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CRIMINAL PROCEDURE

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I INTRODUCTION

THE CODE of Criminal Procedure, 1973 (CrPC) serves as the backbone of India's criminal justice system, ensuring the administration of justice through a robust framework of procedural safeguards. Each year, the Supreme Court of India plays a pivotal role in shaping and refining the interpretation and application of the Cr PC.

This survey seeks to provide an overview of the most significant decisions on Cr PC pronounced by the Supreme Court in 2022. By analysing these rulings, this survey aims to offer insights into the evolving trajectory of criminal procedural law in India.

To enhance readability the cases are categorized under specific thematic headings, allowing for a focused discussion of major developments.

II FIRST INFORMATION REPORT

Registration of First Information Report (FIR) is mandatory when the information given to the police discloses the commission of a cognisable offence. This position was clarified by a Constitution Bench of the Supreme Court as early as in 2014 in *Lalita Kumari v. State of Uttar Pradesh*.¹ Despite subsequent judgments reaffirming this position, instances of police reluctance to comply with this mandate persist. In *XYZ v. State of Madhya Pradesh*,² the Supreme Court had to deal with a situation where the officer-in-charge of police station as well as Superintendent of Police refused to register an FIR on receiving an information regarding the offence of sexual harassment. The court expressed grave concern over this approach in the following terms:

We cannot help but note that the police's inaction in this case is most unfortunate. It is every police officer's bounden duty to carry

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1 (2014) 2 SCC 1.

2 (2023) 9 SCC 705.

out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when they attempt to file a complaint. It is no secret that women's families often do not approve of initiating criminal proceedings in cases of sexual harassment. Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally, visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for visiting the police station is to complain of a sexual offence.

Section 157 (1) CrPC requires the officer-in-charge of police station to send the FIR forthwith to the jurisdictional magistrate. The delay in forwarding the FIR to the jurisdictional magistrate need not be fatal in all situations. In *Chotkau v. State of Uttar Pradesh*³ the Supreme Court held that the word "forthwith" is to be understood in the context of the facts and circumstances of each case. According to the Court, delay in forwarding the FIR to the jurisdictional magistrate would weaken the prosecution case when the prosecution witnesses are found to be unreliable and the testimonies of the police officers including the Investigating Officer are silent on who took the FIR to the jurisdictional magistrate. In *Jafarudheen v. State of Kerala*⁴ the Supreme Court held that mere delay to send the FIR to jurisdictional magistrate cannot be sole factor to reject prosecution's case.

III INVESTIGATION

Section 53-A and 164-A were inserted in the Cr PC by Act 25 of 2005. While 53-A enables medical examination of a person accused of rape, section 164-A enables medical examination of a victim of rape. In *Chotkau v. State of Uttar Pradesh*⁵ the Supreme Court had an opportunity to explain the similarity and distinction between sections 53-A and 164-A of Cr PC. The distinguishing features of the two provisions were highlighted by the Court in the following terms:⁶

Section 164-A requires the prior consent of the woman who is a victim of rape. Alternatively, the consent of a person competent to give such consent on her behalf should have been obtained before

3 (2023) 6 SCC 742. Decided on 28-09-2022.

4 (2022) 8 SCC 440.

5 (2023) 6 SCC 742. Decided on 28-09-2022.

6 *Chotkau v. State of Uttar Pradesh* (2023) 6 SCC 742, para 81.

subjecting the victim to medical examination. Section 53-A does not speak about any such consent.

Section 164-A requires the report of the medical practitioner to contain among other things, the general mental condition of the woman. This is absent in section 53-A.

Under Section 164-A(1), the medical examination by a registered medical practitioner is mandatory when, “*it is proposed to get the person of the woman examined by a medical expert*” during the course of investigation. This is borne out by the use of the words, “*such examination shall be conducted*”. In contrast, Section 53-A(1) merely makes it lawful for a registered medical practitioner to make an examination of the arrested person if “*there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence.*”

In *Chotkau*,⁷ the court however refused to go into the question whether section 53-A was mandatory in nature.

In *XYZ v. State of Madhya Pradesh*,⁸ the Supreme Court highlighted the need for sensitivity on the part of the judicial officers while dealing with cases of sexual harassment and sexual assault. In the instant case a victim of sexual harassment gave information to an officer-in-charge of police station regarding the commission of an offence of sexual harassment. Neither the officer-in-charge of police station nor the Superintendent of Police acted on the information and registered the FIR. The victim thereafter filed a complaint before the Judicial Magistrate and required the court to issue directions under section 156 (3) Cr PC for a police investigation into the matter. The Magistrate came to the conclusion that the case could be decided without collecting evidence from the police and it did not appear to be just and proper for him to issue a direction under section 156 (3) Cr PC. He therefore proceeded to treat the complaint filed by the victim as a complaint case. Setting aside the said order of the Judicial Magistrate the Supreme Court observed that section 156 (3) Cr PC assumed the status of a statutory obligation. According to the Court, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate’s notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate’s duty to order the police to investigate.

In *State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*,⁹ the Supreme Court had issued directions in the form of *mandamus* to all the police stations-in charge in the country as regards the steps to be taken on receipt of information relating to the commission of offence of rape. These

7 (2023) 6 SCC 742.

8 AIR 2022 SC 3957.

9 (2014) 8 SCC 913.

guidelines particularly focussed on the steps to be taken by the police as regards recording of statements of victims under section 164 Cr PC. Subsequently, in *A v. State of Uttar Pradesh and Another*¹⁰, the Apex Court after referring to the judgment in *State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*¹¹ held that the right to receive a copy of statement of victim recorded under section 164 Cr PC will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 Cr PC and not before. In *X v. M. Mahender Reddy*,¹² the court had to deal with a contempt petition which highlighted the conduct on part of the alleged contemnors in wilfully violating the mandatory directions issued by the court in *State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*.¹³ While disposing of the contempt petition the Supreme Court reiterated the legal position that a rape victim's statement made under Section 164 Cr PC should not be disclosed to any person (including accused) till charge-sheet/final report is filed. Noting that provisions in tandem with the directions passed by the Supreme Court in *Shivanna*¹⁴ and *A v. State of Uttar Pradesh*¹⁵ are missing in the rules of criminal practice/criminal trial framed by the high courts across the country, the court suggested to every high court to make appropriate modifications/amendments in the criminal practice/trial rules incorporating provisions consistent with the directions issued by it in the two judgments.

IV ARREST

Concerned over the grave issue of overcrowded jails predominantly occupied by undertrial prisoners, the Supreme Court in *Satender Kumar Antil v. Central Bureau of Investigation*¹⁶ issued comprehensive guidelines to curb unnecessary arrests and remand in India. The judgment delivered by a Bench comprising of Justices Sanjay Kishan Kaul and M.M. Sundresh captured the grim reality of overcrowded jails in India in the following words:

Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court,

10 (2020) 10 SCC 505.

11 (2014) 8 SCC 913.

12 Contempt Petition (Civil) No. 555 of 2022 in Special Leave Petition (Criminal) No. 5073 of 2011.

13 (2014) 8 SCC 913.

14 *State of Karnataka by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*, (2014) 8 SCC 913.

15 (2020) 10 SCC 505.

16 (2022) 10 SCC 51.

it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact that the arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

According to the court, the problem was caused mostly due to unnecessary arrests, which are carried out in violation of section 41 and 41A of the CrPC and the directions issued by the Supreme Court in *Arnesh Kumar v. State of Bihar*.¹⁷ Underscoring the foundational role of trial courts in preserving constitutional values, the court stated:

Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility.

The court thereafter issued the following guidelines (which may be subject to State amendments):¹⁸

- (i) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.
- (ii) The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in *Arnesh Kumar v. State of Bihar*.¹⁹ Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.
- (iii) The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail.
- (iv) All the State Governments and the Union Territories are directed to facilitate Standing Orders for the procedure to be followed under Section 41 and 41-A of the Code while taking note of the order of the High Court of Delhi dated 7-2-2018 in *Amandeep Singh Johar v. State (NCT of Delhi)*²⁰ and the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A of the Code.
- (v) There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code.

17 (2014) 8 SCC 273.

18 *Satender Kumar Antil v. Central Bureau of Investigation* (2022) 10 SCC 51, para 100.

19 (2014) 8 SCC 273.

20 2018 SCC OnLine Del 13448.

- (vi) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in *Siddharth v. State of U.P.*²¹
- (vii) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.
- (viii) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.
- (ix) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.
- (x) An exercise will have to be done in a similar manner to comply with the mandate of Section 436-A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in *Bhim Singh v. Union of India*²², followed by appropriate orders.
- (xi) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

All State Governments, Union Territories and high courts were thereafter directed to file affidavits/status reports within a period of four months from the date of the judgment.

V BAIL

The power to grant bail under section 439 Cr PC is one of wide amplitude. A high court or a court of sessions, as the case may be, are bestowed with considerable discretion while deciding an application for bail. This discretion is not unfettered. On the contrary, the high court or the court of sessions must grant bail after application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner.

In several judgments delivered in 2022 the Supreme Court had an occasion to recapitulate the principles that a court must bear in mind while deciding an application for grant of bail.²³

21 (2022) 1 SCC 676.

22 (2015) 13 SCC 605.

23 See *Y v. State of Rajasthan* (2022) 9 SCC 269; *Jagjeet Singh v. Ashish Mishra @ Monu* (2022) 9 SCC. 321; *Deepak Yadav v. State of U.P.* (2022) 8 SCC 559; *Kamla Devi v. State of Rajasthan* (2022) 6 SCC 725; *Centrum Financial Services v. State of NCT of Delhi*, AIR 2022 SC 650.

In *Jagjeet Singh v. Ashish Mishra @ Monu*,²⁴ the Supreme Court while disposing of an appeal cancelled the bail granted by the high court to a person accused of offences under sections 147, 148, 149, 302, 307, 326 read with sections 34 and 120-B of the Indian Penal Code, 1860 as well as sections 3, 25 and 30 of the Arms Act, 1959 on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victim's right to participate in the proceedings and (iv) the tearing hurry shown by the High Court in granting bail.

The legal position that an order for bail bereft of any cogent reason cannot be sustained came to be reiterated by the Supreme Court during the year under review. In *Manoj Kumar Khokhar v. State of Rajasthan*,²⁵ the Supreme Court took exception to an order passed by the High Court whereby it had granted bail to a person accused of a heinous offence punishable by either life imprisonment or death penalty in a cryptic manner without assigning any cogent reason.

The need for speedy disposal of applications for bail as well as anticipatory bail was emphasised by the Supreme Court in judgments such as *Satender Kumar Antil v. Central Bureau of Investigation*,²⁶ *Sanjay v. State (NCT of Delhi)*,²⁷ *Rajesh Seth v. State of Chhattisgarh*²⁸ and *Tulsi Ram Sahu v. State of Chhattisgarh*.²⁹

There have been a number of instances where the Supreme Court had to set aside orders passed by lower courts in bail matters on the ground that such orders were not legally sustainable. In *Divya Bharti v. State of Bihar*³⁰, the Supreme Court set aside an anticipatory bail condition imposed by the high court whereby the accused was required to return the salary which received while working as a Panchayat Teacher. In *Vijaykumar Gopichand Ramchandani v. Amat Sadhuram Mulchandani*,³¹ the high court while disposing of an anticipatory bail application directed that the accused should be given 72 hours' notice in the event that the State intends to arrest him on the registration of an FIR making out a cognizable offence. This direction was found to be manifestly incorrect and therefore set aside by the Supreme Court. In *Udho Thakur and Anr. v. State of Jharkhand*,³² the high court allowed an application for pre-arrest bail on the condition that the accused furnish a bond in the sum of Rs.25,000/- and also deposit a demand draft in the sum of Rs.7,50,000/- as an ad-interim victim compensation. The condition of depositing a sum of Rs.7,50,000/- as an ad-interim victim compensation for the

24 (2022) 9 SCC 321.

25 (2022) 3 SCC 501.

26 (2022) 10 SCC 51.

27 Special Leave to Appeal (Criminal) No. 5675 of 2022.

28 Special Leave to Appeal (Criminal) No. 1247 of 2022.

29 Special Leave to Appeal (Criminal) No. 2564 of 2022.

30 Special Leave to Appeal (Criminal) No. 8498 of 2022.

31 Special Leave to Appeal (Criminal) No. 9092 of 2022.

32 Criminal Appeal Nos. 1703-1704 of 2022.

purpose of granting the relief of pre-arrest bail was disapproved by the Supreme Court.

VI ROLE OF PUBLIC PROSECUTOR

A public prosecutor appointed under Section 24 Cr PC occupies a statutory office of high regard. He is an independent statutory authority who serves as an officer to the court. The primary role of a public prosecutor is to ensure a fair trial, rather than pursuing convictions at any cost. He has responsibilities that extend beyond securing the conviction of the accused. His role includes ensuring fairness in legal proceedings and presenting all relevant facts before the court to facilitate the discovery of truth and justice for all parties, including the victims as well as the accused.

In *Manoj v. State of Madhya Pradesh*³³ the Supreme Court reiterated and emphasised the critical role of the public prosecutor in ensuring fairness and justice in criminal trials. After extensively referring to the observations made in *Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi*³⁴ and *Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh*,³⁵ the court held that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, furnish to the accused the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials were also directed to ensure compliance with this requirement.

VII INITIATION OF CRIMINAL PROCEEDINGS

Taking cognizance of an offence under section 190(1) Cr PC and issuing process under section 204 Cr PC are judicial functions and require a judicious approach. In 2022, the Supreme Court delivered some judgments touching upon the scope of the process of taking cognizance of an offence. Most of the judgments have reiterated the legal position taken in judgments delivered by the court in previous years and hence they are not discussed in detail. However, the principles laid down in these judgments continue to underscore the importance of judicial application of mind at the stage of taking cognizance to ensure that frivolous or vexatious complaints do not lead to unwarranted prosecution. The judgments reaffirm the well-settled principle that the Magistrate must carefully evaluate the material on record to determine whether a prima facie case is made out, without delving into the merits of the case. Any deviation from this judicious approach can result in miscarriage of justice, either by subjecting innocent persons to unwarranted criminal proceedings or by dismissing legitimate grievances prematurely.³⁶

33 2022 (9) SCALE 67.

34 (2010) 6 SCC 1.

35 (2021) 10 SCC 598.

36 See for example *Vijay Kumar Ghai v. State of West Bengal* (2022) 7 SCC 124; *Sunita Palita v. Panchami Stone Quarry* (2022) 10 SCC 152; *Lalankumar Singh v. State of Maharashtra*, AIR 2022 SC 5151.

The question whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of section 190 (1)(b) of Cr PC can issue summons to any person not arraigned as an accused in the police report and whose name also does not feature in such report came to be addressed by the Supreme Court in *Nahar Singh v. State of Uttar Pradesh*.³⁷ In the present case, the appellant was not arraigned as an accused in the police report nor did his name figure in the FIR. However, his name had transpired from the statement made by the victim under section 164 of Cr PC. Based on this, the Magistrate after taking cognizance of the offence issued summons to the appellant which was challenged by him before the high court. The high court confirmed the decision of Magistrate and thereafter he approached the Supreme Court by way of an appeal. While dismissing the appeal the Supreme Court held that the jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report or the FIR. A statement made under section 164 Cr PC could also be considered for such purpose.

VIII TRIAL

The Supreme Court of India has consistently underscored the significance of criminal trials as a fundamental aspect of the justice delivery system. The Supreme Court has emphasized that procedural safeguards under Cr PC, such as the framing of charges, examination of witnesses, and the opportunity to present a defence, are not technicalities but essential components that ensure the fairness of criminal trials. During the period under review, the court delivered certain judgments that addressed significant aspects of criminal trials.

In *Kalicharan v. State of Uttar Pradesh*,³⁸ the Supreme Court dealt with an appeal filed by an accused whose conviction by the trial court had been upheld by the high court. The court set aside the conviction and acquitted the accused on two key grounds: (1) the failure to frame a proper charge in compliance with section 213 of Cr PC and (2) the omission by the trial judge to present material circumstances from the prosecution evidence to the accused during their examination under section 313 Cr PC. In its judgment, the court examined the scope and purpose of section 313 Cr PC and explained it in the following terms:

Questioning an accused under Section 313 CrPC is not an empty formality. The requirement of Section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused

37 (2022) 5 SCC 295.

38 Criminal Appeal No. 122 of 2021.

is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him.

Section 319 of the Cr PC empowers a court to summon a person as an accused during the course of an inquiry or trial if it appears from the evidence that such person has committed an offense for which they could be tried along with the existing accused. In *Sukhpal Singh Khaira v. State of Punjab*³⁹, a Constitution Bench of the Supreme Court was called upon to answer the following three questions in the realm of section 319 Cr PC: (1) Whether the trial court has the power under section 319 of Cr PC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?; (2) Whether the trial court has the power under section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?; (3) What are the guidelines that the competent court must follow while exercising power under section 319 CrPC? As regards the first question, the Court held that the power under section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. As regards the second question, the court observed that the trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion. The court thereafter issued the following guidelines which the competent court must follow while exercising power under section 319 Cr PC:⁴⁰

- (i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.
- (ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.
- (iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

39 (2023) 1 SCC 289. Decided on Dec. 5, 2022

40 *Sukhpal Singh Khaira v.State of Punjab* (2023) 1 SCC 289, para 41.

- (iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.
- (v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.
- (vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.
- (vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.
- (viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.
- (ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.
- (x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.
- (xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.
- (xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier.
 - (a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.
 - (b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

After referring to its earlier Orders in *State of Maharashtra v. Bandu*⁴¹ and *XYZ v. State of Maharashtra*⁴², the Supreme Court in *XYZ v. State of Madhya Pradesh*⁴³ emphasised on the duty and responsibility of trial courts while dealing with vulnerable witnesses including victims of sexual offences. According to the

41 (2018) 11 SCC 163.

42 (2022) 18 SCC 24.

43 (2023) 9 SCC 705.

Court, this duty can be discharged by the trial courts, *inter alia*, in the following manner:⁴⁴

- (i) Allowing proceedings to be conducted in camera, where appropriate, either under Section 327CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment/violence;
- (ii) Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;
- (iii) Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;
- (iv) Completing cross-examination in one sitting, as far as possible.

IX APPEAL

During the period under review, the legal position with respect to the jurisdiction of the High Court in cases of appeals against acquittals came to be addressed and reiterated by the Supreme Court. According to the Supreme Court an order of acquittal adds up to the presumption of innocence in favour of the accused. The appellate court has to be relatively slow in reversing an order of acquittal passed by a trial court. The presumption of innocence in favour of an accused gets strengthened by way of an order of acquittal. Such a presumption can be disturbed only by thorough scrutiny on the accepted legal parameters.⁴⁵

It is well within the power of the high court to enhance the sentence while dealing with an appeal against conviction. The power to enhance the sentence can even be exercised *suo motu* by the high court. In *Radheyshyam v. State of Rajasthan*,⁴⁶ the Supreme Court clarified that the high court cannot however enhance the sentence of the accused without putting the accused to prior notice.

In *Dhananjay Rai @ Guddu Rai v. State of Bihar*⁴⁷, the Supreme Court addressed the question whether an appeal against conviction filed by an accused under section 374 (2) CrPC can be dismissed on the ground that the accused is absconding. Expressing disagreement with the view taken in *Ram Naresh Yadav v.*

44 *XYZ v. State of Madhya Pradesh*, (2023) 9 SCC 705, para 34.

45 *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440. Also see *Sanjeev v. State of Himachal Pradesh* (2022) 6 SCC 294; *Ravi Sharma v. Govt. of NCT of Delhi*, (2022) 8 SCC 536; *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

46 Criminal Appeal No. 1248 of 2022.

47 Criminal Appeal No. 803 of 2017.

*State of Bihar*⁴⁸ and agreeing with the view taken in *Shyam Deo Pandey and others v. State of Bihar*,⁴⁹ the Supreme Court answered the question in the negative.

X EXERCISE OF INHERENT POWERS

During 2022 the Supreme Court delivered several judgments wherein the Court reiterated and clarified the scope of the power available to the High Courts under section 482 CrPC.

The exercise of inherent power under section 482 Cr PC is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice.⁵⁰In *Shafiya Khan @ Shakuntala Prajapati v. State of U. P.*⁵¹ the Court held that the inherent power available under section 482 Cr PC should be exercised to quash criminal proceedings very sparingly and with circumspection and that too in rarest of the rare cases. The court further reminded high courts that section 482 Cr PC does not confer any arbitrary jurisdiction on the said courts to act according to its whims and fancies.

In *Sunita Palita v. Panchami Stone Quarry*⁵², the court observed that the inherent jurisdiction under section 482 CrPC should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the provision.

The question whether the inherent power can be exercised to quash criminal proceedings relating to non-compoundable offences was also addressed by the Supreme Court in 2022. In *Daxaben v. State of Gujarat*⁵³ the court held that the inherent power of the high court under section 482 Cr PC is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences. According to the court, where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under section 482 Cr PC to quash the criminal proceedings. It was however pointed out by the Apex Court that in what cases the power to quash an FIR or a complaint or criminal proceedings upon compromise can be exercised would depend on the facts and circumstances of the case.

The scope of the inherent power under section 482 CrPC as well as the circumstances in which such power could be exercised was also discussed by the Supreme Court in judgments such as *Vijay Kumar Ghai v. State of West Bengal*⁵⁴ and *Ratish Babu Unnikrishnan v. State*.⁵⁵

48 AIR 1987 SC 1500.

49 (1971) 1 SCC 855.

50 *State of Maharashtra v. Maroti Kashinath Pimpalkar*, AIR 2022 SC 5595.

51 (2022) 4 SCC 549.

52 (2022) 10 SCC 152.

53 AIR 2022 SC 3530.

54 (2022) 7 SCC 124.

55 2022 (6) SCALE 794.

XI VICTIMS

During the period under review, the Supreme Court also had an occasion to accord attention to the rights of victims of crime, reaffirming their pivotal role in the criminal justice system. The court underscored that victims are not mere spectators but are entitled to a meaningful and participatory role in the criminal justice process.

In *Jagjeet Singh v. Ashish Mishra @ Monu*⁵⁶, while dealing with a bail matter, the court expressed its disappointment with the manner in which the high court had failed to acknowledge the right of the victims and granted bail to the accused without hearing the victim. According to the court, a victim cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. Where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing.

XII SENTENCING

During the review period, the Supreme Court also addressed several important aspects of the sentencing process. The court examined the principles that guide sentencing, emphasizing the need for a balanced approach that considers the nature of the offence, the circumstances of the offender, and the impact on the victim and society.

The judgments highlighted the significance of proportionality in sentencing, ensuring that the punishment fits the gravity of the crime while also taking into account mitigating factors. The Court reiterated the importance of individualized sentencing, recognizing that a one-size-fits-all approach may not serve the ends of justice.

In *Manoj and others v. State of Madhya Pradesh*,⁵⁷ the Supreme Court reiterated the legal position that the pre-sentence hearing contemplated under section 235(2), is not confined merely to oral hearing but intended to afford a real opportunity to the prosecution as well as the accused, to place on record facts and material relating to various factors on the question of sentence and if interested by either side, to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty.

In *Manoj*⁵⁸, the court also reminded that public opinion is neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial

56 (2022) 9 SCC 321.

57 2022 (9) SCALE 67.

58 *Manoj v. State of Madhya Pradesh* 2022 (9) SCALE 67.

restraint and play a balancing role when it comes to sentencing. The court observed that there is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage. For this, the court issued some practical guidelines to facilitate the collection of mitigating circumstances during the course of trial.

In *Pappu v. State of Uttar Pradesh*,⁵⁹ the Supreme Court took the position that the abhorrent nature of the crime alone cannot be the decisive factor for awarding death sentence and in that process commuted the death sentence into that of imprisonment for life, with the stipulation that the accused shall not be entitled to premature release or remission before undergoing actual imprisonment for a period of thirty years.

XIII CONCLUSION

The judgments on criminal procedure delivered by the Supreme Court in 2022 mark a significant contribution to the development of criminal jurisprudence in India. Through its rulings, the court has reaffirmed the importance of procedural safeguards while addressing the realities of contemporary law enforcement. As the legal landscape continues to evolve, these judgments serve as milestones shaping the jurisprudence on criminal procedure in India.

