11

CRIMINAL PROCEDURE

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I INTRODUCTION

THE CODE of Criminal Procedure, 1973 (CrPC) is a cornerstone of India's criminal justice system. It provides the machinery for the detection of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person and imposition of appropriate punishment on the guilty person. In addition, it also deals with prevention of offences, maintenance of wives, children and parents and public nuisances. The Cr PC also controls and regulates the working of the machinery set up for the investigation and trial of offences. Since the CrPC is complementary of the substantive criminal law, its failure would seriously affect the substantive criminal law which in turn would considerably affect the protection that it gives to society.

A significant development in the year 2023 was the enactment of three landmark laws aimed at reshaping and redefining the Indian criminal justice system. On December 21, 2023, the Parliament of India passed the Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). The laws received the assent of the President of India on December 25, 2023. However, they will only come into effect from a date to be notified by the Central Government. Once implemented, these laws will replace the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively. As of December 31, 2023, the BNSS as well as the other two laws have entered into force. Be that as it may, this survey does not address the reforms introduced by the BNSS. The details of these reforms will be discussed in the survey for the year in which the BNSS becomes operational.

The Supreme Court of India plays a critical role in shaping the interpretation and application of the Cr PC, with its decisions often influencing the trajectory of the law of criminal procedural in India. This survey aims to present a comprehensive overview of the most significant rulings on Cr PC delivered by the Supreme Court of India in 2023. Through an analysis of these decisions, the survey intends to

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offer a clearer understanding of how criminal procedural law in India is administered. For ease of reference, the cases are categorized under specific thematic sections, allowing for a more focused exploration of key legal developments.

II FIRST INFORMATION REPORT

The First Information Report (FIR) has a significant place in the overall framework of Indian criminal justice system. It sets the criminal justice process in motion and ensures that the investigating agency act upon the information regarding the commission of a cognizable offense. According to the settled legal position, an FIR should be lodged with the police at the earliest opportunity after the occurrence of a cognisable offence. The object of insisting upon prompt registration of FIR is to obtain early information regarding the circumstances in which the crime was committed. However, there can be certain occasions where prompt registration of an FIR may not be possible or feasible. Hence the Supreme Court has repeatedly emphasised on the need to adopt a realistic and pragmatic approach, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In *Sekaran* v. *State of T.N.*[1] the court reiterated the position of law and observed:[2]

> In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.

III INVESTIGATION

According to Section 57 Cr PC, a police officer is not permitted to detain an accused person arrested without a warrant for more than 24 hours. If the police officer considers it necessary to detain such accused person for a longer period for the purposes of investigation, he can do so only after obtaining a special order of a Magistrate under section 167. According to Section 167 Cr PC, whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by section 57, and there are grounds for believing that the accusation is well-founded, the officer in charge of the police station or the police officer making the investigation (if he is not below the rank of sub-inspector) is required to transmit a copy of the entries in the case diary to the nearest Judicial Magistrate and also at the same time forward the

1 (2024) 2 SCC 176.

2 *Id* at para. 15.

accused to such Magistrate. The Judicial Magistrate to whom the accused is so forwarded may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole. In *Central Bureau of Investigation* v. *Anupam J. Kulkarni*[3] a two Judge Bench of the Supreme Court had reiterated that remand to police custody should not be resorted to after 15 days of arrest. According to the court, custody after the expiry of 15 days can only be judicial custody during the rest of the period of 90 days or 60 days and that police custody if found necessary can be ordered only during the first period of 15 days. In *V. Senthil Balaji* v. *State*[4] a two Judge Bench of the Supreme Court expressed doubt about the above interpretation adopted by the Court in *Anupam J. Kulkarni.*[5] The court observed:[6]

> It is too well settled that a proviso has to be understood from the language used in the main provision and not vice versa. Proviso to Section 167 (2) CrPC, 1973 speaks of authorisation of detention of an accused person otherwise than in police custody beyond the period of 15 days, subject to his satisfaction. It further goes on to state that in any case the total period of custody, either police or judicial, shall not exceed 60 or 90 days, as the case may be. To understand this proviso one has to go back to the main provision particularly the words "*from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit", "for a term not exceeding 15 days in the whole*"……..The interpretation given by us to the main provision would give ample clarity to the proviso. Therefore, the period of 15 days being the maximum period that can be granted in favour of the police would span from time to time within the total period of 60 or 90 days, as the case may be. Any other interpretation would seriously impair the power of investigation. We may also hasten to add that the proviso merely reiterates the maximum period of 15 days, *qua* a custody in favour of the police while there is absolutely no mention of the first 15 days alone for the police custody.

In light of its differing interpretation of Section 167(2) Cr PC, the Bench felt that the judgment in *Anupam J. Kulkarni*[7] warranted reconsideration. Consequently, the matter was referred to a larger Bench of the Supreme Court.

In *V. Senthil Balaji* v. *State,*[8] the Supreme Court also clarified the scope of the term "custody" as appearing in Section 167 (2) Cr PC. According to the court, the term "custody" as appearing in the provision can only be interpreted to mean

3 (1992) 3 SCC 141.
4 (2024) 3 SCC 51.
5 *Supra* note 4.
6 *Supra* note 5 at para. 70.
7 *Supra* note 4.
8 *Supra* note 5.

"actual custody" and that the period of 15 days of police custody is to be counted only with respect to the period in actual custody of the police. Thus, according to the Court, curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of court not being the handiwork of investigating agency, would not act as a restriction. The court also clarified that the words "such custody" occurring in Section 167 (2) CrPC would include not only a police custody but also that of other investigating agencies.

In *Kailash Vijayvargiya* v. *Rajlakshmi Chaudhuri,*[9] the Supreme Court had an opportunity to reiterate the settled position and clarify the difference in the power of police to register and investigate an FIR under Section 154 (1) read with Section 157 Cr PC and the Magistrate's direction to register an FIR under Section 156 (3) Cr PC. In *Kailash Vijayvargiya*[10] the court also contrasted the power of the Magistrate to direct registration of an FIR under Section 156 (3) CrPC with the post-cognisance stage power under Section 202 CrPC.

In *Anant Thanur Karmuse* v. *State of Maharashtra,*[11] the Supreme Court held that the mere filing of the chargesheet and framing of the charge cannot be an impediment in ordering further investigation/re-investigation/de novo investigation, if the facts so warrant.

In *State through Central Bureau of Investigation* v. *Hemendhra Reddy*[12] the Supreme Court explained the meaning of the term "further investigation" and outlined the powers of investigating agencies to conduct further investigation under Section 173 (8) Cr PC. According to the court, even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out "further investigation." In other words, there is no bar against conducting further investigation under Section 173 (8) of the Cr PC after the final report submitted under Section 173 (2) of the CrPC has been accepted. Further, prior to carrying out further investigation under Section 173(8) Cr PC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed. In the Court's opinion, "further investigation" is merely a continuation of the earlier investigation. Hence, it cannot be said that the accused are being subjected to investigation twice. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. In the court's view, there is nothing in the Cr PC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173 (8) of the Cr PC.

While addressing the question whether a District Police Chief could have ordered "further investigation", the Supreme Court in *Peethambaran* v. *State of*

9 2023 SCC OnLine SC 569.

10 *Ibid.*

11 (2023) 5 SCC 802.

12 2023 SCC OnLine SC 515.

Kerala[13] reiterated the legal position that the power to order further investigation was vested in the concerned Magistrate or with a higher court and not with an investigating agency.

In *Bohatie Devi (Dead) Through LR* v. *The State of Uttar Pradesh*[14], the Supreme Court had to deal with a peculiar situation where the Home Secretary passed an order for reinvestigation by another agency *i.e.,* CBCID on the basis of a complaint submitted by the mother of an accused whose named figured in the chargesheet filed by the police and that too without obtaining the prior permission of the Magistrate. The court set aside the order passed by the Home Secretary by observing that such a scenario was unknown to law. The court noted that Section 173(3) read with Section 158 Cr PC does not permit the Home Secretary to order for further investigation or reinvestigation by another agency and that too without the permission of the Magistrate.

The practice of police filing closure report under Section 173 Cr PC in cases where the proceedings/FIRs have been quashed by the high court was deprecated by the Supreme Court in *State of Uttarakhand* v. *Umesh Kumar Sharma.*[15]

In *Saurav Das* v. *Union of India,*[16] the apex court dismissed a Public Interest Litigation filed by a petitioner praying for appropriate directions/orders directing the States to enable free public access to chargesheets and final reports filed as per Section 173 Cr PC. In the petition, the petitioner had placed reliance on the judgment of the Supreme Court in *Youth Bar Association of India* v. *Union of India*[17] wherein the court had issued directions for uploading the FIRs in the public domain. The court held that the direction in *Youth Bar Association*[18] case cannot be extended to chargesheets. The FIRs were directed to be publicly uploaded so that innocent accused are not harassed and they are able to get the relief from the competent court and are not taken by surprise. The directions issued by the Supreme Court in *Youth Bar Association*[19] were in favour of the accused, which cannot be stretched to the public at large so far as the chargesheets are concerned. According to the court, directing that all the challans/chargesheets filed under Section 173 Cr PC shall be put on public domain/websites of the state governments shall be contrary to the scheme of the Cr PC.

In *Central Bureau of Investigation* v. *Narottam Dhakad,*[20] the Supreme Court clarified that there is no specific provision in CrPC which requires the investigating agency to file the 173 report in the language of the court determined in accordance with Section 272 of Cr PC. Even if such a requirement is read into

13 2023 SCC OnLine SC 553.
14 2023 SCC OnLine SC 525
15 2023 SCC OnLine SC 635.
16 (2023) 11 SCC 154.
17 (2016) 9 SCC 473.
18 *Ibid.*
19 *Ibid.*
20 2023 SCC OnLine SC 1069.

section 173, *per se,* the proceedings will not be vitiated if the report is not in the language of the court. A charge sheet filed within the period provided under Section 167 of Cr PC in a language other than the language of the court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground. The court noted that providing translations will not be that difficult nowadays with the availability of various softwares and artificial intelligence tools for making translations. The courts can always direct the prosecution to provide a translated version of the charge sheet in such situations.

IV BAIL

In *Ravish Kumar* v. *State of Bihar,*[21] the Supreme Court noted the lack of consistency in the bail orders passed by the various high courts in India and offered suggestions to rectify the anomaly. The court observed:[22]

> [t]his Court notices that the format of orders by various High Courts in bail proceedings differs significantly. In many instances, the orders do not contain any description of the proceedings pending before the trial court there; at times, no advertence to the nature of the offence alleged in the FIR etc. This Court is of the opinion that in bail/anticipatory bail matters, High Courts should endeavour to ensure that all basic essentials (i.e. FIR No., Date, the concerned police station and the offences allegedly committed etc.) are duly recorded or reflected in the format of the order. This order shall be circulated to all the High Courts through their Registrars

In *Priya Indoria* v. *State of Karnataka,*[23] the Supreme Court was called upon to answer the question whether an accused who is residing in a third State or who is present there for a legitimate purpose should be enabled to seek the relief of limited anticipatory bail of transitory nature in that State when the offence was committed and the FIR was registered in another State. The court answered the question in the affirmative on the ground that denying anticipatory bail to an accused in such situations would amount to violation of personal liberty as guaranteed by Article 21 of the Constitution of India. However, the court made it clear that the anticipatory bail so obtained which is commonly referred to as limited/transitory anticipatory bail shall be of limited duration and the accused must seek full-fledged anticipatory bail from the court of competent jurisdiction at the earliest. In other words, an accused cannot seek full-fledged anticipatory bail in a State where he is a resident when the FIR has been registered in a different State.

21 Special Leave Petition (Criminal) No. 555 of 2023. Decided on Mar. 15, 2023.

22 *Id.* at para. 1.

23 (2024) 4 SCC 749.

Cautioning the high courts and courts of sessions to exercise due vigilance against abuse of process or forum shopping in the context of applications for transitory anticipatory bail, the Court in *Priya Indoria*[24] observed:[25]

> We are conscious that this may also lead the accused to choose the court of his choice for seeking anticipatory bail. Forum shopping may become the order of the day as the accused would choose the most convenient court for seeking anticipatory bail. This would also make the concept of territorial jurisdiction which is of importance under the CrPC pale into insignificance. Therefore, in order to avoid the abuse of the process of the court as well as the law by the accused, it is necessary for the court before which the plea for anticipatory bail is made, to ascertain the territorial connection or proximity between the accused and the territorial jurisdiction of the court which is approached for seeking such a relief. Such a link with the territorial jurisdiction of the court could be by way of place of residence or occupation/work/profession. By this, we imply that the accused cannot travel to any other State only for the purpose of seeking anticipatory bail. The reason as to why he is seeking such bail from a court within whose territorial jurisdiction the FIR has not been filed must be made clear and explicit to such a court. Also, there must be a reason to believe or an imminent apprehension of arrest for a non-bailable offence made out by the accused for approaching the court within whose territorial jurisdiction the FIR is not lodged or the inability to approach the court where the FIR is lodged immediately.

The Supreme Court has repeatedly stated that the process of criminal law, especially when it comes to the granting of bail, is not akin to proceedings for the recovery of money. In *Bimla Tiwari* v. *State of Bihar*[26] the high court granted anticipatory bail to the accused, who were alleged of committing offences under Sections 406 and 420 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, after noting that one of the accused had offered to pay a sum of seventy-five thousand rupees. However, upon appeal, the Supreme Court upheld the high court's decision to grant anticipatory bail on merits but annulled the condition imposed by the high court requiring the payment of seventy-five thousand rupees. According to the court, the question as to whether pre-arrest bail, or for that matter regular bail, is to be granted or not in a given case is required to be examined and the discretion is required to be exercised by the court with reference to the material on record and the parameters governing bail considerations. Thus, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved

24 *Ibid.*

25 *Id.* at para 97.

26 (2023) 11 SCC 607.

or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

V INITIATION OF PROCEEDINGS

In *Cardinal Mar George Alencherry* v. *State of Kerala*[27] the Supreme Court had an occasion to highlight the Magistrate's duty to carefully examine the allegations in a complaint before issuing summons to an accused. According to the court:[28]

> [s]ummoning of an accused is a serious matter and therefore the Magistrate before issuing the summons to the accused is obliged to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face any frivolous complaint, nonetheless one of the objects of Section 202 Cr.P.C. is also to enable the Magistrate to prosecute a person or persons against whom grave allegations are made. Just as it is necessary to curtail vexatious and frivolous complaints against innocent persons, it is equally essential to punish the guilty after conducting a fair trial.

VI COMPOUNDING OF OFFENCES

In discussions pertaining to criminal law, the terms "compromise" and "compounding" are often used without any distinction. This has often led to confusion and ambiguity in understanding their legal implications. In *Ajay Kumar Radheshyam Goenka* v. *Tourism Finance Corporation of India Limited,*[29] the Supreme Court distinguished and clarified the scope of the two terms. According to the court, any dispute can be compromised between the parties if the terms are not illegal. But only a compoundable offence allowed by law can be compounded. In a compromise, consensus between the parties to give and take is more important and, in a compounding, decision of the victim of the offence not to prosecute and not to continue with prosecution is more important.

VII FRAMING OF CHARGES

The need for trial courts to be very meticulous when it comes to framing of charges was emphasised by the Supreme Court in *Soundarajan* v. *State Represented by the Inspector of Police, Vigilance Anticorruption, Dindigul.*[30] According to the Court, any error or omission in framing the charges may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section (2) of Section 464 of Cr PC. Even the public prosecutor, according to the court, has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the court to frame an appropriate charge.

27 2023 SCC OnLine SC 286.

28 *Id.* at para. 18.

29 (2023) 10 SCC 545.

30 2023 SCC OnLine SC 424.

The question whether the accused has any right to file any material or document at the stage of framing of charge was answered in the negative by the Supreme Court of India in *State of Gujarat* v. *Dilipsinh Kishorsinh Rao*.[31] According to the court, the expression "the record of the case" used in Section 227 Cr PC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

VIII TRIAL

In *Manoj Kumar Soni* v. *State of Madhya Pradesh,*[32] the Supreme Court cautioned trial courts against recording 313 statements in a casual and cursory manner. The court made it clear that what holds importance is not the mere quantity of questions posed to the accused but rather the content and manner in which they are framed.

Section 319 of Cr PC deals with the power of a court to summon additional persons as accused during the trial of an offense. In *Yashodhan Singh* v. *State of Uttar Pradesh*[34], the Supreme Court was called upon to answer the question whether a person so summoned under Section 319 Cr PC need to be given opportunity of hearing before being added as an accused. Answering the question in the negative, the court observed:[33]

> Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 of the Cr.P.C., he should be given an opportunity of being heard. That is not the mandate of law inasmuch as Section 319 clearly uses the expression "to proceed" which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody. A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before been added as an

31 2023 SCC OnLine SC 1294.

32 Criminal Appeal No. 1030 of 2023. Decided on Aug. 11, 2023.

33 (2023) 9 SCC 108.

34 *Id.* at para. 38.

> accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 Cr .P.C.

In *Yashodhan Singh*[35] the court also clarified that a person who is summoned as an accused under Section 319 Cr PC cannot seek discharge as the court would have exercised the power under Section 319 Cr PC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

IX TRANSFER OF CRIMINAL CASES

During 2023, the Supreme Court delivered a few judgments which addressed the scope of the power to transfer criminal cases from one place to another. In *Afjal Ali Shah @ Abjal Shaukat Sha* v. *State of West Bengal,*[36] the court took the position that transfers may be allowed only in exceptional cases considering the fact that transfers may cast unnecessary aspersions on the State Judiciary and the prosecution agency. This position was also taken in *Neelam Pandey* v. *Rahul Shukla.*[37] In *K. A. Rauf Sherif* v. *Directorate of Enforcement,*[38] the court made it clear that the fact that most of the accused and witnesses are from A state is not a ground to transfer a case from B state to A state.

X SENTENCING

It is now a well settled legal position that the punishment of "life-imprisonment" means imprisonment for the rest of the life of the prisoner, subject to the right to claim remission etc as provided under Articles 72 and 161 of the Constitution of India and Section 432 Cr PC. This legal position came to be reiterated by the Supreme Court in *Ravinder Singh* v. *State Government of NCT of Delhi.*[39] In *Ravinder Singh,*[40] the court was called upon to adjudicate on the legality of imposition of life imprisonment for a specified minimum non-remittable term. After holding that it was permissible to impose such sentence, the court stated that it could only be done by the Supreme Court and the high courts. Consequently, a restriction imposed by an Additional Sessions Judge to the effect that the term of life imprisonment of an accused found guilty of an offence should be at least 20 years and that he should not be given any clemency till then was set aside by the Supreme Court.

35 *Supra* note 34.

36 Transfer Petition (Criminal) No. 409 of 2021. Decided on Mar. 17, 2023.

37 2023 SCC OnLine SC 836.

38 Transfer Petition (Criminal) No. 89 of 2021. Decided on April 10, 2023.

39 2023 SCC OnLine SC 491.

40 *Ibid.*

XI APPEAL

Appeal against an order of acquittal is an extraordinary remedy. Where the initial presumption in favour of the accused has been duly vindicated by a decision of a competent court, an appeal against such a decision of acquittal means putting the interests of the accused once again in serious jeopardy. Therefore, the restrictions on the preferring of an appeal against acquittal as envisaged by Section 378 CrPC are intended to safeguard the interests of the accused person and save him from personal vindictiveness. The Supreme Court has, over the years, through a catena of judicial decisions thrown light on the duty of an appellate court considering an appeal against acquittal. During the year under review, the Supreme Court had an occasion to address this aspect in certain cases. In *H.D. Sundara* v. *State of Karnataka*[41] the Supreme Court reiterated the legal position in the following terms:[42]

> Normally, when an appellate court exercises appellate jurisdiction, the duty of the appellate court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The appellate court normally ascertains whether the decision under challenge is legal or illegal. But while dealing with an appeal against acquittal, the appellate court cannot examine the impugned judgment……..only to find out whether the view taken was correct or incorrect. After reappreciating the oral and documentary evidence, the appellate court must first decide whether the trial court's view was a possible view. The appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion. Thus, the appellate court must see whether the view taken by the trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record. If the view taken by the trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken.

XII REMISSION

During 2023, the Supreme Court also delivered certain judgments on remission/ premature release of prisoners. In *Hitesh* v. *State of Gujarat,*[43] the Supreme Court held that in determining the entitlement of a convict for premature release, the policy of the state government on the date of conviction is the determinative factor. However, if the policy prevalent on the date of conviction is

41 (2023) 9 SCC 581.

42 *Id.* at para 9.

43 2023 SCC OnLine SC 1762.

subsequently liberalised the liberalised policy should be taken into account by the State while taking a decision on the premature release of an accused.

A similar approach was taken by the Supreme Court in *Rajkumar* v. *State of Uttar Pradesh.*[44] In that case the court held that the case of a convict for premature release is governed by the applicable policy on the date of conviction and it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. The State, according to the court, must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination.

XIII INHERENT POWER OF HIGH COURTS

In *Shiv Kumar Sharma* v. *State of Madhya Pradesh,*[45] the Supreme Court had an opportunity to set aside a strange order passed by the High Court of Madhya Pradesh while disposing of a petition filed under Section 482 Cr PC. The petitioner had approached the high court with a prayer to quash an FIR registered against him. The high court rejected the said petition without going into the merits of the case. Strangely, the high court while disposing of the petition required the investigating officer to give opportunity to the petitioner to explain the material collected against him during the investigation before submission of the final report under Section 173 of Cr PC. The Supreme Court found the said direction to be very strange and contrary to law.

In *Cardinal Mar George Alencherry* v. *State of Kerala,*[46] the Supreme Court criticised the overzealous approach adopted by the High Court while exercising its jurisdiction under Section 482 Cr PC. In this case, after dismissing the petition filed under Section 482 Cr PC, the high court invoked its *suo motu* jurisdiction directing the state government to make detailed inquiry with regard to the execution of sale deed and settlement deed in respect of some of the properties sold out by the petitioner, and find out whether the said properties belonged to the government or were Poramboke land, and whether the said settlement deed was created with the aim to manipulate a document of title over government land. Thereafter, the judge retained the matters with him even after the change of roster, and continued to pass the orders one after the other on the issues which were neither the subject matter of the main petitions under Section 482 nor were argued by the concerned advocates for the parties. The concerned judge also assumed his plenary-advisory role by calling upon and advising the state government to legislate a comprehensive law addressing the issues pertaining to the legal status of unincorporated organisation acting under the guise of religion or charity. On non-submission of the second report by the State, the high court directed the concerned officer to appear in person, and directed the Registry to implead CBI as an additional

44 2023 SCC OnLine SC 990.

45 Criminal Appeal No. 3347 of 2023. Decided on Oct. 30, 2023.

46 *Supra* note 28.

respondent in the main case, though the same was already disposed of. Noting that the high court had travelled not only beyond the scope and ambit of Section 482 Cr PC and of Article 226 of the Constitution of India, but had crossed all the boundaries of judicial activism and judicial restraint, the court observed:[47]

> [t]he jurisprudential enthusiasm and wisdom for doing the substantial justice has to be applied by the courts within the permissible limits. The belief of self-righteousness or smugness of the High Court in exercise of its powers of judicial review should not overawe the other authorities discharging their statutory functions. We may not have to remind the High Courts that judicial restraint is a virtue, and the predilections of individual judges, howsoever well intentioned, cannot be permitted to be operated in utter disregard of the well-recognized judicial principles governing uniform application of law. Unwarranted judicial activism may cause uncertainty or confusion not only in the mind of the authorities but also in the mind of the litigants.

XIV CONCLUSION

In conclusion, the judgments on CrPC delivered by the Supreme Court of India in 2023 mark a significant milestone in the development of criminal procedure law in India. They reflect the continuing role of the court in shaping the criminal justice system, ensuring that it remains responsive to the needs of society. These judgments will undoubtedly serve as key reference points for future legal reforms.

47 *Id.,* at para. 29.