

**A COMPENDIUM OF RECENT
SUPREME COURT CASES**

ON CRIMINAL TRIAL

With

Patna High Court Judgements

On

Service Matters

Preface

This compendium is compiled under the guidance and patronage of **Sri Chaitanya Prasad, Additional Chief Secretary, Home Department Government of Bihar**. In the words of Thomas Jefferson “The study of law qualifies a man to be useful to himself, to his neighbours and to the Public.” A lawyer is required to navigate and interpret the law to separate the gold from the dross. This includes navigation of judgments pronounced by the Hon’ble Apex court and the High Courts, which act as source of law through the mechanism of precedent. There are numerous publications publishing judgments in various law reports. However, such reports have their own limitations.

Law reports do not select judgments on the basis of their legal significance. In view of the limitations of law reports, we thought it appropriate to publish a compendium containing recent leading cases related to criminal justice system to enlighten the officers belonging to Prosecution Service.

This compendium of cases is intended to provide a ready reference, comprehensive in coverage of legal issues related to criminal justice system in clear and concise manner. The subject matter has been arranged chapter wise according to stages of Criminal Trial. Leading cases have been discussed to encourage the officers to teach themselves, to stimulate their critical powers and to examine the legal provisions in correct perspective.

One more illuminating feature of the compendium is that the relevant provisions of Criminal Procedure Code has been discussed according to stages of criminal trial beginning from FIR to conclusion of trial by conviction or acquittal. At every stage, recent leading cases are discussed to enable the intended reader to comprehend the subject matter easily. Commentaries on the important sections of the Cr.P.C. are given

detailing the importance of the subject matter supported by leading case laws.

I also extend my sincere thanks to Smt. K.Suhita. Anupam, Special Secretary, Department of Home, Govt. of Bihar for her valuable support in the preparation of this work.

I also express my sincere gratitude to my Colleagues Anil Kumar Roy, SDPO (S.G.) and Sri Bibek Kumar Gupta, SDPO (S.G.) and Sushil Kumar Shukla, A.P.O for their valuable assistance.

Lastly, this work could not have been possible without the help of Shri Umar Farooque (IT Manager) and Technical Cell, Home Department who deserve special thanks. Hope this work shall be able to meet its purpose



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Disclaimer- Best efforts have been made to rule out the likelihood of any error. However, if any discrepancy appears it is suggested to refer to the original judgment by means of the given link.

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94.	Rajeev Kourav v. Baisahab; AIR 2020 SC 909;Criminal Appeal No. 232 of 2020. Date of Judgment – 11.02.2020. -Whether the statements	

	recorded u/s 161 Cr.P.C. can be considered by the High Court while adjudicating a petition filed u/s 482 Cr.P.C. for quashing the FIR?	
95.	State of MP v. Yogendra Singh Jadon and Anr.; AIR 2020 SC 911; Criminal Appeal No. 175 of 2020. Date of Judgment – 31.01.2020. -Whether in the exercise of powers u/s 482 Cr.P.C the High Court can quash the allegations pertaining to offence under 420 IPC, when the accused is also charged with offences under the Prevention of Corruption Act, 1988?	

SPECIAL ACTS

96.	Vijay Madan Lal Chaudhary Vs Union of India; SLP (Crl.) No. 4634/2014; Date of Judgment- 27.07.2022. -Constitutional validity of several provisions of Prevention of Money Laundering Act (PMLA).	
97.	S. Rajasekaran Vs union of India; W.P.(C) No.295/2012, Date of Interim order-22.04.2014 and date of next hearing-06.02.2023. -Modalities for implementing the provisions of section 136 A of the MV Act.	
98.	Venkateshwaran Vs. P. Bakthavatchalam; Crl. Apl. No.1555/2022, Date of Judgment- 05.01.2023. -Private Civil dispute converted to Criminal Proceedings Supreme Court quashes complaint alleging offence under SC/ST Act-	
99.	Jayant Kumar Vs. The State of Madhya Pradesh; Crl. Appl. No. 824-825/2020- Date of Judgement-03.12.2020. -Whether in view of bar u/s 22 of the Mines & Minerals (Development and Regulation) Act, 1957, the order passed by the learned Magistrate directing to register the FIR's unsustainable and deserves to be quashed.	
100.	Prathvi Raj Chauhan Vs. Union of India; W.P., (C). No. 1015/2018- Date of Judgment-10.02.2020. -(i) Whether the SC/ST Act is violating the fundamental rights? (ii) Whether anticipatory bail u/s 438 of Cr. PC for offences registered under Atrocities Act, 1989 is legally valid?	

	(iii) Whether the Schedule Cast and Schedule Tribes (Prevention of Atrocities) Amendment Act of 2018 is constitutionally valid?	
101.	Bikramjit Singh v. State Of Punjab; Criminal Appeal No. 667 of 2020; Date of Judgment – 12.10.2020. -Whether Special Court alone had the exclusive jurisdiction to extend the time for filing the charge sheet from 90 days to 180 days under Section 43-D (2)(b) of the UAPA? Whether subsequent filing of Chargesheet extinguishes indefeasible right of Accused who applied for 'Default Bail'?	
102.	Rizwan Khan vs. State of Chhattisgarh; AIR 2020 SC 4297. Criminal Appeal No. 580 of 2020. Date of Judgment – 10.09.2020. -Whether it is essential to prove the ownership of vehicle for proving the commission of offence under NDPS Act?	
103.	Tofan Singh v. State of Tamil Nadu; Criminal Appeal No. 152/2013. Date of Judgment – 29.10.2020. -Whether an officer “empowered under Section 42 of the NDPS Act” and/or “the officer empowered under Section 53 of the NDPS Act” are “Police Officers” and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act? Whether the confessional statement recorded by the officer in exercise of the powers conferred u/s 67 of the NDPS Act would be capable of being used as substantive evidence to convict an accused?”	

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104.	Prabhakar Tewari v. State of U.P.;Criminal Appeal No.153-154 of 2020. Date of Judgment – 24.01.2020. - Can the gravity & seriousness of alleged offence alone be the basis to refuse bail?	
105.	Aishwarya Atul Pusalkar vs. Maharashtra Housing and Area Development Authority; AIR 2020 SC 4238;Civil Appeal No. 7231 of 2012. Date of Judgment – 27.04.2020. -Builder discharging his obligation by accommodating original owners in the redeveloped	

	premise. Can the wife invoke the writ jurisdiction to enforce her rights to matrimonial home against the builder, if her husband does not permit her to reside in the allocated portions?	
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MAINTENANCE U/S 125 CR. P. CODE

106.	<u>Sanjeev Kapoor v. Chandana Kapoor &Ors.; AIR 2020 SC 1064;Criminal Appeal No. 286 of 2020; Date of Judgment – 19.02.2020.</u> -Whether the order of maintenance passed u/s 125 Cr.P.C. be subsequently altered/modified or cancelled by the Magistrate?	
107.	<u>Rajesh vs. Neha &Anr.; Criminal Appeal No. 730/2020; Date of Judgment – 04.11.2020.</u> -Important judgment on determination and payment of maintenance under various matrimonial laws.	
108.	<u>Rakesh Malhotra vs. Krishna Malhotra; Criminal Appeal No(s).246-247/2020. Date of Judgment – 07.02.2020.</u> -Whether the wife can file the application for maintenance u/s 125 CrPC after being granted permanent alimony u/s 25 Hindu Marriage Act?	
109.	<u>Kiran Tomar v State of Uttar Pradesh; SLP Criminal No. 8768 of 2022; Date of Judgment 31.10.2022.</u> -Whether Income Tax Return can be a decisive guide to determine relief under section 125 Cr. P Code	
110.	<u>Anju Garg v. Deepak Kumar; Criminal Appeal No. 1693 of 2022; Date of Judgment:28.09.2022.</u> - Whether having no source of income can be a ground to refuse mainatenance u/s 125 Cr p code?	

PLEA BARGAINING

111.	Suo Moto Writ Petition (Crl.) No. 04/2021 In Re: Policy Strategy for grant of Bail. -Disposal of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and under the Probation of Offenders act, 1958.	
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112.	Ruhi vs. Anees Ahmed; Criminal Appeal 7 of 2020; Date of Judgment – 06.01.2020. -Whether the court, within whose territorial jurisdiction wife resides after leaving matrimonial home, can entertain complaints under 498A of IPC?	
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MEDICAL EXAMINATION OF ACCUSED

113.	Chotku v. State Of Uttar Pradesh; Criminal Appeal No. 361-362 of 2018; Date of Judgment 28.09.2022. -Whether medical examination under section 53A is mandatory?	
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114.	Mohd. Abid v Ravi Naresh ; SLP Criminal No. 5444 of 2022. - Ambit of criminal proceedings under U/s 145 Cr P Code	
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115.	<u>Ramanand Singh vs The State Of Bihar And Ors; on 12 July, 2021</u> <u>Patna High Court in CWJC No.19034 of 2015.</u> -Effect - Deputation of a clerk as Presenting Officer in absence of Presenting Officer appointed by Disciplinary Authority.	
116.	<u>SarvjeetKumar@Sarbjee Kumar vs The State Of Bihar And Ors on 22 April, 2019;Patna High Court L.P.A No.73 of 2018 dt.22-04-2019.</u> -Whether the order of the learned Single Judge is correct, whereby the learned Single Judge has proceeded to dismiss the writ petition primarily on two grounds, firstly, that the dismissal would operate as res judicata and, even otherwise, a mere acquittal in a criminal case, on the charges which are stated to be similar, will not automatically end up in the exoneration of an employee who has faced disciplinary proceedings on the basis thereof.	
117.	<u>The State Of Bihar &Ors vs Moti Lal on 2 January, 2019; Patna High Court LPA No.1661 of 2018 dt.02-01-2019.</u> -The learned Single Judge has committed an error in allowing the writ petition in spite of the fact that there was ample material on record, including evidence, which remained unrebutted and, therefore, once the charges had been found to be proved and there was no procedural error, there was no occasion to allow the writ petition and set aside the punishment order of compulsory retirement.	
118.	<u>The State Of Bihar And Ors vs Sanjay Kumar Singh on 11 February, 2019;Patna High Court LPA No.1583 of 2017 dt.11-02-2019.</u> -The learned Single Judge while proceeding to quash the punishment order of the respondent and imposed a cost also in view of the law laid down in the case of Shanti Sports Club and another Versus Union of India and others, reported (2009) 15 SCC 705, paragraphs 43 to 46.	
119.	<u>Shailendra Kumar Sinha vs The State Of Bihar &Ors on 16 February, 2017;Patna High Court, CWJC No.12138 of 2007 dt.16-02-2017 12.</u> -Dismissal order passed without	

	considering the grounds or cause shown by the delinquent, the order shall be deemed to be vitiated on the ground of violation of principles of natural justice and fair play.	
120.	<u>Dhanu Hambrum vs The State Of Bihar And Ors on 24 January, 2019;Patna High Court LPA No.1273 of 2018 dt.24-01-2019.</u> -Disciplinary proceedings and Criminal Proceedings are different and mere acquittal in criminal case can't vitiate disciplinary proceedings. Doctrine of proportionality.	
121.	<u>Wakil Singh vs The State Of Bihar &Ors on 31 July, 2018;Patna High Court;Civil Writ Jurisdiction Case No.7772 of 2017.</u> -For staying the departmental proceeding till disposal of the criminal proceeding initiated against the petitioner.	
122.	<u>Jagat Lal vs The State Of Bihar &Ors on 1 April, 2014;Patna High Court; Letters Patent Appeal No.710 of 2012; InCivil Writ Jurisdiction Case No. 1427 of 2001.</u> -The order of punishment has been made without following due procedure and the entire inquiry is vitiated on account of violation of principles of natural justice.	
123.	<u>Ramashish Kumar vs The State Of Bihar &Ors on 30 July, 2012;Patna High Court; Civil Writ Jurisdiction Case No.1646 of 2003.</u> -Dismissal from service on the ground of misconduct and on quantum of punishment.	
124.	<u>The State Of Bihar &Ors vs Shanti Kumari &Ors on 23 February, 2018 Letters Patent Appeal No.247 of 2015; In Civil Writ Jurisdiction Case No. 9636 of 2008.</u> -The disciplinary proceedings was held abated and the substituted heirs of the deceased Government servant were allowed the consequential benefits	
125.	<u>Priya Ranjan Kumar vs The Union Of India &Ors on 14 September, 2016;Patna High Court CWJC No.378 of 2011 dt.14-09-2016.</u> -Dismissal due to absence of the petitioner from duty for a long period on false medical ground and not participated in departmental enquiry.	
126.	<u>Awadhesh Singh vs The State Of Bihar &Ors on 18 August, 2017Patna High Court, Civil Writ Jurisdiction Case No.15593 of 2016.</u> -Failure of the disciplinary	

	authority to serve the charge memo on the petitioner within the stipulated period of 90 days, with reference to Rule 9 (7) of the Bihar Patna High Court CWJC No.15593 of 2016 dt.18-08-2017 Government Servants (Classification, Control and Appeal) Rules, 2005.	
127.	Krishna Mohan Prasad vs The State Of Bihar &Ors on 24 March, 2015 Patna High Court Civil Writ Jurisdiction Case No.148 of 1999. -Orders imposing punishment apparently non-speaking, cryptic and appear to have been passed in most casual manner.	
128.	Kamendar Kumar Kamesh vs The State Of Bihar &Ors on 27 July, 2017; Patna High Court Civil Writ Jurisdiction Case No.11890 of 2016. -Mandatory stipulations present under rule 18(2) and (3) of 'the disciplinary rules' has not been followed by the disciplinary authority while issuing the order of penalty.	

ROLE OF PUBLIC PROSECUTOR

129.	Manoj v State of Madhya Pradesh, CRIMINAL APPEAL NOS. 248-250 OF 2015 Date of Judgment 20.05.2022. -Role of Public Prosecutor in a criminal prosecution	
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VALIDITY OF FIR U/S 66A I T ACT

130.	Peoples Union for Civil Liberties Vs. Union of India ;M.A. No.-901/2021 in W.P. (Crl.) No.-19/2013 - Date of Judgement-12.10.2022. -Validity of FIR despite Section – 66A of the IT Act, 2000 being declared unconstitutional.	
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From FIR to Judgment

Criminal Law is set in motion by any person by giving information to the Station House Officer of the Police Station or to the Court. Whenever any Police Officer i.e. Station House Officer receives any information about the Commission of a cognizable offence, he shall reduce it into writing and forward it to the concerned Jurisdictional Magistrate. The Information can be given to the nearest Police Station. It is not necessary that we can only give this information to the Police Station under which the crime has been committed. The police have to note the information no matter under which Police Station the crime has been committed. This type of FIR is called Zero FIR. The police notes the information and send it to the Police Station of that concerned area.

Chapter XII (Section 154-176) of the Code of Criminal Procedure, 1973 deals with the information to the police and their powers to investigate.

Different stages of Criminal Trial

1. First Information Report: - FIR is registered under section 154 of the Code of Criminal Procedure. FIR is the primary information to nearest Police Station about the cognizable offence either by the aggrieved party or his /her /their parents, relatives or by any friend or by any other person who has knowledge that cognizable offence has happened. Such information can also be given via telephone, letter or E-mail.

Lalita Kumari versus the State of Uttar Pradesh is a landmark decision in the field of Criminal Justice system. The important issue which arises for consideration in this matter before the Hon'ble Supreme Court is that whether a Police Officer is bound to register FIR upon receiving any information relating Commission of a cognizable offence under Section 154 of the Code of Criminal Procedure or the Police Officer has the power to conduct preliminary enquiry in order to verify the truth of such information before institution of FIR. The Supreme Court held: -

- (i) Registration of FIR is mandatory under section 154 of the code if the information discloses Commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

- (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary may be conducted only to ascertain whether cognizable offence is disclosed or not
- (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The Police Officer cannot avoid his duty of registering offence. If cognizable offence is disclosed, action must be taken against erring officers who did not register the FIR, if information received by him discloses a cognizable offence.
- (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under :-

- (a) Matrimonial disputes / family disputes
- (b) Commercial Offences
- (c) Medical negligence cases
- (d) Corruption cases and
- (e) Cases where there is abnormal delay / laches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

- (vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made in a time bound manner and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary Entry.
- (viii) Since the General Diary / Station Diary/ Daily Diary is the record of all information received in a Police Station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and

meticulously reflected in this case diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

Consequences of non-registration of FIR

The Police Officer who refuses to register a FIR in case of cognizable cases may face several consequences owing to their inaction. Section 166 of the Indian Penal Code lays down punishment for a public servant who fails to record information. Specially, sub section (3) of the section provides that failure on the part of a public servant to register any information under section 154 (1) with relation to the offences under section 326 A , 326B, 354, 354B, 370, 370A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E or 509 of the IPC would attract this section and the said public servant shall be punished with rigorous imprisonment for a term which must not be less than 6 months but may extend to 2 years, and he shall also be liable to fine.

It is noteworthy that the FIR is not a substantive piece of evidence. It can be used for contradiction and corroboration of the statement of the author of FIR in Court. But this contradiction has not been put by the defence counsel in cross examination to this witness. Since no opportunity was given to this witness to explain the same, therefore appellants cannot get benefit of this contradiction.

2. Investigation: - Investigation into allegations relating to Commission of Cognizable offence starts on information given to an officer - incharge of a Police Station recorded under section 154 of the Code. The term Investigation is defined in Criminal Procedure Code. Section 2 (h) of Cr.P.C. “investigation includes all the proceedings under this Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”

The Supreme Court in the case of Nasima Vs. The State of Uttar Pradesh by order dated 21-4-2022, passed in S.L.P. (Cri) No. 551/2022 has held as under: The term "investigation" as referred to under Section 2(h) of the Code includes collection of evidence conducted by the police officer or by any person who is authorized by the Magistrate on this behalf and that includes search for material evidence and facts to find out whether an offence has been committed by the accused or not? The fair investigation is the

backbone of criminal justice system and the object of the investigation is to search for the truth so that it would help in meeting the ends of justice by way of fair trial in the Court. At the same time, the need to ensure fair investigation of crime is undoubtedly imperative because it protects at one level the rights of the victim and the fundamental rights of every citizen in ensuring that crime is investigated and dealt with in accordance with law.

Section 155 of Cr.PC says that if the information given to the police is related to a non cognizable offence, then the information is written in the non cognizable report registered and the informant is referred to the Magistrate. Section 156 of Criminal Procedure Code says that any officer in-charge of Police Station may, without the order of a Magistrate, investigate any cognizable case which a Court having Jurisdiction over the local area within the limits of such Station would have power to enquire into or try under the provisions of chapter XIII. Section-157 lays down that if, from information received or otherwise, an Officer In-charge of a police station has “reason to suspect the commission of an offence” which he is empowered under section-156 to investigate, he shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary to take measures for the discovery and arrest of the offender. Section-160 to 163 deals with the power of the police officer making an investigation. Section 165 and 166 confer power upon a police officer making investigation to search or cause search to be made. Section-169 says that if the investigating officer finds that there is no evidence against particular accused he has simply to release him after taking a bond from him under this section. Section-170 says that if the investigating officer finds sufficient evidence or reasonable ground, he shall forward the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him to trial. Sub-section (2) of section-173 says that as soon as the investigation is completed, the officer in-charge of the police station shall forward it to a magistrate empowered to take cognizance of the offence on a police report.

A three-Judge Bench of the Hon’ble Supreme Court in *H.N. Rishbud v. State of Delhi*, while dealing with "investigation", has stated that under the Code, investigation consists generally of the following steps: (AIR p. 201, para 5)

- "(1) proceeding to the spot,
- (2) ascertainment of the facts and circumstances of the case,
- (3) discovery and arrest of the suspected offender,

- (4) collection of evidence relating to the commission of the offence which may consist of: (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and
- (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."

In State of Telangana Versus Habis Abdullah Jeelani the Hon'ble Supreme Court again reiterated that the Police have statutory right to investigate under Section 154 Cr.PC, without any interference or direction.

In case of non cognizable offences registering FIR without the order of the Court is illegal. If the information discloses both cognizable and non cognizable offence by operation of section 155 (4) of Cr.PC. the case shall be deemed to be cognizable offence.

If the Magistrate directs the police to investigate into a cognizable offence, then Investigating Officer can do so as per section of 156 (3) of Cr. PC.

Investigation should be completed within 24 hours: - As per section 57 of CR.PC no person shall be detained in Police custody without warrant beyond 24 hours. The provision of 167 Cr. P.C is to be read as supplementary to those contained in section 57 of Cr. P.C. If the investigation is not completed within 24 hours, the accused shall be remanded to custody either judicial or police custody. Police custody for a maximum period of first 15 days of such custody. If such investigation is not completed within mandatory period of 90 or 60 days as the case may be then the accused is entitled to get default bail (section-167).

It is beneficial to discuss certain aspects of the investigation which is relevant for understanding the provisions of the Code:-

- (a) Cognizance :- Though, the expression "taking cognizance" has not been defined in the Criminal Procedure Code; however when the Magistrate applies his mind for proceeding against the person concerned, he is said to have taken cognizance of an offence. Formation of such opinion is to be stated on the basis of the material available on record.

Sine qua non for taking cognizance of the offence is the application of the mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is therefore, that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether, the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, his is said to have taken cognizance. At the stage of taking cognizance, the only consideration that remains before the Court is to consider judicially whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

(b) Arrest :-

The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined under Article 21 and 22 of the Constitution of India. The governing provisions clearly exhibit the aforesaid intendment of the Parliament.

Though the word 'bail' has not been defined as aforesaid, Section 2 (a) defines a bailable and non-bailable offence. A nonbailable offence is a cognizable offence enabling the police officer to arrest without a warrant. To exercise the said power, the Code introduces certain embargoes by way of restrictions.

Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tempering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the

reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is punishable with more than seven years, among other reasons.

The consequence of non-compliance with Section 41 shall certainly enure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to grant of bail.

Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the Police Officer.

On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273:

From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further

requires the police officers to record the reasons in writing for not making the arrest.

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other condition as enumerated above is satisfied, the power of arrest needs to be exercised. In fact, before arrest, first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and circumspection. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

Before a Magistrate authorises detention under Section 167 Cr. P.C, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the further detention of an accused.

The Magistrate before authorising detention will record his own satisfaction may be in brief but the said satisfaction must be reflected from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing, the Magistrate will authorise the detention of the accused.

In fact, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasize that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

The Hon'ble Supreme Court in celebrated decision of Satendra Kuma Antil Vs CBI and others held that our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the concerned High Court.

(c) Remand:- Remand under section 167 is important component in the investigation. The object and scope of Section 167 is well settled that it is

supplementary to Section 57 of Cr.PC. It is clear from Section 57 that the investigation should be completed in the first instance within 24 hours and if it cannot be done, the arrested person should be brought by the Police before a Magistrate as provided under Section 167 (2). During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 Cr.PC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Important judgements on this topic are discussed below:-

- (i) No mechanical grant of remand by Magistrate under Section 167 Cr.PC. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. See : Manu Bhai Rati Lal Patel TR.Usha Ben versus State of Gujrat and Ors. AIR 2013 SC 313.
- (ii) Production of accused through video conferencing:- Explanation II to the Proviso of Section 167 (2) provides that the production of accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of woman under 18 years of age, the detentions shall be authorised into the custody of a remand home or recognised social institution.
- (iii) Effect of non production of accused at the time of remand under Section 167 Cr.PC. :- Presence of the accused either physically or virtually is sine qua non at the time of remand of the accused under Section 167 Cr.PC. Accused has indefeasible right to oppose prayer for extension of remand. Failure to produce the accused before the Court while considering application for extension of time to investigate amounts to violation of his fundamental rights. See: Jigar alias Jimmy Pravin Chandra Adatiya versus State of Gujarat AIR 2022 SC 4641.
- (iv) Non production of accused on date of remand and its consequences. The Patna High Court in Ramesh Kumar Ravi versus State of Bihar 1987 Criminal Law Journal 1489 held that though the physical production of the accused before the Magistrate is desirable yet the failure to

do so would not per se vitiate the order of remand if the circumstances for non production were beyond the control the prosecution or the police. Remand order passed under Section 167 or 309 Cr.PC in the event of non production of the accused would not be illegal.

- (v) Difference Between Section 167 and 309 of Cr.PC.:- No court has any inherent power of remand of an accused to any custody. Such power has to be conferred by law and must be traced to some provision of the statute. The relevant provisions of the statute are [sections 167](#) and [309](#) CrPC. Remand during investigation is permissible under [section 167\(2\)](#) CrPC up to a prescribed maximum period. After the filing of the charge-sheet or the challan (which signals the completion of investigation) and after cognizance is taken, remand of on accused to custody can only be under section 309(2) CrPC. A plain reading of [section 309](#) CrPC would disclose that before an order of remand in respect of the accused can be passed thereunder, the Magistrate, in the least, must have taken cognizance of the alleged offence. Secondly, when the order of remand is passed the accused must already be "in custody".
- (vi) In the series of leading judgments relating to remand under Section 309 Cr.PC. the recent pronouncement of the Hon'ble Supreme Court in the case of RituChhabaria Versus Union of India passed on 26.04.2023 lays down exhaustive direction. For better understanding the brief facts are reproduced below :-

ARGUMENTS ADVANCED BY THE PETITIONER

The learned counsel for the petitioner contended that:

- (i) The Respondent has admitted in writing in the supplementary chargesheet that the investigation is still pending, and in light of the same the trial court ought not to have issued process and remanded the petitioner's husband under Section 309 Cr.PC.
- (ii) The accused's fundamental rights are in prejudice due to continued custody on grounds of investigation not being completed. It was argued that the provisions of the CrPC do not empower continued remand to custody beyond 60 days if the investigation is still in progress. For this, the learned counsel relied on the judgment in the

case of M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence.

ARGUMENTS ADVANCED BY THE RESPONDENT

The learned counsel appearing on behalf of the respondent contended that:

- (i) The present writ is not maintainable, and for the grant of bail, the accused herein should have either approached the High Court against the order of the Magistrate refusing default bail or filed a Special Leave Petition against the said order invoking provisions of Article 136 of the Constitution of India.
- (ii) The contention of the petitioner that the accused is not named in the FIR is not a relevant submission, as the FIR is not a complete document, and is only the first step to set the criminal procedure in motion. To support the contention, learned counsel relied on the case of State Of Bihar & Others Vs. J.A.C Saldanha &Ors.
- (iii) The supplementary chargesheet filed on 25.06.2022 is a complete document in respect to the offence committed by the persons arraigned in the said supplementary chargesheet, therefore no right to default bail has been accrued in favor of the petitioner's husband.

ISSUES

In light of the abovementioned arguments raised by the learned counsel for the parties, the following three issues arise for our consideration:-

- (i) Can a chargesheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case?
- (ii) Whether the filing of such a chargesheet without completing the investigation will extinguish the right of an accused for grant of default bail?
- (iii) Whether the remand of an accused can be continued by the trial court during the pendency of investigation beyond the stipulated time as prescribed by the CrPC?

PRELIMINARY OBJECTION

A preliminary objection has been raised by the learned counsel appearing on behalf of the respondent stating that the present writ is not maintainable before this court on grounds that no relief at such an early stage of the investigation can be granted.

We have considered the preliminary objection, however, we are not inclined to concur with the same. It must be remembered that our Constitution has entrusted the Supreme Court with the most important task of protecting civil liberties of individuals, and the society at large. These civil liberties, which manifest themselves in the form of fundamental rights, are what allow the people of this country to effectively negotiate with the state and maintain the parity in power in the social contract between the people and the state. If this Court refuses to exercise its jurisdiction on technicalities in cases of violations of fundamental rights, it will lead to a ripple effect that will result in a dysfunctional social contract, wherein the people of this country would become subject to an arbitrary and unfettered tyranny of the state.

Article 32 of the Constitution of India provides remedies for enforcement of rights conferred by this Part. The said Article reads as under:-

“32. Remedies for enforcement of rights conferred by this Part-

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.” Article 32 falls within Part III of the Constitution which deals with fundamental rights and thus the right to invoke Article 32 is a fundamental right in itself, that exists to protect and safeguard the other fundamental rights guaranteed by Part III of the Constitution. We may usefully refer to the following observations of a Constitution Bench of this Court made in the case of K.S. Puttaswamy & Anr. vs. Union Of India & Ors. :-

“A constitutional democracy can survive when citizens have an undiluted assurance that the Rule of Law will protect their rights and liberties against any invasion by the State and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these, most precious rights.”

Further, another Constitution Bench of this Court in the case of K.K Kochunni, Moopil Nayar vs. State of Madras & Ors. as early as 1959, has observed that the Court must exercise its jurisdiction in matters where there is an abuse of fundamental rights. The relevant paragraphs of the said judgment are being extracted hereunder:

“Further, even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether It should issue any of the prerogative writs on an application under Article 226 of the Constitution, as to which we say nothing now - this Court cannot, on a similar ground, decline to entertain a petition under Article 32, for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part I of the Constitution is itself a guaranteed right. It has accordingly been held by this Court in Romesh

Thappar v. State of Madras [1950 SCC 436 1950 SCR 594] that under the Constitution this Court is constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking the protection of this Court against infringement of such rights, although such applications are made to this Court in the first instance without resort to a High Court

having concurrent jurisdiction in the matter. The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition."

It is also pertinent to note that the relief of statutory bail under Section 167(2) of the Cr.PC, in our opinion, is a fundamental right directly flowing from Article 21 of the Constitution of India, and the violation of such a right, as mentioned above, directly attracts consideration under Article 32 of the Constitution. In such circumstance, we are not inclined to agree with the preliminary objections raised by the learned counsel for the respondent regarding the maintainability of this petition under Article 32 of the Constitution and the said objection, therefore, stands rejected.

ANALYSIS

Before we deal with the issues framed, we find it pertinent to mention that in the present case, this Court is not dealing with the merits of the case and as such is not inclined to make any observations regarding the same. Every court, when invoked to exercise its powers, must be mindful of the relief sought, and must act as a forum confined to such relief. In the present case at hand, this Court is not a court of appeal, but a court of writ, and therefore is inclined to limit its jurisdiction only to the personal liberty of the writ petitioner's husband and the impugned points of law.

For the purpose of deciding the issues framed by us, we deem it appropriate to trace the history of the provision of default bail, and the reasons which led the legislature to incorporate the existing provisions in the new statute. Under Section 167 of the Code of Criminal Procedure, 1898, which was the Act that governed criminal procedure before the enactment of CrPC presently in force, an accused, either under judicial or police custody, could be remanded only for a maximum period of 15 days. For a ready reference Section 167 of the 1898 Code is being reproduced herein:-

“Procedure when investigation cannot be completed in twenty-four hours. –

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer in charge of the police station or the police officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section 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 fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction : Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-Divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.”

This period of 15 days, however, more often than not, was inadequate to conclude investigations, especially in complicated cases which required a longer and deeper investigation. This lack of time, because of the abovementioned provision of the 1898 Act, led to a widespread practice wherein investigating officers would file preliminary chargesheets after the expiry of the remand period, and subsequently request the magistrate to postpone the commencement of trial and remand the accused under Section 344 of the 1898 Act for a further time, till the final chargesheet was filed.

This practice of filing preliminary chargesheets was first pointed out by the Law Commission of India in its Report No. 145 on Reforms of the Judicial Administration, wherein it was stated that in many cases, the accused persons, without the filing of any detailed reports before the courts by the investigating authority, were languishing in jail for a prolonged period of time. It thus recommended that there existed an urgent need for a provision that provided for an appropriate time frame for the completion of an investigation while also safeguarding the personal liberty of the accused.

These recommendations made by the abovementioned law commission report were again emphasized by the Law Commission in its Report No. 416 , wherein it was explicitly stated that there was an urgent need to protect the civil liberties of accused persons against the misuse of Section 344 of the 1898 Act, wherein the accused persons, on grounds of a preliminary report and pending investigation, were remanded to custody indefinitely. The relevant paragraphs from the said report are being reproduced hereunder:-

“Section 167 provides for remands. The total period for which an arrested person may be remanded to custody-police or judicial-is 15 days. The assumption is that the investigation must be completed within 15 days and the final report under section 173 sent to court by then. In actual practice, however, this has frequently been found unworkable. Quite often, a complicated investigation cannot be completed within 15 days, and if the offence is serious, the police naturally insist that the accused be kept in custody. A practice of doubtful legal validity has therefore grown up. The police file before a magistrate a preliminary or "incomplete" report, and the magistrate, purporting to act under section 344, adjourns the proceedings and remands the accused to custody. In the Fourteenth Report, the Law Commission doubted if such an order could be made under section 344, as that section is intended to operate only after a magistrate has taken cognizance of an offence, which can be properly done only after a final report under section 173 has been received, and not while the investigation is still proceeding. We are of the same view, and to us also it appears proper that the law should be clarified in this respect. The use of section 344 for a remand beyond the statutory period fixed under section 167 can lead to serious abuse, as an arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner. It is,

therefore, desirable, as was observed in the Fourteenth Report that some time limit should be placed on the power of the police to obtain a remand, while the investigation is still going on: and if the present time limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safe-guard. Like the earlier Law Commission, we feel that 15 days is perhaps too short and we propose therefore to follow the recommendation in the Fourteenth Report that the maximum period under section 167 should be fixed at 60 days. We are aware of the danger that such an extension may result in the maximum period becoming the rule in every case as a matter of routine: but we trust that proper supervision by the superior courts will prevent that. We propose accordingly to revise sub-sections (2) and (4) of section 167 as follows :-

"(2) The Magistrate to whom an accused person is forwarded under this section 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 fifteen days at a time and sixty days in the whole. If he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction

Provided that-

- (a) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;
 - (b) no Magistrate of the second class not specially empowered in this behalf by the High Court shall authorise detention in the custody of the police.
- (5) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate."

On the recommendation made by the Law Commission through the aforesaid reports recommending to curtail the abuse of such power, Section 167(2) as it exists today in the statute was incorporated in the Cr.PC, 1973, which provides for a longer period of maximum remand, but also

guarantees default bail, to ensure that accused persons are bereft of arbitrary detention.⁷ The Statement of Objects and Reasons of CrPC, 1973 also refer to the 41st Law Commission Report and inter alia reads as follows:-

"(2).....A comprehensive report for the revision of the Code, namely, the Forty-first Report, was presented by the Law Commission in September, 1969. This report took into consideration the recommendations made in the earlier 1 Reports of the Commission dealing with specific matters namely, the Fourteenth, Twenty-fifth, Thirty-second, Thirty-third, Thirty-sixth, Thirty-seventh and Fortieth Reports.

(3) The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations-

- (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
- (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to individuals involved but also to society; and
- (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal courts”

A bare perusal of the abovementioned statement of objects strongly indicates that Section 167(2) of the Cr.PC was enacted to ensure that the investigating agency completes the investigation within the prescribed time limit, failing which no accused could be detained if they are willing to avail bail. This position was also laid emphasis on by a three-judge bench of this Court in the case of *M. Ravindran Vs. Directorate Of Revenue Intelligence (Supra)*, the relevant paragraphs of the same are being reproduced hereunder:

“The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein "the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner". Hence the Commission recommended fixing of a maximum timelimit of 60 days for remand.

It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail.”

Further, this legal position was again reiterated in *Satendar Kumar Antil vs CBI & Anr.*, wherein it was held that Section 167(2) of the Cr.PC is a limb of Article 21 of the Constitution of India, and as such, the investigating authority is under a constitutional duty to expediate the process of investigation within the stipulated time, failing which, the accused is entitled to be released on default bail. The relevant observations made in the said judgment are as under:-

“Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of Innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, ensuring to the benefit of suspect.

As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an accused gets the benefit of Section 167(2).”

It is also to be noted that as per the scheme of Cr.PC, an investigation of a cognizable case commences with the recording of an FIR under Section 154 Cr.PC. If a person is arrested and the investigation of the case cannot be completed within 24 hours, he has to be produced before the magistrate to seek his remand under Section 167(2) of the Cr.PC during continued investigation. There is a statutory time frame then prescribed for remand of the accused for the purposes of investigation, however, the same cannot extend beyond 90 days, as provided under Section 167(2)(a) (i) in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days, as provided under Section 167(2)(a)(ii), where the investigation relates to any other offence. The relevant section further provides that on expiry of the period of 90 days or 60 days, as the case may be, the accused has a right to be released on default bail in case he is prepared to and furnishes bail.

This right of statutory bail, however, is extinguished, if the charge sheet is filed within the stipulated period. The question of resorting to a supplementary chargesheet u/s 173(8) of the Cr.PC only arises after the main chargesheet has been filed, and as such, a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.

It is thus axiomatic that first investigation is to be completed, and only then can a chargesheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2) of Cr.PC. In the case of *Union Of India vs Thamisharasi&Ors.*, which was a case under the Narcotic Drugs and Psychotropic Substances Act, 1985, on finding that the investigation was not complete and a chargesheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitation on grant of bail would not apply.

Further, in the case of *Ashok Munilal Jain &Anr. Vs. Assistant Director, Directorate of Enforcement*, it was held that the right of default bail under section 167(2) CrPC was held to be an indefeasible right of the accused even in matters under PMLA.

Therefore, in light of the abovementioned discussions, it can be seen that the practice of filing preliminary reports before the enactment of the present CrPC has now taken the form of filing chargesheets without actually completing the investigation, only to scuttle the right of default bail. If we were to hold that chargesheets can be filed without completing the investigation, and the same can be used for prolonging remand, it would in effect negate the purpose of introducing section 167(2) of the CrPC and ensure that the fundamental rights guaranteed to accused persons is violated.

We have carefully perused the judgments relied upon by the learned counsel for the respondent, however, none of the judgments relied upon permit the abuse of remand under Section 309(2) of the CrPC by permitting the filing of incomplete chargesheets only to scuttle the right of statutory bail.

The judgment in State of West Bengal vs. Salap Service Station & Ors.11 relied upon by the respondent was rendered, not in the context of default bail, but only in the context of entitlement u/s. 173(8) of the CrPC to place on record further evidence in support of the chargesheet already filed.

Further, the judgment of Dharam Pal vs. State Of Haryana & Ors.12, relied upon by the respondent, refers to the power of Constitutional Courts to transfer investigation. In Para 21 of the said judgment, it has been stated that Section 173 empowers the police officer to conduct an investigation to file a report on the completion of the investigation and section 173(8) CrPC allows the conduct of further investigation. However, this judgment also does not talk about default bail and the misuse of the filing of supplementary chargesheets. It is also important to note that the judgment of Ram NarainPopli vs. CBI13 and Rajesh Ranjan Yadav vs. CBI14 have also not dealt with the issues being considered by us in the present matter.

In light of the abovementioned discussion, the judgments relied upon by the learned counsel for the respondent are clearly distinguishable as issues being considered herein were not considered therein and reliance placed by the learned counsel for the respondents on the said pronouncements is totally misfounded.

In view of the above mentioned discussions, the issues framed by us stand answered as under:-

- (i) Without completing the investigation of a case, a chargesheet or prosecution complaint cannot be filed by an investigating

agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.

(ii) Such a chargesheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.

(iii) The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail.

CONCLUSION

In the instant case, it is clear from the facts that during the pendency of the investigation, supplementary chargesheets were filed by the Investigation Agency just before the expiry of 60 days, with the purpose of scuttling the right to default bail accrued in favour the accused. This factual position was missed by the trial court, and instead of offering default bail to the accused, the trial court mechanically accepted the incomplete chargesheets filed by the Investigating Agency, and further continued the remand of the accused beyond the maximum period specified. The Investigating Agency and the trial court, thus, failed to observe the mandate of law, and acted in a manner which was manifestly arbitrary and violative of the fundamental rights guaranteed to the accused.

Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2) of the CrPC is not merely a statutory right, but a fundamental right that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the state. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the investigating authority and the accused. While there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also

extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the Investigation Agency in order to prevent the harassment of accused persons at their hands.

With the above findings and conclusions, the interim order of bail passed in favor of the accused is made absolute, and the present writ petition is, accordingly, disposed of.

Process for Police Remand :- Rule 172 (b) to (e) of The Bihar Police Manual deals with the procedure for taking police remand. Rule 172 (b) :- Application for detention police custody :- An application shall never be made for special order for the detention of the accused in police custody under Section 167 Cr.PC, unless –

- (1) It appears that the investigation cannot be completed within 24 hours;
- (2) There are reasonable grounds for believing that the charge is not baseless; and
- (3) The Station Officer is in a position to show good and satisfactory grounds for the application.

Rule 172 (c) :- When the first to conditions exist and the Station Officer is further in a position to show good and satisfactory grounds for a remand to the Police custody, he shall forward the accused to the nearest Magistrate (Whether or not he has jurisdiction to try the case) together with a copy of his case diary, and report the matter to the Inspector. The latter shall inform his superior officer according to necessity. Application for above action shall be made through Sub Divisional Police Officer who shall forward to the Court concerned.

Rule 172 (d) :- The grounds upon which the remand is needed shall be distinctly stated in the application to the Magistrate. A mere general statement that the accused may be able to give further information is not a good ground for an application for a remand. An

application for remand the police custody is not permissible in any circumstance in the case of a prisoner who has been produced for the purpose of making a confession and who has declined to do so, or has made a statement which, from the point of view of the prosecution, is considered unsatisfactory.

Rule 172 (e) :-In no case shall an application be made to Magistrate of lower status than a stipendiary Magistrate exercising second class powers.

Framing of Charge: - Framing of charge is important stage mandating and regulating the trial of criminal cases. When the police has completed its investigation and submitted the charge sheet alleging the offence against the accused person, the Court after scrutinizing the police paper submitted by the investigating officer, if finds that the accused is not entitled to discharge under section 227 and 239 code of criminal procedure in session cases and warrant cases, frames charges against the accused persons.

The Hon'ble Apex Court in V.C.Shukla Vs. State opined that the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of the trial.

The Law on the issue as to what factors are to be considered at the time of the discharge of an accused is concerned, the Hon'ble Supreme Court in the matter of Captain Manjit Singh Viridi (Rtd.) Versus Hussain Mohammad Shattaf and others (Criminal Appeal No. 1399 of 2023) by its order dated held that:-

“The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of charge sheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced

by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the Criminal Appeal No. 1399 of 2023 trial is allowed to proceed, the same would amount to abuse of process of the Court.

The law on the point has been summarised in a recent judgment of this Court in *State of Rajasthan v. Ashok Kumar Kashyap*². Relevant paras are extracted below: -

“In *P. Vijayan v. State of Kerala*, (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to 2 (2021) 11 SCC 191 Criminal Appeal No. 1399 of 2023 determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

In the recent decision of this Court in *State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC 515, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under:

“25. The High Court [*M.R. Hiremath v. State*, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709, Criminal Appeal No. 1399 of 2023 advertent to the earlier decisions on the subject, this Court held:

‘29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.’”

Plea of guilty:- In a trial before Court of Session following three provisions in the code namely Section 228 (2), 229 and 230 deal with the plea of guilty. According to these sections when the judge frames a charge in session cases, the charge shall be read over and explained to the accused and the accused shall be asked whether he pleads guilty to the offence charged or claims to be tried. If the accused

pleads guilty the Judge shall record the plea and may, in his discretion convict him thereon. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted on his plea of guilty the Judge shall fix a date for examination of witnesses.

Similar provisions are contained in section 240 (2), 241 and 242 of the Court for trial of warrant cases instituted on police report by Magistrate.

Prosecution evidence: - After the charges are framed, the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statement of witnesses.

Statement of the accused :- After examination of the prosecution witness, the trial Court under Section 313 of the Cr.PC examines the accused to explain evidence adduced against him. It is established principle of Justice that no one should be condemned unheard. The Hon'ble Supreme Court in the matter of Rajkumar Singh @ Raju @ Batya Vs. State of Rajsthan (AIR 2013 SCC 3150) held that:

“25. In a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice i.e. *audi alterum partem*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and have to be excluded from consideration.”

Evidentiary value of 313 examination :- The Hon'ble Supreme Court in SantanNaskar and another versus State of West Bengal held that the answer by an accused under section 313 of the Cr.P.C are of relevance to find out the truth and examining the veracity of the case of the prosecution. The scope of section 313 of Cr.PC is wide and is not a mere formality.

Defence evidence: - An opportunity is given to the accused in a case where he is not being acquitted, to produce evidence in his defence. The defence can produce both oral and documentary evidence.

Judgment: - The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the prospective punishment. This is usually done when the person is convicted of an offence punishable with imprisonment for life or capital punishment.

An Analysis and Scope of further Investigation

It shall be my endeavour to dwell on it to explain and analyse such provision in the context in which it has been incorporated in the statute, but with a view to understand the intent of the legislature to envisage proviso to this Section, it will indeed be nice to have a resume of contents of Law Commission Report wherein Law Commission observed as follows in Para 14.23 of its 41st report.

"14.23 A report under section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the Police Officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under section 173 had been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter even to the accused. It should be made clear in Section 173 that the competent Police Officer can examine such evidence and send to a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused.

Based upon the opinion, Section 173(8) was statutorily incorporated in the Code. The Supreme Court held that even before Section 173(8) was incorporated, Police had the same powers. After considering the Judgment in H.N. Rishbud's case, AIR 1955 SC 196; 1955 Cri. LJ 526 the Supreme Court in Ram Lal Narang's case, (1979)2 SCC 322 AIR 1979 SC 1791; 1979 SCC (Cri.) 479; 1979 Cr. LJ 1346 observed as follows.

"17..... This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured

by a further investigation, if circumstances permit it. Resume of subsection 8 of section 173 Cr. P.C.:

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and where upon such investigation, the Officer-in-charge of the Police Station obtains further evidence oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provision of sub-sections (2) to (6) shall as far as may be apply in relation to such report or reports as they apply in relation to a report forwarded Under sub-section (2)"

From a plain reading of the above it is evident that even after the submission of Police report under sub-section (2) on completion of investigation the police has a right of further investigation under sub- section (8) of 173 Cr. P.C.

Now question arises

(A) Whether obtaining formal permission from the court

for conducting further investigation of the crime is necessary?

(B) Whether a Magistrate is competent to order further Investigation even after taking cognizance of offence on the basis of Police report filed u/s 173(2) Cr.PC. and after appearance of the accused in pursuance of the summons issued..?

(C) Whether Judicial Magistrate can order on his own Further investigation of the case?

(D) Whether accused can claim to get further

Investigation as a matter of right?

These are some of the questions which are intended to be answered in the present article with reference to the case law on the subject.

The question whether obtaining formal permission from the court for conducting further investigation of the crime is necessary?

Though there is no statutory requirement for the Police to

obtain permission from concerned court to conduct further investigation in the case, the Apex Court held in the decision in Ram Lal Narang (supra) that "in the interest of independence of Magistracy and Judiciary, in the interest of purity of administration of Criminal Justice and in the interest of comity of various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the Police should inform the court and seek formal permission to make further investigation when fresh facts come to light."

Another decision in this series is Sri Bhagwan Samardha Sreepada Vallabah vs. State of A.P., 1999 Cri LJ 3661: AIR 1999 SC 2332: (1999)5 SCC 740. In this case Supreme Court relying on the decision of Ramlal Narang's case, (supra), observed in Para-10 "Power of the Police to conduct further investigation, after laying final report is recognised under Section 173(8) of Cr.PC. Even after the Court took cognizance of any offence on the strength of the Police report first submitted, it is open to the Police to conduct further investigation. This has been so stated by the Supreme Court in Ram Lal Narang, (supra). The only rider provided by the aforesaid decision is that it would be desirable that the Police should inform the Court and seek formal permission to make further investigation.

The second question that arises for consideration is whether a Magistrate is competent to order further investigation even. After taking cognizance of offence on the basis of Police report filed u/s 173(2) Cr.P.C. and after appearance of the accused in pursuance of the summons issued. There are series of decisions in which Supreme Court reiterated that a Magistrate is competent to order further investigation even after taking cognizance of offence on the basis of Police report filed u/s 173(2) Cr. P.C. and after appearance of the accused in pursuance of the summons issued.

In H.N. Rishbud vs. State of Delhi (supra) the Supreme Court contemplated the possibility of further investigation even after the court had taken cognizance of the offence. It was held that if invalidity of the investigation comes to the knowledge of the court in the earlier stages of trial, the court can take necessary steps to get the

illegality cured and rectified by ordering re-investigation. The court observed as follows: -

"It does not follow, however, that the invalidity of the investigation is to be completely ignored by the court during trial, when the breach of such a mandatory provision is brought to the knowledge of the court at a sufficiently early stage. The court while not declining cognizance will have to take necessary steps to get, the illegality cured and the defect rectified by ordering such re-investigation as the circumstances of an individual case may call for In our opinion, therefore, when such a breach is brought to the notice of the court at an early stage of the trial the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation and may be called for wholly or partly and by such Officer as it considers appropriate.

In Ram Lal Narang's case (supra) the Supreme Court Held that there is a statutory right on the Police to investigate under section 173(8) even if the Magistrate had taken cognizance. The Police cannot abuse the power and therefore, when the case is pending, police should ordinarily seek permission from the court for fresh investigation.

In Union Public Service Commission vs. S. Papaiah, 1997 Cri LJ 4636: (1997)7 SCC 614: 1997 SCC (Cr)1112 was held by the Supreme Court that in the larger interest court should have ordered re-investigation under section 173(8) even after acceptance of the final report.

Third question that arises for consideration is whether the Judicial Magistrate can order on his own further investigation of the case.

In Randhir Singh Rana vs. State being the Delhi Administration, AIR 1997 SC 693 1997 Cri LJ 779, the question before the Apex Court was whether Judicial Magistrate after taking cognizance of an offence on the basis of a Police report and after appearance of accused in pursuance of the process issued can order on his own further investigation of the case and the Apex Court after

examining the question with the assistance of some related decisions of Supreme Court and that of High Court came to the conclusion that the Magistrate on his own cannot order for further investigation.

After the above decision, in *Sri Bhagwan Samardha Sreepada Vallabha Vegikata Vishwandadha Maharaj vs. State of A.P.*, (supra) the Supreme Court held that re-investigation under section 173 Cr. PC can be ordered by the Magistrate without affording an opportunity of hearing to the accused. In that case, even though final report was filed, that was not accepted. But before taking cognizance the Magistrate ordered further investigation while disposing of the case. The Supreme Court held that even after taking cognizance of the offence, Police can further investigate the matter under section 173(8) and in such a situation the court also can direct the Police to conduct further investigation.

Another decision in this series is *Hemant Dhasmana vs. CBI*, 2001 SCC (Cri.) 1280: (2001)7 SCC 536: 2000 Cr. LJ 4190. There, the Supreme Court held that the Magistrate has got power to order further investigation in a case and when exercised, it would not be appropriate for the High Court to interfere in exercise of revisional power. The Supreme Court observed as follows:-

"16. Although the said section does not in specific terms, Mention about the powers of the Court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of Court. When any such order is passed by a court which has the jurisdiction to do so, it would not be proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice."

Whether the accused has a right to get further Investigation?

It is well settled that sub-section 8 of the Section 173 is only permissive in character. A bare reading of provisions of Section 173(8) Cr. P.C. shows that even after filing of a charge sheet the Investigating Officer may undertake a further investigation of the case. If he does so, the further evidence collected by him shall be forwarded to the Magistrate along with a further report. This shows that neither

the prosecution i.e. informant nor the accused can claim as a matter of right a direction from a court commanding further investigation under subsection B of Section 173 after charge sheet was filed after investigation.

"Even for investigation there must be a point of finality is yet another reason for conclusion. Law expects discharge of duties by the investigation officer properly resulting in a report under section 173(2) It may only be in some exceptional cases whether the investigation officer may have to collect some further evidence/materials and submit it to the Magistrate along with his further report. Such an exceptional case will only prove the general rule that normally investigations terminate with the filing of charge sheet in court." [1990 Cr. LJ 456 All.)] Another decision which is important for understanding of the topics is *Leela Das vs. State CBI*, 2001 Cr. LJ 2684 (Cal.) (Para 7) :-

"From the Judgment of the Apex Court in connection with *Kamalapati Trivedi vs. State of West Bengal* (supra) it transpires that the said decision has given a clear indication as to what should be done by the Magistrate in a case like this. The Hon'ble Court first of all quoted the finding of the Apex Court in connection with the case of *Abhinandan Jha vs. Dinesh Mishra* reported in AIR 1968 SC 117: 1968 Cr. LJ 97. Thus it transpires from the said reported case that after submission of the final report by the Police under sub-section (1) of section 173 of Cr.P.C. the Magistrate has got the following course open, namely (1) he may agree with the report of the Police and file the proceedings, (2) not agree with the police report and (a) or further investigation or (b) hold that the evidence are sufficient to justify forwarding of the accused to the Magistrate and take cognizance of the offence complained of. Thereafter the Apex Court proceeded to observe as follows:-

"But then the problem to be solved is whether the order Passed by the Magistrate pertains to his executive or judicial capacity. In my opinion the only order which can be recorded as having been passed by the Magistrate in his capacity as the supervisory authority in relation to the investigation carried out by the Police is the one covered

by the course 2(a). The order passed by the Magistrate in each of other two courses that is (1) and 2(b) follows the conclusion of the Investigation and is judicial order determining the rights of the parties."

Before concluding I would like to quote the decision of the Hon'ble Supreme Court passed in 'State through Central Bureau of Investigation versus Hemendhra Ready and others on 28.04.2023 which is also useful for understanding of this topics :-

"77. We may summarise our final conclusion as under:

- (i) 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 the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.
- (ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.
- (iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. 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. The principle of double jeopardy would, therefore, not be applicable to further investigation.
- (v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.

F.I.R

1. Name	<u>State Bank of India Vs Rajesh Agrawal and others Civil Appeal No. 7301/2022 Read with petition No.138/2022</u>
Court	Supreme Court Of India
Issue	Whether the accused can claim right of hearing before registration of FIR?
Held	A Division Bench of Supreme Court lead by Chief Justice D.Y.Chandrachud held that an accused cannot claim to have a right of hearing before registration of FIR. The Principles of Natural Justice has no application at the stage of reporting of cases. The Hon'ble Court further held that: Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers.

2.Name	<u>Vijay Kumar Ghai v The State of West Bengal; Criminal Appeal No. 463 of 2022; Date of judgment 22.03.2022</u>
Court	Supreme Court Of India
Issue	Legality of second FIR arising out of or relating to same cognizable offence
Held	Barring situations in which a counter- case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of Cr.P.C or Articles 226/227 of the Constitution of India.

3. Name	<u>Babu Venkatesh v State of Karnataka; Criminal Appeal no. 252 of 2022; Date of Judgment:18.02.2022</u>
Court	Supreme Court of India
Issue	(i) Quashing of FIR in the exercise of Power under section 482 Cr P Code; (ii) Invoking the authority of the Magistrate under Section 156(3)
Held	(i) The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. (ii) while filing a petition under Section 156(3) there has to be prior applications under Sections 154(1) and 154(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. Applications under Section 156 (3) of Cr.P.C. must be supported by an affidavit duly sworn by the complainant who seeks to invoke the jurisdiction of the Magistrate so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). In an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations

4. Name	<u>Jafarudheen vs State Of Kerala; Criminal Appeal No. 430-431 of 2015; Date of judgment 22.04.2022</u>
Court	Supreme Court of India
Issue	Effect of delay in sending FIR to Jurisdictional Magistrate on the prosecution case.
Held	In a criminal case the First Information Report starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of spontaneity, there is also a danger creeping in by the introducing of a colored version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimate, it is for the Court concerned to take a call. Such a view is expected to be taken after considering the relevant materials
(5)Name	<u>Central Bureau Of Investigation Vs Thommandru Hannah Vijayalakshmi, [Criminal Appeal No. 1045 of 2021, date of judgment-08.10.2021]</u>
Court	Supreme Court of India
Issue	<p>Whether a preliminary enquiry is mandatory in cases of corruption involving public servants?</p> <p>whether FIR registered without such enquiry liable to be quashed ?</p> <p>what is the ambit and scope of powers of high court under section – 482 Cr. P.Code and article 226 of the constitution of India in this regard?</p>
Held	The Hon'ble Apex Court held – 'the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the Cr P Code, P. C. Act or even the CBI Manual, for this Court to issue a direction requiring Preliminary Enquiry will be tantamount to stepping into the legislative domain. Hence, where the information received by the CBI, through a complaint or a source information under Chapter 8, discloses the commission of a cognizable offence and the

officer is satisfied that the information discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry.' However, the Hon'ble Apex Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR for instance, if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. The CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. The precedents and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption.

When a prayer for quashing the FIR is made by the accused and the court exercises the power under Section 482 Cr.P.C.the only thing to be considered is whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR; The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

However, 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

	<p>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 438 Cr.P.C. before the competent court.</p> <p>The High Court shall not and as 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/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.”</p>
Relevant Paras	Paras– 28, 33, 34

6. Name	<u>Devendra Nath Singh vs State of Bihar; Criminal Appeal No. 1768/2022 Date of Judgement: 12.10.2022</u>
Court	Supreme Court of India
Issue	<p>(i) Whether the Magistrate can order further investigation under section 156(3) of Cr.P. Code?</p> <p>(ii) Whether the High Court in the exercise of power under section 482 Cr.P. Code can direct the concerned magistrate to order further investigation?</p>
Held	<p>(i) Where the concerned magistrate is of the opinion that the result of investigation in the form of police report is not satisfactory he can direct further investigation in terms of section 156(3) and/or under section 173(8) of Cr.P. Code or straightway take cognizance under section 190(1)(c) of Cr.P. Code.</p> <p>(ii) The High Court has rightly exercise its powers under section 482 Cr.P. Code for directing further investigation but, has not been justified in making such observations, comments, and remarks, which leave little scope for an independent investigation and which carry all the potential to cause prejudice to the appellant.</p>

7. Name	<u>XYZ vs State of Madhya Pradesh; Criminal Appeal No. 1184 of 2022 Date of judgment 05.08.2022</u>
Court	Supreme Court of India
Issue	(i) Whether Police Officer can exercise discretion while receiving complaint disclosing commission of cognizable offence? (ii) What is the ambit of discretion to be exercised by the Magistrate u/s 156(3)?
Held	It is the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. It is every police officer's bounden duty to carry 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. They must abide by the law and enable the smooth registration of an FIR. 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. If an application under section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered. Where the aggrieved person alleges that the investigation was not proper, the Magistrate can also direct a proper investigation to be made. Under the same provision the Magistrate can also monitor the investigation to ensure a proper investigation.

8. Name	<u>Rajesh Yadav v State of Uttar Pradesh ; Criminal Appeal No. 339-40 of 2014 Date of Judgment:04.02.2022</u>
Court	Supreme Court of India
Issue	(i)Evidentiary Value of a Final Report (ii)Effect of Non examination of witness
Held	(i)Section 173(2) of the CrPC calls upon the investigating officer to file his final report before the court. It is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him. The aforesaid conclusion would lead to the position that the evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court. Even assuming that the investigating officer has not deposed before the court or has not cooperated sufficiently, an accused is not entitled for acquittal solely on that basis, when there are other incriminating evidence available on record. (ii) A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it

9. Name	<u>Jigar @ Jimmy Pravinchandra Aditya v State of Gujrat; Criminal Appeal No. 1657of 2022;Date of Judgment: 23.09.2022</u>
Court	Supreme Court of India
Issue	Requirement of the presence of the accused while considering the application for extension of time for investigation beyond 90 days
Held	The orders passed by the Special Court of extending the period of investigation are illegal on account of the failure of the respondents to produce the accused before the Special Court either physically or

	virtually when the prayer for grant of extension made by the Public Prosecutor was considered. It was the duty of the Special Court to ensure that this important procedural safeguard was followed. The accused may not be entitled to know the contents of the report but he is entitled to oppose the grant of extension of time on the grounds available to him in law.
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10.Name	<u>Waheed -Ur -Rehman v Union Territory of Jammu & Kashmir Criminal Appeal No. 237 of 2022 Date of Judgment: 25.02.2022</u>
Court	Supreme Court of India
Issue	whether in the case of certain witnesses being declared as protected witnesses in the exercise of powers under Section 173(6) of the Code of Criminal Procedure, 1973 read with Section 44 of the Unlawful Activities (Prevention) Act, 1967 by the trial court, can the defence seek recourse to the remedy under Section 207 and Section 161 of the Cr.P.C. for obtaining copies of redacted statements of these protected witnesses.
Held	The provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C. The objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses. They are in the nature of a statutory witness protection. On the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, such an order can be passed. They are also in the context of special provisions made for offences under special statutes. The accused can exercise his right under section 207 and 161 Cr. P Code to obtain copy of redacted statements ensuring safeguards to protect the identity of witness.

11.Name	<u>Hazrat Deen v. State of Uttar Pradesh; SLP Criminal No. 9552 of 2021 Date of Judgment: 06.01.2022</u>
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Court	Supreme Court of india
Issue	Effect of discrepancy between the FIR and the statement under section 164 Cr P Code
Held	Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial.

12. Name	<u>Paramvir Singh Saini Vs. Baljit singh & Ors, Special Leave Petition (Criminal) No. 3543 of 2020; date of order 02.12.2020</u>
Court	Supreme Court of India
Issue	Directions for installation of CCTV cameras in each and every Police Station functioning in the respective State and/or Union Territory.
Held	<p>The Hon'ble Supreme Court in this case issued certain directions with respect to the installation of CCTV cameras in police stations and the offices of other investigating agencies No part of a Police Station is to be left uncovered, it is to be ensured that CCTV cameras are fixed at all entry and exit points etc.CCTV systems that have to be installed must be equipped withnight vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio.</p> <p>The storage of CCTV camera footage which can be done indigital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in</p>

any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the concerned SHO shall inform the DLOC of the arrest / interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the concerned SHO has reported malfunctioning or non-functioning of CCTVs of a particular Police Station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a Police Station to entrust the SHO of the concerned Police Station with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification etc.

Other important aspects discussed in the judgment.

CCTV is all to be installed in the offices of all Central Investigation agencies.

Constitution of State and State and District Level Oversight Committee.

Human Right Commissions/ Courts Can Summon CCTV Footages.

13. Name	<u>Mukesh Singh Vs. State (Narcotic Branch Of Delhi), Special Leave Petition(Criminal) Diary No. 39528/2018; Date of judgement - 31.08.2020</u>
Court	Supreme Court of India
Issue	The reference was made to the constitutional bench doubting the correctness of the decision in the case of Mohan Lal v. State of Punjab, 2018 17 SCC 627 wherein it was held that in case the investigation is conducted by the police officer who himself is the complainant, the trial would be vitiated and the accused would be entitled for acquittal.
Held	<p>The Hon'ble Supreme Court in this case held that- In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis.</p> <p>The Hon'ble Constitutional Bench overruled the judgment passed in the case of <i>Mohan Lal v. State of Punjab, 2018 17 SCC 627</i>.</p>
Relevant Para No.	Paragraph No. 12.

14. Name	<u>Amar Nath Chaubey Vs. Union Of India S.L.P. (CRL.) NO.6951 of 2018. Date of judgement- 14.12.2020.</u>
Court	Supreme Court of India
Issue	<p>Can a closure report be filed only on the basis of lack of adequate information provided by Informant?</p> <p>Role of court in case the Investigating Agency fails to duly perform its duties.</p>
Held	<p>The Hon'ble Supreme Court held that- A closure report cannot be filed merely on the ground that the investigation was not possible as the informant had not supplied adequate materials to investigate.</p> <p>The Hon'ble Supreme Court held further that if the police has not investigated properly or is remiss in the performance of</p>

	its duty, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.
Relevant Para No.	Paragraph No. 7 & 8.

15. Name	<u>Fertico Marketing and Investment Pvt. Ltd. Vs. Central Bureau of Investigation, 2020 SCC OnLine SC 93.Criminal Appeal No. 760-764 of 2020.Date of judgement - 17.11.2020</u>
Court	Supreme Court of India
Issue	Can the illegality in investigation be a ground for quashing of order of cognizance?
Held	The Hon'ble Supreme Court held that- The cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. The Hon'ble Supreme Court further held that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.
Relevant Para No.	Paragraph No. 15.

16. Name	<u>Dr Naresh Kumar Mangla Vs. Anita Agarwal, Criminal Appeal Nos.872-873 of 2020. date of judgement - 17.12.2020.</u>
Court	Supreme Court of India
Issue	Can a CBI investigation be ordered even after submission of chargesheet?

Held	The Hon'ble Supreme Court in this case held that- Where a charge-sheet has been submitted before the court, even the Supreme Court would not ordinarily reopen the investigation especially by entrusting it to a specialized agency. However, in a proper case, when the Court feels that the investigation by the police has not been in the proper perspective and that in order to do complete justice, the facts of the case demand that the investigation be handed over to a specialized agency, a superior court is not bereft of the authority to do so.
Relevant Para No.	Paragraph No. 22.

17. Name	<u>Arnab Ranajan Goswami Vs. Union of India and Others. AIR 2020 SC 2389. WP. (Cr.) No. 130 of 2020. Date of judgement – 19.05.2020.</u>
Court	Supreme Court of India
Issue	<p>Whether several FIRs can be lodged in different states on the same set of facts and allegations?</p> <p>Can an accused person have a choice in regard to the mode or manner in which the investigation should be carried out?</p> <p>Can the displeasure of an accused person about the manner in which investigation proceeds be a ground to invoke the extraordinary power of Supreme Court to transfer an investigation to the CBI?</p>
Held	<p>The Hon'ble Apex Court in this case observed that subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime.</p> <p>An investigation cannot be transferred to CBI in a routine manner. Power of transfer must be used sparingly and only in exceptional circumstances. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.”</p> <p>An accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. As long as the investigation does not violate any provision of law, the</p>

	<p>investigation agency is vested with the discretion in directing the course of investigation.</p> <p>The displeasure of an accused person about the manner in which the investigation proceeds must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI</p> <p>Whether the allegations contained in FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of the Supreme Court under Article 32, to quash FIR.</p>
Relevant Para No.	Paragraph No. 33, 36, 39, 41, 44 & 49.

18. Name	<u>Ramji Singh Vs. State Of Uttar Pradesh;AIR 2020 SC 169. Criminal Appeal No. 1397 of 2014. Date of judgement – 11.12.2019.</u>
Court	Supreme Court of India
Issue	<p>Whether delay in compliance of requirements of Section 157 Cr. P.C. by the police officials is fatal to prosecution?</p> <p>The scope of reliability of interested witness.</p> <p>Whether the accused can be given the benefit of negligence of investigation agency even when the ocular evidence is direct and clear?</p>
Held	<p>Even if prosecution has failed to prove that Section 157 Cr. P.C. was complied with then also the effect thereof has to be assessed. Mere delay in compliance of Section 157 by itself is not fatal to prosecution. All it does is to raise a doubt that the prosecution story may have been concocted at a later stage.</p> <p>It may be true that their relations with the accused may not have been cordial but the evidence does not show that the enmity or dispute between these two witnesses and the accused was of such a nature that these two witnesses would make false statements only to settle scores with the appellants thereby leaving the real culprits to go scotfree. Merely because these witnesses are interested witnesses their testimony cannot be discarded.</p> <p>When the ocular evidence is direct and clear, and this ocular evidence is fully supported by the medical evidence, the negligence of the investigation team cannot be used by the defence in support of their case.</p>

Relevant Para No.	Paragraph No.11, 19 and 21.
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(19) Name	<u>Satish Kumar Nyalchand Shah Vs. The State Of Gujarat, Criminal Appeal No. 353 OF 2020. Date of judgement – 02.03.2020.</u>
Court	Supreme Court of India
Issue	Whether in the facts and circumstances of the case, the appellant-one of the co-accused against whom the charge-sheet is already filed and against whom the trial is in progress, is required to be heard and/or has any locus in the proceedings under Section 173(8) Cr. P.C. for further investigation qua another accused against whom no charge-sheet has been filed till date?
Held	The co-accused against whom no relief is sought for further investigation does not have any locus and/or any say in the application for further investigation under Section 173(8) Cr. P.C. Such person cannot be said to be a necessary and a proper party in such application or appeal/revision against the order on such application.
Relevant Para No.	Paragraph No.7 and 8.

COGNIZANCE AND FRAMING OF CHARGES

20.Name	<u>Nahar Singh v State of Uttar Pradesh; Criminal Appeal No. 443 of 2022; Date of judgment 16.03.2022</u>
Court	Supreme court Of India
Issue	whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of Section 190 (1)(b) of The Code can issue summons to any person not arraigned as an accused in the police report and whose name also does not feature in column (2) of such report?
Held	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. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in column 2 of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence

(21) Name	<u>Bhawna Bai Vs. Ghanshyam and Ors., AIR 2020 SC 554. Criminal Appeal No. 1820 of 2019. Date of judgement – 03.12.2019</u>
Court	Supreme Court of India
Issue	Whether the court is required to pass the detailed order at the time of framing of charge?
Held	The Hon'ble Supreme Court held that- for framing charges u/s 228 of Cr.P.C. the judge is not required to record detailed reasons. At the stage of framing of charge, the court is not required to hold an elaborate enquiry, only prima facie case is to be seen.
Relevant Para No.	Paragraph No. 16.

(22) Name	<u>Govind Prasad Kejriwal Vs. State of Bihar and Anr., AIR 2020 SC 1079. Criminal Appeal No. 168 of 2020.Date of judgement – 31.01.2020.</u>
Court	Supreme Court of India
Issue	Factors required to be considered by the Magistrate while conducting enquiry u/s 202 of Cr.P.C..
Held	The Hon'ble Supreme Court held that- In course of enquiry u/s 202 of Cr.P.C the Magistrate is required to consider whether prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or court. Also, whether the complainant is trying to give the criminal flavour to the purely civil dispute.
Relevant Para No.	Paragraph No.6.5.

(23) Name	<u>Puneet Dalmia Vs. Central Bureau of Investigation, Hyderabad AIR 2020 SC 214. Criminal Appeal No. 1901 of 2019. Date of judgement – 16.12.2019.</u>
Court	Supreme Court of India
Issue	Factors to be considered while deciding the exemption application filed by the Accused u/s 205 Cr.P.C.
Held	Court can dispense with the personal appearance of the Accused provided that such exemption would not affect the conclusion of trial at the earliest and the accused shall ensure his presence through counsel on every date of hearing. Further, he would present himself before the Court when his personal presence is ordered by the trial court.

APPRECIATION OF EVIDENCE DURING TRIAL

(24) Name	<u>Sukhpal Singh Khaira Vs The State of Punjab. [Crl. Appl. No.-885/2019, Date of judgment- 05.12.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Whether the Court has power to issue summon to additional accused during trial u/s 319 Cr. P.C.

Held-

The Supreme Court after going through the provisions of Code of Criminal Procedure, 1973 issued elaborate guidelines regarding the exercise of powers u/s 319 of the Code of Criminal Procedure for summoning additional accused during trial:-

“(i) If the competent court finds evidence or if application under Section 319 of Cr. P.C 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 Cr. P.C and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(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 Cr. P.C 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 Cr. P.C, 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.”

(25) Name	Rajesh Yadav Vs. The State of Uttar Pradesh. Crl. Appl. No.-339-340/2014, Date of judgment-04.02.2022
Court-	Supreme Court of India, New Delhi.
Issue-	Deliberate attempt to derail the quest for Justice.
Held-	In the present case Supreme Court expressed agony and anguish for the manner in which trials in respect of serious offence relating to corruption are being conducted by the trial courts. The Supreme Court held that adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witnesses is over, adjournment is sought for cross examination and the disquieting feature is that trial courts grant time. The law requires special reasons to be recorded for the grant of time but the same is not taken not off.

(26) Name	Kaalicharan Vs. The State of Uttar Pradesh [Crl. Appl. No.-122/2021- Date of Judgement-14.12.2022]
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Court-	Supreme Court of India, New Delhi.
Issue-	Issue- Requirement of Section-313 of Cr. P. C.
Held-	<p>Hon'ble Apex Court held questioning an accused u/s 313 of Cr. P.C. is not an empty formality.</p> <p>“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 is questioned under Section 313 Cr. P.C, 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. He will not be able to properly defend himself.” (Para-22)</p> <p>Code of Criminal Procedure, 1973 Section-215 & 464 – The Hon'ble Court observed that there are two provisions in Cr. P.C. that deal with errors and omissions in framing charges. The said provisions are Section 215 & 464. The Hon'ble Court observed that when the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.</p> <p>Code of Criminal Procedure, 1973 – There are provisions made in CrPC in Chapter XVII regarding the framing of charge. The object of the said provisions is obviously to make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him. The object of the provisions regarding the framing of charge is that accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts.(Para-16)</p>

(27) Name	Makhan Singh Vs. The State of Haryana[Crl. Appl. No.-1290/2010 - Date of Judgement-16.08.2022]
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Court-	Court- Supreme Court of India, New Delhi.
Issue-	To dying declarations, both contradictory, both recorded by Judicial Magistrate.
Held-	<p>In the present case dying declarations were recorded twice. First dying declaration was recorded by Miss Vani Gopal Sharma (DW1). A perusal of the same would reveal that prior to the recording of the statement of the deceased Manjit Kaur, she was examined as to whether she was in fit condition to make the statement. After being satisfied that she was in fit condition her statement was recorded wherein she stated that she had mistakenly taken a medicine which was in fact a poison. After recording the statement she was also examined as to whether she made the statement voluntarily. Subsequently a day later, once again statement of the deceased was recorded by another magistrate Miss Kanchan Nariyala wherein she stated that her husband and his parents had administered the poisonous substance to her. The Hon'ble Court held that the first dying declaration will have to be considered to be more reliable and trustworthy as against the second one which is recorded after medical examination (Para- 16 & 17).</p> <p>India Evidence Act, 1872–Dying declaration- “It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”</p>

(28) Name	<u>Neeraj Dutta Vs. Government of National Territory of New Delhi.[Crl. Appl. No. 1669/2009- Date of Judgement-15.12.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Whether circumstantial evidence can be used to prove demand of illegal gratification?
Held-	<p>The Constitution Bench of the Supreme Court held that-‘in absence of primary evidence of the complainant due to his death, inferential deductions in order to sustain a conviction u/s 7 & 13 (1) (d) (i) & (ii) of the Prevention of Corruption Act, 1988 was permissible in law.</p> <p>The Hon’ble Court further observed that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.</p> <p>The Hon’ble Court further observed that In the event the complainant turns ‘hostile’, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.</p>

(29) Name	<u>Manoj and others Vs. The State of Madhya Pradesh[Crl. Appl. No. 248-250/2015- Date of Judgement-20.05.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Procedural fairness of the imposition of the death penalty.
Held-	<p>In the present case the appellants were convicted for offence punishable u/s 302 of IPC for committing the murder during the course of robbery. The Apex Court held that there is an intense and persistent crisis in the fairness of administering the death penalty in India. In this case the appellants were convicted for offence punishable u/s 302 IPC for committing the murder during the course of robbery.</p>

The Hon'ble Court issued practical guidelines to collect mitigating circumstances of the accused at the trial stage

To do this, the trial court must elicit information from the accused and the state, both. The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the state - conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

215. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:-

(a) Age,(b) Early family background (siblings, protection of parents, any history of violence or neglect),(c) Present family background (surviving family members, whether married, has children, etc.),(d) Type and level of education, (e) Socio-economic background (including conditions of poverty or deprivation, if any),(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any),(g) Income and the kind of employment (whether none, or temporary or permanent etc); (h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

The Apex Court also held that public opinion is neither an objective circumstance relating to crime, nor to the criminal, and the courts must exercise judicial restraint and play a balancing role.

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(30) Name	<u>Jay Prakash Tiwary Vs. The State of Madhya Pradesh[Crl. Appl. No. 704/2018- Date of Judgement-04.08.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Whether all adverse evidences should be put as questions to the accused for explaining circumstances u/s 313 of Cr. P.C. Whether all close relatives can automatically be characterized as interested witnesses?
Held-	The Hon'ble Supreme Court held that the purpose of section- 313 of Cr. P.C. is to provide the accused a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of trial. A reasonable opportunity entails putting all the adverse evidences in the form of questions so as to give an opportunity to the accused to articulate his defense and give his explanation. Section 313 of Cr. P.C. confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to fair trial under Article 21 of the Constitution of India. A close relative cannot automatically be characterized as ' interested ' witnesses. However, even related witness's statements need to be scrutinized more carefully.

(31) Name	<u>Smriti Tukaram Badada Vs. The State of Maharashtra[Misc. Application No. 1852/2019 in Crl. Appl. No. 1101/2019- Date of Judgement-11.01.2022]</u>
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Court-	Supreme Court of India, New Delhi.
Issue-	Directions for creating a safer and barrier free environment for recording the evidence of valuable witnesses.
Held-	<p>The Hon'ble Apex Court in exercise of powers under Article-142 of the Constitution of India issued 12 directions to facilitate the implementation of directions issued in State of Maharashtra Vs. Bandhu, for setting up 'special centers for examination of vulnerable witnesses'.</p> <p>The directions are enumerated below:-</p> <p>(i) The definition of "vulnerable witness" contained in Clause 3(a) of the 'Guidelines for recording evidence of vulnerable witnesses in criminal matters' of the High Court of Delhi shall not be limited only to child witnesses who have attained the age of 18 years and should be expanded to include, inter alia, the following categories of vulnerable witnesses:</p> <p>(a) Age neutral victims of sexual assault read with Sections 273 and 327 of the Code of Criminal Procedure 1973 and Section 354 of the Indian Penal Code 1860 ;</p> <p>(b) Gender neutral victims of sexual assault read with Section 2(d) of the Protection of Children from Sexual Offences Act 2012;</p> <p>(c) Age and gender neutral victims of sexual assault under Section 377 of the Indian Penal Code 1860 read with paragraph 34(1) of the decision in Sakshi (supra);</p> <p>(d) Witnesses suffering from "mental illness" as defined under Section 2(s) of the Mental Healthcare Act 2017 read with Section 118 of the Indian Evidence Act 1872;</p> <p>(e) Any witness deemed to have a threat perception under the Witness Protection Scheme 2018 of the Union Government as approved by this Court in Mahender Chawla v Union of India;</p> <p>(f) Any speech or hearing impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent court;</p> <p>(g) Any other witness deemed to be vulnerable by the concerned court.</p> <p>(ii) The High Courts shall adopt and notify a Vulnerable Witnesses Deposition Centres Scheme within a period of two months from the date of this order unless a scheme is already notified. The High Courts which already have existing VWDC Schemes in place may consider making suitable modifications in</p>

conformity with the guidelines which are indicated in the present order. In formulating the VWDC Scheme, the High Courts shall have due regard to the scheme which has been formulated by the High Court of Delhi, which has been duly approved in the judgment of this Court in Bandu;

(iii) Every High Court should set up an in-house permanent VWDC Committee for continuously supervising the implementation of the present directions and making a periodic assessment of the number of VWDCs required in each district proportionate to the time required for recording evidence of vulnerable witnesses and to coordinate the conduct of periodic training programmes;

(iv) Every High Court is requested to make an estimation of costs towards manpower and infrastructure required to set up at least one permanent VWDC in every establishment of the District Court (or additional Sessions Court establishments) and estimate the optimal number of VWDCs required for the entire State within a period of three months;

(v) Having due regard to the importance of conducting periodic training programmes for manning and managing the VWDCs and sensitizing all stake “VWDC” holders, including judicial officers, members of the Bar and the staff of the court establishment, we constitute a Committee chaired by Justice Ms Gita Mittal, former Chief Justice of the Jammu and Kashmir High Court. The Committee shall devise and implement an All India VWDC Training Programme, besides engaging with the High Courts on the creation of infrastructure for VWDCs. The initial tenure of the Chairperson shall be for a period of two years. All High Courts or concerned role assignees shall facilitate and give full cooperation in conducting training programmes in terms of the module which may be prepared by the Chairperson;

(vi) Upon the estimation of costs prepared by the VWDC Committee of each High Court, the State Government shall expeditiously sanction the requisite funds within a period of three months from the date of the submission of the proposal or the end of the financial year, whichever is earlier, and disburse the funds to the High Court in accordance with the project plan. The State Government shall nominate a nodal officer of the Finance Department who shall be associated ex officio with the work of the VWDC Committee of the High Court, to facilitate the

implementation of the proposal submitted by the High Court in terms of these directions;

(vii) The High Courts shall ensure that at least one permanent VWDC is set up in every District Court establishment (or additional Sessions Court establishments) within a period of four months. The Registrars General of the High Courts shall file compliance reports before this Court;

(viii) In many States, ADR Centres have been set up by the High Courts in close proximity to the court establishments in the districts. Where such ADR Centres are in place, the High Courts would be at liberty to ensure that the VWDC is made available within the premises of the ADR Centre so as to secure a safe, conducive and barrier free environment for recording the depositions of vulnerable witnesses;

(ix) The National Legal Services Authority as well as the State Legal Services Authorities have a vital stake and role, particularly in devising and implementing sensitization and training programmes. The Chairperson of the Committee appointed by this Court is requested to engage with NALSA and SLSAs (subject to the directions which may be issued by the Hon'ble Executive Chairperson of NALSA) so as to provide an effective interface for implementing the scheme for training;

(x) The Hon'ble Chief Justices of the High Courts would be at liberty to take all appropriate steps either on the administrative side or on the judicial side in furtherance of the present directions and to monitor compliance on a periodic basis;

(xi) The Chief Justice of the High Court of Delhi is requested to make available a work space/room for the office of the VDWC Committee Training Centre and requisite staff, preferably personnel who have previously assisted in the development and implementation of the Training Modules of the Delhi High Court and to designate a Coordinator of the programme in consultation with the Chairperson. Appropriate secretarial and logistical support staff and equipment may be made available to the Committee on a reasonable remuneration as fixed by the Chairperson. The expenses in that regard, including the honorarium payable to the Chairperson shall be defrayed by "NALSA" "SLSAs" the Ministry of Women and Child Development to the Director of the Delhi Judicial Academy. The Chairperson may fix a reasonable honorarium for the work

assigned to her under the terms of this order. In the event that any further directions are necessary, the Chairperson may seek them before this Court and any communication in that regard shall be placed for further directions; and

(xii) The Ministry of Women and Child Development of the Union Government shall designate a nodal officer for coordinating the implementation of these directions and for providing all logistical support to Justice Ms Gita Mittal, the Chairperson of the Committee appointed by this Court. This would include the payment of honorarium to the Chairperson in terms as fixed by the Chairperson and meeting the expenses, including those towards engaging domain experts for training programmes. The Union Ministry of Women and Child Development and all Ministries of Women and Child Development in the States shall coordinate with the Chairperson and extend logistical support.

The High Courts shall, in consultation with the Chairperson of the Committee, enlist experts in the field to facilitate proper training and development of all stake holders.

(32) Name	<u>Re: to issue certain guidelines regarding inadequacies and deficiencies in Criminal Trial.[Suo Moto Writ No. 01/2017- Date of Judgement-20.04.2021]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Guidelines regarding inadequacies and deficiencies in Criminal Trial.
Held-	<p>In the present case the Hon'ble Supreme Court suo moto took cognizance of the said issue during course of hearing of a criminal appeal. The Hon'ble Court observed that due to lack of uniformity in practices adopted by states in criminal trial, appreciation of evidence is hampered which has a tendency of prolonging proceedings especially at the appellate stage. The Supreme Court delivered Draft Rules of Criminal Practice, 2021 in the matter on 20.04.2021. The following issues raised and considered in the judgment are pertinent note:-</p> <p><u>List of non-relied documents, statements and other material objects to the accused:</u></p> <p>It was pointed out that along with furnishing of the relied upon list of documents, material objects to the accused, the Magistrate</p>

should ensure that the list of materials not relied upon should also be furnished to the accused to give him an opportunity to decide whether those materials are necessary to be produced for a proper and just trial. This brings about transparency in the trial and justifies the principle of 'Audi Altrem Partem' with respect to the accused.

Objections regarding questions to be put to witnesses

The Amici Curiae pointed that the practice of recording answers to all questions regardless of objections to the questions, as was directed in matter titled as **Bipin Shantilal Panchal Vs. State of Gujarat** prolongs the proceeding and leads to lengthy cross examination. Therefore the rule in Bipin Shantilal Panchal warrants re-consideration. Furthermore, it was pointed out that entertaining even the unnecessary questions during cross examination will also lead to hampering rights of the accused and witnesses, but further prolongs the proceedings.

Day-to-day trial and hearings

It was pointed out by High Courts and States that day to day commencement of trial does not bring a practical approach, as more often than not, the said hearing gets delayed with absence of one or other witnesses. Instead, sequencing must be done of witness deposition and accordingly dates should be assigned to the said witnesses. This would bring effectiveness in the hearing of the matter.

Preliminary case management hearing

The Hon'ble Court observed that after beginning of trial, such management hearing should be done in order to consider the total number of witnesses and further classifying them. Furthermore, the court would consider whether parties are in a position to admit any document or any document requires to be produced by the accused, so that a separate date may be kept for the said purpose. Separate dates should be fixed for witnesses.

Directions to State Government and Union of India

State Government and Union of India (in relation of agencies under control) were directed to carry out consequential amendments to their police and other manuals, within six months from the date of order. The High Courts were also directed to take steps to incorporate Draft Rules 2021 as part of the Rules governing trials and required modifications thereunder.

Draft Rules, 2021 in a nutshell:

Chapter 1 deals with investigation:

Rule 1 provides for body sketch to accompany medico legal certificate, post mortem report in the printed format.

Rule 2 lays down rules regarding photographs and videographs of post mortem in certain cases.

Rule 3 lays down rule for scene mahazar/ spot panchnama.

Rule 4 deals with supply of documents under Sections 173, 207 and 208 CrPC.

Chapter 2 deals with Charge:

Rule 5 deals with charge in which it is directed that order framing charge shall be accompanied by a formal charge in Form 32, Schedule II, CrPC to be prepared personally.

Chapter III deals with Trial

Rule 6 lays down procedure for recording of evidence.

Rule 7 provides format of witnesses for recording of evidence.

Rule 8 deals with exhibiting of material objects and evidence.

Rules 9 deals with subsequent references to accused, witness, exhibits and material objects.

Rule 10 deals with references to statements under Section 161 and 164 CrPC.

Rule 11 deals with marking of confessional statements.

Chapter IV deals with the Judgment

Rules 12 to 16 deals with the things to be mentioned in the judgment, the format of judgment including nomenclatures of the accused, witnesses and documents which will bring about clarity in the judgement.

Chapter V deals with miscellaneous rules

Rule 17 deals with Bail. Rule 18 deals with separate of prosecutors and investigators. As already mentioned Rule 18 was unanimously agreed to by all the High Courts as it will bring effectiveness in criminal trial.

Rule 19 provides directions for expeditious trial.

(33) Name	Manoj @ Monu @ Vishal Chaudhary vs The State Of Haryana;[Crl. Appl.No. 207/ 2022, date of judgement- 15.02.2022]
Court	Supreme Court of India
Issue	(i) Whether ossification test is conclusive for the determination of age of the offender?

	(ii) Whether registered maintained by Panchayat authorities can be relied for this purpose?
Held	<p>The Hon'ble Apex Court held that ossification test is not conclusive for the determination of the age of the offender as after a certain age it is difficult to determine the exact age of the concerned person on the basis of ossification test or other tests.</p> <p>The Hon'ble Apex Court further held that in the absence of matriculation certificate and when the genuinity of birth certificate issued by the school is doubtful, date of birth as maintained in the family register prepared and maintained by the Panchayat authorities can be relied upon.</p>

(34) Name	Md. Firoz vs The State Of Madhya Pradesh;[Crl. Appl No. 612/2019, Date of Judgement 19.04.2022]
Court	Supreme Court of India
Issue	What is the effect on trial if the accused fails to throw light upon the facts which are proved to be within his special knowledge in view of Section 106 of the Evidence Act? Whether statement under section 313 can be relied upon for conviction? What is the effect of "last seen together theory" on trial?
Held	In the present case the Hon'ble High Court vide that impugned common judgment dismiss the criminal appeal filed by the accused Md. Firoz and confirmed the death sentence awarded to him. Entire prosecution case rested on the circumstances evidence in as much as though certain facts were admitted by the appellant accuse u/s 313 of Cr. P. C. The law with regard

The law with regard to the appreciation of evidence when the case of the prosecution hinges on the circumstantial evidence is very well settled. The five golden principles laid down by this Court in the case of Sharad Birdhichand Sarada vs. State of Maharashtra⁵ and followed in catena of decisions, are worth reproducing:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency, 1984 (4) SCC 116 (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

It clarifies that statement of the accuse u/s 313 of Cr. P. C. is not substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject.

Last seen together theory :-

Once the theory of “last seen together” was established, the accused was expected to offer some explanation as to under which circumstances, he had parted the company of the victim.

Effect of failure to through light upon the facts specially within knowledge (Section-106 Evidence Act)-

It hardly needs to be reiterated that in the criminal jurisprudence, the entire burden of proving the guilt of the accused rests on the prosecution, nonetheless if the accused does not throw any light upon the facts which are proved to be within his special knowledge in view of Section 106 of the Evidence Act, such failure on the part of the accused may also provide an additional link in the chain of circumstances required to be proved against him. Of course, Section 106 of the Evidence Act does not shift the burden of the prosecution on the accused, nor requires the accused to furnish an explanation with regard to the facts which are especially within his knowledge, nonetheless furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of “last seen together” as propounded by the prosecution is proved against him, to know as to how and when the accused parted the company of the victim.

(35) Name	Vinay Sharma v. Union of India., AIR 2020 SC 1451. {W.P. (Cr.) No. 65/2020; Date of judgement – 14.02.2020
Court	Supreme Court of India
Issue	<p>The rejection of mercy petition by the President was challenged by the Nirbhaya Convicts on various grounds such as solitary confinement, non-consideration of relevant documents by President and Lt. Governor, inter alia on the grounds:-</p> <p>(i) Non-furnishing of relevant materials under RTI Act; (ii) non-consideration of relevant material; (iii) torture; (iv) mental illness; (v) consideration of irrelevant material by the respondent authorities; and (vi) illegal solitary confinement.</p>
Held	In this case The Hon’ble Apex Court held that – In a writ petition seeking the judicial review of the order of the President passed under Article 72 of the Constitution, the

	<p>scope of review by the Supreme Court is very limited and the court is called upon to examine:-</p> <p>(i) Whether the order has been passed without application of mind</p> <p>(ii) Whether the order has been passed on extraneous or wholly irrelevant considerations</p> <p>(iii) Whether the relevant materials have been kept out of consideration</p> <p>(iv) The order suffers from arbitrariness.</p> <p>Single room where the Petitioner was placed had iron bars open to air and the same cannot be equated with solitary confinement as the Petitioner was permitted to come out and mingle with other inmates at regular interval.</p> <p>The rejection of mercy petition of the Nirbhay convicts was held to be valid and in accordance with law.</p>
Relevant Para No.	Paragraph No. 16 and 28.

(36) Name	<u>Asian Resurfacing of Road Agency Pvt. Ltd. Vs. Central Bureau of Investigation, Miscellaneous application no. 1577 of 2020 in Criminal Appeal Nos. 1375-1376 of 2013; Date of judgement – 25.04.2022</u>
Court	Supreme Court of India
Issue	For how long a stay granted in civil/ criminal proceeding would be operative?
Held	The Hon'ble Supreme Court held that- 'In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The Hon'ble Apex Court also held that stay granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same.'

(37) Name	<u>Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Others, Civil Appeal Nos. 20825-20826 OF 2017</u>
Court	Supreme Court of India
Issue	Whether requirement of certificate u/s 65-B(4) of Evidence Act, mandatory for production of electronic evidence?
Held	<p>The Hon'ble Supreme Court held that certificate under Section 65B(4) evidence act is a condition for admissibility of electronic evidence but Certificate under Section 65B(4) is unnecessary if the original document itself is produced.</p> <p>In the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.</p> <p>Where the requisite certificate has been applied for from the person or the authority in the position to issue such certificate, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the Court for its production under the provisions aforementioned of the Evidence Act, CPC or Cr.P.C..</p> <p>The Court also issued general directions to cellular companies and internet service providers to maintain CDRs and other relevant records for the concerned period (in tune with Section 39 of the Evidence Act) in a segregated and secure manner.</p> <p>The court also directed that appropriate rules and directions should be framed for preservation, retrieval and production of electronic record by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption.</p> <p>Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which,</p>

	the secondary evidence pertaining to that electronic record, is inadmissible.
Relevant Para No.	Paragraph No. 32, 45 & 62.

(38) Name	<u>Karulal Vs. State of Madhya Pradesh, Criminal Appeal No. 316 of 2011. Date of judgement – 09.10.2020.</u>
Court	Supreme Court of India
Issue	Relevance of the testimony of a related Witness
Held	The testimony of a related witness, if found to be truthful, can be the basis of conviction. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony.
Relevant Para No.	Paragraph No. 14, 15, 20-23.

(39) Name	<u>Somasundaram Alias Somu Vs. State Rep. by the Deputy Commissioner of Police AIR 2020 SC 3327</u>
Court	Supreme Court of India
Issue	Principles pertaining to presumptions u/s 106 of the Evidence Act and importance of testimony of accomplice.
Held	<p>The Hon'ble Supreme Court held that the law does not permit the abettor to escape punishment for abetment even if the actual player who commits the offence is not criminally liable for the actual act which results in the commission of an offence. Thus, there need not be meeting of minds between all the persons involved in a conspiracy and it is sufficient if a person is engaged in the conspiracy following which the offence is committed.</p> <p>An accomplice may become an approver under Section 306 Cr.P.C. resulting in exposure under Section 308 Cr.P.C.</p> <p>Statements under Section 164 Cr.P.C. did not constitute substantial evidence and can only be used for contradiction and corroboration.</p> <p>Uncorroborated testimony of the accomplice cannot in itself be the basis of conviction.</p>
Relevant Para No.	Paragraph No. 71, 79 to 83, 87, 88, 103, 152 and 156.

(40) Name	<u>Surinder Kumar Vs. State Of Punjab;Criminal Appeal No. 512 of 2009. Date of judgement – 06.01.2020.</u>
Court	Supreme Court of India
Issue	Whether failure to examine an independent witness would give rise to the conclusion that the accused is falsely implicated?
Held	The Hon'ble Supreme Court held that Merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated.
Relevant Para No.	Paragraph No. 13.

(41) Name	<u>Shailendra Rajdev Pasvan Vs. State of Gujarat, AIR 2020 SC 180.Criminal Appeal No. 333-334 of 2017. Date of judgement – 13.12.2019.</u>
Court	Supreme Court of India
Issue	Whether the accused can be convicted merely on the basis of extra-judicial Confession and on the basis of last seen theory?
Held	The Hon'ble Supreme Court held that the entire case of prosecution is based on circumstantial evidence. Further held that extra judicial confession and last seen theory by itself can't form the basis of confession.
Relevant Para No.	Paragraph No. 13.

(42) Name	<u>Manoj Suryavanshi Vs. State of Chattisgarh, AIR 2020 SC 3863.Criminal Appeal No.of 2020 (arising out of SLP. Cr. No. 8682/2014. date of judgement – 05.03.2020.</u>
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Court	Supreme Court of India
Issue	<p>Can prosecution rely upon the deposition of a hostile witness?</p> <p>What are the factors that need to be considered while hearing a plea on sentence under section 235(2)?</p> <p>Whether sentencing would be vitiated if it is awarded on the date of conviction itself?</p>
Held	<p>The Hon'ble Supreme Court held that even the deposition of the hostile witness to the extent it supports the case of the prosecution can be relied upon.</p> <p>The Hon'ble Supreme Court further held- that the object and purpose of the section 235(2) is to evaluate whether at the time of awarding of the sentence, sufficient and proper opportunity has been given to the accused or not and whether at the time of awarding of the capital punishment is awarded, whether the accused has been given the opportunity to point out the aggravating and mitigating circumstances or not.</p> <p>There is no absolute proposition of law laid down by this Court that if the sentencing is awarded on the very same day on which the conviction was recorded, the sentencing would be vitiated.</p>
Relevant Para No.	Paragraph No. 20 & 35.

(43) Name	<u>Kaushik Chatterjee Vs. State of Haryana, AIR 2020 SC 4633. Transfer Petition No. 456 of 2019. Date of judgement – 30.09.2020</u>
Court	Supreme Court of India
Issue	Appropriate stage for seeking transfer of case u/s 406 Cr.P.C. on the ground of lack of territorial jurisdiction. Interpretation of word " <i>tries an offender</i> " in section 462 Cr.P.C.
Held	<p>It is possible to take the view that the words "<i>tries an offence</i>" are more appropriate than the words "<i>tries an offender</i>" in section 461(1). This is because, lack of jurisdiction to try an offence cannot be cure by section 462 and hence section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender.</p> <p>In case of issues pertaining to territorial jurisdiction, the answer would depend upon the facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by sections 177 to 184 Cr.P.C. The superior court cannot transfer the case, on the ground of lack of territorial jurisdiction, even before evidence is marshalled.</p>
Relevant Para No.	Paragraph No.38 and 41.

(44) Name	<u>Miss A Vs. State of UP, Criminal Appeal No. 659 of 2020.</u> <u>Date of judgement - 08.10.2020.</u>
Court	Supreme Court of India
Issue	Stage at which the accused can seek the copy of the statements recorded u/s 164 Cr.P.C..
Held	Filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement under Section 164 of Cr.P.C. The right to receive a copy of such statement will arise only after cognisance is taken and at the stage contemplated by Sections 207 and 208 of the Code and not before.
Relevant Para No.	Paragraph No.14 to 18.

(45) Name	<u>Chunthuram Vs. State of Chhattisgarh, Criminal Appeal No.1392 of 2011</u>
Court	Supreme Court of India
Issue	Whether presence of police during test identification makes statements by identifiers fall within the ban of section 162 Cr.P.C.? Whether unnatural conduct of the eye-witness is relevant while determining his credibility?
Held	When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of section 162 of the Code. The witness here knew the victim, allegedly saw the fatal assault on the victim and yet kept quiet about the incident. If the eye-witness had the occasion to actually witness the assault, his reaction and conduct does not match upto ordinary reaction of a person who knew the deceased and his family. His testimony therefore deserves to be discarded. If two innocence, the view favourable to the accused should be adopted.

Relevant para no.	Paragraph No.10 and 14.
(46) Name	Subed Ali Vs. State of Assam, AIR 2020 SC 4657. Criminal Appeal No. 1401 of 2012. Date of judgement – 30.09.2020.
Court	Supreme Court of India
Issue	Essential factors for establishing the common intention u/s 34 of the IPC.
Held	Common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different. The role may be active or passive is irrelevant, once common intention is established. There can hardly be any direct evidence of common intention. It is more a matter of inference to be drawn from the facts and circumstances of a case based on the cumulative assessment of the nature of evidence available against the participants. The foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of other with whom he shared the common intention.
Relevant Para No.	Paragraph No.13.

(47) Name	M/s Bandekar Brothers Pvt. Ltd. Vs. Prasad Vassudev Keni, AIR 2020 SC 4247. Criminal Appeal No. 546-550 of 2017. Date of judgement – 02.09.2020.
Court	Supreme Court of India
Issue	<p>Whether private complaint is maintainable for the offence u/s 191-193 IPC, if such offences are committed outside the Court?</p> <p>Whether provisions of section 195(1)(b)(i) is applicable when offence u/s 191-193 IPC have been committed outside the Court?</p> <p>Whether the principle laid down in the case of Iqbal Singh Marwah v. Meenakshi Marwah and Anr., 2005 4 SCC</p>

	370 is also applicable for the offences covered u/s 195(1)(b)(i) Cr.P.C.?
Held	<p>Private Complaint is not maintainable for the offences u/s 191 to 193 of IPC, even when the said offences have been alleged to be committed outside the Court. In case of the offences covered u/s 195(1)(b)(i) Cr.P.C., the procedure prescribed u/s 340 is necessarily required to be complied with, in all the cases.</p> <p>The principle laid down in Iqbal Singh Marwah v. Meenakshi Marwah and Anr., 2005 4 SCC 370 is merely applicable in relation to the offences covered u/s 195(1)(b)(ii) and not on the offences 195(1)(b)(i) Cr.P.C.</p>

(48) Name	Mohd. Anwar Vs. State (Nct Of Delhi), Criminal Appeal No. 1551/2010. Date of judgement – 19.08.2020.
Court	Supreme Court of India
Issue	Burden of proof in the cases when the accused places the defence of mental unsoundness.
Held	Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable
Relevant Para No.	Paragraph No. 12 and 15.

49.Name	<u>Saud Faisal v. State of Uttar Pradesh; SLP (Crl.) No.5647/2022; Date of judgment 21-06-2022</u>
Court	Supreme Court of india
Issue	Whether different statement given by the same prosecution witness in another case can be a reason for recalling the witness?
Held	Merely because a different statement was given by the same prosecution witness in another case that itself would not be a reason for recalling the witness and that too, after a period of seven years. It is not a case where a contradictory statement was given by some other witnesses in the present trial.

50.Name	<u>Varsha Garg v. State of Madhya Pradesh; Criminal Appeal No. 1021 of 2022 : Date of judgment: 08.08.2022</u>
Court	Supreme Court of india
Issue	Whether application under section 311 Cr P code, should not be allowed as it will lead to filling in the lacunae of the prosecution's case?
Held	The Court is vested with a broad and wholesome power, in terms of Section 311 of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. Merely, because it will lead to filling in the lacunae of the prosecution's case the said reason cannot be an absolute bar to allowing an application under Section 311.

51Name	<u>Mohammad Firoz v State of Madhya Pradesh; Criminal Appeal No. 612 OF 2019; Date of judgment:19.04.2022</u>
Court	Supreme Court of india
Issue	Whether there can be conviction on the basis of statement under section 313 Cr. P Code?

Held	The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. However, It is not a substitute for the evidence of the prosecution. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution.
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(52)Name	The State Represented By The Deputy Superintendent of Police. Vs. Tr. N. Seenivasagan, [Criminal Appeal Nos 231-232 of 2021, Date of Judgment-01.03.2021]
Court	Supreme Court of India
Issue	What is the ambit and scope of application for recall of witness u/s 311 of Cr. P. Code?
Held	<p>The Hon’ble Apex Court held that “the scope and object of the provision is to enable the Court to determine the truth and render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Such a power. Where the evidence likely to be tendered by the witnesses is germane to the issue involved such a power must be exercise.</p> <p>The very use of words such as any Court, at any stage, or any enquiry, trial or other proceeding clearly spells out that the provisions of this section has been expressed in widest possible terms and do not limit the discretion of the Court in any way. Therefore, the determinative factor should be whether the summoning / recalling of the said witness is in fact essential to the just decision of the case.</p>
Relevant Para	Para – 15
(53) Name	Ombir Singh Vs. The State Of Uttar Pradesh, [Crl. Appl. No. 982 of 2011, Date of Judgment-26.05.2020]
Court	Supreme Court of India

Issue	Whether delay in compliance of section 157 of the Cr. P Code has fatal impact on criminal trial?
Held	The Hon'ble Apex Court held "Delay in compliance of Section 157 of the Code cannot by itself, be a ground to acquit the appellant although this fact has to be considered while examining the credibility of the version of the eye-witnesses. The obligation cast on the IO to communicate the report to the Magistrate is an obligation of a public duty. But in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. However, where the date and time of the lodging of the FIR is questioned the delay in submitting the report is always taken as a ground to challenge the veracity of the FIR. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground."
Relevant Para	Para – 19, 20 & 21.

(54) Name	<u>Anwar Ali and Another Vs. State of Himachal Pradesh, AIR 2020 SC 4519 Criminal Appeal No. 1121 of 2016. Date of judgement – 25.09.2020.</u>
Court	Supreme Court of India
Issue	Relevancy of motive if a case is based on circumstantial evidence.
Held	<p>The Hon'ble Supreme Court held that in deciding the sufficiency of the circumstantial evidences for the purpose of conviction, the Court has to consider the total cumulative effects of all the proved facts, each one of which reinforce the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive.</p> <p>Absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.</p> <p>Recovery is doubtful as the IO stated that the recovery of the knife and rope was done on the basis of the disclosure statement of accused, however, the witnesses suggested that the recovery was done with the help of sniffer dogs. Such story was</p>

	<p>neither mentioned in the FIR nor was stated by IO during his court statement. Thus, the Court was justified in disbelieving in the disclosure statement.</p> <p>The Investigation Officer did not follow the procedure prescribed u/s 166(3 and 4) and section 100 of Cr. P.C. Non following the aforesaid provisions alone may not be a ground to acquit the accused. However, considering the overall surrounding circumstances and in case where recovery is seriously doubted, non-compliance of these provisions play an important role.</p>
Relevant Para No.	Paragraph No. 6, 1, 7 & 9.

(55)Name	<u>Sharma Sahani Vs. The State of Bihar, [Crl. Appl. (SI) No. 2459 of 2017, Date of Judgment 08.04.2022]</u>
Court	High Court Patna, Bihar
Issue	Whether Corroboration is an imperative component of judicial credence in every case of rape?
Held	The Hon'ble Patna High Court held that "It is well settled by a catena of judicial pronouncements that while appreciating the evidence of the victim of sexual assault, it should be treated on a par with the evidence of an injured witness. The reason is simple that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. In normal course, Indian Women has tendency to conceal such offence even before her family members much less before public or before the police. Therefore, testimony of the prosecutrix stands on higher pedestal than that of an injured witness. She would be conscious of the danger of being ostracized by the society. When, in face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated Corroboration is not an imperative component of judicial credence in every case of rape. Refusal to act on the testimony of the victim of sexual assault, in absence of corroboration as a rule, is adding insults to the injury. If the Doctor, who examined the victim, does not find sign of rape, it is

	no ground to disbelieve the sole testimony of the prosecutrix. If totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence as no self-respecting women would come forward to make a self- humiliating statement in casual manner.”
Relevant Para	Para – 5 and 6.

(56) Name	Surendran Vs. The State of Kerala.[Crl. Appl. No. 1080/2019- Date of Judgement-13.05.2022]
Court-	Supreme Court of India, New Delhi.
Issue-	Whether wife’s dying declaration can be used to prove cruelty even if husband is acquitted of charges relating to her death.
Held-	<p>In the present case the trial Court, after examining all the witnesses and perusing the documents produced by the prosecution and defence, convicted the accused persons u/s 304 B and 498 A of the IPC. Vide Judgment dated 12.05.2006, the Appellate Court acquitted the appellant’s brothers of both the offences.</p> <p>The Hon’ble Supreme Court after referring catena of decision held that In some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section 32(1) of the Evidence Act. There are, however, certain necessary preconditions that must be met before the evidence is admitted.</p> <p>The first condition is that her cause of death must come into question in the matter. This would include, for instance, matters where along with the charge under Section 498A of the IPC, the prosecution has also charged the accused under Sections 302, 306 or 304B of the IPC. It must be noted however that as long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility.</p> <p>The second condition is that the prosecution will have to show that the evidence that is sought to be admitted with respect</p>

	to Section 498A of the IPC must also relate to the circumstances of the transaction of the death.
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CONVICTION/ACQUITTAL

(57) Name	<u>Maheshwar Tigga Vs. State of Jharkhand, AIR 2020 SC 4535. Criminal Appeal No. 635 of 2020. Date of judgment – 28.09.2020</u>
Court	Supreme Court of India
Issue	The Hon'ble Apex Court considered the jurisprudence of consent in the cases of allegation of rape under the false pretext of marriage. Accused alleged for commission of offence u/s 376, 341, 323 and 91 IPC.
Held	<p>Acquittal – The consent of the prosecutrix was but a conscious and deliberate choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep seated love for the appellant, leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love.</p> <p>Delay of four years in lodging the FIR and lodging of FIR seven days prior to the date of marriage of accused with other girl, raises serious doubt about the veracity of the allegations levelled by the prosecutrix.</p> <p>Court relied on the its previous judgments delivered in the case of <i>Dhruvaram Murlidhar Sonar v. State of Maharashtra, AIR 2019 SC 327</i> and in the case of <i>Pramod Suryabhan Pawar v. State of Maharashtra, 2019 9 SCC 608</i>.</p>
Relevant Para No.	Paragraph No.73 and 74.

(58) Name	<u>Stalin Vs. State represented by Inspector of Police., AIR 2020 SC 4195. Criminal Appeal No. 577 of 2020. Date of judgement – 09.09.2020.</u>
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Court	Supreme Court of India
Issue	<p>Whether the accused can be held liable for the offence of murder in the case of single blow or injury caused to the deceased?</p> <p>Whether the death caused without any motive but due to sudden quarrel be covered u/s 302 or 304 IPC?</p>
Held	<p>It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, the section 302 IPC is ruled out. It has to be seen that whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death but with the intention to cause death.</p> <p>Though the incident was caused due to sudden quarrel, without premeditation, however, since the accused inflicted the injury with knife and the injury was inflicted on vital parts of body, it is presumed that causing such bodily injury was likely to cause death. Hence, covered in part I of section 304 IPC.</p>
Relevant Para No.	Paragraph No.7.2 and 11.

(59) Name	Jugut Ram Vs. State of Chhattisgarh, AIR 2020 SC 4395. Criminal Appeal No. 616 of 2020. Date of judgment - 16.09.2020
Court	Supreme Court of India
Issue	Section 302 and 304 IPC – Death caused due to assault by lathi.
Held	<p>A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter. In a case of assault on head by lathi, without any premeditation, it is always a question fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge, as the case may be.</p>

	The conviction of accused was altered from 302 to 304 Part II of IPC.
Relevant Para No.	Paragraph No.7 and 11.

(60) Name	<u>Ananta Kamilya Vs. State of West Bengal, AIR 2020 SC 315. Criminal Appeal No. 1930 of 2019. Date of judgment - 07.01.2020</u>
Court	Supreme Court of India
Issue	Whether the death caused without any motive but due to sudden quarrel be covered u/s 302 or 304 IPC? Section 302 and 304 IPC – Death caused due to assault by lathi.
Held	The incident was caused due to sudden quarrel, without premeditation, without intention to cause death. However, since the accused inflicted the injury with lathi and the injury was inflicted on the head of the accused, it is presumed that there does not appear to be any premeditation or intention to kill the deceased. The death resulted due to injury in quarrel. Hence, the case would fall under the Exception 4 to section 300 IPC. Therefore, the conviction of accused was altered from 302 to 304 Part I of IPC.
Relevant Para No.	Paragraph No.6.1, 6.2 and 7.

(61) Name	<u>Mohd. Anwar Vs. State (Nct Of Delhi), Criminal Appeal No. 1551/2010. Date of judgment – 19.08.2020.</u>
Court	Supreme Court of India
Issue	Burden of proof in the cases when the accused places the defence of mental unsoundness.
Held	Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defenses are thus well reasoned and unimpeachable
Relevant Para No.	Paragraph No. 12 and 15.

(62) Name	<u>Chota Ahirwar Vs. State of MP, AIR 2020 SC 1150. Criminal Appeal No. 238 of 2011. Date of judgement – 06.02.2020</u>
Court	Supreme Court of India
Issue	Essential elements to establish common intention u/s section 34 of the IPC

Held	<p>Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This Section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot.</p> <p>Section 34 of the Indian Penal Code, is really intended to meet a case in which it is difficult to distinguish between the acts of individual members of a party and prove exactly what part was played by each of them.</p> <p>To attract Section 34 of the Indian Penal Code, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention.</p> <p>It is not enough to have the same intention independently of each other.</p>
Relevant Para No.	Paragraph No.24, 26 and 27.

(63)Name	<u>The State Represented By The Deputy Superintendent of Police. Vs. Tr. N. Seenivasagan, [Criminal Appeal Nos. 231-232 of 2021, Date of Judgment-01.03.2021]</u>
Court	Supreme Court of India
Issue	What is the ambit and scope of application for recall of witness u/s 311 of Cr. P. Code?
Held	The Hon'ble Apex Court held that "the scope and object of the provision is to enable the Court to determine the truth and render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Such a power. Where the evidence likely to be tendered by the witnesses is germane to the issue involved such a power must be exercise.

	<p>The very use of words such as any Court, at any stage, or any enquiry, trial or other proceeding clearly spells out that the provisions of this section has been expressed in widest possible terms and do not limit the discretion of the Court in any way. Therefore, the determinative factor should be whether the summoning / recalling of the said witness is in fact essential to the just decision of the case.</p>
Relevant Para	Para – 15

(64) Name	<u>Gurcharan Singh Vs. State Of Punjab, Criminal Appeal No.40 of 2011. Date of judgment – 01.10.2020.</u>
Court	Supreme Court of India
Issue	The husband was convicted for the offence u/s 306 IPC for abetment of suicide of his wife, though the allegation of 304 B and 498-A were not found to be proved. The conviction was upheld by the High Court and the same was challenged before the Apex Court.
Held	<p>To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.</p> <p>In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must</p>

	<p>be proved and established by the prosecution before he could be convicted under Section 306 IPC. Husband was acquitted by the Apex Court</p>
Relevant Para No.	Paragraph No.13.

SENTENCE

(65) Name	Malkeet Singh Gill Vs. State of Chhattisgarh, Criminal Appeal No. 915 of 2022; Date of Judgment 05.07.2022
Court	Supreme Court of India
Issue	Power of court to order concurrent running of sentence
Held	Section 31 of Cr.P.C confers full discretion to the Trial Court as well as Appellate Court to order the sentences to run concurrently in case of conviction for two or more offences.

APPEAL

(66) Name	Parvinder Kansal Vs. State of Nct Of Delhi, Criminal Appeal No. 555/2020; Date of judgment – 28.08.2020.
Court	Supreme Court of India
Issue	Can the victim file the appeal against the inadequacy of sentence under proviso to section 372 Cr.P.C.?

Held	While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.P.C. gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.P.C. but similarly no appeal can be maintained by victim under Section 372, Cr.P.C. on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable.
Relevant Para No.	Paragraph No.9.

(67) Name	Ramesan (Dead) Through LR. Girija A Vs. State Of Kerala. Criminal Appeal No. 77 of 2020. Date of judgment - 21.01.2020
Court	Supreme Court of India
Issue	Can appeal against composite sentence of imprisonment & fine u/s 394 Cr. P.C. abate on the death of the accused?
Held	The appeal before the High Court being against sentence of fine was required to be heard despite death of accused. However, the appeal against sentence of imprisonment shall abate. Opportunity must be given to legal heirs to make their submissions on the merits of the appeal.
Relevant para no.	Paragraph No.19 and 20.

(68) Name	Raveen Kumar Vs. The State of Himachal; Crl. Appl. No. 2187-88/2011, Date of judgment- 26.10.2020
Court-	Supreme Court of India, New Delhi.
Issue-	(i) What is the scope and essence of High Court's appellate jurisdiction against a judgment of acquittal?

	<p>(ii) What is the extent of reliance upon a document with which the other side was not confronted with during cross examination?</p> <p>(iii) Whether non examination of independent witness vitiates the prosecution case?</p>
Held-	<p>The Hon'ble Supreme Court in this case held that there is no difference of power, scope, jurisdiction or limitation under the Cr. P.C. between appeals against judgments of conviction or of acquittal. An appellate Court is free to reconsider questions of both law and fact, and re-appreciate the entirety of evidence on record. There is, nonetheless, a self-restraint on the exercise of such power, considering the interest of the justice and fundamental principle of presumption of innocence.</p> <p>The Hon'ble Supreme Court further held that the High Court has correctly noted in the present case that no opportunity to controvert this reply document was given to the prosecution nor was PW5 confronted with it. Moreover, no weight can be accorded to such reply when the trial Court itself, while rejecting bail on 17.11.1994 had interpreted the same to conclude that the police was not having a prior information that the petitioner was carrying Charas in his Maruti Van.</p> <p>The Hon'ble Supreme Court while acknowledging the importance of independent witness, observed that it would be gainsaid that lake of independent witnesses are not fatal to the prosecution case. However, such omissions caste and added duty on Courts to adopt a greater degree of care while scrutinizing the testimonies of the police officers, which if found reliable can form the basis of a successful conviction.</p>

BAIL & PERSONAL LIBERTY

(69) Name	<u>Satendra Kumar Antil Vs CBI, New Delhi.[SLP (Crl.) No. 5191/2021, Date of judgment- 11.07.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Guidelines for granting bail.
Held-	Keeping in the increased number of cases seeking bail, mainly because of interpretation of section-170 of Cr. P.C., the Supreme Court laid down following guidelines regarding grant

	<p>of bail and requested the Union Government to enact a separate law to streamline grant of bail:-</p> <ul style="list-style-type: none"> * The Courts will have to satisfy themselves on the compliance of section-41 A of the Court. Any non-compliance would entitle the accused for grant of bail. * While considering the application u/s 88, 170, 204 & 209 of the code, a bail application need not be compulsorily filed. * The State and Central Governments have to comply with the directions issued by Supreme Court with respect to constitution of Special Courts. * The High Courts are directed to look for the under trial prisoners who are unable to complied with the bail conditions and take appropriate action in light of section-440 of the court for, facilitating their release. * Bail application ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being and intervening application. Application for anticipatory bail are excepted to be disposed of within a period of six weeks with the exception of any intervening application.
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(70) Name	<u>Manish Jain v. Haryana State Pollution Board, AIR 2020 SC 4288.{SLP. (Cr.) 5385/2020 Date of judgement - 20.11.2020.</u>
Court	Supreme Court of India
Issue	Whether the accused released on regular bail can apply for the anticipatory bail as his bail was cancelled due to non-appearance?
Held	In this case The Hon'ble Apex Court held that – ‘A person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law.
Relevant Para No.	Paragraph No. 2.

(71) Name	<u>Myakala Dharmarajam v. State of Telangana, AIR 2020 SC 317; Cr.Appeal No. 1974-1975/2019; Date of judgment – 07.01.2020</u>
Court	Supreme Court of India
Issue	The court discussed the relevant factors to be considered at a time of granting the bail and at a time of cancelation of bail. The court also laid down the scope of powers to be exercised by the court in the matter of cancellation of bail.
Held	<p><u>Factors to be considered while granting bail:</u></p> <ul style="list-style-type: none"> a) The character of the evidence. b) Position and status of the accused with reference to the victim and witnesses. c) The likelihood of the accused fleeing from justice and repeating the offence. d) The possibility of his tempering with the evidence and witnesses. e) Obstructing the course of justice etc. <p>Factors to be considered at the time of cancellation of bail:</p> <ul style="list-style-type: none"> a) The accused misuses his liberty by indulging in similar criminal activity. b) Interferes with the course of investigation. c) Attempts to tamper with evidence or witnesses. d) Threatens witnesses or indulges in similar activities which would hamper smooth investigation. e) There is likelihood of his fleeing to another country. f) Attempts to make himself scarce by going underground or becoming unavailable to the investigating agency. g) Attempts to place himself beyond the reach of his surety, etc. <p><u>Scope of powers to be exercised by the court in the matter of cancellation of bail:</u></p> <p>It is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice.</p> <p>It is not necessary for the Sessions Court to discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail.</p> <p>It is not the case of either the complainant-Respondent No.2 or the State that irrelevant considerations have been taken</p>

	<p>into account by the Sessions Court while granting bail to the Appellants.</p> <p>The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the accused tampering with the evidence.</p>
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(72) Name	<u>Arnab Manoranjan Goswami v. State of Maharashtra, Criminal Appeal No. 742 of 2020. Date of judgment – 27.11.2020.</u>
Court	Supreme Court of India
Issue	Interim bail.
Held	<p>The Hon'ble Apex Court held that the High Court may consider granting of bail under article 226 of the Constitution. when the court is called upon to secure the liberty of the accused.</p> <p>While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors for granting bail such as the nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction; apprehension of the accused tampering with the witnesses, possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice, antecedents of and circumstances which are peculiar to the accused, whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR and significant interests of the public or the State and other similar considerations.</p> <p>High Court has the power to protect the citizen by an interim order in a petition invoking Article 226. High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of state power.</p> <p>The Apex Court granted the Interim Bail to the Petitioner with the liberty to approach the Hon'ble Bombay High Court for deciding his pending petition on merits.</p>

Relevant Para No.	Paragraph No. 12.
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(73) Name	<u>G. Selvakumar v. State Of Tamil Nadu, Special Leave to Appeal (Cri) No. 4202-4203/2020; Date of judgment - 01.10.2020.</u>
Court	Supreme Court of India
Issue	The High Court dismissed the bail application of the Petitioner on the ground that the Petitioner did not abide by the conditions of interim bail and failed to settle the matter by making payment. The order of High Court was challenged before the Apex Court.
Held	The Hon'ble Apex Court held - that the High Court ought to have heard the bail application on merits and ought not to have dismissed the same on the ground that the Petitioner has gone back of the promise made to the High Court while seeking the interim bail from the Court.

(74) Name	<u>Saravanan v. State , Criminal Appeal Nos. 681-682 OF 2020</u>
Court	Supreme Court of India; Criminal Appeal Nos. 681-682 OF 2020.Date of judgment – 15.10.2020.
Issue	Whether while releasing the accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition like deposit of amount can be imposed?
Held	The Hon'ble Apex Court held - the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and if, within 60 or 90 days, as the case may be, the investigation is not completed and chargesheet is not filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail, no other condition for deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.
Relevant Para No.	Paragraph No.9.

(75) Name	<u>Preet Pal Singh v. State of UP and Anr. AIR 2020 SC 3995Criminal Appeal Nos. 520 OF 2020.Date of judgment – 14.08.2020.</u>
Court	Supreme Court of India
Issue	Difference in approach while granting bail u/s 439 of Cr.P.C. in case of a pre-trial arrest and grant of bail post-conviction under Section 389 of the Cr.P.C?
Held	The Hon’ble Supreme Court held –“There is a difference between grant of bail under Section 439 of the Cr.P.C. in case of pre-trial arrest and suspension of sentence under Section 389 of the Cr.P.C. and grant of bail, postconviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception. However, in case of postconviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.”
Relevant Para No.	Paragraph No. 36 .

(76) Name	<u>Mahipal Vs. Rajesh Kumar @ Polia, [Criminal Appeal No. 1843/2019, Date of Judgement-05.12.2019]</u>
Court	Supreme Court of India
Issue	When the exercise of discretion while granting bail can be set to be perverse and bail already granted liable to be cancelled?

Held	<p>The Hon'ble Apex Court has held 'though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be under taken, there is a need to indicate reasons for prima facie concluding why bail was being granted particularly where the accused a charged of having a committed serious offence. Any order devoid of such reasons would suffer from non application of mind requiring the intervention of this Court.'</p> <p>Where an earlier application has been rejected, there is a higher burden on the applet Court to furnish specific reasons as to why the bail should be granted.</p>
Relevant Para No.	Paragraph No. 23 and 25.

(77) Name	Prabhakar Tewari v. State of UP, Criminal Appeal No.153-154 of 2020. Date of judgment - 24.01.2020.
Court	Supreme Court of India
Issue	Can the gravity & seriousness of alleged offence alone be the basis to refuse bail?
Held	The Hon'ble Supreme Court held that- Factors like gravity & seriousness of alleged offence by themselves cannot be the basis to refuse the grant of bail.
Relevant Para No.	Paragraph No. 7.

(78) Name	Ankita Kailash Khandelwal Vs. The State of Maharashtra,[Criminal Appeal No. 660-662/2020, Date of Judgment-08.10.2020]
Court	Supreme Court of India
Issue	Whether conditions imposed while granting bail can be relaxed by subsequent order? What is the ambit of the term 'any condition' in Section-438 of the Cr. P.C.?
Held	The Hon'ble Apex Court has held while exercising power u/s 438 of Cr. P.C., the Court is duty bound to strike a balance between the individual's right to person freedom and the right of investigation of the police. While granting relief u/s 438 (1),

	<p>appropriate conditions can be imposed u/s 438 (2) so as to ensure uninterrupted investigation. Thus, any condition which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law.</p> <p>While explaining the ambit of the term ‘any condition’ as use in u/s 438 the Apex Court held that ‘the words any condition used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition i.e. chooses.’ It has to be interpreted as reasonable condition permissible in the circumstances of the case should not defeat the order of grant of bail.</p>
Relevant Para No.	Paragraph No. 10, 11 and 15.

(79) Name	Shor v. State of Uttar Pradesh, Writ Petition (Criminal) No. 58/2020; Date of judgment – 05.08.2020.
Court	Supreme Court of India
Issue	Factors to be considered for pre-mature release of the prisoner.
Held	<p>In this case The Hon’ble Apex Court enumerated the factors to be considered for premature release of the prisoners as follows :-</p> <ul style="list-style-type: none"> (i) Antecedents of the prisoner (ii) Conduct of the prisoner in the prison (iii) The prisoner, if released, is likely to abstain from crime and lead a peaceable life. <p>The same cannot be denied solely on the ground that the crime is heinous and that release of such person would send a negative message against the justice system in society.</p>
Relevant Para No.	ALL.

(80) Name	S. Kasi v. State through the Inspector of Police, AIR 2020 SC 2921 [Crl. Appl. No. 45/2020, Date of Judgment-15.01.2020]
Court	Supreme Court of India
Issue	Whether the accused person would be entitled to default bail due to non-submission of chargesheet during the lockdown period?

Held	In this case The Hon'ble Apex Court held that – ‘During the lockdown, the Investigation Officer was not precluded from submitting the charge-sheet before the Magistrate within the prescribed period. Lockdown restriction by Government shall not operate as any restriction on the rights of an accused as provided by section 167(2) of Cr.P.C. regarding his indefeasible right to get a default bail on non-submission of charge-sheet within the prescribed time.’
Relevant Para No.	Paragraph No. 26.

(81) Name	<u>Sushila Agarwal Vs. State (NCT of Delhi) and Anr, 2020 5 SCC 1.[SLP (Cri.) No. 7281-7282/2017, Date of judgment-29.01.2020]</u>
Court	Supreme Court of India
Issue	<p>(i) Whether the protection granted to a person under Section 438 Cr.P.C. should be limited to a fixed period so as to enable the person to surrender before the Trial Court and seek regular bail?</p> <p>(ii) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court?</p>
Held	<p>The Hon'ble Apex Court held:- “Life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. However, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.</p> <p>It is not essential that an application for anticipatory bail should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest.</p> <p>It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.</p>

Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. The Court would be free to decide the nature and extent of restrictions to be imposed in accordance with section 437(3) and 438(2) of the Cr.P.C.

The Hon'ble Apex Court further held that – ‘Order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre arrest bail.’

The Hon'ble Apex Court held further that “‘The investigation officer would be free to take limited custody or deemed custody of the accused for the purpose of section 27 of Evidence Act. However, there would no need for separate surrender and need for bail. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.’”

The Hon'ble Apex Court further held that –‘The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances.’

Relevant Para No.	Final Conclusion.
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(82) Name	<u>Jagjeet Singh vs. Ashish Mishra.[Crl. Appl.No. 632/2022, Date of judgement-18.04.2022]</u>
Court	Supreme Court of India
Issue	(i) Whether the victim has a legal right to be heard at the stage of adjudication of bail application ? (ii) Whether the impugned order was passed in contravention of this right?
Held	<p>It is necessary to mention here that in this case the Hon'ble Apex Court has not cancelled bail, but set aside the order granting bail as it was found contrary to law. Therefore, the case was remanded back to the Allahabad Court for reconsideration and the accused was directed to surrender within a week.</p> <p>The Hon'ble Supreme Court set aside the order of the High Court due to failure to honor the right of the victim to participate in the hearing. The victims had been present for the online hearing before the High Court but could not participate due to technical reasons. They had preferred an application seeking rehearing, citing the reason, which was rejected by the High Court.</p> <p>The Hon'ble Court held that victim has a legally vested right to be heard at every stage of the bail. And such a victim has unbridled participatory right from the stage of the investigation till the continuation of the proceeding in a appeal.</p>

(83) Name	<u>Deepak Yadav vs The State of Uttar Pradesh[Crl. Appl.No. 861/2022, Date of judgement-30.12.2022]</u>
Court	Supreme Court of India
Issue	Cancellation of bail.
Held	<p>The Hon'ble Supreme Court held that bail was granted to the accused without considering the relevant facts and circumstances like criminal history of the accused, nature of the crime, material evidences available, involvement of accused in the said crime, recovery of weapons from his possession etc. Therefore, rejected the bail application of the accused.</p> <p>Holding that the Hon'ble Supreme Court has the inherent power and discretion to cancel the bail of an accused even in</p>

the absence of supervening circumstances, the Court laid down the following illustrative circumstances where the bail cancelled:-

(a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

(b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

(c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

(d) Where bail has been granted on untenable grounds.

(e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

(f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

(g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

(84)Name-	Jayaben vs Tejas Kanubhai Zal; Crl. Appl. No.1655/2021 Date of judgement-10.01.2022
Court-	Supreme Court of India
Issue-	(i) Whether Bail granted by the High Court ignoring the gravity of offence when there is no allegation of abuse of liberty can be cancelled? (ii) What are the considerations for cancellation of bail? (iii) What is the obligation of prosecution in such a situation?
Held-	The Hon'ble Supreme Court set aside the order of grant of bail to the accused facing charge u/s 302, 114, 323 of IPC u/s 135, 37 (1) of the Gujrat Police Act and u/s 3(2)(v) of the SC/ST Act on the grounds of gravity of the offences, statement of eye witnesses, CCTV and mobile phones footage. Once, it is found that the order passed by the High Court releasing the accused on bail is unsustainable, necessary consequences shall have to follow and the bail has to be cancelled.

	<p>The Hon'ble Court also observed that the State, by not filing appeal against the order releasing the accused on bail in such a serious matter, has failed to protect the rights of the victim. In criminal matters the party who is treated as a aggrieved party is the State Which is the custodian of the social interest of the community at large and so it is for the State to take all the necessary steps to book the person who as acted against the social interest of the community.</p>
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(85) Name	<u>Venkatesan Balasubramaniyan v. The Intelligence Officer, D.R.I. Bangalore.Criminal Appeal No. 801of 2020. Date of judgment - 20.11.2020.</u>
Court	Supreme Court of India
Issue	Can High Court cancel the default bail granted under section 167(2)?
Held	The Hon'ble Supreme Court held that- A 'default bail' illegally or erroneously granted under Section 167(2) Cr.P.C. can be cancelled by High Court under Section 439(2) Cr.P.C.

(86) Name	<u>Aparna Bhatt Vs The State of Madhya Pradesh,[Crl. Appl. No. 329/2021, Date of Judgment-18.03.2021]</u>
Court	Supreme Court of India
Issue	While allowing bail application in cases of violence against women whether the Court can impose conditions such as tying Rakhi, marrying the victim or effecting compromise etc.
Held	<p>In this case the Hon'ble Apex Court held laid down directions to be followed henceforth in this regard:-</p> <p>(a) bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complaint from any further harassment by accused;</p> <p>(b) where circumstances exist for the Court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for report from the police, the nature of protection shall be considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;</p> <p>(c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;</p>

(d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail;

(e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Further, courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that

(i) women are physically weak and need protection;

(ii) women are incapable of or cannot take decisions on their own;

(iii) men are the “head” of the household and should take all the decisions relating to family;

(iv) women should be submissive and obedient according to our culture;

(v) “good” women are sexually chaste;

(vi) motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother;

(vii) women should be the ones in charge of their children, their upbringing and care;

(viii) being alone at night or wearing certain clothes make women responsible for being attacked;

(ix) a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or “has asked for it”;

(x) women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony;

	<p>(xi) testimonial evidence provided by women who are sexually active may be suspected when assessing “consent” in sexual offence cases; and</p> <p>(xii) lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman.</p>
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(87) Name	S.G. Vombatkere Vs. Union of India [W.P. (C) No. 682/2021, date of judgment- 11.05.2022]
Court-	Supreme Court of India, New Delhi.
Issue-	Whether section 124 A of IPC curtails the freedom of speech and expression?
Held-	<p>The Apex Court stayed the operation of section- 124 (A) of the Indian Penal Code which is relating to the offence of sedition and issued two directions which are as follows :-</p> <ul style="list-style-type: none"> * State and Central Governments should refrain from registering any FIR u/s 124 A of IPC. * Investigating Agency should not continue any investigation or taking any coercive measures by invoking Section-124A of IPC while the aforesaid provision of Law is under consideration.

(88) Name	BudhadevKarmaskar v/s State of West Bengal;[Criminal Appeal No. 135/2010, Date of judgment- 19.05.2022]
Court-	Supreme court of India, New Delhi.
Issue-	Issue- Dignity and equal protection of sex worker.
Held-	<p>In a significant order the Supreme court recognised sex work as a “profession” and held that consenting practitioners of sex work were entitled to dignity and equal protection under law. The Hon’ble Court has directed that the police should neither interfere nor take criminal action against adult and consulting order. The Hon’ble Court using inherent power under Article 142 of the Constitution issued few directions in respect of sex workers, which is as follows :-</p> <ul style="list-style-type: none"> *If there is any raid on any brothel The Sex Workers concerned should not be arrested on harassed of victimized. * Police should treat all Sex Workers with dignity and should not abuse them, both verbally and physically, Subject them to violence or coerce them into any sexual activity.

	<p>* The Press council India should issue appropriate guidelines show that identities of Sex Workers, during arrest, raid, and rescue operations shall not be published or telecasted </p> <p>*Measures that Sex Workers employ for their health and safety must neither be construed as offences nor seen as evidence of the commission offences </p> <p>* Both the Governments shall carry out workshops for educating the Sex Workers about their rights.</p>
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(89) Name	State of Jharkhand Vs. Shailendra Kumar Rai;[Criminal Appeal No. 1441/2022, Date of judgment- 31.10.2022]
Court-	Supreme Court of India, New Delhi.
Issue-	Whether two finger test violates the right of privacy of a women.
Held-	<p>The Supreme Court relied on the case of Lillu Vs State of Haryana and held that the ‘two finger or per vaginum examination (while examining a person alleged to have been subjected to a sexual assault) in contravention of the direction of this Court shall be guilty of misconduct’.</p> <p>The Court held that the test is based on an incorrect assumption that a sexually active women cannot be raped. Nothing can be further from the truth, it is patriarchal and sexist to suggest that a women cannot be believed when she states that she was raped, merely for the reason that she sexually active.</p> <p>Dying declaration does not become inadmissible merely because police officer recorded it.</p>

LIMITATION FOR TAKING COGNIZANCE

(90)Name	Amrit Lal Vs. Shanti Lal Soni; Criminal Appeal No. 301 of 2022
Court	Supreme Cort of India, New Delhi
Issue	(i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?
Held	The Hon’ble Apex Cort held—“For the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. The enunciations and

	<p>declaration of law by the Constitution Bench of this Court in the case of Sarah Mathew v. Institute of Cardio Vascular Diseases by its director Dr. K.M. Cherian & Ors. (2014) 2 SCC 62 do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence.</p>
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INHERENT POWERS
OF HIGH COURT/QUASHING OF FIR

(91) Name	<u>K. Jagadish Vs. Udaya Kumar G.S., AIR 2020 SC 936; Criminal Appeal No. 56 of 2020.Date of judgment – 10.01.2020.</u>
Court	Supreme Court of India
Issue	FIR was quashed by the High Court on the ground of pendency of civil suit for cancellation of registered deed, which was filed by the Complainant subsequent to the lodging of the FIR; Order of High Court quashing FIR was challenged before the Apex Court.
Held	<p>The Hon’ble Supreme Court held that- ‘In certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. It is true that civil proceedings have been subsequently initiated to get the registered Sale Deed set-aside but that has nothing to do with the present criminal proceedings.’</p> <p>Order of the High Court was set aside and the criminal proceedings were allowed to be continued in accordance with law.</p>
Relevant Para No.	Paragraph No. 8 and 9.

(92)Name	<u>Central Bureau Of Investigation Vs Thommandru Hannah Vijayalakshmi; Criminal Appeal No. 1045 of 2021, Date of judgment-08.10.2021</u>
Court	Supreme Court of India
Issue	<p>Whether a preliminary enquiry is mandatory in cases of corruption involving public servants? whether FIR registered without such enquiry is liable to be quashed ? what is the ambit and scope of powers of high court under section – 482 Cr. P.Code and article 226 of the constitution of India in this regard?</p>
Held	<p>The Hon’ble Apex Court held –‘the institution of a Preliminary Enquiry in cases of corruption is not made mandatory before the registration of an FIR under the Cr P Code, P. C. Act or even the CBI Manual, for this Court to issue a direction requiring Preliminary Enquiry will be tantamount to stepping into the legislative domain. Hence, where the information received by the CBI, through a complaint or a source information under Chapter 8, discloses the commission of a cognizable offence and the officer is satisfied that the information discloses the commission of a cognizable offence, it can directly register a Regular Case instead of conducting a Preliminary Enquiry.’ However, the Hon’ble Apex Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR for instance, if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. The CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. The precedents and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry</p>

	<p>is not mandatory in all cases which involve allegations of corruption.</p> <p>When a prayer for quashing the FIR is made by the accused and the court exercises the power under Section 482 Cr.P.Code the only thing to be considered is whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR; The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.</p> <p>However, 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 438 Cr.P.C. before the competent court.</p> <p>The High Court shall not and as 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/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.”</p>
Relevant Paras	Paras– 28, 33, 34

(93) Name	State Of Kerala v. Rajesh, Criminal Appeal No. 154-157 OF 2020 date of judgment – 24.01.2020.
Court	Supreme Court of India
Issue	Can the High Court recall its bail order by exercising the powers u/s 482 Cr.P.C. if the same has been passed under the misconception of facts?

Held	<p>The Hon'ble Supreme Court held that- The remedy of the State lies in challenging the orders of this Court, if it was really aggrieved, before a superior forum and not before the same court. High Court cannot recall such order while exercising the powers u/s 482 Cr.P.C. and none of the applications seeking to recall the order of this Court is maintainable under law.</p> <p>In the NDPS cases, while hearing bails, the Court must be cognizant of requirements u/s 37 of the NDPS Act.</p>
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(94) Name	<u>Rajeev Kourav v. Baisahab, AIR 2020 SC 909.Criminal Appeal No. 232 of 2020. Date of judgment – 11.02.2020.</u>
Court	Supreme Court of India
Issue	Whether the statements recorded u/s 161 Cr.P.C. can be considered by the High Court while adjudicating a petition filed u/s 482 Cr.P.C. for quashing the FIR?
Held	<p>The Hon'ble Supreme Court held that- 'It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing criminal proceedings.It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding. Statements of witnesses recorded under Section 161 Cr.P.C. being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 Cr.P.C.'</p>

(95) Name	<u>State of MP v. Yogendra Singh Jadon and Anr., AIR 2020 SC 911.Criminal Appeal No. 175 of 2020. Date of judgement – 31.01.2020.</u>
Court	Supreme Court of India
Issue	Whether in the exercise of powers u/s 482 Cr.P.C the High Court can quash the allegations pertaining to offence under 420 IPC, when the accused is also charged with offences under the Prevention of Corruption Act, 1988?
Held	The Hon'ble Supreme Court held that- 'The power under Section 482 of Cr.P.C. cannot be exercised where the allegations are

	required to be proved in court of law. The Hon'ble Apex Court reversed the finding of the High Court and denied to quash the charge for offence u/s 420 IPC by stating that the charge under section 420 IPC is not an isolated offence but it has to be read along with the offences under the PC Act to which the respondents may be liable with the aid of section 120-B of IPC.'
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SPECIAL ACTS

(96) Name	Vijay Madan Lal Chaudhary Vs Union of India. [SLP (Crl.) No. 4634/2014, Date of judgment- 27.07.2022]
Court-	Supreme Court of India, New Delhi.
Issue-	Constitutional validity of several provisions of Prevention of Money Laundering Act (PMLA).
Held-	<p>The Supreme Court upheld the provisions of the Prevention of Money Laundering Act (PMLA), 2002 and held that the Money Laundering is one of the heinous crimes, which not only affects the social and economic fabric of the nation, but also tends to promote other heinous offences such as terrorism, offences related to NDPS Act, etc.</p> <p>The Apex Court further clarifies that the power given to ED for making arrests, conducting search and seizures and attach proceeds of crime are constitutionally valid and do not suffer from the vice of arbitrariness.</p>

(97) Name	S. Rajaseekaran Vs union of India; [W.P.(C) No.295/2012, dated of interim order-22.04.2014 and date of next hearing- 06.02.2023]
Court-	Supreme Court of India, New Delhi.
Issue-	Modalities for implementing the provisions of section 136 A of the MV Act.
Held-	<p>This case discusses the most crucial problem of India that is the loss of human lives because of road accident.</p> <p>The Apex Court asked for a meeting to be convened by Justice AM Sapre, Chairperson of Supreme Court Committee on road safety to set out an agreed formulation of modalities for implementing the provisions of Section-136 of the MV Act. Section-136 provides that- "The State Government shall ensure electronic monitoring and</p>

enforcement of road safety in the manner provided under sub-section (2) on National Highways, State Highways, roads or in any urban city within a state which has a population up to such limits as may be prescribed by the Central Government”. The bench passed the following order :-

“1. The Motor Vehicles Act 1988 was amended by Act 32 of 2019, inter alia, to incorporate the provisions of Section 136A.

2. Section 136A has made provisions for the electronic monitoring and enforcement of road safety on national highways, state highways, roads or in any urban city within a State. Pursuant to the provisions of sub-section (2) of Section 136A, Rules have been framed by the Central Government. The rules have come into force on 11 August 2021.

3. The issue now is about ensuring the due enforcement of the provisions of Section 136A by drawing up state specific implementation guidelines. This exercise would have to be conducted in collaboration with the State governments.

4. Together with the amendment resulting in the introduction of Section 136A, Sections 215A and 215B were incorporated by the same amending Act 32 of 2019. Section 215A empowers the Central Government and the State Government to delegate their functions. Section 215-B has provides for constitution of the National Road Safety Board which has an advisory capacity. Section 215 contemplates the setting up of Road Safety Councils and Committees at the national, state and district levels.

5. Having due regard to the legislative framework, it would be appropriate if Mr Justice A M Sapre, Chairperson of the Committee appointed by this Court convenes a preliminary meeting with the Secretary in the Ministry of Road, Transport and Highways, the Additional Solicitor General and Mr Gaurav Agarwal, Amicus Curiae so that an agreed formulation can be placed before the Court for setting out modalities for implementing the provisions of Section 136A. The modalities shall be chalked out and presented before this Court.

6. We request Justice A M Sapre to convene a meeting at his early convenience preferably within a period of two weeks.

7. The Amicus Curiae may thereafter report back to this Court on the consensus which has emerged during the course of meeting so that the provisions of Section 136A can be enforced across the country having due regard to the requirements and exigencies of each State.

8. List on 6 February 2023.”

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(98) Name	<u>Venkateshwaran Vs. P. Bakthavatchalam.[Crl. Apl. No.1555/2022, Date of judgment- 05.01.2023]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Private Civil dispute converted to Criminal Proceedings Supreme Court quashes complaint alleging offence under SC/ST Act-
Held-	<p>In the aforesaid case, the complainant alleged that the accused encroached the pathway adjacent to his house and started to construct temple. It was further alleged that the accused prevented him from putting up further constructions on his building and also committed criminally intimidation. The Special Court having gone through the case diary took cognizance of the offences u/s -3(1) (v) and (va) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and issued summons to the accused. The Madras High Court dismissed the petition filed by the accused challenging the summoning order. The Apex Court after allowing the appeals held that “it seems that the private civil dispute between the parties is converted into criminal proceedings. Initiation of the criminal proceedings for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, therefore, is nothing but an abuse of process of law and Court. From the material on record, we are satisfied that no case for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, even prima facie. None of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/ or satisfied. Therefore, we are of the firm opinion and view that in the facts and circumstances of the case, the High Court ought to have quashed the criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure”.</p>

(99) Name	<u>Jayant Kumar Vs. The State of Madhya Pradesh[Crl. Appl. No. 824-825/2020- Date of Judgement-03.12.2020]</u>
Court-	Supreme Court of India, New Delhi.

Issue-	Whether in view of bar u/s 22 of the Mines & Minerals (Development and Regulation) Act, 1957, the order passed by the learned Magistrate directing to register the FIR's unsustainable and deserves to be quashed.
Held-	<p>The Hon'ble Apex Court referring catena of decisions held that:-</p> <p>(i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;</p> <p>(ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;</p> <p>(iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and</p> <p>(iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.</p> <p>(v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in</p>

	<p>respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.</p> <p>In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the MMDR Act-Sections 4/21 of the MMDR Act only. The appeal preferred by the State of Madhya Pradesh stands dismissed.</p>
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(100) Name	Prathvi Raj Chauhan Vs. Union of India.[W.P.. (C). No. 1015/2018- Date of Judgement-10.02.2020]
Court-	Supreme Court of India, New Delhi.
Issue-	<p>(i) Whether the SC/ST Act is violating the fundamental rights?</p> <p>(ii) Whether anticipatory bail u/s 438 of Cr. PC for offences registered under Atrocities Act, 1989 is legally valid?</p> <p>(iii) Whether the Schedule Cast and Schedule Tribes (Prevention of Atrocities) Amendment Act of 2018 is constitutionally valid?</p>
Held-	<p>The Hon'ble Apex Court upheld the Constitutional validity of Section-18-A of the Schedule Cast and Schedule Tribes (Prevention of Atrocities) Amendment Act of 2018 and nullified the effect of the Kashinath Mahajan Case. The Apex Court held that the verdict given in the Kashinath Mahajan Case had put an unnecessary burden upon people of Schedule Cast and Schedule Tribes.</p> <p>About Section-18(A) of the Act, The Hon'ble Court held that preliminary inquiry is permissible only in circumstances and as per the law laid down in Lalita Kumari Vs. Government of Uttar Pradesh.</p> <p>With respect to the applicability of provisions of Section 438 of Cr. P.C. in respect of offences under SC & ST Act, the Hon'ble Court held that it shall not apply to the cases of SC & ST Act cases. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act the bar created u/s 18 and 18 A (1) shall not apply.</p>

(101) Name	Bikramjit Singh v. State Of Punjab, Criminal Appeal No. 667 of 2020. Date of judgment - 12.10.2020.
Court	Supreme Court of India

Issue	<p>Whether Special Court alone had the exclusive jurisdiction to extend the time for filing the charge sheet from 90 days to 180 days under Section 43-D (2)(b) of the UAPA?</p> <p>Whether subsequent filing of Chargesheet extinguishes indefeasible right of Accused who applied for 'Default Bail'?</p>
Held	<p>The Hon'ble Supreme Court held that –“The Magistrate Court does not have power to extend the time for filing of chargesheet in the offences under UAPA and the same can only be done by the Special Court or if there is no designated special court, then by Court of Sessions. The Hon'ble Court held that all scheduled offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. The Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, “the Court” being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. Where an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.</p>

(102) Name	Rizwan Khan vs. State of Chhattisgarh, AIR 2020 SC 4297. Criminal Appeal No. 580 of 2020. Date of judgment – 10.09.2020.
Court	Supreme Court of India
Issue	Whether it is essential to prove the ownership of vehicle for proving the commission of offence under NDPS Act?

Held	To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act. Therefore, merely because of the ownership of the vehicle is not established and proved and/or the vehicle is not recovered subsequently, trial is not vitiated, when the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot.
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(103) Name	<u>Tofan Singh v. State of Tamil Nadu, Criminal Appeal No. 152/2013. Date of judgment – 29.10.2020.</u>
Court	Supreme Court of India
Issue	<p>Whether an officer “empowered under Section 42 of the NDPS Act” and/or “the officer empowered under Section 53 of the NDPS Act” are “Police Officers” and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act?</p> <p>Whether the confessional statement recorded by the officer in exercise of the powers conferred u/s 67 of the NDPS Act would be capable of being used as substantive evidence to convict an accused?”</p>
Held	<p>The officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.</p> <p>Statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.</p>

OFFENCES AGAINST WOMEN

(104) Name	<u>Prabhakar Tewari v. State of UP, Criminal Appeal No.153-154 of 2020. Date of judgment – 24.01.2020.</u>
Court	Supreme Court of India
Issue	Can the gravity & seriousness of alleged offence alone be the basis to refuse bail?
Held	The Hon'ble Supreme Court held that- Factors like gravity & seriousness of alleged offence by themselves cannot be the basis to refuse the grant of bail.

(105) Name	<u>Aishwarya Atul Pusalkar vs. Maharashtra Housing and Area Development Authority, AIR 2020 SC 4238. Civil Appeal No. 7231 of 2012. Date of judgment – 27.04.2020.</u>
Court	Supreme Court of India
Issue	Builder discharging his obligation by accommodating original owners in the redeveloped premise. Can the wife invoke the writ jurisdiction to enforce her rights to matrimonial home against the builder, if her husband does not permit her to reside in the allocated portions?
Held	<p>A married woman is entitled to live, subsequent to her marriage, with rest of her family members on the husband's side, in case it is a joint-property. If she resides in an accommodation as an independent family unit with her husband and children, the matrimonial home would be that residential unit. There cannot be forcible dishousing of a wife from her matrimonial home. For a husband to compel his wife to live in a separate household, which is not her matrimonial home, an order from appropriate legal forum would be necessary.</p> <p>The wife cannot claim such rights by filing a writ petition against the Builder by diffusing her right with the rights of the husband arising from the family property.</p> <p>Wife free to exhaust the legal remedies conferred to her under the Protection of Women from Domestic Violence Act and other civil laws.</p>

MAINTENANCE U/S 125 CR. P. CODE

(106) Name	Sanjeev Kapoor v. Chandana Kapoor &Ors., AIR 2020 SC 1064. Criminal Appeal No. 286 of 2020. Date of judgment – 19.02.2020.
Court	Supreme Court of India
Issue	Whether the order of maintenance passed u/s 125 Cr.P.C. be subsequently altered/modified or cancelled by the Magistrate?
Held	The magistrate does not become <i>functus officio</i> after passing order of maintenance u/s 125 Cr.P.C. He is empowered to cancel or vary such order, as and when needed. The embargo prescribed u/s 362 Cr.P.C. is not applicable on the orders passed u/s 125 Cr.P.C.

(107) Name	Rajesh vs. Neha &Anr., Criminal Appeal No. 730/2020. Date of judgement – 04.11.2020.
Court	Supreme Court of India
Issue	Important judgment on determination and payment of maintenance under various matrimonial laws.
Held	<p><u>Issue of overlapping jurisdiction</u></p> <p>Where successive claims are filed for seeking maintenance under various statutes, the Court would consider the adjustment or set-off of the maintenance awarded in other proceedings.</p> <p>The Applicant is mandatorily required to disclose the previous proceedings and orders passed in the subsequent proceedings.</p> <p>If any correction or modification is required in the previous order, then it would only be done in that proceeding.</p> <p><u>Payment of interim maintenance</u></p> <p>The Hon'ble Court has directed that both the parties would be compulsorily required to file the Affidavit of Disclosure of Assets and Liabilities in all maintenance proceedings. The format of the affidavit has been prescribed in the judgment.</p> <p>Such affidavit would also be filed in the pending proceedings</p> <p><u>Criteria for determining the maintenance</u></p>

The Hon'ble Court has enumerated the list of criteria to be considered by the Court while deciding the quantum of maintenance. However, the list is not exhaustive and the concerned would be free to consider other relevant factors. Date from which maintenance is to be awarded

From the date of filing of the Application

Enforcement / Execution of orders of maintenance

Order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC.

(108) Name	Rakesh Malhotra v. Krishna Malhotra, Criminal Appeal No(s).246-247/2020. Date of judgment - 07.02.2020.
Court	Supreme Court of India
Issue	Whether the wife can file the application for maintenance u/s 125 CrPC after being granted permanent alimony u/s 25 Hindu Marriage Act?
Held	Application seeking maintenance u/s 125 Cr. P.C filed by wife, who was granted permanent alimony u/s 25 Hindu Marriage Act, cannot be entertained.

(109)Name	Kiran Tomar v State of Uttar Pradesh, SLP Criminal No. 8768 of 2022 Date of Judgment 31.10.2022
Court	Supreme Court Of India
Issue	Whether Income Tax Return can be a decisive guide to determine relief under section 125 Cr. P Code
Held	The Hon'ble Apex Court held that in matrimonial disputes the parties have a tendency to underestimate the income .Therefore while ascertaining the real income, holistic assessment has to be done. Income tax returns do not always provide accurate guide of the real income and so other evidences have to be considered.

(110) Name	Anju Garg v. Deepak Kumar Criminal Appeal No. 1693 of 2022 Date of Judgment:28.09.2022
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Court	Supreme court Of India
Issue	Whether having no source of income can be a ground to refuse maintenance u/s 125 Cr p code?
Held	Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India. It is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute

PLEA BARGAINING

(111) Name	<u>Suo Moto Writ Petition (Crl.) No. 04/2021 In Re: Policy Strategy for grant of bail.</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Disposal of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and under the Probation of Offenders act, 1958.
Held-	The Hon'ble Court directed that the accused has to remain present with his or her advocate and the complainant may also remain present with his/her advocate. The Court further observed that the Public Prosecutor would be required to ascertain the criminal incident of the accused. Only cases of first time offenders would be taken up.

JURISDICTION

(112) Name	<u>Ruhi vs. Anees Ahmed, Criminal Appeal 7 of 2020. Date of judgement - 06.01.2020.</u>
Court	Supreme Court of India
Issue	Whether the court, within whose territorial jurisdiction wife resides after leaving matrimonial home, can entertain complaints under 498A of IPC?

Held	The courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498- A of the Penal Code.
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MEDICAL EXAMINATION OF ACCUSED

(113) Name	<u>Chotku v. State Of Uttar Pradesh, Criminal Appeal No. 361-362 of 2018, Date of Judgment 28.09.2022</u>
Court	Supreme court of India
Issue	Whether medical examination under section 53A is mandatory?
Held	Though the medical examination of accused under section 53 A is not mandatory but where there are reasonable grounds for believing that the examination of a person will afford reasonable evidence as to the commission of the offence of rape or attempt to commit rape then a medical examination as postulated by section 53 A Cr P Code must be conducted and that includes examination of the accused and the description of the material taken from the person of the accused for DNA profiling

PROCEEDING U/S 145 Cr P. Code

(114) Name	<u>Mohd. Abid v Ravi Naresh ; SLP Criminal No. 5444 of 2022</u>
Court	Supreme Court of India
Issue	Ambit of criminal proceedings under U/s 145 Cr P Code
Held	The Hon'ble supreme court held that once the civil court has been seized of the dispute regarding the property then the jurisdiction of the Court of Magistrate under the provision of Section 145 / Section 146 of the Code of Criminal Procedure, 1973 is extinguished and the Criminal Proceedings must be set aside for effective adjudication of rights of the parties.

DEPARTMENTAL PROCEEDINGS

115. Name	<u>Ramanand Singh vs The State Of Bihar And Ors on 12 July, 2021 Patna High Court in CWJC No.19034 of 2015</u>
Court	Patna High Court

Issue	Effect - Deputation of a clerk as Presenting Officer in absence of Presenting Officer appointed by Disciplinary Authority.
Held	The Hon'ble Court remanded back to the Enquiry Officer to conduct de novo enquiry against the petitioner in accordance with the CCA Rules.

116. Name	<u>SarvjeetKumar@Sarbjee Kumar vs The State Of Bihar And Ors on 22 April, 2019;Patna High Court L.P.A No.73 of 2018 dt.22-04-2019</u>
Court	Patna High Court
Issue	Whether the order of the learned Single Judge is correct, whereby the learned Single Judge has proceeded to dismiss the writ petition primarily on two grounds, firstly, that the dismissal would operate as res judicata and, even otherwise, a mere acquittal in a criminal case, on the charges which are stated to be similar, will not automatically end up in the exoneration of an employee who has faced disciplinary proceedings on the basis thereof.
Held	<p>Having perused the said judgment, we are of the opinion that even if some of the witnesses were common in the disciplinary proceedings, their deposition before the enquiry officer cannot be said to be suffering from any infirmity as the appellant did not choose to contest the same and he concentrated on the criminal case where he was ultimately convicted and his appeal had also been dismissed. It was only in the revision petition that the impugned judgments were set aside.</p> <p>We, therefore, do not find this to be a valid reason to ignore the judgments which have become final and then to grant a relief of mandamus, as prayed for in a subsequently instituted writ petition. We, therefore, do not find any error, muchless a legal error so as to warrant interference in this appeal which lacks merit. The same is accordingly rejected.</p>

117. Name	<u>The State Of Bihar &Ors vs Moti Lal on 2 January, 2019Patna High Court LPA No.1661 of 2018 dt.02-01-2019</u>
Court	Patna High Court

Issue	The learned Single Judge has committed an error in allowing the writ petition in spite of the fact that there was ample material on record, including evidence, which remained unrebutted and, therefore, once the charges had been found to be proved and there was no procedural error, there was no occasion to allow the writ petition and set aside the punishment order of compulsory retirement.
Held	<p>Relying on the judgment of the Apex Court in the case of Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 2270.</p> <p>The Hon'ble D.B. opines that even though the learned Single Judge has not issued any directions for proceeding with the enquiry from the stage of leading of oral evidence, yet he has found that the procedural lapses vitiate the enquiry. The procedural lapses are clearly evident and, consequently, the enquiry should be held from the stage of the leading of oral evidence on behalf of the appellants.</p> <p>The Hon'ble D.B. partly allow this appeal and set aside the impugned judgment to the extent that the enquiry proceedings shall recommence from the stage of leading of oral evidence by the appellants and the respondent-petitioner shall be given an opportunity to rebut the same and lead his defense in whatever possible manner he may so choose to in the enquiry proceedings. For this, the matter stands remitted to the enquiry officer who shall conduct the enquiry expeditiously and conclude the same.</p>

118. Name	The State Of Bihar And Ors vs Sanjay Kumar Singh on 11 February, 2019; Patna High Court LPA No.1583 of 2017 dt.11-02-2019
Court	Patna High Court
Issue	The learned Single Judge while proceeding to quash the punishment order of the respondent and imposed a cost also in view of the law laid down in the case of Shanti Sports Club and another Versus Union of India and others, reported (2009) 15 SCC 705, paragraphs 43 to 46.
Held	The Hon'ble D.B. opines that the issue of an established misconduct may be relevant for consideration at the time of applying the doctrine of washing off, but in the present case, the award of punishment itself suffered from infirmities that has been rightly quashed by the learned

	<p>Single Judge. The impugned judgment, therefore, does not require any interference on the merits of the writ petition.</p> <p>The Hon’ble D.B. opines on the the imposition of costs on State, that it cannot be said conclusively that the petitioner had been subjected to any harassment. If the disciplinary/appointing authority was of the opinion that there was a reason to differ with the enquiry report, the issuance of a second show cause notice is an exercise of power which by itself cannot be treated to be mala fide unless it can be shown that it was completely tailored for the purpose of motivated harassment. It is quite possible that there was a doubt in the mind of the disciplinary authority about the conclusions drawn by the enquiry officer which can be an error of judgment as well. In this view of the matter, the Hon’ble D.B. find it expedient and just on the facts of the present case to partly allow the appeal to the extent of imposition of costs and consequently, the imposition of Rs.50,000/- as costs on the State under the impugned judgment dated 22.08.2017 passed in Civil Writ Jurisdiction Case No.8415 of 2017 is set aside.</p>
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119. Name	<u>Shailendra Kumar Sinha vs The State Of Bihar &Ors on 16 February, 2017 Patna High Court CWJC No.12138 of 2007 dt.16-02-2017 12</u>
Court	Patna High Court
Issue	Dismissal order passed without considering the grounds or cause shown by the delinquent, the order shall be deemed to be vitiated on the ground of violation of principles of natural justice and fair play.
Held	<p>It appears that the disciplinary authority has not assigned any reason to show that on what grounds the facts stated by the delinquent in support of his innocence were rejected. Similarly, the orders passed by the appellate authority and the order passed on memorial of the petitioner do not disclose any reason. Therefore, the Hon’ble Court find that orders are not sustainable.</p> <p>The matter is remitted to the disciplinary authority to pass order afresh in accordance with law.</p>

120. Name	<u>DhanuHambrum vs The State Of Bihar And Ors on 24 January, 2019; Patna High Court LPA No.1273 of 2018 dt.24-01-2019</u>
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Court	Patna High Court
Issue	Disciplinary proceedings and Criminal Proceedings are different and mere acquittal in criminal case can't vitiate disciplinary proceedings. Doctrine of proportionality.
Held	<p>The Hon'ble D.B. opines that the acquittal in the criminal case was brought about because the prosecution failed to adduce any evidence and, not only this, no one turned up on behalf of the prosecution to even argue the case before the trial court. This state of affairs led to the acquittal of the appellant for want of complete evidence. In this background, it will be difficult to accept the proposition that the acquittal of the appellant can be termed as an "Honourable" acquittal. The acquittal was on account of the trial having collapsed due to failure of the Government prosecution machinery to adduce evidence and, further, not getting the matter argued by the public prosecutor.</p> <p>This, by itself, demonstrates that the charge against the appellant is of driving the vehicle in a drunken state, whereas the trial in the trial court ended up without there being any assistance of which no benefit can be claimed by the appellant. Since there was no evidence before the trial court, the same cannot be read so as to construe that the evidence in the disciplinary proceedings is incorrect. The two proceedings being separate and distinct, the evidence led during the disciplinary proceedings, in our opinion, did establish the charge.</p> <p>Coming to the issue of doctrine of proportionality as pressed into service, it is correct that the proposition of law as laid down in the case of State Bank of Bikaner (supra) was in the background of the facts of that case where the employee was a bank employee, and the charge against him was with regard to the transfer of certain amount from a dormant account to an operative account. It is in this background that the Court held that the order of dismissal was harsh, but, at the same time, the Supreme Court had set aside the judgment of the High Court whereby the employee had been reinstated and converted the punishment to one of compulsory retirement.</p> <p>The Hon'ble D.B. held that the dismissal from service clearly amounts to a complete elimination of livelihood which is nothing else and can be compared with the death of services of the appellant. It is</p>

	correct that dismissal brings about complete disruption of service, but, at the same time, it cannot be lost sight of that the rash and negligent driving of appellant resulted in the death of one person and injuries not to his colleagues but himself as well. The appeal lacks merit and is accordingly dismissed.
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121. Name	<u>Wakil Singh vs The State Of Bihar &Ors on 31 July, 2018 IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.7772 of 2017</u>
Court	Patna High Court
Issue	For staying the departmental proceeding till disposal of the criminal proceeding initiated against the petitioner.
Held	<p>Heard the learned counsel for the parties and gone through the materials on record. As stated above, both the departmental proceeding as well as the criminal case is based on same and similar charges/ allegations. Thus the only question, required to be answered, in view of the law laid down by the Hon'ble Apex Court in a catena of decisions specially the one rendered in the case of Capt. M. Paul Anthony (supra), is as to whether the criminal case involves complicated question of law and fact. Upon perusal of the allegations leveled in the FIR, I am of the opinion that the said charges do not involve any complicated question of law and fact, hence according to the law laid down by the Hon'ble Apex Court, it would not be desirable to stay the departmental proceedings till the conclusion of the criminal case. Even otherwise, the interest of administration demands that the departmental proceeding should be concluded expeditiously and undesirable element be thrown out. It is also not in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely for long period awaiting the result of the criminal proceedings since the same only serves the interest of the guilty and dishonesty, hence it is in the interest of justice as also in the interest of good governance that the departmental proceeding is completed expeditiously without any delay. Having regard to the facts and circumstances of this case, I do not find any reason to stay the departmental proceeding during the pendency of the criminal proceeding, hence the present writ petition is dismissed being devoid of any merit.</p>

122. Name	<u>Jagat Lal vs The State Of Bihar & Ors on 1 April, 2014 IN THE HIGH COURT OF JUDICATURE AT PATNA Letters Patent Appeal No.710 of 2012 In Civil Writ Jurisdiction Case No. 1427 of 2001</u>
Court	Patna High Court
Issue	The order of punishment has been made without following due procedure and the entire inquiry is vitiated on account of violation of principles of natural justice.
Held	<p>In absence of the reply submitted by the appellant, the respondents were required to proceed against the appellant ex parte. In a hurry to complete the disciplinary proceeding, the basic principles of disciplinary proceedings have been lost sight of. The enquiry officer has acceded the scope of the enquiry and has recorded a finding that the appellant was guilty of forgery and of criminal conspiracy. The said finding is the basis for imposing punishment of reduction in pay.</p> <p>The petitioner has relied upon the judgment of the Hon'ble Supreme Court in the matter of Anant R. Kulkarni Vs. Y.P. Education Society & Ors {2013(6) SCC 515}. In the submission of Mr. Ajit Kumar if the proceeding of the departmental inquiry were defective; the respondents, having regard to the gravity of imputation of charge made against the appellant, should be permitted to hold departmental proceeding against the appellant afresh.</p> <p>We are not persuaded by the submission for the simple reason that the alleged acts of misconduct relate to the year 1993, i.e. more than 20 years old. We are informed that the appellant shall retire from service in 2015. We do not propose to allow the respondents to hold the enquiry de novo right from the stage of the charge sheet in a twenty years old cause of action, when the delinquent was allowed to dodge the disciplinary proceeding successfully and now that the appellant is on the verge of retirement.</p> <p>For the afore said reasons, the Appeal is allowed.</p>

123. Name	<u>Ramashish Kumar vs The State Of Bihar &Ors on 30 July, 2012 IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.1646 of 2003</u>
Court	Patna High Court
Issue	Dismissal from service on the ground of misconduct and on quantum of punishment.
Held	<p>In view of the above, an error of Judgment, per se is not a misconduct and a negligence simpliciter would not constitute a misconduct. Similarly, an innocent mistake also does not constitute misconduct. In the present case, as has been noted above, as per the finding of the enquiry officer himself, the petitioner attempted to discharge his duties and could not take further action as he got injured. There is vague reference to carelessness / negligence on the part of the petitioner. There is no finding of any dereliction of duty on his part.</p> <p>In the facts and circumstances above mentioned and in the light of the findings of the Enquiry Officer, I find the punishment of dismissal to be shockingly disproportionate to the act / inaction proved against the petitioner by the Enquiry Officer. The order of dismissal set aside. The matter is remanded back to the disciplinary authority to consider the petitioner's case on the quantum of punishment.</p>

124. Name	<u>The State Of Bihar &Ors vs Shanti Kumari &Ors on 23 February, 2018 Letters Patent Appeal No.247 of 2015 IN Civil Writ Jurisdiction Case No. 9636 of 2008</u>
Court	Patna High Court
Issue	The disciplinary proceedings was held abated and the substituted heirs of the deceased Government servant were allowed the consequential benefits
Held	A death of the delinquent at the stage of disciplinary proceeding and at the stage of appellate proceeding is vastly different. In fact if the death of a delinquent occurs in the midst of the disciplinary proceeding there can be no confusion that the proceeding would abate instantly. But the situation would be vastly different if the death takes place after the proceeding has concluded and the matter is resting with the

Disciplinary Authority for final orders or after orders are passed or where the death takes place at the appellate stage.

In an identical situation arising in a matter which fell for consideration before a Division Bench of this Court in the case of Gupteshwar Mishra (supra), the Division Bench at paragraphs 5 and 6 of the judgment has held as follows:

"5. Having considered the matter, in our view, the order of the Tribunal holding that there was serious flaw in the proceedings by non-examination of the Accountant General and the Deputy Accountant General cannot be said to be bad or perverse in any manner. However, even if we set aside the order of the Tribunal that would have necessitated remanding the matter to the Tribunal for fresh consideration or fresh enquiry which obviously cannot be done as the employee is dead. In our view, this writ petition would abate as has been held by the Apex Court in the case of Basudeo Tiwary Vs. SidhoKanhu University and others since reported in (1998) 8 Supreme Court Cases 194. As held in that case, it would be deemed that the employee died in harness. We also supported by a decision of this Court in the case of [Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others](#) since reported in 2000(4) PLJR 471. There is yet another decision of this Court in the case of MohalLall Vs. the State of Bihar being C.W.J.C. No. 9636 of 2008 disposed of on 08.08.2013 wherein again it was held that the employee would be deemed to have died in harness in such a situation.

The legal position as it stands is, that if a matter requires a remand to the Disciplinary Authority for proceeding afresh in the matter but the delinquent has deceased in the meanwhile, the disciplinary proceeding would abate as a whole. But if there is no procedural default by the Disciplinary Authority; the delinquent has been given opportunity to examine the evidence, both oral and documentary; and the order of penalty is to be tested on its merits by the Appellate Authority, then the death of the delinquent would not lead to abatement because the disciplinary proceeding has attained finality. The essential requirement in either situation is, that the records should be available.

In the uncontested circumstances noted where:

	<p>(a) the disciplinary proceedings records are untraceable;</p> <p>(b) the Disciplinary Authority has passed the appellate order Patna High Court LPA No.247 of 2015 dt.23-02-2018 20 bearing Memo No.959 dated 17.5.2008;</p> <p>(c) the issues raised in appeal require a verification from the records;</p> <p>(d) the delinquent has expired during pendency of appeal; the appellate order as well as the order of penalty passed in the disciplinary proceeding No.92 of 2002 cannot be upheld and thus while quashing the order of penalty dated 16.3.2007 together with the appellate order bearing Memo No.959 dated 17.5.2008, we hold the disciplinary proceedings abated.</p> <p>The appeal is dismissed. The writ petition is allowed with the direction to the appellants herein to provide the consequential “in-service” benefits as found admissible to the legal heirs of the deceased Government servant together with the post retirement benefits, which should be provided to them within a period of three months from the date of receipt/production of a copy of this judgment and order.</p>
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125. Name	<u>Priya Ranjan Kumar vs The Union Of India &Ors on 14 September, 2016;Patna High Court CWJC No.378 of 2011 dt.14-09-2016</u>
Court	Patna High Court
Issue	Dismissal due to absence of the petitioner from duty for a long period on false medical ground and not participated in departmental enquiry.
Held	The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16.6.1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this

nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged." A similar view has been taken at paragraph 9 of the judgment rendered by the Supreme Court in Ghulam Mohd Bhat (supra) in which the Supreme Court has with reference to a judgment reported in (1996)1 SCC 302 (State of U.P. vs. Ashok Kumar Singh) and another judgment reported in (2003) 3 SCC 309 (Mithilesh Singh vs. Union of India) observed that overstay by the members of the disciplined force are act of indiscipline and needs to be dealt sternly unless mitigating circumstances are placed on record by the delinquent concerned as to how the punishment imposed can be held disproportionate. The Supreme Court has held that an order of removal for absence from duty for more than 300 days without justifiable reasons, would suffer no infirmity. Considering the case of the petitioner on the facts on record and in the surrounding circumstances as well as the opinion Patna High Court CWJC No.378 of 2011 dt.14-09-2016 17 of the Supreme Court on the issue of continued absence, my opinion is that the order of punishment is not capable for being interfered with either on merits or on quantum. In result, the writ petition is dismissed.

126. Name	<u>Awadhesh Singh vs The State Of Bihar &Ors on 18 August, 2017 IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.15593 of 2016</u>
Court	Patna High Court
Issue	Failure of the disciplinary authority to serve the charge memo on the petitioner within the stipulated period of 90 days, with reference to Rule 9 (7) of the Bihar Patna High Court CWJC No.15593 of 2016 dt.18-08-2017 Government Servants (Classification, Control and Appeal) Rules, 2005
Held	In view of the law laid down by the Full Bench in the case of The State of Bihar Vs. Gyan Kumar Ram (supra), the petitioner having moved this Court after drawing the attention of the Civil Surgeon towards the lapse in handing over the charge memo within the stipulated period of 90 days which was served on 21.04.2017 vide Annexure-G series i.e. after filing of the writ petition, the order of suspension is rendered invalid and accordingly the suspension order bearing memo no. 126 dated 14.01.2016 impugned at Annexure-1 is Patna High Court CWJC No.15593 of 2016 dt.18-08-2017 quashed and set aside. The petitioner is reinstated in his post.

127. Name	<u>Krishna Mohan Prasad vs The State Of Bihar &Ors on 24 March, 2015 IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Writ Jurisdiction Case No.148 of 1999</u>
Court	Patna High Court
Issue	Orders imposing punishment apparently non-speaking, cryptic and appear to have been passed in most casual manner.
Held	From the impugned orders, it appears that the disciplinary authority considered the report and the report submitted by the Project Director, upon an enquiry which was certainly held beyond the departmental enquiry upon which the Inquiry Officer had submitted his report. This procedure is unknown in a departmental proceeding. The disciplinary authority could not have taken into account any material which was

	<p>not part of the report of departmental enquiry. It was open to the disciplinary authority to have asked for fresh enquiry or de novo enquiry depending upon the facts and circumstances of the case but he could not have placed reliance upon report submitted by the Project Director, after submission of the report by the Inquiry Officer.</p> <p>The orders impugned are, therefore, not sustainable. Accordingly, the Office order No. 68 dated 21.4.1998, Office order No. 69 dated 21.4.1998 and Office order No. 70 dated 21.4.1998 passed by the Chief Conservator of Forests-Cum Managing director, Bihar State Forest Development Corporation, Patna are set aside. The petitioner shall be entitled to all consequential benefits.</p>
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128. Name	<u>Kamendar Kumar Kamesh vs The State Of Bihar &Ors on 27 July, 2017; Civil Writ Jurisdiction Case No.11890 of 2016</u>
Court	Patna High Court
Issue	Mandatory stipulations present under rule 18(2) and (3) of 'the disciplinary rules' has not been followed by the disciplinary authority while issuing the order of penalty.
Held	Having heard learned counsel for the parties and in view of the uncontested circumstances where the mandatory stipulations present under rule 18(2) and (3) of 'the disciplinary rules' has not been followed by the disciplinary authority while issuing the order of penalty, the penalty order under challenge bearing Memo No. 991 dated 9.11.2016 is quashed and set aside. The matter is remitted to the disciplinary authority i.e. Director, Primary Education to proceed in the matter in accordance with law from the stage of issuance of a disagreement note. It goes without saying that the salary and allowance for the period under suspension of the petitioner would be guided by the final outcome of the proceeding.

ROLE OF PUBLIC PROSECUTOR

(129)Name	<u>Manoj v State of Madhya Pradesh, CRIMINAL APPEAL NOS. 248-250 OF 2015 Date of judgment 20.05.2022</u>
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Court	Supreme Court Of India, New Delhi
Issue	Role of Public Prosecutor in a criminal prosecution
Held	A public prosecutor occupies a statutory office of high regard and rather than a part of the investigating agency, they are instead, an independent statutory authority who serve as officers to the court. The role of the public prosecutor is intrinsically dedicated to conducting a fair trial, and not for a “thirst to reach the case in conviction” .if an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the force and make it available to the accused.

VALIDITY OF FIR U/S 66A I T ACT

(130) Name	<u>Peoples Union for Civil Liberties Vs. Union of India [M.A. No.-901/2021 in W.P. (Crl.) No.-19/2013 - Date of Judgement-12.10.2022]</u>
Court-	Supreme Court of India, New Delhi.
Issue-	Validity of FIR despite Section – 66A of the IT Act, 2000 being declared unconstitutional.
Held-	The Hon’ble Apex Court issued a slew of directions to the Director General’s of Police and Home Secretaries to all States to ensure that reference to Section-66A is removed from all pending cases. The Court also directed that the abstracts of the IT Act published should adequately inform the readers that Section-66A has been declared unconstitutional.