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CRIMINAL PROCEDURE

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I INTRODUCTION

AS IN the past, there have been a large number of decisions handed down by various courts during 2010 also. Only those decisions which are felt important in terms of trend-setting have been analysed in the present survey. The run of the mill cases might also be important in terms of application of the provisions to new fact situations but paucity of space makes one to confine to the trend-setters only.

The High Courts in the country have been ordering inquiry of criminal cases by the central bureau of investigation (CBI) in exercise of their writ jurisdiction under article 226 of the Constitution of India without the consent of the state governments as envisaged under section 6 of the Delhi Police Establishment Act, 1946 (under which CBI has been constituted) without much objection from the states. The State of West Bengal, however, chose to question this practice in *State of West Bengal* v. *Committee for Protection of Democratic Rights*.[1] Holding that the words, "notwithstanding anything contained in clauses (2) and (3)" in article 246(1) of the Constitution and the words "subject to clauses (1) and (2)" in article 246(3) lay down the principle of federal supremacy, the Supreme Court ruled that in case of inevitable conflict between the union and the state powers, the union power as enumerated in list I of the seventh schedule to the Constitution shall prevail. Apparently, since the legislation is passed on a subject in list III of the seventh schedule, the central law, *viz.* the Delhi Police Establishment Act, 1946 shall prevail. The court upheld the practice of the High Courts in ordering CBI inquiries ignoring states' consent. This is a welcome decision for the commoner as the credibility of state police is diminishing every day.

The Supreme Court in a sense redefined the role of the High Courts in maintaining standards of criminal justice system including the conduct of lawyers in the court. It called upon them to have proper supervision of subordinate courts' functioning and reiterated their duties under articles 227 and 235 of the Constitution.[2]

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1 (2010) 2 SCC (Cri.) 401.

In 2010, the Supreme Court had an occasion to come across unlawful confinement of unsound people in a news item "38 years in jail without trial" published in the *Hindustan Times*.[3] The court issued several directions calling for periodical reports under the provisions of the Act.

How certain practices get into suspicions is evident from the arguments raised by the accused in *Patai @ Krishna Kumar* v. *State of U.P.*[4] It was the neatness and clarity of the FIR which made him to suspect that it must have either been prepared or dictated by the police. However, the court rejected this argument. It is interesting to note that the Supreme Court clarified that the "charge sheet" mentioned by all including the court refers to the police report under section 173. In fact, the charge sheet can be made by the courts only. This clarification removes the wrong impression created by the practice of different functionaries in criminal justice system.[5]

The usual practice of the Supreme Court in tagging of precedents without any regard to brevity or avoidance of confusion was refreshingly not followed by it in *Padmanabhan* v. *State*.[6] Of course, this view is not being followed now by the Supreme Court though the manipulation and distortion of facts by political rivals in criminal cases came to be noticed by the Supreme Court which it was constrained to observe thus:[7]

The trial court then also relied on the decisions in *State of U.P.* v. *Sahai* (1082) 1 SCC 352, *Sathyamaiah* v. *State of AP* (1978) APLJ 83, *Reghunathnath* v. *State of Haryana* (2003) 1SCC 398; *Moolchand* v. *Jagdish Bedy* (1993) SCC (Cri) 767, wherein it was held that it was not unusual for factionist to take advantage of every situation and occurrence and there is incurable tendency in the factionists to rope in the innocent members of the opposite faction along with the guilty and twist and manipulate their facts with regard to the mode and manner of the occurrence so as to make their case appear true with the innocent members of the opposite faction as participants in the occurrence.

Interestingly, the Supreme Court had an occasion to deal with the case wherein the national human rights commission (NHRC) had recommended commutation of death sentence of a convict in *Banikanta Das* v. *State of Assam*.[8] Having regard to the provisions of the Protection of Human Rights Act, 1993, there was no violation of human rights of the convict in as much as he was awarded death penalty by the Supreme Court. The court ruled that the NHRC did not have any jurisdiction in the matter.

2 See *R.K. Anand* v. *Registrar, Delhi High Court* (2010) 2 SCC (Cri.) 563.
3 (2010) 2 SCC (Cri.) 759.
4 (2010) 2 SCC (Cri.) 854.
5 See *Srinivas Gunduluri* v. *Sepco Electric Power Construction Corpn.* (2010) 3 SCC (Cri.) 652.
6 *Boddella Babul Reddy* v. *PP High Court of AP* (2010) 3 SCC (Cri.) 648.
7 *Id.* at 656.
8 (2010) 2 SCC (Cri.) 39. It is understood from news papers that later a different bench ruled otherwise.

The quoting of an extract purportedly from a Supreme Court decision without verification by the A.P. High Court came to be criticised by the Supreme Court in *Union of India* v. *P.C. Ramakrishnayya*.[9] It remains a fact that the Supreme Court also cites extracts from its own decisions without making proper referencing.[10]

The Supreme Court during 2010 dealt with a compromise between a husband and wife granting divorce on the following terms:[11] on payment of Rs. 5 lakhs by respondents to the petitioner, the proceedings under section 498A, 406 and 120B, IPC and under section 9 of the Hindu Marriage Act, 1955 would stand quashed. An amount of Rs. 3,000 should be paid p.m. for the welfare of the son till he attains majority. On failure to pay for two months consecutively, the criminal case would revive. It is not usual for the highest court to resolve matrimonial disputes and attendant criminal cases.

It is interesting to see how the court responded to a claim of maintenance to a woman who claimed to have been in a relationship in the nature of marriage. Though the case has been remanded to family court for ascertaining the facts, the legality of the claim in the context of the Protection of Women from Domestic Violence Act, 2005 (DVA) and section 125, Cr P.C came to be adverted to[12] by Supreme Court thus:[13]

> An aggrieved person under the Act can approach the magistrate under section 12 for the relief mentioned in section 12(2). Under section 20(1) (d) the magistrate can grant maintenance while disposing of the application under section 12(1). Section 26(1) provides that the relief mentioned in section 20 may also be sought in any legal proceeding before civil court, family court or a criminal court.

Thus, a woman who was in a marriage like relationship, though not a legally wedded wife under section 125 could claim maintenance under the DVA. The court also got an opportunity to remind the journalists about the need for protection of rights of the accused who are on trial. The court in *Siddartha Vasisht* v. *State (NCT of Delhi)*,[14] observed:[15]

> In the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which

9 (2010) 3 SCC (Cri.) 1062.
10 Note that paras. 15 to 20 of *State of Punjab* v. *Manjit Singh* (2010) 1 SCC (Cri.) 1283 are extracted from *Ronny* v. *State of Maharashtra*, 1998 SCC (Cri.) 859 without any acknowledgment.
11 See *Navpreet Kaur* v. *Gurukirat Singh* (2010) 3 SCC (Cri.) 1199.
12 See *Velusamy* v. *A. Patchiammal* (2010) 2 SCC (Cri.) 469.
13 *Id.* at 475.
14 (2010) 2 SCC (Cri.) 1385.
15 *Id.* at 478.

> again gave rise to unnecessary controversies and apparently had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial, defence of the accused and non-interference with the administration of justice in matters subjudice.

The court reiterated that the trial by media should be avoided particularly at a stage when the suspect is entitled to the constitutional protection. The Supreme Court thus touched upon vital aspects of the Indian criminal justice system in 2010 as in earlier years and the judiciary's response to certain fact situations in the light of the provisions in Cr PC which is noted below under different heads.

II INVESTIGATION

Writ court has no jurisdiction to investigate

In *Kunga Nima Lepcha* v. *State of Sikkim*,[16] the Supreme Court clarified that it was not the forum for seeking initiation of investigation against political opponents. The court's observations are pertinent:[17]

> However even if we were to accept the locus standi of the petitioners keeping in mind that the allegations of corruption on the part of the incumbent C.M. do not touch on public interests, this court is not the appropriate forum for seeking the initiation of investigation. x x x
> In all these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigation agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation.

In this context, it may be noted that the magistrate on a petition under section 156(3) after reading the complaint, instead of applying his mind to the complaint to decide whether or not there was ground for proceeding, may direct the police to investigate. Here he does not take cognizance of the offence at all.[18]

Handing over of investigation to CBI after filing charge sheet

Usually, the investigation of a case is given to CBI before the charge sheet is filed. But in *Rubabuddin Sheikh* v. *State of Gujarat*,[19] the Supreme

16 (2010) 2 SCC (Cri.) 878.
17 *Id*. at 881-82.
18 *Supra* note 5.
19 (2010) 2 SCC 200.

Court authorized CBI investigation after filing of charge sheet because of the involvement of senior officers of the State of Gujarat in the commission of the crimes.

Purpose of identification proceedings

The identification proceedings are in the nature of tests. In fact, there are no provisions in the Cr PC or the Evidence Act for holding such tests. In *Musheer Khan & Badshah Khan* v. *State of MP*,[20] the Supreme Court reiterated that the main object of holding T.I tests during investigation is to check the memory of witnesses based upon first impression and to enable the prosecution to decide whether these witnesses could be cited as eyewitnesses of the crime. The evidence obtained from these is governed by section 162, Cr PC and the weight to be attached to it is determined by the court.[21] In the same case, the Supreme Court also clarified that if the discovery of a fact is otherwise reliable, its evidentiary value is not diminished by reason of non-compliance of sub-sections (4) or (5) of section 100 Cr PC.

What is FIR

It has categorically been ruled by the Supreme Court that the fact that the information was the first in point of time does not by itself clothe it with the character of FIR. Naturally a cryptic telephonic message of a cognizable offence cannot constitute FIR under the Cr PC.[22]

Court should not direct investigation to add a new charge

The Supreme Court deprecated the direction given to the investigation by a metropolitan magistrate to include an offence under section 307, IPC for investigation.[23] The High Court also upheld this direction. The Supreme Court following its decision in *M.C. Abraham*[24] ruled that the direction of the metropolitan magistrate was wrong.

The use of polygraph test, etc. in investigation: Role of the court

In *Selvi* v. *State of Karnataka*,[25] the Supreme Court examined the desirability of adopting polygraph, narco-analysis and BEAP tests in criminal investigation and concluded that no one should be compelled to undergo

20 (2010) 2 SCC (Cri.) 1100.

21 See the observation in *Siddharth Vasishia alias Manu Sharma* v. *Delhi (NCT of Delhi)* (2010) 2 SCC (Cri.) 1385. The court said: The logic behind the T.I.P. which will include photo identification lies in the fact that it is only an aid to investigation where in accused is not known to the witnesses, the I.O conducts a T.I.P. to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under s. 8 of Evidence Act as evidence of conduct of a witness in photo identifying the accused in the presence of an I.O or the magistrate, during the course of an investigation".

22 *State of AP* v. *Panduranga Rao* (2010) 2 SCC (Cri.) 394.

23 *Sheriff Ahmed* v. *State of NCT of Delhi* (2010) 1 SCC (Cri.) 1317.

24 (2003) 2 SCC 646.

25 (2010) 3 SCC (Cri) 1.

these tests. However, the court left scope for voluntary administration of the impugned techniques in the conduct of investigation provided that certain safeguards were complied with. The test results by themselves may not be admitted as evidence. However, any information or material that is subsequently discovered with the help of test results can be admitted in evidence under section 27 of the Evidence Act. The court ruled that the guidelines issued by the NHRC in the conduct of the detector tests should be followed. Also, it said that similar guidelines should be developed for these two tests.

It has been categorically declared in *Bhabani Prasad Jena* v. *Convener Secretary, Orissa State Women's Commission*[26] that the court has to decide the imposition of DNA test only on balancing the interest of the accused and the need for a just decision. It has also to consider section 112 Evidence Act and "eminent need" rule.

Investigation - Extent of

Section 57, Cr PC lays down that if from the information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is authorised to investigate, he may proceed to the place of occurrence under intimation to the magistrate. If, however, he fails to send a report to the magistrate that does not mean that his proceeding to the place of occurrence is not a part of the process of investigation. To bring such a proceeding within the ambit of investigation, it is not necessary that a formal registration of the case should have been made before proceeding to the spot. If he has some information to have reason to suspect of the commission of cognizable offence, any step taken by him pursuant to such information towards detection of the said offence would be part of investigation under the Code.[27]

It is fundamental right to have fair investigation

Drawing inspiration from *Kashmeri Devi* v. *Delhi administration*,[28] the Supreme Court declared that a court should decline to accept I.O's report if it is glaringly unfair and offends basic canons of criminal investigation. Relying on the maxim, *contra veritatem lex nunquam aliquid permittit*, the court held that it is the duty of the court to accept and accord its approval only to a report which is result of faithful and fruitful investigation. In *Manu Sharma* v. *State (NCT of Delhi)*,[29] the Supreme Court, quoting *Nirmal Singh Kahlon* v. *State of Punjab*,[30] reiterated that it is the fundamental right of the accused to have fair investigation.

26 (2010) 3 SCC (Cri) 1053.
27 See *Sambudas* v. *State of Assam* (2010) 10 SCC 374.
28 AIR 1988 SC 1323.
29 (2010) 2 SCC (Cri.) 1385.
30 (2006) 12 SCC 421.

Court has power to disregard unacceptable investigation report

The Supreme Court's views on un-satisfactory investigation reports expressed in *State of Karnataka* v. *K. Yarappa*[31] came to be reiterated in *Abu Thakkir v. State of Tamil Nadu.*[32] It ran thus:[33]

> [E]ven if the investigation is illegal or even suspicious, the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officer ruling the roost…. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words if the court is convinced that the testimony of the witness to the occurrence is true the court is free to act on it albeit the I.O's suspicious role in the case.

The case is not different when the I.O says that there is no case to proceed and the court does not share that view. In such a case, the court can reject the investigation report and proceed with the case. For in *Umashankar Singh* v. *State of Bihar*,[34] the court declared thus:[35]

> The law is well settled 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 in exercise of his power under S. 190(1)(b) of Cr PC.

No Police remand after 15 days of arrest

In *Devendra Kumar* v. *State of Haryana*,[36] the Supreme Court ruled that a person arrested could be given in police remand for some days but after 15 days of arrest, he cannot be remanded to police custody.

The report under s. 173(2) can be filed by an officer in charge of a police station

It has been ruled[37] by the Patna High Court that a report under section 173(2), Cr PC could be filed by an officer in charge of a police station and by any senior police officer.

Taking blood samples for DNA test is permissible

In *Halappa* v. *State of Karnataka*,[38] The Karnataka High Court held that

31 (1999) 8 SCC 715.
32 (2010) 2 SCC (Cri.) 1258.
33 *Id.* at 1267.
34 (2010) 3 SCC (Cri.) 1397.
35 *Id.* at 1401.
36 (2010) 6 SCC 753.
37 *Lalusingh* v. *State of Bihar* (2010) Cri. LJ 1602 (Pat.).
38 2010 Cri. LJ 4341 (Kar.); also see s. 53(a) of the Amendment to Cr PC in 2005.

it is not violative of any law including the Constitution to take blood sample of the accused in the rape case.

Recording of statement under s. 161, Cr PC

It is not obligatory for the investigating officer to record statements under section 161, Cr PC. However, his discretion in this respect is not fettered. This view also accords well with the amendment to section 161 effected in 2008.[39]

Witness can be summoned u/s 160 by police if they reside near police station

The Gauahati High Court held that the police can require witnesses to attend P.S. if they reside within limit of his office or the adjoining police station.[40]

Further investigation

The police is authorised to conduct further investigation *suo motu*. But it cannot pass orders if charge has been filed and charges have been framed against some discharging others.[41] Though it is not necessary to obtain the permission of the court to do further investigation, it is desirable to keep him in the picture.[42]

III INITIATION OF PROCEEDINGS

Case emanating from offences committed with respect to a document given in the court

In *Maheshchand Sharma* v. *State of U.P*,[43] documents in respect of a property purchased by the appellant came to be manipulated showing that the vendor was dead and that the father of the seller gave the property to the respondent. On further investigation by the police on the rejection of earlier request of the police, the magistrate took cognizance of the fresh report under sections 420, 467, 468, 471 and 120(b), IPC. The petition of the accused for quashment under section 482 was allowed by the single judge. On appeal, the Supreme Court held that the case was maintainable under clause (iii)(b) of section 195, Cr PC in as much as the offences enumerated therein were committed with respect to a document "subsequent to its production or giving in evidence in a proceeding in any court."

Maintainability of complaint after order dismissing the first complaint attained finality

The question whether, after an order of dismissal, in respect of a complaint had attained finality, the complainant can file another complaint on almost

39 *Bhakth Horad* v. *State*, 2010 Cri LJ 4524 (Cal.).
40 *Pusma investment Pvt. Ltd.* v. *State of Meghalaya*, 2010 Cri LJ 56 (Gau.)
41 *Reeta Nag* v. *State of West Bengal*, 2010 Cri LJ 2245.
42 See *Sunil Tandon* v. *State of Maharashtra*, 2010 Cri LJ 4263 (Bom.).
43 (2010) Cri LJ 660.

identical facts without disclosing in the second complaint the fact of either filing of the first complaint or its dismissal came to be answered in the negative in *Poonamchand Jain* v. *Fazru*.[44] In fact this question was raised in 2004 in the Supreme Court in *Poonamchand Jain* v. *Fazru*.[45] Though the issues could have been resolved as it had been rightly done in the present case, the Supreme Court in 2004 remitted that case back to the High Court after a confusing discussion of the case law dating back to the 19th century. In fact, the issue was resolved by the Supreme Court in *Pramatha Nath Talukdar* v. *Saroj Ranjan Sarkar*[46] where the court had held that an order of dismissal under section 203, Cr PC was no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances such as (a) where the previous order was passed on incomplete record, or (b) on a misunderstanding of the nature of the complaint, or (c) the order passed was manifestly absurd, unjust or foolish; or (d) where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings. This ruling was reiterated in *Jagtindersingh* v. *Renjit Kaur*[47] and *Maheshchand* v. *B. Janardan Reddy*.[48]

In the present case the court found that the second complaint was not covered within exceptional circumstances explained in *Pramathanatha Talikdar*. It was unfortunate that the Supreme Court instead of straightening the law caused a delay of more than 5 years.

Treating protest petition as a complaint under section 200 is possible

Power to direct investigation to police authorities is available to the magistrate both under section 156(3) and section 202. The only difference is the stage at which the power may be invoked by the magistrate. The magistrate in *Rameshbhai Pandurao Hedan* v. *State of Gujarat*[49] had chosen to treat the protest petition filed by the appellant against the police report on the death of his brother, as a complaint under section 200 and proceeded to act under section 202. It was held proper by the Supreme Court.

Initiating two cases on same occurrence – to be tried simultaneously

The facts and decision in *Pal @ Palla* v. *State of U.P*[50] are very interesting. The appellant's father came to be killed by four persons. The investigating officer did not carry out proper investigation. So the appellant filed a writ petition implicating one Gyan Singh. While it was pending, the investigation officer filed report implicating four persons not mentioned by the appellant in the FIR. Subsequently, another report implicating Gyan Singh was

44 (2010) 2 SCC (Cri.) 1085.
45 (2004) 13 SCC 269.
46 AIR 1962 SC 876.
47 (2001) 2 SCC 570.
48 (2003) 1 SCC 734.
49 (2010) 2 SCC (Cri.) 801.
50 (2010) 3 SCC (Cri.) 1228.

filed. The appellant filed protest petition implicating five persons mentioned by him. The magistrate issued summons. On petition for quashment, the High Court ordered simultaneous trial. The appellant appealed to the Supreme Court which ordered as follows:[51]

> The facts of the case also warranted that the two trials should be conducted by the same presiding officer in order to avoid conflict of decisions. As was observed in Hajinder Singh, 1985 SCC (Cri) 93, clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases should be disposed of simultaneously.

Magistrate need not examine all witnesses while acting under s. 202(2)

The question whether it is necessary for the magistrate to examine all the witnesses of the complainant for finding *prima face* case for summoning of the accused came to be answered in the negative by the Supreme Court in *Shivjee Singh* v. *Nagendra Tiwari.*[52] The court's observations are self-explanatory. It observed:[53]

> The use of the word "shall" in the proviso to section 202(2) is prima face indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with the other provisions contained in Chapter XV and sections 226 and 227 and section 465 would clearly show that non-examination on oath of any or some of the witnesses cited by the complainant is by itself not sufficient to denude the Magistrate concerned of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word, "all" appearing in the proviso to section 202(2) is qualified by the word "His". This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant consider material to make out a prima facie case for issue of process.

51 *Id.* at 1233.
52 (2010) 3 SCC (Cri.) 452.
53 *Id.* at 459.

IV BAIL AND ANTICIPATORY BAIL

The provisions in the Cr PC confer a lot of discretion with judges for deciding grant of bail to the accused. Judges are to consider the possibility of accused's interfering with the investigation and trial and the infringement of the freedom of the accused. Thus while granting bail, the court has to resort to a delicate balancing of societal interest and individual interest. Naturally, an order granting or refusing bail has to have reasons for the grant or rejection. If undue considerations have gone into the grant of bail, the courts retain the power to cancel bail. Also, there could be collusion by the investigation agency in some persons getting bail from the courts.

Orders granting bail without adducing reasons not proper

Both in *Suresh Kumar Somabhai Rana* v. *Ashok Kumar Haraklal Mittal*[54] and *Masroor* v. *State of U.P*,[55] the Supreme Court pointed out that though the detailed examination of evidence is not expected at the stage of granting bail, some reasons for the *prima facie* conclusion should be given by the court. In both the cases, the Supreme Court reversed the decision of the High Court favouring grant of bail without reasons. In *Masroor,* the court noted with concern the unholy nexus between the prosecuting agencies and the accused in creating a situation favourable to the accused getting bail. The court vehemently criticised the practice of the prosecution.

Cancellation of bail

In *Subodhkumar Yadav* v. *State of Bihar*[56] and *Manjit Prakash* v. *Sobha Devi*,[57] it was observed that if the grant of bail was on irrelevant considerations, the bail order can be cancelled by the superior court. The Supreme Court in unequivocal terms declared in *Subodhkumar Yadav* thus:[58]

> In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material, or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear P.P. complainant where required, an order for cancellation of bail can in fact be made (See *Gajanand Agarwal* v. *State of Orissa* (2006) 12 SCC 131 and *Rizwan Akbar Hussain Sayyed* v. *Mohamed Hussain* (2007) 10 SCC 368). Further, by cancelling bail, the Superior court would be justified in considering the question whether irrelevant materials were taken into consideration by the court granting bail.

54 (2010) 1 SCC (Cri.) 1373.
55 (2010) 1 SCC (Cri.) 1368.
56 (2010) 2 SCC (Cri.) 200.
57 (2010) 1 SCC (Cri.) 1260.
58 (2010) 3 SCC (Cri.) 299.

Be that as it may, the Supreme Court refused to cancel bail granted to the persons accused of trafficking in women in *Guria Swayam Sevi Sansthan* v. *State of U.P.*[59] Indeed, the court noted that the High Court's act of granting them bail ignoring the gravity of the offence was wrong. Still, because long time had passed after the grant of bail, the court did not cancel it.

Delay in hearing appeals not a proper ground to grant bail

Both in *Sunil Kumar Sinha* v. *State of Bihar*,[60] and *Rabindra Nath Singh* v. *Rajesh Ranjan @ Pappu Yadav*,[61] it was held in categorical terms that delay in hearing the appeals is no ground to grant bail. In the latter case, unfortunately, the petitioner brought a letter urging hearing of his application in a bench excluding a particular judge of the Supreme Court. In fact, it was a case where despite an order not to hear his bail application, the High Court granted him bail on the ground that his appeal was not likely to be heard within six months. This invited a terse comment from the Supreme Court:[62]

> We do not wish to express our regret that bail was granted by the High Court for no good reason except by saying that the appeal is not likely to be heard in six months. If bail is granted on such a ground then bail will have to be granted in almost every case, even when the offence is heinous.

Unwarranted grant of bail by a High Court deprecated

The Patna High Court came to be severely criticized for granting bail to the accused in *Virendra Pratap Singh* v. *Rajesh Bharadwaj*.[63] The accused in this case absconded after the news of the death of a woman whom he took away from the village before her death. The offence was allegedly committed on 30/11/2007. A series of applications for bail under section 438, Cr PC came to be filed on his behalf in the High Court and the Supreme Court. He did not surrender. The High Court ordered to get the investigation conducted by a senior officer of the level of DGP on the police's filing of its report. It also ordered that the lower court should not take any action till 21.06.2010. His application for bail on one ground or the other came to be filed despite their rejection. This prompted the Supreme Court to observe:[64]

> A very novel statement was made that his father's kidney had failed and that the accused was going to donate the kidney and he should be granted provisional anticipatory bail. What flabbergasts us is that

59 (2009) 15 SCC 75.
60 (2010) 2 SCC (Cri.) 299.
61 (2010) 3 SCC (Cri.) 165.
62 (2010) 3 SCC (Cri.) 165.
63 (2010) 3 SCC (Cri.) 1169.
64 *Id* at 1173.

> on this broad plea the High Court grants eight month's provisional anticipatory bail to Respondent 1- accused. Very strangely all this was in the backdrop of the rejection of all the applications made by the accused under Section 138 Cr PC before all the courts including this Court. Again, to say that we are surprised by this order, would be an understatement. We also did not understand as to why eight months time was required by the accused and granted by the High Court for donating the kidney

The Supreme Court found that the High Court was influenced in favour of the accused and its actions were not permissible and warranted in law.

Anticipatory bail

Theoretically speaking, when a person is granted bail, he is in the custody of the court.[65] This has rightly been pointed out by the Allahabad High Court thus:[66]

> As soon as an accused surrenders before a court he submits to the jurisdiction of the court and the right of the police to arrest him does not exist thereafter. When an accused surrenders and is released on personal bond, he remains in the custody of the court. Release on personal bond is nothing but a release on temporary bail, pending the final disposal of the bail application in order to make the remedy effective and efficacious.

In fact, the concept of anticipatory bail could be satisfactorily explained in the light of this explanation. This is granted at the discretion of the sessions court or the High Court. Both the legislature as well as the courts seem to have been under the impression that it may be a hurdle to smooth investigation though.[67] As a matter of fact, *dehors* the liberal interpretation section 438 received in *Gurbakksh Singh Sibbia* v. *State of Punjab*,[68] the trend has been

65 See *Issma* v. *State of U.P*, 1993 Cri LJ 2432 (All.); see also *Vinod Kumar* v. *State of UP,* 1996 Cri LJ 309 (All.).

66 1993 Cri LJ 2432.

67 The Supreme Court in *Samunder Singh* v. *State of Rajasthan* (1987) 1 SCC 466 ruled that in dowry death cases, anticipatory bail should not be granted. In *State (CBI)* v. *Anil Sharma*, 1997 SCC (Cri.) 1039, the court observed at p. 1041 thus: "[W]e find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is ensconced with a favourable order under section 438 of the code"; see also S.C. and S.T. (Prevention of Atrocities) Act, 1989, excluding application of anticipatory bail. The Supreme Court in *Samunder Singh* v. *State of Rajasthan* (1987) 1 SCC 466 had ruled that in dowry death cases anticipatory bail should not be granted.

68 1980 SCC (Cri.) 465.

to limit the period of operation of anticipatory bail order to the point of granting of regular bail by the trial court. The decisions in *Salauddin,*[69] *A.L.Verma,*[70]*Adri Dharamdas*[71] and *Sunita Devi* v. *State of Bihar*[72] were in conflict with *Sibbia* decision and the court did not refer to *Sibbia* decision at all. It held that the anticipatory bail order may be valid till the trial court is approached for regular bail.

This position has now come under fire in as much as the constitution bench decision in *Sibbia* was not followed by similier benches of the Court even without making a reference to it. Now, in *Siddhram Satlingappa Mhetre* v. *State of Maharashtra*,[73] the Supreme Court said thus:[74]

> A number of judgements have been referred to by the learned counsel for the parties consisting of Benches of smaller strength where the courts have observed that the anticipatory bail should be of limited duration only and ordinarily on expiry of that duration or standard duration, the court granting the anticipatory bail should leave it to the regular court to deal with the matter. The view is clearly contrary to the view taken by the Constitution Bench in *Sibbia* case.

In this context, it may be pertinent to state that the smaller benches have shared the common perception that the power to grant anticipatory bail is to be an extraordinary power to be exercised sparingly.[75] This view must have been strengthened by the *ratio* of *Sibbia* in which the court also said:[76]

> Should the operation of an order passed under section 438(1) be limited in point of time? Not necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail u/s 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

69 (1996) 9 SCC 998.
70 (1998) 9 SCC 348.
71 (2005) 4 SCC 303.
72 (2005) 1 SCC 608.
73 2010 (12) SCALE 691.
74 *Id*. at 721, para. 133.
75 See *Naresh Kumar* v. *Ravindra Kumar* (2008) 1 SCC (Cri.) 277.
76 (1980) SCC (Cri.) 465 at 491.

In fact before the decision of the Supreme Court in *Siddha Satlingappa Mhetre*,[76a] the AP High Court in *C.H. Shiva Prasad* v. *State of A.P*,[77] tried to address the question of following the larger bench decision. It appears that the courts try to follow the *Sibbia* with caution despite the detailed scheme laid down by the Supreme Court in *Siddha Satyalingappa*. Such approach may be more in consonance with[78] conceptual foundation of anticipatory bail. In other words, it could be argued that anticipatory bail is only to avoid the inconvenience of an accused, who has not yet been investigated. It would be appropriate if later on a *prima facie* case is found against him, he is to be under the custody of trial court by way of regular bail order from it.

V PROSECUTION

Impact of sloppy prosecution of the case

The impact a sloppy prosecution can have on the case came to be discussed by the Supreme Court in *Sambudas @ Bejo das* v. *State of Assam*,[79] wherein the prosecution did not elect to examine prosecution witness and there was improvement on her version in the court. The court's observations are self-explanatory:[80]

> At this juncture, we intend to add that if the prosecution fails to explain the reason for non-examination of an important witness, who is supposed to have informed about the alleged incident, should the accused persons go scot free. It is a difficult question, sometimes difficult to answer. Since it is noticed by this Court time and again that a number of criminal cases, because of sloppy attitude shown by the prosecution, the real culprit goes scot free.

Independence and impartiality of the office of the public prosecutor

It is universal in common law countries that the public prosecutor is required to tell the truth even if it is in favour of the accused. He is independent and impartial. He represents the State. He is not supposed to procure a conviction at any cost. He is not part of the investigating agency either. In *Siddartha Vasisht @ Manu Sharma* v. *State of NCT of Delhi*,[81] all these aspects were reiterated by the Supreme Court.

76a *Supra* note 73.

77 1999 Cri LJ 1263 (AP); see *Pravibhai Kashirambhai* v. *State of Gujarat* (2010) 1 SCC (Cri.) 469. It has been ruled that no strait jacket formula could be there in granting anticipatory bail.

78 (2010) 10 SCC 374. The conceptual foundation is that when a person on bail, he is under the custody of the court.

79 *Id.* at 386; see also *Sajjan Kumar* v. *CBI* (2010) 3 SCC (Cri.) 137.

80 (2010) 2 SCC (Cri) 1385.

81 (2010) 2 SCC (Cri) 1385.

VI TRIAL AND TRIAL PROCEDURE

Importance of open trial

The criminal justice system in India stands for open trial. However, in certain situations this requirement is relaxed. In *Mohammed Shahabuddin* v. *State of Bihar*,[82] the trial of the petitioner was arranged in a court established by the High Court in jail under section 9(6), Cr PC. The Supreme Court okayed it on the basis of *Kehar Singh*,[83] a decision by a three member bench of the Court.

The relevance & importance of cross-examination before charging

The Supreme Court reiterated, in *Ajoy Kumar Ghose* v. *State of Jharkhand*[84] the relevance and need for cross-examination of the prosecution witnesses before framing charges. This is a right to be afforded to the accused so that he may argue that no charge should be framed against him and he should be discharged. It has also been ruled in this case that the magistrate can discharge accused after recording reasons even at stage when accused appears in response to summons or warrant but no prosecution evidence has been led.

Need for witness protection

The Supreme Court, while examining the trial in *State of Maharashtra* v. *Mangilal*,[85] opined that it is highly necessary that should be protection to witnesses so that they may freely depose in the court. Upholding the acquittal of the accused for want of prosecution evidence, the court contioned that if witnesses are not protected, accused persons with money and power can trample any witness who dares to depose against them.

Confessional statement recorded under TADA not made applicable in a case under IPC

In *Sunderlal Kanaiyalal Bhatia*,[86] the accused was proceeded against under TADA and convicted. Along with that case, another case under the provisions of IPC was also registered at the instance of a person but, as a result of the review committee recommendations, those offences were dropped. In such a situation, it was held that a confession made by a person in another case cannot be relied by the prosecution in the case registered under IPC.

At the time of framing charge only *prima facie* case is to be ascertained

Time and again it has been reiterated by the Supreme Court that at the framing of the charges, the probative value of the material time of on record

82 (210) 3 SCC (Cri) 604.
83 (1988) 3 SCC 609.
84 (2010) 1 SCC (Cri.) 1301.
85 (2010) 2 SCC (Cri.) 554.
86 (2010) 2 SCC (Cri.) 848.

cannot be gone into, and the material brought on record by the prosecution has to be accepted as true.[87] Before framing a charge, the court must be satisfied that the commission of offence by the accused was possible. Whether he has committed the crime or not can be ascertained only in the trial.

Non-mention of s. 34 in the place of s. 149 with s. 302, IPC may not prejudice the accused

When in a murder case involving five accused charged under section 302/ 149, three got the benefit of doubt and the remaining two came to be punished with the help of section 34 IPC, it was ruled that the accused were not prejudiced and, if common intention can be established, the conviction is valid.[88]

Circumstantial evidence & extra-judicial confession

Extra judicial confession is primarily a judicial creation. It must be used with utmost restraint in limited circumstances and should also be corroborated by way of abundant caution. Evidentiary value of extra-judicial confession should be judged in the facts and circumstance of each case. If it is voluntarily made and fully consistent with circumstantial evidence, it can be safely relied upon by the court along with other evidence in convicting the accused. [89]

Status of approver whose pardon has been withdrawn

If a person fails to support prosecution after becoming approver, he will be relegated to the status of an accused liable to be tried separately. The evidence given by him will be ignored though it may be used against him. He need not be permitted to be cross-examined by the defence.[90]

Evidentiary value of statements made u/ss. 315 and 313, Cr PC

The relative evidentiary value of statements recorded under sections 315 and 313 came to be examined by the High Court in *Dehal Singh* v. *State of H.P.*[91] The statement made under section 313 is recorded by the court without

87 See *Vijayan* v. *State of Kerala* (2010) 1 SCC (Cri.) 1488; see also *Chitresh Kumar* v. *State* (2010) 3 SCC (Cri.) 367.

88 *Prem Singh* v. *State of Haryana* (2010) 1 SCC (Cri.) 1423.

89 *Arul Rajah v. State of T.N* (2010) 3 SCC (Cri) 801.

90 *State of Maharashtra* v. *Abu Salem, Abdul Rayyum Ansari* (2010) 3 SCC (Cri.) 1243 wherein the court observed; "The designated court seriously erred in treating respondent 3 as a hostile witness; it failed to consider that the pardon granted and accepted by him was on the condition of his making a true and full disclosure of all the facts concerning the commission of crime and once the pardon granted to him stood forfeited, all the certificate issued by the Spl. P.P relegated to the position of an accused and did not remain a witness. In the circumstances there was no justification to permit the defence to cross examine the respondent 3 and to that extent the impugned order cannot be sustained."

91 (2010) 3 SCC (Cri.) 1139.

administering oath and the witness without being cross-examined. Naturally, it does not come under section 3 of the Evidence Act as evidence.[92] But, if an accused is examined under section 315, the statement becomes relevant under section 3 of that Act.

It has been held that all incriminating material circumstances should be put to the accused while being examined under section 313. Even if it is not done, it would not lead *ipso facto* to the exclusion of the statement unless it could further be shown that prejudice and miscarriage of justice had been sustained by the accused.[93] Statement under section 313 can be used by the court to the extent that it is in line with the prosecution case. However, it cannot be the sole basis for conviction.[94]

Right of accused with regard to the disclosure of the documents

The right of the accused for disclosure of documents is a limited right. However, it is the very foundation of a fair investigation and trial. The accused cannot have an indefeasible right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under section 173(2). But certain rights flow both from the codified law as well as from the equitable concepts of constitutional jurisdiction, as substantial variation to such a procedure would frustrate the very basis of a fair trial.[95] The Supreme Court reasoned:[96]

> To claim documents within the purview of scope of sections 207, 243 read with provisions of section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statements and documents which the prosecution has collected during investigation and upon which they rely.

Revision and appeal

Review of judgements by way of appeals and revision and under writ provisions is quite frequent. Of late, curative petitions are also heard and decided. In *State of M.P.* v. *Sughar Singh*,[97] the Supreme Court on appeal by the state reversed the acquittal of some accused against whom the state did not file appeal and, therefore, no notice of appeal was served on them. On curative petitions being filed by the three accused, the Supreme Court ordered recall of the case on the ground that it reversed the acquittal of the accused without hearing them.

92 Also read observations in *Sidhartha Vashisht @ Manu Sharma,* (2010) 2 SCC 1385.
93 See *Aftab Ahamed Ansari* v. *State of Uttaranchal* (2010) 2 SCC (Cri.) 1054, *Santhoshkumar Singh* v. *State* (2010) 3 SCC (Cri.) 278.
94 *Dharmidar* v. *State of UP* (2010) 7 SCC 759.
95 *Sidhartha Vashisht, supra* note 92.
96 *Id.* at 1457.
97 (2010) 2 SCC (Cri.) 463.

Appeal against High Court judgments under art. 136

In *Ganga Kumar Srivastav* v. *State of Bihar*,[98] the principles governing exercise of jurisdiction under article 136 have been stated as follows:-

1. The powers of the Supreme Court under article 136 of the Constitution are very wide, but in criminal appeals it does not interfere with the concurrent findings of the facts save in exceptional circumstances.
2. It is open to the Supreme Court to interfere with findings of the fact given by the High Court, if the High Court has acted perversely or otherwise improperly.
3. It is open to the Supreme Court to invoke the power under article136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the court.
4. When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
5. When the appreciation of evidence and finding is vitiated by any error of law and procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions are manifestly perverse and unsupportable from the evidence on record.

The Supreme Court by subsumtion of these principles to the facts of the cases came to decide several appeals.[99]

The Supreme Court similarly re-stated rules for exercise of revisional jurisdiction in *Sheetala Prasad* v. *Srikant.*[101] It was a case in which the accused was acquitted of offence under section 380, IPC. The state did not elect to appeal. So the complainant approached the High Court in revision. The single judge reversed the acquittal and remitted the case to the sessions judge. This case came to be appealed against. The Supreme Court responded:[102]

Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a private complainant -

98 (2005) 6 SCC 211; see also *State of UP* v. *Gurucharan* (2010) 2 SCC (Cri.) 465; *Fathchand* v. *State of Haryana* (2010) 2 SCC (Cri.) 676; *Jayabalan* v. *U.T. of Pondicherry* (2010) 2 SCC (Cri.) 966.

99 Quoted in *Khiltan* v. *State of MP* (2010) 2 SCC (Cri.) 441; also see *Dharamveer* v. *State of UP* (2010) 2 SCC 872.

100 (2010) 2 SCC (Cri.) 1002.

101 *Id.* at 1004.

102 (2010) 2 SCC (Cri.) 522.

1. where the trial court wrongly shut out evidence which the prosecution wished to produce;
2. where the admissible evidence is wrongly brushed aside as inadmissible;
3. where the trial court has no jurisdiction to try the case and has still acquitted.
4. where the material evidence has been overlooked either by the trial court or the appellate court or the order passed by considering irrelevant evidence; and
5. where the acquittal is based on the compounding of the offence which is invalid under the law.

When this jurisdiction is invoked by a private party, it should be exercised strictly only in exceptional cases.

Determination of juvenility of the accused

In both *Josbar Singh* v. *Dinesh*[102] and *Pawan* v. *State of Uttaranchal*,[103] the issue was whether the accused were juveniles. If they were juveniles, they could seek trial under the J.J. Act and avoid the serious punishment under the IPC. In the former case, the trial court after examination of the evidence, found that he was an adult. On appeal, however, the High Court issued direction to treat him as a juvenile. On appeal, the Supreme Court after appreciation of evidence found that the trial court was right.

In the latter case, the plea of juvenility was raised for the first time in the Supreme Court which rejected it observing thus:[104]

> If the plea of juvenility was not raised before the trial court or High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate and satisfactory material that the accused had not attained the age of eighteen years on the date of commission of offence; sans such material any further enquiry in the juvenility would be unnecessary.

Circumstantial evidence can be relied upon

The Supreme Court in *Aftab Ahmed Ansari* v. *State of Uttaranchal,*[105] relied on the circumstantial evidence to uphold the conviction of a person who was sentenced to death by the trial court and later converted to life imprisonment by the High Court in the rape and murder case of a five year old girl. The court went on record:[106]

103 2009 (15) SCC 259.
104 *Id.* at 535.
105 (2010) 2 SCC (Cri.) 1054.
106 *Id.* at 1059.

> However it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that "men may tell lies, but circumstances do not".

In *Wahid Khan* v. *State of MP*,[107] the prosecutrix, a twelve year old girl, did not support the prosecution. But on confrontation with her statements given under sections 161 and 164, she came out to support the prosecution. The trial court found sufficient corroboration of the evidence and convicted the accused under section 376 and sentenced the accused to seven years imprisonment which was later upheld by the High Court and the Supreme Court. The court found corroboration following the famous explanation offered by Vivian Bose J in *Rameshwar* v. *State of Rajasthan*,[108] which runs thus:

> The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safer to disperse with it, must be present to the mind of the Judge.

Trial courts judgements upheld by Supreme Court

In *State of Punjab* v. *Atma Singh*,[109] the trial court convicted the accused but on appeal the High Court reversed the judgement without considering the evidence of three witnesses who were considered credible by the trial court. The Supreme Court disapproved the High Court's intervention and restored the conviction registered by the trial court.

Again, in *Boddella Babul Reddy* v. *PP High Court of AP,*[110] the Supreme Court upheld the acquittal registered by the trial court. The High Court had convicted the appellant while maintaining the acquittal of others. The Supreme Court, on appreciation of evidence, restored the trial court's order of acquittal.

Necessity for adducing reasons

Both, in *State of Punjab* v. *Rajwinder Singh*,[111] on appeal and *Ashok Kumar Takur* v. *State of Bihar,*[112] an application under section 482, the High Court did not indicate the reasons for their orders of dismissal. In the first case, the Supreme Court, to avoid delay, decided the case while in the other, court remanded it to the High Court.

107 (2010) 1 SCC (Cri.) 1208.
108 AIR 1952 SC 54.
109 (2010) 2 SCC (Cri.) 260.
110 (2010) 3 SCC (Cri.) 648.
111 (2010) 3 SCC (Cri.) 1008.
112 (2010) 3 SCC (Cri.) 1200.

Appeal against acquittal

Common law, generally speaking, does not encourage appeal against acquittal. But the Indian Criminal Procedure Code to incorporate provisions enabling parties to appeal against acquittal also. In the Code of 1861, section 407, in consonance with the common law, prohibited appeal from acquittal. It was only in 1872 that the Code incorporated section 272 enabling appeal against acquittal. It was re-enacted as section 417 in the 1882 and in the 1898 Code. In the present Code, there are provisions retaining appeals against acquittal.

The question with regard to the authority/persons entitled to make appeals depends on the authority which initiates the prosecution. It was in this context that the question whether the State of Bihar had competence to file an appeal from the judgment passed by the special judge, CBI acquitting the accused persons when the case had been investigated by the Delhi Special Police Establishment was raised in *Lalu Prasad Yadav* v. *State of Bihar.*[113] The court answered it in the negative and ruled that the State of Bihar did not have authority to appeal against acquittal of the accused in the case.

In *Siddartha Vasisht @ Manu Sharma* v. *State (NCT of Delhi)*,[114] the Supreme Court clarified that the following principles have to be kept in mind by the appellate court in dealing with appeals, particularly against an order of acquittal:

1. There is no limitation on the part of appellate court to review the evidence upon which the order of acquittal is founded.
2. The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.
3. The appellate court can also review the trial court's conclusion with respect to both facts and law.
4. While dealing with the appeal preferred by the state, it is the duty of the Appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.
5. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so.
6. While sitting in judgment over an acquittal, the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative, the order of acquittal is not to be disturbed; conversely, if the appellate court holds for reasons to be recorded that the order of acquittal cannot at all be sustained in

113 (2010) 2 SCC (Cri.) 1215.
114 (2010) 2 SCC (Cri.) 1385 at 1409.

view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

7. When the trial court has ignored the evidence or misread the material evidence or has ignored the material documents like dying declaration, report of ballistic experts, *etc*. the appellate court is competent to reverse the decision of the trial court depending upon the materials placed.

VII INHERENT POWER OF HIGH COURTS

There have been some decisions in which the inherent power of the High Court under section 482 came to be dcided. In fact, majority of the cases in this area pertained to disputes arising out of civil transactions involving allegations of offences like cheating, breach of contract, *etc*. An analysis of these cases shows that such cases used to be subjected to quashment in as much as there was no criminal element in them.

Ramesh Dutt v. *State of Punjab*[115] involved offences under sections 420, 465, 467, 468 and 471, IPC. It was alleged that the appellants transferred a portion of their land to the complainant though the order of mutation in their favour was cancelled. But they did have possession. The court rightly found that no charge under sections 467, 468 and 469 could be made against appellants unless there existed a statutory interdict, a person in possession could transfer his right, title and interest in favour of a third party. No case was made out and it was quashed.

Again, in *NP Gupta* v. *Ashutosh*,[116] the question was whether there was cheating of the complainant by the petitioner who claimed that there was no encumbrance on the property. The case was not quashed as it was not clear whether the complainant was in fact mistaken and that it was important issue which needed to be decided.

The judgement in *Kishan Singh (dead)thro. LRs* v. *Gurpal Singh*[117] shows that the dispute arose out of civil transactions involving transfer of property. The appellant in this case filed an FIR under sections 420/423/467/468/471/120-B, IPC after losing the case in the civil court. Obviously, the FIR was filed with the sole intention of harassing the respondents and enmeshing them in long arduous criminal proceedings. The court found it to be an abuse of the process of the court. The Supreme Court did not quash the proceedings against the company in *Iridium India Telecom Ltd.* v. *Motorola*

115 (2010 2 SCC (Cri.) 649; see also *Jugesh Sehgal* v. *Shamseer Singh* (2010) 2 SCC (Cri.) 218.

116 (2010) 6 SCC 562; also see *M.A.A. Annamalai* v. *State of Karnataka* (2010) 3 SCC (Cri.) 950.

117 (2010) 8 SCC 775.

Incorporation[118] as there was non-disclosure of information which was misrepresentation of facts leading to deception by the company. In *V.P. Srivastava* v. *Indian Explosives Ltd.,*[119] the Supreme Court found that there were no ingredients of offences under sections 415 and 420, IPC. According to it, at best it was a case of breach of contract for which the company was defending a civil suit. There was neither entrustment of property nor dominion of the accused which was converted to the use of the accused. Supreme Court quashed the proceedings.

Futility of prosecution is a ground for quashment

In *Gireshbhai Dahyabhai* v. *C.C Jami*,[120] it was found that in the case under the provision of the Food Adulteration Act, there was inordinate delay in getting the report on first sample. In the mean time, the second sample got deteriorated. The High Court refused to quash the proceedings. However, the Supreme Court noted the futility in continuing it with the possibility of not getting a proper report on the sample. It rightly quashed the prosecution.

Prosecution based on allegations of harassment that led to commission of suicide

In *Madhan Mohan Singh* v. *State of Gujarat*,[121] a case was being launched against the petitioner by the wife of his driver who allegedly committed suicide due to harassment of the petitioner. Finding it an abuse of process of court, the Supreme Court quashed it.

Complainant desiring to quash proceeding initiated by him

In *State of Maharastra* v. *Arun Gulab Gawali*,[122] the complainant alleged that it was on police persuasion that he complained against the respondent and that he wanted it to be quashed. The Supreme Court quashed it as it was felt that the complainant might be harassed if it continued.

VIII SENTENCING AND EXECUTION OF SENTENCE

Sentence to be related to gravity of offence

Generally speaking, it could be said that our courts follow the policy of maintaining a correlation between the offence and the punishment. This became evident in *Gurumukh Singh* v. *State of Haryana.*[123] In this case, the appellant alone came to be convicted under section 302 and sentenced to life imprisonment and a fine of Rs. 1,000. Other accused were acquitted. The Supreme Court, on an appreciation of evidence, concluded that there was no

118 (2010) 3 SCC (Cri.) 1201.
119 (2010) 3 SCC (Cri.) 1290.
120 (2010) 2 SCC (Cri.) 270.
121 (2010) 3 SCC (Cri.) 1048.
122 (2010) 3 SCC (Cri.) 1459.
123 (2010) 2 SCC (Cri.) 711.

pre-meditation, that the incident occurred on the spur of moment. Conviction, therefore, was altered to one under section 304, part II and accordingly, sentence was reduced to seven years RI. The court reiterated the principle that the sentence should be proportionate to the crime. The court elaborately identified the factors in ascertaining the crime and in choosing a sentence appropriate to the crime.

Sentencing in murder cases

The disparity manifested in awarding appropriate sentence in murder cases came to the fore in S*tate of Punjab* v. *Manjit Singh*[124]and *Muniappan* v. *State of Tamil Nadu.*[125] In the first case, the Supreme Court favoured to avoid imposition of capital punishment because the accused were driven by infatuation and deprivation of their senses. It was a case where the accused killed the sons of the woman with whom they had illicit relations. The court seems to console itself because "Though the act of the accused is a gruesome one, but it was a result of human mind going astray. No doubt they acted in a ghastly manner…." Indeed, while reasoning, the court drew the discussions from an earlier decision in *Ronny* v. *State of Maharashtra,*[126] but did not mention it at all.

In the second case, *viz. Muniappan*, a bus carrying students was burnt, killing the girl students. The Supreme Court upheld the capital punishment noting that the members of the society, the police and other officials remained inactive while the crime was being committed. The court apparently put this case as the rarest of the rare case. Indeed, one could go on adding reasons for making it so. It appears that *Manjith Singh* also could have equally been made one of the rarest of rare cases.

Compounding not permissible in serious cases

Even when the opposing parties have agreed to compromise and their *panchayts* deciding to bury the hatchet to live peacefully, the rule of law requires that the state should not interfere with legal provisions. In *Satbir Singh* v. *State of UP*,[127] the parties, as a result of their compromise, wanted acquittal to be registered in favour of persons accused of non-compoundable offences which relif the Supreme Court held was in admissible in law. The Supreme Court held that the settlement cannot be a ground to pass a judgement of acquittal.

Recovery of compensation and default sentence

The distinction between "fine" under section 357(1) and "compensation" under section 357(3) came to be decided in *K.A. Abbas* v. *Sabu Joseph*.[128] The

124 (2010) 1 SCC (Cri.) 1283.
125 (2010) 3 SCC (Cri.) 1402.
126 (1998) 3 SCC 625.
127 (2010) 1 SCC (Cri.) 1250.
128 (2010) 3 SCC (Cri.) 127.

main question was whether in default of payment of compensation ordered under section 357(3), a default sentence can be imposed. Though compensation and fine are distinct, it is a fact that both can be recovered as fine. The Supreme Court clarified:[129]

> Section 431 clearly provides that an order of compensation under Section 357(3) will be recoverable in the same way as if it were a fine. Section 421 further provides the mode of recovery of a fine and the section clearly provides that a person can be imprisoned for non-payment of fine. Therefore, going by the provision of the code, the intention of the legislature is clearly to ensure that mode of recovery of a fine and compensation is on the same footing.

Obviously, there can be sentence of imprisonment for a default in payment of compensation.

Attachment of property under chapter VII-A of the Code

An interesting question was raised in the *State of MP* v. *Balram Mihani*.[130] In this case, an application was filed for the attachment of properties of the respondent on the allegation that they were acquired from criminal activities. After a thorough analysis of the various provisions like sections 105A, 105C. *etc*., the court concluded that the chapter was not meant for attaching the properties in the question. The court concluded:[131]

> Though the language of the section 105C(1) is extremely general, its being placed in chapter VII A cannot be lost sight of. Again, there is a clear cut reference in sub-section (2) thereof to the contracting state, the definition of which is to be found in section 105A(a). It is, therefore clear that the property envisaged in section 105C(1) cannot be an ordinary offence committed in India.

Execution of sentence

In *Anandrao Sawant* v. *State of Maharashtra,*[132] the Bombay High Court awarded sentences for murder and attempt to commit murder and ordered that the sentences shall run consecutively. It was a case where the accused killed his brother and inflicted serious injuries on brother's wife. It was also clarified by the court that life imprisonment in practice is not imprisonment for the whole life of the person in as much as all states have framed rules enabling remission of sentence. In fact, some states resorted to premature release of offenders in exercise of clemency powers of the Governor.

129 *Id.* at 137.
130 (2010) 2 SCC (Cri.) 1070.
131 *Id.* at 1073.
132 2010 Cri LJ 3579 (Bom.).

IX TRANSFER OF A CASE

Transfer on grounds of political clout of accused

The very purpose of provisions enabling transfer of cases is to have a free and fair investigation and trial. Fairness in trial procedures should inspire public confidence also. The Supreme Court was alive to these considerations when it granted the transfer of the case under section 406 in *Surendara Pratap Singh* v. *State of UP*.[133] The court noted that one of the accused, R2, was an MLA of the ruling party of the state and ordered transfer. It also relied on the principle that justice must not only be done but must also be seen to be done.

Personal convenience alone cannot be a ground for transfer

In *Bhairu Ram* v. *CBI*,[134] the petitioner was an accused in a computer case. His case was being tried in Bombay. The main accused was working in Bombay and allegedly acquired wealth in Bombay. The petitioner was seeking transfer of the case to Jaipur to suit his convenience. The court noted that if his request was acceded to, witnesses may have to be brought to Jaipur from Bombay. The court rejected the prayer. The Supreme Court, however, agreed to the transfer of the case in *Lalitha* v. *Kulvinder Kumar*.[135] The petitioner there sought for the transfer of case from Ghaziabad and Delhi to Ludhiana as she was unable to bear the cost of travel having two minor school-going children and being sick due to hyper thyroid and incisional hernia. The court, in these circumstances, allowed the transfer.

X CONCLUSION

The survey of cases pertaining to criminal procedure reported during 2010 shows the lively participation of the appellate courts in making the criminal justice system work satisfactorily. Indeed, their contribution to the legal literature has been commendable. But certain cases such as decisions in *Shahdeo Singh* v. *State of UP,*[136] *Darshan Singh* v. *State of Punjab*,[137] *State of Punjab* v. *Manjith Singh,*[138] *etc*., might be cited to show that the court cannot escape criticism of not being precise and to the point. In fact, in *Shahdeo Singh,* the Supreme Court failed to take note of its earlier decision in *Nilabati Behra* v. *State of Orissa,*[139] decision on almost similar facts. The

133 (2010) 3 SCC (Cri.) 1394.
134 (2010) 3 SCC (Cri.) 1509.
135 (2010) 3 SCC (Cri.) 629.
136 (2010) 2 SCC (Cri.) 451; see also K.N.C. Pillai "A comment on *Shahdeo* v. *State of UP*", 2010 (3) KHC (J) 25.
137 (2010) 2 SCC (Cri.) 1037.
138 (2010) 1 SCC (Cri.) 1283.
139 (1993) 2 SCC 746.

Supreme Court also took five long years to restate its position in *Poonam Chand Jain* v. *Fazru.*[140] It should have been decided in 2004 itself instead of remitting it to the High Court which in turn rendered a wrong decision. The court's call for a review of litigation practices around section 498A, IPC in *Preeti Gupta* v. *State of Jharkhandh,*[141] it is hoped, would be taken note of by all concerned.

140 (2010) 2 SCC (Cri.) 1085; also read (2004) 13 SCC 267 and the comment thereon by K.N.C Pillai, 'A comment on *Poonamchand Jain* v. *Fazru*, 2005 CULR 76.

141 (2010) 7 SCC 667.