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CRIMINAL PROCEDURE

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I INTRODUCTION

THE CRIMINAL justice system in India has been functioning under the various provisions of the Criminal Procedure Code, 1973 (Cr PC) Indian Evidence Act, 1972 *etc*. The Indian judiciary affords protection to the citizens in accordance with the law; while implementing the law, the judiciary meticulously enforces the Constitution affording legal protection to the citizens. In this process naturally the highest judiciary including the Supreme Court lay down the law for future guidance. The efforts to achieve clarity of procedure and practices relating to various aspects such as investigation, prosecution, trial, bail, evidence, judgement the Supreme Court issued several directions to be adopted by the high courts and trial courts in the country. The move initiated in 2017 thus brought out the necessary changes in procedures and practices.[1] In 2021 also the Indian judiciary produced case law in this field. These are analysed here under different heads for facility of examination and studies.

II FIRST INFORMATION REPORT

It is incumbent upon the courts to preserve the delicate balance between the power to investigate offences under the Cr PC, and the fundamental rights of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State.The Supreme Court has, in the past, consistently taken the position that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not permissible and amounts to a violation of article 21 of the Constitution of India. This position was reiterated by the Supreme Court in *Krishna Lal Chawla* v. *State of U.P.*[2]

In *Lalita Kumari* v. *State of U.P.*[3] the Supreme Court had held that the police are duty-bound to register an FIR on receipt of information disclosing a cognizable offence.

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1 *Criminal Trials Guidelines regarding inadequacies and deficiencies In re'* v. *State of Andhra Pradesh*, 2021(10) SCC 598 .

2 (2021) 5 SCC 435.

3 (2014) 2 SCC 1.

The question whether it is possible to conduct a preliminary enquiry when the information does not disclose a cognizable offence was addressed by the court in *Charansingh* v. *State of Maharashtra.*[4] While answering the question in the affirmative, the Court observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.

III INVESTIGATION

In *Laxmibai Chandaragi B.* v. *State of Karnataka,*[5] the Supreme Court criticised the investigating officer for his failure to close a man missing case instituted on information given by parent of a girl after the girl who went missing informed him that she had married another man. The court took exception to the conduct of the investigating officer in insisting the girl to report at the police station for recording her statement. According to the court, consent of the family or the community or the clan is not necessary once two adult individuals agree to enter into a wedlock and that their consent has to be piously given primacy. The court directed the police authorities to counsel the investigating officers, devise training programme to educate investigating officers and also lay down guidelines on how to deal with such socially sensitive cases.

In *Supreme Bhiwandi Wada Manor Infrastructure (P) Ltd.* v. *State of Maharashtra,*[6] the Supreme Court set aside an order of the high court since it was found to be contrary to line of precedents[7] dealing with the distinction in the power of the magistrate under section 156 (3) Cr PC and section 202 Cr PC. According to the Court the power of the Magistrate under section 156 (3) CrPC. to order investigation by the police is not touched or affected by section 202 Cr PC. The investigation which the magistrate can direct under section 202(1) either by a police officer or by any other person is for a limited purpose of enabling the magistrate to decide whether or not there is sufficient ground to proceed further. The power under Section 156(3) can be exercised by the magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence.

In *Sidharth* v. *State of U. P.*[8] the Supreme Court had occasion to criticise the approach of trial courts in insisting on the arrest of the accused as a prerequisite formality to take a chargesheet on record.[9] According to the Supreme Court, section 170 Cr PC does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. If the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in section 170 Cr PC., according to the Court, does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer

4 (2021) 5 SCC 469.

5 (2021) 3 SCC 360.

6 (2021) 8 SCC 753

7 *Supreme Bhiwandi Wada Manor Infrastructure (P) Ltd.* v. *State of Maharashtra*, (2021) 8 SCC 753.

8 (2022) 1 SCC 676.

before the court while filing the charge-sheet. The court also pointed out the distinction between the existence of power to arrest and justification for exercise of that power. It observed:[10]

> ..... personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

In *Kapil Agarwal* v. *Sanjay Sharma,*[11] the Supreme Court reiterated the procedure to be followed when there is a complaint and police investigation in respect of the same offence. According to the court there is no bar to lodge an FIR when a complaint has been filed earlier on the same set of facts with the same set of allegations and averments.

The Supreme Court and high courts are 'sentinels of justice' that ensure that rule of law and constitutional guarantees of a fair and impartial investigation are upheld. While investigating offences justice must not only be done but also be seen and perceived to be done. In the past the Supreme Court has made creative interventions to ensure fairness in investigations by taking steps for monitoring investigations by police on a daily basis. Such an intervention was made by the Supreme Court during the period covered by this survey. The Supreme Court was seized of the *In re Violence in Lakhimpur Kheri (Uttar Pradesh) Leading to Loss of Life*[12] matter when two lawyers wrote to the court seeking an independent inquiry into an incident in which several people who were protesting against the Agricultural Acts of 2020 were rammed from behind and run over by a vehicle resulting in eight deaths and injury to several others. Ever since then, the case was investigated by a Special Investigation Team which essentially comprised of middle level/subordinate level officers of U.P. police posted in Lakhimpur Kheri district. When the matter was taken up by the Supreme Court on various occasions some of the parties questioned the fairness of the investigation conducted by the SIT. Hence the Supreme Court, by an Order dated November 17, 2021,[13] appointed (Retd.) Rakesh Kumar Jain J., Former Judge, High Court of Punjab

9 *Siddharth*v. *State of U.P.*, (2022) 1 SCC 676.

10 *Siddharth* v. *State of U.P.*, (2022) 1 SCC 676, para 10.

11 (2021) 5 SCC 524.

12 Writ Petition (Crl.) No. 426 of 2021.

13 (2022) 9 SCC 337.

and Haryana to monitor the ongoing investigation so as to ensure transparency, fairness and absolute impartiality in the outcome of the investigation. To ensure fairness and independence of investigation the court also directed reconstitution of SIT by including three directly recruited IPS who do not hail from the State of Uttar Pradesh, though allocated to U.P. cadre.

IV BAIL

In *Dilip Singh* v. *State of M.P.*[14], the Supreme Court modified an order passed by the Indore Bench of Madhya Pradesh High Court whereby the high court had granted anticipatory bail to an accused subject to the condition of deposit of Rs 41 lakhs in court and upon his furnishing personal bond in the sum of Rs 50,000 with one solvent surety in the like amount to the satisfaction of the arresting officer. While issuing the said order the high court had further directed that the order would be governed by conditions 1 to 3 of sub-section (2) of section 438 of the Cr PC. The trial court was also directed to deposit the amount so deposited by the appellant with any nationalised bank.The Supreme Court expressed the view that by imposing the condition of deposit of Rs 41 lakhs, the high court has, in an application for pre-arrest bail under section 438 of the Cr PC, virtually issued directions in the nature of recovery in a civil suit. The court clarified:[15]

> It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/ anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.

With a view to avoid unnecessary bail matters reaching the court, the Supreme Court in *Satender Kumar Antil*v. *CBI,*[16] categorised the offences and thereafter issued the following guidelines to be followed by the trail courts and the high courts while considering bail applications.[17]

14 (2021) 2 SCC 779.

15 (2021) 2 SCC 779, 780.

16 (2021) 10 SCC 773.

17 (2021) 10 SCC 773, para 4.

"***Categories/Types of Offences***

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D (5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet *Siddharth* v. *State of U.P.* [*Siddharth* v. *State of U.P.*, (2022) 1 SCC 676])

Category A

After filing of charge-sheet/complaint taking of cognizance

(*a*) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(*b*) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(*c*) NBW on failure to appear despite issuance of bailable warrant.

(*d*) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(*e*) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc."

After issuing the above guidelines the court clarified that economic offences are not completely taken out of the guidelines. Economic offences form a different nature of offences and the seriousness of the charge as well as the severity of the

punishment would be relevant factors while taking decision in the matter of granting bail in cases involving economic offences.

In *Satender Kumar Antil,*[18] the Supreme Court also gave its imprimatur to the practice of granting interim bail taking into consideration the conduct of the accused during the investigation. According to the court the bail application to be ultimately considered, would be guided by the relevant statutory provisions.

After reiterating the legal position as laid down in *Sushila Aggarwal* v. *State (NCT of Delhi),*[19] and guided by the consideration of nature and gravity of the alleged offence, the Supreme Court in *Supreme Bhiwandi Wada Manor Infrastructure (P) Ltd.* v. *State of Maharashtra*,[20] set aside an order granting anticipatory bail to an accused who was alleged to have fraudulently misappropriated amounts intended to be paid by a company to the farmers affected by the work of road widening. The court expressed the view that the order granting anticipatory bail suffered from serious infirmities resulting in miscarriage of justice.

Non-compliance with the procedure contained in section 41 CrPC before arresting an accused, as adumbrated in the judgment in *Arnesh Kumar* v. *State of Bihar,*[21] was taken as a factor for releasing him on interim bail.[22]

In *Union of India v. K.A. Najeeb,*[23] the Supreme Court emphasised on the need for harmonising the restrictions in the matter of grant of bail imposed by a statute as well as the powers exercisable under constitutional jurisdiction. According to the Court, statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the power of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. At commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence.

Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.Insistence on reason is a requirement for both judicial accountability and transparency. Time and again the Supreme Court has emphasised the need for assigning reasons while issuing an order granting bail to an accused. In *Brijmani Devi* v. *Pappu Kumar,*[24] the Supreme Court set aside a cryptic order by which the high court granted bail to an accused and held that though elaborate reasons need not be

18 (2021) 10 SCC 773.
19 2020) 5 SCC 1.
20 (2021) 8 SCC 753.
21 (2014) 8 SCC 273.
22 *Munawar* v. *State of M.P.*, (2021) 3 SCC 712.
23 (2021) 3 SCC 713.
24 (2022) 4 SCC 497.

assigned for grant of bail, an order dehors reasoning or bereft of the relevant reasons cannot result in grant of bail.

The necessity of recording reasons while exercising the extraordinary jurisdiction of granting ad interim protection from arrest was emphasised by the Supreme Court in *Sorathia Bindi* v. *State of Gujarat,*[25] wherein the Supreme Court while considering a special leave petition filed against an order granting ad interim protection from arrest remitted the matter back to the High Court of Gujarat with a direction to consider the application for anticipatory bail afresh and dispose the same by recording reasons for the order.

The necessity of recording reasons for grant of bail was also emphasised in several other judgments delivered during the period covered by this survey.[26]

In *State of Maharashtra* v. *Pankaj Jagshi Gangar,*[27] the Supreme Court deprecated the tendency of certain accused to go for forum-shopping in the matter of bail. In this case a person accused of offences under MCOCA filed an appeal before a single judge of high court against the order of a special judge. While the bail application was pending before the single judge, the accused sensing that the judge was not inclined to grant bail, withdrew the appeal and thereafter preferred a writ petition before a division bench of the high court under the guise of challenging the vires of MCOCA. Without being aware of what transpired earlier, the division bench released the accused on bail and that too by way of interim relief. The Supreme Court referred to this as an instance of forum shopping and described it as a conduct which cannot be approved. The order passed by the division bench of the high court was therefore quashed and set aside by the Supreme Court.

In *Enforcement Directorate, Government of India* v. *Kapil Wadhawan*[28] a two judge bench of the Supreme Court referred to a three judge bench the question whether the day of remand is to be included or excluded while computing the period of 90 days or 60 days as contemplated under section 167 (2) (a) (ii) in the context of considering a claim for default bail. The reference was necessitated because of the conflicting views on the proposition of law. According to the two judge bench the ratio of two earlier benches of the court in *Chaganti Satyanarayana* v. *State of Andhra Pradesh*[29] and *State Through CBI* v. *Mohd. Ashraft Bhat*[30] were not brought to the notice of a three judge bench *M. Ravindran* v. *Intelligence Officer, Directorate of Revenue Intelligence*[31] when the court took a view that date of remand is to be excluded for computing the period of investigation.

Can a court insist on payment of compensation to the victim as a pre-condition for grant of bail? This question was examined by the Supreme Court in *Dharmesh* v.

25 (2021) 7 SCC 817.
26 *Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana (Koli)*, (2021) 6 SCC 230.
27 (2022) 2 SCC 66.
28 2021 SCC OnLine 3136.
29 (1984) 3 SCC 141.
30 (1996) 1 SCC 432.
31 (2021) 2 SCC 485.

State of Gujarat.[32] In this case, the High Court of Gujarat while granting bail to certain accused required them to deposit before the trial court Rs. 2 lakhs each as compensation to the victim within a period of three months. Setting aside the impugned order, the Supreme Court held that there were no provisions in the Cr PC which permitted a court to impose such a condition while granting bail to an accused.

In *Rekha Sengar* v. *State of M.P.*[33]the Supreme Court reiterated that nature and gravity of the offence, its impact on society and whether there is a prima facie case are the factors which the court must consider while exercising discretion in non-bailable cases.

In *Ramesh Bhavan Rathod* v. *Vishanbhai Hirabhai Makwana (Koli),*[34] the Supreme Court had the opportunity to clarify the law relating to bail on the ground of parity with co-accused. The Supreme Court held that while applying the principle of parity a court cannot exercise its power in a capricious manner and that the court has to consider the totality of circumstances before granting bail. In *Ramesh Bhavan Rathod*[35] the court also expressed its disapproval at the observation of the High Court that the grant of bail to one accused shall not be considered as a precedent for any other person who is accused in the FIR on grounds of parity. According to the Supreme Court such an observation did not constitute judicially appropriate reasoning. In *Ramesh Bhavan Rathod*[36] the Supreme Court had also elaborated on the considerations that govern the grant of bail as well as the necessity of recording reasons for grant of bail.

In 2020, in *Sushila Aggarwal* v. *State (NCT of Delhi),*[37] a Constitution Bench of the Supreme Court had clarified the extent of power exercisable by the courts under section 438 Cr PC. In the said judgment the Court had authoritatively held that when a court grants anticipatory bail under section 438 Cr PC, the same is ordinarily not limited to a fixed period and would subsist till the end of the trial. However, it was clarified in the judgment that if the facts and circumstances so warranted, the court could impose special conditions, including limiting the relief to a certain period. In *Nathu Singh* v. *State of U.P.*[38]the court clarified that a sessions court or a high court may decide to grant anticipatory bail for a limited period of time in certain special facts and circumstances. While doing so the court must indicate its reasons for doing so. To do so without giving reasons, would be contrary to the pronouncement of the Supreme Court in *Sushila Aggarwal.*[39]

The High Court of Judicature at Allahabad, while dismissing the anticipatory bail application of certain accused, granted them 90 days to surrender before the trial

32 (2021) 7 SCC 198.
33 (2021) 3 SCC 729.
34 (2021) 6 SCC 230.
35 *Ramesh BhavanRathod* v. *Vishanbhai Hirabhai Makwana (Koli)*, (2021) 6 SCC 230.
36 *Ramesh BhavanRathod* v. *Vishanbhai Hirabhai Makwana (Koli)* (2021) 6 SCC 230.
37 (2020) 5 SCC 1.
38 (2021) 6 SCC 64.
39 *Sushila Aggarwal* v. *State (NCT of Delhi)*, (2020) 5 SCC 1

court to seek regular bail and granted them protection from coercive action for the said period. This order came to be challenged before the Supreme Court through an appeal by special leave. The appellant, relying on the proviso to section 438 Cr PC., raised the argument that the impugned orders, wherein the high court granted protection to the respondents subsequent to the dismissal of their application, was therefore passed in excess of the high court's jurisdiction under section 438 Cr PC. While answering the legal question whether the High Courtwhile dismissing the anticipatory bail applications of the respondentscould have granted them protection from arrest, the Supreme Court in *Nathu Singh* v. *State of U.P.*[40] observed:[41]

> We cannot be oblivious to the circumstances that courts are faced with day in and day out, while dealing with anticipatory bail applications. Even when the court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the trial court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice.

While making the above observation, the Supreme Court located the source of the said power in section 482 Cr PC. According to the Supreme Court such discretionary power cannot be exercised in an untramelled manner. The impugned order of the High Court Allahabad was however set aside by the Supreme Court on the ground of (a) failure of high court to adduce reasons and (b) non-consideration of the concerns of the investigating agency and the complainant.

IV SPEEDY TRIAL

Over the years, the Supreme Court has consistently taken the position thatthe liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Ashim*v. *NIA,*[42] a two-judge bench of the Supreme Court reiterated this position and held that deprivation of personal liberty without ensuring speedy trial is not consistent with article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. According to the Court, denial of speedy justice is a threat to public confidence in the administration of justice.

40 (2021) 6 SCC 64.

41 *Nathu Singh* v. *State of U.P.*, (2021) 6 SCC 64, para 23.

42 (2022) 1 SCC 695.

V DUTIES OF TRIAL JUDGES

The justice dispensation machinery in India is plagued with backlogs. A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system—a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings. In *Krishna Lal Chawla* v. *State of U.P.*[43] (2021) 5 SCC 435the Supreme Court highlighted the role of trial judges in identifying and disposing of frivolous litigation at an early stage. In paragraph 17 of *Krishna Lal Chawla*[44] the court made the following observation:

> Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not

Thereafter in paragraph 19 the court noted:

Similarly, the power conferred on the Magistrate under Section 202 CrPC to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out of frivolous complaints that must be fully exercised.

In paragraph 20, the court said:

> It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in "fact-finding" owing to the adversarial nature of our justice system. However, Section 165 of the Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

The trial courts, according to the Supreme Court,[45] have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the

43 (2021) 5 SCC 435.

44 *Krishna Lal Chawla* v. *State of U.P.*, (2021) 5 SCC 435.

45 *Krishna Lal Chawla* v. *State of U.P.* (2021) 5 SCC 435.

duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution.

VI SANCTION FOR PROSECUTION

The Cr PC treats public servants as a special category in order to protect them from malicious or vexatious prosecutions. Section 197 of the Code seeks to protect an officer who is accused of an offence committed while acting or purporting to act in the discharge of his official duties from unnecessary harassment. It prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. On earlier occasions the Supreme Court has held that section 197 Cr PC should be construed in such a manner as to advance the cause of honesty, justice and good governance.[46] In *Indra Devi* v. *State of Rajasthan*,[47] the Supreme Court had an opportunity to summarise the principle to be applied while determining whether sanction under section 197 Cr PC is required or not. According to the court, sanction under section 197 Cr PC is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a *prima facie* view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties.

VII WITNESS PROTECTION

For instance, *In Re Violence in Lakhimpur Kheri (UP) Leading to Loss of Life*[48] the Supreme Court directed the state government to provide protection to all witnesses connected with the case as per the Witness Protection Scheme, 2018.

VIII FRAMING OF CHARGE

The factors to be considered at the time of framing of charge were reiterated and summarised in *State of Rajasthan* v. *Ashok Kumar Kashyap.*[49]

IX TRANSFER OF CRIMINAL CASES

Time and again the courts have observed that no hard and fast rule can be prescribed for deciding a transfer petition which will always have to be decided on the facts of each case. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the

46 *Subramanian Swamy* v. *Manmohan Singh* (2012) 3 SCC 64.

47 (2021) 8 SCC 768.

48 2021 SCC OnLine SC 3195.

49 (2021) 11 SCC 191.

transferred place of trial. Thus, in *Swaati Nirkhi* v. *State (NCT of Delhi),*[50] the Supreme Court refused to transfer a criminal case from Delhi to Allahabad (Prayagraj) on the ground that most of the prosecution witnesses were located at Delhi. According to the court, if the transfer petition is allowed, the witnesses would be required to travel from Delhi to Allahabad, which in turn would cause hindrance in performing their official duties.

X EXERCISE OF INHERENT POWERS

The inherent jurisdiction under section 482 Cr PC is designed to achieve the salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. While quashing an FIR in *Kapil Agarwal* v. *Sanjay Sharma,*[51]the Supreme Court reiterated the settled position that criminal proceedings can be quashed when the court is satisfied that such proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused. A litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends. It has therefore been held that the inherent power can be exercised by the court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands.[52]

The question whether an interim order of no coercive steps during proceedings under section 482 Cr PC and/or under article 226 of the Constitution of India could be passed by the High Court was addressed by the Supreme Court in two judgments pronounced during the period covered by the survey. In *Neeharika Infrastructure Private Ltd.* v. *State of Maharashtra*[53]the Supreme Court frowned upon the tendency of the courts to pass blanket, cryptic, laconic, non-speaking orders reading "*no coercive steps shall be adopted*".However, it allowed space for the high court to pass such orders "*in exceptional cases with caution and circumspection, giving brief reasons*".

Subsequently in *SiddharthMukesh Bhandari* v. *State of Gujarat,*[54] the court while reiterating the position taken in *Neeharika Infrastructure*[55] noted:[56]

> An interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as

50 (2021) 11 SCC 163.

51 (2021) 5 SCC 524.

52 *Krishna Lal Chawla* v. *State of U.P.*, (2021) 5 SCC 435.

53 2021 SCCOnLine SC 315.

54 (2022) 10 SCC 530.

55 *Neeharika Infrastructure Private Ltd.* v. *State of Maharashtra*, 2021 SCC OnLine SC 315.

56 *SiddharthMukesh Bhandari* v. *State of Gujarat*, (2022) 10 SCC 530, paras 5.16 – 5.18.

> such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.
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> Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.
>
> Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood.

In *A.P. Mahesh Coop. Urban bank Shareholders Welfare Assn.* v. *Ramesh Kumar Bung*[57] the Supreme Court upheld the impugned order granting interim protection to the accused from arrest on the ground that the order cannot be said to be bad in the light of the *Neeharika*[58] principles.

The Supreme Court has also reiterated the settled position that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr PC and that the inherent jurisdiction under section 482 Cr PC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself.[59]

X TRIAL

In *Nasib Singh* v. *State of Punjab,*[60] the Supreme Court summarised the law relating to the requisite tests to be applied by the trial court while applying the principles enunciated in section 218 to 223 Cr PC. *i.e.,* while taking an appropriate decision on whether there should be a joint or separate trial. The two-pronged test that should be applied by the trial court is (a) whether conducting a joint/separate trial will prejudice the defence of the accused and/or (b) whether conducting a joint/separate trail would cause judicial delay.

The Supreme Court has consistently taken the position that a retrial or a de novo trial should be the last resort and that too when such a course becomes desperately

57 (2021) 9 SCC 152.

58 *Neeharika Infrastructure Private Ltd.* v. *State of Maharashtra*, 2021 SCC OnLine SC 315.

59 *Kaptan Singh* v. *State of U.P.*, (2021) 9 SCC 35.

60 (2022) 2 SCC 89.

indispensable. A retrial should be limited to the extreme exigency to avert a "failure of justice". In *Nasib Singh*,[61] the court also had the occasion to summarise the principles that emerge from the various judicial pronouncements of the Supreme Court in the matter of ordering retrials. The principles are enumerated below:[62]

i. The appellate court may direct a retrial only in "exceptional" circumstances to avert a miscarriage of justice.

ii. Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed.

iii. A determination of whether a "shoddy" investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence.

iv. It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the appellate court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process.

The aim of every court is to discover the truth. Section 311 Cr PC is one of the provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. In *V. N. Patil* v. *K. Niranjan Kumar*[63] the Supreme Court while summarising the principles relating to object and scope of section 311 Cr PC held that the discretionary power vested in the courts has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

XI POWER TO PROCEED AGAINST OTHER PERSONS

The position regarding the exercise of power under section 319 Cr PC *i.e.,* power to proceed against other persons appearing to be guilty of offence was clarified by a Constitution Bench of the Supreme Court as early as in 2014.[64] In *Ramesh Chandra Srivastava* v. *State of U.P.*[65] a two judge Bench of the Supreme Court reiterated the position as laid down in *Hardeep Singh*[66] and held that the power under section 319 Cr PC should be exercised only when strong and cogent evidence occurs against a person from the evidence. In the instant case the Sessions Judge had exercised the power under section 319 Cr PC in a casual and cavalier manner. The order of the sessions judge was unsuccessfully challenged before the High Court. While allowing an appeal by special leave the Supreme Court set aside the order passed by the sessions judge and directed him to apply his mind in the light of the principles laid down by

61 *Nasib Singh* v. *State of Punjab*, (2022) 2 SCC 89.

62 *Nasib Singh* v. *State of Punjab*, (2022) 2 SCC 89, para 33.

63 (2021) 3 SCC 661.

64 *Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92.

65 (2021) 12 SCC 608.

66 *Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92.

the Constitution Bench in *Hardeep Singh*.[67] In another case[68]the Supreme Court held that a court can exercise the power under section 319 Cr PC even on the basis of the statement made in the examination-in-chief of the witness concerned and the court need not wait till the cross-examination of such a witness and the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination. Further a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under section 319 Cr PC, provided from the evidenceit appears that such person can be tried along with the accused already facing trial.

In *Ajay Kumar* v. *State of Uttarakhand,*[69] the Supreme Court further reminded that the power under section 319 Cr PC is a discretionary and extraordinary power which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant.

XII APPEALS

While considering an appeal against conviction, the Supreme Court, in *Samaul S. K.* v. *State of Jharkhand,*[70]used the voluntary initiative of the accused to pay an amount of Rs. 3 lakhs for the benefit of the victim and her children as a ground to reduce the sentence of three years rigorous imprisonment for an offence under section 498A to seven months imprisonment which was the period of incarceration already undergone by him on the date of the order.

The scope of the power of a court considering an appeal against acquittal was clarified further in *Jayamma* v. *State of Karnataka*.[71] According to the Supreme Court, unless the high court finds that there is complete misreading of the material evidence which has led to miscarriage of justice, the view taken by the trial court which can also possibly be a correct view, need not be interfered with. This self-restraint doctrine, of course, does not denude the high court of its powers to reappreciate the evidence, including in an appeal against acquittal and arrive at a differentfinding of fact.

While discussing the scope of the powers of an appellate court dealing with an appeal against acquittal, the Supreme Court in *Achhar Singh* v. *State of H.P.*[72] held that though it is a well-crystallised principle that if two views are possible, the High Court ought not to interfere with the trial court's judgment, such a precautionary principle cannot be overstretched to portray that the "*contours of appeal*" against acquittal under Section 378 Cr PC are limited to seeing whether or not the trial court's view was impossible.

67 *Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92.
68 *Sartaj Singh* v. *State of Haryana*, (2021) 5 SCC 337.
69 (2021) 4 SCC 301.
70 2021 SCC OnLine SC 645.
71 (2021) 6 SCC 213.
72 (2021) 5 SCC 543

XIII SENTENCING

In *Machhi Singh* v. *State of Punjab,*[73] the Supreme Court had identified the anti-social or socially abhorrent nature of the crime as one of the factors that may be taken into account by the court for imposition of death sentence. In *Hari* v. *State of Uttar Pradesh*[74]decided during the period covered by the survey the Court held that the ghastly murders of three youngsters which are honour killings squarely falls under the head of anti-social and abhorrent nature of the crime as mentioned in *Machi Singh*.[75]

In *Bhagchandra* v. *State of Madhya Pradesh*[76]Supreme Court converted the death sentence awarded to a convict who murdered two of his siblings and one nephew to life imprisonment for a period of two years. The court noted:[77]

> In view of the settled legal position, it is our bounden duty to take into consideration the probability of the accused being reformed and rehabilitated. It is also our duty to take into consideration not only the crime but also the criminal, his state of mind and his socio-economic conditions. The deceased as well as the appellant are rustic villagers. In a property dispute, the appellant has got done away with two of his siblings and a nephew. The State has not placed on record any evidence to show that there is no possibility with respect to reformation or rehabilitation of the convict. ……
> The appellant comes from a rural and economically poor background. There are no criminal antecedents. The appellant cannot be said to be a hardened criminal. This is the first offence committed by the appellant, no doubt, a heinous one. The certificate issued by the Jail Superintendent shows that the conduct of the appellant during incarceration has been satisfactory. It cannot therefore be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

In another case[78] the court commuted the death sentence awarded to a convict for the offence punishable under section 302 IPC to one of life imprisonment on the following grounds:[79]

> The appellant is a young person, who was 23 years old at the time of commission of the offence. He comes from a rural background. The State has not placed any evidence to show that there is no possibility with respect to reformation and the rehabilitation of the accused. The

73 (1983) 3 SCC 470.

74 2021 SCC OnLine SC 1131

75 *Machhi Singh* v. *State of Punjab*, (1983) 3 SCC 470.

76 2021 SCC OnLine SC 1209

77 *Bhagchandra* v. *State of Madhya Pradesh*, 2021 SCC OnLine SC 1209, para 44.

78 *LochanSrivas* v. *State of Chhattisgarh*, 2021 SCC OnLine SC 1249.

79 *LochanSrivas* v. *State of Chhattisgarh*, 2021 SCC OnLine SC 1249, para 56.

> High Court as well as the trial court also has not taken into consideration this aspect of the matter……..A perusal of the affidavits would reveal that the appellant comes from a small village called Pusalda in Raigarh district of Chhattisgarh. His father was earning his livelihood as a barber. The appellant was studious and hardworking. He did really well at school and made consistent efforts to bring the family out of poverty. The conduct of the appellant in the prison has been found to be satisfactory. There are no criminal antecedents. It is the first offence committed by the appellant. No doubt, a heinous one. The appellant is not a hardened criminal. It therefore cannot be said that there is no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

On earlier occasions, through decisions such as *Muthuramalingam,*[80] *O. M. Cherian*[81] and *Nagaraja Rao*[82]the Supreme Court has clarified that while awarding multiple sentences a court of first instance is under a legal obligation to specify in clear terms as to whether they would run concurrently or consecutively and that sentences awarded by a court for several offences committed by a convict shall run consecutively unless otherwise directed by the court. In *Sunil Kumar v. State of U.P.*[83]the Supreme Court came across a situation where not only the trial court but also the High Court omitted to specify whether the sentences awarded to the convicts shall run concurrently or consecutively. Though it observed that the omissions will not, by themselves, provide a room for concurrent running of sentences, the Court keeping in view the peculiar facts and circumstances of the case invoked its power under Article 142 so as to modify the punishment awarded to the convicts in the manner that the maximum period of imprisonment to be served by them in relation to offences in question shall be 14 years and not beyond.

XIV REMISSION OF SENTENCES

In *State of Haryana* v. *Raj Kumar*,[84] the Supreme Court had an opportunity to address the nature and scope of power of the Governor under article 161 of Constitution of India and the manner in which the said power was to be exercised. Holding that the restrictions under section 433-A cannot apply to the constitutional power under article 161 of the Constitution of India, the court observed:[85]

> [t]he power of the appropriate Government to release a prisoner after serving 14 years of actual imprisonment is vested with the State Government. On the other hand, the power conferred on the Governor, though exercised on the aid and advice of the State, is without any

80 *Muthuramalingam* v. *State*, (2016) 8 SCC 313.

81 *O. M. Cherian* v. *State of Kerala*, (2015) 2 SCC 501.

82 *Nagaraja Rao* v. *CBI*, (2015) 4 SCC 302.

83 (2021) 5 SCC 560.

84 (2021) 9 SCC 292.

85 *State of Haryana* v. *Raj Kumar*, (2021) 9 SCC 292.

> restriction of the actual period of imprisonment undergone by the prisoner. Thus, if a prisoner has undergone more than 14 years of actual imprisonment, the State Government, as an appropriate Government, is competent to pass an order of premature release, but if the prisoner has not undergone 14 years or more of actual imprisonment, the Governor has a power to grant pardons, reprieves, respites and remissions of punishment or to suspend, remit or commute the sentence of any person dehors the restrictions imposed under Section 433-A of the Constitution. Such power is in exercise of the power of the sovereign, though the Governor is bound to act on the aid and advice of the State Government.

XV SAFEGAURDING RIGHTS OF VICTIMS OF CRIME

In *X* v. *State of Jharkhand,*[86] the Supreme Court after referring to its own judgment in *NipunSaxena* v. *Union of India,*[87] reminded the media of its obligation to not print or publish the name of the rape victims or even in a remote manner disclose any facts which can lead to the suchvictims being identified.

XVI COMPOUNDING OF OFFENCES

The mere fact that an offence is compoundable with consent of the court need not persuade the court to automatically or mechanically exercise the power of compounding. Nature of the offence and its effect on society are relevant considerations, which the court must consider carefully while determining whether leave to compound offence is to be granted or not. Thus, in *Pravat Chandra Mohanty* v. *State of Odisha,*[88] the Supreme Court observed that offences involving police brutalities are crimes not only against the victims but also against humanity and hence permission for compounding of such offences cannot be granted by the court.[89]

XVII SETTLEMENT BETWEEN PARTIES

In *Murali* v. *State,*[90] the Supreme Court while considering an appeal filed by an accused who had been convicted for the offences punishable under sections 324 and 341 IPC reduced his sentence to the period already undergone. Though the offences were non-compoundable in nature and in spite of concurrent findings of three preceding forums, the Court considered the case to be a fit one to take a sympathetic view. That the parties to the dispute have buried their hatchet; that the convicts were young college students at the time of commission of the offence; that there was no previous enmity between the parties; that the convicts had no previous criminal antecedents; that they were the sole bread earners of their families and had significant social

86 (2021) 2 SCC 598.

87 (2019) 2 SCC 703.

88 (2021) 3 SCC 529.

89 In the instant case the police officers were prosecuted, inter alia, for the offence punishable under section 324 IPC. At the time of commission of the offence, section 324 was an offence which could be compounded with the permission of the court. However, it may be noted that section 324 was made non-compoundable by way of an amendment in 2005.

90 (2021) 1 SCC 726.

obligations to tend to and that they had served a significant portion of their sentence prompted the court to take such a lenient view. The court also drew strength from a line of previous decisions[91] where the Supreme Court took note of the compromise between the parties to reduce the sentence of the convicts even in serious non-compoundable offences.

XVIII CONCLUSION

Thus during 2021 the Indian Judiciary played very active role in the administration of justice on important issues. Among the important aspects special mention about the courts' dealing of sentencing and in effecting reformative steps should be made. The court's reliance on the constitutional provisions make the issues important and relevant in enforcing the constitutional protection to the citizens.

91 *Ram Lal* v. *State of J and K* (1999) 2 SCC 213; *Bankat* v. *State of Maharashtra* (2005) 1 SCC 343; *MoharSingh* v. *State of Rajasthan* (2015) 11 SCC 226; *Nanda Gopalan* v. *State of Kerala* (2015) 11 SCC 137; *Shankar* v. *State of Maharashtra* (2019) 5 SCC 166.