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CRIMINAL PROCEDURE

I INTRODUCTION

CRIMINAL JUSTICE Administration in India is being done by the Judiciary it is therefore independent and active. Since the administration has to deal with the constitutional and human rights of the citizens the judiciary takes the lead in ensuring citizens' rights. The progressive judiciary quite frequently gives new dimensions to the rights of the citizens by a very progressive interpretation to the provisions in the Constitution, criminal procedure, penal code, *etc.* The dynamics of the provisions are explored and given new meanings in the international context. The case law produced by the judiciary forms the chunk of literature prompting the system to register progress. The Indian judiciary's tendency to analyse the case law in other common law countries makes the Indian system a very progressive one. So it is rewarding to examine the case law produced by the Indian courts. It is done here under different heads to facilitate appreciation. Decisions which the present writer felt important are analysed.

II INITIATION OF CRIMINAL PROCEEDINGS

Initiation of criminal proceedings for offences under section 195 Cr PC came to be examined by the Supreme Court. Section 195 (1)(b)(i) refers to offences against public justice and section 195 (1)(b)(ii) refers to offences in respect of documents produced or given in evidence in the proceedings in any court.

The Supreme Court in *Narendra Kumar Srivastav v. State of Bihar*¹ has held that prosecution can be initiated only by sanction of court under whose proceeding offence referred to in section 195(1) (b) Cr PC was allegedly committed. Further, it was held object of section 340 Cr PC is to ascertain whether any offence affecting administration of public justice was committed in relation to any document produced or given in evidence and that during time when document or evidence was in *custodia legis* and whether it is also expedient and in the interest of justice to take such action. Court has not only to ascertain prima facie case but also to see whether it is in public interest to allow criminal proceedings to be initiated. In the instant case magistrate erred in taking cognizance of offence on the basis of private complaint. High court set aside magistrates' order. The Supreme Court upheld high court's order.

Section 197 Cr PC lays down that prosecution of judges and public servants could be possible with courts' sanction. It lays down thus, "when any person who is

¹ (2019) 2 SCC (Cri) 221.

or was a judge or magistrate or a public servant not removable from his office save by or with the sanction of government is accused of any offence.....”

In *S K Miglani v. State (NCC) of Delhi*,² the appellant being an officer of a public sector bank was held to be not an officer entitled for protection of section 197 Cr PC.

What the court could satisfy itself before if it initiates proceedings against a person under section 195 (1) (b) and section 340 Cr PC is discussed in *Sasikala Pushpa v. State of Tamil Nadu*.³ Even if forgery is committed outside precincts of court and long before its production in court it would also be treated as one affecting administration of justice.

Investigation

Investigation into the crimes is being done by the police. The code of criminal procedure lays down the procedure to be followed. The code also envisages supervision by judicial authorities. There have been some decisions on several issues in 2019.

In *Pattu Rajan v. State of Tamil Nadu*,⁴ the question arose whether the investigations into the offence of murder that took place when the investigation into abduction was or could be considered further investigation as envisaged under section 173 (8) Cr PC. The investigation into murder case is a new case. Fresh investigation cannot be termed as continuation of the first investigation into abduction.

The Supreme Court has held the view that the position of police officer under section 102 Cr PC to seize any property which may be found under circumstances that create suspicious of the commission of any offence would not include the power to attach, seize and search an immovable property.

This however could not bar or prohibit the police officer from seizing documents, papers of title relating to immovable property as it is distinct and different from seizure of immovable property.⁵

Serious lapses were noticed by the Supreme Court in conducting proper investigation in *State v. Subramanyan*.⁶ The prosecution could not provide a satisfactory explanation for the delay in investigation. The court therefore ordered that a senior officer of Central Bureau of Investigation should investigate the crime.

The Supreme Court gave a very important ruling on ‘voice sample’ of a person for the purpose of facilitating investigation. In *Ritesh Sinha v. State of Uttar Pradesh*,⁷ the court ruled that till parliament makes a law on the subject the Magistrate should have power to order a person to give his voice sample for investigation. “Such power has to be conferred on Magistrate by a process of interpretation and in exercise of

2 (2019) 2 SCC (Cri.) 737.

3 (2019) 2 SCC (Cri.) 826.

4 (2019) 2 SCC (Cri.) 354.

5 *Nevada Properties through its Director v. State of Maharashtra*, 2019 (4) KHC 782 (SC).

6 (2019) 2 SCC (Cri.) 796.

7 (2019) 3 SCC (Cri.) 253.

jurisdiction vested in this court under article 142 of the Constitution of India” the court said.⁸

The Supreme Court gave another decision which may have far reaching consequences. In *Kathi David Raju v. State of A.P.*⁹ the court issued directions as to when DNA test of a person be given for investigation. When reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence request for such test have to be on the basis of police authorities satisfaction based on materials collected after substantial investigation.

First information report

The question of validity of a second FIR and investigation was before the bench in *Manoj Kumar v. State of Uttarakhand.*¹⁰ The bench which was to hear and decide did not allow the question as there was no second FIR in the instant case. Still the question whether the FIR and investigation in pursuance of the second FIR should be straight away quashed or should it require a scrutiny during trial of the permissible matter prejudice to the accused and truthfulness of evidence collected on the basis of second FIR should be examined. It has been recommended to be examined by larger bench.

Bail

There were some decisions of the Supreme Court regarding bail and anticipatory bail. In *Jagisha Arora v. State of Uttar Pradesh*¹¹ the court heard the bail application of the petitioner’s husband though he was on remand for 13/14 days on the order of the jurisdictional magistrate. Invoking power under article 142 and 32 the petitioner’s husband was directed to be released on bail to satisfaction of conditions of magistrate. The point that habeas corpus is not maintainable against remand order of the magistrate in a glaring case of depression of liberty was stressed in the present case.

The Supreme Court pointed out that refusal to grant anticipatory bail does not amount to denial of fundamental rights under article 21 of the Constitution.

Having regard to the nature of allegation and stage of investigation it was held Investigation Agency must be given sufficient freedom in process of investigation. Appellant may not be granted anticipatory bail as the same would tamper investigation.

Though the object of section 438 is to safeguard personal liberty of an individual, a delicate balance is to be struck to be established between the rights in safeguarding the personal liberty of an individual and societal interest and that (ii) grant of anticipatory bail, particularly in economic offences tampers effective investigation. It was held power to grant anticipatory bail being an extraordinary power, is to be excused in case of economic offences. Such bail must be granted only in exceptional cases

8 (2019) 3 SCC (Cri.) 252, 261-262.

9 (2019) 3 SCC (Cri.) 382.

10 (2019) 2 SCC (Cri.) 687.

11 (2019) 2 SCC (Cri.) 881

after application of mind in relation to nature and gravity of accusation, possibility of applicant fleeing justice and other factors.¹²

Trial and trial procedure

Criminal Proceedings are processed by the courts in accordance with the procedure laid down in the Cr PC. The intention of the legislature is that unless the cases are dealt with as per procedure it may prejudice the accused or the complainant. Sometimes it may become necessary to make deviations from the regular procedure for the prosecution of the victims sometimes special provisions are made.

While dealing with the provisions in the protection of children from sexual acts the Supreme Court has made very important points in dealing with the Act. In *Nipun Saxena v. Union of India*,¹³ the court has said that though the name of the victim has to be in FIR and copy of FIR relating to offences under sections 376, etc. IPC and offences under POCSO Act it must not be put in public domain. In cases where the victim is dead or of unsound mind, the name of the victim should not be disclosed even under authorization of next of kin, unless circumstances exist for the disclosure which should be decided by competent authority.

Sections 22a imposes a clear cut ban on the name and identity of the victim being disclosed. So where the accused is acquitted and the victim wants to file an appeal under section 372, she is not bound to disclose her name in the memo of appeal.

All the authorities are required to issue similar instructions to suit the place/state they work in.

The jurisdictional question whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate /and access the legal process within the jurisdiction of courts when she is forced to shelter with the parents or other family members' came to be answered in the affirmative by the Supreme Court in *Rupalu Devi v. State of Uttar Pradesh*.¹⁴ The bench relied on section 179 Cr PC.

Summoning of additional accused under section 319

Section 319 Cr PC empowers the trial court to summon a person if he is not found to be listed as an accused by the investigation officer though the trial court feels, on the basis of information, he is involved in the case.

There have been several cases on this question in 2019 though several points came to be clarified earlier by the Supreme Court. While in *Sunil Kumar Gupta v.*

12 See *P Chitamparam v. Directorate and Enforcement* (2019) 3 SCC (Cri.) 509

13 (2019) 2 SCC (Cri.) 772.

14 (2019) 2 SCC (Cri.) 558.

15 (2019) 4 SCC (Cri.) 320 .

16 (2019) 2 SCC (Cri.) 280.

17 (2019) 2 SCC (Cri.) 884.

18 (2019) 2 SCC (Cri.) 883.

State of Uttar Pradesh,¹⁵ the Supreme Court and high court approved the summoning of additional accused, in *Devnat v. State of Haryana*,¹⁶ all the courts viz., the trial court high court and the Supreme Court approved the summoning of accused. In *Rajesh v. State of Haryana*,¹⁷ the Supreme Court approved summoning of additional accused though the High Court disapproved earlier.

In *Satyapal Singh Khaira v. State of Punjab*,¹⁸ three questions have been referred to a larger bench. The questions are;

- i. Whether the trial court has powers under section 319 for summoning additional accused when the trial with respect to the co-accused has ended and the judgment of conviction rendered on the same day before pronouncing the summoning order?
- ii. Whether the trial court has the power under section 319 Cr PC for summoning additional accused (whose presence is subsequently secured) is ongoing / pending having been bifurcated from main trial?
- iii. What are the guidelines that the competent court must follow while exercising power under section 319 Cr PC.

The question whether a doctor who performed post mortem of the body of the deceased wife in Nigeria could be examined through video conference came to be answered affirmatively by the Supreme Court in *Manju Devi v. State of Rajasthan*.¹⁹ It was a case where the Indian Medical Authorities could not provide conclusions about the cause of death. The appellant, mother of the deceased woman appealed to the Supreme Court to permit the doctor who performed post mortem of the body in Nigeria to be examined by video conference.

The Supreme Court reiterated that a child witness of tender age is a credible witness as he will be receptive to abnormal events which take place in his life. He will be capable of recapitulating when asked at any time in future.²⁰

The Supreme Court has in *Abdul Wahab v. State of Kerala*,²¹ ruled that the public prosecutor has an important role under the statutory scheme and is expected to act as an independent person. He also has to apply his own mind and consider the impact of withdrawal on the society in the event such permission to withdraw prosecution is granted for withdrawal of case.

Appeal /revision

Both high court and Supreme Court exercise their powers to correct the decision rendered by the courts below. There have been some decisions which reversed, upheld or remitted to the lower courts. In *Vijaya Mohan Singh v. State of Karnataka*,²² the wife of the appellant was allegedly burnt to death due to disputes regarding dowry. There was dying declaration of the deceased. The trial court did not accept the dying

19 (2019) 2 SCC (Cri.) 765.

20 *Shamin v. NCT of Delhi*, (2019) 1 SCC (Cri.) 319.

21 (2019) 3 SCC (Cri.) 181.

22 (2019) 2 SCC (Cri.) 586.

declaration and acquitted the husband. On appeal the High court found dying declaration acceptable and convicted the husband. On further appeal the Supreme Court upheld the order of conviction passed by the high court.

In yet another dowry death case, viz. in *Sampast Babso v. State of Maharashtra*,²³ the husband appellant was given benefit of doubt and the accused was acquitted. The high court on appeal did not agree with the trial court and convicted appellant. On appeal the Supreme Court did not accept the high court order and acquitted the appellant upholding the decision of the trial court.

The Supreme Court ordinarily does not interfere with assessment of evidence done by the courts below. In *Satya Raj Singh v. State of Madhya Pradesh*²⁴ also the Supreme Court did not interfere with the evaluation done by the courts below and confirmed the conviction registered by both the sessions court and high court despite the minor contradiction in the evidence led by a witness.

In *Harveer Singh v. State of Uttar Pradesh*,²⁵ the magistrate acquitted all accused including appellants. Session judge while partly allowing the appeal upheld the magistrate's order in respect of two accused who were convicted herein under section 327, 329 and 452 IPC. Appellant filed revision before the high court. None appeared for them though. The high court heard the revision *ex parte* and dismissed it. The Supreme Court remanded the case to the high court for appropriate decision after hearing.

In *State of Tamil Nadu v. J Doraiswamy*,²⁶ It was reiterated that appreciation of evidence at the stage of discharge is impermissible. Both the trial court and high court did discuss evidence while considering discharge. Here the Supreme Court refused discharge and direction of special court to hear it on merits and decide uninfluenced by the observation of the high court and Supreme Court.

In *Manishamappa v. State of Karnataka*,²⁷ it was ruled that the high court should not interfere with the acquittal only because two views are possible in the case. In this case the high court was right in interfering with acquittal.

It is interesting to see that a revision application in the case came to be returned to the high court which in the first instance refused to hear as the applicant did not approach the sessions court which has concurrent jurisdiction with high court to decide revision under section 397 Cr PC.²⁸ It was 16 years old case which was allowed to close by the magistrate.

Revisional court will not interfere even if a wrong order is passed by a court having jurisdiction in the absence of a jurisdictional error. It is not for the revisional court to interfere the evidence.²⁹ An order for discharge rejected by the trial court was

23 (2019) 2 SCC (Cri.) 345.

24 (2019)2SCC (Cri.) 252.

25 (2019) 2 SCC (Cri.) 343.

26 (2019) 2 SCC (Cri.) 331.

27 (2019) 2 SCC (Cri.) 229.

28 *Chander Bhanding v. CBI* (2019) 2 SCC (Cri.) 214.

29 *Bir Singh v. Mukesh Kumar* (2019) 2 SCC (Cri.) 40.

under revision by the trial court and the high court. Though no appreciation of evidence at the stage of revision is permissible the petition came to be examined and passed by both trial court and high court. The Supreme Court remitted the case to the trial court for decision.³⁰

Sentencing

Appellant was convicted and sentenced by the special judge to seven years imprisonment and Rs.50,000/- fine. On appeal the high court enhanced the punishment to 10 years imprisonment and Rs.50,000/- fine. High court could have exercised its powers under section 401 read with section 386 (b) (iii) after serving notice of enhancement. Here no notice was served. So no enhancement by the high court is permitted sentence awarded by the lower court is sustained.

In *Gangan Kumar v. State of Punjab*,³¹ the appellant was sentenced to two years imprisonment and Rs.1,000/- under section 304 A IPC and six months imprisonment and Rs.1,000/- under section 279 Cr PC by session judge. High court dismissed.

The Supreme Court in appeal held that the sentence awarded under two sections 304 A and 279 would run concurrently under section 31 Cr PC. The sentencing court should specify whether the sentence would run concurrently or consecutive.³²

In *Ravi v. Maharashtra*,³³ (majority) capital punishment was awarded to the offender who had committed penetrative sexual offence on a child below 10 years. The decision seems to be realistic and timely.³⁴ Death sentence in the case of a mentally deranged prisoner was set aside by the Supreme Court.³⁵

Compounding

The question whether non compoundable offences could be compounded by higher courts came to be answered affirmatively in *Unnikrishnan @ Unnikuttan v. State of Kerala*.³⁶ Offence under section 394 IPC came to be compounded under section 320 Cr PC while maintaining conviction.

In *Bhagyan Das v. State of Uttarakhand*,³⁷ considering the delay in initiating the case and other comments of the case the court reduced the sentence already undergone by the accused. The offence was compoundable with permission of the court under section 320 Cr PC.

Directions

Appreciating its limitations in the matter of legislative activities the Supreme Court issued instructions calling for the withdrawal of certain direction it issued in

30 *State of Tamil Nadu represents by SP v. J Doraiswamy* (2019) 2 SCC (Cri.) 31.

31 (2019) 2 SCC (Cri.) 466.

32 See also *Kuldip Singh v. Haryana* (2019) 3 SCC 202.

33 (2019) 9 SCC 622.

34 *Accused v. Maharashtra* (2019) 3 SCC (Cri.) 10.

35 *Haribhau v. Maharashtra* (2019) 3 SCC (Cri.) 137

36 (2019) 2 SCC (Cri) 854.

37 (2019) 2 SCC(Cri.)236.

Rajesh Sharma,³⁸ and those issued in Subhash Kashinath Mahajan. Several instructions were recalled in Social Action Forum for *Manav Adhikar v. Union of India*³⁹ and *Prithvi Raj Chouhan v. Union of India*.⁴⁰

While directions contained in para 19.1 to 19.11 regarding Family Welfare Committee and para 19.13 regarding power of session judge to settle cases contained in para 19.12, 19.14 to 19.17 regarding preliminary inquiry in Rajesh Sharma are recalled in Social Action Forum Instruction in para 79.3 to 79.5 issued in Subhash Kashinath Mahajan are withdrawn in Prithvi Raj Chouhan. The court found that these withdrawn instructions have had no connection with any statute the court was dealing with. It found that it had no right for framing these instructions.

Inherent powers of the courts

The high courts in exercise of their inherent powers under section 482 Cr PC quashed proceedings if there is any abuse of process of the court. The Supreme Court interferes with the high court decisions under section 482 if they go wrong. There were several decisions some of them are discussed here.

In *Mohd. Allauddin Khan v. State of Bihar*,⁴¹ the high court quashed orders passed by a magistrate in a complaint case whereby the magistrate took cognizance of complaint filed by the appellant. The high court under section 482 quashed the order passed by magistrate. The high court failed to note that there was a civil dispute against the respondent. The high court has no jurisdiction to appreciate evidence under section 482. The conclusion arrived at by the high court for quashing complaint was not legally sustainable. Order of magistrate was revoked because it recorded a finding that the magistrate made out a case for taking cognizance. Magistrate was ordered to try the case.

In *Jitendar Kumar v. State of Bihar*⁴² the case was dismissed under section 482 and affirmed order passed by the trial judge. The Supreme Court held that the trial judge's order was without reason signifying non application of mind. The court remanded the case to high court for decision in accordance with law.

The high court has inherent power to quash the proceedings even in those cases which are not compounded where the parties have settled the case. However, this power is to be exercised sparingly and with caution. The law came to be summarised as under in *State of MP v. Laxmi Narayan*:⁴³

- i. That the powers conferred under S.482 to quash the criminal proceedings for the compoundable offences under S.320 Cr PC can be exercised in cases having overwhelmingly and predominantly the civil character, particularly those arising out of Commercial transactions or arising out of matrimonial

38 (2018) 10 SCC 470.

39 (2019) 1 SCC (Cri.) 216.

40 (2019) 4 SCC 727.

41 (2019) 2 SCC (Cri.) 734.

42 (2019) 2 SCC (Cri.) 817.

43 (2019)2 SCC (Cri) 706.

- relationships or family disputes and where the parties have resolved the entire dispute amongst themselves.
- ii. Such power is not exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not first in nature and have serious impact on society.
 - iii. Similarly, such power is not to be exercised for the offence under special statutes like Prevention of Corruption Act or offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
 - iv. Offences under section 307 IPC and Arms Act would fall in the category of heinous and serious and therefore are to be treated as crime against society and not against individual alone and not therefore the criminal proceedings for the offence under S.320 IPC or under Arms Act which have a serious impact on society cannot be quashed in exercise of powers under section 482 Cr PC on the ground that the parties have resolved their entire dispute among themselves. However, the high court would not rest its decision merely because there is a mention of section 307 in the FIR or charge framed under the provisions. It would be open to the high court to examine as to whether the mention of section 307 is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under section 307. For this purpose it would be open for the high court to go by the nature of weapons used *etc.* However, such an exercise by the high court would be permissible only after evidence is collected after investigation and charge sheet is filed during the trial such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in para 29.6 and 29.7 of the decision of the supreme court in Narinder Sing should be harmoniously and to be read as a whole and in the circumstances stated herein
 - v. While exercising the powers under section 482 to quash the criminal proceedings in respect of non-compoundable offences which are private in nature and do not have a serious impact on society on the ground that there is a settlement compromise between the victim and the offender, the high court is required to consider the antecedents of the accused the conduct of the accused, namely whether the accused was absconding how he had managed with the complainant to enter into a compromise *etc.*

In *State of Madhya Pradesh v. V D Dhruv*,⁴⁴ the complainant entered into compromise with the accused in the serious case in which charges under serious offence like section 307 IPC and approached the high court under section 482 Cr PC. The high court quashed the proceedings u/s.482 High court did not consider the offences under section 307 IPC as compoundable under section 320 Cr PC. Neither the

44 (2019) 2 SCC (Cri.) 648.

seriousness of the offence nor the social impact of compromise was considered by it. Nor did the court consider the distinction between a personal or social wrong. The social impact of compromise was also not considered. The Supreme Court set aside quashing order of the high court.

In *Monu v. State of Madhya Pradesh*,⁴⁵ the high court quashed proceedings under section 420, section 498A, 323, 376 and 506 IPC and sections 3 and 4 of Dowry Prohibition Act, 1961 without application of mind. The case was remanded to the high court by the Supreme Court.

CONCLUSION

All the segments of the Criminal Justice Administration system have been active and contributed a lot during 2019. The Supreme Court as usual provided excellent leadership. Our system will continue to serve its role.

45 (2019) 2 SCC (Cri.) 329.