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CRIMINAL PROCEDURE LAW

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I INTRODUCTION

TODAY CRIMINAL Procedure Law assumes great importance in a Democratic country like India. Because almost all branches of public law get examined and evaluated in the context of Criminal Procedure frequently. The developments in the Constitutional Law, Human Rights Law, International Law, Criminal Law, etc. will have impact on the Procedural Law. The case laws emerging from Democratic countries signify that the various provisions in the CrPC get reviewed, reevaluated and often rejuvenated in the context of Constitutional Law, Criminal Law, Human Right Law, etc. The person who ventures to evaluate the developments in Criminal Procedure may have to capture the impact it may have on other branches of law.

India being a vibrant Democracy functioning within the framework of rule of law, Criminal Procedure receives vital additions in terms of procedural justice. It is always better that the scholars of procedural laws should watch and evaluate the developments continuously on a regular basis.

Keeping these aspects in view the case law in Criminal Procedural Law during 2017 was examined and analysed. Only those decisions which have had the trend of improving the system have been analysed under different heads for better appreciation.

II ARREST

The Supreme Court categorically declared the contours of arrest law while deciding *D K Basu* v. *State of West Bengal*[1] as early as in 1997. The precautions the police should take in arresting have been spelt out in detail in the context of human rights. The Court was constrained to recall and reiterate the precautions in *Rini Johar* v. *State of Madhya Pradesh*[2] during 2017. This decision indicated that our police have not yet got familiar with the requirement of arrest law.

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1 (1997) 1 SCC 416.

2 (2017) 1 SCC (Cri.) 364.

In this case a lady lawyer and lady doctor were arrested from their residences at Pune and without producing them before the Magistrate made them to travel in an unreserved Railway compartment, made to lie on base floor, to Bhopal. They were made to pay Rs. five lakhs to the senior police officers. They were released after several weeks. Thus their personal liberty was affected. The Supreme Court said that the freedom of individual has its sanctity when the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized shaken, perturbed, disillusioned and emotionally torn. Here was violation of the arrest law spelt out by the court in *D K Basu*. The Supreme Court ordered the State to pay compensation to the victims. And the State was free to recover this amount from the officials concerned.

III INVESTIGATION

The Supreme Court in *Zorawar Singh* v. *Gurbax Singh Bains*[3] came to examine the investigation that was got conducted by the State. On the request of the Respondent complaint the court issued several instructions for the conduct of proper investigation.

IV INQUEST REPORT

In the context of investigation, identification parade assumes importance. In 2017, the Supreme Court in *Sheikh Sintha Madhar @ Jaffer* v. *State,*[4] said that inquest report relates to cause of death and not witness's account of incident. It was also made clear by the Court that the purpose of TIP is to ensure that investigation is going on right track and it is merely a corroborative evidence. Actual identification should be done in Court. Then only it becomes part of substantive evidence.

It has been clarified by the Supreme Court that the Magistrate cannot order further investigation under section 173 (8) after cognizance has been taken. Only the investigating agency has this power to be exercised preferably after informing the Court. In *Amrutbhai Shambhubhai Patel* v. *Sumanbhai Kantibhai Patel,*[5] the High Courts' order against trial court's order for further investigation passed after the stage of final hearing of the case was upheld by the Supreme Court.

The limited scope of accused's cross examination of police with reference to the entries in the police diary under section 172 (2) and (3) came to be examined by the Supreme Court in *Balakram* v. *State of Uttarakhand*.[5] The trial court in this case did not permit the accused to cross-examine the police on the basis of certain pages of police diary obtained by way of petition under Right to Information Act, 2005. The high court however allowed the prayer. The Supreme Court did not agree. It ruled that this is a very limited power and it arises only when court uses such entries to contradict

3 (2017) 1 SCC (Cri.) 290.
4 (2017) 4 SCC 177.
5 (2017) 7 SCC 668.

police officer or when he uses it to refresh his memory and that again is subject to the provisions of sections 145 and 161 Evidence Act. The denial of right to the accused to inspect the case diary cannot be characterized as unreasonable. It is necessary to keep the confidentiality of investigation. The Supreme Court did not examine the question as to whether the copy of case diary can be provided to the accused under the provisions of Right to Information Act, 2005.

V BAIL

There have been several decisions on grant of bail. While in many cases the Court considered the delay and non-likelihood of completing the trial promptly to grant bail in certain cases it either rejected the bail or cancelled the bail granted to the accused.[6] The Court also got an opportunity to clarify the position with reference to default bail. In *Hussain* v. *Union of India*[7], the Supreme Court issued instructions to the High Courts for expediting bail and other applications thus:[8]

> The High Court may issue directions to the subordinate Courts that (a) bail application be disposed of normally within one week, (b) Magisterial trials where accused are in custody be normally concluded within 6 months and sessions trails where accused are in custody be normally concluded in two years, (c) efforts be made to dispose of all cases which are 5 years old by end of the year, (d) as a supplement to section 436A CrPC but consistent with the spirit thereof if an under trial has completed period of custody in excess of the sentence likely to be awarded if conviction is awarded, such under trial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time, (e) The above timelines may be touchstone for assessment of judicial performance in annual confidential reports.

In *Prassanna Venkardari Agrahar* v. *State of Maharashtra,*[9] the petitioner was granted anticipatory bail. The allegations against the petitioner that he murdered his wife came to be rejected by the Court he was adequately supported by the parents of the deceased wife.

6 See *State of Bihar* v. *Rajballav Prasad,* (2017) 2 SCC178, *Umarmia @ Mamu Miah* v. *State of Gujarat*, (2017) 2 SCC (Cri.) 114, *Manoranjana Sinh* v. *CBI*, (2017) 2 SCC (Cri.) 520, *Hussain* v. *Union of India*, (2017) 2 SCC (Cri.) 638, *Pravat Kumar Dash* v. *CBI*, (2017) 8 SCC 452, *Shyamlal* v. *State of Rajasthan*, (2017) 8 SCC 517, *Vishnu* v. *State of Rajasthan*, (2017) 3 SCC (Cri.) 876. Also see, *Virupakshappa Gouda* v. *State of Karnataka*, (2017) 5 SCC 406 wherein bail granted was cancelled, *Asha Ram* v. *State of Rajasthan*, (2017) 5 SCC 807 where bail application was rejected.

7 (2017) 5 SCC 702: (2017) 2 SCC (Cri.) 638.

8 *Id.* at para 29.

9 (2017) 2 SCC (Cri.) 621.

The contours of 'default bail' came to be examined by the Supreme Court in *Rakesh Kumar Paul* v. *State of Assam*.[10] The question posed before the Supreme Court in this case was with regard to interpretation of "offences punishable with imprisonment for not less than ten years" occurring in section 167 (2) (a)(i) of the CrPC. The Court clarified:[11]

> Keeping in view the legislative history of section 167 it is clear that the legislature was leaving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of default bail. It categorizes those offences in the three classes.
> First category comprises of those offences when the maximum punishment was death;
> Second category comprises of those offences where the maximum punishment is life imprisonment;
> The third category comprises of those offences which are punishable with a term not less than 10 years.

In the first two categories the legislation made reference only to the maximum punishment imposable regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum punishment is less than 10 years, then also the period of 90 days will apply. But when we look at the third category, the words used by the legislation, are not less than 10 years. "This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment".

VI PRETRIAL PROCEDURE

Under section 302 CrPC Magistrate can authorize private prosecution by the complainant. In *Dhariwal Industries Ltd*. v. *Kishore Wadhwani,*[12] section 302 has been held to be applicable to every stage including stage of framing charge in as much as the complainant is permitted by the Magistrate to conduct prosecution. The Court further clarified thus:[13]

> We have already explained the distinction between section 301 and 302 CrPC. The role of the informant or private party is limited during

10 (2017)15 SCC 67.
11 *Id.* at para 65.
12 (2017) 1 SCC (Cri.) 116: (2016) 10 SCC 378.
13 *Id*. at para 17.

> the prosecution of a case in a Court of Session. The counsel engaged by him is required to act under the directions of the Public Prosecutor. As far as section 302 is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct prosecution independently.

It is for the Magistrate to consider the contentions in a discharge petition under section 239 CrPC and pass discharge orders.[14]

At the time of framing charge the trial court is concerned not with proof of allegations, rather it has to focus on material and form an opinion whether there is strong suspicion that accused has committed an offence, which, if put to trial, could prove his guilt.[15]

The requirement of conducting an enquiry or investigation before issuing process is not an empty formality. Section 202 CrPC was amended in 2005 by the Code of CrPC (Amended) Act, 2005 with effect from June 20, 2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction". The purpose is to ward off false complaints. The kind of enquiry is explained by the Supreme Court in *Vijay Dhamka* case reiterated in *Abhijit Pawar* v. *Hemant Madhukar Nimbalkar*[16] thus:[17]

> No specific mode or manner of inquiry is provided under section 202 of the Code. In the inquiry envisaged under section 202 of the Code, the witnesses are examined whereas under section 200 of the Code, examination of complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate for the purpose of deciding, whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under section 202 of the Code. With a view to avoiding abuse of process, the Court may permit compounding of even non-compoundable offences. In *CBI* v. *Sadhu Ram Singla,*[18] the parties managed to compromise the disputes. In view of this compromise the Supreme Court permitted to compound the offences.

VII TRIAL AND TRIAL PROCEDURE

The Supreme Court have had an opportunity to clarify an important aspect of Domestic Violence Act, 2005 in *Kunapareddy @ Nokala Shanka Balaji* v.

14 *Umesh* v. *State of Kerala,* (2017) 2 SCC (Cri.) 5.
15 (2017) 2 SCC (Cri.) 40.
16 (2017) 2 SCC (Cri.) 192.
17 *Id*. at paras 25 & 26.
18 (2017) 5 SCC 350.

Kunapareddy Swarna kumari.[19] In this case the trial court permitted the Respondent to amend the prayer clause in her petition. This was upheld by the High Court as it was permissible under order 6 rule 17, CPC. The appellant challenged this order saying that the Act does not envisage application of CPC.

The Supreme Court upheld the order of the trial court and High Court saying that the provisions in D V Act, 2005 envisage application of CPC. Most of the reliefs that can be granted by the final order or by an interim order, are of civil nature. If it is not held so, D V Act, 2005 may not serve the purpose for which it was enacted.

Burden of proof is always on the prosecution and accused is presumed to be innocent unless proved guilty. Prosecution has to prove its case beyond reasonable doubt and accused is entitled for benefit of reasonable doubt. This universal rule of common law came to be reiterated by the Supreme Court in *Bhagwan Jagannath Markad* v. *State of Maharashtra.*[20] The doubt the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to separate the chaff from grain. The degree of proof need not reach certainty but must carry a degree of probability.

The need for a programme of witness protection came to be emphasized by the Supreme Court in *Ramesh* v. *State of Haryana.*[21] Reasons for witness turning hostile may be various. It may be fear of deposing against accused or, political pressure or pressure from family members or other sociological factors. It may also be possible that witnesses may be corrupted with monetary considerations. The Court has elaborately analysed the causes for the non-cooperation of witnesses and suggested that we should have a witness protection scheme. In the instant case the Supreme Court upheld the High Court's reversal of acquittal registered by the trial court.

How the facts of a case should be appreciated by the Court has been detailed by the Court in *Kishore Bhadke* v. *State of Maharashtra.*[22] In this case separate statements of accused under section 313 were taken in part on different dates after complying with section 319. It was held to be proper and the case was held to be appreciated properly. Addition of charge under section 216 CrPC was analysed in *P. Kartika Lakshmi* v. *Shri Ganesh.*[23] The appellant's request for adding a charge under section 417 IPC along with charge under section 376 IPC came to be held that it is neither for accused nor for respondent to seek addition of charge. In the instant case when application preferred by the appellant itself before trial court was not maintainable it was not incumbent upon the trial court to pass an order under section 216 CrPC. Therefore, there was no question of said order being revisable under section 307

19 (2017) 1 SCC (Cri.) 396.

20 (2017) 1 SCC (Cri.) 189. Also see, *Satish Nirankari* v. *Rajasthan*, (2017) 8 SCC 497.

21 (2017) 1 SCC (Cri.) 460.

22 (2017) 3 SCC 760.

23 (2017) 2 SCC (Cri.) 84. Also see, *R. Rachaiah* v. *Home Secretary, Bangalore*, (2017) 3 SCC (Cri.) 710.

CrPC. Hence the whole proceedings initiated at the instance of appellant was not maintainable and it was thoroughly misconceived and vitiated in law.

There was a serious issue in *Ajay Singh* v. *State of Chhattisgarh.*[24] In trial pertaining to offence under sections 304 B, 438, 34, 328 IPC r/w sections 3/4 of Dowry Prohibition Act, 1961 the trial court passed an order of acquittal in the order sheet and recorded that a judgment to this effect was separately typed, signed and dated. In relation to this there was a complaint made to the High Court that though the accused has been acquitted the Judge did not issue a judgment.

Transferring the case to another Court for rehearing, the Supreme Court essayed:[25]

> The case at hand constraints us to say that a trial judge should remember that he has immense responsibility as he has a lawful duty to record the evidence in the prescribed manner keeping in mind the command postulated in section 309 CrPC and pronounce the judgment as provided under the code. A Judge in charge of the trial has to be extremely diligent so that no doubt is created in the trial and in its eventual conclusion. Mistakes made or errors committed are to be rectified by the Appellant Court in its error jurisdiction. This is a different matter. But when a situation like this present one crops up, it causes agony, an unbearable one, to the cause of justice and hits like lightening in the cloudless sky. It hurts the justice dispensing system and no one, and we mean no one, has any right to do so. The High Court by rectifying the grave error has acted in furtherance of the cause of justice. The accused person must have felt delighted in acquittal and affected by the order of rehearing but they should bear in mind that they are not receivers of justice. They are victims of crimes. Law serves both and justice looks at them equally. It does not tolerate that the grievance of the victim should be comatosed in this manner.

The Supreme Court in *Sarada Prasanna Dalai* v. *Inspector General of Police, Crime Branch Odisha,*[26] reiterated that it is for the trial court to consider the request of the respondent for adding a new charge against the accused after considering the material presented to it. The material/additional evidence were required to be perused/ examined by the trial court to decide addition of charge.

Power under section 319 to summon any person as accused can be exercised by trial court at any stage during trial i.e., before conclusion of trial and make him face trial in ongoing case, once trial court finds that there is some 'evidence' against such

24 (2017) 2 SCC (Cri.) 161: (2017) 3 SCC 330.

25 *Id*. at para 29.

26 (2017) 5 SCC 381.

a person, on basis of which evidence, it can be gathered that he appears to be guilty of offence.

"Evidence" means material that is brought before Court for Trial. In so far as material evidence collected by Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support evidence received by Court to invoke power under section 319 CrPC. In *Brijendra Singh* v. *State of Rajasthan*[27] the evidence that has surfaced during examination-in-chief without cross-examination of witnesses came to be rightly based for summoning accused. But in the facts of the case it was ruled that the Court erred in summoning the persons who were otherwise proved to have been away from the place of occurrence of the crime.

Recall of a witness under section 311 CrPC is not a matter of course and discretion given to the Court to recall should be exercised judiciously to prevent failure of justice. Reasons for exercising this power should be spelt out in the order. Delay in filing application for recalling a witness is one of the important factors which has to be explained in the application. In *Ratanlal* v. *Prahlad Jat,*[28] PW4 and PW5 were recalled and they changed their earlier statement to favour the accused. The Trial Judge rejected the prayer for recalling. On appeal the High Court permitted them to be recalled and reexamined. The Supreme Court rejected the High Court's order and okayed the decision by the trial court to reject the fresh statements of PW4 and PW5.

The tendency of the public to tag in all the relatives in the matrimonial petition has made the Supreme Court to issue several instructions including constitution of Family Welfare Committees by the District Legal Services Authorities. Every petition under section 498A IPC will now be referred by the police/Magistrate to the Family Welfare Committee. Till the receipt of the Committee's report no arrest will be made. These petitions may be investigated by the designated Investigating Officer of the area.[29] The Supreme Court seems to have resorted to a sort of subordinate legislation.

In a case where a new charge is substituted under section 216 it is bound to be prejudiced against the accused. To avoid it the witnesses may have to be recalled, re-examined in the light of the new charge. In *R. Rachaiah* v. *Home Secretary, Bangalore,*[30] the original charge under sections 306 and 365 IPC were changed to section 302 and the accused was convicted under section 364 instead of section 365. No witness was recalled or re-examined. The accused was prejudiced. Provisions of section 216 and 217 are mandatory in nature. In the instant case the accused had already suffered imprisonment for 8 years. The sentence was therefore limited to the period undergone.

27 (2017) 7 SCC 706.

28 (2017) 9 SCC 340.

29 *Rajesh Sharma* v. *State of Uttar Pradesh,* (2017) (4) KHC 163 (SC). Also see, AIR 2017 SC 3869.

30 (2017) 3 SCC (Cri.) 710. Also see, *Kartika Lakshmi* v. *Shri. Ganesh*, (2017) 2 SCC (Cri.) 84. *Supra* note 24.

VIII SENTENCING

There have been several decisions on different aspects of sentencing during 2017. The discretion of the Court in directing the sentences to run concurrently or consecutively was the concern in some decisions of the Supreme Court.

In *Shyampal* v. *Dayavati Besoya,*[31] in dealing with sentences of 10 months each in a case involving two loans of Rs.5 lakhs each, the Supreme Court ordered the substantive sentences of 10 months' under section 427 CrPC to run concurrently. The appellant was however ordered to serve default sentences if fine imposed by way of compensation was not paid.

In *Benson* v. *State of Kerala,*[32] it has been pointed out that the Court under section 427 CrPC has power to order the sentence imposed on a person serving a sentence to run concurrently with the earlier sentence.

In *Anil Kumar* v. *State of Punjab,*[33] the sentence imposed in both cases as concurrent in terms of section 427 CrPC. It was further ordered that fine amount and default sentences are maintained.

The question as to whether when compensation is ordered as payable for an offence committed under section 138 Negotiable Instrument Act, 1881 and in default thereof, a jail sentence is prescribed and undergone, is compensation recoverable, has been answered affirmatively in *Kumaran* v. *State of Kerala,*[34] despite undergoing default sentence, compensation can thus be recovered.

Having regard to the peculiar facts of the case and considering the nature of allegations, it was found not justifiable to direct concurrency of sentences in *Neera Yadav* v. *CBI.*[35]

The accused is given an opportunity to be heard about the sentence to be imposed on him. In some cases, this plea was made and though a separate date is not fixed Courts used to give this opportunity. In *Mukesh* v. *State (NCT of Delhi),*[36] the Supreme Court gave adequate opportunities to the death convicts to make representation about the mitigating circumstances.

In *Vasanta Sampat Dupare* v. *State of Maharashtra*,[37] the same plea was made and the Supreme Court though it was not mandatory gave opportunity to the death convict to be heard on the question of sentence. Death was confirmed in both these cases.

There have been instances where the age and delay in imposing the punishment have had the effect of reducing the quantum of punishment. In *Baleshwar Mahto* v.

31 (2017) 1 SCC (Cri.) 264.
32 (2017) 1 SCC (Cri.)108.
33 (2017) 5 SCC 53.
34 (2017) 7 SCC 471.
35 (2017) 8 SCC 757.
36 (2017) 3 SCC 717.
37 (2017) 6 SCC 631.

State of Bihar,[38] Accused 1 was convicted of section 302 IPC and Accused 2 was convicted under section 307 IPC and sentenced to 7 years imprisonment. Both the accused were 80 years old and the incident occurred about 34 years ago. In the light of these facts A1 was advised to be given the benefit of remission and A2's punishment was reduced to the period undergone.

In *Dhurukumar S/o.Radhakishan Pitti* v. *State of Maharashtra,*[39] both the appellants convicted under section 7 of Essential Commodities Act, 1955 and sentenced to 3 months RI with fine were given the benefit of probation as they were first offenders and did not have any criminal antecedent.

In *Muthuramalingam* v. *State rep. by Inspector of Police,*[40] since legitimacy of consecutive sentences in the light of section 31 CrPC was challenged in the appeals, before arriving at the conclusive findings, a 3 Judge bench of the Court referred the matter[41] to a larger bench (Constitution Bench) vide its judgment dated 19.07.2016 and upheld the legitimacy of consecutive sentences of life imprisonment and held that:[42]

> While multiple sentences of life imprisonment can be awarded for multiple murders or other offences punishable with life imprisonment, the life imprisonment so awarded cannot be directed to run consecutively.

The Supreme Court can *suo motu* issue notice for enhancement of punishment. In *Gandi Doddabasappa @ Gandhi Basavaraj* v. *State of Karnataka,*[43] the appellant appealed to the Supreme Court against his conviction. On the Supreme Court issuing *suo motu* notice for enhancement of punishment the appellant sought to withdraw his appeal. The appellant was not permitted to withdraw appeal. The Supreme Court found the accused guilty of murder and awarded life imprisonment.

In *Pawan Kumar* v. *State of Himachal Pradesh,*[44] the trial court acquitted the accused of offence under section 306 IPC. But the High Court having regard to the facts of the case reversed acquittal and sentenced him to 7 years RI under section 306 IPC. The Supreme Court upheld the High Court's order.

The decision in *Ravada Sasikala* v. *State of AP,*[45] is very important. This was an unfortunate case involving acid attack on a young girl for refusal to marry the accused. The Supreme Court reversed the order of High Court reducing the punishment and

38 (2017) 2 SCC (Cri.) 26.
39 (2017) 9 SCC 411.
40 (2017) 1 SCC (Cri.) 450.
41 (2016) 8 SCC 331.
42 *Id*. at para 34.
43 (2017) 5 SCC 415.
44 (2017) 7 SCC 780.
45 (2017) 2 SCC (Cri.) 436.

reaffirmed the sentence awarded by the Trial Court. It also ordered the accused to pay compensation of Rs.50,000/- in addition to the State's compensation of Rs.3 lakhs.

IX APPEAL

There have been appeals to the Supreme Court during 2017.While exercising its appellate jurisdiction it laid down many instructions/rules. In *State of Himachal Pradesh* v. *Nirmala Devi,*[46] conviction under sections 328, 392, 207 r/w section 34 IPC by the High Court vide judgment substituting 2 years' S I awarded by trial court for all offences which were to run concurrently and fine of Rs.2,000/- with fine of Rs.30,000/- alone considering that respondent was a lady looking after three minor sons of whom two were unsound.

Sections 307, 308 and 392 IPC after specifying a particular term of imprisonment use words "and shall also be liable to fine". Hence it was imperative to impose both imprisonment and fine under section 386 CrPC. Appellate Court in Appeal from conviction, if conviction is maintained has power to alter nature or extent of sentence (though in such appeal it cannot enhance the same) but such power would not extend to exercising powers contrary to law.

The Court rightly found that sections 306, 328, 390 envisage imposition of imprisonment "and" fine. In fact, these sections use the words "and shall also be liable to fine". As such the Court is supposed to impose both imprisonment and fine. As regards the powers of the appellate Court, the Supreme Court said:[47]

> Section 386 of CrPC enlists the powers of the appellate Court while hearing the appeals from the trial court. In an appeal from conviction, if the conviction is maintained the appellant Court has the power to alter the nature or extent or the nature and extent of the sentence (though it cannot enhance the same). However, such a power has to be exercised in terms of the provisions of the Penal Code, for which the accused has been convicted. Power to alter the sentence would not extend to exercising the powers contrary to law. It clearly follows that the High Court committed a legal error in doing away with the sentence of imprisonment altogether.
>
> The Supreme Court restored the Trial Court's judgment.

There cannot be any strait jacket formula as to under what circumstances the appellate Court can interfere with the order of acquittal but the same depends on the facts and circumstances of each case. In *Mahavir Singh* v. *State of MP,*[48] though the

46 (2017) 7 SCC 262.

47 *Id.* at para 14.

48 (2017) 1 SCC (Cri.) 45. Also see, *Raja* v. *Karnataka,* (2017) 1 SCC (Cri.) 158.

trial court acquitted all the accused the high court reversed it and registered conviction under section 302 IPC. The Supreme Court in exercise of its powers under article 136 reversed the conviction and upheld acquittal by the trial court. Reversal of trial court's conviction in *Himanshu Mohan Rai* v. *State of Uttar Pradesh,*[49] by the high court was set aside by the Supreme Court as it found that the trial court was right in appreciating the evidence which it had the advantage of seeing the demeanour of witnesses. Trial court's order of conviction in *State of Maharashtra* v. *Nisar Ramzan Sayyed*[50] was reversed by the high court. The Supreme Court reversed the high court and awarded life imprisonment to the accused. In *Hakeem Khan* v. *State of Madhya Pradesh,*[51] the trial court acquitted all seventeen accused. But the High Court reversed it and convicted all 17 for life imprisonment. The Supreme Court reversed the high court and acquitted all.

It ruled that so long as the view taken by the trial court can be reasonably formed, regardless of whether the high court agrees with the same or not, view taken by the trial court cannot be interdicted and that of high court supplanted over and above the view of trial court.

In *V. Sejappa* v. *State rep. by Police Inspector,*[52] the acquittal recorded by the trial court was reversed by the high court. The Supreme Court disagreed with the high court and said that merely because appellate court on reappreciation and reevaluation of evidence is inclined to take a different view, interference with judgment of acquittal is not justified if view taken by the trial court is possible view. If two views are possible, appellate court should not interfere with acquittal by trial court and that only where material on record leads to one inescapable conclusion of guilt of accused, judgment of acquittal will call for interference by appellate court.

In *Arun Kumar* v. *State of Bihar,*[53] the Supreme Court did not appreciate the way the high court dealt with the appeal. It did not call for further material and evidence, though the evidence and circumstances called for such steps. The Supreme Court set aside the high court's order upholding the trial court's acquittal. The court remitted it back to the high court for rehearing the appeal.

The appeal seeking acquittal on the basis of parity in *Dinesh Yadav* v. *State of Jharkhand,*[54] came to be rejected as the evidence against the appellant was not the same on which the other accused came to be acquitted. Contention that evidence against appellant is similar to that of acquitted accused is found to be not correct.

CrPC envisages the high courts as a Superior Court to have powers for correcting the system. Section 482 is prefaced with an overriding provision. The CrPC saves the inherent power of the high court as a Superior Court to make such orders as are

49 (2017) 2 SCC (Cri.) 322.
50 (2017) 2 SCC(Cri) 624.
51 (2017) 2 SCC (Cri.) 653.
52 (2017) 3 SCC (Cri.) 699.
53 (2017) 6 SCC 765.
54 (2017) 3 SCC (Cri.) 450.

necessary (i) to prevent abuse of process of any Court, or (ii) otherwise to secure the ends of justice.

During 2017 there have been several cases wherein the high courts passed different orders. While in some cases they refused to quash the proceedings in certain cases they granted orders prohibiting arrests while not quashing the proceedings.[55]

In *Varala Bharath Kumar* v. *State of Telangana,*[56] the high court's order of refusing the quashment came to be quashed by the Supreme Court as there was no case made out by the parties.

The Supreme Court got an opportunity to recapulate the principles in *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur* v. *State of Gujarat,*[57] wherein it stated:[58]

The broad principles which emerge from the precedents may be summarized in the following propositions:

1. Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any Court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves the inherent powers which inhere in the high court.
2. The invocation of the jurisdiction of the high court to quash a FIR or Criminal Proceedings on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of section 320 CrPC. The power to quash under section 482 is attracted even if the offence is non-compoundable.
3. Informing an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under section 482, the high court must evaluate whether end of justice would justify the exercise of the inherent powers.
4. While the inherent power of the high court has a wide ambit and plenitude it has to be exercised (a) to secure the ends of justice, or (b) to prevent an abuse of process of any court.
5. The decision as to whether a complaint or FIR should be quashed on the ground that the offender and the victim have settled. The dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.
6. In the exercise of the power under section 482 and while dealing with a plea that the dispute has been settled the high court must have the regard to the

55 *Sampelly Satyanarayana Rao* v. *Indian Renewable Energy Development Agency*, (2017) 1 SCC (Cri.) 149, *Jai Ram* S/*o. Nathu Salunke* v. *State of Maharashtra*, (2017) 1 SCC (Cri.)730, *State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC (Cri.) 142, *Alka Bapu Gund* v. *Prakash Kanhaiyalal Kankaria*, (2017) 3 SCC (Cri.) 863, *Northern Minerals Ltd*. v. *Rajasthan Govt.*, (2017) 3 SCC (Cri.)763.

56 (2017) 3 SCC (Cri.) 740.

57 (2017) 9 SCC 641.

58 *Id*. at para 12 to 16.

nature and gravity of the offence. Heinous and serious offences including mental depravity or offence such as murder, rape and dacoity cannot appropriately quashed though the victim or the family of the victim have settled the dispute such offences are truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is forwarded on the overriding element of public interest in punishing persons for serious offences.

7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant elements of civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.
8. Criminal cases which arise from commercial or financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the disputes.
9. In such a case the high court may quash the criminal proceedings if the compromise between the disputants if the possibility of conviction is remote and continuation of a criminal poceeding would cause oppression and prejudice, and
10. There is yet an exception to the principle set out in proposition (8) and (9) above, economic offences involving financial and economic well-being of the state have implications which lie behind the domain of mere dispute between private disputants. The high court would be justified in dealing to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh and balance.

X CHILD PROTECTION

The Supreme Court in *Exploitation of children in Orphanages Inre,*[59] issued several directions for taking care of children in orphanages. The directions include instructions / direction not to give an exhaustive definition to children in need of care and protection referred to in section 2(14) of the Juvenile Justice Act, 2015. The directions are exhaustive in dealing with all aspects of child protection.

XI TRANSFER

The Supreme Court in *State (CBI)* v. *Kalyan Singh (Former Chief Minister, Uttar Pradesh),*[60] justified the transfer it ordered from one Criminal Court in Rae Bareilley to the Criminal Court in Lucknow by exercising its powers under article 142 thus:[61]

59 (2017) 7 SCC 594.

60 (2017) 3 SCC (Cri.) 408: (2017) 7 SCC 444.

61 *Id*. at paras 29 & 30.

> That article 142 can be used for procedural purposes, namely to transfer proceedings from one Court to another is undisputed. In the instant case, section 406 does not apply as the transfer is from one Criminal Court to another Criminal Court, both subordinate to the same High Court. Further, the fact that such power of transfer is granted to the High Court under section 407 does not detract from the Supreme Court using a constitutional power under article 142 to achieve the same and to do complete justice in the matter before it. In the present case, there is no substantive mandatory provision which is infracted by using article 142.

The Supreme Court have had occasion to deal with the role of *National Human Rights Commission in Extrajudicial Execution Victim Families Association* v. *Union of India.*[62] There have been pending cases with the NHRC calling for investigation. The Court appointed special teams for making investigations. As regards access to justice, the Court said vide para 21 thus:[63]

> Access to justice is certainly a human right and it has been given a special place in our constitutional scheme where free legal aid advice is provided to a large number of people in the country. The primary reason is that for many of the deprived sections of society access to justice is only a dream

As regards the inability of the organization to carry out its mission, the Court said:[64]

> Considering that such a high powered body has brought out its difficulties through affidavits filed in this Court, we have no doubt it has been most unfortunately reduced to a toothless tiger. We are of the clear opinion that any request made by NHRC in this regard must be expeditiously and favourably respected and considered by the Union of India, otherwise it would become impossible for NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country. We direct the Union of India to take note of the concerns of NHRC and remedy them at the earliest and with a positive outlook.

The whole scheme of Prevention of Corruption Act, 1988 came to be thoroughly analysed in *State of Karnataka* v. *J. Jayalalitha.*[65]

62 (2017) 8 SCC 417.
63 *Id*. at para 21.
64 *Id*. at para 44.
65 (2017) 3 SCC (Cri.) 1.

The Prevention of Corruption Act has ordained the constitution of a Court of Special Judge to try the offences there under and also any change of conspiracy or attempt or abetment in the commission thereof. The provisions of CrPC have been made applicable subject to the modifications contemplated in the Special Judge in particular, while trying an offence punishable under the Act has been authorized to exercise all powers and functions invocable by a District Judge under the ordinance.

The ambit of section 165 IPC is wider than that of sections 161, 162 and 163 IPC and is intended to cover cases of corruption that do not come within the sweep of the latter provisions. If public servants are allowed to accept presents when they are prohibited in law they would easily circumvent the prohibition by accepting bribe in the shape of a present. The difference between the acceptance of bribe made punishable under sections 161 and 165 IPC was that under section 161 IPC, present is taken as a motive or reward is wholly immaterial and acceptance of available thing without consideration or with inadequate considerations from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servants to show official favour, it is likely to influence the public servant to show official favour to a person giving such valuable thing. The provision under section 161 and 165 as well as section 5 of the 1947 Act were intended to keep the public servant free from corruption and thus ultimately to ensure purity in public life.

It is worthwhile to recall that with the advent of 1988 Act sections 161 to 165 IPC have been omitted from IPC as those have been engrafted to the Prevention of Corruption Act, 1988 and thus the essence and spirit thereof seemingly have a hearing on the constituents of section 13 of 1988 Act. As a corollary while applying section 13 of 1988 Act in the facts of the given case, the attributes of the offences contained in erstwhile sections 161 and 165A cannot be totally disregarded.

XII CONCLUSION

Each decision of the Supreme Court has added new dimensions to the provisions in the CrPC and IPC. One of the trends noticed is the practice of the court to issue directions for the implementation of the various provisions. With regard to the initiation of proceedings in matrimonial offences cases, unnatural deaths taking place in various prisons, children's homes, indicating cases wherein quashing under section 482 CrPC could be possible etc. have been indicated by the Supreme Court. It is perhaps time for the parliament/government to undertake creating subordinate legislation.