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SOCIO ECONOMIC CRIMES

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I INTRODUCTION

WHENEVER A society grows it has to face new challenges. Revolutionary changes bring new opportunities for both good and evil. The march of new economic policy which was started in 1991 has completed three decades. It has brought "economy" into focus. It has been fruitful at various levels. Government monopoly was rightly restricted and opportunities of wealth creation by individual enterprise was facilitated by law and policy which were liberalised. Liberalisation of the economy came with its own strengths and weaknesses. Western idea of liberalisation gives individuals a preferential position over society while the Indian idea keeps society in the center. This made morality the first casualty. Moral degradation and decline in ethics continued to remain in the back seat. The increase in socio economic crimes in nature and dimension was the essential and unavoidable evil consequences which accelerated due to the new economic order. While the new order was beyond the control of India, the evil consequences were not beyond our regulation. However, the laws and the execution on socio economic crimes failed to reboot themselves with changing time. Though new enactments and amendments were made to relax the classical jurisprudence like the dilution of the doctrine of presumption of innocence, we performed poorly on execution of laws on socio economic crimes. Like in previous surveys, this year's survey also highlights the lack of an enforcement culture by executives, and weakness in understanding established jurisprudence by judiciary. Corruption cases under general and special enactment, Narcotic drugs and dowry related offences continue to dominate the judicial precedents. The conflict between crime control model and due process model is noticeable in the interpretation of laws.

II PREVENTION OF CORRUPTION ACT, 1988

Preliminary enquiry and open enquiry

In *Charan Singh* v. *State of Maharashtra*[1] a complaint was registered with the Anti Corruption Bureau, Maharashtra, about assets disproportionate to their income in 2018. This can be an offence under section 13(1)(e) of the Prevention of Corruption Act, 1988. Charan Singh was Member and President of Municipal Council, Katol, District Nagpur. In between a discreet inquiry was made. In 2020 a Police Inspector,

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1 2021 SCC OnLine SC 251.

Anti-corruption Bureau, Nagpur had issued a notice to him "asking him to provide documents relating to his property, assets, bank statements, income tax returns and asking the appellant to give a statement to the police." He challenged this 'open enquiry' in the high court which the court refused to entertain. The matter came to the Supreme Court where the issue was "whether such an enquiry at pre-FIR stage would be legal and to what extent such an enquiry is permissible?" and is it "permissible under the Maharashtra State Anti-corruption & Prohibition Intelligence Bureau Manual of Instructions 1968"?[2]

Preliminary enquiry permissible and desirable

The court rightly taken the precedential guidance from *Lalita Kumari* v. *Government of Uttar Pradesh*[3] and *P. Sirajuddin* v. *State of Madras*[4] where it was observed:

> 9.1 Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/ properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

The reason for such preliminary inquiry as mentioned in *P. Sirajuddin* is that "the lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general." This becomes more important because the right to reputation is a part of article 21 and is more important than many other rights[5] if there is an unavoidable conflict.

The purpose of such preliminary inquiry is to ascertain whether a cognizable offence is *disclosed* or not, It does not and never extend to ascertain whether cognizable offence is *committed* or not. This difference between disclosure and commission is a "distinction with difference." Ascertainment of commission is the procedure after

2 Discrete enquiry is permissible as per para 14 of the said Manual and the 'open enquiry' is permissible as per para 15 of the said Manual.

3 (2014) 2 SCC 1. It was a Constitution Bench decision.

4 (1970) 1 SCC 595.

5 *Subramaniam Swamy* v. *Union of India*, AIR 2016 SC 2728.

FIR ie investigation. This is a crucial and primary lesson for the police which many of them either do not know or do not care or omit intentionally.

Enquiry : Preliminary or open

The fact remains whether preliminary inquiry as envisaged under *Lalita Kumari* judgement and open inquiry under Maharashtra Manual are the same thing. This is significant because under this open inquiry the police is expected to call the suspect, examine their documents, take his statement etc. However, the Supreme Court held that such open inquiry can also be treated as preliminary inquiry if the sole purpose iss to ascertain whether the facts disclose the commission of cognizable offence or not. It is useful to reproduce from the judgement itself:

> during the course of the 'open enquiry', the appellant has been called upon to give his statement and he has been called upon to carry along with the information on the points, which are referred to hereinabove for the purpose of recording his statement. The information sought on the aforesaid points is having a direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income. However, such a notice, while conducting the 'open enquiry', shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law.

This is liberal interpretation of the word preliminary inquiry and to distinguish it from investigation is a very thin line. For example, the suspect presented certain documents of properties. Based on these documents the police sent letters to various authorities and banks for certain clarifications. The suspect statement has been partially recorded. Is it not a part of the investigation? Is it not a fact finding inquiry? However, this argument of the suspect was rejected as under:

> After having been satisfied and after conclusion of the enquiry and on the basis of the material collected, if it is found that there is substance in the allegations against the appellant and it discloses a cognizable offence, FIR will be lodged and the investigating agency has to collect the evidence/further evidence to substantiate the allegations/charge of accumulating the assets disproportionate to his known sources of

> income. However, if during the enquiry at pre- registration of FIR stage, if the appellant satisfies on production of the materials produced relating to his known sources of income and the assets, in that case, no FIR will be lodged and if he is not able to clarify his assets, vis-à-vis, known sources of income, then the FIR will be lodged and he will be subjected to trial. Therefore, as such, such an enquiry would be to safeguard his interest also which may avoid further harassment to him.

This decision is a useful guideline on when to register FIR and when to go for preliminary inquiry. It legitimises various inquiries made by the Police in the anticipation that it will check false or motivated FIR, contractual matters being posed as criminal, reduce harassment of suspects, and make the task of the Police better. That way it sounds like a fair procedure. The flip side is that in practice *Lalita Kumari* may be further diluted using *Charan Singh*. The seasoned officers in the Police and the judiciary should limit the use of the precedent of *Charan Singh* only to corruption cases.

Quashing of PCA case under article 226

Central Bureau of Investigation v. *Thoomandry Hannah Vijayalakshmi*[6] is another case of disproportionate assets close to Rs One crore beyond known source of income. In 2017 an FIR was registered against an income tax commissioner and his husband, who was a minister in Government of Andhra Pradesh under section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act 19885 and Section 109 of the Indian Penal Code 1860. In 2020 the high court of Telangana quashed the FIR under article 226 on the ground that the description does not disclose commission of cognizable offence, available of various documents like IT Return, pertaining to the accused couple in public domain and the CBI did not conduct a preliminary enquiry.

It was argued that preliminary enquiry is mandatory for CBI. The Supreme Court rightly rejected this argument because there may be various cases where the information is sufficient to disclose a cognizable offence. In such cases any discreet enquiry can only delay the investigation process. "The proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in *Lalita Kumari* (*supra)* but would also tear apart the framework created by the CBI Manual." The court also referred *Union of India* v. *State of Maharashtra*[7] and *Vinod Dua* v. *Union of India*[8] where any scope of mandatory preliminary enquiry was declined as impermissible under statutory framework, practical difficulties and constitutional norms of equality. The Court ultimately held that it is not mandatory for the CBI to conduct preliminary enquiry and there is no corresponding right that a preliminary enquiry be conducted before FIR.

6 2022 SCCOnLine SC 213.

7 (2020) 4 SCC 761. This was a full bench decision which set aside the judicial proposition of a mandatory preliminary enquiry in case of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8 2021 SCC OnLine SC 414.

Quashing of FIR in corruption cases

The second issue is whether quashing by the high court was lawful or not. The court referred the *locus classicus* on quashing ie *State of Haryana* v. *Bhajan Lal.*[9] It has also taken support from *Neeharika Infrastructure Pvt. Ltd.* v. *State of Maharashtra*.[10] The first fundamental flaw the Court diagnosed was that the high court confused between availability of a public document with truthfulness of those documents. Second flaw in the approach of the high court was that it completely missed that the jurisdiction under which he is exercising was article 226. It was not an appeal nor the matter was under trial. The judge acted like a "chartered accountant" and conducted a "mini trial". He "enquired into the material adduced by the respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be 'known sources of income' within the meaning of section 13(1)(e) of the PC Act.)" The only task of a high court for a quashing proceeding is to ascertain whether the "FIR – as they stand and on their face – prima facie make out a cognizable offence."

Khesari Lal and Jayalalitha distinguished

There is no clash between the decisions in *Kedari Lal* v. *State of MP*[11] and *J. Jayalalitha*[12] for two reasons: (i) the judgment in J. *Jayalalitha* (supra) notes that a document like the Income Tax Return, by itself, would not be definitive evidence in providing if the "source" of one's income was lawful since the income tax department is not responsible for investigating that, while the facts in the judgment in *Kedari Lal* (*supra*) were such that the "source" of the income was not in question at all and hence, the Income Tax Returns were relied upon conclusively; and (ii) in any case, the decision in *Kedari Lal* (*supra*) was delivered while considering a criminal appeal challenging a conviction under the PC Act, while the present matter is at the stage of quashing of an FIR.

It seems the high court has assumed that the source is lawful and the income tax details validate it. The State in FIR has questioned the very "source" of the income. The high court also found infirmities in the FIR which was not the real job under article 226 at quashing stage. Even if there was a wrong calculation [the authorities calculated the cost of lift separately from the value of the house though the value of house included the cost of lift] that cannot be a basis to throw away the whole case of disproportionate assets.

The Court left open the following issues, (a) Can FIR be registered in Chennai if the party is in Telangana [one party is minister in Telangana] (b) As Telangana government has withdrawn general consent, can the CBI file a case. This was done because this needs separate cases and cannot be decided at the proceeding of quashing.

9 1992 Supp (1) SCC 335.

10 2021 SCC OnLine SC 315.

11 (2015) 14 SCC 505, paras 10, 12 and 15-16.

12 (2017) 6 SCC 263.

The high court judgement to quash the FIR against the spouses was rightly set aside by the Supreme Court.

The issue of corruption that too at a higher level needed to be dealt with iron hand. The high courts should be careful in quashing proceedings. The persons involved are powerful and can afford big lawyers. Many times the cases filed in the high courts and the Supreme Court are strategic in nature. They want to buy time, expect stays, find favourable verdicts, delay the process and ultimately derail the whole proceeding to get benefit of doubts.

III CORRUPT PRACTICES AND INDIAN PENAL CODE

Quashing of FIR or chargesheet[13] is an area which is often litigated in the high courts and the Supreme Court. Though a number of pronouncements have been made in the last many decades there are various grey areas which lead to the difference of opinion between high courts and the Supreme Court. *Archna Singh Rana* v. *UP,*[14] provides another chance to deliberate on this issue of quashing.

In 2016 A1 allegedly promised V1 to procure a job for his son for Rs 5 lakh. As the son did not get any job V1 requested to get back the money. V1 went to the home of A1 where the wife of A1 "assaulted the complainant [V1] and threatened to get them falsely implicated in criminal cases and the appellant pushed/thrown him and his son from her house. FIR was registered against the appellant, Archna and her husband for the offences under sections 419, 420, 323, 504 and 506 of IPC. A charge sheet was submitted in 2017. This was challenged before the high court of Allahabad which refused to quash the proceeding in 2019. In 2023 the Supreme Court partially quashed the criminal proceedings and the chargesheet. The alleged Rs 5 lakh was given to the husband of Archana Rana. There is no allegation that Archana Rana promised anything. Therefore the case of cheating under sections 419, 420 cannot stand. The other cases of section 323, 504 and 506 of IPC cannot be quashed and the accused will have to face trial.

The high court order [by Rajv Gupta, J] did not consider this aspect that the alleged money was not given to Archna nor was any allegation made against her regarding a promise to procure a job for the son of the victim. The high court relied on the argument that all matters relate to disputed questions of fact which cannot be decided under section 482 Cr PC. No reasoning was given how Archna was associated with the cheating case? Was there anything in the FIR or chargesheet that has driven the high court to reach that decision, is not clear.

Another point for concern is that the case was registered in 2016. The high court decided the quashing proceeding in 2019. The Supreme Court decided it in 2021. Four years have gone by to decide whether the charge sheet is ok or not. Two years was taken by both the high court and the Supreme Court to decide the case of quashing. The judiciary needs to find a way to reduce this time.

13 The high courts exercise their power of quashing FIR, charge sheet etc under section 482 of Cr PC 1973 and article 226 of the Constitution of India.

14 March, 1 2021, by DY Chandrachud, CJ and MR Shah, J.

Use of article 136 in corruption cases

N Raghavendra v. *AP*, [15] highlights the question of law on article 136 as well as the one of corrupt practice in Banks during the nineties. N Raghavendra was a bank manager. He with his colleagues allowed the withdrawal of Rs 10 lakh for an account where the fund was Rs 5 lakh. The cheques were issued on three different months for which withdrawal was permitted but the "debit was deliberately not entered into the ledger book." The signature of third cheque did not tally. There were other allegations of "pre- maturely closing of two FDRs which were for a sum of Rs. 10,00,000/- and 4,00,000/- respectively, and stood in the name of one B. Satyajit Reddy. As per the vouchers issued by the bank, a total of Rs. 14,00,000/- were credited to account No. 282 but only Rs. 4,00,000/- were shown in the ledger. The remaining Rs. 10,00,000/- were allegedly adjusted towards the secret withdrawal from account no. 282 during the year 1994."

When should the Supreme Court interfere under article 136 when there is a concurrent finding of conviction from trial court and the high court? N Raghavendra rightly points out that only in exceptional circumstances it should be done. This case also highlights what can be exceptional circumstances. N Raghavendra presents three such situations, viz.,

A. If the ingredient of provisions are not discussed in the judgement, If the specific evidence proximately connecting the ingredient is not referred

"neither the Trial Court or the High Court has discussed the ingredients of Sections 409, 420, or 477-A IPC, nor have they made any effort to refer to the specific evidence which may satisfy such ingredients."

B. If the allegations are mixed up

Courts below have inter-changed and mixed up the allegations against the Appellant. While the charges were framed primarily with respect to the issuance of the three loose cheques and the alleged unlawful withdrawal of Rs. 10 Lakhs from account no. 282, the Courts below have proceeded to convict the Appellant on the ground that he prematurely and fraudulently enchashed the two FDRs, which stood in the name of B. Satyajit Reddy. Further, the High Court, while acknowledging that no loss was caused to the Bank, held that a loss had been incurred by B. Satyajit Reddy. But the charges against the Appellant, as can be seen in Paragraph No. 5 above, were that the three accused, by their fraudulent and illegal actions, caused a loss to the Bank.

C. If a court concluded that the beneficiary of the transaction was A1 and not A2. A1 was acquitted, no appeal was filed by State against acquittal. A2 was convicted.

15 2021 SCC OnLine 1232.

> the High Court held that the actions of the Appellant were not to his benefit, but to the advantage of his brother-in-law, i.e., Accused No. 3. The Brother-in-law of the Appellant was, however, acquitted by the Trial Court and no appeal was preferred by the State against his acquittal.

Based on the above three factors the full bench found this case fit under article 136. On the detailed analysis of provisions of IPC under section 409, 420, or 477-A they found strong suspicion against the accused but it was not conclusive in nature. The reason was the non examination of a witness who could be crucial to the case. The witness was a customer whose FDR was allegedly encashed. The Supreme Court criticised the casual approach of CBI. There was a question whether section 405 and 420 can be concurrently used or not because the source of property in 405 is entrustment [valid from the very beginning] while source of property under section 420 is dishonest inducement of property [invalid from the very beginning]. The Supreme Court left this question open stating it is mere academic now because it is inconsequential. This author also feels that both cannot be used together.

Another point is the shortcut decision on administrative proceedings against the appellant bank manager. After the trial court conviction the bank manager was dismissed from service without any inquiry committee. The Supreme Court approved this procedure stating that the evidence may not be sufficient for a criminal case but was enough for a civil consequence.

The wrongdoing was done in 1995. The CBI court convicted him in 2002. The high court convicted him in 2009, ie., seven years The Supreme court delivered its verdict in 2021 ie., 12 years. From incident to final decision it took 26 years. Such delay that too when a case is in CBI court does not repose confidence in the criminal justice system.

IV NARCOTICS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Private vehicle at public place

Boota Singh v. *State of Haryana*[16] deals with the issue officials section 42 and 43. If the seizure of a prohibited substance is made in a public place section 43 is applicable. Otherwise, section 42 has to be complied with. The procedure for section 43 is not as strict as section 42. The reason is the fact section 43 is applicable if the search is made in public places where the chances of abuse of authority is reduced. The chances of independent witness increases.

In Boota Singh case, alleged 75 kg of poppy straw was found in a jeep which was on road. Road is considered a public place. The trial court and high court convicted the accused considering the recovery was made from a public place and section 43 is applicable [and not section 42 which needs stricter compliance]. Despite the concurrent finding from courts below the Supreme Court framed two issues, viz., Is the private vehicle a public place? And, whether the matter came within the scope of section 42 of NDPS Act?

16 AIR 2021 SC 1913 decided by Uday Umesh Lalit C.J.I. and K.M. Joseph J.

The prosecution failed to establish that the vehicle was used for public conveyance as required under the explanation to section 43. On the other hand the accused presented the document that the jeep was a private vehicle though placed on the road. Therefore on issue one the court concluded as under: [17]

> The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act.

The Supreme Court also took support from State of Rajasthan v. Jag Raj Singh @ Hansa[18] where opium powder was allegedly recovered from the jeep. This jeep was registered as a private vehicle and there was no evidence to establish that it was used for public transport. Once the private jeep even at a public place was established, it excludes the applicability of section 43. The prosecution has to establish its case under section 42. The officer who received the secret input has to take down that information so that the abuse may be minimised. Something should be done to establish the bona fide. However, the evidence of one of the key witness during cross examination was contrary to mandatory provisions of section 42 which the Supreme Court has reproduced as under:

> I did not record the secret information in writing. Wireless in my jeep was out of order at that time. I did not obtain any search warrants for conducting the search of the jeep of the accused during night hours. I did not record any ground for not obtaining the requisite search warrants in my police file. The writing work was done while sitting in the jeep.

As there was total non compliance of section 42 the constitution bench pronouncement of *Karnail Singh* v. *State of Haryana*,[19] was found relevant and a binding precedent. In *Karnail Singh* the Supreme Court held that delayed compliance with sufficient explanation can be considered but total non compliance cannot be considered. The accused were acquitted. Private vehicles being used to carry prohibited substances has become defence for the accused in *Boota Singh* case [2021] and *Jag Raj Singh* case [2016]. There are two options to address such situations. One, that explanation attached to section 43 be amended to include private vehicles in public places and the punishment is reduced in such cases. This should be done by the concerned State [and not by the Parliament] where the menace of drug trafficking is acute. Two, the police officials are trained in following the strict compliance of section

17 Explanation.—For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

18 (2016) 11 SCC 687, decided by a Division Bench of Abhay Manohar Sapre, Ashok Bhushan. Ashok Bhushan delivered the verdict. This case was critically examined in the *ASIL* by this author in 2016.

19 2009 (8) SCC 539.

42. First suggestion follows the crime control model while the second follows the due process model.

NDPS officials as police officers

Tofan Singh v. *State of Tamil Nadu*[20] shows the competing claims of rights of accused *vis-a-vis* protection of State in socio economic crimes. It has reversed the established criminal jurisprudence and the pendulum is swung now more towards the protection of accused. The story begins twenty years back when in 2004 a car was allegedly carrying five kilograms of heroin. It was intercepted by the NDPS officials. The statements of the accused were recorded who admitted his guilt. They were tried under "Section 8(c) r/w Section 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 as well as for the offences under Section 8(c) read with section 29 of the NDPS Act. The special trial court convicted and punished them in 2009. The High court upheld the punishment in 2012. In 2013 the division bench of the Supreme Court noticed following two arguments:[21]

> 1. Whether an officer "empowered under Section 42[22] of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act; and
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> 2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused?"

As the division bench spotted conflicting views of coordinate benches, they referred the matter to a larger bench. The larger bench thoroughly discussed various aspects of the issue and decided by majority that the NDPS officials are police officers and a confessional statement before them is hit by section 25 of the Indian Evidence Act, 1872. An analysis of majority and minority under certain head is as follows:

Fundamental right and NDPS Act

The Supreme Court (majority) discussed the NDPS Act in context of article 20(3). The provisions of fundamental rights that came for discussion were article 20(3) and article 21. The precedents that were discussed were *M.P. Sharma* v. *Satish Chandra*,[23] *State of Bombay* v. *Kathi Kalu Oghad*[24] and *K.S. Puttaswamy* v. *Union of*

20 (2021) 4 SCC 1. It was a full bench consisting of R.F. Nariman J., Navin Sinha, J. and Indira Banerjee, J. RF Nariman delivered majority judgement with Navin Sinha, J. while Indira Banerjee, J. presented an equally persuasive dissent note. This case was briefly discussed in the last survey. However, this decision has far reaching consequence and therefore a detailed analysis is presented in this survey.

21 (2013) 16 SCC 31, delivered by A.K. Patnaik and A.K. Sikri, J. AK Sikri delivered the verdict.

22 NDPS Act, s. 42. Power of entry, search, seizure and arrest without warrant or authorization,; 53. Power to invest officers of certain departments with powers of an officer-in-charge of a police station

23 1954 SCR 1077, (eight-judge bench).

24 (1963) 2 SCR 10 (eleven-judge bench).

India.[25] The Court held that "the interpretation of a statute like the NDPS Act must be in conformity and in tune with the spirit of the broad fundamental right not to incriminate oneself, and the right to privacy." "The interpretation of the term "accused" in section 25 of the Evidence Act is materially different from that contained in Article 20(3) of the Constitution. Formal accusation is necessary for invoking the protection under Article 20(3), the same would be irrelevant for invoking the protection under section 25 of the Evidence Act."

Indira Banerjee, J. also agreed on these points of fundamental rights be it fair trial or self incrimination. "However, the question of whether provisions of entry, search, seizure and arrest would violate the right to privacy of a person accused of an offence was not in issue." It seems that she suggested that the judgement of *Puttaswamy* is not relevant to the question. Even if it is relevant to some extent, *Puttaswamy* also reminded that the right to privacy is not absolute. It is a limited right like all other rights. She did not support "strict scrutiny" standard. She clarified from *Puttaswamy* judgement that "a strict standard of scrutiny comprises two things—a 'compelling State interest' and a requirement of 'narrow tailoring'. Before adopting 'compelling state interest' it must be kept in mind that this term has uncertain contours in the US. Therefore the privacy claims must be clearly stated before the use of this standard. She reproduced as under:

> Only in privacy claims which deserve the strictest scrutiny is the standard of compelling State interest to be used. As for others, the just, fair and reasonable standard under Article 21 will apply. When the compelling State interest standard is to be employed, must depend upon the context of concrete cases. However, this discussion sets the ground rules within which a limitation for the right to privacy is to be found.

It seems she is suggesting that NDPS Act does not need compelling state interest and current standard of reasonableness is sufficient.

Nature of NDPS Act: Is it different from other special enactments

Nariman J., identified the provision which makes the NDPS Act as stringent,[like presumption clauses, all offences being cognizable, strict provision of bail, strict punishment, naming and shaming etc], He also traced the safeguards under NDPS Act. Therefore he observed that the NDPS Act is a different type of penal Act. It cannot be compared either with IPC or with other special laws like Customs or Excise Act.

Indira Banerjee, J. agreed that the NDPS Act is very stringent. She observed:

> When a statute has drastic penal provisions, the authorities investigating the crime under such law, have a greater duty of care, and the investigation must not only be thorough, but also of a very high standard.

She did not agree that the nature of NDPS Act is substantially different from other special laws. She highlighted that drug crimes are socio economic crimes which

25 (2017) 10 SCC 1(nine-judge bench).

are themselves very serious in nature like dowry death. Section 304B has a presumption clause. It has a minimum punishment of seven years and maximum punishment of life imprisonment. Customs or Excise Act also have a presumption clause, they have punishment up to seven years, many (not all) offences are cognizable, even non cognizable offences are punishable by seven years imprisonment.

How to interpret NDPS Act

What is the role of nature of enactment in the interpretation of facts and law? Can we devise a rule that all criminal law follow the same pattern of interpretation? NDPS Act is a penal legislation. Should it be interpreted following classical criminal jurisprudence like strict interpretation of provision? If there is a doubt the benefit must go to the accused etc. It is a special penal legislation made with a certain specific purpose. Should a purposive interpretation be done. Purposive interpretation is different from classical interpretation of criminal law. It avoids overdependence of the maxim like "100 offenders should be acquitted but an innocent should not be convicted" or "accused must get benefit of doubts" or "in case of two interpretations, the court must be inclined to one which is favourable to the accused".

Nariman J. has first delineated the principle of interpretation in NDPS cases. The NDPS Act contains stringent provisions. "It is important to note that statutes like the NDPS Act have to be construed bearing in mind the fact that the severer the punishment, the greater the care taken to see that the safeguards provided in the statute are scrupulously followed. This was laid down in paragraph 28 of *Baldev Singh*.[26] In *Directorate of Revenue* v. *Mohammed Nisar Holia*,[27] Union of India v. Bal Mukund,[28] this court held:

> 28. Where a statute confers such drastic powers and seeks to deprive a citizen of its liberty for not less than ten years, and making stringent provisions for grant of bail, scrupulous compliance with the statutory provisions must be insisted upon.

The provision and the safeguards go hand in hand. Indeed the evidentiary requirement is little better or stricter than those required for general offences because of the strict bail provision, ingredients of offence, presumption clause and minimum or long term imprisonment clause. The requirement to satisfy court is more than those required in other prosecutions. The stringent provision and the safeguards go together. Substantial compliance will not serve the purpose, the compliance has to be scrupulous. "This Court has clearly held that non-compliance of this provision would lead to the conviction of the accused being vitiated, and that "substantial" compliance with these provisions would not save the prosecution case."

However, Indira Banerjee disagreed on this approach of interpretation that NDPS offences need absolute compliance. She opined as under:

> There can be no doubt that the mandatory provisions of the NDPS Act to ensure fair trial of the accused must be enforced. However, over-

26 *State of Punjab* v. *Baldev Singh* (1999) 6 SCC 172.

27 (2008) 2 SCC 370.

28 (2008) 2 SCC 370.

emphasis on the principles of natural justice in drug trafficking cases can be a major hindrance to the apprehension of offenders. In offences under the NDPS Act, substantial compliance should be treated as sufficient for the procedural requirements, because such offences adversely affect the entire society. The lives of thousands of persons get ruined.

She reminded that NDPS Act has to be given a purposive interpretation. She supported her argument as under:

The dominant object of the NDPS Act is to control and regulate operations relating to narcotic drugs and psychotropic substances, to provide for forfeiture of property derived from or used in illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Drugs and Psychotropic Substances, and for matters connected therewith. On the other hand, the dominant object of a penal statute is to provide for punishment of a range of intentional acts and omissions of different types, enumerated in the statute.

She also took help from *Balram Kumawat* v. *Union of India*,[29] a three-Judge Bench of this Court as under:

Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. *The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so.* [emphasis added]

She also observed:

the fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. A crime under the NDPS Act is a crime against society and not just an individual or a group of individuals. While the safeguards in the NDPS Act must scrupulously be adhered to prevent injustice to an accused, the Court should be vigilant to ensure that guilty offenders do not go scot free by reason of over emphasis on technicalities. Substantial justice must be done. Every piece of evidence should be objectively scrutinised, evaluated and considered to arrive at a final decision

29 (2003) 7 SCC 628.

Section 67[30]

The stringent provision against the accused and the safeguards given to the accused go together. In *Toofan Singh* the the Supreme Court has to address many questions like, what is the status of a statement recorded by an NDPS official under section 67. Can it be used as a substantial piece of evidence? Substantial evidence means something which is sufficient in itself to prove guilt beyond reasonable doubts. "Evidence" includes those things which are collected during investigation. Does the proceeding under section 67 amount to investigation or is it mere enquiry to ascertain whether investigation is required or not? The State argued that it is an investigation though section 67 uses the word "enquiry". Any information so gathered will be equivalent to "statement" under section 162 of Cr PC given to an NDPS official who is not police. Therefore, even if it is a confessional statement, it is admissible as extra judicial confession subject to section 24 of Indian Evidence Act *i.e.,* it must be voluntary. However, it will not be hit by section 25 because the NDPS officials are not the Police. Police is someone who can submit a final report under 173 of Cr PC. This was a status oriented description. This was the line of argument of the State which was declined by the majority but accepted by the dissenting opinion.

In other words the court has to answer whether "enquiry" and "investigation" are the same thing? Or is enquiry antecedent to investigation? Does section 67 permits gathering of information only or does it permit gathering of evidence also?

The Supreme Court through majority held that section 67 permits only "information" and any such information gathered from anyone cannot be termed a "statement". The court provided various reasons for it, viz:

> a. Section 67 uses the words "enquiry" and "information". Section 53A uses 'inquire'. According to the dictionary, 'Enquire' refers to 'ask' while 'inquire' refers to formal 'investigation'. Such use is deliberate.
>
> b. Under section 42 it is mentioned that "if he has reason to believe from personal knowledge or information given by any person…". When an official gets "information" he has "reasons to suspect". But the requirement of section 42 is "reason to believe". The Supreme Court made a contrast of "reason to believe" with the expression "reason to suspect", which is contained in section 49 of the NDPS Act. The majority reproduced *A.S. Krishnan* v. *State of Kerala*[31] as follows:
>
> 9. Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to

30 NDPS Act, s. 67. Power to call for information, *etc*.—Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a state government may, during the course of any enquiry in connection with the contravention of any provision of this Act,— (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder; (b) require any person to produce or deliver any document or thing useful or relevant to the enquiry; (c) examine any person acquainted with the facts and circumstances of the case.

31 (2004) 11 SCC 576.

> believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing.
>
> "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same.[32]

Based on the above logic Nariman, J. observed as under :

> Therefore, the official goes to make "enquiry". He gathers further information to satisfy himself that there is a reason to believe that an offence under NDPS Act is committed. In this process the official receives various information which cannot be termed as "statement" under section 162 of CrPC and it cannot be an "evidence" collected during investigation. "The 'enquiry' that is made by a section 42 officer is so that such officer may gather 'information' to satisfy himself that there is 'reason to believe' that an offence has been committed in the first place."

c. The third reasoning advanced by Nariman, J. was as under:

> Under section 52(3), every person arrested and article seized under sections 41 to 44 shall be forwarded without unnecessary delay either to the officer-in-charge of the nearest police station, who must then proceed to "investigate" the case given to him, or to the officer empowered under section 53 of the NDPS Act, which officer then "investigates" the case in order to find out whether an offence has been committed under the Act. It is clear, therefore, that section 67 is at an antecedent stage to the "investigation", which occurs after the concerned officer under section 42 has "reason to believe", upon information gathered in an enquiry made in that behalf, that an offence has been committed.
>
> Equally, when we come to section 67(c) of the NDPS Act, the expression used is "examine" any person acquainted with the facts and circumstances of the case. The "examination" of such a person is again only for the purpose of gathering information so as to satisfy himself that there is "reason to believe" that an offence has been committed. This can, by no stretch of imagination, be equated to a "statement" under section 161 of the CrPC.

32 Section 26 IPC -'Reason to believe'.—A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

Nariman, J. highlighted an illustration to show the arbitrary nature of the argument of State as under:

> Example 1- A1 is arrested for Ganza trafficking. If the investigation is done by State Police all safeguards from 161-164 of Cr PC apply. If it is investigated by NDPS officials, no safeguards apply. Such interpretation is not permissible as being manifestly arbitrary. In such cases the law will have to be "read into" to keep it in conformity with fundamental rights.

Under NDPS Act a confessional statement can be useful only under section 53A. If the same is also used under section 67, it will make 53A as otiose. The court rightly observed:

> section 53A of the NDPS Act shows that confessional statements that are made under section 161 of the CrPC, which are otherwise hit by section 162 of the Cr PC, are made relevant only in the two contingencies mentioned under section 53A of the NDPS Act, being exceptions to the general rule stated in section 162 of the Cr PC. He contended, therefore, that section 67 of the NDPS Act cannot be used to bypass section 53A therein and render it otiose.

In the context of NDPS Act, an investigation can be done by both the Police as well as NDPS officials. Any confessional statement to the Police under section 67 is hit by section 25 of the Evidence Act, while the same is not permissible when investigation is done by the NDPS officials. In other words NDPS officials can bypass statutory and constitutional safeguards. This line of argument as per Nariman, J. was unreasonable.

Ratio of *Mukesh Singh* distinguished

The ratio of constitution bench in the case of *Mukesh Singh* v. *State (Narcotic Branch of Delhi)*[33] also cropped up in the arguments. The State argued that *Mukesh Singh* strongly suggests that "investigation begins from the stage of collection of material under section 67."[34] And therefore, NDPS officials can investigate without being treated as police officers. The Supreme Court agreed on *Mukesh Singh* "to the effect that the very person who initiates the detection of crime, so to speak, can also investigate into the offence – there being no bar under the NDPS Act for doing so." However, Nariman, J. declined to accept as under:

> This is a far cry from saying that the scheme of the NDPS Act leads to the conclusion that a section 67 confessional statement, being in the course of investigation, would be sufficient to convict a person accused of an offence.

33 2020 SCC OnLine SC 700.

34 The correctness of the decision in *Mohan Lal* v. *State of Punjab* (2018) 17 SCC 627 was in question. *Mohan Lal* had taken the view that in case the investigation under NDPS Act, is conducted by the very police officer who is himself the complainant, the trial becomes vitiated as a matter of law, and the accused is entitled to acquittal.

Who is a "police officer": Functionality test or status test

It was a crucial question in *Tofan Singh* whether NDPS officials can be treated as police officers or not. If yes, a confessional statement made to them has no value because of section 25 of Indian Evidence Act, 1872. If NDPS officials cannot be police officers, the confessional statement is as good as any extra judicial confession subject to section 24 of the Indian Evidence Act, 1872 and has probative force. The State advanced following arguments -

a. that a Police officer is someone who can submit a final report under 173 of CrPC. As NDPS officials under section 67 cannot submit any report under section 173 of CrPC, they cannot be treated as police officers.

b. Officials under the Customs Act and Excise Act are not treated as Police officers. Similarly, under NDPS Act also they should not be treated as Police officers because all these enactments are special laws.

c. There are judicial precedents like *Raj Kumar Karwal* v. *Union of India*;[35] The question was whether NDPS officials under section 53 are police officers or not. Raj Kumar Karwal judgement categorically held that they are not police officers because (i) they don't have power under section 173 to submit a report. (ii) NDPS officials have power to investigate but have no power to prosecute. (iii) legislative intent does not show that there was any desire to vest NDPS officials with all powers of police officers. They have limited powers. Therefore, NDPS officials like custom officials cannot be termed as police officers. (iv) the confession made to them is therefore, not hit by section 25 of the Indian Evidence Act, 1872.

On the other hand the petitioners argued that as description of police officer is not provided any where, a "functional test" has to be adopted, ie any official who has authority similar to police officer, "that a person who is given the same functions as a police officer under the Cr PC, particularly in the course of investigating an offence under the Act". Nariman. J. held that precedents as mentioned above are not applicable. He compared various laws as under:

> Even a cursory look at the provisions of these statutes would show that there is no parallel whatsoever between section 67 of the NDPS Act and these provisions. In fact, section 108 of the Customs Act, 1962 expressly states that the statements made therein are evidence, as opposed to section 67 which is only a section which enables an officer notified under section 42 to gather information in an enquiry in which persons are "examined".

While comparing with counter terror legislations Nariman, J. observed:

> Equally, section 32 of POTA and section 15 of TADA are exceptions to section 25 of the Evidence Act in terms, unlike the provisions of the NDPS Act. Both these Acts, vide section 32 and section 15 respectively, have non-obstante clauses by which the Evidence Act has to give way

35 1990(2) SCC 409.

> to the provisions of these Acts. Pertinently, confessional statements made before police officers under the provisions of the POTA and TADA are made "admissible" in the trial of such person – see section 32(1), POTA, and section 15(1), TADA. This is distinct from the evidentiary value of statements made under the NDPS Act, where section 53A states that, in the circumstances mentioned therein, statements made by a person before any officer empowered under section 53 shall merely be "relevant" for the purpose of proving the truth of any facts contained in the said statement. Therefore, statements made before the officer under section 53, even when "relevant" under section 53A, cannot, without corroborating evidence, be the basis for the conviction of an accused.

In dissenting note Indira Banerjee, J. replied as under:

> It is true that some statutes such as Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Prevention of Terrorism Act, 2002 (POTA) and Maharashtra Control of Organised Crime Act, 1999 (MCOCA) expressly empower the authorized officers to record confession. Investigation under those statutes is however carried out by police officer.

Finally the majority held as under :

> Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

Police officers *vis a vis* NDPS officers

Indira Banerjee, J. in minority relied on the constitution bench precedents. While comparing the distinct nature of work of NDPS officials from the Police officers she relied on the constitution bench ruling of *Romesh Chandra Mehta* v. *State of West Bengal*[36] as under:

> "5. ….. The broad ground for declaring confessions made to a police officer inadmissible is to avoid the danger of admitting false confessional statements obtained by coercion, torture or ill-treatment. But a Customs Officer is not a member of the police force. He is not entrusted with the duty to maintain law and order. He is entrusted with powers which specifically relate to the collection of customs duties and prevention of smuggling. There is no warrant for the contention raised by counsel for Mehta that a Customs Officer is invested in the enquiry under the Sea Customs Act with all the powers which a police

36 (1969) 2 SCR 461. It was a five judge bench.

> officer in charge of a police station has under the Code of Criminal Procedure..."

She also referred to another constitution bench judgement of *Illias* v. *Collector of Customs, Madras*[37] where the Supreme Court compared the duties and functions of police officers with Customs Officers and held that statements of the nature of a confession made before a Customs Officer would not be inadmissible in evidence. As found in *Illias* (supra) the main function of the police is prevention and detection of crime. The Police Officers have powers wide enough to extract confessions by intimidation or use of force or veiled threats of implication in some other crime. On the other hand, the powers of officers under the NDPS Act are not for the prevention and detection of crimes generally. These officers are only concerned with detection and prevention of trafficking of and/or illegal trade/business in narcotic drugs and psychotropic substances. Powers of search, seizure *etc.*, conferred on officers of the NCB or other officers under the NDPS Act are of a limited character. The NDPS Act itself refers to police officers in contradistinction to other officers under the NDPS Act. She also relied on *Badku Joti Savant* v. *State of Mysore*[38] where it was held that:

> even if an officer is invested under any special statute with powers analogous to those exercised by a police Officer in Charge of a Police Station investigating a cognizable offence, he does not thereby become a police officer under Section 25 of the Evidence Act unless he has the power to lodge a report under Section 173 of the Cr.P.C. 173.

However Nariman, J. in majority departed from the constitution bench findings by distinguishing it one way or other. Indira Banerjee, J. cautioned that such approach is not healthy :

> Constitution benches are constituted to resolve a constitutional issue, harmonize conflicting views and settle the law. A Constitution bench decision might only be reconsidered by a Constitution Bench of a larger strength and that too in exceptional and compelling circumstances. An interpretation which has held the field for over fifty years should not be upset for the asking. A Change in the legal position which has held the field through judicial precedents over a length of time can only be considered when such change is absolutely imperative.

One of the arguments of the majority was that the NDPS Act has all offenses as cognizable and therefore they cannot be compared with other laws like Customs Act. To this Indira Banerjee, in minority responded as under:

> non cognizable offence and evidence in a trial for cognizable offence. The admissibility of evidence does not depend on whether an offence is 'cognizable' or non-cognizable'. The mere fact that an offence was cognizable, enabling the police to arrest without warrant, should not

37 *Illias* v. *Collector of Customs, Madras* (1969) 2 SCR 613.

38 (1966) 3 SCR 698.

make any difference to the admissibility or the probative value of the evidence adduced by the prosecution during the trial of the offence.

The arguments of majority and minority offer compelling jurisprudential foundations. The concern of the majority is to protect the rights of those accused of NDPS Act and is willing to ignore constitutional bench precedents in new light. The illustrations given by Nariman, J remain unaddressed by the minority. On the other hand the minority view follows the doctrine of precedents. It gives more credence to the intention of the Parliament and purpose of the enactment. This author supports minority views for the reasons given while analysing the judgement above. The Parliament may bring an amendment to set the track right or the constitution bench should consider the issue.

Application of *Tofan Singh*

Bharat Chaudhary v. *Union of India*[39] is a case of bail but informs significant aspects of enforcement of NDPS Act. In this case a large amount of sexual enhancement tablets were recovered from various locations. The tablets were sent for tests where the report also contained the fact that "quantitative analysis of the samples could not be carried out for want of facilities". Whether they were of commercial quantity or not could not be determined due to this. Secondly, the tablets also contained herbs, "medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act." Thirdly the reliance on the statements of NDPS officials could not be made in the light of majority judgement in *Toofan Singh* case[40] which decided that the confessional statements recorded by these officials are also hit by section 25 of the Indian Evidence Act, 1872. The accused were granted bail.

Bharat Chaudhary case in application of *Tofan Singh* ruling. Also it is deeply concerning that the laboratory writes that facilities are not available. Can a country fight from the menace of drugs with this type of approach? While the government officials may be taking note of this lack of facilities in the laboratory, the Supreme Court should have asked the government why the situation of laboratories is so disturbing. These cases are not normal crimes but are part of socio economic crimes. They need additional attention by all stakeholders of the State including judiciary.

V DOWRY CASES

Among socio economic crimes dowry offences are *sui generis* as unlike many other socio economic crimes they do contain grave physical injury to the victim and many times death by their own family members. The NCRB data of 2021[41] identifies 6753 incidents of dowry death[section 304A], 136234 incidents of cruelty [section 498A] and 5292 incidents of abatement ot suicide[section 305 and 306] many of these abetments under section 306 are dowry related. At the same time there are flags of abuses of these laws.

39 2021 SCC OnLine SC 1235, decided by N.V. Ramana,C.J., Surya Kant J. and Hima Kohli, J.

40 [2021] 4 SCC 1.

41 NCRB- Crimes in India- Vol. I at 211-212, table 3A2 of , *available at*: https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf(last visited on Jan. 20, 2023).

A.R. Mariyambeevi v. *State Rep By Inspector of Police*[42] indicates the possible abuse of process and use of quashing jurisprudence. After marriage the wife stayed with husband and their family for one month. Then she went to Dubai with husband. Dispute cropped up and she registered a dowry harassment case under section 498(A), 406, 294(b), 506 (1) of IPC and section 4 and 6 (2) of the Dowry Prohibition Act, 1961. The case was registered against the mother in law and six sisters of his husband. While quashing proceedings in the high court was rejected on the ground that the high court cannot go into factual inquiries under section 482 of CrPC, the Supreme court rightly exercised its power. The proceedings against six sisters were quashed because the allegations against them were vague in nature. They were married and staying at different places. The wife stayed in India for mere one month. However the proceeding against the mother in law was permitted as the allegations were specific. The High court erred because the facts relevant for quashing were already in the FIR and no factual probe was required.

Ajay Kumar v. *State of Punjab*,[43] is another case which suggests how a high court should proceed as an appeal court and what are the possibilities of mistakes in the appreciation of evidence. In this case wife committed suicide within three years of marriage. The immediate reason seems to be the disappointment of the wife who was not able to participate in a marriage function though his husband went to the function with his friend. Wife had a baby of ten months and it was winter. This explanation was advanced as a reason for not accompanying her to the marriage who committed suicide. The FIR under section 304B, IPC was registered after a week where the allegation of demand of dowry and alleged illicit relationship of husband with his brother's wife was mentioned. The trial court convicted all four ie husband, his mother, brother and sister-in-law under section 304B.

The high court has maintained the conviction of the husband but set aside the conviction of his mother, brother and sister-in-law. There are detailed discussion on why his mother, brother and sister-in-law ought to be acquitted but there is no useful deliberation on why the conviction of the husband is sustained. The Supreme court observed:

> …there is no discussion as such of the case of the appellant. What is inter alia indicated[by the high court] is that a young married woman blessed with a son would not have ended her life without any rhyme and reason; some sort of matrimonial discord was there. We must pause here and indicate that in a prosecution for the commission of an offence and that too, a serious offence like section 304B IPC to hold that some sort of matrimonial discord was there clearly does not, in any manner, advance the case of the prosecution. Such reasoning clearly falls short of the premise on which a person can be convicted.

42 Special Leave Appeal (Crl.) No(s).5773/2020.

43 SLP (Crl.) No. 1406 of 2019, decided on Dec 14, 2021.

Right to appeal and responsibility of the high court

There was some discussion on the ingredients of related provisions like 304B, 113A and 113B. But there was no analysis of how they have a proximate connection to the evidence produced against the husband. The Apex Court reminded that :

This Court has declared the importance of the right to appeal with a person who stands convicted. Article 136 is only a special extraordinary jurisdiction which is not a right of appeal in itself. It is to be exercised rarely. The real right which is available to the person who is convicted is the right of appeal. The appellate Court is duty bound to re-appreciate the evidence and apply the law to the facts as are found on such reappreciation. This necessarily means that the High Court must discuss the evidence threadbare and also apply the correct principles of law. We do not think that in this case, the impugned judgment of the High Court has dealt with the matter as is required in law.

Indeed the high court acknowledged that the delay in FIR was unexplained, a few witnesses whose statement has been recorded were not presented in the trial court. There was an argument that the common statement of witnesses were not relied upon against other accused but were accepted by the courts against the Husband. These facts necessitates that the high court cannot pass the judgement without dealing with these issues in detail. The Apex Court has remanded the matter back to the high court for the conviction of husband and did not disturb the acquittal of other accused.

Ashok Kumar Modi v. *State of Jharkhand*[44] is significant to understand that the small orders are not easy to understand. In this case an FIR was registered for dowry death and other dowry laws. There was an arrest. There is mention of a second FIR but it is difficult to understand which FIR is being referred to? The high court of Jharkhand has passed an order under section 482 "not to take any coercive steps", a template used by the courts. Fact is that the accused was already on bail when this order was issued. Does it mean the police should not call him for investigation? there was no clarity. The Supreme Court rightly pointed out that "no coercive steps" must be explained because it is vague in nature and can be abused easily.

Bhagwanrao Mahadeo Patil v. *Appa Ramchandra Savkar*[45] underlines the controversy between section 304B and 306 of IPC. In a suicide case by wife can the accused be discharged from section 306 but continue to be prosecuted under section 304 B. In the case of *Bhupendra* v. *State of Madhya Pradesh*[46] it was observed that where charge under section 306 IPC is framed, a party could be discharged under section 304B IPC, but not the reverse. "Section 306 IPC is much broader in its application and takes within its fold one aspect of Section 304B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304B IPC, it will necessarily attract Section 306 IPC. However, the converse is not true." The Supreme Court reversed discharge from section 306 of IPC.

44 Special Leave to Appeal (Crl.) No(s).4890/2021, decided on Sep. 20, 2021.

45 SLP(Cri.) No.9487 of 2019, decided on July 14, 2021.

46 (2014) 2 SCC 106.

***Child as sole witness* and bride burning**

Pramila v. *State of UP*[47] brings focus on child witnesses in dowry cases. Sister-in-law (Jethani) of the deceased was convicted "under section 302, 34 IPC and sections 3 and 4 of the Dowry Prohibition Act sentencing her for life with a default stipulation." Deceased died of burn injuries committed by husband and other family members. There was a sole eyewitness of 11-12 years of age who was the brother of the deceased. He stated that the she saw, appellant Pramila had "stuffed cloth in the mouth of the deceased after which she [her sister] was set on fire by others." The issue was whether the conviction can be made on the statement of the sole child witness. The court presented the legal position as under:

> Criminal jurisprudence does not hold that the evidence of a child witness is unreliable and can be discarded. A child who is aged about 11 to 12 years certainly has reasonably developed mental faculty to see, absorb and appreciate. In a given case the evidence of a child witness alone can also form the basis for conviction. The mere absence of any corroborative evidence in addition to that of the child witness by itself cannot alone discredit a child witness. But the Courts have regularly held that where a *child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for of the evidence so that the Court is satisfied with regard to the reliability and genuineness of the evidence of the child witness.* PW-2 was examined nearly one year after the occurrence. The Court has, therefore, to *satisfy itself that all possibilities of tutoring or otherwise are ruled out* and what was deposed was nothing but the truth. [emphasis added]

On the point of child witness the Supreme Court quoted from *State of M.P.* v. *Ramesh*,[48] as under:

> In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.

The court applied these principles on the evidence available as under :

> According to PW-2, the appellant stuffed cloth in the mouth of the deceased, thereafter others tied her up and set her on fire leading to 95% burns. Events happened in continuity as is evident from the

47 Criminal Appeal No. 700 OF 2021, decided on July 28, 2021.

48 (2011) 4 SCC 786.

> deposition of PW-2, where he states that after the deceased had suffered burn injuries he had seen the entire scenario including the room where the burnt articles were kept including that he was a witness to his sister being put in a vehicle while being taken to the hospital. He then states that the deceased in that condition was speaking. At no stage has the witness deposed that the cloth was taken out from her mouth. It stands to reason that if cloth was stuffed in the mouth of deceased she would have been unable to speak.

The court was also impressed by the fact that the "Doctor who examined the deceased when she was brought to the hospital did not depose that the deceased was unable to speak. He only said that she was in a serious condition." The postmortem report stated that "the mouth of the deceased was closed, the jaws were shut, no cloth was present in the mouth". The court also found that "no injuries of any nature have been found inside the mouth". [if the mouth was stuffed with cloth and she was burnt some burn injuries (called blisters) in the mouth should have been present]. The court also inferred that the appellant being daughter in law like the deceased herself, "it highly unlikely that she would have engaged in such actions." On strict scrutiny of these facts and evidence the apex court did not find it of "sterling quality so as to inspire confidence in the court to base the conviction on the sole evidence of a child witness." The appellant was acquitted.

It is not understandable why the charges were not framed under section 304B of IPC when charges were framed under the Dowry Prohibition Act, 1861. Secondly, the issue of "stuffed cloth" was stretched too much. When the deceased was taken to hospital anyone near her could have removed it and the child might not have seen who had removed it. Does it make the child an unreliable witness? The statement that the doctor told the deceased was serious was sufficient to state that she was not able to speak. If it is unlikely that a daughter in law would not commit such specific conduct, is it equally unlikely that the child will help in framing her in the case.

A PIL was filed under article 32 for certain directions to curb the evil of dowry in the case of *Sabu Steephen* v. *Union of India.*[49] The sought directions like (i) in every government/public office, there should be a designated Dowry Prohibition Officer, (as similar to Public Information Officer, under RTI Act 2005) in order to implement the Dowry Prohibition Act 1961, in letter and spirit. (ii) the Dowry or the share of the family properties, vehicles and other assets should be in the name of the woman only, at least for the first 7 years after the marriage and keep the appropriate Register in this regard by the all the concerned officers. (iii) to constitute a "Curriculam Commission" for the 'School Classes' and 'Special Pre-Marriage Course' to impart proper education for marriage, which includes Medical Experts (including Sexologist, Psychologist and Gynecologist), Sociologist, Economist, Legal Expert, Educationalist, Social Activist and Religious Experts from all Major Religions in India and make the Special Pre-Marriage Course' certificate is a mandate for marriage registration. (iv) provision to issue "No Dowry Certificate"

49 Writ Petition(s)(Criminal) No(s).319/2021, decided on Dec. 6, 2021.

from the District or State Dowry Prohibition Officer, and the said "No Dowry Certificate" should be a mandate for marriage registration, Government employment, availing Government schemes *etc.*(v) to implement proper penalty provisions, both to the petitioner and to the Police Officials who are supporting the misuse of law, in order to curtail the misuse of legal provisions of anti-dowry laws. (vi) other necessary directions to prevent, reduce and control the dowry deaths and dowry harassment.

The Supreme Court rightly refused to honour the prayer because these were policy issues, beyond the scope of article 32. The petitioners were advised to request the Law Commission of India to look into it.

VI CONCLUSION

Charan Singh highlights the significance of preliminary enquiry in corruption cases especially when a public servant is involved but held that it is never mandatory. *Thoomandry Hannah Vijayalakshmi* underlines the fact that in some cases the high court is not able to appreciate their limits under article 226 while deciding a case of corruption under quashing proceedings. They begin mini trials and make accused oriented interpretations of facts which were rightly corrected by the Supreme court. However, simple issues need shorter reasoning. The Apex Court in this case has given very detailed reasons and it is difficult to understand why it was necessary to go into these details of various precedents which makes the case lengthy. The issue was whether a preliminary enquiry by CBI is mandatory under any law especially under their manual. The law is crystal clear. Cr PC 1973 does not mandate a preliminary enquiry. *Lalita Kumari* does not make it mandatory under their exceptions. The CBI manual does not make it obligatory. The precedents have also declined to support any mandatory preliminary enquiry. There was no new development, no compelling arguments recorded by the accused. Why such an issue [which does not pose any complexities] takes lengthy passages from precedents, sometimes repetitive. Indeed they do not develop any legal principles also. *Archna Singh Rana* case on alleged false promise of job for money under IPC was registered in 2016. The high court decided the quashing proceeding in 2019. The Supreme Court decided it in 2021. Four years have gone by to decide whether the charge sheet is ok or not. Two years was taken by both the high court and the Supreme Court to decide the case of quashing. The judiciary needs to find a way to reduce this time. *N Raghavendra* is useful to understand the scope of article 136 in corruption cases. Under the Narcotics and Psychotropic Substances Act, 1985 the issue of private *vis a vis* public vehicles in *Boota Singh* case shows that the Parliament or the State legislature needs to modify the law. Most important development that was registered in this survey was *Tofan Singh* where the majority held that NDPS officials are Police officers section 25 of Indian Evidence Act, 1872 is applicable to which this survey does not agree and supports the dissenting opinion.

Among offences related to dowry *A.R. Mariyambeevi* and *Ajay Kumar* both examine the power of the high court to appreciate the available evidence in dowry cases. While section 482 does not permit a fishing inquiry, the evidence on record should be appreciated well [*A.R. Mariyambeevi*] On the other hand *Ajay Kumar* reminds the high court that in case of appeal against conviction it is duty to re-appreciate

the evidence threadbare. *Ajay Kumar* also points to the delay as the case was registered in 2001 and the Supreme Court sent the matter back to the high court in 2021. *Pramila case* highlights the role of child witness and follows the jurisprudence that a sole child witness needs to be examined strictly. *Sabu Steephen* case is an unsuccessful PIL to bring reform in dowry laws, policy.