12

CODE OF CRIMINAL PROCEDURE

*K N Chandrasekharan Pillai**

I INTRODUCTION

CRIMINAL PROCEDURE law assumes a lot of importance in a democratic country governed by rule of law like India. This is a vital branch of law involving interaction of different branches of law such as the Constitution of India,1950, Indian Penal Code, 1860 Criminal Procedure Code,1973 (Cr PC) Indian Evidence Act,1872 *etc*. In addition to these domestic laws, since it involves human rights of the citizens at every stage of the proceedings in the constitutional context the courts will have to keep in mind the international and national documents dealing with protection of human rights.

Provisions of law become effective only when they are interpreted and implemented in accordance with the philosophy of the constitution. This function is very well done by our courts. Both the high courts and the Supreme Court have jurisdiction to deal with cases involving criminal procedure. They hand down judgments on vital issues. They are worth studying to have a proper perspective of our criminal justice system in action. During 2015 there have been several judgments handed down by the courts. Here only those decisions which the present author thinks important as trend setters are surveyed under different heads to facilitate reading and learning.

II INITIATION OF PROCEEDINGS

Issuance of process and summoning of accused under sections 204 and 190 Cr PC could be done by the magistrate on application of his mind with a view of taking cognizance. At this stage the magistrate is not required to consider the defence case. The accused could however be discharged if it can be shown that the evidence is insufficient for framing charge.[1]

Grant of opportunity of hearing to the accused in revision has been held to be an obligation under section 401(2). However, if the matter is remanded to the magistrate by the revisional court in such a case, the accused cannot claim any right of hearing

* BSc. (Ker), LL.B, LL.M (Del), LL.M, S.J.D (Michigan).

1 *Sonu Gupta* v. *Deepak Gupta* (2015) 2 SCC (Cri) 265.

before that magistrate till the consideration of matter by the magistrate under section 204 for issue of process

In *Gurdev Singh* v. *Surinder Singh*,[2] the magistrate on receipt of the revisional court's order issued summons without hearing the accused. It was quashed and revisional order was also set aside. The revisional (sessions judge) court was directed to hear revision afresh after hearing the accused. The summoning order of the magistrate was set aside. The Supreme Court clarified thus:[3]

> We, however, make it clear that we have not quashed complaint 55 (complaint filed by Respondent 1 and 2) dated 14.6.2008 nor have we expressed any opinion on the view expressed by the High Court on the question whether if a complaint is remanded to additional Chief Judicial Magistrate for enquiry, fresh evidence must necessarily be taken. In fact, on merit, we have expressed no opinion.

Cognizance when taken

In *S R Sukumar* v. *S Sunal Raghu Ram*,[4] the question was as to the time of cognizance taken by the magistrate. The respondent filed a complaint against appellant under section 200 Cr PC. After the complaint was filed on May 9, 2007 the statement of respondent was recorded in part on May18, 2007. This statement was further recorded on May 25, 2007. On May 24, 2007, the respondent moved an application seeking for insertion of para 11 (a) and 11 (b) in the complaint depicting the respondent as villain with intention to malign the image of the respondent. The trial court allowed the prayer, took cognizance of offence and directed issuance of process to the appellant. The appellant moved the high court for quashing on the ground that there was no provision for amendment of complaint. High court and Supreme Court dismissed it.

The Supreme Court reasoned that the court was yet to make up the mind whether to take cognizance of the offence or not. It is wrong to contend that the court took cognizance even on May18, 2007 when the magistrate recorded the statement of the respondent – complainant in part and when the Magistrate has not applied his judicial mind. Even though the order on May18, 2007 read "cognizance taken under Section 200" the same was held not grounded in reality and the court held that actual cognizance was taken only later, *ie*., on June 21, 2007.

The court opined that it is neither practicable nor desirable to define as to what is meant by 'taking cognizance'. The question as to whether magistrate has taken cognizance of offence or not would depend upon facts and circumstances of given case.

2 (2015) 3 SCC 773.

3 *Id.* at 778.

4 (2015) 9 SCC 609.

Registration of first information report (FIR)

Application for registration of FIR under section 156(3) was held to be on affidavit to prevent abuse of process, which is becoming more and more common. Prior application under section 154(1) and 154(3) have to be in existence while filing petition under section 156(3). A large number of FIR came to be registered by defaulters of bank loans – an abuse of process of law. The court quashed the FIR registered by the defaulters of bank loan.[5]

Inquiry before issue of process

In *Vijay Dhanuka* v. *Najima Mamtaji*,[6] the following questions came to be examined by the Supreme Court.

i. In a case in which the accused is residing at a place beyond the area in which the magistrate exercises his jurisdiction, whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding?
ii. Whether the magistrate before issuing summons has held the inquiry as mandated under section 202 Cr PC?

The expression "shall" in section 202(1) Cr PC *prima facie* makes the enquiry or the investigation, as the case may be, by the magistrate mandatory.

In section 202(1) words "and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by section 19 of the Cr PC (Amendment) Act, 2005 with effect from June 23, 2006. The legislature thus thought that it was essential to spell out to avoid false complaints that were being filed against persons residing at far off places.

As regards inquiry the court observed: [7]

> It is evident from the definition of 'inquiry' under Section 2 (g) that every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner is of inquiry is provided under Section 202. In the inquiry envisaged under Section 202 the witnesses are examined whereas under Section 200, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise of the Magistrate, for the purpose of recording whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202.

Here the Magistrate did conduct the inquiry.

5 *Priyanka Srivastav* v. *State of UP* (2015) 6 SCC 287.
6 (2015) 1 SCC (Cri) 479.
7 *Id*. at 480.

Inquiring under section 156(3)

In *Ramdev Food Products Pvt. Ltd.* v. *State of Gujarat,*[8] it has been ruled that direction for investigation under section 156(3) is to be issued where magistrate does not take cognizance and does not find it necessary to postpone issue of process and finds a case made out to proceed forthwith.

On the other hand, 'power of magistrate to direct investigation under section 202 is of a distinct nature. This power is available for limited purpose to seek report from police to decide whether or not there is sufficient ground to proceed in the case.

Subject to these broad guidelines available from scheme of Cr PC, exercise of discretion by magistrate to proceed under section 156(3) or under section 202 is guided by interest of justice from time to time.

Remand of the accused

Remand is an exception rather than rule. In *Satyajit Ballubhai Desai* v. *State of Gujarat,*[9] police remand was sought in respect of the person who has already been granted bail by the high court in a case that came to be registered on the petition of a third party after the appellant and respondent had compromised. It was held by the Supreme Court that both the magistrate and high court were wrong in granting remand even for three days.

III INVESTIGATION

The question that was examined by the Supreme Court in *R. N Agarwal* v. *R.C Bansal,*[10] was the scope of special judge's power under section 5 and 13 (b) (d) Prevention Of Corruption Act, 1988 (PC Act) to proceed against persons not included as accused in the police report.

The court ruled that once cognizance is taken by the special judge, it is his duty to proceed against accused connected with the case though the police has not mentioned them in their report to the court. The summoning of additional accused is part of the proceedings initiated by his taking cognizance of an offence. Section 209 should be understood as magistrate playing a passive role in committing the case to court of sessions/special judge on findings from the police report that the case was triable by the court of session.

Constitution Bench decision in *Dharampal* v. *State of Haryana,*[11] supports this view. The investigation under the P C Act by an unauthorised officer with permission of the court was held valid by the Supreme Court in *Union of India* v. *T. NathaMuni.*[12] In this case, on the application of state investigation was got conducted by the sub inspector of police under the Delhi Police Establishment Act, 2006 whereas it should

8 (2015) 6 SCC 439.
9 (2015) 1 SCC (Cri) 398.
10 (2015) 1 SCC (Cri) 540.
11 (2014) 3 SCC 306.
12 (2014) 16 SCC 285.

have been conducted by inspector of police. The court also noted that the PC Act does not bar such an investigation by sub inspector of police. The proceedings are not vitiated if there is no prejudice or miscarriage of justice.

Investigation in violation of high court's order

Father alleged pre-planned murder of his son giving the colour of a motor accident in FIR. Deputy Inspector General (DIG) (Crime) finding flaws in police investigation recommended addition of offence under section 302 IPC along with offences under sections 304 A, 279, 337 and 427 of IPC. In spite of the high court's directions for implementing DIG's report the authorities had been constituting and reconstituting special investigating teams (SIT) to nullify DIG's report and thereafter filing section 173 report without including charge under section 302 IPC. SITs were constituted not in consultation with the high court and when in fact the court was thinking of handing over the case to CBI.[13]

The Supreme Court enhanced the already granted compensation to the petitioner to Rs.25 lakhs. Raising several questions the Supreme Court sought for a report from the chief secretary. It was unusual for the state to have acted in this fashion in the name of investigation.

Identification parade

In *Iqbal* v. *State of Uttar Pradesh*,[14] the Supreme Court referred to its earlier decision in *Hari Nath* v. *State of Uttar Pradesh*,[15] wherein it was observed that the conduct of an identification parade belongs to the realm, that is part of the investigation.

The evidence of test identification parade is admissible under section 9 of the Evidence Act, 1872. Surveying academic writings indicating the lack of certainty in identification the court in *Iqbal* case[16] concluded that the evidence of identification merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity.

Since the identification evidence in the present case was not acceptable to the Supreme Court, reversing the concurrent guilty verdicts by the trial court and the high court it registered acquittal.

Reinvestigation – only by appellate court

It has been reiterated that reinvestigation or investigation by a different agency could be directed by a constitutional court and not by the magistrate. In *Chadra Babu @ Moses* v. *State*,[17] after completing investigation, the investigating officer submitted a final report before the chief judicial magistrate who on not being satisfied ordered further investigation by another agency, CBCID. The high court set aside this order.

13 *Zorawar Singh* v. G*urbax Singh Bains* (2015) 2 SCC 572.
14 (2015) 3 SCC (Cri) 301.
15 (1988) 1 SCC 14.
16 *Supra* note 14.
17 (2015) 8 SCC 774.

The Supreme Court categorically ruled that the magistrate does not have power to order reinvestigation by another agency.

In *Sanjaysinh Ramrao Chavan* v. *Dattatray Gulabrao Phalke,*[18] it was held by the Supreme Court that there was no material to order an investigation against the state district magistrate. The court ruled that unmerited prosecution is an infringement of guarantee under article 21 of the Constitution.

IV TRIAL AND TRIAL PROCEDURE

Determination of guilt on the basis of evidence of accused

Generally speaking protection against self-incrimination enshrined in article 20(3) of the Constitution is reflected in various provisions in the Cr PC and Evidence Act, 1872. In fact these provisions are relied on at times to determine the guilt of the accused and this has come to be criticised by the appellate courts. Section 342 of Cr PC 1898 (now section 313 Cr PC 1973) came to be enacted to provide an opportunity to the accused to have direct conversation with the court. Bose J in *Hate Singh Bhagat Singh* v. *State of Madhya Pradesh,*[19] explained its purpose and utility thus:[20]

> Now the statements of an accused person recorded under Sections 208, 209 and 342, Cr PC are among the most important matters, to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases that experience elsewhere has shown that it can also be powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box.

As regards its operation for the benefit of accused the Supreme Court in *Ajay Singh* v. *State of Maharashtra,*[21] observed thus:[22]

A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

The question whether a trial is vitiated or not depends upon the degree of error and the accused must show that non-compliance with section 313 has materially

18 (2015) 3 SCC 123.

19 AIR 1953 SC 468.

20 *Id* at 471.

21 (2008) 1 SCC (Cri) 371; (2007) 12 SCC 341.

22 *Id*. at 348.

prejudiced him or is likely to cause prejudice to him. When prejudice is alleged, it has to be shown that the accused has suffered some disability with regard to the safeguard given to him under section 313. In fact the court has summarised the course of action in dealing with the claim of the accused.[23]

In *Nagaraj* v. *State*,[24] the appellant was not arrested for several months after the death of the deceased. He then surrendered before the police and was tried and convicted by the sessions judge and the high court on the ground that for many questions put to him under section 313 no answers were given by him. On appeal the Supreme Court acquitted the appellant saying thus:[25]

> It is intended to benefit the accused, the corollary being to benefit the court in reaching its final conclusion; its intention is not to nail the accused but to comply with the most salutary and fundamental principle of natural justice i.e., *audi alteram partem* as explained in *Asraf Ali* v. *State of Assam*.[26] In *Sher Singh* v. *State of Haryana*,[27] the court has recently clarified that because of the language employed in section 304B IPC, which deals with dowry death, the burden of proving innocence shifts to accused which is in stark contrast and dissonance to a person's right not to incriminate himself. It is only in the backdrop of section 304B IPC that an accused must furnish credible evidence which is indicative of his innocence, either under section 313 Cr PC or by examining himself in the witness box or through defence witnesses, as he may be best advised. Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer would not justify the court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance it must not be lost sight of the fact that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met the statement under section 313 assumes significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence. We say this because we are unable to subscribe to the conclusion of the high court that the substance of his examination under section 313 was indicative of his guilt.In the case in the hand, the High

23 *Nar Singh* v. *State of Haryana* (2015) 1 SCC (Cri) 699.

24 (2015) 4 SCC 739.

25 *Id* at 747. Also see *State of Karnataka* v. *Suvarnamma* (2015) 1 SCC (Cri) 663 and *Ravikant Misra @ Lalu* v. *State of Madhya Pradesh* (2015) 8 SCC 299 explaining shifting of burden of proof.

26 (2008) 16 SCC 328.

> Court was not correct in drawing an adverse inference against the accused because of what he has stated or what he has failed to state in his examination under Section 313 Cr PC.

Protection under section 132 Evidence Act, 1872

The difficulty experienced by the trial court in collecting evidence and ensuring protection against self-incrimination came to be noticed in *Dinesh Kumar @ Deena* v. *State*.[28] In this case, in his statement under section 161 Cr PC or under section 164 and in his chief examination in the trial of other accused, prosecution witness (PW)64 admitted that he had agreed with accused 2 to kill one victim for Rs. 5 lakhs, and accepted Rs. 50,000/- as initial payment. Later accused 3 agreed to join PW64 and PW64 paid accused 3 advance amount of Rs. 10,000/-. However, subsequently PW64 pleaded that he did not participate in conspiracy to kill victim at all, though victim was ultimately killed by accused 3 and other accused. The question was as to whether he could be prosecuted on the basis of that evidence by summoning him under section 319 Cr PC.

Once he is examined as a witness he has to give answers to the questions, though it amounts to compulsion. However, there cannot be prosecution on the basis of answers in as much as he gets protection of proviso to section 132 of the Indian Evidence Act 1872. The Supreme Court responded thus: [29]

> Section 132 existed on the statute Book from 1872 ie. for 78 years prior to the advent of the guarantee under Art.20 of the Constitution of India. As pointed out by Justice Muthuswamy Ayyar and in Gopal Das, ILR (181) 3 Mad 271, the policy under Section 132 appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the court. In the process of securing such evidence, if a witness who is under obligation to state the truth because of the oath taken by him makes any statement which will criminate or tend to expose such a witness to a penalty or forfeiture of any kind etc. the proviso grants immunity to such a witness by declaring that such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings

The question before the high court in *Dinesh Kumar @ Deena* v. *State*[30] was whether the session judge was justified in declining to summon a witness *viz.*, PW64 under section 319 Cr PC as an additional accused. Holding that proviso to section 132 Evidence Act, 1872 is a statutory immunity against self-incrimination there need not be prosecution against him. The court's above quoted observations are revealing:

27 (2015) 3 SCC 724.
28 (2015) 2 SCC (Cri) 1.
29 *Id*. at 23.
30 (2015) 2 SCC (Cri) 1.

The court concluded that the proposition whether the prosecution has liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried, requires a deeper examination.

Conviction on the basis of uncorroborated confession

The Supreme Court in *Tajuddin* v. *Union of India*,[31] had occasion to rule that there could be no conviction solely on the basis of confession if it is not corroborated. In fact the accused made inculpatory statements when they were in custody and when their house was raided. They on release from custody retracted from these confessions. The articles recovered from their house with mahazar were also not accepted in evidence since mahazar witnesses were neither produced nor cross-examined by the accused.

Conviction on the basis of victim's statement

The Supreme Court in *Mukesh* v. *State of Jharkhand*,[32] reiterated its position that there could be conviction solely on the basis of the prosecutrix statement in a rape case.

False plea of accused

In *State of Karnataka* v. *Suvarnamma*,[33] the accused was charge sheeted with section 304 B and 498 A IPC. There were conflicting dying declarations. But the incriminatory dying declaration was fully corroborated by the remaining evidence.

It was ruled by the court that the lapses in prosecution case may not result in rejection. Once the prosecution finds the probability of the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Article 20(3) of the Constitution, according to the court, it does not require the court to ignore the accused's conduct in not disclosing the fact within his knowledge.

Appointment of public prosecutor

The question of appointment of public prosecutor in a case pertaining to the State of Tamil Nadu, tried in Karnataka came to be examined in *Anpazhagan* v. *State of Tamil Nadu*.[34] In this case against the Tamil Nadu Chief Minister J. Jayalalitha had been transferred to the State of Karnataka. In the absence of a public prosecutor appointed by the State of Karnataka, the public prosecutor appointed by the State of Tamil Nadu for the trial of case was allowed to participate in the appeal proceedings also. There was conflict of opinion in the Supreme Court on the legality of the Tamil Nadu government's action and the validity of the appeal. The bench to which the

31 (2015) 4 SCC 435.
32 (2015) 1 SCC (Cri) 103.
33 (2015) 1 SCC 323
34 (2015) 6 SCC (Cri) 158.

conflict had been referred to had concluded that the appointment made by the State of Tamil Nadu was not correct. But the bench upheld the appellate proceedings and ruled as follows: [35]

> 41.1 The State of Tamil Nadu had no authority to appoint the 4th Respondent, Bhavani Prasad as Public Prosecutor to argue appeal.
>
> 41.2 It is the State of Karnataka which is the sole authority – prosecuting agency and it was alone authorised to appoint Public Prosecutor.
>
> 41.3 The appointment of 4th Respondent, Bhavani Singh as Public Prosecutor for the trial did not make him eligible to prosecute the appeal on behalf of the prosecuting agency before the High Court.
>
> 41.4 The appointment of a Public Prosecutor as envisaged under Section 24(1) Cr PC in the High Court is different than appointment of a Public Prosecutor for the District Courts, and that the notification appointing the 4th respondent did not enable him to represent the State of Karnataka in appeal.
>
> 41.5 Though the appointment of the fourth respondent is bad in law, yet there is no justification to direct de novo hearing of the appeal, regard being had to the duties of the appellate judge which we have enumerated herein before, especially in a case pertaining to the Prevention of Corruption Act 1988.
>
> 41.6 The appellant as well as the State of Karnataka are entitled to file their written note of considerations within the framework, as has been indicated in para 40.
>
> 41.7 The Learned Appellate Judge, after receipt of our judgment sent today shall peruse the same and be guided by the observations made thereon while deciding the appeal.

Approver

Before committal of the case and filing of charge sheet the chief judicial magistrate / munsiff magistrate as well as sub judge have concurrent jurisdiction to appoint approver under section 306 Cr PC. If the special judge under the Prevention of Corruption Act, 1988 is appointed and the chief judicial magistrate /munsiff magistrate has acted under section 306 still it is a curable defect under section 460(g) Cr PC. However, after committal of the case pardon granted by the chief judicial magistrate is not a curable irregularity.[36]

35 *Id*. at 189.

36 *P C Mishra* v. *State* (2015) 1 SCC (Cri) 471.

Directions – not approved

In *State of Uttar Pradesh* v. *Anil Kumar Sharma*,[37] the direction issued by the High Court of Allahabad enabling the police to file report direct to the session judge, making it mandatory for the police to produce the accused with the police report and requiring the police to supply copies of statements to the accused have been set aside by the Supreme Court as the court cannot direct the legislature to make law.

Trial procedures – need for caution

The Supreme Court had occasion to dwell upon the causes for failure of trial system.[38] It identified mainly two reasons *viz*., (i) procrastination of trial due to non-availability of witnesses, (ii) unwarranted adjournments of trial for unfathomable reasons. The court was reacting to an instance wherein the court took 20 months to recall a witness for re-examination. Reiterating that re-examination is for clarifying certain statements made in his examination, the court referred to its earlier decision in *Rammi'*s case,[39] wherein it observed thus:[40]

> Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the court thinks that such new matters are necessary for proving any material fact, court must be liberal in granting permission to put necessary questions

The important role played by the high court in overseeing the trial proceedings has been stressed in *Bablu Kumar* v. *State of Bihar*.[41] The trial courts' powers under section 165 Evidence Act, 1872, the high courts revisional jurisdiction under section 401 Cr PC *etc*. came to be examined and highlighted in this case. The case was ordered to be retried.

Sections 138 and 146 Evidence Act confer a valuable right to cross examination. In *Vinod Kumar* v. *State of Haryana*,[42] the accused was examined by the chief judicial magistrate and proved that the letters were written by him and that there was no pressure from the police. The accused had identified the letters and identified his signature. No doubt was expressed in cross-examination. In the absence of cross-examination the bald suggestion of police pressure raised by accused was held to be not sustainable.

Non-production of evidence by prosecution – Effect

The Supreme Court have had occasion to examine the burden of proof of the accused in the context of the presumption under section 114, illustration (g) of Evidence

37 (2015) 6 SCC 716.

38 See *Vinod Kumar* v. *State of Punjab* (2015) 3 SCC 220.

39 (1999) 8 SCC 649.

40 *Id*. at 651.

41 (2015) 8 SCC 787.

42 (2015) 2 SCC (Cri) 31.

Act, 1872 drawing of presumption under this provision depends upon the facts required to be proved and its importance in the controversy, the usual mode of proving it, the nature quality and cogency of evidence which has not been produced and its accessibility to the party *etc*. have to be taken into consideration. It is only when all these matters are duly considered that an adverse inference can be drawn against the party. Since in a case the prosecution failed to produce CCTV footage adverse inference has been drawn against it under section 114 illustration (g) of Evidence Act,1872.[43]

Accused summoned under section 319 - discharge

An accused summoned under section 319 on the basis of evidence collected by the court may not be discharged as in the case of other accused included in the police report. There should be higher standard of proof such as a prima facie connection with the offence necessary for charging the accused.[44]

Contradiction – Proof under section 145, Evidence Act

It has been ruled in *V K Mishra* v. *State of Uttarakhand*,[45] that if the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court, cannot *suo motu* make use of the statements to the police not proved in compliance with section 145, Evidence Act, 1872 that is, by drawing attention to the parts intended for contradiction.

If the investigating officer has omitted to do investigation regularly, documents produced by the defence, the defence should take steps to prove the documents. If not, later the defence cannot contend that there were lapses in investigation.

Proof of discovery

Discovery is said to be proved only when investigation officer deposes the information obtained by him from the accused and the fact of subsequent seizure of the object pursuant to it.[46]

Purpose of sanction under Prevention of Corruption Act

The purpose of section 19 of Prevention of Corruption Act, 1988, requiring sanction is to protect honest officers. The exercise of this power has to be regulated to effectuate the purpose of law. A fine balance has to be maintained between need to protect a public servant against *mala fide* prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom *prima facie* material in support of allegation of corruption exists, on the other hand.

The Central Vigilance Commission, after taking note of the decision High Court of Punjab and Haryana in *Jagbir Singh*,[47] *State of Bihar* v. *P P Sharma*,[48] *CBI* v.

43 See *Thomas Bruno* v. *State of Uttar Pradesh* (2015) 3 SCC (Cri) 54.

44 See *Yogendra Yadav* v. *Bihar* (2015) 9 SCC 299.

45 (2015) 9 SCC 588.

46 See *Krishnankutty* v. *State of Kerala* (2015) 2 KHC 322.

47 1996 Cri L J 2962.

48 (1992) SCC (Cri) 192.

Deepak Choudhary,[49] framed guidelines which were circulated *vide* office order No.31/5/05 on May 12, 2005 (reiterated in *Subramanium Swamy's* case[50] and *Mansoor Ali Khan* v. *Union of India*[51]).

Prosecution under Prevention of Corruption Act

Sanction for prosecution of a public servant may not be necessary if he is retired. In *State of Punjab* v. *Labh Singh,*[52] the public servant was retained on date of cognizance by the court. The high court erred in setting aside the order of the vigilance court. However, action of the state in waiting for retirement and filing charges thereafter thus setting at naught the protection under section 19 was emphatically disapproved by the Supreme Court.

Section 197 Cr PC provides for protection to the public servant even after retirement in respect of offences punishable under IPC. In the instant case the order of the high court setting aside order of special judge under sections 28, 218, 409, 465, 467, 120B IPC was not disturbed. The court referred to *Nishant Sareen's* case[53] and said that the recourse in such cases is either to challenge the order of sanctioning authority or to approach it again if there is any fresh material.

V BAIL

Bail of accused under the custody of court

Many interesting questions were discussed by the Supreme Court in *Sudhir Kumar Bafna* v. *State of Maharashtra.*[54] A case under sections 288, 304, 308, 336, 388 read with section 34 and section 120 B IPC was registered. His application for anticipatory bail was rejected by the high court. The Supreme Court rejected special leave petition. However, the Supreme Court granted him four weeks' time to apply for regular bail. Accordingly the appellant filed application under section 439 before the high court with permission to surrender before the high court which declined as the police may lose opportunity to interrogate him. High court thought that the law postulates application for regular bail before magistrate under section 167. Since he cannot be held to be under the custody of the magistrate he cannot be granted bail under section 439. The appellant was in person before the court with prayer for surrendering.

The court held that when the person surrenders before court he is in the custody of the court. And section 439 enables the high court or sessions court to grant bail. The court observed: [55]

49 (1995) 6 SCC 225.

50 (2012) 3 SCC 64.

51 (2015) 1 SCC (Cri) 802.

52 (2015) 3 SCC (Cri) 601.

53 (2010) 14 SCC 527. Also see, *Vinod Chandra Somwal* v. *Special Police Establishment, Ujjain* (2015) 3 SCC (Cri) 614.

54 (2015) 3 SCC (Cri) 558.

55 *Id*. at 583.

> The impugned order is accordingly set aside. The learned Single Judge shall consider the appellant's plea for surrendering to the Court and dependant on that decision, the Learned Single Judge shall, thereafter, consider the appellant's plea for his being granted bail. The appellant shall not be arrested for a period of 2 weeks or till the final disposal of the said application, whichever is later. We expect that the Learned Single Judge shall remain impervious to any pressure that may be brought to bear upon him either from the public or from the media as this is the fundamental and onerous duty cast on every judge.

It has been reiterated by the Supreme Court in *Ravi Prakash @ Arvind Singh* v. *State of Bihar,*[56] that number of days for the purpose of application to proviso to section 167(2) Cr PC is computed by excluding the date of remand and including the date of submission of police report.

The Supreme Court vehemently opposed grant of bail to respondent no. 2 in *Neeru Yadav* v. *State of Uttar Pradesh,*[57] a history sheeter with criminal antecedents on the ground of parity. His involvement in serious criminal case made the case stronger for rejection. Bail granted to him by the court as a result of non-application of mind was quashed.

Default bail

In *Narendar Kr. Amin* v. *CBI,*[58] the accused was arrested on April 4, 2013. Report under section 173 Cr PC was put in on July 3, 2013 *ie.*, exactly on the 90th day. The accused claimed bail under section 167(2) proviso as the report though described by the accused not satisfying the requirements of sections173 (2) and 173 (5) the high court accepted it as police report and dismissed default bail. The Supreme Court approved this decision.

Cancellation of bail

Although the court granting bail can cancel the bail on ground of accused's misconduct or new adverse fact having manifested after grant of bail; however in view of express bar, in section 362 it cannot review its order as to grant of bail on ground of being illegal or perversed. Such bail orders could be revised by superior court.[59]

The bail granted under section 167(2) proviso can however be cancelled as it is not an order on facts but granted on the basis of default. On filing of charge sheet if there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. Default bail could be cancelled on application of prosecutor in the interest of justice.

56 (2015) 3 SCC (Cri) 305.
57 (2015) 3 SCC (Cri) 527.
58 (2015) 3 SCC 417.
59 See *Abdul Basist @ Raju* v. *Mohd. Abdul Khader* (2015) 1 SCC (Cr) 257.

Criminal antecedents of accused – ground for rejecting bail

In *Mansoor Adam* v. *State of Uttar Pradesh*,[60] the bail granted to the respondents no.1 and 2 during pendency of their appeal in the high court was set aside by the Supreme Court on the ground of criminal antecedents of the accused.

Forum – shopping deprecated

The Supreme Court disapproved the grant of bail to the accused in *Jaganmohan Bahl* v. *Delhi*,[61] after some period of the rejection of his application for bail by a judge in the first instance. Recalling its rulings ending with *Jagan Mohan Rao V P* v. *Mohan Rao*,[62] the court observed thus: [63]

> In view of the principle laid down by this court, since the learned Single Judge who had refused bail in the first instance, was available, the matter should have been placed before him. This court has indicated that such cases of successive bail applications should be placed before the same judge who had refused bail in the first instance, unless that judge is not available.

VI APPEALS

Procedure to be adopted to deal with criminal appeals

The procedure for dealing with criminal appeals had been a subject of examination by the Supreme Court in a number of decisions like *Kishan Singh*[64] and *Bani Singh*.[65] In *Surya Bakshi Singh* v. *State of Uttar Pradesh*,[66] the Supreme Court reiterated its position in the following words: [67]

> We fully and respectfully concur with the latest elucidation of the law, profound by perspicuous, in *K S Panduranga* v. *State of Karnataka* (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned brother had distilled the legal position into expositions:-
>
> 19.1 that the High Court cannot dismiss an appeal for non prosecution simplicitier without examining the merits;
> 19.2 that the court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent

60 (2015) 2 SCC (Cri) 718.
61 (2015) 3 SCC (Cri) 521.
62 (2010) 15 SCC 491.
63 *Id.* at 525.
64 (1996) 9 SCC 372.
65 (1996) 4 SCC 720.
66 (2015) 1 SCC (Cri) 313.
67 *Id.* at 325.

19.3 that the court may as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4 that it can dispose of the appeal after perusing the record and judgment of the trial court

19.5 that if the accused is in jail and cannot, on his own, come to court it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant accused if his lawyer is not present, and the court deems it appropriate to appoint a lawyer at the state expense to assist it, nothing in law would prevent the court from doing so; and

19.6 that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.

Appeal under article 136 of the Constitution

In *Mohamed Ali Gudde* v. *State of Uttar Pradesh*,[68] on the complaint of mother of the prosecutrix aged 14 years both the trial court and the high court convicted and sentenced the accused appellant on charges of offences under Sections 376, 366 and 368 IPC. The accused appealed to the Supreme Court under article 136 of the Constitution. On reappraisal of evidence the Supreme Court found that the evidence of the prosecutrix did not inspire confidence and accordingly the court reversed conviction and sentence. The Supreme Court found that the high court had fallen into error without appreciating material on record by giving it a stamp of approval. The court's earlier decisions in *Arunachalam* v. *PSR Sadhanandam*,[69] *Alamelu* v. *State*,[70] were relied upon.

Reappreciation of facts by the Supreme Court

The decision in *D L Laxmikanta* v. *State by SP Lokayukta*,[71] none appeared for the appellant. The high court heard it *ex-parte*. In fact it was wrong for the high court. The appellant should be heard by engaging an *amicus curae*. In the absence of *amicus curae*, instead of remitting the case the Supreme Court re-appreciated the whole evidences and dismissed the appeal.

VII COMPOUNDING

Compounding and quashing

In order to prevent abuse of process of court the high courts have inherent powers under section 482 Cr PC. This power is exercised by the high courts quite often and sometimes it is reviewed by the Supreme Court. During 2015 also there have been some decisions of the Supreme Court approving[72] the quashing or at times

68 (2015) 7 SCC 272.

69 (1974) 2 SCC 297.

70 (2011) 12 SCC 385.

71 (2015) 4 SCC 222.

72 See *P S Meherhomji* v. *K T Vijay Kumar* (2015) 1 SCC (Cri) 789.

disapproving[73] the quashing by the high court. The grounds for not permitting quashing included the civil nature[74] of the dispute, improper[75] compounding of the offences having social impact, *etc*. Addition of a person as an accused without assigning any role to him in the commission of the offence was held to be a ground for quashing. The decision in *Narendra Kumar Singh* v. *State of Punjab*,[76] *Gian Singh* v. *State of Punjab*,[77] *etc*., provide the guidelines for compounding and quashing. In *Narinder Kumar Singh* v. *State of Punjab* the Supreme Court has issued instructions to the lower courts.

Compounding of matrimonial offences

In *Ravinder Kaur* v. *Anil Kumar*,[78] the Supreme Court held the proceedings initiated by the appellant against respondent after his discharge in an earlier proceedings has attained finality, was held not violation of section 300 Cr PC and article 20 (2) of the Constitution. In this case within six days of the second marriage of the appellant his wife got the decree of divorce set aside. So marriage tie got reversed. As such there cannot be proceedings under section 493 IPC either. Since both are married separately so they consented to compound under section 320. Wife was ordered to be given Rs. 5 lakhs as compensation.

Matrimonial issues

In *Mahaboob Basha* v. *State of Karnataka*,[79] there was allegation of cruelty to first wife after the accused's second marriage. He had three children by each wife. The court ordered a compensation of Rs.2 lakhs to the first wife. There was no complaint of harassment against first wife. On the contrary dowry was demanded from her. The sentence of imprisonment for 6 months had been reduced to the period already undergone in view of the facts that the husband had to take care of three children by the second wife. The first wife was awarded compensation of Rs. 2 lakhs with default sentence of five months.

In *Suresh Abdul Majid Patni* v. *Adif Iqbal Mansoor*,[80] the application of appellant under the protection of women from domestic violence was not maintainable. The High Court of Bombay upheld this view. The wife contended that the 'kula' obtained from mufti under Mushin personal law was not valid, instead she sought for restitution.

73 See *State of Madhya Pradesh* v. *Deepak* (2015) 7 SCC (Cri) 89; *N Soundaram* v. *P K Pounraj* (2015) 1 SCC (Cri) 169; *Musiruddin Munshi* v. *Mohd. Suny* (2015) 1 SCC (Cri) 281; *Gangadhar Khalit* v. *State of Assam*, (2015) 9 SCC 647.

74 See *Binod Kumar* v. *State of Bihar* (2015) 1 SCC (Cri) 203; *Rajib Ranjan* v. *Vijayakumar* (2015) 1 SCC (Cri) 714.

75 See *supra* note 69, *State of Madhya Pradesh* v. *Manish* (2015) 8 SCC 307; *Kailash Chandra Agrawal* v. *State of Uttar Pradesh* (2015) 3 SCC (Cri) 536; *Kulvir Singh* v. *State of Punjab*, *CRM-M 22257* of 2014.

76 (2014) 6 SCC 466.

77 (2012) 10 SCC 303.

78 (2015) 8 SCC 286.

79 (2015) 1 SCC (Cri) 67.

80 (2015) 1 SCC 241.

She also filed petition under section12 of Domestic Violence Act, 2005 (DV Act). The protection officer found that there was violence and interim relief of Rs.25,000/- was ordered. The husband deposited the amount and moved an application alleging that there was no domestic relation between the parties. Both the sessions judge and the high court upheld the husband's plea.

The Supreme Court held that there was domestic relationship between the parties and even if divorce is accepted under section 12 of DV Act, the case is maintainable.

The consent by the wife to the effect that after getting permanent alimony of Rs.8,000/- she would not claim maintenance under section 125 Cr PC was not complied with by the wife. She in fact in breach of consent/contract moved the family court for maintenance under section 125. The Supreme Court approved her act and held that the contract entered into by her was unlawful.[81]

In *Shalu Ojha* v. *Prasanth Ojha*[82] the Supreme Court stated that it can be seen from the DV Act that no further appeal or revision is provided to the high court or any other court against the order of sessions judge under section 29. It is in the background of the above mentioned scheme of the DV Act the case is to be considered. The court further observed that the appellant made a complaint under section 12 of the Act. The magistrate in exercise of jurisdiction granted maintenance to the appellant. The magistrate's legal authority to pass such an order is traceable to section 20 (1) (d) of DV Act.

Instead of addressing several issues raised, the Supreme Court held that interest of justice would be better served if husband's (respondent) appeal before the sessions court was heard and disposed of on merits. The court accordingly directed sessions court to hear appeal only after execution of maintenance order passed by the magistrate.

The court felt that in a matter arising under a legislation meant for protecting the rights of women the high court should have been slow in granting interim orders interfering with the orders by which maintenance is granted to the wife.

Maintenance orders- effective date

In fact section 125 Cr PC enables the court to grant maintenance order from date of order or from date of application. The Supreme Court had occasion to examine sections 125 (2) and 354(6) Cr PC. As per section 354(6) court should record reasons in support of order passed by it. In *Jaimini Ben Itirabhai Vyas* v. A *Ramesh Chandra Vyas,*[83] the high court had not given any reason for not granting maintenance from date of application though the circumstances eminently justified to do so. The Supreme Court allowed the appeal by the wife.

It has been reiterated by the Supreme Court that family court can grant maintenance to a divorced Muslim woman in *Shemima Farooque* v. *Shabid Khan,*[84] under section 125 (1) explanation (b) Cr PC. It was also ruled that there was no

81 See *Nagendra Natikar* v. *Neelamma* (2015) 1 SCC (Cri) 407.

82 (2015) 1 SCC (Cri) 826.

83 (2015) 2 SCC 385.

84 (2015) 2 SCC (Cri) 785.

justification for the high court in reducing the quantum of maintenance granted to the wife. The order of the family court was restored.

In *Sunita Kuchwaha* v. *Anil Kuchwaha*,[85] the wife was denied maintenance by the high court on the ground that she was on her own living away from her husband. The order granting maintenance by the family court was set aside. On appeal to the Supreme Court, the high court's order was set aside. The court felt that it is not necessary for court to ascertain as to who was in the wrong in maintenance disputes between husband and wife. Merely because the wife was earning something, wife would not be refused maintenance.

VIII SENTENCING

Reacting to the present day pathetic situation of many people dying or many getting injured and crippled due to the careless driving of vehicles causing accidents the Supreme Court in *State of Punjab* v. *Saurabh Bakshi*,[86] felt that there is an urgent need to scrutinise, relook at and revisit sentencing policy under section 304 A IPC. The court held that it cannot be said as a proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under section 304 A IPC, there can be reduction of sentence. The court said: [87]

> It is the duty of every right-thinking citizen to show veneration to law so that an orderly, civilized and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If any one defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognizes. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain crimes assume more accent and gravity depending upon the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and let it be said, on certain occasions the person aggrieved

85 (2015) 3 SCC (Cri) 589.

86 (2015) 5 SCC 182.

87 *Id*. at 186.

> and as well as the society at large can be victims, never be marginalised. In this context one may recapitulate the saying of Justice Benjamin N. Cardizo "Justice, though due to the accused, is due to the accuser too". And, therefore, the requisite norm has to be the established principles laid down in precedents. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices.

This approach was however, it is felt, not scrupulously followed by the court as is evident in its decision in *State of Uttar Pradesh* v. *Omprakash.*[88] The court converted death sentence of several accused to life imprisonment observing thus:[89]

> We have no hesitation to say that the accused indulged themselves in acts of the most gruesome nature. At the same, it is to be borne in mind that the accused were on a rampage and running berserk with the only sense triggered by the thrust of avenge. The brutality of the murder must be seen with all mitigating factors in order to come to the conclusion whether the case falls within the ambit of the rarest of rare cases. Though the incriminating circumstances proved by the prosecution unmistakably and unerringly lead to the guilt of the appellant accused, but having regard to the observation made by this court in *Macchi Singh*, (1983) 3 SCC 470 after balancing all the mitigating and aggravating circumstances of the case, we are of the view that this case does not fall under the category of the rarest of rare cases. Further, the repetition of such criminal acts at their hands making the society further vulnerable are also not apparent. There is a ray of hope for their reformation and rehabilitation.

The request for reduction of sentence on the ground of delay in reporting the crime and the young age of the offender was not acceded to by the court in *Deepak* v. *State of Haryana*.[90] The evidence of the prosecution in the rape case was truthful and sentence of seven years' rigours imprisement was upheld by the Supreme Court (See also *Madanlal* v. *State* [91] wherein the Supreme Court disapproved compensation for rape).

The kind of attitude one noticed in *State of Uttar Pradesh* v. *Omprakash*[92] was not seen in *Purushotham Dasrath Borate* v. *State of Maharashtra*,[93] wherein having regard to the atrocious murder of a helpless woman who was working in business

88 (2015) 4 SCC 467.

89 *Id*. at 481.

90 (2015) 4 SCC 762, see also *Madanlal* v. *State* (2015) 7 SCC 781, *State of Gujarat* v. *Jaydip Damjibhai Chavda*, Cr. App. No.763 of 2011 (Guj).

91 (2015) 7 SCC 781.

92 (2015) 4 SCC 467.

93 (2015) 6 SCC 652.

process outsourcing (BPO) the accused was awarded death penalty. It recorded that in not awarding death sentence in such a case would tempt other potential offenders to commit crimes.

The question of awarding sentences for two or more offences arising from one trial has been raised in the Supreme Court in some cases. In *Nagaraja Rao* v. *CBI*[94] the Supreme Court ruled that it is obligatory for the sentencing court to mention the reasons for making the sentence consecutive sentence or concurrent under section 31 Cr PC. In this case since person was already removed from service and 21 years had lapsed he was given concurrent sentence under section 381 IPC and under section 52 of the Indian Post Office Act, 1898.

In *Duryodhan Rout* v. *State of Orissa*,[95] the appellant was awarded death sentence under section 302 and 10 years imprisonment under section 376(2)(f) IPC along with other sentence to run consecutively in a rape murder case of a minor girl. The high court converted death sentence to life imprisonment.

It was ordered that the other sentences should run consecutively. On appeal to the Supreme Court the sentence was made life imprisonment under the proviso to section 31(2) Cr PC in as much as the imprisonment for life is for the whole span of life. In fact reading of section 55 IPC with sections 433 and 433 A, life imprisonment should be imprisonment for the whole span of life of the offender. In the present case all sentences were directed to run concurrently.

In *O M Cherian @ Thankachan* v. *State of Kerala*,[96] the Supreme Court categorically ruled that it is in the full discretion of the court under section 31 to order the sentences to run concurrently or consecutively.

If the court directs running of sentences consecutively order of running of sentences is not necessarily to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the court which is to be exercised as per the established law of sentencing. The court before exercising its discretion under section 31 is required to consider the totality of the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently.

The Supreme Court in several cases confirmed death sentence because of the cruel and brutal murders involved in them.[97] There are decisions wherein it opted for life imprisonment[98] and life imprisonment without commutation.[99] A person whose mercy petition could not be promptly considered by the President and therefore had to

94 (2015) 4 SCC 302.

95 (2015) 2 SCC 783.

96 (2015) 2 SCC (Cri) 123.

97 See *Vasant Sampat Dupara* v. *State of Maharashtra* (2015) 1 SCC (Cri) 624; *Mofilkhan* v. *State of Jharkhand* (2015) 1 SCC (Cri) 556; *Purushotham Dasrath Borate's case* (2015) 6 SCC 652; *Sabnam* v. *State of Uttar Pradesh* (2015) 6 SCC 632.

98 *State of Uttar Pradesh* v. *Omprakash* (2015) 4 SCC 467.

99 *B Kumar* v. *Inspector of Police* (2015) 2 SCC (Cri) 78.

spend a long time in jail in solitary confinement was saved of death penalty in *Ajay Kumar Pal* v. *Union of India*.[100]

It is interesting to mention that Shabnam, the convict in *Shabnam* v. *State of Uttar Pradesh*,[101] who was proved to have been responsible for the extinguishment of her family including a child and sentenced to death was served with death warrant immediately after the disposal of her appeal under article 136. In *Shabnam* v. *Union of India*,[102] the Supreme Court found fault with the service of death warrant without waiting for the review. The court has given a detailed account of the avenues available to a death convict to get her death sentence reviewed.

The Supreme Court in *Vikram Singh @ Vicky* v. *Union of India*,[103] rejected the challenge of constitutional validity of section 364 A on a parity of reasoning with *Mithu* v. *State*,[104] emphasising that there is no discretion for the judge in awarding the punishment under section 364 A. In fact under section 364 A form of punishments are death or life imprisonment; not death alone as in the case of *Mithu*. The Supreme Court's summing up in this case is worth quoting

> (i) punishments must be proportionate to the gavity and nature of the offence for which the same are prohibited @ prescribing punishments is the function of the legislature and not the courts;
> (ii) the legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs;
> (iii) courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provision dealing with the quantum of punishment prescribed for different offences;
> (iv) courts however have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or inhuman or brutal that the same cannot be accepted by any standard of decency;
> (v) absence of objective standards for determining the legality of the prescribed sentence makes the job of the court reviewing the punishment difficult;
> (vi) courts cannot interfere with the prescribed punishment only because the punishment is perceived to be excessive; and
> (vii) in dealing with questions of proportionality of sentences, capital punishment is considered to be different in kind and degree from sentence of imprisonment. The result is that while there are several

100 (2015) 2 SCC 478.
101 (2015) 6 SCC 632.
102 (2015) 6 SCC 702.
103 (2015) 9 SCC 502.
104 (1983) 2 SCC 277.

> instances when capital punishment has been considered to be disproportionate to the offence committed there are every few and rare cases of sentences of imprisonment being held disproportionate.

It has been categorically ruled by the Supreme Court in *State of Rajasthan* v. *Mohd. Muslim Jagala*,[105] that the commutation of sentence is the prerogative of the Government. The Court went on to record thus:[106]

> When appropriate Government commutes the sentence, it does so in exercise of its sovereign powers. The Court cannot direct the appropriate Government to exercise its sovereign power. The court can merely give a direction to the appropriate govt. to consider the case for commutation of sentence and nothing more. The legal position is no more res integra.

The court relied on its decision in *Delhi Admn*. v. *Manoharlal*.[107]

IX COMPENSATION

Apart from sentence and fine the court can award compensation to the victim. If the offender is incapable of compensating the victim, the state can step in and give compensation under section 357A. In *State of Madhya Pradesh* v. *Mehcabb*,[108] the deceased died as a result of electrocution by a hidden wire because of the negligence of the accused. Since the accused was incapable of compensating the victim, the State was asked to pay.

It was reiterated in *Manohar Singh* v. *State of Rajasthan*,[109] that just compensation should be determined having regard to the medical expenses, pain and suffering, lose of earning and other relevant factors. The object of section 357 A is to enable the court to direct the state to pay compensation to the victim where the compensation under section 357 is not adequate on where the case ended in acquittal or discharge and the victim is required to be rehabilitated.

The Supreme Court in *Suresh* v. *State of Haryana*,[110] declared that section 357 A recognises compensation as one of the methods of protection of victims. The court has also ruled that gravity of crime and need of victim are some of the guiding factors to be kept in mind, apart from other factors as may be found relevant in the facts and circumstances of an individual case.

105 (2015) 1 SCC (Cri) 199.

106 *Id*. at 202.

107 (2002) 7 SCC 222.

108 (2015) 5 SCC 197.

109 (2015) 3 SCC 449.

110 (2015) 2 SCC 227. See *Ranganatha* v. *State of Karnataka*, Cr. Appeal No.600 of 2010 in which PP have been directed to take care of compensation under sections 357 and 357A of the code being granted to the parties.

It is interesting to note that High Court of Madras awarded compensation to the persons who were victims of unfair investigation by the police. The state had to pay. (*Koil Pillai* v. *State of Tamil Nadu*, Cr PC (MD) No.167 of 2015 and M.P (MD) No.1 of 2015).

X TRANSFER OF CASE FOR TRIAL

In *Kanakalata* v. *NCI of Delhi*,[111] while discharging the accused under the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 the trial judge made certain observations on the misuse of the provisions of the Act. The high court on revision set aside the discharge order and ordered to decide the case ignoring the remarks/observations.

The Supreme Court by majority decided to accede to the prayer of the petitioner for transfer Banumati J dissented on the ground that the petitioner had not made a serious ground for transfer though.

XI DETERMINING JUVENILITY

The Supreme Court was presented 40 years old accused who was allegedly a juvenile at the time of commission of the crime. The court found that section 7 A and 15 Juvenile Justice Act, 2000 are likely to cause anomalous situation as to what order was to be passed. The court referred it to the advocate general to assist it as in the case of *CBI* v. *Swapan Roy*[112] and *Mumtaz Mumtyaz* v. *Uttar Pradesh.*[113]

Release of the juvenile

The High Court of Delhi in *Subramanian Swamy* v. *Raju*,[114] rejected the plea that the juvenile who had been sent to the special home cannot be released until it is demonstrably assured that he has reformed during his stay. The court however directed the juvenile justice board (JJB) to take necessary steps for the post-release rehabilitation in accordance with the rules.

XII CONCLUSION

The foregoing discussion signifies the importance with which the Supreme Court had dealt with the cases that came before it for decision. The courts have had opportunities to deal with serious issues that had emerged from the case law. The tendency on the part of the litigants to drag almost every case to the apex court seemed to have not been arrested. The Supreme Court could perhaps exercise some control over this trend.

111 (2015) 6 SCC 617.
112 (2015) 4 SCC 323.
113 (2015) 4 SCC 318.
114 WP(C) No.11511 of 2015 (Del).