11
CRIMINAL PROCEDURE

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I INTRODUCTION

DESPITE AN authoritative pronouncement of the Supreme Court that "brevity in judgment writing has not lost its virtue (and that) all long judgments or orders are not great nor brief orders are always bad"[1] as happened in previous years, during 2012 also there have been lengthy decisions.[2] Few of them, indeed set new directions in development of law in criminal justice system and others reiterated the established principles. Worth quoting judgments were taken into consideration for this survey.

The Supreme Court has had occasion to dwell on the 'state of affairs' of crime in the present situation, thus:[3]

> Be it noted, a stage has come that in certain states abduction and kidnapping have been regarded as heroism. A particular crime changes its colour with afflux of time. The concept of crime in the contextual sense of kidnapping has really undergone a seachange and has really shattered the spine of orderly society. It is almost nauseating to read almost everyday about the criminal activities relating to kidnapping and particularly by people who call themselves experts in the said nature of crime.

As regards the time-consuming practices in the trial courts, the Supreme Court observed in *Bhushan Kumar* v. *State*[4] relying on *Kanti Bhadra Shah* v. *State of W.B.*[5] thus:[6]

> The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a magistrate is to write detailed orders at different stages merely because the counsel should address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be

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1 *Board of Trustees of Martyrs Memorial Trust* v. *Union of India* (2012) 10 SCC 734 at para 22.

2 See *Jugendra Singh* v. *State of U.P.* (2012) 3 SCC (Cri.) 129.

3 *Ash Mohamed* v. *Shiv Raj Singh @ Lalla Babu* (2012) 9 SCC 446 at 458.

4 (2012) 2 SCC (Cri) 872.

5 (2000) 1 SCC 722.

6 (2012) 2 SCC (Cri) 872 at 876.

> slowed down. We are coming across inter-locutory orders of magistrates and sessions judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.

The Supreme Court in 2012 followed up its guidelines in *Visakha* v. *State of Rajasthan*[7] with instructions for their enforcement in *Medha Kotwal Lele* v. *Union of India*.[8] All the State Governments have been advised to make provisions in their Service Rules for the guidelines within two months. In short, the disciplinary authority shall treat the report/findings etc. of the complaints committee as the findings in a disciplinary enquiry against the delinquent employee and shall act on such report accordingly. The findings and report of the complaints committee shall not be treated as a mere preliminary investigating /inquiry leading to disciplinary action but shall be treated a finding/report in an inquiry into the misconduct of the delinquent.

The menace of eve-teasing also came to be adverted to by the Supreme Court in *Dy. Inspector General of Police J.S. Samuthiram*.[9] The court issued directives to all the States and Union Territories to depute plain clothed female police officer in the precincts of bus stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches , public service vehicles, places of worship *etc.* so as to monitor and supervise incidents of eve-teasing. There are other useful directions including the one to establish CCTVs *etc.*

The importance of presumption of innocence and our adherence to it came to be reiterated by the Supreme Court in *S. Genesen* v. *Rama R. Raghuraman*[10] and in *Kailash Gaur and others* v. *State of Assam*.[11] The court observed thus: [12]

> That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency inadequacy or inept handling of the investigation by the police. The benefit arising from such faulty investigation ought to go to the accused and not to the prosecution.

Leaving apart these general issues, the courts have had occasions to decide several issues of importance. For convenience of reference these decisions are analyzed under relevant headings:

Registration of FIR

The issue whether under section 154 Cr P C a police officer is bound to register an FIR when a cognizable offence is made out or he has some latitude of conducting

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7 (1997) 6 SCC 241.
8 (2013) 1 SCC 297.
9 (2013) 1 SCC 598.
10 (2011) 2 SCC 83.
11 (2012) 1 SCC (Cri.) 717.
12 *Ibid*.

some kind of enquiry before registering FIR, though referred to a larger bench, *Lalitha Kumari* v. *U.P.*[13] is yet to be decided.

Investigation and enquiry

Investigation is generally considered to be the prerogative of the police. The magistrate is just to oversee investigation. He cannot interfere at all. A police officer is authorized to investigate cases without the order of a magistrate, though; in terms of section 156(3) the magistrate empowered under section 190 may direct the registration of a case and order the police authorities to conduct investigation. This would result in a police report under section 173. Then the magistrate may or may not take cognizance of the offence and proceed under chapter XVI of Cr PC.

The magistrate has discretion, upon receipt of a complaint to take cognizance directly under section 200 or to adopt the above procedure. The trial court, though not having inherent powers have sufficient powers under sections 317 and 391. Further investigation can be ordered under section 173 (8) even after submission of the report under section 173 (2). In *Samaj Parivartan Samudaya* v. *State of Karnataka*[14] the Supreme Court after taking note of the above mentioned role of the magistrate declared thus: [15]

> It is clearly contemplated under the Indian criminal jurisprudence that an investigation should be fair, in accordance with law and should not be tainted. But, at the same, the court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation….

The inaction of the police, magistrate and even the high court to order an investigation as envisaged in the code made the Supreme Court to dwell upon the constitutional dimension of investigation thus:[16]

> In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Art-14 of the constitution.[17]

It is interesting to note that in *Dayal Singh* v. *Uttaranchal,*[18] *Nagesh* v. *State of Karnataka*[19] and in *Gajoo* v. *Uttarakhand*[20] it has been declared by the Supreme Court that the trial court has powers to take action against erring officers who have not effected proper investigation. In the latter case the court ordered thus: [21]

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13 (2012) 4 SCC 1.
14 (2012) 7 SCC 407.
15 *Id.* at 428.
16 *Azija Begum* v. *State of Maharashtra* (2012) 2 SCC (Cri.) 69 at 71.
17 *Id*. at 71.
18 (2012) 8 SCC 263.
19 (2012) 3 SCC (Cri) 168.
20 (2012) 9 SCC 532.
21 *Id.* at 544.

> However, we direct the DGP, Uttarakhand, to take disciplinary action against S.I. Brehma Singh, PW 6, whether he is in service or has since retired, for such serious lapse in conducting investigation……

As regards the right of the accused to peruse certain documents, the Supreme Court in *V.K. Sasikala* v. *State*[22] said thus: [23]

> But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Ss. 207, 243 read with section 173 in its entirety and powers 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 statement and documents which the prosecution has collected during investigation and upon which they rely.

The court then essayed on the constitutional dimension thus: [24]

> The question arising would no longer be one of compliance or non-compliance with the provisions of section 207 Cr.P.C. and would travel beyond the confines of the strict language of the provisions of Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Art-21 of the Constitution.

It has been reiterated that the magistrate does not have power to call upon the police to submit a challan, when they have sent a report under section 169 that there is no case made out for sending up an accused for trial. The magistrate has however power to (i) reject the police report and direct an inquiry under section 202 and after such enquiry to take action under section 203, or (ii) he can take cognizance under section 190 at once if he disagrees with the police report.[25] The magistrate has also power to have inquiry under section 200.

An interesting question as to the agency for monitoring of CBI investigation into the 2-G spectrum case, *viz.*, centre for *PIL* v. *Union of India*[26] came to be answered by the Supreme Court to the effect that the power of superintendence cannot be used by the Central Vigilance Commission for interfering with the manner and method of investigation or consideration of any case by CBI in a particular manner.

The approach of the court seems to allow the investigation agency to have enough freedom to conduct the investigation. In case they are not cooperative, they should be proceeded with departmentally. Looking upon investigation as the

22 (2012) 9 SCC 771.
23 *Id.* at 787.
24 *Id*. at 774.
25 See *Vasanti Dubey* v. *State of M.P*. (2012) 2 SCC (Cri) 1007.
26 (2012) 2 SCC (Cri) 50.

prerogative of the police does not mean that they can conduct investigation the way they like. Investigation should be done in accordance with Constitution inasmuch as it has been declared that free and fair investigation is part of article 21.

II TRIAL AND TRIAL PROCEDURE

Initiating action against additional accused

The Supreme Court examined the powers of the sessions court to initiate action against persons who later come to be accused, in *Jile Singh* v. *State of U.P.*[27] The court declared that once the sessions court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under section 319 can be invoked. It may not, however, be necessary for the court to wait until the entire evidence is collected for exercising this power.

With reference to admissibility of statements made by some witnesses, the Supreme Court ruled that a witness could be confronted only with a previous statement made by him. If some statement has come to be made in some legal ways, it may be admissible on its own without any help from section 311 or section 319 Cr.P.C. The court ruled in *Sudevanand* v. *State through CBI*[28] that 'it is only such statement or development which is otherwise not within the legal framework that would need the exercise of the court's jurisdiction to bring it before it as part of the legal record.'

As regards appreciation of circumstantial evidence, the Supreme Court identified the following steps in *Sharad Birdhichand Sarda* v. *State of Maharashtra*[29] and reiterated in *Sampath Kumar* v. *Inspector of Police, Krishnagiri*: [30]

1. The circumstances from which the conclusions of guilt are to be drawn should be fully established.
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved, and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The admissibility of evidence of hostile witnesses came to be reiterated in *Bhajju @ Karan Singh* v. *State of M.P.*[31] thus: [32]

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27 (2012) 3 SCC 383.
28 (2012) 3 SCC 387.
29 (1984) 4 SCC 116.
30 (2012) 4 SCC 124.
31 (2012) 2 SCC (Cri.) 440.
32 *Id*. at 443.

It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident.

It has also been reiterated that dying declaration is admissible in evidence and that there could be conviction on its basis.

Speedy trial

Though the court held that speedy trial is implicit in the broad sweep and content of article 21 of the constitution it had in several cases decided that its recognition depends upon various factors that cause delay in trials.[33] In *Ramachandra Rao*[34] the court reasoned that prescribing a time limit for the trial court to terminate the proceedings or at the end thereof, to acquit or discharge the accused in all cases will amount to legislation, which cannot be done by judicial directives within the arena of judicial law-making power available to the constitutional courts.

Right to counsel – A universal right

The decision in *Mohd. Hussain @ Zulfiqar Ali* v. *State*[35] signifies that the right to counsel / legal aid might be available even to a foreign national. In this case a Pakistani national who was involved in *Delhi blast case* was not given effective assistance by a counsel in the court. On being ordered to be retried after giving counsel, the trial court found the records defective and the person is reported to have been deported to Pakistan.

Admissibility of statements not amounting to confession

In *Sandeep* v. *State of U.P.*[36] the Supreme Court clarified that confessions to the police may be barred by section 25 of the Evidence Act. But other information disclosed by him in such statement is admissible under section 8 of the Evidence Act. The court has to admit such information by carefully sifting the said statement in order to identify the admission part of it as against the confession part of it.

Delayed summoning of witnesses

Rejecting an argument that recalling witnesses for reexamination after 3½ years' of examination and after 7 years of incident are likely to prejudice the prosecution, the Supreme Court ruled that 'looking to the consequences of denial of opportunity to cross-examine the witnesses it would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against possible prejudice at his cost. "Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue", the court declared.[37]

Accused's duty to explain incriminating circumstances

Explaining the relevance of section 106 of the Evidence Act, the Supreme

33 See discussions in *Ranjan Dwivedi* v. *CBI* (2012) 8 SCC 495. Speedy trial right was not given in *Shyam Babu* v. *State of U.P* (2012) 8 SCC 651.

34 (2002) 4 SCC 578.

35 (2012) 8 SCALE 308.

36 (2012) 3 SCC (Cri.) 18.

37 See *P. Sanjeeva Rao* v. *State of A.P* (2012) 3 SCC (Cri) 1.

Court in *Neelkumar @ Anil Kumar* v. *State of Haryana*[38] the Supreme Court stated:[39]

> It is the duty of the accused to explain the incriminating circumstances proved against him while making a statement under section 313. Keeping silent and not furnishing any explanation for such circumstances is an additional link in the chain of circumstances to sustain the charges against him.

Evidence of deaf and dumb person

The Supreme Court in *State of Rajasthan* v. *Darshan Singh @ Darshan Lal*[40] observed that a deaf and dumb person is a competent witness (section 119 of the Evidence Act). If in the opinion of the court, oath can be administered to him / her it should be done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

The purpose of charging

The purpose of charge sheet is to give a notice to the accused as to the case he has to face. If that purpose is served, a defect may not prejudice him. In *Bhimanna* v. *State of Karnataka,*[41] the Supreme Court reiterated the principle stated in *Sanichar Sahni* v. *State of Bihar*[42] which runs thus: [43]

> ….unless the convict is able to establish that defect in framing charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself, properly no interference is required on mere technicalities."

A suspect is entitled to hearing by the revisional court

The question whether a suspect is entitled to hearing by the Revisional Court in a revision preferred by the complainant challenging an order of the magistrate dismissing the complaint under section 203 Cr.P.C. came to be answered by the Supreme Court in the affirmative in *Manharibhai Muljibhai Kakadia* v. *Shaileshbhai Mohanbhai Patel*.[44] This is a very welcome decision.

Failure to draw attention of accused to incriminating evidence

If the accused has not been given opportunity to explain what he wanted to say in respect of the prosecution case and such omission has not caused any prejudice

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38 (2012) 3 SCC (Cri.) 271. See also *Ravi Kapur* v. *State of Rajasthan* (2012) 9 SCC 284.
39 *Id.* at 278.
40 (2012) 2 SCC (Cri.) 916.
41 (2012) 9 SCC 650.
42 (2009) 7 SCC 198.
43 *Id.*, Para 27.
44 (2012) 10 SCC 517.

to him resulting in failure of justice, the failure to draw his attention to incriminating evidence may not vitiate the trial. It was held so in *Alister Antony Pereira* v. *State of Maharashtra*.[45]

Sentencing

In the field of sentencing there have been some landmark decisions by the Supreme Court. The court has had occasion not only to deal with theoretical questions but also to speak about new punishments.

In *Rajesh Kumar* v. *State,*[46] the court examined the evolution of sentencing policy in the context of death penalty and essayed on the change thus: [47]

> These changes in the sentencing structure reflect the evolving standards of decency" that mark the progress of a maturing democracy and which is in accord with the concept of dignity of the individual one of the core values in our preamble to the constitution. In a way these changes signify a paradigm shift in our jurisprudence with the gradual transition of our legal regime from 'the rule of law' to the 'due process of law' to which this court would advert to in the latter part of the judgment.

The court described enactment of sections 235 (2) and 354 (3) of the code as procedural safeguards that came to be accepted as mark of incorporation of due process concept and the 8th amendment of the US Constitution in our Constitution. The court commuted the death penalty imposed on the appellant to life imprisonment.

The decision in *Kunal Majumdar* v. *State of Rajasthan*[48] is conspicuous for the court's description of the factors that have to be considered for imposition of a sentence. To quote some: the nature and manner in which the offence was committed, the *mens rea* if any of the culprit, the plight of the victim as noticed by the trial court, the diabolic manner in which the offence was alleged to have been performed, the ill effects it had on the victim as well as the society at large, the mindset of the culprit *vis-à-vis* the public interest, the conduct of the convict immediately after the commission of the offence and thereafter the past history of the culprit, the magnitude of the crime and also the consequences it had on the dependants or the custodians of the victim. The ultimate outcome of the reference under section 366 of the code should instill confidence in the minds of peace-loving citizens and also achieve the object of acting as a deterrent.

Thus no factor has been left out. Is it possible for the court to comprehend all these factors? Would it not be appropriate to identify a theory of punishment and in pursuance thereof to impose punishment instead of listing out mutually contrary factors? The court should examine these questions in future.

In *State of Punjab* v. *Balwinder Singh*[49] a case involving motor accident it was deterrence which was stressed as the important objective of punishment. The court's

45 (2012) 1 SCC (Cri.) 953.
46 (2012) 2 SCC (Cri.) 836. See also *Sangeet* v. *State of Haryana* (2012) 11 SCALE 140.
47 *Id.* at 850.
48 (2012) 9 SCC 320.
49 (2012) 1 SCC (Cri.) 706.

observations are illustrative. It observed:[50]

> For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.

Both in Guru *Basavaraj @ Benne Setappa* v. *State of Karanataka*[51] and *Alister Anthony Pareira* v. *State of Maharashtra*[52] the court attempted to articulate its varied views on sentencing. In fact *Anthony Pareira* was followed in *Guru Basavaraj*. To recapitulate at the risk of repetition the court essayed on the objectives of punishment *viz*. 'the twin objective of the sentencing policy is deterrence and correction'. What sentence would meet the ends of justice depends on the facts and circumstances of each case and court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances'. The court then spelt out thus: [53]

> The principle of proportionality in sentencing a crime-doer is well-entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears the most relevant influence in the determination of sentencing the crime-doer. The court has to take into consideration all aspects including the social interest and (conscience) of the society for award of appropriate sentence.

Both in *Pushpanjali Sahu* v. *State of Orissa*[54] and *State of U.P.* v. *Munesh*[55] the Supreme Court was to deal with rape cases wherein the high court's reduced punishments imposed by the trial court. In both the decisions the Supreme Court retained the punishment awarded by the trial courts.

The Supreme Court had to deal with a situation where-in a rape case the high court awarded punishment lesser than the minimum, in *State of Rajasthan* v. *Vinod Kumar*.[56] The court reacted thus: [57]

> The High Court further took note that awarding punishment lesser than the minimum sentence of 7 years was permissible only for adequate and special reasons. However, no such reasons have been recorded by the High Court. It failed to ensure compliance with such mandatory requirement but awarded the punishment lesser than the minimum prescribed under I.P.C. Such an order is violative of the mandatory requirement of law and has defeated

50 *Id.* at 710.
51 (2012) 8 SCC 734.
52 (2012) 1 SCC (Cri.) 953.
53 *Id.* at 975.
54 (2012) 9 SCC 705.
55 (2012) 9 SCC 742.
56 (2012) 3 SCC (Cri.) 299.
57 *Id.* at 309.

> the legislative mandate. Deciding the case in such a casual manner reduces the criminal justice delivery system to mockery.

Section 27 (3) of Arms Act providing for death penalty has been held to be violative of articles 14 and 21 of the Constitution in *State of Punjab* v. *Dalbir Singh*.[58]

The Supreme Court has been listing out aggravating and mitigating circumstances to decide the rarest of rare case for imposition of capital punishment. In *Ramnaresh Yadav* v. *State of Chhattisgarh*[59] after this exercise the court opted for life imprisonment in the factual situation described by the court itself thus:[60]

> There cannot be two opinions that the offence committed by the appellants is very heinous and all of them have taken advantage of the helplessness of a mother of two infants at that odd hour of the night and in the absence of her husband.

Still the court was guided by the feelings expressed by itself thus:[61]

> While we cumulatively examine the various principles and apply them to the facts of the present case, it appears to us that the age of the accused, possibility of the death of the deceased occurring accidentally and the possibility of the accused reforming themselves, they cannot be termed as 'social menace'. It is unfortunate but a hard fact that all these accused have committed a heinous and inhuman crime for satisfaction of their lust, but it cannot be held with certainty that this case falls in the "rarest of rare" cases.

The mutually contrary considerations led the court to impose life imprisonment. Reacting to an appeal against imposition of capital punishment in *State of U.P.* v. *Sanjay Kumar*[62] the court said thus:[63]

> The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.

The court examined the theoretical foundation of clemency powers which according to Taft in Crossman, exp, 267 under section 87 (1925) runs as follows:

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58 (2012) 2 SCC (Cri.) 143. See also *Ajay Pandit @ Jagdish Dayabhai Patel* (2012) 8 SCC 43.

59 (2012) 2 SCC (Cri.) 382. See also *Rajendra Singh* v. *State of U.P.* (2012) 2 SCC (Cri.) 400.

60 (2012) 2 SCC (Cri.) 382 at 407.

61 *Id.* at 408.

62 (2012) 8 SCC 537.

63 *Id.* at 546.

> The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy it has always been thought essential in popular government; as well as in monarchies, to vest in some other authority then the court's power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases. To exercise it to the extent of destroying the deterrent effect of judicial punishment would be to prevent it; but whoever is to make it useful must have full discretion to exercise it.

The Supreme Court ruled that the orders on sentence do not interfere with clemency powers. The court dismissed the appeal seeking imposition of death penalty. The case law emerging from the courts do not signify an appropriate sentencing policy.

Order to pay compensation may be enforced by awarding sentence in default

Section 431 of the code provides for recovery of any money other than fine payable by virtue of any order made under the code and the recovery of which is not otherwise provided for. Thus order of compensation can be effectuated by section 431 which says that money can be recovered as if it is a fine. And proviso to section 431 says that section 421 could be relied on for recovery.[64] The court further reasoned: [65]

> If section 421 of the code puts compensation ordered to be paid by the court on a par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under section 64 I.P.C.":

The court thus in *R. Mohan* v. *A.K. Vijaya Kumar*[66] ruled that default sentence of 2 months imprisonment for compensation of Rs.5 lakhs ordered under section 357 (3) was right.

The imprisonment ordered in default of payment of fine is not a sentence. When it is imposed the person is required to undergo imprisonment either because he is unable to pay the fine or refuses to pay such amount. Accordingly, he can avoid undergoing imprisonment in default of payment of fine by paying such an amount. It is therefore for the court to see the pecuniary circumstances of the accused and the nature of the offence. The court therefore, in *Shahejadkhan Mahebubkhan Pathan* v. *State of Gujarat*[67] ruled that where substantial term of imprisonment is inflicted, excessive fine should not be imposed except in exceptional cases.

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64 See *R. Mohan* v. *A.K. Vijay Kumar* (2012) 8 SCC 721.
65 *Id.* at 729.
66 (2012) 8 SCC 721.
67 (2013) 1 SCC 570.

III BAIL

The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusations and severity of punishment in case of conviction and nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. Also, likelihood of the accused fleeing from justice and tampering with the prosecution witness has to be looked into by the court in serious cases.[68]

Bail wrongly granted can be revised

In *Ash Muhammad* v. *Shiv Raj Singh @ Lalla Babu*[69] the Supreme Court had to deal with a case in which the accused was wrongly granted bail. Bringing out the distinction between cancellation of bail because of supervening circumstances and in nullifying an order granting bail in an appeal the court observed thus: [70]

> We may note with profit that it is not an appeal for cancellation of bail as cancellation is not sought because of supervening circumstances. The present one is basically an appeal changing grant of bail where the High Court has failed to take into consideration the relevant material factors which make the order perverse".

The court also pointed out that grant of bail should be done after considering the totality of circumstances including the collective cry and desire. It should be put in juxtaposition of individual liberty.

Bail pending further investigation

In *Pratapbhai Hamirbhai Solanki* v. *State of Gujarat,*[71] the court was faced with a situation where the accused sought for bail after submission of the police report there was a direction for further investigation by the high court. The Supreme Court did not express its final opinion on the entitlement of the appellant to be released on bail.

In *Vipul Shital Prasad Agarwal* v. *State of Gujarat,*[72] the court was again faced with a piquant situation. The investigation against the petitioner was stayed by the high court. However, when he approached the magistrate for release from remand it was rejected. His *habeas corpus* petition to the high court was also rejected. It has been mentioned by the court that only if second investigation is treated to be a fresh investigation and petitioner had been arrested in connection therewith, would section 167 (2) proviso (a) would be relevant. The court treated the second investigation as further investigation.

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68 See *Dipak Subhashchandra Mehta* v. *CBI* (2012) 2SCC (Cri.) 350.
69 (2012) 9 SCC 446.
70 *Id.* at 459.
71 (2013) 1 SCC 613.
72 (2013) 1 SCC 197.

IV ANTICIPATORY BAIL

In *Jaiprakash Singh* v. *State of Bihar*,[73] the Supreme Court said that discretion to grant anticipatory bail should be exercised in accordance with the requirements of section 438 of the code. In the instant case, disagreeing with the high court the Supreme Court cancelled the order granting anticipatory bail.

Misuse of discretionary powers

In *Rashmi Rekha Thatoi* v. *State of Orissa*[74] the Supreme Court disapproved the order passed by the high court restraining the police from arresting certain accused. The court seemed to distinguish its treatment of anticipatory bail for short periods made in *Siddarama Satlingappa* in the context of *Sibbia*. It is felt that the court approves deemed custody as laid down in *Salaudin* and similar decisions. In the instant case the Supreme Court disapproved the orders restraining arrest. The high court could issue an interim order in accordance with the requirement of section 438 of the code.

Accused's statement under section 313

The accused is given an opportunity to speak direct to the court to explain the circumstances under which he came to be accused. This statement under section 313 can be used as evidence against him in so far as it supports case of prosecution though normally it cannot be made the basis of conviction, but where statement of accused under section 313 is in line with case of prosecution then certainly the heavy onus of proof on the prosecution is, to some extent reduced.[75]

V ARREST

The Supreme Court was presented with a case in which an advocate who got the non-bailable warrant against him cancelled but came to be arrested by the police at the instance of the complainant. The advocate got himself released after showing the cancellation order and sought for compensation. The high court ordered Rs.2000/- to be paid by the police officer who made the arrest. Aggrieved by the order he moved the Supreme Court for enhanced compensation. Rejecting the prayers the court issued a number of directives so that the magistrates may keep proper records of arrest. The court has gone to the extent of prescribing a register for keeping the records.[76]

It has been emphatically reiterated by the Supreme Court in *Rajender Singh Pathania* v. *State of Delhi*[77] that arrest should be made only if it appears to police officer concerned that commission of offence cannot otherwise be prevented. An arrest without fulfilling these conditions may expose arresting officer in proceedings for violation of articles 21 and 22 of the Constitution.

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73 (2012) 2SCC (Cri.) 468.
74 (2012) 2SCC (Cri.) 721.
75 See *Brajendra Singh* v. *State of M.P.* (2012) 2 SCC (Cri.) 409.
76 See *Raghuvansh Dewanchand Bhasin* v. *State of Maharashtra* (2012) 9 SCC 791.
77 (2012) 1 SCC (Cri.) 873.

Position of public prosecutor

The Supreme Court, while dwelling on the role of the public prosecutors came to examine Christmas Humphrey's statement[78] which runs thus:[79]

> The prosecutor has a duty to the state to the accused and to the court. The prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of the prosecuting counsel to secure a conviction, nor should any prosecutor even feel pride or satisfaction in the mere fact of success.

Following this, the Supreme Court in *Centre for PIL* v. *Union of India* said thus:[80]

> A P.P. cannot be equated with a person who is holding an office under the state. He cannot be treated as a govt. employee. It may be that he should be a lawyer on the govt. panel. However, the independence of P.P. from any governmental control is the hallmark of this office.

Sanction for prosecution

The rationale of insisting on sanction for prosecution came to be examined by the Supreme Court in General Officer commanding, *Rashtriya Rifles* v. *CBI*[81] wherein it was observed thus:[82]

> In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission of the public servant can be shown to have a reasonable connection, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction.

The exercise of power under section 197 of the code by the state in *Hardeep Singh* v. *State of M.P.*[83] against the request for sanction for prosecution of the government official was upheld by the Supreme Court. However, the court enhanced the compensation awarded to him by the high court.

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78 1955 Cr. Law Review (740-741).
79 See *Centre for PIL* v. *Union of India* (2012) 2 SCC (Cri.) 61.
80 *Id.* at 68.
81 (2012) 6 SCC 228.
82 *Ibid.*
83 (2012) 1 SCC (Cri.) 684.

VI MISCELLANEOUS

Transfer

The absence of material to substantiate the grounds for transfer of case makes transfer under sections 406 and 407 of the code impossible. It was ruled by the Supreme Court in *Ashish Chadha* v. *Asha Kumari*[84] that unless a very strong case based on concrete material is made out, transfer should not be ordered.

Transfer of the case from Delhi to Thane on the ground that it may facilitate speedy and fair trial was held valid by the Supreme Court in *Mrudul M. Damle* v. *CBI.*[85]

Compensation for police atrocities

In *Mehmood Nayyar Azam* v. *State of Chhattisgar*,[86] the Supreme Court deprecated the state for the police atrocities the petitioner was subjected to by the police. The police in fact defamed him by compelling him to display disparaging comments about him thus affecting his reputation. His prayer for compensation was not addressed by the state adequately. The Supreme Court awarded him Rs.5 lakhs as compensation adopting the observation in *D.F. Mason* v. *Davis*,[87] which run as follows:

> The right to the enjoyment of a private reputation unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security and is protected by the constitution equally with the right to the enjoyment of life, liberty and property.

Thus, the police practice injuring the dignity of the individual was deprecated and the court ordered the compensation amount to be recovered from the individual police officers.

VII CONCLUSION

As is evident from the above discussion, the developments in the field of criminal procedure law have been encouraging. The right to access to courts has received adequate attention and extension. The right to counsel and legal aid has been elevated as a universal right extending it to even foreign nationals accused of crimes in India. There has been follow-up action by the Supreme Court as in the case of laws protecting women. The contours of courts' power to ensure free and fair investigation have been attempted to be stated clearly. The law of criminal procedure thus received adequate attention from the judiciary in 2012 and its contribution in breathing life into the statutory provisions has been remarkable. In short, the courts have adopted a balanced approach by upholding the individual rights, on the one hand and affording protection, to the society.

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84 (2012) 1 SCC (Cri.) 744. See also *Rajesh Talwar* v. *CBI* (2012) 2 SCC (Cri.) 359.
85 (2012) 2 SCC (Cri.) 735.
86 (2012) 3 SCC (Cri.) 733.
87 217 Ala 16-114 S. 357.