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CRIMINAL PROCEDURE

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I INTRODUCTION

IN 2016 as usual many important judgments have been handed down by the court. The author identified some cases which are considered very important and are surveyed. The cases are discussed under different heads to facilitate reading.

II ARREST AND REMAND OF ACCUSED

An interesting question on arrest and remanding arose in *CBI* v. *Ratin Dandapet.*[1] In this case some accused were arrested and charge sheeted. There were some other accused who were absconding. During further investigation they were arrested by the Central Bureau of Investigation (CBI) who prayed for their remand in police custody for interrogation. Rejecting the decisions of the sessions court and the high court, the Supreme Court held that police remand could be sought under section167(2) Cr PC in respect of the accused arrested at the stage of further investigation. It was also clarified that 'accused if in custody' mentioned in section 309(2) does not include accused arrested during further investigation.

III ANTICIPATORY BAIL

The Supreme Court have had occasion to reiterate that for grant of anticipatory bail there is no straightjacket formula. It depends upon the facts of each case. A balance has to be maintained between need for fair investigation and avoidance of harassment.[2]

In *Bhadresh Bipinbhai Sheth* v. *State of Gujarat*,[3] the principles for grant of anticipatory bail came to be summarised as follows:[4]

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1 (2016) 1 SCC 507.

2 *Sudhir* v. *State of Maharashtra* (2016) 1 SCC 146.

3 (2016) 1 SCC 152.

4 *Id*. at 166.

i. The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The Court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the Investigating Officer is established then action be taken against the Investigating Officer in accordance with law.

ii. The gravity of the charge and the exact role of the accused must be properly comprehended. Before arrest the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the Court.

iii. It is imperative for the Court to carefully and with meticulous precision evaluate the facts of the case……..

iv. There is no justification for reading into S.438 Cr.PCthe limitations mentioned in S.437 Cr.PC. The plenitude of S.438 must be given its full play. ……

v. The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the Court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor ……. The anticipatory bail granted by the Court should ordinarily be continued till the trial of the case.

vi. It is settled legal position that the Court which grants the bail also has the power to cancel it.

vii. In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the Trial Court, then it would be unreasonable to compel the accused to surrender before the trial Court and again apply for regular bail.

viii. Discretion vested in the Court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise.……

ix. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of the anticipatory bail because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

x. The following factors and parameters need to be taken into consideration while dealing with anticipatory bail.

a. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made.
b. The antecedents of the applicants including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.
c. The possibility of the applicants to flee from justice
d. The possibility of the accused's likelihood to repeat similar or other offences
e. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her
f. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people
g. The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of S.34 and 149 of the Penal Code, 1860 the Court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern.
h. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation and there should prevention of harassment, humiliation and unjustified detention of the accused.
i. The Court should consider reasonable apprehension of tampering of the witness or apprehension of tampering of witness or apprehension of threat to the complainant
j. Frivolity in prosecution should always the considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

IV INVESTIGATION

It has been categorically ruled by the Supreme Court that the constitutional courts have extraordinary power to order investigation by independent agency like the CBI. This power should be exercised sparingly and cautiously. It has been held in *Poojapal* v. *Union of India*,[5] that the power should be exercised in exceptional situations.

Criminal trial encompasses, investigation, inquiry, trial, appeal and retrial *i.e.,* entire range of scrutiny including crime detection and adjudication on basis thereof.

5 (2016) 3 SCC 135 See also, *Rashmi Behl* v. *State of Uttar Pradesh* (2016) 1 SCC (Cr.) 145.

The court by an extensive analysis of article 136, 21, 14, 368, 32, etc. pointed out that it is the constitutional obligation of the constitutional Courts to order reinvestigation, if found necessary.

It has been clarified in *State of Kerala* v. *P B Sourabhan*,[6] that the chief of the state police may not have power to appoint superior police officer to investigate a crime case registered outside the territorial jurisdiction of such officer.

In *Dharampal* v. *State of Haryana*,[7] the Supreme Court endorsed the right of constitutional court to order even *de novo* reinvestigation even after the stage of examination of some witnesses. The court observed: [8]

> We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation…….

The purpose of section 157 Cr PC came to be examined and reiterated in *State of Rajasthan* v. *Daud Khan*.[9] The purpose of giving copy of FIR to the magistrate under section157 is to prevent manipulation.

In *Murad Abdul Mulani* v. *Salma Baba Shaikh*,[10] reversing the order for taking action against the Investigating Officer for not promptly investigating a case the Supreme Court ordered:[11]

> Having given our thoughtful consideration to the directions issued by the High Court, and keeping in mind that the occurrence took place almost a decade ago on 17.01.2006, we are of the view, that the impugned direction contained in para 43 of the order passed by the High Court deserves to be modified.

The court stayed the operation of order for compensation and directed the home secretary of the state to examine the material and pass orders after hearing the parties as to whether action should be taken against the investigating officer.

The need for uploading the FIR on police website before the stage of section 207 Cr PC came to be accepted by the Supreme Court which issued a number of directions in *Youth Bar Association* v. *Union of India.*[12]

6 (2016) 2 SCC (Cr.) 241.
7 (2016) 2 SCC (Cr.) 259.
8 *Id*., para 25.
9 (2016) 1 SCC (Cr.)743.
10 (2016) 2 SCC (Cr.) 411.
11 *Id*. para 6.
12 (2016) 4 KHC 838 (SC).

Several instructions with regard to supply of FIR have been issued by the bench:[13]

11.1 An accused is entitled to get a copy of the FIR at an earlier stage than as presented u/s.207.

11.2 An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a FIR can submit an application through this representation for grant of a certified copy before the police officer concerned or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within 24 hours.

11.3 Once the FIR is forwarded by the police station to the Magistrate concerned or any Special Judge on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate entered under section 207 Cr.PC.

11.4 The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences should be uploaded on the police website and if there is no such website, on the official website of the state government, within 24 hours of the registration of the first information request so that the accused or any person connected with the same can download the FIR and file appropriate application before the Courtas per law for redressal of his grievance. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty the time can be extended up to 48 hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

11.5 The decision not to upload the FIR on the website should not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the states where the District Magistrate has a role, he may also assume the said authority. A decision taken by the police officer concerned or the District Magistrate shall be duly communicated to the jurisdictional Magistrate concerned.

11.6 The word "sensitive" apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

13 *Id*., para 11.

11.7 If an FIR is not uploaded, needless to say, it shall not ensure per se a ground to obtain the benefit under section 438Cr PC.

11.8 In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as metropolitan cities are concerned, where commission is there, if a representation is submitted to the Commissioner of Police, he shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within 3 days from the date of receipt of the representation and communicate it to the grieved person.

11.9 The competent authority referred to hereinabove shall constitute the committee, as directed hereinabove, within 8 weeks from today.

11.10 In cases wherein decisions have been taken not to give copies of the FIR, regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the Court concerned not beyond three days of the submission of application.

11.12 The direction for uploading of FIR in the website of all the States shall be given effect from November 15, 2016.

The question whether there could be an FIR on the death of a person after five years of the closure of the case on the ground that there was no offence, came to be answered in the negative in *Manoj Kumar Sharma* v. *State of Chhattisgarh*.[14] The new FIR was registered after 5 years on anonymous letters received by the brother of deceased. In this case before the closure there was also an inquiry under section 174 to collect information on the death of the person.

In *Awadesh Kumar Jha* v. *State of Bihar*,[15] the appellants were proceeded against under Immoral Traffic (Prevention) Act. 1956. On their giving false information regarding their names, address, etc. in connection with the first FIR, they were proceeded against under Sections418 and 420 IPC. The appellants' argument that it was further investigation by the police, was rejected by the Supreme Court since the offences in the second FIR cannot be said to arise from the same transaction. Their application under section 239 Cr PC for discharge was rejected by the court.

14 (2016) 3 SCC (Cr.) 407.
15 (2016) 3 SCC 8.

V SANCTION FOR PROSECUTION

It has been reiterated by the Supreme Court in *Manorama Tewari* v. *Surendranath Rai*,[16] that doctors working in government hospitals, being public servants cannot be prosecuted without sanction from the government. The question whether the employees of co-operative society could be considered public servants for the purpose of Prevention of Corruption Act 1988 is to be ascertained at the trial stage. It has been stated in *State of Maharashtra* v. *Brejlal Sudhasukh Madan*,[17] that meaning of 'any aid' in section 2 (e)(ix) in Prevention of Corruption Act needs to be purposely construed as the concept in entirety has to be understood in the backdrop of corruption. Prosecution initiated against the petitioners in *N K Ganguly* v. *CBI*[18] was quashed as there was no previous sanction. In *Virupakshan* v. *C Subhash,*[19] also the prosecution of the police officer who initiated a murder case against the petitioner came to be quashed as there was no sanction for prosecution of the police officer whose conduct was connected with his official duties. But in *Inspector of Police* v. *Battana Patla Venkata Ratnam*[20] prosecution was permitted as there was no connection between the offensive conduct and official duties of the respondents.

There are instances where the provision for previous sanction are not applicable as in the case of section 48 of the Water Act, 1974. Resorting to section197 Cr PC in the absence of any other provision providing for any sanction to be secured for proceeding against a public servant under special laws like Water Act, 1974 would be possible. It has overriding effect over any other enactment including section197 of Cr PC.

Special judge appointed under the P C Act could try not only cases under that Act but also cases under other Acts (*HCL Infoster Lt.* v. *CBI* with *Vijay Tripathi* v. *CBI*.[21] In *Sunderjit Singh* v. *State of Punjab*,[22] the act of the police officer in illegally detaining a person in connection with a case against him came to be treated as not part of the official duty. He was allowed to be prosecuted without previous sanction.

In *Anilkumar Jha* v. *State of Chhatisgarh*,[23] the person who did not allow his official jeep to be used to carry a sick person to hospital was proceeded against. But the Supreme Court ruled that sanction was necessary for his prosecution.

VI COGNIZANCE

Taking cognizance of a crime by the Magistrate is a very serious function. If the order does not indicate application of mind of the Magistrate in taking cognizance

16 (2016) 1 SCC 594.
17 (2016) 2 SCC (Cr.) 296.
18 (2016) 1 SCC (Cr.) 478.
19 (2016) 1 SCC (Cr.) 82.
20 (2016) 1 SCC (Cr.) 164.
21 (2016) 3 SCC (Cr.) 438.
22 (2016) 3 SCC (Cr.) 556.
23 (2016) 3 SCC 160.

and issuing process to the appellant accused the order passed by the magistrate will not be approved. In *MehmoodUl Rahman* v. *KhazerMohd. Tunda*,[24] the Supreme Court rejected the magistrate's order as approved by the high court. The Supreme Court remanded it to the Magistrate for fresh consideration as the complaint on the face of it does not disclose commission of offence. There was no indication of application of mind by the Magistrate on his order either.

In *S Satyanarayana* v. *EnergoMasch Power Engineering and Consultancy Pvt. Ltd*.,[25] special court was empowered by state notification to try cases even if such cases include offences punishable under the IPC and any other enactment, if such offence formed part of the same transaction. In this case the high court erred in quashing criminal complaint in respect of accused persons on the ground that special court could not have taken cognizance of offences under section 20B and 420 IPC when accused could not be prosecuted for offences under Companies Act, 1956 as offences in question formed part of the same transaction.

The order of cognizance and issue of process cannot be recalled by the magistrate. The remedy for this is invocation of inherent power of the high court under section 482 Cr PC as held by the court in *Adalat Prasad* case.[26]

Cognizance taken after 12 years of the offence was held to be not proper in *Premlata* v. *State of Rajasthan*.[27] In the instant case after investigation police filed a closure report. Against this the complainant filed a protest petition. Apparently it was not pursued promptly by the complainant for a considerable time. Not even a single witness was examined. It was in these circumstances the magistrate took cognizance ignoring limitation under section 468 Cr PC.

A very interesting question as to the power of the session court as a court of revision to take cognizance of offences, arose in *Balveer Singh* v. *State of Rajasthan*.[28] In this case charge sheet under section 306 IPC was filed against the husband of the deceased woman. Father of the deceased approached the magistrate for taking cognizance of offences under section 304B and 498A IPC against the parents of the husband. The magistrate dismissed the petition and committed the case to the sessions judge. The father then prayed to the sessions to take cognizance of the offences under sections 304B and 498A. The sessions judge after hearing the parties took cognizance of these offences and in the alternative offence under section 306 IPC. This was upheld by the high court. It was held by the Supreme Court that the magistrate's order was revisable by the court of revision either on petition or *suo motu*. Here it was upheld by the Supreme Court because the sessions court took cognizance after hearing the parties. The Supreme Court distinguished a case where the magistrate actively acted in taking cognizance and in case where the magistrate takes a passive role. In

24 (2016) 1 SCC (Cr.) 124.
25 (2016) 1 SCC (Cr.) 399.
26 *Adalat Prasad* v. *Rooplal Jindal* (2004) 7 SCC 338.
27 (2016) 2 SCC (Cr.) 430.
28 (2016) 6 SCC 680.

the first instance where the Sessions Judge takes cognizance it acts as a revisional court. There is no cognizance second time. In the latter case Sessions can take cognizance as a court of original jurisdiction.

VII TRIAL

In *Krishen Chander* v. (NCT) of *Delhi,*[29] the complainant turned hostile. His testimony in Court was at variance with his section 161 statement. The question that arose for decision was when the section 161 statements could be relied upon as ground for conviction. The court reiterated that the investigating officer who recorded section 161 statement and the witness concerned should be cross-examined on the contradiction in strict compliance with law laid down in *Misra's* case,[30] to make it basis for conviction.

Under section 145 of Evidence Act, 1872 when it is intended to contradict the witness by his previous statement reduced into writing the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part intended to contradict him, it stands proved and there is no need of further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process, this contradiction is merely brought on record, but it is yet to be proved. Thereafter when the investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition. If the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves the referring to the police statement and calling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that of the statement with which the defence wanted to contradict him, then the court cannot *suo motu* make use of statement to police not proved in compliance with section 145 of Evidence Act,1872 that is, by attention to the parts intended for contradiction.

The Supreme Court have had occasion to fall back on its own observations in *K P Tiwari* v. *State of Madhya Pradesh*[31] wherein it said thus:[32]

> It has to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and those lawyers almost breathing

29 (2016) 3 SCC 108.
30 *V.K Misra* v. *State of Uttarakhand* (2015) 9 SCC 588.
31 (1994) SCC (Cr.) 712.
32 *Id.* at 542.

> down their necks - more correctly upto their nostrils. They do not have the benefit of a detached atmosphere of the higher Courts to think 'coolly and decide patiently. Every error however gross it may look, should not, therefore be attributed to improper motive.

In *Usmangani Adanbhai Vahora* v. *State of Gujarat*,[33] apprehending miscarriage of justice, the petitioner prayed for transfer of his petition from the court to any other court in the division. This wasapproved by the high court. Rejecting this plea, the Supreme Court advised the judge not to recuse. It refused to transfer the case observing thus:[34]

> It has to be borne in mind that a judge who discharges his duty is bound to commit errors. The same have to be rectified. The accused has never moved the Superior Court seeking its intervention for speedy trial. The High Court has innovated a new kind of approach to transfer the case.

The Supreme Court did not approve the correction recorded by the high court in *Prem Sagar Manocha* v. *State (NCC of Delhi*),[35] since the expert gave the opinion the way he gave on the insistence of the trial court for a firm opinion in the circumstances of the case.

Merely because, the court reasoned an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he committed perjury. And merely rejection of expert evidence by itself may not warrant initiation of proceedings under section 340 CrPC.

Proceeding under section 340 can be successfully started even without a preliminary inquiry since the whole purpose of inquiry is only to decide whether it is expedient in the interests of justice to inquire into the offence which appears to have been committed. Section 340 CrPC prior to amendment in 1973 was section 479 A in the 1898 code and it was mandatory under the pre amended provision to record a finding after the preliminary inquiry regarding the commission of the offence, whereas in the 1973 code the expression 'shall' has been substituted by 'may' meaning thereby that under the 1973 code it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too opinion on offence 'which appears to have been committed' as to whether the same should be duly inquired into.

The question whether recall of witnesses, as to the stage when the statement of the accused under section 313 CrPC has been recorded, could be allowed on the plea that the defence counsel was not competent and had not effectively cross examined

33 (2016) 3 SCC 370.
34 *Id*. at 377.
35 (2016) 3 SCC 571.

the witnesses, having regard to the facts and circumstances of the case came to be examined in *State (NCT of Delhi)* v. *ShivkumarYadav*.[36] The mere observation made by the high court that record was necessary 'for ensuring fair trail' is not enough unless there are tangible reasons to show how the fair trial suffered without recall is not tangible. In the absence of any ground for it the Supreme Court set aside the high court's order. The court also enumerated the reasons for disapproving the high court's orders.

Noticing the practice of non enforcement of section 418 CrPC requiring the court to issue warrants against convicts to jail, the Supreme Court directed constitution of a committee to oversee the operation of section 418 thus:[37]

> Having heard the learned counsel for the parties on the question of composition, any such supervisory mechanism, we are of the opinion that a state level supervisory committee comprising (a) Secretary to Govt., Home Department, (b) Secretary to Govt., Department of Law, (c) DGP and (d) Secretary, State Legal Services Authority can be constituted to monitor and review such cases on six monthly basis. A biannual status report shall then be submitted by the State Level Committee to the Executive Chairman of the State Level Legal Services Authority take such action in the matter as is considered fit including , if necessary, taking up to matter in the judicial side.

In *Essar Teleholdings Ltd.* V. *CBI*,[38] the Supreme Court did not find that the facts and allegations were common. Nor was evidence common. In such a situation it was not obligatory on court to conduct a joint trial and provisions of sections 220 and 223 CrPC were only enabling provisions. Further, the accused cannot insist with ulterior purpose or otherwise that he be tried as co-accused with other accused, that too in a different case.

In *Vivek Rai* v. *High Court of Jharkhand,*[39] high court rule 159 requiring surrender of convict before his revision is registered came to be challenged. It is generally the practice, the Supreme Court said, in similar situation the accused is taken into custody in the court itself. The object of the rule is to ensure that a person who has been convicted by two courts obeys the law and does not abscond. It is therefore not arbitrary.

Charges can be framed by high court. This has been reiterated in *Darshan Singh Sain* v. *Sohan Singh,*[40]*Anant Prakash Sinha@ Anant Sinha* v. *State of Haryana,*[41]*Bhanamappa Gigi* v. *Praveen Murthy*.[42]

36 (2016) 1 SCC (Cr.) 510.
37 *Lallan Singh* v. *State of Uttar Pradesh* (2016) 1 SCC (Cr.) 614 at 620.
38 (2016) 1 SCC (Cr.) 1.
39 (2016) 1 SCC (Cr.) 56.
40 (2016) 1 SCC (Cr.) 418.
41 (2016) 2 SCC (Cr.) 525.
42 (2016) 2 SCC (Cr.) 540.

In *Subhadramma* v. *State of Andhra Pradesh*,[43] it has been held by the Supreme Court that attachment order passed under the Criminal Law Amendment Ordinance 1944 must be withdrawn where prosecution against the accused concerned abates or cannot result in a conviction due to death of that accused during trial.

It has been rightly ruled by the Supreme Court in *State of Haryana* v. *Ram Mehra*,[44] that concept of fair trial cannot be limitlessly stretched. Ambit and scope of provisions like sections 311, 231(2), 309, 482 Cr.PC, etc. came to be examined.

VIII APPRECIATION OF EVIDENCE

It is interesting to have a look into some decisions of the Supreme Court to understand the overview exercised by the Supreme Court in the administration of justice. For example, let us look into *Sobaram Singh* v. *State of Madhya Pradesh*.[45] In this case there was discrepancy between earlier statement of eyewitnesses recorded immediately after occurrence and one after registration of FIR which was recorded after 11 months of occurrence at the instance of senior police officer wherein for the first time they were stated to be eye witnesses and appellant – accused was implicated. Neither the ASI who recorded inquiry report nor the investigation officer was examined for which no explanation is offered. The S.H.O could not ascertain the names of the culprits. Nor could he register the crime. Prosecution failed to prove the case. In these circumstances the Supreme Court set aside their conviction. The court observed:[46]

> Our independent analysis of the evidence on the record coupled with the infirmities we have noticed above has created an impression on our mind that the prosecution has not been able to bring home the guilt to the appellants beyond a reasonable doubt. The High Court even after noticing the infirmities, in our opinion, fell in error in confirming the conviction of appellants. The reasons given by the High Court do not commend to us to sustain the conviction and sentence. They are neither sufficient nor adequate or cogent, much less compelling to uphold the impugned judgment.

In *State of Rajasthan* v. *Janudeen Sheikh*,[47] since the courts below found that the respondents were innocent of the crimes under the Narcotic Drugs and Psychotropic Substances Act, 1985 on analysis the alleged contraband being found to be no drug the Supreme Court reversed the conviction. The respondents were awarded a compensation of Rs.50,000/-. The court initiated proceedings against malicious

43 (2016) 3 SCC (Cr.) 236.
44 (2016) 3 SCC (Cr.) 577.
45 (2016) 1 SCC (Cr.) 643.
46 *Id*., para 20.
47 (2016) 1 SCC (Cr.) 380.

prosecution against the investigating officers. The Supreme Court reversed the conviction and sentence. There was nothing on record to suggest that there was lapse on the part of seizing officer. Nothing was brought out by way of evidence to show that prosecution had falsely implicated respondents. The court set aside the order for compensation also.

The high courts' decision in *Dineshlal* v. *Uttarakhand*,[48] was set aside by the high court on the ground that the court did not properly appreciate the evidence. The case was remitted to the high court.

IX COMPENSATION TO THE VICTIMS

There have been some decisions granting compensation to the victims of crimes. The victims of acid attacks came to be extremely analysed in *Laxmi* v. *Union of India*.[49] Noticing the increase of acid attacks it has been advised to regulate its sale and availability so that it is not easily and readily available. The Supreme Court issued several instructions in *Laxmi's case*.[50] The IPC was amended (section 326A and 326B) and compensation for treatment of victims was also ordered under sections 357A and 357C CrPC. The amount has been enhanced to Rs.3 lakhs as after care cost. The court identified the district legal authority including the district judges to be involved in awarding compensation.

In *Tekan@ Tekram* v. *State of Madhya Pradesh (Chhattisgarh)*,[51] the victim of rape a blind girl was awarded Rs.8,000/- per month (as the interest of Rs.10 lakhs) on fixed deposit) to be paid by the accused. It was indeed a befitting compensation going beyond sections 357 and 357A.

X BAIL

Section 436A was inserted into the Cr PC in 2005 with a view to facilitate release of undertrial prisoners althoughits implementation has been tardy. Therefore, the Supreme Court issued directions for its implementation in *Bhim Singh* v. *Union of India*:[52]

> We accordingly direct that Jurisdictional Magistrate/Chief Judicial Magistrate/Special Judge State hold one sitting in a week in each jail/ prison for two months commencing from 01.10.2014 for the purposes of effective implementation of section 436 A of Cr PC. In its sittings in the jails, the above judicial officers shall identify the undertrial prisoners who have completed half of the maximum period or maximum period

48 (2016) 1 SCC (Cr.) 590.
49 (2016) 2 SCC (Cr.) 152.
50 (2014) 13 SCC 743.
51 (2016) 2 SCC (Cr.) 307.
52 (2016) 1 SCC (Cr.) 663.

> of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under said offence under the law and after complying with the procedure prescribed under section436 A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfill the requirement of section 436 A for their release immediately. Such Jurisdictional Magistrate/Chief Judicial Magistrate/ Special Judge shall submit the request of each of such sittings to the Registrar General of the High Court and at the end of two months the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate the compliance with the above orders, we direct the jail Superintendent of each jail/prison to provide all necessary facilities for holding the Court sitting by the above judicial officers. A copy of the order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within the state for necessary compliance.

The spirit of these directions is reflected in some decisions of the court. Where an accused is already in custody and has one year and seven months' imprisonment out of the four years' imprisonment imposed on him by the lower court, and there is no likelihood of his appeal being heard in the near future the Supreme Court granted him bail pending appeal under section 389 Cr PC.[53]

In *Galli Janardhan Reddy* v. *Devipolymers (Pvt.) Ltd*.,[54] the petitioner was granted bail by the Supreme Court as the investigation was completed and the prosecution did not oppose the payer for bail on condition that in case of breach of conditions the Court would cancel the order of bail.

In *Gautam Kunder* v. *Directorate of Enforcement*,[55] the Supreme Court did not grant bail to the accused as he could not satisfy mandatory conditions prescribed under section 45 of the Prevention of Money Laundering Act, 2002. In *Chandrakeshwar Prasad* v. *State of Bihar*,[56] the Supreme Court cancelled the bail granted to the person accused of murder of a person who was witness in a case against the applicant. His antecedents made the Court to order his taking into custody forthwith.

XI SENTENCING

It is interesting and informative to examine the Supreme Court's judgment in state through *CBI* v. *Sanjiv Bhalla*.[57] In this case one accused was convicted under

53 *JBS Uppal* v. *CBI* (2016) 1 SCC (Cr.) 352.
54 (2016) 2 SCC (Cr.) 661.
55 (2016) 3 SCC (Cr.) 603.
56 (2016) 3 SCC (Cr.) 685.
57 (2016) 1 SCC (Cr.) 631.

Prevention of Corruption Act, 1988. Others were convicted under IPC by the Trial Court. But on appeal to the High Courteveryone was treated as convicted under *Prevention of Corruption Act*, 1988. Still because of lapse of time they were released on probation under the Probation of Offenders Act. 1958.

In the Supreme Court the bench did not interfere though one of the judges expressed dissent of the action taken by the courts below. Madan B Lokur J, one of the Judges, Lokur J undertook a study of the Supreme Courts' earlier judgments and showed that in the matter of sentencing it has not been consistent. He concurred with Ranjana Desai J. But he gave a separate opinion in which he expressed his view that the court should stick to a policy to enable the convicts to reform. His observations after finding that there is no policy being followed by the court are worth consideration though he claims that no opinion about the policy is expressed by him. He observed:[58]

> These decisions indicate that the philosophical basis of our criminal jurisprudence is undergoing a shift from punishment being a humanizing mission to punishment being deterrent and retributive. This shift may be necessary in today's social context (though no opinion is expressed), but given the legislative mandate of sections 360 and 361 of Cr.PC and the Probation of Offenders Act, what is imperative for the judge is to strike a fine balance between releasing a convict after admonition or on probation or putting such a convict in jail. This can be decided only on a case by case basis but the principle of rehabilitation and the humanizing mission should not be forgotten.

One may not agree with this view. What the court should look for is the prevention of crime by way of deterrent or retributive punishment in as much as the criminal justice system should satisfy the commoners. The main objective of punishment is prevention of crime. All other objectives are subordinate to this. What is important is that the judgment is well-reasoned. Unfortunately, many a times the court fails in coming up with properly reasoned judgments.

One may, however, agree with Justice Lokar when he says:[59]

> This being the position in law, there is a necessity of giving justice to the victims of a crime and by arriving at a fair balance, awarding a just sentence to the convicts by treating them in a manner that tend to assist in their rehabilitation. The amendment brought about in the Cr.PC 1973 in 2006 also include a chapter on plea bargaining which again is intended to assist and enable the trial judge to arrive at a mutually satisfactory disposition of a criminal case by actively engaging the victim of a crime. It is the duty of a trial judge to utilize all these tools

58 *Id.,* para 20
59 *Id*., para 25

given by parliament for ensuring a fair and just termination of a criminal case.

The fact that the Supreme Court's approach towards conviction and sentencing by the high courts is also responsible for the lack of consistency becomes evident when one examines its decision in *Hymad Pasha* v. *State of Andhra Pradesh*.[60]

In this case the accused was convicted and sentenced as his wife was found dead and he had no explanations to offer. He was convicted and sentenced under section 302 and 498A IPC. He preferred appeal to the high court and while it was still pending preferred another appeal against the same judgment of trial court. While previous appeal came up for hearing high court remained oblivious of pending of another appeal on the same subject matter. Hence, not only was previous appeal dismissed by high court affirming appellant's conviction, the other appeal that came up for hearing separately before another bench of that court was allowed acquitting appellant. These were brought before the high court under section 482 CrPC. The high court recalled the acquittal order and confirmed conviction.

On appeal, the Supreme Court confirmed the high court's order of conviction and rejected the acquittal order. It is to be noted that not even a single word pointing out the conflict has been said against the high court. It is not only the duty of the trial court to be vigilant about sentencing policy. It is high time that superior court also consider the scheme of CrPC reflected in sections like 235(2), 360, 361 and keep in mind the cry for justice made by the 'little Indians' rather than the intellectuals.

XII EXECUTION OF SENTENCE

There have been some very important decisions touching on grant of remission/commutation of sentence. In *Union of India* v. *V Sriharan*,[61] several propositions have been made by the constitution bench like the conclusion to the effect that imprisonment for life in terms of section53 read with section 45 IPC only means the imprisonment for the rest of life of the convict. The right to claim remission/commutation, reprieve, etc. as provided under article 72 or 161 of the Constitution will always be available being constitutional remedies untouchable by the court.[62] New punishment of life imprisonment beyond 14 years viz. beyond application of remission is well founded.[63]

Powers under sections 432 and 433 is available to the appropriate government even if the President / Governor exercised powers under article 72 and 161.[64]

The status of 'appropriate government' whether the union government or state government will depend upon the order of the sentence passed by criminal court as

60 (2016) 3 SCC (Cr.) 334.
61 (2016) 2 SCC (Cr.) 695.
62 *Id*., para 177.
63 *Id*., para 178.
64 *Id*., para 179.

has been stipulated in section 432(6) and in the event of specific executive power conferred[65] on centre under a law made by Parliament or under the constitution itself then in the event of the conviction and sentence covered by the said law of Parliament or the provisions of the constitution even if the legislature of the state is also empowered to make a law on the same subject and coextensive, the appropriate government will be union government having regard to the prescription contained in the proviso to article 73(1)(a) of the Constitution. Barring cases falling under section 432(7)(a) in all other cases when the offender is sentenced or sentence order is passed within the territorial, jurisdiction of the state concerned the state government would be the appropriate government.[66] There is no *suo motu* power of remission that can be exercised under section 432(1). It is always safe and appropriate to hold that in those situations covered by clauses (a) to (c) of section 435(1) falling with the jurisdiction of the Central Government it will assume primacy and consequently, the process of 'consultation' in reality be held in the requirement of 'concurrence'.[67]

In *Muthuramalingam* v. *State (Inspector of Police)*,[68] the following points have been arrived at: Keeping in view the provisions in sections.31(1), 432-433A, a person convicted of several offences at one trial may be sentenced as follows:[69]

Whether they are to run consecutively or concurrently when

Case I – multiple sentences awarded, none of them being life imprisonment

Case II – multiple sentences awarded, some being term sentences and one life imprisonment

Case III – multiple sentences of life imprisonment

Case IV – multiple sentences awarded some being term sentences and multiple sentence of life imprisonment

III Effect of remission / commutation of one sentence of life imprisonment when multiple sentence of life imprisonment are imposed

Firstly, held multiple term sentence and multiple sentence of life imprisonment may be imposed when one is convicted of several offences at one trial

Secondly, held in case I i.e., if multiple sentences are awarded, none of them being life imprisonment the sentences would run consecutively unless otherwise directed by Court.

Thirdly, in case II, i.e., if multiple sentences are awarded some being term sentences and one sentence of life imprisonment, then the sentences can be directed to run consecutively by specifying that prisoner shall undergo term sentences first and then life sentence but converse thereof cannot be directed.

65 *Id*., para 180.
66 *Id*., para 180.
67 *Id.,* para 181; See *State of Gujarat* v. *Lal Singh Manjit Singh* (2016) 3 SCC (Cr.) 511.
68 (2016) 3 SCC (Cr.) 259.
69 *Ibid.*

Fourthly, held in case III ie., if multiple sentence of life imprisonment only are awarded , the same cannot be directed to run consecutively. They can only run concurrently. In law they stand superimposed on each other.

Fifthly, held on Case III ie., if multiple sentences are imposed some being term sentences and multiple sentence of life imprisonment, then sentences can be directed to run consecutively by specifying that prisoner shall undergo term sentence first and then one life imprisonment which would be a superimposition of all life imprisonment all such life imprisonment running concurrently. Again, converse cannot be directed.

Sixthly, held, when it is a case of multiple life imprisonment (falling under case III or Case IV, above) and they stand superimposed on each other concurrently as explained above then in case prisoner is granted benefit of remission or commutation qua one such sentence, the benefit of such remission would not ipso facts extend to the other.

In case the prisoner is granted the benefit of remission/commutation qua one such sentence the benefit would not ipso facto extend to the other.

In *Duryodhan Rout*,[70]although the court's conclusion that imprisonment for life means that for the full span of one's life and consecutive life imprisonment cannot be awarded is otherwise sound and acceptable, but to the extent of its reliance on the proviso to section 31 (2) to support the conclusion that a direction for consecutive running of sentence is impermissible, it does not state the law correctly.

In *VikasYadav* v. *State of Uttar Pradesh*,[71] and *V. Sriharan's* case[72] came to be applied. In this case the high court imposed a fixed term sentence of 25 years and directed sentence under sections 201 and 34 IPC to run consecutively but did not direct that sentence under section 201/34 should run first and thereafter fixed term sentence will commence.

The Supreme Court without modifying such sentencing order as the appeals have been preferred by accused and not the state directed the sentences to run concurrently.

XIII WITHDRAWAL OF PROSECUTION

In *V L S Finance Ltd*. v. *S P Gupta*,[73] it has been reiterated by the Supreme Court that the public prosecutor has the right to withdraw prosecution with the consent of the court. The court's observations are illustrative of the accepted position of law. The court observed:[74]

70 *Duryodhan Rout* v. *State of Orissa* (2015) 2 SCC 783.
71 (2016) 3 SCC (Cr.) 621.
72 *Union of India* v. *V. Shriharan* (2016) 7 SCC 1.
73 (2016) 2 SCC (Cr.) 200.
74 *Id*., para 54.

> The Court only has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage the Court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent prior to the application being taken up or being moved by the Public Prosecutor, the Court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so. The Court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application.

The accused have no role and, therefore, the high court could not have quashed the orders permitting the accused to withdraw the application and granting such liberty to the accused person.

XIV SECURITY PROCEEDINGS EVIDENCE UNDER SECTION145 Cr.PC

With regard to the use of the report made under section 145 Cr PC, the Supreme Court in *Surinder Pal Kaur*,[75] said that it is settled position that observations made in the proceedings under section145 Cr PC do not bind the competent court in legal proceedings initiated before it. A decision given under section145 has reliance in evidence to show one or more of the following facts:[76]

a. That there was a dispute relating to particular property
b. That the dispute was between the parties
c. That such dispute led to the passing of a preliminary order under section 145 or an order of attachment issued under section.146(1) Cr.PC and
d. The Magistrate found that the particular party or parties in possession or fictional possession of the disputed property.

XV JUDGMENT

A miscarriage of justice that may occur by acquittal of guilty is no less than from conviction of innocent. It is therefore the system empowers the appellate courts to oversee the judgments of the court below. Reason is the heart beat of judgments. Without reason conclusion becomes lifeless. In *Sadhu Suran Singh* v. *State of UP*,[77] the Supreme Court found the high court's judgment without proper reasoning. Court's reasoning is revealing:[78]

75 *Surinder Pal Kaur* v. *Satpal* (2016) 1 SCC (Cr.) 409.
76 *Id*. at 26.
77 (2016) 2 SCC (Cr.) 275.
78 *Id*. at 286.

> We are also of the considered opinion that the reason given by the High Court to reverse the conviction and sentence of the accused are flimsy, untenable and bordering on perverse appreciation of evidence.

The Supreme Court tried to explain the meaning of reason in the context of judicial decisions, in *Sree Mahavir Carbon Ltd*. v. *Om Prakash Jalan*,[79] that:[80]

> When we talk of 'reasons' in support of a judgement, what is meant by 'reasons' In the context of judicial decision making, the focus is on what makes something a valid reason. Thus, reason would mean a justifying reason or more, simply a justification for a decision is a consideration, in non-arbitrary ways in favour of making or accepting that decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.

The Supreme Court remitted the case to the high court for hearing afresh.

XVI TRANSFER

The Supreme Court will transfer a case from one state to another only if there is reasonable apprehension on the part of a party to a case that justice will not be done. Mere apprehension that the accused are influential may not be sufficient to transfer a case. It was so held by the Supreme Court in *Sujatha Ravikaran @Sujatha Sahu* v. *State of Kerala*.[81] The Court also rejected the request for entrusting the case with CBI.

The Supreme Court however asserted its power under articles 32 and142 of the Constitution to transfer civil or criminal case out of a State, in *Anita Kushwaha* v. *Pushpa Sudan*.[82] This was made in the context of ordering transfer of cases from the state of Jammu and Kashmir to do complete justice to the parties.

XVII APPEAL

Proviso to section 372 CrPC was added by Act 5 of 2009. Conferring a statutory right upon the victim, as defined under section 2(ww) CrPC to prefer an appeal against order passed by trial court either acquitting the accused or convicting him for a lesser offence or inadequate compensation. The Supreme Court in *Satyapal Singh* v. *State of Madhya Pradesh*,[83] rightly ruled, settling the conflicting high court decisions, that the victim is entitled to appeal after taking leave of the high court under section 378 (3) Cr PC.

79 (2016) 1 SCC (Cr.) 315.
80 *Id*., para 16.
81 (2016) 3 SCC (Cr.) 228.
82 (2016) 3 SCC (Cr.) 530.
83 (2016) 3 SCC (Cr.) 307.

Following its decision in *P S R Sadanandan* v. *Arunachalam*,[84] the Supreme Court in *Amanullah* v. *State of Bihar*,[85] upheld the *locus standi* of interested parties in making appeal under article 136 of the constitution. It was a case which was quashed by the high court under section 482 Cr PC on the ground that the trail court took cognizance of the offences wrongly.

XVIII QUASHING OF CASES UNDER SECTION 482

Generally speaking, the Supreme Court seems to follow the policy of not permitting quashing of the proceedings under section 482 Cr PC if the offence involved economic offences in as much as the victim of such crimes is the society at large. Perusal of *CBI* v. *Maninder Singh*,[86] *State of Tamil Nadu* v. *Vasanthi Stanley*,[87] *State of Tamil Nadu* v. *Ramesh*,[88] *L Narayana Swamy* v. *State of Karnataka*[89] signifies this approach. In several decisions such as *Savitri Pandey* v. *State of Uttar Pradesh*,[90] *Ramesh Raj Gopal* v. *Devi Polymers Pvt. Ltd*.,[91] *Omni Plastics Pvt. Ltd.* v. *Standard Chartered Bank*,[92] the quashing of criminal cases was approved as there was abuse of process of the court.

XIX CONCLUSION

The Supreme Court's rulings thus give clarifications of law on several points. But its silence on certain conflicting judgments rendered by a high court cannot be ignored.[93] Also, its issuance of directions for grant of anticipatory bail and uploading FIR, indicate the limitations of laws and the courts below including the high courts. These developments have the tendency of litigants looking at the Supreme Court on all issues in criminal procedure. That does not seem to be a healthy trend.

84 (1980) 3 SCC 141.
85 (2016) 6 SCC 699.
86 (2016) 1 SCC 389.
87 (2016) 1 SCC 376.
88 (2016) 3 SCC (Cr.)347.
89 (2016) 3 SCC (Cr.)696.
90 (2016) 1 SCC (Cr.)168.
91 (2016) 2 SCC (Cr.)567.
92 (2016) 3 SCC (Cr.) 355.
93 See, *Hymad Pasha* v. *Andra Pradesh* (2016) 3 SCC (Cr.) 334.