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# Law Summary

( Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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( Founder : Late Sri G.S. GUPTA)

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PART - 24 (31ST DECEMBER 2017)


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# SUBJECT - INDEX


**CRIMINAL PROCEDURE CODE,** Maintainability of revisions u/Secs.397 and 401 of Cr.P.C., against interlocutory Order passed u/Sec.23(1) and (2) of Protection of Woman from Domestic Violence Act.

Held – Scope of appeal is wider than the scope of revision – In view of wider scope of appeal provided U/S 29 of the DVC Act, revision u/Sec.397 and 401 of Cr.P.C. is not maintainable against an Order passed u/Sec.23(1) and (2) of DVC Act and only an appeal is maintainable against such Order u/Sec. 29 of DVC Act – Criminal Revision is dismissed. **(Hyd.)** ***333***

**CRIMINAL PROCEDURE CODE,** Secs.197 & 482 – Theft occurred in the house of Respondent/Complainant – In addition to the complaint on the same, she further filed another complaint against the Petitioner/Circle Inspector who investigated the report of the theft scene alleging petitioner of cheating and theft of gold ornaments.

Held - In this case scope for allegations arises due to investigation being taken up by petitioner, on the complaint of theft in the house of respondent – It is not an allegation that petitioner committed an offence which is unrelated to his official duty – What petitioner ought to do, is complained as not done, which can, without any demur, be termed as a complaint relating to his official duty, for the prosecution of which sanction is required – Hence complaint given by the complainant has to be quashed – Criminal Petition is allowed. **(Hyd.)** ***304***

**CRIMINAL PROCEDURE CODE**, Sec.438 - **INDIAN PENAL CODE,** Secs. 323, 354-A, 385 and 506 - **SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT,** Secs.3(2)(va), 4 and 18 – Criminal petition to grant pre-arrest bail to petitioner.

Held – Simply because the offences are triable by a Special Court, that does not convert the bailable offences into non-bailable offences, in view of part II of the first schedule under Cr.P.C. – Offence u/Sec. 3(2)(va) of SC/ST Act is a bailable offence - A person who is alleged to have committed a bailable offence is not entitled to file an application u/Sec.438 of Cr.P.C. - Criminal petition is dismissed. **(Hyd.) 316**

**TRADEMARKS ACT,** Sec. 28 -**C IVIL PROCEDURE CODE,** Or.39, Rules 1, 2 and Sec.151 – Respondent started rendering identical descriptive services to appellant under a trademark which is similar to the trademark of appellant - Instant appeal is preferred against the dismissal order of temporary injunction application pending disposal of the suit for permanent injunction with regard to the registered trademark of the appellant.

Held –Under passing off action law, the rights of prior user being superior placed on higher pedestal against subsequent user of the mark – A person trading with a particular mark is entitled to insist that no one else should use that mark for trading in the same or similar commodity – If there is any infringement of the mark used by the other of deceptively similar to prior users mark that is likely to deceive or create confusion he can undoubtedly ask the Court to restrain the other to trade with such deceptively similar mark - Appeal is allowed by setting aside the dismissal order.

**(Hyd.) 304**

**--X--**

## 2017(3) L.S. 291

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr.Justice
B. Siva Sankara Rao

M/s Hotel Swagath,
Hyderabad ..Appellant

Vs.

M/s Hotel Swagath
East Court,
Hyderabad ..Respondent

**TRADEMARKS ACT, Sec. 28 - CIVIL PROCEDURE CODE, Or.39, Rules 1, 2 and Sec.151 – Respondent started rendering identical descriptive services to appellant under a trademark which is similar to the trademark of appellant - Instant appeal is preferred against the dismissal order of temporary injunction application pending disposal of the suit for permanent injunction with regard to the registered trademark of the appellant.**

**Held –Under passing off action law, the rights of prior user being superior placed on higher pedestal against subsequent user of the mark – A person trading with a particular mark is entitled to insist that no one else should use that mark for trading in the same or similar commodity – If there is any infringement of the mark used by the other of deceptively similar to prior users mark that is likely to deceive or create confusion he can undoubtedly ask the Court to restrain the other to trade with such deceptively similar mark - Appeal is allowed by setting aside the dismissal order.**

**Cases referred**

1.(1946) 63 RPC 39 HL
2.(2004) 28 PTC 404 (Delhi)
3.(1970) RPC 238

Mr.K. Mohan Kumar, Advocate for the appellant.
Mr.Venkat Reddy Douthi Reddy, Advocate for the respondent.

**O R D E R**

The appellant-M/s Hotel Swagath (registered partnership firm) is plaintiff in O.S.475 of 2016 on the file of the IX Addl.Cheif Judge, City Civil Court, filed for the relief of permanent injunction restraining defendant-M/s Hotel Swagath East Court(represented by V.Narasimha Reddy) and his men, his successorsin-interest and others claiming under him from infringing the plaintiffs exclusive statutory right to the registered trademark Swagath and common law right to the trade name/trademark/service mark of the plaintiff and from passing off his business under the impugned trade name consisting of Swagath with or without any laudatory epithet or generic or descriptive expressions as its prefix or suffix depicted in any form or in any language, which is

identical or similar or deceptively similar, either visually, phonetically or structurally to the plaintiffs registered tradename/ trademark/service mark, Swagath as the business of the plaintiff.

2. During pendency of the suit, the plaintiff filed I.A.No.817 of 2016 U/O.XXXIX Rules 1 and 2 r/w Sec.151 CPC for grant of interim injunction against the defendant. After contest, the trial Court dismissed the petition by order dt.14.10.2016.

3. Impugning said order, the plaintiff preferred the present appeal with grounds in memorandum of appeal that the lower court failed to appreciate or understand either the facts of the case or the provisions of the Trademarks Act, 1999 or the principles laid down in common law relating to trademarks under which the suit is filed or the case law relating to the subject matter of the suit. The lower Court failed to appreciate that the appellant is the registered user of the trademark (label) under No.20222183 and should have recorded its specific finding on the question of infringement. The lower Court failed to appreciate the difference between the rights conferred by virtue of registration of the trademark under Section 28 of the Act and the rights acquired by common law by use of the mark prior in point of time. The lower Court erred in not recording its specific findings on the questions relating to infringement and passing off actions as required by law. The lower Court erred in ignoring the age old principle relating to passing off action under the Trademarks Law that similarity between the competing marks is to be taken into consideration while determining the likelihood of deception and confusion which is being followed by various Courts of the country including the Apex Court. The lower Court erred in taking into consideration the dissimilarity between the competing marks while determining the likelihood of deception and confusion and coming to the conclusion that there is no likelihood of deception and confusion. The lower Court erred in holding that a slight difference between the plaintiffs and the defendants trading style is a sufficient distinction by blindly following the extract of a part of the decision in OFFICE CLEANING SERVICES LTD. VS. WESTMINISTER WINDOW AND GENERAL CLEANERS LTD(1). BORROWED FROM BHARAT HOTELS LIMITED VS. UNISON HOTELS LIMITED(2) without having the full text of the decision of House of Lords to appreciate the circumstances under which the said finding was arrived at by the House of Lords. The lower Court also erred in applying the dictum in the decision of the House of Lords in Office Cleaning Services Ltd. Supra that a slight difference between the descriptive words, services and association occurring at the end of the respective services of the plaintiff and the defendant would be sufficient to distinguish their services in the absence of fraud, to the present case where the trading styles of both the parties consist of the fancy word Swagath as prefix part, which is not a descriptive word. The lower Court has failed to appreciate the decision in EFFLUENT DISPOSALS LTD., VS.

1.(1946) 63 RPC 39 HL
2.(2004) 28 PTC 404 (Delhi)

MIDLANDS EFFLUENT DISPOSAL LTD(3). that the dictum small differences may suffice in cases concerned with the descriptive names in Office Cleaning Services Ltd. supra does not apply to the case before them where the addition of MIDLANDS as prefix to an otherwise identical name amounted to no distinction at all aptly applies to the present case where the common words, Hotel Swagath, East Court are added in an insignificant way as suffix to an otherwise identical trading style of the plaintiff. The lower Court also failed to appreciate the difference between fancy, generic or descriptive and common words. The lower Court also failed to appreciate that while the fancy word like Swagath indicates a single source, the generic or descriptive words like, hotel, restaurant etc., indicate the nature of services/goods and the common words are the words which have been in use and became publici juris. The lower Court failed to appreciate that the consumers/customers always remember and identify the services/ goods with the distinctive word SWAGATH, which appears predominantly in the appellants trading style and not by the last common words like, East Court occurring in the trading style of the respondent and that there is every likelihood of confusion or deception being caused in the minds of the consuming public. It is not out of place to submit that the word Swagath which is recollected by the consumers and not the other descriptive expressions contained in the trading styles of the rival parties and therefore the goodwill and reputation revolves around the word Swagath. The lower Court failed to appreciate that the case of the plaintiff is that the reputation is attached to the tradename/ trademark can neither be regained nor compensated in terms of money, if lost, and has erroneously held that the appellant has not produced any material to show that their business has been adversely affected by the use of the expression, Hotel Swagat East Court by the respondent. It is not out of place to submit that the courts including Apex Court on several occasions granted injunctions in passing off cases, when there is likelihood of creating confusion or deception in the minds of the consumers. The lower Court failed to appreciate that the trading style of the plaintiff containing the prefix fancy word Swagath is inherently distinctive entitling them to the grant of injunction when the defendant fraudulently adopted the prefix identical fancy word in conjunction with descriptive or common words East Court for identical business. The lower Court erred in holding that if the respondent/defendants business is stopped the irreparable loss cannot be compensated whereas the petitioner/plaintiff can be compensated for the damages prayed in the suit, ignoring the fact that the damage caused to the hard earned goodwill and reputation can neither be restored nor be compensated in terms of money. The lower Court erred in applying the irrelevant decisions without appreciating the distinction between the facts in those cases and the facts in the present case and also in considering the documents marked as Exs.P.1 to P.3,P.7 and P.13. Hence, to set aside the order impugned herein of the lower Court.

4. Heard both sides and perused the material on record.

3.(1970) RPC 238

5. The factual background, in deciding the appeal lis while sitting against the impugned dismissal order of the temporary injunction application pending disposal of the suit for permanent injunction with regard to the registered trademark and since earlier of the passing off rights, is that:

a) The case of the plaintiff is that it is one of the largest, renowned and reputed business houses rendering the services of hotels snack bars food catering and restaurants under the tradename/ trademark/servicemark, Swagath, preceded by the generic or descriptive expression Hotel and they have been continuously rendering the services bearing the service name in various parts of the erstwhile composite state of Andhra Pradesh from 1991 and also after its bifurcation in both the States of Andhra Pradesh and Telangana, that plaintiffs partnership firm was though registered bearing No.04483 of 1994, dt.26.05.1994, the partnership firm was constituted with effect from 09.04.1991 in continuously, extensively and openly rendering the hotel services under the name and the style of Swagat(vegetarian restaurant) till it was registered and continue to provide said services by the registered firm as Hotel Swagath with the Registrar of Firms and wherein Swagath being the key word and main feature in identifying and recognizing their services known as Swagath among the public in general and the customers who patronize their services in particular. In 1993, the plaintiff created an artistic logo consisting of the letters H and S being the acronym of the tradename Hotel Swagath and they being the originators of the artistic work in the logo enjoy the copyright therein and applied for registration of the composite label consisting of the letters H and S and the expression Hotel Swagath under the trademarks Act, 1999 and obtained its registration under No.2022183 in class-43 in respect of the services providing food and drinks, catering, hotels, restaurants and snackbars; accommodation bureaux(hotels), rental of temporary accommodation, canteens, barservices, holiday camp services(lodging). They also sought registration of the mark Swagath word per se under No.2037599, class-43 in respect of the same description of services as aforesaid mention. While so, also was granted SWAGATH marriage and Function Hall in 2003 a partnership firm and Dhanturi group of hotels private limited to render hotel services under the name and style consisting of Swagath as a key word of main feature thereof with liberty to add any further suffix in the twin cities of Hyderabad and Secunderabad, the first license started service under the name and style of hotel Swagath Grand at A.S.Rao nagar, Malkajgiri and Suchitra Swagath Grand Conventional Hall, at Jillellaguda and Swagath marriage and function hall at Ameerpet, the second licensee started hotel service under the name and style of hotel Swagath at Kukatpally, Swagath residency at K.P.H.B. and hotel Swagath grand at Nagole. In all 9 hotels consisting of SWAGATH of the main feature or key word thereof are existing under the plaintiffs control and supervision in the twin cities of Hyderabad and Secunderabad. By virtue of origination of the artistic logo and its registration as part of the composite label consisting of the expression Swagath and continuous user of the expression Swagath

in relation to the services rendered by them from 1991 they enjoy right thereof to the exclusion of the others under the Trademark Act, 1999 and Copyright Act, 1957 and are entitled to restrain others from rendering similar service by using any artistic logo or expression Swagath which is identical with, same or similar or deceptively similar to the artistic logo or the expression Swagath with or without the logo or any other prefix or suffix. They came to know that the respondent started rendering identical descriptive services under the tradename/ trademark/servicemark Hotel Swagath East Court, the prefix part of Swagath, viz; Hotel is generic or descriptive and suffix part of Swagath, viz; East Court being laudatory epithets which is identical and similar with the main feature or key word of their tradename/trademark/ servicemark, Hotel Swagath got issued a cease and desist notice bearing No.TMC.L:7765:2016/17,dt.15.04.2016 through their advocates Rao and Rao Secunderabad and though respondent received it on 25.04.2016, did not give reply. Respondent is not prior user of the tradename/ trademark/servicemark Hotel Swagath, its main feature or keyword being Swagath. Under passing off action law, the rights of prior user being superior placed on higher pedestal against the subsequent user of the mark. The malafide intention of the respondent in adopting identical tradename/trademark/servicemark and similar service is nothing but to pass off his business/service as their business/ service and to make easy gain at the cost of reputation and goodwill built over it at a heavy cost of plaintiff which cannot be compensated in terms of money of such invasion of this property right and thereby respondent should not be allowed to usurp such rights of plaintiff in reaping without sowing being not entitled apart from the statutory right the plaintiff got over Swagath to prevent the respondent of such user by infringement and thus entitled to the suit relief and pending disposal for the temporary injunction as the available relief to invoke, from the prima facie case, balance of convenience and irreparable injury otherwise being caused.

b) The case of the defendant is that the suit claim is false with unclean hands by suppression of material facts, plaintiff is not competent to file the suit, the word Swagath per se is not registered on the name of the plaintiff, in the plaintiff firm with four partners as per the firm registration and income tax form 45-D and no authorization by other partners by D.Ravinder filed with plaint much less with leave of the Court under Rule 32 of the CRP and there is no cause of action to the suit claim which is also barred by non-joinder and mis-joinder of parties. The defendant is running hotel business with name and style Hotel Swagath East Court since 2010 without any interference and it was originally coined as Swagath Hotel Vegetarian in the year 2005 and thereby running in use of the word Swagath of the Hotel name at Santoshnagar, even to the knowledge of plaintiff and the operation of the defendant extended in 2010 at Kharmanghat road. The defendant coined the word Swagath bonafide and honestly to mean welcome so it is a generic and common word for services rendered in hotel and hospitality business and there are several hotels in and around Hyderabad

with similar name Swagath and no one can monopolize the word Swagath, even plaintiff is running the hotel business in rendering services under the name and the style Hotel Swagath since 1994. The user status mentioned in the plaintiffs trademark application is since 24.10.1993 and the firm registered later is on the name Hotel SWAGATH on 26.05.1994 and the partnership deed, dt.09.04.1991 indicates the firm name as Swagath Vegetarian Restaurant and there are conflicting statements with regard to the user status thereby. The trademark application of plaintiff No.2022183 for registration of Hotel Swagath as a devise, is filed on the name of two partners Danturi Harishankar and Ravinder contrary to the mention of more names in the partnership deed. It is false to state that SWAGATH is the keyword in the composite trademark Hotel Swagath, for the trademark is to be considered as a whole and not be dissected including for infringement of passing off and plaintiff cannot pickup the word Swagath from the composite trade mark to claim monopoly over the word Swagath. The plaintiffs trademark Hotel Swagath consists of letters S and H in the circle along with the word Hotel and Swagath and as per Section 17 of the Trademark Act,1991 plaintiff can only claim rights for the composite trademark consisting of the words hotel Swagath and logo consisting S and H and trademark registration certificate on application No.2022183 clearly indicate that conditional order was passed allowing the trademark Hotel Swagath restricted for States of AP and Telangana. Said trademark is registered as associated trademark along with trademark application 443819 and Registrar of Trademarks initially objected for registration of trademark Hotel Swagath for the goods in clause-43 of Section 11 of the Act. Similar trademarks are in progress of registration on the name of the different entities and the plaintiff replied to the objection of Registrar saying - a) The Applicants trademark is for the registration of trademark Hotel Swagath as a device. Whereas, the marks reflected in the Search Report are word marks and also channel of distribution and service circle for Applicants trademark is different from other marks, hence the Applicants trademark is pleased to be considered for the registration and b). As per Sec.12 of the Trademarks Act, 1999, similar trademarks can be registered if the Applicant is honest and concurrent user. The Applicant herein is using the trademark continuously from 24.10.1993. It implies the trademark Hotel Swagath of plaintiff is registered as a device and another application No. 2037599 for goods in class-43 of plaintiff for trademark Swagath, was opposed by one of its partners Mrs. Anupama which is pending and as such plaintiff can not claim exclusive rights of the word Swagath. The plaintiff did not approach the Court with clean hands thereby in not put forth real facts and otherwise the word Swagath is generic and common word for which the plaintiff cannot claim monopoly and there is no specific registration for the word Swagath in favour of plaintiff and there is no violation of any of the rights of the plaintiff by the defendant under the Copy Rights Act and the Trademarks Act, much less impairing any reputation and the goodwill and turnover of plaintiff. Plaintiff also not established any act of passing off of services by defendant much less to

demonstrate the confusion and deception in the market because of the use of the trademark Hotel Swagath East Court by the defendant and the claim of damages is frivolous and the suit claim is only to trouble the defendant 6 years after the defendant started the business with that logo, the plaintiff thereby cannot prevent the defendant from using the logo or the word Swagath therein. The other contention is plaintiff filed suit against own partner O.S.No.476 of 2016 and another suit against one Sai Lakshmi for using trademark Swagath and said Sai Lakshmi filed rectification application before Intellectual Appellate Board, Chennai, challenging registration of trademark Hotel Swagath of the plaintiff.

c). The rejoinder of the plaintiff to the counter of defendant is that Rule 32 of CRP not applicable to the suit filed by partnership firm represented by partner for the firms business activity concerned for not a case appointing an agent by the principal with authorization to permit or recognize. If at all defendant is a partnership firm plaintiff seek amendment of cause title array. The prior use of a mark always considered on highest pedestal even those of a registered proprietor of a mark. There are no any inconsistent pleas much less suppression of material facts in the claim against the defendant. The partnership deed of 09.04.1991 to be read with registration certificate dated 26.05.1994 of the firm registration in use of the word Swagath continuously as prior use. It is wrong to say Swagath is a generic word and used only to welcome for in fact it is the main keyword of the plaintiffs trading style and in the trademark which they coined and invented. Plaintiff came to know of the use in questioning by issuing notice and otherwise use of the mark by the defendant allegedly since 2010 will not give any right nor take away the right of the plaintiff of the exclusive user.

6. The Court originally granted ad-interim injunction in I.A.No.817 of 2016 against the defendant on 09.08.2016.

7. It is from the above material and with reference to the respective contentions and referring to documents, the trial Court by the impugned dismissal order in I.A.No.817 of 2016 dated 14.10.2016 observed that as per dictionary Swagatham is not defined. The defendant also running hotel Swagath Vegetarian since 2010 though claimed since 2005 and thereby acquired acquiescence and the suit thus suffered by delay and latches as per Section 33 of the Trademarks Act. Further as held by our High Court in 2004 in Chennai Hotel Saravana Bhavan and Bharat Hotels Limited of Delhi High Court supra where a Trader adopts dictionary words in common user for his trade name such Trader cannot be allowed to monopolize the common language words a slight difference between that of plaintiff and defendants title in the descriptive words in the absence of fraud is a sufficient distinction apart from customers who patronize such hotels are well educated and well informed particularly with more literacy rate in Hyderabad and there shall be no question of confusion among customer and clientele. The elements of passing off action are reputation of goods, possibility of deception, and likelihood of

damage to the plaintiff and the same principle applies to trademark and tradename. In action for passing off on the basis of unregistered trademark generally in deciding on descriptive similarity the factors to consider are - nature of the mark as to word mark or label mark or its composition, degree of reasonableness between the marks, phonetically similar and similar in idea, nature of goods in respect of which they are in use as trademarks, similarity in nature, character and performance of goods of rival traders, class of purchasers likely to buy the goods bearing the marks and their intelligence, degree of care in such purchase for use, mode of purchasing and placing orders for such goods or services and other relevant surrounding circumstances on extent of dissimilarity as held in Lakshmikanth Vs. Patel by Supreme Court, that was referred by our High Court in Shaik Nazeemuddin Vs. Mahammad Aslam in CMA No.878 of 2015 also referring to Cadila Health Care Vs. Cadila Pharmaceauticals. In the plaintiffs firm doing hotel business under the name and style M/s Hotel Swagath and defendants firm running with name and style M/s Hotel Swagath East Court, both are thus distinct to each other with dissimilarities and no confusion in the mind of customers in their identity and the word Swagath is generic and thereby there is no infringement and plaintiff has no prima facie case or balance of convenience nor suffer any irreparable loss in dismissing the injunction petition vacating the ad- interim injunction.

8. Said dismissal order impugned in the present appeal with the grounds urged supra. The learned counsel for the appellant reiterated the same in the course of hearing. Whereas, counsel for the respondent supported the order of the lower Court from his contentions referred supra in the counter. In the course of hearing, the expression of the three Judge Bench of the Apex Court in Cadilla Health Care supra of 2001, two Judge Bench of the Apex Court in Ramdev Food Products Private Limited Vs. Arvindbhai Rambhai Patel and Others (2006 (7) Supreme 224), Chennai Hotel Saravan Bhavan supra, Bharat Hotels Limited supra, Division Bench of our High Court in Trinetra Vs. Mee Trinetra (2011) 4 ALT 692, Rich products Corp. Vs. Indo Nippon Food Limited (2004) Delhi, Bajaz Auto limited Vs. TVS Motors, (2009) 9 SCC 797, Shaik Nazeemuddin supra of 2015, Three Judge Bench of the Apex Court in Skyline Education Institute India Vs. SL Vaswani (2010) 2 SCC 142, Power Control Appliances Vs. Sumeeth Appliances (1994) 2 SCC 448, Ultratech Cement Limited Vs. Dalmia Cement and Bharat Limited (2016) Bombay are drawn attention in support of the rival claims.

9. In the light of the above, it is now to consider:

i). Whether the impugned dismissal order of the lower Court of the temporary injunction application of the plaintiff is unsustainable and requires interference by this court while sitting in appeal?

ii). To what result?

10. The fact that plaintiff started the unregistered partnership business in 1991 covered by Ex.P.4 partnership deed dated

09.04.1991 is not in dispute before the lower Court much less in the appeal. Ex.P.3 refers to certificate of the Chartered Accountant no doubt dated 21.04.2016 of the turnover of the Hotel Swagath of the plaintiff at Ameerpet from the financial year 1991-92 till the financial year 2015-

16. It also substantiates the partnership business of plaintiff started in 1991 of the firm with name and the hotel with name. The copy of partnership deed of 1991 filed for reference is incomplete in the appeal. Even according to the counter with reference to the documents before the trial Court supplied it is the firm name Hotel Swagath particularly counter para-9 and the business name mentioned in form No.45-B of the Income Tax Act, shows M/s Swagath Vegetarian Restaurant and the hotel business started in November, 1991 as a partnership firm mentioning four partners. Even from that, the hotel business started is with name Swagath that is devised, leave about the further title to it as Vegetarian restaurant from the documents drawn attention by the respondent which they placed reliance as Ex.R.1. In fact, during 1991-92 the commercial tax registration obtained with M/s Swagath Vegetarian Restaurant supra and renewed again in 1994. The firm was later registered with the Registrar of Firms covered by Ex.P.7 certificate dated 26.05.1994 as Hotel Swagath, pursuant to which Ex.9 issued of the firm registered as M/s Hotel Swagath supra. The Ex.P.11 showing four partners in the Registrar of Firms dated 19.05.1994 of the Firm registered as M/s Hotel Swagath supra. The commercial tax fresh registration obtained with M/s Hotel Swagath supra in 1996-97 as per Ex.P.8. Ex.P.12 VAT registration also confirms the same besides Ex.P.13 bunch of bills of Hotel Swagath. From this, though in 1991 firm started in doing business with name M/s. Swagath Vegetarian Restaurant, within no time later and at least from 1994 as per the above the firm is registered and doing business with the name M/s Hotel Swagath. What the defendant contends is that he is doing business with the name and style M/s Hotel Swagath East Court from 2010 and earlier started in 2005 as Swagath Hotel Vegetarian.

11. So far as the words Hotel and Vegetarian and Restaurant respectively concerned, they are the generic terms undisputedly. Swagath whether generic term or not is the issue. It is not to say Swagatam, that only to mean welcome in English for the Sanskrit word. There is a difference between Swagatam and Swagath even otherwise, apart from the fact that in Swagatam, there is no h after t but in Swagath used herein since 1991 there is h after the letter t. From this, coming to the trademark registration of the plaintiff Ex.P.1 shows the certificate of trademark u/sec.23(2) and Rule 62(1) of the Trademarks Act, 1991 issued on 29.01.2016, valid till 13.09.2020 as used since 24.10.1993 and the type of trademark as device (for the logo with s and h within s in the circles and word mark HOTEL SWAGATH from the trademark No.2022183, class-43 dated 13.09.2010 J.No.1687 by Registrar of Trademarks, Chennai, shows the Trademark/representation is annexed hereto has been registered in the name of Hotel Swagath, ----- Ameerpet. Names of two persons who are no doubt among the

four partners of the firm supra mentioned in their application for registration and in registration of the trademark Hotel Swagath, trading as M/s. Hotel Swagath, service provider, a partnership firm. The annexure of certificate No.1260240 for above trademark Number as referred supra contains the logo like in round seal by inscription of the letters s and within it h in their description of the device and it is also with the capital letters underneath the logo HOTEL SWAGATH. Thus, it is the registration of the trademark not only for the logo covered by the device but also for the word mark as Hotel Swagath as referred supra and that also says the same in use since 1993. In fact, as per the partnership deed it is in use as referred supra from 1991 though between 1991-1993, it was in referring as Swagath Vegetarian Restaurant and from 1993-94 as Hotel Swagath. Thus, if not from 1991, at least from 1993-94 the passing off rights of the user as Hotel Swagath of the plaintiff cannot be disputed. Once such is the case, it is to be seen whether there is acquiescence, from the use by defendant with the word Hotel Swagath East Court since 2010 and whether it is within the knowledge of the plaintiff all through. In M/s. Power Control Appliances Vs. Sumeeth Missions supra of the Apex court in 1994 it was observed that family business of family members involved with shares and directorship and son of sole proprietrix of the appellant company is Managing Director of respondent company in starting marketing of the family product but subsequently commencing business of manufacturing same product and suits filed for infringement later it was held mere averments in the pleadings would not amount implied consent use of trademark by rival manufacturer not permissible and thereby there is no question of implied concerned in saying interim injunction to be issued for use of same trademark. Here it is not that case with reference to the facts leave about a little change in the facts may even tilt the result and any such acquiescence really exists or not is a serious disputed issue ultimately to decide in suit and not to non-suit the temporary injunction relief sought for therefrom if petitioner otherwise entitled. Thus, from the above, so far as the registered trademark/wordmark Hotel Swagath concerned, though Hotel is a generic word, for Swagath is not prima facie from what is discussed supra, the defendant cannot use it even by adding the words after Hotel Swagath as East Court-the generic words.

12. In N.R.Domgiri Vs. Whirlpool Corporation of 1996 the Apex Court, held that a mark in the form of a word which is not a derivative of the product, points to the source of the product. The mark/name `WHIRLPOOL' is associated for long, much prior to the defendants' application in 1986 with the Whirlpool Corporation-plaintiff. In view of the prior user of the mark by Plaintiff and its trans-border reputation extending to India, the trade mark `WHIRLPOOL' gives an indication of the origin of the goods as emanating from or relating to the Whirlpool Corporation, Plaintiff. The High Court has recorded its satisfaction that use of the `WHIRLPOOL' mark by the defendants indicates prima facie an intention to pass off the defendants' washing machines as those of the plaintiffs or at least the likelihood of the buyers being confused or misled into

that belief.

13. The same is quoted with approval by the three Judge Bench of the Apex Court in Skyline supra of 2010, though deferred on facts in saying internationally the word Skyline for several educational institutions and the like popularly in use is proved, apart from not chosen to interfere with the concurrent findings of the Courts below for not found any perversity from the limited scope to sit against. Here, there is nothing to show prima facie of the word Swagath is popularly in use by several business or service activities including for hotel and hospitality services, but for to establish any such if at all during trial to consider and same aspect totally ignored by the trial Court in dismissing the injunction application. In fact, it is the similarity not the dissimilarity that is criteria. In this regard, Cadila Health Care Ltd. supra of the 3 Judge Bench of the Apex Court of 2001, particularly at paras-18 to 20 it is observed that what was observed in S.M.Dyechem Limited Vs. Cadbery (India Limited) 2000(5) SCC 573 of comparative strength as to dissimilarities is essential rather than similarity is held not good law in saying the decision in the last four decades of the Apex Court clearly laid down that what has to be seen the case of passing off action is the similarity between the competing marks and to determine whether there is likelihood of deception or causing confusion and for that it referred several expressions in coming to the conclusion that the dissimilarities found be given more importance than phonetic similarity or similarity in use of the words. It reiterated the earlier binding expressions of Amruthadharas case and Durgadatta Sharmas case in saying the use of the defendants mark is likely to deceive to be make out by the plaintiff in an action for infringement but where similarity between the marks of both is so close either visually, phonetically or otherwise the Court reaches the conclusion that there is an imitation and no further evidence is required to establish that plaintiffs rights are violated. The products will be purchased by both villagers and townsfolk, literate as well as illiterate and question has to be approached from the point of the view of a man of average intelligence and imperfect recollection and the purchasers in India cannot be equated with those of England and the decision in Dyechem did not lay correct law in this regard.

14. Thus, the trial courts observation of the Hyderabadies are literates is accordingly unsustainable for the hotel business of the both the States not confined even its location of Hyderabad area to Hyderabadies only and not for any rurals to attend and avail.

15. From the above, coming to the criteria on deceptive similarity, doctrine of passing off, acquiescence, the requirements for grant of temporary injunction and also on scope of interference with the trial Courts order, in an injunction order by sitting in appeal concerned, in Ramdev Supra it was held at Para 55 on facts in setting aside the concurrent findings of dismissal of temporary injunction and by granting the same by the Apex court that it is one thing to say that the respondents were permitted to carry on trade, but it would be another thing to say that they would be entitled to manufacture and market its products under

the name which would be deceptively similar to that of the registered trade mark of the appellant. At Para 74 it was held further that what is needed by way of cause of action for filing a suit of infringement of trade mark is use of a deceptively similar mark which may not be identical for if it nearly resembles that other mark as to be likely to deceive or cause confusion. At Paras 80 to 82 it was further held on doctrine of passing off is a common law remedy whereby a person is prevented from trying to wrongfully utilize the reputation and good will of another by trying to deceive the public through passing off his goods. Although, defendant may not be using the actual trade mark of plaintiff, the get up of the defendants goods may be so much like the plaintiffs that a clear case of passing off could be proved. At Para 93 it was held further on acquiescence that in an infringement of trade mark, delay by itself may not be a ground for refusing to issue injunction as for defence of acquiescence special knowledge on the part of the plaintiff and prejudice suffered by defendant is also relevant. It was ultimately at Para 109 to 113 concluded in saying plaintiff is entitled to injunction when prima facie made out from the above on comparative strength of cases of either party, with reference to balance of convenience if lies in favour of plaintiff, there is no need of showing more than loss of good will and reputation to fulfill the condition of irreparable injury. At Para 116 it was held that once trial Court granted injunction, appellate Court will not substitute their discretion unless the trial Courts conclusion is arbitrary and perversive. No doubt in the above expression of Ramdev only Dyechem supra referred and not Cadilla supra which held Dyechem not laid down correct law on the aspect of similarities rather dissimilarities for considering prima facie case with reference to that principle also, for in other respects on acquiescence and irreparable injury what to make out, the decision of Ramdev no way can be said not good law. From Cadilla supra it is observed that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.

16. Here as discussed supra the lower Courts order is contrary to law and ill-appreciation of the facts and without any objective consideration of the material on record and prima facie unsustainable and thereby it is the duty of the Court while sitting in appeal against, to set aside the same. Further in Satyam Info way Limtied Vs. Sifinet AIR 2004 SC 3540 that was referred in Saravan Bhavan supra at para-18 also laid down that where there is likelihood of confusion to the public from there the use of the words Sifi and Siffy of the rival products and the plaintiff is the prior user plaintiff is entitled to interim injunction. Even referred Satyam at para-22 of Saravan Bhavan, only Dyechem of dissimilarity principle followed and even Dyechem overruled in Cadilla supra, Cadilla not even cited. Even in Bharat Hotels supra,

the issue is use of the words the grand/ grand and Grand Hyatt. It was observed that the word Grand is an essential and prominent and uniform feature in all hotels thereby injunction cannot be granted. Thus, facts of that case are different to the facts on hand, for the reason Grand is generic word whereas Swagath is hardly appreciable of a generic word even the prayer in the plaint speaks on infringement of the registered trade mark Swagat and registered as device and pointed out what Section 30 of the Act limits and what Section 35 of the Act saves to understand with reference to Section 17 of the Act. Coming to Trinetra supra, it is also observed at para-45 that a person trading with a particular mark is entitled to insist that no one else should use that mark for trading in the same or similar commodity. If there is any infringement of the mark used by the other of deceptively similar to his mark in nearly resembles his mark that is likely deceive or cause confusion he is undoubtedly ask the Court to restrain the other to trade with such deceptively similar mark. Here, no doubt only similarities aspect considered of Dyechem and not even dissimilarities aspect laid down in Cadilla later by overruling Dyechem. Coming to Rich Products Corp. supra of Delhi High Court of 2004 and the rival products of similar use of words Whip Topping both generic and descriptive of products the words have not acquired a secondary meaning by saying the issues have to be determined on merits and delay in laches taken consideration in holding acquiescence of the claim. In Bajaj Auto supra by referring to earlier expression in 2009 in Sri Vardhaman rice and Jungle mills case observed without going into merits of controversy in matters relating to trademarks, copyrights and patents should be finally decided very expediently in the trial Court instead merely granting or refusing to grant injunction rather keep the matters for years together without finality in directing the courts to follow by disposal of the appeal.

17. Having regard to the above and in the result, the appeal is allowed by setting aside the dismissal order dt.14.10.2016 in I.A.No.817 of 2016 on the file of the IX Addl.Chief Judge, City Civil Court, Hyderabad, and by restoring the ad-interim injunction order passed pending disposal of the suit by directing the trial Court to dispose of the suit on merits within six(6) months from the date of receipt of the order. This order comes into force after 30 days from this day and suspended meantime to enable the respondent to approach Superior Court to invoke any available remedy to impugn it. Consequently, miscellaneous petitions pending if any, shall stand closed.

–X–

## 2017(3) L.S. 304

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Smt.Justice
T. Rajani

P.Bhaskara Rao ..Appellant

Vs.

Smt.Kusumanchi Surekha & Anr., ..Respondents

**CRIMINAL PROCEDURE CODE, Secs.197 & 482 – Theft occurred in the house of Respondent/Complainant – In addition to the complaint on the same, she further filed another complaint against the Petitioner/Circle Inspector who investigated the report of the theft scene alleging petitioner of cheating and theft of gold ornaments.**

**Held - In this case scope for allegations arises due to investigation being taken up by petitioner, on the complaint of theft in the house of respondent – It is not an allegation that petitioner committed an offence which is unrelated to his official duty – What petitioner ought to do, is complained as not done, which can, without any demur, be termed as a complaint relating to his official duty, for the prosecution of which sanction is required – Hence complaint given by the complainant has to be quashed – Criminal Petition is allowed.**

Crlp.No.7501/11 Date:7.11.2017

**Cases referred:**

1. 2013(3) SCC 330
2. (2013) 10 SCC 591
3. AIR 1992 SC 604
4. 1994(2) SCC 277
5. AIR (SCW)-2009-0-3336
6. 2012 CJ (SC) 1081

Mr.T.Niranjan Reddy for Mrs.D.Sangeetha Reddy, Advocate for the Appellant.
Mr.Y.Rama Rao (R1) PP (R2) for Respondents.

**O R D E R**

This petition is filed seeking for quash of the proceedings in Crime No.263 of 2011 of Tanuku Police Station, West Godavari District.

2. Heard the counsel for the petitioner; the counsel for the 1st respondent; and the Public Prosecutor, who took notice on behalf of the 2nd respondent.

3. The facts of the case, briefly, which lead to the filing of the present report by the complainant, need to be stated as it is, in the earlier report given by the complainant herein, that the roots of this case lie.

4. There was a theft in the house of the complainant regarding which a report was lodged by the complainant on 05.03.2009. The narrated facts therein are that the complainant went to her younger brothers house in order to attend a marriage 20 days back and she took some of the gold ornaments along with her and on 04.03.2009, in the evening all their family members went

to Dwaraka Tirumala and when they were attending the marriage, her elder brother Chalapathi telephoned to her and informed that the doors of her house were found opened and he expressed a doubt that a theft might have been committed in their house. Immediately, she returned and she found that the doors of her bed room were also opened and some gold ornaments were found missing. Investigation was taken up based on the said report and now she comes up with a complaint against the Circle Inspector (CI), who investigated the earlier report, stating that there was no justice done to her and the CI cheated and committed theft of gold ornaments, weighing 80 tulas, which value about Rs.30 lakhs and that he cheated them in the enquiry and that no recovery was made and no action was taken against the CI. She sought the Inspector General to take action against the CI and prayed that their ornaments are returned to them and also to punish the CI, who is responsible for not returning the articles. She further stated that out of 120 tulas of gold, only 25 tulas of gold ornaments were returned to her. She complained that from the beginning the CI was cheating them and that he was not responding about Rs.25,000/- of cash and 25 tulas of silver.

5. In the background of the allegations made in the above report, it is necessary to examine the investigation that was done in respect of the earlier report. The earlier report i s in respect of gold ornaments, which pertain not only to the complainant but also to her mother and her sister and there is absolutely no mention made in the said report about any cash or silver.

6. When the counsel for the petitioner made an effort to draw the attention of this Court to the earlier statements and the record pertaining to the investigation of the earlier report, the counsel for the respondent opposed the said effort by contending that it is only the material pertaining to the present crime that has to be perused to find out whether there are any grounds to quash the proceedings against the petitioners/accused. She also furnished several rulings in support of her argument, though none of them run counter to the principles laid down in RAJIV THAPAR AND OTHERS VS. MADAN LAL KAPOOR(2) by the apex court. They may however be gone through, to keenly understand the ratio laid down in the above rulings and to see whether they run counter to those in Rajiv Thapar's case.

1) In UMESH KUMAR VS. STATE OF ANDHRA PRADESH AND ANOTHER(2) , it was held that the order as to partial quashment of charge sheet in relation to offences concerned passed by the High Court therein on the basis of material available before it at that stage, which could not be termed as substantive evidence, is not final and the same is subject to further orders which could be passed by trial court under Section 216 Cr.P.C. The scope of Section 482 is also explained by stating that the inherent powers under Section 482 Cr.P.C. could be exercised by the High

1. 2013(3) SCC 330
2. (2013) 10 SCC 591

Court to give effect to an order under Cr.P.C. to prevent abuse of the process of the court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. It also observed that however in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial and any document filed along with the petition labelled as evidence without being tested and proved cannot be examined.

2) In STATE OF HARYANA AND ORS., VS. CH.BHAJANLAL AND OTHERS(3) , it was held that in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised;

a) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

d) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the Code;

e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

3. AIR 1992 SC 604

f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

g) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

3) In UNION OF INDIA V. B.R. BAJAJ(4) ,it was observed that the approach of the High Court amounts to investigation by the Court whether the alleged offences in the FIR were made out or not.

4) In State of M.P. v. S.B. Johari and others, dated 17.01.2000, the apex court found fault with the approach of the High Court therein, as the High Court recorded reasons by appreciating and weighing the material on record produced by the accused therein.

It was observed that it is settled law that at the stage of framing the charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused.

5) In STATE OF ANDHRA PRADESH V. ARAVAPALLY VENKANNA(5) , it was held therein that it would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. It was observed that the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

6) In GIAN SINGH VS. STATE OF PUNJAB

4. 1994(2) SCC 277

5. AIR (SCW)-2009-0-3336

AND ANOTHER(6) , the issue before the court was whether a non-compoundable case can be allowed to be compounded and the summary of the discussion, which touched upon the principles of quashment of the proceedings in a criminal case, was as follows:

The position that emerges from the above discussion can be summarised thus; the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz., (1) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly, the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc., or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative the High Court shall be well within its jurisdiction to quash the criminal proceeding.

7. What flows from the above rulings, as understood by this court, is that the material

6. 2012 CJ (SC) 1081

produced by the accused cannot be relied upon to quash the proceedings against him and the basis for quashing the proceedings should be only the material that is produced and which is related to the crime, the proceedings of which are sought to be quashed.

8. The counsel for the petitioner seeks to carve out an exception for the principle that only the material related to the crime can be relied upon, by relying on certain rulings. The first of it is Rajiv Thapars case (supra). The apex court held that in exercise of its inherent jurisdiction under Section 482 Cr.P.C., the High Court must make a just and rightful choice. The High Court should not evaluate the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. It was held that this was so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. It was also observed that the converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. It was also observed that there is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/ complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held. Having observed so, and having held that the Supreme Court rendered endless list of judgments to the effect that the material produced by the accused cannot be considered in a case where the complainant levelled allegations bringing out all the ingredients of the charges levelled, the apex court went on to observe as follows:

To invoke its inherent jurisdiction under Section 482 Cr.P.C. the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/ complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations

as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

9. The above ruling was relied upon by the apex court in Prashant Bharti vs. State (NCT of Delhi) . The apex court extracted the observations made in Rajiv Thapars case (supra), which reads as follows:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecutions/complainants case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/ complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the

assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal

- proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

10. In Prashant Bhartis case (supra), it was observed that the complainant did not refute the material relied upon by the accused. The court, in fact, ordered the complainant to produce documents regarding her marital status on the date of the alleged offences against the accused therein and the same were looked into by the Court. However, that was a matter where the prosecutrix/ complainant also approached the High Court for quashment of the FIR lodged by her.

11. Bhajan Lal's case was relied upon by both sides. However, the respondent's counsel relying on the aforesaid decision contends that powers under section 482 Cr.P.C. have to be used sparingly, under the circumstances enumerated therein, which are already extracted above. Counsel for the petitioner also relies on the said decision to convince this Court, that this case falls under the (e) and (f) categories. Rajiv Thapars case also refers to Bhajan lals case.

12. The counsel for the petitioner also took the help of the ruling of the apex court in Matajob Dobey vs. H.C.Bhari to support his contention that when no sanction under Section 197 Cr.P.C. is obtained to prosecute the accused, who is a public servant, the proceedings need to be quashed. The above ruling is rendered by a Constitutional Bench of the Supreme Court, wherein it was held that the offence alleged to have been committed must have something to do or must be related in some manner, with the discharge of official duty and no question of sanction can arise under Section 197 Cr.P.C. unless the Act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty and there must be a reasonable connection between the act and the official duty.

13. So now, there are two aspects which have to be examined and determined in this

case.

14. One is whether the material produced by the accused are such as exempted in Rajiv Thapars case (supra) and whether the acts of the accused, which are alleged to be offences, constitute a part of his official duty.

15. The material that is sought to be relied upon by the counsel for the petitioner is comprised of the statements of the complainant, her mother and sister and the receipts issued by them after receiving the property, which was recovered from the accused. The counsel for the respondent does not refute the genuineness of the said material and does not dispute the fact that the receipts were issued by the complainant, her mother, and sister. The above material would undoubtedly fall under the category of the material that is permitted to be looked into by the Apex Court in Rajiv Thapar's case. Even if the petitioner refutes the material, it would definitely constitute justifiably unrefutable material and becomes reliable by virtue of Rajiv Thapar's case. The facts in Rajiv Thapars case are also similar, in the sense that the father of the deceased therein gave one complaint, which in the light of the post mortem report, inquest report, and other documents, was found to be baseless. He again gave a complaint and in the quash petition filed in the said case, those documents were relied upon, to quash the subsequent complaint. As the genesis for the complaint filed in this case is the complaint filed by the complainant earlier in Crime No.401 of 2009, the same can be looked into in the foremost. She gave a list of ornaments, which were lost by her and subsequently she gave a letter to the Inspector of Police, stating that 16 tulas of gold pieces and one pearl ring, which she thought were also lost in the theft, were found in her house and that hence, she sought for deleting the above items from the report. After deleting the said items, the remaining items are 1) one necklace with enamel coating, 2) one pair matching ear studs to the necklace, 3) six sada bangles,

4) one ring out of the two rings originally reported, be it pearl ring or betrothal ring, 5) a pair of white stone studded jukas and 7) a balck bead studded chain were stolen.

16. Later, all of her gold ornaments were recovered during investigation and were handed over to her. She issued a receipt while receiving the said ornaments, which is dated 04.09.2010. The ornaments that were taken are 1) one gold necklace with enamel coat, 2) one pair of gold ear studs, 3) six sada gold bangles,

4) One gold pearl ring, which has to be considered as the betrothal ring or the ring other than the pearl ring, which was found in her house, 5) two gold jukas studded with white stones, 6) Two stringed gold black beads chain with locket. The receipt would show that the complainant has received all the ornaments, which were lost by her in the theft and she issued receipt to that effect. Further support for the above fact comes from the evidence given by her before the court, wherein she categorically stated in the cross-examination that she received the stolen property from the police station, but not from the court.

She also stated that the CI of Police handed over the subject property and receipt was also obtained for the same. Hence, it is very clear from the above material that the entire property lost by her was not only recovered by the petitioner herein but was also handed over to the complainant, who is none other than the C.I. against whom allegations that he robbed the property are made. Wherefrom did she had a reason to suspect that he robbed the property cannot be deciphered.

17. The counsel for the respondent contends that there was a CID enquiry ordered against the petitioner herein and in the report submitted by the CID, departmental enquiry was ordered by holding that the petitioner committed the offence. She also expressed her grievance with regard to the non-furnishing of the CID report to her in spite of her applying for the same under the Right to Information Act. Her grievance about the non-furnishing of the report cannot be agitated in this case. But, however, the report is not before this court. The counsel for the petitioner also filed the charge sheet in the earlier crime and also the explanation given by the petitioner herein to the Deputy Inspector General of Police, in the departmental enquiry.

He mentioned about the entire investigation done by him and submits that some more items have to be recovered from the accused, who is absconding and who, according to the confession of accused No.1, is in possession of the remaining gold. The report of the mother and the sister of the complainant are also filed and the properties were recovered during investigation and handed over to the mother and sister of the complainant under the receipts issued by them. While all the items lost by her sister Chandralekha are recovered and handed over to her, two items lost by her mother are not recovered and returned to her. The reasons for the same can be gathered from the charge sheet and also the explanation given by the petitioner to the Deputy Inspector General of Police. But, however, the mother did not raise any grievance and she did not give any complaint against the petitioner. In the background of the above factual scenario, the report given by the complainant seems to be based on a total misconception and the reasons for such complaint are obscure. When she does not at all allege that she lost any cash and silver, she cannot find fault with the petitioner for not recovering the same. There is absolutely no foundation laid to make an allegation that the petitioner has committed theft of 80 Soveriegns of gold worth Rs.30 lakhs. There is absolutely no grievance that can be entertained by the complainant by the manner of investigation done by the petitioner. She must be more than satisfied with the investigation, as the property was not only recovered but also returned to the complainant, which is unusual and unlikely in most of the many cases of theft where due to lapse of time the accused either spends away the robbed property or at least converts the gold ornaments into cash.

18. What is prevented by the Supreme Court is the evaluation of the truthfulness of the allegations levelled by the complainant. In this case, no evaluation is

needed. Our Supreme Court has in a judgment Rukmini Narvekar V. Vijaya Satardekar and others , after dealing with the larger bench judgment of the Supreme Court in State of Orrisa V. Debebdra Nath Padhi , distinguished between a proceeding under Section 227 Cr.P.C before the trial court and a proceeding under Section 482 Cr.P.C. and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 Cr.P.C. The Supreme Court in paragraph 38 referred to the observation of the larger bench, wherein the larger bench in paragraphs 21 and 29 of its decision did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited where under the High Court could in the interest of justice make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court; there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrP.C. can be taken into consideration by the learned Magistrate at that stage; however, in a proceeding taken therefrom under Section 227 Cr.P.C. the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained.

Rajiv Thapars case makes a reference to Rukmini Navekars case also.

19. The complaint in this case lays only bare facts from which the complicity of the petitioner cannot be gathered. It spells the earlier complaint, making it imminent to look into it. A mere reading of the earlier complaint would reveal the falsity of the allegations made in this complaint. The material furnished by the petitioner/accused passes the qualitative test of Rajiv Thapars case and crosses all the four steps delineated by the Apex Court in the said case. The morale of a Public Servant should not be dented by false prosecutions.

The freedom required for an investigating officer, to conduct proper investigation, would be under constant threat, if frivolous complaints are entertained. The documents filed by the petitioner are justifiably irrefutable, if not irrefutable. This complaint dated 16.08.2011 is filed long after the ornaments were returned to the complainant i.e., on 04.09.2010. There is an allegation in the complaint that for the loss of 120 tulas only 25 tulas was registered as the loss. But her letter, stating that 16 tulas were found in her house and that they can be removed from the list of lost articles, would suggest that the FIR was registered for the loss of whatever ornaments were stated by her, even without verifying the truth of her complaint. She had the freedom to inform the police about the errors committed by her. She could have utilized the freedom to give a letter as given for rectifying her mistake, to inform that there are some more articles lost in the theft. Her letter would show that she was keen on reporting about the exact number of articles. She did not report to any superiors of the petitioner, about his acts which were mentioned in the present report. It is obvious

that no grievance was put forth till she received her lost ornaments. Her allegation that no recovery and return of any of her lost ornaments, turns out to be an absolutely false statement, in the light of not only the receipt issued by her but also the evidence given by her in the court. The above observations would answer the vehement submission of the respondent's counsel that the complainant did not keep quite and has been agitating about the misdeeds of the petitioner.

20. The ornaments were recovered within less than one month. There is absolutely no grievance that could have been entertained by the complainant. In the departmental enquiry, initiated against the petitioner, the explanation of the petitioner was found convincing and the charges were dropped. In conclusion, it can be said that by looking into the permitted category of documents, which are not refuted by the respondent, the complaint turns out to be a frivolous one and permitting the prosecution to proceed on the basis of such complaint would be a sheer abuse of the process of law. The argument of the respondent's counsel that the complaint should not meet a sudden death and that truth should be allowed to come out by permitting the prosecution to go on, can be upheld, if the court finds the balance of credibility leaning, at least, in the slightest manner, towards the complainant. It is on the other hand, otherwise.

21. As regards the necessity of obtaining sanction under Section 197 Cr.P.C. for prosecuting the petitioner, the allegations in the report, if accepted, have to be considered only as a lapse on the part of the petitioner in conducting proper investigation. Then, it would amount to a lapse on the part of the petitioner in performing his official duties for the prosecution of which a sanction is required under Section 197 Cr.P.C. No sanction is reported to have been obtained before prosecuting the petitioner. A Constitutional Bench of the Supreme Court, in the ruling cited by the petitioner's counsel, Sanjay Kumar Thakur v. State of Bihar dealing with a batch of two appeals, observed that the offences alleged must have something to do with the discharge of official duty and there can be no sanction if the acts alleged do not constitute an offence. It is held that the only point to be determined is whether the act complained of is committed in discharge of his official duty and there must be reasonable connection between the act and the official duty. In this case the scope for the allegations arises due to the investigation being taken up by the petitioner, on the complaint of theft in the house of the respondent. It is not an allegation that the petitioner committed an offence which is unrelated to his official duty. What he ought to do, is complained as not done, which can, without any demur, be termed as a complaint relating to his official duty, for the prosecution of which, sanction is required. Hence, the complaint given by the complainant has to be quashed on both the counts, which are urged by the petitioners counsel.

22. Accordingly, the Criminal Petition is allowed and the proceedings in Crime No.263 of 2011 of Tanuku Town Police Station, West Godavari District, are hereby

quashed. As a sequel, the miscellaneous applications, if any, shall stand closed.

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## 2017(3) L.S. 316

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
T.Sunil Chowdary

Rajulapati Ankababu ..Petitioner
Vs.
The State of A.P., ..Respondent

**CRIMINAL PROCEDURE CODE, Sec.438 - INDIAN PENAL CODE, Secs. 323, 354-A, 385 and 506 - SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, Secs.3(2)(va), 4 and 18 – Criminal petition to grant pre-arrest bail to petitioner.**

**Held – Simply because the offences are triable by a Special Court, that does not convert the bailable offences into non-bailable offences, in view of part II of the first schedule under Cr.P.C. – Offence u/Sec. 3(2)(va) of SC/ ST Act is a bailable offence - A person who is alleged to have committed a bailable offence is not entitled to file an application u/Sec.438 of Cr.P.C. - Criminal petition is dismissed.**

**Cases Referred:**
1.(2012) 8 SCC 795
2.(2014) 15 SCC 521
3.(1982) 3 SCC 516
4.(1984) 2 SCC 500 : AIR 1984 SC 718
5.(1999) 3 ALT 533
6.(2004) 4 SCC 584
7.(2000) 2 SCC 504
8.(2003) 2 SCC 649
9.(2014) 8 SCC 273
10.2017 SCC Online Hyd 198
11.2015 (2) ALD (Crl.) 141 (AP) = 2015 (2) ALT (Crl.) 349 (AP)
12.(1976) 4 SCC 572

Mr.C.Sharan Reddy, Advocate for the petitioner.
The Public Prosecutor, Advocate for the respondent.

**O R D E R**

This criminal petition is filed by the petitioner-accused No.2, under Section 438 of Cr.P.C., to grant pre-arrest bail in Crime No.62 of 2016 on the file of the Station House Officer, Maredimilli Police Station, East Godavari District, registered for the offences punishable under Sections 323, 506, 385, 354-A of IPC and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter after referred to as, the SC/ST Act).

2. The case of the prosecution is that prior to October, 2016, some people came to Chinthakoyya Village of Y.Ramavaram Mandal and enquired the villagers about availability of antique gold coins. In that process, they also enquired de facto

complainant for antique gold coins for which he pleaded ignorance. While so, on 03.10.2016, accused No.1, who is a Police Constable, came to the house of de facto complainant, forcibly took Rs.40,000/- kept in the house and also took him to Maredimilli Police Station. At that time, accused Nos.3 and 4 came to the Police Station and demanded de facto complainant for antique gold coins and if he did not give them, accused No.4 will lodge a complaint with the petitioner, who is the Inspector of Police, as if he has given Rs.4,00,000/- to de facto complainant for procuring antique gold coins. According to de facto complainant, accused No.4 never came to their village. On the next day, accused No.3 came to the house of de facto complainant and demanded an amount of Rs.2,40,000/- for not registering a case against him, besides sending wife of de facto complainant to satisfy his lust. On 05.10.2016, de facto complainant gave Rs.2,00,000/-, which was drawn from Andhra Bank account of his mother-in-law, to accused No.3, who in turn gave it to the petitioner. The petitioner threatened de facto complainant not to disclose the same to anybody otherwise he will be implicated in a case under the provisions of the Narcotic Drugs and Psychotropic Substances Act. It is the further case of the prosecution that the accused persons did the above acts knowing fully well that de facto complainant belongs to a Scheduled Tribe.

3. Sri C.Sharan Reddy, learned counsel for the petitioner strenuously submitted that the de facto complainant filed a false complaint against the petitioner, who is an Inspector of Police, for the reasons best known him. He further submitted that even if the allegations made in the complaint are ex facie taken to be true and correct, no prima facie case is made out against the petitioner for the alleged offences more particularly under Section 3(2)(va) of the SC/ST Act; therefore, it is a fit case to grant pre-arrest bail to the petitioner. He further submitted that the Investigating Officer, during the course of investigation, has to follow the procedure as contemplated under Section 41A of Cr.P.C., even though offence is registered under Section 3(2)(va) of the SC/ST Act, in view of Sub- section (2) of Section 4 of Cr.P.C. Per contra, learned Public Prosecutor submitted that all the offences alleged to have been committed by the petitioner are bailable; therefore, the petition under Section 438 of Cr.P.C., is not maintainable. He further submitted that Section 438 of Cr.P.C., has no application to the offences committed under the provisions of the SC/ST Act, in view of Section 18 of the SC/ST Act.

4. In order to appreciate the rival contentions, it is inexorable to consider various provisions of Cr.P.C., in touchstone with the provisions of the SC/ST Act.

5. The Parliament felt that the existing laws like the Protection of Civil Rights Act, 1955, and the general provisions of IPC have somewhat become redundant in preventing the atrocities against the persons belong to SC/ST. In order to achieve the underlying object of social justice, as enshrined in the Constitution of India, the Parliament enacted the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in the year 1989 with an avowed object of protecting the dignity of the persons belong

to the SC/ST communities from the people belong to the other communities. The statement of objects and reasons of the SC/ST Act indicates that these people were being subjected to squalor, in the hands of the people other than the SC/ST communities, simply because they belong to SC/ST community.

6. The word atrocity is not specifically defined under the SC/ST Act. What exactly constitutes an atrocity, as contemplated under the SC/ST Act, has to be gathered from the provisions of the SC/ST Act. As per Section 2(1)(a) of the SC/ST Act atrocity means an offence punishable under Section 3 of the SC/ST Act. Section 3 is heart and soul of the SC/ST Act, which encompasses in it, certain acts done by a non-SC/ST person towards an SC/ST person, willfully and intentionally humiliating that person, knowing fully well that such person belongs to SC/ST. To put it in a different way, various provisions of the SC/ST Act revolve around Section 3. Sections 3 and 4 are the penal provisions.

7. Experiencing the difficulties faced in curtailing the atrocities against the SC/ST community, even after enactment of the SC/ST Act and taking note of the present day scenario as well as for more effective implementation of the SC/ST Act, the Parliament has made certain amendments to the SC/ST Act, in the year 2016, and one such insertion is Section 3(2)(va) of the SC/ST Act.

8. At this juncture, the pristine question that crops up for consideration is, whether the offence committed under Section 3(2)(va) of the SC/ST Act is bailable or not. If the answer is in the affirmative, the corollary question that germane for consideration is, whether the petitioner is entitled to seek pre-arrest bail under Section 438 of Cr.P.C. A perusal of Section 18 of the SC/ST Act, at a glance, clearly demonstrates that Section 438 of Cr.P.C., has no application in respect of an offence alleged to have been committed under the provisions of the SC/ST Act.

9. In order to resolve the issue, this Court is placing reliance on the judgment of the Honble apex Court in VILAS PANDURANG PAWAR V. STATE OF MAHARASHTRA(1) , wherein it was held in paragraph Nos.1, 9 and 10 as follows:

> 1. The short question to be decided in this petition is whether an accused charged with various offences under the Penal Code, 1860 (in short IPC) along with the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the SC/ST Act) is entitled for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (in short the Code).
>
> 9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment

1.(2012) 8 SCC 795

in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

10. In SHAKUNTLA DEVI V. BALJINDER SINGH(2) , the Honble apex Court held at paragraph No.4 as follows:

4. The High Court has not given any finding in the impugned order that an offence under the aforesaid Act is not made out against the respondent and has granted anticipatory bail, which is contrary to the provisions of Section 18 of the aforesaid Act as well as the aforesaid decision of this Court in Vilas Pandurang Pawar v State of Maharashtra, (2012) 8 SCC 521. Hence, without going into the merits of the allegations made against the respondent, we set aside the impugned order of the High Court granting bail to the respondent.

11. As per the principle enunciated in the cases cited supra, if the allegations made in the complaint prima facie do not constitute any offence punishable under Sections 3 and 4 of the SC/ST Act, anticipatory bail application under Section 438 of Cr.P.C., is maintainable. Despite specific bar created under Section 18 of the SC/ST Act, the competent Court can entertain and grant pre-arrest bail, under Section 438 of Cr.P.C., in respect of the allegations made under the provisions of the SC/ST Act, if the exigencies so warrant.

12. It is needless to say that the provisions of the Cr.P.C., which is the parent statute, provides the procedure to be followed by the Investigating Agency and the Courts, during the course of investigation, inquiry and trial, as the case may be. The crucial question that falls for consideration is whether the provisions of Cr.P.C., are mutatis and mutandis applicable to the cases registered under the provisions of the SC/ ST Act, for the purposes of investigation, inquiry and trial. The SC/ST Act is a special enactment. It is not much in dispute with regard to the proposition of law that when

2.(2014) 15 SCC 521

there is a conflict between the provisions of the Cr.P.C., and the special Act, the provisions enumerated under the special Act will prevail over the Cr.P.C.

13. It is needless to say that the definitions of an Act are the beacon-light to understand the letter and spirit of the other provisions of the Act. Before proceeding further, I am of the considered view that it is necessary to refer relevant provisions of the Cr.P.C., and the SC/ST Act. Section 2(1)(b) & (f) of the SC/ST Act read as follows:

> 2. Definitions, -
>
> (1) In this Act, unless the context otherwise requires, -
>
> (b) Code means the Code of Criminal Procedure, 1973 (2 of 1974);
>
> (f) the words and expressions used but not defined in this Act and defined in the Indian Penal Code (45 of 1860), the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), as the case may be, shall be deemed to have the meanings respectively assigned to them in those enactments.

14. A conjoint reading of the above two provisions clearly demonstrates that the words and expressions as used in Cr.P.C., are applicable, with the same force and vigour, to the SC/ST Act unless contrary meaning is assigned to the same word or expression under the SC/ST Act.

15. Section 4(1) of Cr.P.C., provides the procedure to be followed while conducting investigation by the Investigating Officer, and inquiry or trial by the Courts, for the offences under the IPC. Section 4(2) of Cr.P.C., reads as follows:

> 4. Trial of offences under the Indian Penal Code and other laws:-
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. A cursory reading of the above sub-section reveals that the procedure contemplated under Cr.P.C., is equally applicable to the cases triable under a special enactment unless there is a specific provision under the special enactment.

17. This Court is placing reliance on the following decisions:

(i) MIRZA IQBAL HUSSAIN V. STATE OF U.P(3). , wherein the Honble apex Court held at paragraph No.2 as follows:

> 2. In this appeal by special leave, the only point raised by Mr Bana on behalf of the appellant is that the learned Special Judge had no jurisdiction to pass an order of confiscation. We see no substance

3.(1982) 3 SCC 516

in this contention. Section 4(2) of the Code of Criminal Procedure provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiring into, trying or otherwise dealing with such offences. It is clear from this provision that insofar as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried.

(ii) A.R.ANTULAY V RAMDAS SRINIWAS NAYAN(4) , wherein a Constitution Bench of the Honble apex Court held at paragraph No.16 as follows:

> 16. Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations.

(iii) REFERRING OFFICER REP. BY STATE OF A.P., BY PUBLIC PROSECUTOR V SHEKAR NAIR @ GURU(5) , wherein this Court held at paragraph Nos.19 and 20 as follows:

> 19. Referring to Sections 4(2) and 5 of Cr.P.C., the Supreme Court in Directorate of Enforcement v. Deepak Mahajan, 1994 CriLJ 2269, summed up the legal position as follows:
>
> "To sum up Section 4 is comprehensive and that Section 5 is not derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the

4.(1984) 2 SCC 500 : AIR 1984 SC 718

5.(1999) 3 ALT 533

Code reading".....but subject to any enactment for the time being in force regulating the manner or place or investigating, inquiring into, trying or otherwise dealing with such offences"

20. It was further observed:

"The operation of Section 4(2) of the Code is straight away attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of Section 167".

18. The learned Public Prosecutor, in support of his submission, has drawn the attention of this Court to the following decision:

MOLY V. STATE OF KERALA(6) , wherein the Honble apex Court held at paragraph Nos.9 and 10 as follows:

9. So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word trial is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. The word inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a Magistrate or court. So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. Special Court is defined in the Act as a Court of Session specified as a Special Court in Section 14 [vide Section 2(1)(d)].

10. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently, the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for trial before a Court of Session.

19. The same principle was reiterated by the Honble apex Court in paragraph No.13

6.(2004) 4 SCC 584

of the judgment in GANGULA ASHOK V STATE OF A.P.(7).

20. As per the principle enunciated in the cases cited supra, the provisions of Cr.P.C., are equally applicable for investigation, inquiry and trial of the offences under any other special or local Act, unless such special or local Act provides a specific provision for that purpose.

21. Let me consider the provisions of the SC/ST Act, in the light of the above legal principles.

22. Under the provisions of the Cr.P.C., the Station House Officer will conduct investigation into a cognizable offence. Rule 7 of the SC/ST Rules, 1995 mandates that the Deputy Superintendent of Police alone is competent to investigate into the offences committed under the SC/ST Act. This provision is a clear- cut departure to the Cr.P.C., so far as the rank of the Investigating Officer in conducting investigation is concerned. Section 26 of Cr.P.C., deals with the Court which is competent to conduct trial of the offences under IPC and of the offences under any other law. It is not out of place to extract hereunder clause (b) of Section 26 of Cr.P.C.

26. Courts by which offences are triable:

(a)

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by :

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

23. Section 26(2) of Cr.P.C., enables the Courts constituted under the Cr.P.C., to conduct inquiry or trial in respect of the offences committed under a special enactment provided if such Act is silent with regard to the forum. A fascicular reading of Section 2(bd) and Section 14 of the SC/ ST Act clearly demonstrates that a Special Court constituted under this Act alone is empowered to conduct trial of the offences alleged to have been committed under this Act. Section 14A of the SC/ST Act provides the appellate forum to challenge an order of the Special Court and stipulates the period of limitation to prefer appeal. The second proviso to Sub- section (1) of Section 14 of the SC/ST Act reads as follows:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

24. A perusal of the above provision clearly demonstrates that Section 209 of Cr.P.C., has no application to the offences committed under the SC/ST Act. In other words, the Special Court can directly take cognizance of offence. Section 18 of the SC/ST Act excludes the application of Section 438 of Cr.P.C., for the offences committed under the SC/ST Act. It is needless to say that Section 360 of Cr.P.C., enables the Court to release the accused on probation of good

7.(2000) 2 SCC 504

conduct or after admonition. In view of Section 19 of the SC/ST Act, Section 360 of Cr.P.C., and the provisions of Probation of Offenders Act, 1958 have no application in respect of the offences committed the SC/ST Act.

25. Having regard to the principles enunciated in the cases cited supra, the provisions of the SC/ST Act referred supra are exceptions to the Cr.P.C. To put it in a different way, certain provisions of Cr.P.C., are not applicable for the offences committed under the SC/ST Act so far as investigation, inquiry and trial are concerned, in view specific machinery provided under the SC/ ST Act.

26. The learned Public Prosecutor submitted that arrest of an accused forms an integral part of investigation. To fortify his submission, he has drawn the attention of this Court to the following decision:

27. In M.C. ABRAHAM V STATE OF MAHARASHTRA(8) , the Honble apex Court held at paragraph No.14 as follows:

> 14. Tested in the light of the principles aforesaid, the impugned orders dated 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

8.(2003) 2 SCC 649

28. Sections 41A to 41D of Cr.P.C., were added by way of amendment to Cr.P.C., by Act 5 of 2009. These provisions came into force with effect from 01.11.2010. In ARNESH KUMAR V STATE OF BIHAR(9) , the Honble apex Court, while considering the scope of Sections 41 and 41A of Cr.P.C., held at paragraph Nos.10, 11, 12 and 13 as follows:

> 10. 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 emphasise 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.
>
> 11. 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 498-A 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

9.(2014) 8 SCC 273

directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they 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 appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

29. As per the principle enunciated in the case cited supra, the Investigating Officer has to follow the procedure as contemplated under Section 41A of Cr.P.C., while investigating the offences for which the punishment prescribed is below seven years or upto seven years.

30. In KONIDHANA ANANDA SHARMA V STATE OF A.P.(10) , this Court had an occasion to consider the question as to whether the bail bonds produced before the Investigating Officer are not sufficient for the purpose of committing the case to the Court of Session. While answering the question, at paragraph No.8 the following observations are made:

8. The offences alleged in the instant case are under Sec.323, 506 IPC and Sec.3(1)(x) of SC, ST (POA) Act, 1989. All the aforesaid offences are punishable with a term less than 7 years. Therefore, the procedure contemplated under Sec.41 and 41-A Cr.P.C, squarely apply to them and those Sections have not made any express distinction between the offences punishable under IPC and other Special enactments. Therefore, the contra view expressed by learned Addl. Junior Civil Judge, is incorrect. The explanation of the SDPO Madanapalle dated 13.04.2017 shows that since the offence was punishable below 7 years of imprisonment and as the accused had not failed to comply with the terms of notice under Sec.41-A Cr.P.C, the I.O did not consider it necessary to arrest the accused. Therefore, the I.O granted station bail by securing the bail bonds of the sureties on behalf of the accused. This procedural order under Sec.41-A Cr.P.C cannot be equated with an order passed by a Court under Sec.438 Cr.P.C. Therefore, in my

10.2017 SCC Online Hyd 198

view, there is no procedural violation. Consequently, the committal Court is directed to submit the bail bonds produced before the I.O by the accused and sureties to the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, in which case they shall be deemed to be the due compliance under Sec.209(a) of Cr.P.C by the Sessions Court.

31. The core issue which falls for consideration at this juncture is whether the Investigating Officer has to follow the procedure as contemplated under Section 41A of Cr.P.C., while conducting investigation in respect of the offences alleged to have been committed under the provisions of the SC/ST Act.

32. The SC/ST Act came into force with effect from 30.1.1990. Section 41A of Cr.P.C., was introduced in the year 2010. The Parliament was very much aware of the provisions of the SC/ST Act at the time of introducing Section 41A of Cr.P.C., in the year 2010. Had it been the intention of the Parliament to exclude the application of Section 41A of Cr.P.C., in respect of the offences committed under the SC/ST Act, the same might have been reflected in the Cr.P.C. There is no specific provision under the SC/ST Act, excluding the application of Section 41 of Cr.P.C. The Parliament amended the provisions of the SC/ST Act, by way of Amendment Act 1 of 2016 by introducing certain provisions. The Parliament is very much aware of existence of Section 41A of Cr.P.C., at the time of making suitable amendments to the SC/ ST Act. It is a settled principle of law that the provisions of Cr.P.C., are applicable to the Special Acts so far as the investigation, inquiry and trial are concerned, unless there is specific provisions under the Special Act. Even under the amended Act, there is no provision which specifically excludes the application of Section 41A of Cr.P.C., in respect of offences committed under the SC/ST Act.

33. Having regard to various provisions of the Cr.P.C., and the SC/ST Act referred supra, and the principle enunciated in Arnesh Kumar, I am of the considered view that Section 41A Cr.P.C., in letter and spirit, is applicable to the offences committed under the SC/ST Act if the offence is punishable with imprisonment for a term which may be less than seven years or which may extend upto seven years, whether with or without fine.

34. Reverting to the facts of the case on hand, the present case was registered for the offences punishable under Sections 323, 506, 385 and 354A of IPC and Section 3(2)(va) of the SC/ST Act. A petition under Section 438 of Cr.P.C., is not maintainable if the offence/offences alleged to have been committed by the accused is/are bailable. According to Clause (b) of Section 2 of Cr.P.C., bailable offence means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and non-bailable offence means any other offence. The point, which has to be considered at this stage, is whether the offences alleged to have been committed by the accused are bailable or non-bailable. In paragraph No.4 of the petition, the

petitioner himself stated that Sections 323, 506, 385 and 354A of IPC are bailable offences. Thus remains the offence under clause (va) of Sub-section (2) of Section 3 of the SC/ST Act. Clause (va) was inserted in the SC/ST Act by Act 1 of 2016 with effect from 26.1.2016 vide S.O.No.152(E), dated 18.1.2016, which reads as follows:

> 3. Punishments for offences of atrocities,- (2) Whoever, not being a member of Scheduled Caste or Scheduled Tribe,-
>
> (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.

35. A perusal of the above clause, at a glance, indicates that if any person commits an offence as mentioned under the Schedule (IPC offences), such an accused shall be prosecuted under Section 3(2)(va) of the SC/ST Act also. The Schedule contains the offences under Sections 120A, 120B, 141, 142, 143, 144, 145, 146, 147, 148, 217, 319, 320, 323, 324, 325, 326B, 332, 341, 354, 354A, 354B, 354C, 354D, 359, 363, 365, 376B, 376C, 447, 506 and 509 of IPC.

36. The punishment prescribed for the offences alleged in this case is as follows:

| Section | Offence | Punishment |
|---|---|---|
| 323 of IPC | Voluntarily causing hurt. | Imprisonment for one year, or fine of 1,000 rupees, or both. |
| 506 of IPC | Criminal intimidation<br><br>If threat be to cause death or grievous hurt, etc. | Imprisonment for 2 years, or fine, or both.<br><br>Imprisonment for 7 years, or fine, or both. |
| 385 of IPC | Putting or attempting to put in fear of injury, in order to commit extortion. | Imprisonment for 2 years, or fine, or both. |
| 354A of IPC | Sexual harassment of the nature of unwelcome plysical contact and advances or a demand or request for sexual favours, | Imprisonment which may extend to 3 years or with fine or with both. |

| | | |
|---|---|---|
| | showing pornography.<br>Sexual harassment of the nature of making sexual coloured remark. | Imprisonment which may extend to 1 year or with fine or with both. |
| 3(2)(va) of SC/ST Act | Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe belongs to such member, | shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine. |

37. The punishment prescribed for the offences under Section 3(1) of the SC/ST Act is not less than six months but which may extend upto five years and with fine. The punishment prescribed under Clauses (i) to (vii) of Sub-section (2) of Section 3 of the SC/ST Act is as follows:

| Clause u/s. 3(2) | Punishment prescribed |
|---|---|
| (i) | Imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death. |
| (ii) | Imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine. |
| (iii) | Imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine. |
| (iv) | Imprisonment for life and with fine. |
| (v) | Imprisonment for life and with fine. |
| (va) | Fine. |
| (vi) | The punishment provided for that offence (for which the evidence was screened). |
| (vii) | Imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence. |

38. The learned counsel for the petitioner submitted that the petitioner had no knowledge about the caste of the de facto complainant; therefore, prima facie no case is made out against the petitioner for the offence under Section 3(2)(va) of the SC/ ST Act. Countenancing the above contention, the learned Public Prosecutor has drawn the attention of this Court to clause (c) of Section 8 of the SC/ST Act, which reads as follows:

8. Presumption as to offences.- In a prosecution for an offence under this Chapter, if it is provided that

(a)

(b)

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.

39. The learned Public Prosecutor further submitted that the offence is committed in the notified area wherein almost all the inhabitants belong to Scheduled Tribe; therefore, the submission of the learned counsel for the petitioner cannot be accepted, in view of the above presumption. A perusal of Section 8(c) of the SC/ST Act in juxtaposition with Section 3(2)(va) of the SC/ST Act makes it clear that the Court can drawn a presumption that the accused has knowledge that the victim belongs to SC/ST community unless the contrary is proved. Whether the petitioner committed the alleged offence knowing fully well that the de facto complainant belongs to Scheduled Tribe or not would become a relevant issue after full- fledged trial only. It is needless to say that while deciding the interlocutory applications more particularly the bail petitions, the Court has to restrain itself to express any opinion more particularly on factual aspects which ultimately affects the merits of the main case. At this stage, the Court has to consider whether the allegations made in the complaint prima facie constitute the offences alleged to have been committed by the petitioner, for a limited purpose of granting or rejecting the bail.

40. The learned Public Prosecutor submitted that the offences alleged to have been committed by the petitioner are bailable; therefore, the petition is not maintainable. In support of the submission, he has drawn the attention of this Court to the judgment of this Court in THATI VENKATA NAGARAJU V STATE OF A.P.(11) , wherein it was held at paragraph No.9 (Manupatra) as follows:

> 9. In the second part of the first schedule to Cr.P.C., which deals with classification of offences against other laws, it is stated that if the offences are punishable with imprisonment for less than three years or with fine only, the same is bailable, non-cognizable and triable by any Magistrate. Section 18 of the Act states that nothing in Section 438 Cr.P.C. shall apply in relation to any case involving the arrest of any person on an accusation of having

11.2015 (2) ALD (Crl.) 141 (AP) = 2015 (2) ALT (Crl.) 349 (AP)

committed an offence under the Act. From a reading of Section 18 of the Act, it is clear that bar under Section 438 Cr.P.C. shall apply when a person commits offences under the Act in which he is liable to be arrested. Arresting a person would arise only if he commits an offence which is non-bailable. Since the punishment prescribed under Section 4 of the Act is an imprisonment upto one year and in view of the First Schedule to the Cr.P.C., the said offence has to be treated as bailable.

41. As per the principle enunciated in the case cited supra, the offence punishable under Section 4 of the SC/ST Act is a bailable offence; therefore, the petition under Section 438 of Cr.P.C., is not maintainable.

42. The schedule under Section 3(2)(va) of the SC/ST Act is silent whether the offence is bailable or not. Part-I of the First Schedule under the Cr.P.C., classifies the offences under the IPC as

(a) cognizable or non-cognizable, (b) bailable or non-bailable; and

(c) the Court by which the offence abetted is triable. Part-II of the First Schedule classifies the offences against other laws and it reads as follows:

| Offence | Cognizable or non-cognizable | Bailable or non-bailable | By what court triable |
|---|---|---|---|
| If punishable with death, imprisonment for life, or imprisonment for more than 7 years, | Cognizable | Non-bailable | Court of Session |
| If punishable with imprisonment for 3 years, and upwards but not more than 7 years, | Cognizable | Non-bailable | Magistrate of the first class |
| If punishable with imprisonment for less than 3 years or with fine only. | Non-cognizable | Bailable | Any Magistrate |

43. There is no special provision indicating Section 3(2)(va) is a non-bailable offence. Therefore, one has to fall back to the Cr.P.C., in order to consider whether the offence under Section 3(2)(va) of the SC/ST Act is bailable or not. Part-II of the First Schedule, as mentioned supra, clearly reveals that the punishment prescribed for an offence under any law other than IPC is less than 3 years or with fine only, such an offence shall be treated as bailable. The punishment prescribed for the offence under Section 3(2)(va) of the SC/ST Act is fine only; therefore, it is a bailable offence. If there is no specific provision under the SC/ST Act, Sections 323, 506, 385, 354-A of IPC are triable by a Magistrate. The above offences are shown in the Schedule annexed to Section 3(2)(va) of the SC/ST Act. By virtue of Section 14 of the SC/ST Act read with Section 26(b) of Cr.P.C., the above mentioned IPC offences are triable by a Special Court. Simply because the above offences are triable by a Special Court, that does not convert the bailable offences into non- bailable offences, in view of Part II of the First Schedule under Cr.P.C.

44. Having regard to the facts and circumstances of the case and also various provisions under the Cr.P.C., and the SC/ ST Act, I am of the considered view that the offences under Sections 323, 506, 385, 354-A of IPC and Section 3(2)(va) of the SC/ST Act are bailable even though they are Schedule offences under Section 3(2)(va) of the SC/ST Act.

45. The next question that falls for consideration is whether the present bail petition is maintainable or not. It is needless to say that an accused person, who alleged to have committed a non- bailable offence, can approach the competent Court seeking pre arrest bail under Section 438 of Cr.P.C. A person who alleged to have committed a bailable offence is not entitled to file application under Section 438 of Cr.P.C., in view of the language deployed in it. Section 438 of Cr.P.C., can be invoked only in cases of non- bailable offences and not in cases of bailable offences, in view of the principle enunciated in BALCHAND JAIN V. STATE OF M.P.(12).

46. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the present petition is not maintainable under Section 438 of Cr.P.C. The petition lacks merits and bona fides.

47. In the result, the criminal petition is dismissed.

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12.(1976) 4 SCC 572

**2017(3) L.S. 333**

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
M.Satyanarayana Murthy

Jallarapu Laxman Rao ..Petitioner
Vs.
Jallarapu Pedda
Venkateswarlu & Ors., ..Respondents

**CRIMINAL PROCEDURE CODE, Maintainability of revisions u/Secs.397 and 401 of Cr.P.C., against interlocutory Order passed u/Sec.23(1) and (2) of Protection of Woman from Domestic Violence Act.**

**Held – Scope of appeal is wider than the scope of revision – In view of wider scope of appeal provided U/S 29 of the DVC Act, revision u/Sec.397 and 401 of Cr.P.C. is not maintainable against an Order passed u/Sec.23(1) and (2) of DVC Act and only an appeal is maintainable against such Order u/Sec. 29 of DVC Act – Criminal Revision is dismissed.**

**Cases referred:**
1. 2007 Criminal Law Journal 2057
2. (1997) 4 SCC 241
3. 2016(3) ALT (Crl.) 179 (A.P.)
4. 1981 AIR 746 = 1981 SCR (2) 516
5. (1996)2 SCC 549
6. (1994)6 SCC 349
7. (1974)4 SCC 3
8. 2009 Crl.L.J.889
9. (2006)8 SCC 726
10. AIR 1977 SC 2185
11. 2016 Crl.L.J.1970
12. 2012 Crl.L.J.1827
13. (2013)2 MLJ 406
14. (2008)1 KLT 750 to 752
15. (2009)1 JCC 520
16. (2007)3 KHC 757, 762 (Ker.)
17. (2010)1 (KHC) 417
18. (2016)5 ALJ 419
19. (2015)2 SCC 99
20. MANU/DE/8716/2007
21. (1952)1 SCR 218
22. 2007(2) K.L.T. 36
23. 2012(2) RCR (Criminal) 730

Mr.Kowturu Pavan Kumar, Advocate for the Petitioner.
Public Prosecutor (Telangana), Advocate for the Respondents.

**C O M M O N O R D E R**

These two revisions are filed by two different petitioners aggrieved by the order in Crl.MP.No.348 of 2017 in DVC.No.4 of 2017 dated 06.03.2017 passed by the I Additional Judicial Magistrate of First Class, Kothagudem and order in Crl.MP.No.172 of 2016 in DVC.No.4 of 2015 dated 27.04.2016 passed by the I Additional Judicial Magistrate of First Class at Jagtial, respectively.

The common issue in these two matters is about maintainability of the revisions under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against an interlocutory order passed by the Courts

below in respective petitions.

In Crl.MP.No.348 of 2017 in DVC.No.4 of 2017, the Court below directed the employer of the respondent i.e., the General Manager, Singareni Collieries Company Ltd., Kothaguda Area, Bhadradri Kothagudem District, to withhold an amount of Rs.5,00,000/- from and out of the retirement benefits of the respondent i.e., Jallarapu Laxman Rao, S/o.Pedda Venkateswarlu. In Crl.MP.No.172 of 2016 in DVC.No.4 of 2015, the Court below ordered payment of interim maintenance of Rs.5,000/- to the wife-second respondent herein. These two orders passed by two different Courts below are assailed in these two revisions questioning the illegality and irregularity of the said orders.

Sri M.V.Raja Raam, learned counsel for the petitioner in Crl.RC.No.1247 of 2017, would contend that against an interim passed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (the Act for brevity), a revision lies under Sections 397 and 401 Cr.P.C. before a High Court or under Section 397 Cr.P.C. before a Sessions Court, since an interim order would not decide the substantive rights of the parties. He also drawn the attention of this Court to Sections 23, 28 and 29 of the Act. Section 23 of the Act enables the Magistrate to pass an interim order in favour of the aggrieved person and Section 28 of the Act prescribes the procedure to be followed under the Act. Section 29 of the Act enables the person aggrieved by the interim order or final order passed under Section 12 of the Act or Section 23 of the Act to file an appeal before the Court of Session. Finally, he contended that when an ex parte order is passed, the remedy available to the person aggrieved by the order is to file a petition before the Magistrate and whereas against an order passed on merits, after hearing both the counsel, revision would lie under Section 397 Cr.P.C. before the Sessions Court or under Sections 397 and 401 Cr.P.C. before the High Court. Since the revisional jurisdiction under Section 397 Cr.P.C. is concurrent, the party aggrieved by such an order passed by the Courts below may either approach the Sessions Court under Section 397 Cr.P.C. or the High Court under Sections 397 and 401 Cr.P.C. for redressal of his grievance. Therefore, a revision would lie against the orders under challenge and placed reliance on judgment of the Kerala High Court reported in SULOCHANA AND ANR. V. KUTTAPPAN AND ORS(1). in support of his contention.

Sri Kowturu Pavan Kumar, learned counsel for the petitioner in Crl.RC.No.1137 of 2017, would contend that the remedy of revision under Section 397 Cr.P.C. is available to a person aggrieved by an interlocutory order and apart from that, the provisions of the Act would not override the general provisions of Cr.P.C. which confer revisional jurisdiction on the Court i.e., the Sessions Court and the High Court and therefore, in the absence of any bar under the Act, a revision is maintainable. He placed reliance on two judgments of the Supreme Court reported in KRISHNAN AND ANOTHER V. KRISHNAVENI AND ANOTHER(2) AND G.VENKATA MUTYA VENU GOPAL V. G.VENKATA RAMANAMMA AND ORS(3). . On the strength of these principles, both the counsel requested to pass appropriate

1. 2007 Criminal Law Journal 2057
2. (1997) 4 SCC 241
3. 2016(3) ALT (Crl.) 179 (A.P.)

orders in these two revision petitions.

In view of the contentions raised by both the counsel, the point that arises for consideration is:

Whether a revision under Sections 397 and 401 Cr.P.C is maintainable against an interim order passed under Section 23(1) and (2) of the Act?

POINT:

When the question of interpretation of a specific provision in the Act came up before this Court, it is the duty of the Court to decide the maintainability of an appeal or revision with reference to the provisions contained in the said enactment based on the object of the Act i.e., the Protection of Women from Domestic Violence Act, 2005. The Act is a remedial legislation intended to provide appropriate remedy to the aggrieved person who is subjected to domestic violence as defined in the Act. The present legislations in the country are not sufficient to provide appropriate remedy to the women who are subjected to domestic violence. Domestic violence is sadly a reality in Indian society, a truism, in the Indian patriarchal setup. It became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The role of the woman is to accept her fate and the violence employed against her meekly. The Act is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup. It is the first substantial step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists time and again. Admittedly, women could earlier approach the Courts under the Indian Penal Code (IPC) in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act and the victims recognized by it, make it more expansive in scope than the IPC. The IPC never used the term domestic violence to refer to this objectionable practice. In fact, the only similar class of offences addressed by the IPC dealt with cruelty to married women. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim. This posed a problem especially where the victims were children or women who were dependant on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under Section 498-A IPC, she would presumably have to move out of her matrimonial home to ensure her safety or face further violence as retaliation. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her. This, together with many other problems faced by women in the household, prompted this enactment.

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution of India. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. Since the right to be protected from domestic violence is a right enshrined and guaranteed under Articles 14, 15 and 21 of the Constitution of India, more particularly Article 21 of the Constitution of India confers the right to life and liberty in negative terms stating that it may not be taken away except by procedure established by law, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the right to be free of violence as held by the Apex Court in FRANCIS CORALLE MULLIN V. UNION TERRITORY DELHI(4), Administrator stating that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21 of the Constitution of India. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence. Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of Domestic Violence.

An identical question with regard to interpretation of the provisions of the Act came up before the Apex Court in CHAMELI SINGH V. STATE OF U.P.(5) AND GAURI SHANKAR V. UNION OF INDIA(6) wherein it is held that the right to life would include the right to shelter and where the question had related to eviction of a tenant under the statue. Sections 6 and 17 of the Act reinforce this right. Under Section 6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under Section 17, the partys right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless. In ROYAPPA V. STATE OF TAMIL NADU(7) , the Apex Court further analysed that any law that is arbitrary is considered as violative of Article 14 of the Constitution of India and Article 15 of the Constitution of India disallows discrimination on the grounds of religion, caste, sex, race etc, but permits the State to make special provisions for certain classes of persons, including women and children. The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15 of the Constitution of India. Domestic Violence is one among several factors that hinder women in their progress and the Act seeks to protect them from the evil. It indeed effects a classification between women and men protecting only women from domestic violence, but the classification is founded on an intelligible differential, namely, gender and also has a rational nexus with the object of the Act. Therefore, the present

4. 1981 AIR 746 = 1981 SCR (2) 516
5. (1996)2 SCC 549
6. (1994)6 SCC 349
7. (1974)4 SCC 3

Act is enacted to provide necessary remedies to the aggrieved person i.e., women, to whom no sufficient protection is provided under the present laws available in the country. When such provision is enacted with such an object to provide various remedies under the Act, the Court must construe such provisions in favour of the person for whose benefit the Act is enacted. The objectives of the Act are provided under the Act itself. The main object is primarily meant to provide protection to the wife or female live-in partner from violence in the hands of the husband or male live-in partner or his relatives, the Act also extends its protection to women who are sisters, widows or mothers. Domestic Violence under the Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands of the woman or her relatives would also be covered under the definition. Therefore, the Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage or adoption etc. In addition to relationship with family members living together as a joint family are also included sisters, widows, mothers and the other women who are closely related to the abuser living with them in a shared household. Therefore, while incorporating such provision in the Act, the Court must lean towards the women for whose benefit the Act was enacted. Even to interpret any of the provisions of the Act, the basic rules of statutory interpretation have to be taken into consideration.

Admittedly, the present legislation i.e. the present Act is a remedial legislation as held by this Court in Giduthuri Kesari Kumar v. State of Telangana (Criminal Petition No.16576 of 2014 dated 16.02.2015) wherein it is observed that if a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the State, it can be said that legislation will be classified as a remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction and is resolved in favour of the class of persons for whose benefit the statute is enacted. The word remedial legislation is not defined. If its legal definition is applied to the present facts of the case, the present Act is purely a remedial legislation which was enacted for the benefit of a particular class of persons. Therefore, such provision has to be interpreted as nearly as possible in favour of the person for whose benefit the Act is enacted.

Here, the controversy in the present matters is maintainability of a revision under Sections 397 and 401 Cr.P.C. against an interlocutory order passed by the Courts below under Section 23 of the Act. Section 23 of the Act enables the Courts to grant interim and ex parte orders in favour of the person aggrieved which are covered by Sections 18, 19, 20 and 21 of the Act. The Bombay High Court in ABHIJIT BHIKASETH AUTI V. STATE OF MAHARASHTRA(8) had an occasion to deal with an identical case and in paragraph Nos.20 and 25 of the judgment, learned Single Judge of the Bombay High Court discussed about the power under Section 23 of the Act, to grant an ex parte ad interim order and therefore, the orders

8. 2009 Crl.L.J.889

both under sub-Sections 1 and 2 are appealable. However, the scope of interference will be naturally limited. The orders contemplated by Section 23 of the Act are discretionary orders. The Apex Court had an occasion to deal with scope of appeals against interim orders which are discretionary in nature in RAMDEV FOOD PRODUCTS (P) LTD., V. SRVINDBHAI RAMBHAI PATEL & ORS(9). The Apex Court dealt with an appeal provided under Rule 1 (r) of Order XLIII of the Code of Civil Procedure (CPC) against an interim order of injunction. In paragraph Nos.125 and 126 of the said judgment, it is made clear that against an ex parte interim order, an appeal would lie under Order XLIII CPC.

According to Section 29 of the Act, an appeal would lie against every order passed by the Magistrate. The question that arises for consideration is that whether an appeal lies against an interim order passed under sub-Section (2) of Section 23 of the Act. The contention was based on the observation made in AMARNATH V. STATE OF HARYANA(10) but the Bombay High Court did not accede to the request of the counsel for the petitioner and finally concluded that an appeal under Section 29 of the Act would be maintainable against an order passed under Section 23 of the Act whether it is an ad interim order or an interim order under Clauses 1 and 2 of Section of the Act. Section 29 of the Act made it clear that an appeal lies against an ad interim order or an interim order which determine the rights of the parties.

In the present case, the interim orders were passed by the Courts below in both the revisions and those orders will substantially affect the rights of the parties. Therefore, the judgment in Amarnath v. State of Haryana (10 supra) will have no application. Even otherwise, the orders under challenge are only interim orders as against which an appeal is provided in the statute itself under Section 29 of the Act. The reason for providing an appeal in all the credence is to provide effective machinery for redressal of the grievance of either aggrieved person or against whom the orders were passed by the Courts below. If a revision is preferred to the High Court under Sections 397 and 401 Cr.P.C., the jurisdiction of this Court is limited and the High Court while exercising power under Sections 397 and 401 Cr.P.C., normally do not interfere with fact-finding since jurisdiction is mostly confined to law. But the Court can interfere with such fact findings if the Court finds that the findings recorded by the Courts below are manifestly or apparently erroneous. Therefore, if a woman or an aggrieved person is driven to the High Court even against simple interim orders passed under Section 23 of the Act, the women will have to face serious problems, more particularly when a woman is said to have abused as defined under Section 3 of the Act. For the reason that Magistrates in lower Courts are conferred with the jurisdiction to try and decide the cases under the Act and the Courts are located even in small towns and villages also, but the District Courts are located in various places of the District enabling the Courts to entertain an appeal under Section 29 of the Act and if the revisions under Sections 397 and 401 Cr.P.C. are entertained against such orders on the applications filed by the abuser or a person aggrieved have been the women will have to face serious problems in approaching the High

9. (2006)8 SCC 726
10. AIR 1977 SC 2185

Court. Perhaps this may be one of the reasons for providing an appeal against order passed by the Magistrates under Section 29 of the Act, so as to confer benefit to the aggrieved person (woman) and to avoid unnecessary delays in approaching the High Court and incurring expenditure. Therefore, in such cases, such provision has to be interpreted in favour of the women approaching the Court for whose benefit the Act is enacted.

In KRISHNA MURTHY NOOKULA V. Y.SAVITHA(11) , the learned Single Judge of Karnataka High Court had again dealt with an issue of maintainability of a revision against an order passed under Sections 23(1) and 23(2) of the Act. Learned Single Judge considered the scope of Sections 23, 28 and 29 of the Act and concluded that an appeal would lie against an interim order passed under Section 23(1) or Section 23(2) of the Act. No distinction has been drawn between an order passed under Section 23(1) or Section 23(2) of the Act to maintain an appeal against such an order even after considering Section 28 of the Act. Therefore, when law permits an appeal even against an ex parte order in view of the decision in Ramdev Food Products (P) Ltd., (9 supra), a regular appeal would lie either against an ad interim order or an order passed by way of interim relief under Clause (2) of Section 23 of the Act is maintainable.

Sri M.V.Raja Raam, learned counsel, mainly based his contention on a judgment in POONAM KHANNA V. V.P.SHARMA AND ANR(12). . Even in the judgment also the learned Single Judge of the Delhi High Court did not lay down any law disabling the person aggrieved by the interim order passed under Section 23 of the Act either under Clause (1) or Clause (2) but preferred an appeal under Section 29 of the Act, discussed about the scope of maintainability of revisions under Section 397 Cr.P.C. and criminal petition to invoke the inherent jurisdiction under Section 482 Cr.P.C. But this judgment is also of little assistance to the petitioners to substantiate the contention that a revision under Section 397 read with Section 401 Cr.P.C. is maintainable against such an order. The Kerala High Court in Sulochana (1 supra) while deciding about maintainability of an appeal against an interim order passed under Section 23 of the Act held as under.

A Court considering the entertainment of an appeal against an interim ex parte order under Section 29 will certainly be conscious of this fact that the aggrieved persons can approach the Magistrate who passed the interim order and seek its variation under Section 23 read with Section 28(2) of the Act. A court considering admission of an appeal under Section 29 must always remind itself of the fact that such a course/remedy is available to the aggrieved person and as a reasonably prudent person, a Court will certainly look for answers as to why without and before exhausting that remedy resort is made to the provisions under Section 29 to prefer an appeal. But that is not to say that an appeal is not maintainable. Only in an appropriate case need the powers under Section 29 be invoked and the appeal entertained. That discretion vests with the appellate Court. But the jurisdiction or the competence to entertain an appeal cannot be doubted. (emphasis supplied) As per the judgment of the Kerala High Court

11. 2016 Crl.L.J.1970
12. 2012 Crl.L.J.1827

in Sulochana (1 supra) and judgment of the Bombay High Court in Abhijit Bhikaseth Auti (8 supra) an appeal would lie against an interim order whether under Clause (1) or Clause (2) under Section 29 of the Act, but not a revision. Similarly in the judgment of the Madras High Court in Mr. G.Balasubramanian v. Mrs. Jayashree Rajagopalan (order in Criminal Original Petition No.15455 of 2008 and M.P.Nos.1 and 3 of 2008 dated 11.09.2008), it was categorically held as under.

A plain reading of Section 29 of the Act does not make any distinction between the final order and the interim order and therefore in the considered view of this Court an appeal will lie both against the final order and an interim order passed by the learned Magistrate in the exercise of powers conferred on him under this Act. Therefore this Court is of the considered view that the preliminary objection raised by the learned counsel for the respondent merits acceptance and accordingly accepted.

A similar view was expressed by learned Single Judge of Madras High Court in K.RAJENDRAN AND ANOTHER V. AMBIKAVATHY AND ANOTHER(13) had liberally considered various provisions of the Act relying on KARTHIKEYAN V. SHEEJA(14) and held that the writ petition cannot hence be entertained as the petitioner has an efficacious remedy. In RAMESH CHAND V. STATE OF NCT OF DELHI(15) , it is held that the petitioner has been directed to withdraw the petition with liberty to file an appeal before the Court of the learned Assistant Sessions Judge while holding that a revision is not maintainable. A similar view was expressed by Kerala High Court in CHITRANGATHAN V. SEEMA.C(16) . While discussing about the scope of Section 29 of the Act, the Court concluded that Section 29 of the Act is wide enough not only to take in the parties to the petition/application, but also a Protection Officer or a person who has moved the Magistrate on behalf of the aggrieved person. Therefore, Section 29 of the Act enables even a Protection officer or a person, who has moved the Magistrate, as competent to file an appeal. Section 23 of the Act enables the Judicial Magistrate to grant interim and ex parte orders as he deems just and proper. He may also pass ex parte orders on the basis of affidavits furnished by the affected party. Section 29 of the Act refers to filing of an appeal before the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondents, as the case may be, whichever is later but the Court of Session is to follow Criminal Procedure Code while entertaining an appeal filed under Section 29 of the Act. It cannot be gainsaid that under Section 29 of the Act, an appeal lies to the Court of Session. No wonder the ingredients of Cr.P.C. relating to admission, hearing and disposal of appeals will apply to an appeal filed by an aggrieved person before a Court of Session as per Section 29 of the Act. Really speaking, when a Judicial Magistrates order is assailed before the Court of Session, the said order in fact is one passed by an inferior Court to the Court of Session. As such, as per Section 29 of the Act, an appeal lies before the Sessions Court. The judgment of the Court of Session in an appeal under Section 29

13. (2013)2 MLJ 406
14. (2008)1 KLT 750 to 752
15. (2009)1 JCC 520
16. (2007)3 KHC 757, 762 (Ker.)

of the Act, being an inferior Criminal Court is revisable by the High Court in exercise of its power under Sections 397(1) and 401 Cr.P.C. As a matter of fact, the Court of First Class Magistrate or a Metropolitan Magistrate acts as a Criminal Court while discharging functions under the Act, 2005, though some of the reliefs he can grant are of civil in nature. However, in PRECELINE GEORGE V. STATE OF KERALA(17) , it is held that the order passed in sub-section (2) of Section 23 of the Act, is of ad interim in nature. An ex parte order passed under Section 23(2) of the Act can be modified, altered or revoked by the same Court based on the application filed by the aggrieved party as per Section 25(2) of the Act. The learned Judicial Magistrate ought to be careful and circumspect while passing an ex parte order under Section 23 of the Act only to the extent required/necessary after subjectively satisfying himself, as to the materials available on record and as such, it is open to the learned Judicial Magistrate to pass an ex parte interim order and it is concluded that the revision petitioner is entitled to file an appeal only against an interim order passed under Section 23 of the Act either under Clause (1) or Clause (2) since it is a viable, efficacious, effective and alternative remedy under the provisions of the Act.

Similarly, in CHIRANJEEV KUMAR ARYA V. STATE OF U.P.(18) , the Allahabad High Court while considering the maintainability of a revision against an order passed under Section 29 of the Act in the appeal had an occasion to decide the maintainability of revision based on SHALU OJHA V. PRASHANT OJHA(19) wherein it was observed that as seen from the provisions of the Act, no further appeal or revision is provided to the High Court or any other Court under Section 29 of the Act. The Apex Court in the said judgment held that appeal would lie against an order passed in the appeal in the Sessions Court under Section 29 of the Act. But the Court projected the provisions in a different way while holding that since the application of Cr.P.C. is not included to the provisions of the Act, the revision is maintainable against such an order under Section 29 of the Act.

Similarly, the DELHI HIGH COURT IN SMT. MAYA DEVI V. THE STATE OF N.C.T. OF DELHI(20) held that Section 29 of the Act provides for appeal within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent. When specific remedy by way of appeal or by way of alteration, modification or revocation of any order, has been provided under the Act, prima facie, the petition under Article 227 of the Constitution of India or Section 482 Cr.P.C. is not maintainable before the Court. The Delhi High Court, while placing reliance on the judgment in N.P.PONNUSWAMI V. RETURNING OFFICER, NAMAKKAL CONSTITUENCY(21) concluded that if an efficacious remedy is available to an aggrieved person, no revision under Article 227 of the Constitution of India or under Section 482 Cr.P.C. is maintainable. In Arivazhagan v. M.Uma (Crl.R.C. (MD) No.287 of 2012), the Madras High Court relying on CHANDRASEKHARA PILLAI V. VALSALA CHANDRAN(22) held in paragraph Nos.35 and 36 as under.

17. (2010)1 (KHC) 417
18. (2016)5 ALJ 419
19. (2015)2 SCC 99
20. MANU/DE/8716/2007
21. (1952)1 SCR 218
22. 2007(2) K.L.T. 36

Be that as it may, in view of the fact that as per Section 29of the Protection of Women from Domestic Violence Act, 2005, there is an effective and alternative remedy of filing of an appeal by the Revision Petitioner/ Husband as against the order dated 23/ 4/2012 in C.M.P.No.9459 of 2010 (M.C.No.5 of 2009) passed by the Learned Judicial Magistrate, Aranthangi, this Court is of the considered view that the present Revision Petition field by the Revision Petitioner/ Husband is not per se maintainable in the eye of Law. Furthermore, this Court is of the opinion that ordinarily, the Learned Judicial Magistrate exercising his functions under the Protection of Women from Domestic Violence Act, 2005 as a Criminal Court inferior to the Court of Sessions and the High Court. No wonder, a Court of Session is a Criminal Court inferior to High Court for the purpose of exercise of Revisional Power under Section 397(1) and Section 401 of the Criminal Procedure Code. Also, it cannot be lost sight of that revisional power of a High Court is a supervisor jurisdiction to correct miscarriage of Justice arisen out of irregularity of procedure being adopted or misconception of Law etc. To put it succinctly, the power of revision is parental supervisory in character. However, the Protection of Women from Domestic Violence Act, 2005 is a special Act and even though the Learned Judicial Magistrate is empowered to adopt his own procedure for disposal of an application under Section 12 of Sub-Section 12 or Section 23 of the Act. Section 28 of the act speaks of save as otherwise provided unless Act of proceeding under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 23(1) shall be governed by the provisions of the Criminal Procedure Code, 1973(2) of 1974, yet the proceedings of the Magistrate are civil in nature. Looking at from any angle, the present Criminal Revision Petition filed by the Revision Petitioner/Husband is not maintainable in limini, when he has an alternative viable and efficacious remedy of filing of an Appeal as per Section 29 of the act. Viewed in that perspective, this Criminal Revision Petition fails.

In the result, this Criminal Revision Petition is dismissed as not maintainable. It is open to the Revision Petitioner/Husband to prefer an appeal as per the Protection of Women from Domestic Violence Act, 2005 as against the impugned order dated 23.04.2012 in C.M.P.No.9429 of 2010 passed by the Learned Judicial Magistrate, Aranthangi in the manner known toLaw and in accordance with law before the Court of Session and to seek appropriate remedy thereto, if he is so desires/advised. Consequently, the connected Miscellaneous Petition is also dismissed.

In MD. SABIR HUSSAIN V. STATE OF WEST BENGAL(23) , the learned Single Judge of the Calcutta High Court had an occasion to deal with similar issue regarding maintainability of an appeal under Section 29 of the Act against, an interim order passed under Section 23 of the Act and finally concluded that when a remedy by way of appeal is provided under the special statute, the petitions under Articles 226 or 227 of the Constitution of India or Section 482 Cr.P.C. are not maintainable.

In view of the views expressed by various High Courts in catena of judgments referred to supra, an appeal would lie against an interim order passed under Section 23 of

23. 2012(2) RCR (Criminal) 730

the Act but no Revision under Article 227 of the Constitution of India or a petition under Section 482 Cr.P.C. or a revision under Sections 397 and 401 Cr.P.C. are maintainable. Even though the Delhi High Court took a contrary view, it did not express any opinion and therefore, the law declared by the Delhi High Court cannot be applied. Even otherwise, the law declared by various other High Courts is not a binding precedent on this Court but can place reliance on the judgments based on the principles with relation to the provisions of the Act.

Sri Kowturu Pavan Kumar, learned counsel for the petitioner in Crl.RC.No.1137 of 2017, mainly drawn the attention of this Court to the judgment of the Apex Court in Krishnan and another (2 supra) where the Apex Court held that Court of Session and Magistrates were inferior Criminal Courts to High Court and the High Court is vested with inherent power under Section 482 Cr.P.C. and the power of revision under Sections 397 and 401 Cr.P.C. against the orders passed by the subordinate Courts in the State under the control and superintendence of the High Court. In paragraph No.4 of the said judgment, it is held as under.

Shri Krishnamurthy, learned counsel for the appellants, contended that the State as well as the respondents having availed of the remedy of revision under Section 397 of the CrPC, 1973 (for short, the Code) the High Court was devoid of power and jurisdiction to entertain the second revision due to prohibition by Sub-section (3) of Section 397 of the Code. Therefore, the impugned order is one without jurisdiction and vitiated by manifest error of law warranting interference. In support of his contention, the learned counsel placed strong reliance on the abovesaid two decisions of this Court. He further contended that when there is a prohibition under Section 397(3) of the Code, the exercise of the power being in violation thereof, is non est. He further placed reliance on the decisions of this Court in Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and Deepti alias Aarati Rai v.Akhil Rai (MANU/SC/0787/1995 : (1995)5 SCC 751). The question, therefore, is : whether the High Court has power to entertain a revision under Section 397(1) in respect of which the Sessions Judge has already exercised revisional power and whether, under the circumstances of the present case, it could be considered to be one under Section 482 of the Code?

In G.Venkata Mutya Venu Gopal (3 supra), the learned Single Judge of this Court entertained a revision and decided the legality of the order passed by the Magistrate in D.V.C.No.28 of 2012 issuing a direction to pay an amount of Rs.1,00,000/- to the petitioner and passed appropriate orders. But in the said judgment, this Court did not decide the maintainability of a revision under Sections 397 and 401 Cr.P.C. Therefore, in the absence of laying down any law in the two judgments referred to supra regarding maintainability of revision against an order passed under Section 23 of the Act, the general provisions of CPC cannot be applied though it enables the Court to follow the procedure under Cr.P.C. in view of Section 28 of the Act. When a special remedy is provided under the Act itself i.e. the Protection of Women from Domestic Violence Act, 2005, which prescribes various reliefs to be granted and the hierarchy of the Courts to redress their claims in the petitions filed under the provisions of the Act and the orders passed

by the Courts and the remedies against the orders passed by the Court keeping in view of the harassment of a woman on account of domestic violence and perhaps to provide a cheaper remedy in the District Court without driving them to High Court by filing various petitions under Sections 397 and 401 Cr.P.C. If the Courts entertain such petitions directly against the orders passed by the Magistrate under Section 23 of the Act, the power of the High Court would frustrate the very purpose of filing petitions as appeal is provided against any order passed by the Magistrate under the provisions of the Act. Therefore, to avoid frustration of the remedy available to the parties under the Act and to avoid driving the woman who is subjected to domestic violence to approach this Court, an appeal alone can be maintained either against a final order passed under Sections 18, 19, 20, 21 and 22 of the Act or against an interim order passed under Section 23(1) and (2) of the Act.

The scope of appeal is wider than the scope of revision. In a revision under Sections 397 and 401 Cr.P.C, mostly the jurisdiction is limited to law whereas in an appeal, the appellate Court has got wider power of re-appreciating the entire evidence to come to an independent conclusion and reverse the orders passed by the Courts below. In a revision, unless the Court finds apparent error in the findings recorded by the Courts below shall not exercise power of revision and interfere with the orders passed by the subordinate Courts under its jurisdiction. In view of wider scope of appeal provided under Section 29 of the Act, revision against an order passed under Section 23(1) and (2) of the Act cannot be entertained keeping in view the intention of Legislature in enacting the law for the benefit of the women who are subjected to domestic violence. Therefore, any other interpretation to the provision i.e. Section 29 of the Act would frustrate the intention of the Legislature to disable the aggrieved person to redress their claim within the ambit of the provision and driving such aggrieved person may render the remedy under the Act redundant. Therefore, in view of the law laid down by the various High Courts, I am of the view that a revision under Sections 397 and 401 is not maintainable, against, either an order passed under Clause (1) or Clause (2) of Section 23 of the Act and only an appeal is maintainable against such order under Section 29 of the Act. Accordingly, the point is answered.

In view of my foregoing discussion, I need not decide the merits of these two revisions. Accordingly, both the Criminal Revision Cases are dismissed holding that revisions under Sections 397 and 401 Cr.P.C. are not maintainable and only appeal lies against an order passed under Section 23 of the Act.

Miscellaneous petitions, if any, pending shall stand dismissed.

**-- THE END --**

# Law Summary

(Founder: Late Sri.G.S.GUPTA)

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## ANDHRA PRADESH HIGH COURT


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**A.P. BUILDINGS (LEASE, RENT AND EVICTION) CONTROL ACT, 1960:**

---Secs,3(a)(i)(a),10(2)(i)(ii)(b) & 20 – Petitioner took schedule property on lease from respondents - First respondent is owner of the premises, affairs of the premises are taken care by second respondent who is the grand father of first respondent - Schedule premises were let out for commercial purpose with a clause that petitioner has to meet the charges for conversion of electricity meter from category –I to category- II.

Respondents filed a petition before Trial Court against petitioner for eviction from schedule premises and to deliver vacant possession to respondents with costs – Petition was allowed by the trial court, directing petitioner to vacate schedule premises within two months from date of Order.

Held - It is for the land lord to decide which portion is convenient for him to reside in schedule property and tenant cannot dictate to landlord to occupy a particular portion – Petitioner has deviated from agreement by using schedule premises for domestic purpose apart from commercial purpose – Instant petition stands dismissed. ***78***

**A.P. CO-OPERATIVE SOCIETIES ACT:**

---Secs.51 and 115-D – Instant appeal is preferred against the Order passed in writ petition, directing that the enquiry under Section 51 of A.P. Co-operative Societies Act shall go on; but, its implementation would be subject to final result of writ petition.

Enquiry is directed by the Registrar of cooperative societies, A.P, against the 7th respondent bank with regard to certain fraudulent transactions and misappropriation of funds by discharging fake fix deposits –Necessary to examine whether Section 115-D ousts the jurisdiction of the Registrar to cause an enquiry under Section 51 of the Act.

Held – Non obstante clauseis a legislative device which is usually employed to give over riding effect to certain provisions over some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions – Order passed in writ petition is justified in refusing to interdict the process of enquiry under Section 51 of the Act and in making the enquiry subject to the result of writ petition – Writ appeal stands dismissed. **187**

**ANDHRA PRADESH RIGHTS IN LAND AND PATTADAR PASS BOOKS ACT:**

---Sec.9 - Writ petition – Respondents 4 to 6 filed revision before the Joint Collector to carryout corrections of illegal entry in the old ROR in respect of their land and further contended that they are the rightful owners of the land.

Writ Petitioners opposed the claim on ground that there was no sale as claimed by them and sale deed was a false document - Objection of petitioners before Joint Collector, that no decision shall be made in the revision as there was pending suit before a Civil Court was rejected holding that same suit was for perpetual injunction and no injunction orders were granted by the Court and allowed the revision and ordered to restore the name of respondents – Hence this Writ petition.

Held – As there was no adjudication of title dispute, the decision of revisional authority does not amount to decision made on title dispute – No error in the revisional authority exercising quasi-judicial power under section 9 of the Act, merely because suit is pending on a prayer to grant perpetual injunction – Contentions on title/owner ship and possession are left to be agitated in pending suit or other proceedings - Writ petition is dismissed. ***235***

**ARBITRATION AND CONCILIATION ACT, 1996**:

---Sec.8 – Petitioner filed present Civil Revision – Assailing Order passed by Trial Court, whereby application filed by petitioner to refer parties to Arbitration has been dismissed.

Case of petitioner is that when any dispute arises with regard to Kidzee Franchisee Agreement entered into by parties – Dispute shall be referred to Arbitrator – Trial Court observed that, disputes between parties are not clear since there are no pleadings of petitioner as it has not filed any written statement in the suit to know whether issue between both the parties is with regard to the said agreement – Respondent contended that signatures on Kidzee Franchisee Agreement are taken by petitioner by fraudulent means.

Held – It is nowhere mentioned in the plaint that signatures on the said agreement are taken fraudulently – It was the duty of Trial Court to direct the parties to approach arbitrator after receipt of such application by petitioner – In spite of existence of a clause in the agreement, Trial Court erred in dismissing application filed by petitioner, without referring parties to an arbitrator – Civil Revision Petition is allowed. ***39***

---Sec.34 – CONSTITUTION OF INDIA,

Article 162 - Contract for the execution of construction was awarded to 1st respondent and with regard to the fixation of rates for drilling of bore holes, arose a dispute between Petitioner/Department and 1st respondent - As per the terms of contract, 1st respondent referred matter to Technical expert, which arrived at a decision in favour of 1st respondent - However, petitioner referred the matter for Arbitration.

Arbitration tribunal passed a notice to the petitioner to attend proceedings - Petitioner reported that it had no pecuniary jurisdiction to entertain the matter in view of G.O – Arbitration tribunal has also passed an award in favour of the 1st respondent – Counsel for petitioner contended that though G.O was not incorporated in the contract, still being the executive order of government should not have been ignored.

Held – Executive fiats of a state government issued in terms of Article 162 of Constitution for meeting various administrative exigencies cannot be equated with law and have no force of statute passed by the Legislature –Arbitration tribunal ought to have only decided the correctness of the decision of technical expert and should not have entertained other claims made by 1st respondent before it – Instant appeal is allowed partly. ***170***

**CIVIL PROCEDURE:**

---Sec.2(17) and Order XVI Rule 6 – CIVIL RULES OF PRACTICE, Rule 129 – BANKERS BOOK EVIDENCE ACT, Sec.4 – Aggrieved by order passed by trial court, at the instance of first respondent in a suit for specific performance, directing second respondent/ Bank to produce certain documents, appellant preferred present revision.

First respondent filed an application under Rule 129(1) of Civil Rules of Practice, praying for summoning from the bank, the entire correspondence to One Time Settlement proposal between petitioner and the bank – Trial court allowed the application.

Held – Object behind Bankers Book Evidence Act is to ensure that original books of accounts are retained by bank to enable them to carry on their day-to-day transactions – This object is not stultified by production of some correspondence relating to a One Time Settlement proposal between petitioner and the bank - Endeavour of every court should be to find out the truth, to enable the court to render justice – The summoning of documents in question, would certainly enable the court to arrive at the truth –This Court finds absolutely no reasons to interfere with the Order of Trial court - Revision petition is dismissed. ***123***

---Secs. 10 & 151 and Order XIII Rule 9 **71** - Whether an interim order directing stay

of all further proceedings passed by appellate court in appeal or by revisional court in revision, operates as stay in considering the interlocutory application filed in the trial court or bars only from proceeding with the trial of the suit?

Petitioners filed an IA seeking return of original registered sale deeds filed by them to avail bank loans – Trial court dismissed IA on the ground that High Court had granted stay of all further proceedings of suit, till disposal of appeal.

Held – Section 10 of CPC projects only stay of trial of suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between same parties – This provision does not prevent or bars the court from passing incidental orders required to meet the ends of justice –Any incidental orders not affecting trial of the suit nor decides rights of parties conclusively can be passed – Trial court has not exercised its jurisdiction properly – Petitioners are permitted to take original registered sale deeds filed into courts by substituting with the certified copies with an undertaking to produce same as when required by the court – Civil Revision Petition is allowed. ***108***

---Sec.20(c) - NEGOTIABLE INSTRUMENTS ACT, Sec. 70 - Revision – Challenging the decree passed by the appellate court, whereby the Order passed by the trial court was confirmed for returning the plaint for presentation in proper court.

Held – Where the right of the plaintiff depends upon the assignment of a promissory note in his favour, the assignment would constitute part of cause of action and the court within whose jurisdiction the assignment took place, would have jurisdiction to entertain the suit on the promissory note – Trial court has the jurisdiction to try the suit in question – Revision petition is allowed. **133**

---Sec.47 - RENT CONTROL ACT, Sec. 32(b) - Civil Revision by Tenants/ Petitioners – Challenging the dismissal of their applications filed in the course of execution of the Orders of Eviction passed by the Rent Controller.

Ground on which eviction was sought was that petitioners were guilty of willful default in payment of monthly rents for several months – Petitioners made new pleadings which were not made by them in counter statements to the eviction petitions.

Held – It is fundamental that a person, who was a party to the original proceedings and who set up a different case in the original proceedings, cannot plead new facts in an Application under

Section 47 of CPC and claim that the decree was nullity on the basis of new facts so pleaded - Civil Revision Petitions are dismissed. ***195***

--Or.VI, VII, XIV and XVIII Rule 1 – INDIAN EVIDENCE ACT, Secs.101, 102, 103 and 104 – Civil Revision Petition – The basis to begin the suit depends upon whom the burden of proof lies on the main issue.

Instant petitioner is the defendant and respondent is the plaintiff at the Trial Court – Respondent filed suit for specific performance basing on agreement of sale and consequential perpetual injunction – Petitioner filed written statement denying very nature of document of agreement of sale – Respondent filed Memo, with a prayer to direct petitioner to begin the trial for which petitioner filed objections – Trial court over-ruled objections and directed petitioner to begin the trial.

Held – A perusal of Order XVIII Rule 1 of CPC clearly demonstrates that, as a general rule, plaintiff has the right to begin the suit, exception is the right of defendant to begin – Since petitioner denies the very nature of suit document itself, the burden of proof lies on respondent/ plaintiff that suit document was executed by petitioner - Memo filed by respondent is not sustainable either on facts or in law – Order of trial court is liable to be set aside – Civil revision petition is allowed. ***71***

---Secs.47 & 151 - Civil Revision Petition is filed against the Order of Trial Court which allowed the Application of respondent by setting aside the sale – Revision petitioner contends that Court below has erroneously allowed the Application as Sec.47 of CPC has no application since 1st respondent is not a party to the suit.

Held – 1st respondent is neither a decree holder nor auction purchaser in the auction conducted by Court below – No material on record or evidence to the effect that any fraud or illegality is played by petitioner while purchasing EP schedule property in the auction conducted by Court below – Having participated in the auction and having kept quite at that time, 1st respondent/ third party cannot question the auction sale of EP schedule property by way of an Application u/Sec.47 r/w 151 of CPC – Impugned order of Court below is set aside and Civil Revision is allowed. ***276***

---Order IX - Rule 9 and Rule 13 - This case reflects typical mindset of a litigant in a civil litigation who perceive prolongation of litigation as far as possible itself as a gain, pushing adversary party to brink of uncertainty and frustration – Public criticism of courts for long pendency of cases overlooks contributory role of litigants, ably advised and supported by some lawyers

– Litigants and Lawyers representing them being equal partners in justice dispensation need to play catalyst role, instead of playing a role of obstructionist.

Respondent filed a suit for recovery of money against the petitioner before the Trial court – As petitioners counsel was not ready to cross-examine witness, case was adjourned at his request – Yet again an adjournment was sought on next hearing date and lower court has declined the request of adjournment and closed evidence of P.W.1 by showing cross-examination as 'Nil' – Petitioner there upon filed an I.A. for recalling P.W.1 for cross-examination – Lower court has graciously allowed said application, however by imposing costs of Rs.2,500/- on petitioner – Instead of paying costs petitioner has approached this court by filing civil revision – Case was adjourned at request of counsel for petitioner – Meanwhile lower court has dismissed I.A for non-compliance with conditional order.

Held - Petitioner has been indulging in vexatious litigation evidently to procrastinate suit proceedings – It is a matter of concern that a money suit is kept pending for last six years owing to simple trick played by petitioner – One can imagine that the expenses for filing two civil revision petitions including lawyer's fees in this court would far outweigh costs imposed by lower court – Procedural safeguards provided in CPC to protect interests of bona fide litigants are being abused by dishonest litigants to such an extent that they are proving to be an obstruction in dispensation of Justice - No merits in both civil revision petitions and same are dismissed with costs of Rs.5,000/-. **26**

---Or. 13 Rules 3 and 4 - INDIAN STAMP ACT, Sec. 2(5)(b), Articles.6(A) and 13 of Schedule I(A) – Whether it is open to a party who raised the objection or not with regard to admissibility of document to file a petition for de-exhibition of the said document at a later stage ?

In the Trial court, Suit was filed for recovery of money on the basis of a hand letter which was marked as an exhibit and treated as an agreement - At the stage of arguments, respondents filed an I.A. contending that said exhibit is not an agreement and it is a bond that is liable to be stamped under Article 13 of Schedule I(A) of the Indian Stamp Act – Respondent further contended that though said document was marked as an exhibit, it does not amount to admission and sought to de-exhibit the document.

Held – Court has got right to de-exhibit a document when its attention was drawn as to the inadmissibility of the document, as it has got duty to decide the admissibility of a document and eschew

irrelevant and inadmissible evidence – Even assuming that a Court decides to admit a document in evidence, there is nothing in C.P.C prohibiting the court from recalling such an Order – I.A. filed by the respondent at the Trial court is maintainable – Civil revision petition is accordingly dismissed. ***139***

---Or.XVIII, Rule 17 & Sec.151 – Civil Revision Petitions – Petitioners made two applications before Trial Court to reopen the case for further cross-examination of P.W. 2 and also in respect of admission made by her with regard to an exhibit, that it is a forged and created document.

Trial court did not accede to the request of petitioners – Petitioners contended that they have a genuine reason for reopening and recalling P.W. 2 and applications can be filed at any stage of the suit and trial court without proper appreciation of reasons assigned by them, dismissed both the applications – On the other hand respondents stated that there are no convincing grounds to reopen the case and recall P.W. 2

Held – Object of enacting Order XVIII, Rule 17 is obvious, power to recall a witness under said provision for further cross-examination is intended only to clarify the courts to clear any ambiguity, but not intended to fill up, any omissions in evidence – Petitioners are unsuccessful in showing that the applications are intended to prevent abuse of process of the Court – Petitioners failed to set out convincing grounds that said two applications are intended to achieve the ends of the justice – Revision petitions are dismissed. ***63***

---Or.41 Rules 23, 23-A, 25 and 27 – Remand by the appellate court - Instant appeal is preferred against the order of the lower appellate court.

The Original suit was dismissed by the trial court - Appeal filed before lower appellate court was allowed setting aside the judgment and decree passed by trial court and further it also remanded the matter to the trial court for fresh disposal – Before the lower appellate court an application for additional documents was filed and the same was allowed.

Held – Order 41 Rule 23-A of C.P.C. deals with the case of remand by the appellate court of the suits which were disposed of other than on a preliminary point -Instant case falls under Order 41 Rule 23-A of C.P.C and the order of lower appellate court can be held to be valid – Instant appeal is dismissed. ***181***

## CONSTITUTION OF INDIA:

---Articles, 14 and 226 - Petitioner has participated in the tender process and became the successful bidder – Contract

agreement was also executed in favour of petitioner.

A show cause notice was issued against the petitioner alleging hat the contract was awarded based on a misrepresentation, and it is liable to be terminated - Petitioner was directed by the respondent to remit certain sum on account of alleged excess payments - Respondent contended that petitioner is seeking to enforce contractual terms under Article 226 of Constitution of India, which is impermissible as there is a specific dispute resolution mechanism provided in the contract agreement.

Held – When State has acted in an arbitrary and unreasonable manner, infringing the fundamental rights of a petitioner, Writ is maintainable – Party to the contract cannot be a judge of his own case determining the amounts payable – Writ petition is allowed. ***200***

**CRIMINAL PROCEDURE CODE:**

---Maintainability of revisions u/Secs.397 and 401 of Cr.P.C., against interlocutory Order passed u/Sec.23(1) and (2) of Protection of Woman from Domestic Violence Act.

Held –Scope of appeal is wider than the scope of revision – In view of wider scope of appeal provided U/S 29 of the DVC Act, revision U/S 397 and 401 of Cr.P.C. is not maintainable against an Order passed U/S 23(1) and (2) of DVC Act and only an appeal is maintainable against such Order U/S 29 of DVC Act – Criminal Revision is dismissed. **333**

---Secs. 41, 41-A, 209(a) and 438 – INDIAN PENAL CODE, Secs.323 and 506 – SC & ST (POA) Act, Sec.3(1)(x) –Petitioner filed instant petition seeking pre-arrest bail - De-facto complainant in his complaint stated that petitioner was purohit and arranged photography, cook and utensils for a sum of Rs. 70,000 for which complainant paid Rs. 40,000 at the time of his marriage and requested some time to pay balance amount – When petitioner demanded balance amount, complainant requested for some more time to repay, for which petitioner grew wild and abused him in filthy language touching name of his caste and also beat him with hands on his cheek and threatened him.

Trial Court observed that since petitioner was on station bail, he was ordered to be continued on bail till conclusion of trial and committed case before Special Sessions Judge cum Additional District Judge – Sessions Judge returned entire case record for non-compliance of Section 209(a) Cr.P.C and observed that bail order was not on record and called for explanation of I.O regarding bail order – I.O stated that

after investigation, he served notice under Section 41-A of Cr.P.C and since offences of the case were punishable below 7 years of imprisonment and he did not consider necessary to arrest the accused as accused had not failed to comply with terms of the said notice.

Held – Where accused complies and continues to comply with the notice under 41-A Cr.P.C, accused shall not be arrested in respect of the offence referred to in notice, unless for reasons to be recorded, the police officer is of the opinion that he ought to be arrested – Therefore, the procedure contemplated under Section 41 and 41-A of Cr.P.C, squarely apply to alleged offences and said sections have not made any express distinction between offences punishable under IPC and other Special enactments – Procedural Order under section 41-A Cr.P.C cannot be equated with an order passed by a court under Section 438 of Cr.P.C – There is no procedural violation – Committal court is directed to submit the bail bonds produced before the I.O by accused and sureties to Additional District Judge. ***52***

---Secs.197 & 482 – Theft occurred in the house of Respondent/Complainant – In addition to the complaint on the same, she further filed another complaint against the Petitioner/Circle Inspector who investigated the report of the theft scene alleging petitioner of cheating and theft of gold ornaments.

Held - In this case scope for allegations arises due to investigation being taken up by petitioner, on the complaint of theft in the house of respondent – It is not an allegation that petitioner committed an offence which is unrelated to his official duty – What petitioner ought to do, is complained as not done, which can, without any demur, be termed as a complaint relating to his official duty, for the prosecution of which sanction is required – Hence complaint given by the complainant has to be quashed – Criminal Petition is allowed. ***304***

---Secs.235(2) and 374(2) – INDIAN PENAL CODE, Secs. 201, 302 and 304-B – Instant Criminal appeal preferred by appellant against the Judgment passed by Trial court.

Deceased is the wife of appellant - Appellant used to harass the deceased to sell away certain land and give cash to him – Appellant killed the deceased and tried to screen away evidence by burning her dead body.

Held – Death of the deceased is homicidal – As per section 113-B of Indian Evidence Act, soon after the death, such a woman has been subjected to cruelty or harassment for or in connection with any demands for dowry, then the court shall

presume that such person had committed dowry death – Prosecution had proved guilt of the appellant beyond all reasonable doubts - Appeal stands dismissed. ***158***

---Secs.374(2) and 235(2) – INDIAN PENAL CODE,Sec. 302 – Appellant questioned the judgment of the trial court, where by he is sentenced to undergo imprisonment for life – Instant case is based on circumstantial evidence.

Homicidal death of B. Laxmi by drowning allegedly committed by her son-in-law (appellant) by pushing her into agricultural well since she forced him to reveal whereabouts of her missing daughter, renuka – Appellant was suspected by his wife renuka due to his physical relationship with women of loose character, which in turn made him to get vexed up with her – Appellant is also alleged of killing renuka.

Held – In the cases based on circumstantial evidence, circumstances from which inference of guilt is sought to be drawn, must be cogently and firmly establish the guilt of appellant – Circumstances, taken cumulatively, should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by appellant and none else – No such evidence is available on record – Even at the time of inquest, there were no witnesses to identify dead body and under these circumstances, I.O. ought have collected blood samples, soft tissues, hair etc., from dead body and preserved the same and could have sent them to Forensic Science Laboratory to establish the identification of dead body – Investigating officers are required to subject the dead body for its proper identification by following required procedures to conduct DNA test – Prosecution failed to establish complete chain of circumstances beyond reasonable doubt - Appellant is acquitted of the charges framed against him – Criminal appeal is allowed. ***112***

---Sec.438 - INDIAN PENAL CODE, Sec. 323, 354-A, 385 and 506 - SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, Secs.3(2)(va), 4 and 18 – Criminal petition to grant pre-arrest bail to petitioner.

Held – Simply because the offences are triable by a Special Court, that does not convert the bailable offences into non-bailable offences, in view of part II of the first schedule under Cr.P.C. – Offence U/S 3(2)(va) of SC/ST Act is a bailable offence - A person who is alleged to have committed a bailable offence is not entitled to file an application U/S 438 of Cr.P.C. - Criminal petition is dismissed. **316**

**GUARDIAN AND WARDS ACT:**

---Sec.25 - Appellants seek direction to set

aside the decree and order passed by Trial Court – Appellants are maternal grand parents of minor girl, aged about 6 years - Respondent married daughter of appellants and the couple were blessed with the said girl child – Respondent admitted his wife at Hospital for second delivery – She gave birth to a son but due to negligence of doctors, wife of respondent and son died immediately.

When respondent was planning to perform cremation of his wife in his native place, appellants had taken away dead body of his wife along with his daughter who was then two years old – Counsel for appellants contended that respondent has solemnized second marriage and one male child was also born out of their wedlock, therefore minor daughter will not be happy to stay with respondent because she never stayed with him in past and she does not even recognize respondent as her father.

Held – In a matter of this nature, where the grand parents are seeking preferential custodial right over the natural father's claim for custody for the minor child, it is essential for the grand parents to plead and establish that the natural guardian being father is unfit or is otherwise disqualified from being given the custody of the child – In the instant case, respondent/ father is drawing a salary of Rs. 45,000/- per month – He had assured this court that welfare of the child will not be compromised under any circumstances – Appeal stands dismissed. ***49***

## LAND ACQUISITION ACT:

---Secs. 4(1) and 18 & 54 - Petitioner sent a requisition for acquisition of lands to the District Collector for the benefit of petitioner laboratories – Having not satisfied with the award passed by Land Acquisition Officer, land owners sought for reference under Section 18 of the Act and the Civil Court enhanced the compensation – Writ Petitioner has challenged the Judgment passed by the Trial Court.

Held - Proceedings under Article 226 of the Constitution are limited to the grounds available for judicial review, whereas the appeal under Section 54 of the Act enables the Appellate Court to go through the evidence adduced before the Civil Court or available with it in the light of evidence already adduced and examine whether the enhancement of compensation is proper or not – Alternative remedy and the scope of enquiry in the appeal is much wider than the discretionary remedy of Article 226 of the Constitution – Writ Petitions are dismissed, giving liberty to petitioners to avail remedy of appeal under Section 54 of the Act and time spent for these proceedings can be exempted for condoning the delay. ***229***

**LIMITATION ACT, Art.110:**

---Appellants /Sons preferred instant appeal against Respondents/Daughters and mother, challenging the preliminary decree for partition granted in their favour.

Suit schedule properties were purchased by Father, who died intestate – Properties devolved equally upon his wife, 4 daughters and 5 sons, entitling each of them to 1/10th share – Appellants contend that suit properties were not self-acquisition of their father and they were acquired from the nucleus and by sale of certain ancestral properties – Appellants further pleaded exclusion and contended that respondents have abandoned and waived their right.

Held – Law is well settled that a person pleading ancestral nucleus and the source of purchase should prove the same – Principle of waiver is akin to principle of estoppel and the difference lies in the fact that while estoppel is a rule of evidence and not a cause of action, waiver may constitute a cause of action - None of the elements of waiver or abandonment is present in instant case – Appeal stands dismissed. ***151***

**PENAL CODE(INDIAN)**

---Secs.- 148, 149, 302, 324 and 326 – Instant appeal preferred against Judgment passed by trial court whereby, A1 to A5 were found guilty of murdering M. Sheshulu.(D1) and M. Venkata Satyanarayana (D2) - Two incidents occurred, one culminating in death of D1 and D2 and the other, where A1 to A5 sustained injuries.

Held – Relying on MoharRaivs State of Bihar, where Apex Court held that non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which Court can draw inference that prosecution has suppressed the genesis and not presented true version or witnesses who have denied injuries on accused persons are lying or in case there is a defence version which explains the injuries on the person of accused, it is rendered probable so as to throw doubt on the prosecutions case - Prosecutions case was fraught with inconsistencies and weaknesses and it failed to present the origin and genesis of the occurrence in its full form - Criminal Appeal filed by the accused is allowed. ***206***

---Secs.201 r/w 511, 302 & 377 – Appellant challenged Judgment passed by Trial Court, whereby, appellant was held guilty and sentenced to suffer life imprisonment - Appellant brought deceased to room and tried to have homosex – Deceased refused,

appellant insisted him for carnal intercourse – When deceased tried to make cries, appellant shut his face with jeans pant and smothered him to death.

Counsel for appellant contended that prosecution has failed to establish that seized article, wherein finger prints are available, were not tampered before it reached the expert for examination as it was not packed and sealed and there is no evidence led whether bureau expert received packages with seals intact - He further contended that it is mandatory to obtain permission of a magistrate or finger prints have to be obtained in the presence of magistrate.

Held - If the sentence is for death or life imprisonment, to take finger prints, permission of magistrate is not required – Criminal appeal dismissed. ***29***

---Secs.302 r/w 34, 304-B & 498-A - DOWRY PROHIBITION ACT, Sec.4 - Trial Court sentenced husband(appellant no.1) and mother-in-law (appellant no.2) of deceased to suffer life imprisonment along with other lesser punishments which were directed to run concurrently - Prosecution must prove cruelty or harassment of victim "soon before the occurrence" - Prosecution failed to produce evidence proving that appellants have burnt deceased, the only cause of death must inevitable be an accidental one.

Marriage of husband with deceased took place about three years prior to occurrence of alleged offence – At the time of marriage, parents of deceased gave certain amount of dowry – Since the time of marriage, appellants harassed deceased for additional dowry – Couple were blessed with a female child – Six months prior to the commission of alleged offence, appellants necked deceased out of their house – On the day of alleged offence, appellants beat deceased from the morning and around evening they killed deceased by setting fire to her.

Held – Instant Case is based on circumstantial evidence – None of the prosecution witnesses has witnessed occurrence of alleged offence – Prosecution has failed to establish demand for additional dowry – No credible evidence to show that there was harassment of deceased by appellants at any point of time - As prosecution has failed to establish guilt of accused, Judgment of lower cannot be sustained – Criminal appeal is accordingly allowed. **(Hyd.)*1***

---Secs.302 and 34 – CRIMINAL PROCEDURE CODE, Sec.174 - When the witness has come out with diagonally opposite versions, it is always safe to rely upon the earliest version - State has preferred instant appeal assailing Judgment

passed by Trial Court whereby all five accused were acquitted.

A1 is husband of deceased Radha, A2 to A5 are family members of A1 – When father of deceased got to know about the death of deceased at her matrimonial house, he went to house of A1 along with his wife and son – Enquiries from villagers did not reveal any suspicion about death of deceased - Three months after the marriage of A1 with deceased, A1 had taken deceased to house of concubine saroja and forced deceased to live in the house of said saroja – After coming to know about illegal intimacy of A1 with saroja, deceased questioned A1 who in return paid a deaf-ear - Deceased complained to her parents and also lodged a complaint before a Police station.

Held – Instant case is based on circumstantial evidence – In a case based on circumstantial evidence, motive plays an important role – It is therefore, not possible to accept the version of prosecution that A2 to A5 have shared common motive with A1 for eliminating deceased to pave way for latter to continue his illicit relationship with another woman – Illicit relationship is considered as a taboo in the society and other family members would not generally approve of such relationship – Prosecution has miserably failed to prove guilt of accused beyond all reasonable doubt and trial court rightly acquitted all the accused of charge framed against them – Criminal appeal and revision case are dismissed. ***56***

---Secs.302, 304-B & 498-A - **CRIMINAL PROCEDURE CODE,** Sec.374(2) –Criminal Appeal - Husband/Accused is found guilty of murder of his wife and demanding additional dowry.

Held – A charge u/Sec. 304-B, IPC ought to have been framed against the accused – Therefore, in the Interest of Justice, the accused be charged and tried u/Sec.304-B IPC at this stage – It may be noted that u/Sec.304-B, IPC it is not necessary to establish a homicidal death for proving the offence of dowry death – It is sufficient if the death of the woman is otherwise than under the normal circumstances – As the accused was never charged with an offence u/Sec. 304-B, IPC and did not have the opportunity to rebut the same, it would be appropriate if Sessions Court frame the charge at this stage and give him an opportunity to meet it – Sessions Court shall permit prosecution to adduce additional evidence, oral and documentary and appellant shall be permitted to recall any of the witnesses already examined for further cross-examination – Criminal Appeal allowed partly. **283**

## REGISTRATION ACT:

---Sec.69 and Rule 26(k) of Andhra Pradesh Rules - SPECIFIC RELIEF ACT, Sec.31 –

Question as to whether there can be cancellation of a registered document unilaterally by the executant and registration of same by Registering Authorities and whether writ petition is maintainable for setting aside such deeds of cancellation.

No dispute of facts in present cases – All deeds were executed unilaterally by executants and these documents were registered by registering authorities – Documents fall under two category of cases, one relates to period prior to amendment of Rule 26(k) of registration rules; Where as the second category relates to registration of documents by registering authorities in violation of said Rules after amendment.

Held – Complete and absolute sale deeds can be cancelled at the instance of transferor only by taking recourse to the civil court by obtaining a decree of cancellation of sale deed on ground of fraud or any other valid reasons – Instant cases, there is an alternative remedy of approaching civil court U/S 31 of Specific Relief Act – Even it is assumed that action of registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these petitions – Fraud cannot be assumed from a mere registration of a document by registering authority – Merely because respondent is a State under Article 12 of the constitution, this court cannot interfere – In order to exercise jurisdiction by this court, action of statutory authorities must be without any alternative authority and in discharge of public law duty – Writ petitions are accordingly dismissed. **89**

**SUIT FOR PARTITION:**

– Adverse possession - No one can confer a better title than what he himself has ( Nemodat quod non habet ) - To establish adverse possession, a person making the claim should establish a Peaceful, Open and Continuous possession as engraved in nec vi, nec clam and necprecario - Appellant/ Plaintiff filed a suit seeking partition and separate possession of her 1/5$^{th}$ share in scheduled properties of plaint before Trial Court - Plaintiff and defendants 1 to 4 are daughters of Kistareddy – Said Kistareddy was absolute owner of scheduled properties - Kistareddy died intestate in 1971 leaving behind his wife and five daughters.

Properties were devolved equally upon plaintiff and defendants – After the death of both parents, Defendant no.1 used to look after properties – When activities of Defendant no.1 became suspicious, plaintiff approached M.R.O and obtained certified copies of pahanies and other documents – From those documents she found that sons of defendant no.1 who were arrayed as defendants 5 to 8 got their names entered in revenue records – Appellant contended at Trial court that mutation was

unlawful and she is entitled to partition – Defendants 2 to 4 filed a written statement agreeing with claim of appellant – Instead of defendant no.1, her sons defendants no.5 to 8 filed a written statement contending defendant no.1 was given in marriage to Narayanareddy who was brought to house of Kistareddy as Illatam and he was in possession and enjoyment of properties till his death, after his death defendants 5 to 8 are in possession and enjoyment of properties. ***17***

**TRADEMARKS ACT:**

---Sec. 28 -CIVIL PROCEDURE CODE, Or.39 Rules 1, 2 and Sec.151 – Respondent started rendering identical descriptive services to appellant under a trademark which is similar to the trademark of appellant - Instant appeal is preferred against the dismissal order of temporary injunction application pending disposal of the suit for permanent injunction with regard to the registered trademark of the appellant.

Held – Under passing off action law, the rights of prior user being superior placed on higher pedestal against subsequent user of the mark – A person trading with a particular mark is entitled to insist that no one else should use that mark for trading in the same or similar commodity – If there is any infringement of the mark used by the other of deceptively similar to prior users mark that is likely to deceive or create confusion he can undoubtedly ask the Court to restrain the other to trade with such deceptively similar mark - Appeal is allowed by setting aside the dismissal order.

**291**

**TELENGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOT-LEGGERS, DECOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:**

---Sec.2(g) – Petitioner has challenged the detention Order and consequently to direct respondents to release the detenu, who is her husband – Detenu has been detained by detaining authority on the ground that he has been involved in the offences of criminal conspiracy, cheating, kidnapping, extortion etc., - 4 out of 6 cases against detenu are concerning to the gangster, Nayeem.

Counsel appearing on behalf of petitioner submits that it is well settled law that imposition of preventive detention is very harsh and unconstitu-tional, unless there is a brazen conduct, which affects the tempo of public life – Collusion with gangster nayeem and involvement in some sale transactions does not warrant imposition of preventive detention.

Held – Detaining authority has good

grounds to detain the detenu - Detenu is a habitual offender and his activities fall within the ambit of Sec.2 (g) of the Act, 1986 which defines 'Goonda' – A person who has been habitually engaging himself in unlawful acts of committing kidnapping, cheating and extortion, which create a sense of insecurity in the minds of public and pose threat to maintenance of peace and public tranquility in the society – If such person is not curbed, he will continue to do same activities – Writ petition is dismissed. ***42***

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# Law Summary

(Founder: Late Sri.G.S.GUPTA)

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## SUBJECT - INDEX


**CIVIL PROCEDURE CODE:**

---Sec.146 and 151 and Order – IX, Rule 13 – Civil Revision – Application preferred by petitioners was not entertained in the Trial court to set aside ex parte preliminary decree and ex parte final decree passed in the suit proceedings.

Petitioners purchased one of the items of suit scheduled properties pendente lite – Petitioner contends that the parties of the suit in collusion, committed fraud by not bringing to the knowledge of the court about alienations made pendente lite.

Held – It is not established by petitioners as to how they could maintain a single application to set aside both ex parte preliminary decree and ex parte final decree passed and petitioners have not stated as to when they came to know about the same – Petitioners should have moved necessary applications to condone delay in filing application to set aside ex parte decrees passed in the suit – Though a transferee pendente lite is entitled to maintain application under Order IX Rule 13 of C.P.C., to set aside ex parte decrees passed against his transferor but the application preferred by petitioners had not conformed the requirements of law – Application laid by petitioners is not maintainable – Civil revision petition is dismissed. ***27***

---Or. IX, Rule.13 - Petitioner has laid suit before Trial Court for the reliefs of declaration – From 1999 onwards suit had been listed for filing written statement by respondents and only some of the respondents have filed written statement in the year 2003, resultantly, set ex parte.

Respondents have come forward with an application to set aside ex parte

decree passed against them as there was a delay of 2735 days – The reason given by respondents for the said delay is that they were not aware of ex parte decree passed and no intimation had been received from their advocate about the progress of the suit – Trial Court has entertained application preferred by respondents.

Held – Plea of respondents that on account of their advocate's failure to send communication to them about the progress of the suit, they are unable to know about the progress cannot be believed and accepted in any manner – Respondents have not endeavored to set aside ex parte decree passed against them immediately after coming to know about the same – Order of Trail Court in entertaining application preferred by respondents to condone delay of 2735 days is incorrect and unacceptable and accordingly, it deserves to be set aside – Civil revision petition is allowed. ***17***

---Order XLI Rule 27- HINDU MARRIAGE ACT, Sec.16(1) - Documents sought to be produced as additional evidence during the course of this appeal are not marked during the original suit proceedings – It has not been explained by appellant properly as to why said documents had not been marked before court below.

Suit properties originally belonged to Rathinampillai and he died intestate – When he was alive, he had married Rajammal and through her appellants were born – At the instance of his elder sisters, Rathinampillai had married Rajeswari as his second wife, who is the daughter of one of his elder sisters – Through Rajeswari respondents were born to Rathinalpillai – After the death of Rathinampillai, his second wife married Veeramuthuswamy – Respondents were under care of Palaniammal, sister of Rathinampillai – Hence, appellants contends that Rajeswari is not entitled to any share in her husbands properties - Respondents contended that Rajammal is not legally wedded wife and appellants are not the children born to Rathinampillai.

Appellants have miserably failed to establish that there has been a valid marriage between Rajammal and Rathinampillai and appellants have been born out of said wedlock and it is found that appellants as such are not entitled to claim any share in suit properties even on footing that they are illegitimate children of Rathinampillai – Plea that very recently appellants had come to know regarding said documents and therefore, same should be received as additional evidence, cannot be accepted without any material to substantiate their case – Appeal stands dismissed. ***1***

**CONSTITUTION OF INDIA -** Compassionate Appointment - Writ petition – Petitioner seeking direction to quash the order of rejection, in respect of the claim of the petitioner for compassionate appointment.

Father of the writ petitioner was serving in the Department and passed away while he was in service - At the time of demise of his father, the writ petitioner was

seven years old and his younger brother was two years old - When the petitioner attained age of majority , he submitted an application, seeking appointment on compassionate grounds.

Held - Compassionate appointment, being an exception, cannot be extended in a routine manner and administration of the Scheme to be adhered to strictly and without any deviation - Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment - Compassionate appointment scheme as a special one necessarily to be restricted to the extent possible, so as to provide appointment only to the genuine and warranting families - Under the scheme, the department is not obligated to keep any post vacant, till the applicant attains majority or to consider his candidature on attaining majority - The scheme of compassionate appointment cannot be granted after a reasonable period - Writ petition stands dismissed. ***33***

**CRIMINAL PROCEDURE CODE:**

---Secs.250 & 482 - INDIAN PENAL CODE, Secs.34, 403, 406 & 415 - Petitioners challenging and seeking to quash the FIR registered against them.

Held – Whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of High Court under Section 482 of Cr.P.C. can be invoked – Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint – It is not just to permit the police to continue with the investigation and the same is quashed – Criminal Original Petitions are allowed. ***65***

**JUVENILE JUSTICE ACT, 2000:**

**---**Sec. 7-A - JUVENILE JUSTICE RULES, 2007, Rule -12 - INDIAN PENAL CODE, Secs.148and 302 – Review preferred by the detenu challenging the order, whereby the relief sought by the wife of the review petitioner to set him at liberty on the ground that on the date of commission of the offence, he was a juvenile, was rejected.

Held - Age determination inquiry contemplated under the Act, 2000 and Rules, 2007 is nothing to do with an inquiry contemplated under the Criminal Procedure Code - Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court or Board or the Committee need to go for medical report for age determination - Medical evidence as to the age of a person, though a very useful guiding factor, is not a conclusive proof - As an apparent error is there, correction becomes necessitous – In the instant case petitioner was imposed with life imprisonment and petitioner has served with maximum sentence of imprisonment - Hence, without referring the matter to the Juvenile Justice Board for passing appropriate order, this Court is inclined to set the petitioner at liberty - Review Petition is allowed. ***57***

**(INDIAN)PENAL CODE,** Sec. 201

and 302 - Appellant/Accused has challenged the legality of the conviction and sentence passed by the Trial Court against him - Case of the prosecution rests upon circumstantial evidence.

Held – If the case of the prosecution rests upon circumstantial evidence, it is bounden duty of prosecution to link the chain of circumstances unerringly to connect the accused for the commission of offence, but they have miserably failed to do so – Circumstance of last seen together does not by itself necessarily lead to inference that it was accused who committed the crime but there must be something more to connect the accused with the crime and to point out guilt of accused and none else - There are very many gaps and holes in the case projected by the prosecution and the chain of circumstances to link the accused with the commission of offence is not at all complete and therefore, benefit of doubt shall endure in favour of the appellant - Criminal appeal is allowed – Conviction recorded and sentence imposed on appellant is set aside. ***77***

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# Law Summary

(Founder: Late Sri.G.S.GUPTA)

**2017 (3)**

**SUPREME COURT**

**(Vol.92)**

## SUPREME COURT


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## SUBJECT - INDEX

**CRIMINAL PROCEDURE CODE:**

---Sec.91 - INDIAN PENAL CODE, Sec.376 - Respondent approached High Court with the prayer that entire material available with the investigator, which was not made part of the charge sheet, ought to be summoned u/Sec.91 of Cr.P.C. – Said Application was allowed.

Held - While ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not part of a charge sheet – It does not mean that the defence has a right to invoke Sec.91 of Cr.P.C. de hors the satisfaction of the Court, at the stage of charge - Appeal preferred by the appellants to set aside the view taken by the High Court is allowed. ***87***

**---**Sec.125 – Petitioner was already married – He duped the respondent and married her also by suppressing factum of first marriage – Petitioner cannot be permitted to deny the benefit of maintenance to respondent, taking advantage of his own wrong.

After getting divorce from her first husband, on demand of petitioner, respondent married him as per Hindu Rites and Customs –After three months of her marriage, Shobha came to the house of petitioner and claimed herself to be his wife by then respondent was already pregnant – On enquiring about shobha with petitioner he said that if respondent wanted to cohabit with him, then she should reside quietly – In the instant petition, Petitioner denied his relation with respondent and contended that he never entered with any matrimonial alliance with respondent.

Held – Respondent has been able to prove, by strong evidence that she was married to petitioner – While dealing with application of destitute wife or hapless children or parents under section 125 of Cr.P.C, Court is dealing with marginalized sections of society – Purpose is to achieve “Social Justice” which is the constitutional vision – Therefore, it becomes bounden duty of Courts to advance the cause of social justice – While giving interpretation to a particular provision, Court is supposed to bridge gap between the Law and Society – Courts have to adopt different approaches in “Social justice adjudication” as mere

"Adversarial approach" may not be very appropriate – It would amount to giving a premium to husband for defrauding the wife/ respondent therefore, for the purpose of section 125 of Cr.P.C, such a woman is to be treated as legally wedded wife – Petitions stands dismissed. ***15***

**---**Secs. 247, 249, 256 and 302 – INDIAN PENALCODE Secs.34, 120B, 201, 420, 467, 468 and 471 – Appeal against the Judgment passed by the High Court allowing IA filed by the legal representatives, praying them to be substituted in place of the complainant.

Complainant died during the pendency of petition before High court which was filed challenging the order of sessions judge, rejecting the criminal revision against the order of magistrate dismissing the complaint - Legal heirs of complainant filed an application praying them to be substituted in place of complainant – High court allowed the application.

Held –There is no provision in chapter XIX of Cr.P.C. which says that, in the event of death of the complainant the complaint is to be rejected – Magistrate under Section 249 of Cr.P.C. can discharge a case where the complainant is absent - We do not find any error in the Order of the High court – Appeal stands dismissed. ***69***

---Sec.482 – Appellants sought the quashing of a FIR registered against them – Complainant/ Respondent was approached by appellants to purchase his land – When respondent followed up for payment of balance amount from appellants, he was threatened of a forcible transfer of the land.

Appellants advanced a plea before High Court for quashing of FIR on the ground that they amicably settled dispute with complainant, and even complainant had also filed an affidavit to that effect – In the view of High Court, it was not in the interest of society at large to accept settlement and quash the FIR - Prayer to quash FIR has been rejected.

Held – In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of jurisdiction under section 482 of Cr.P.C, by High Court, revolves ultimately on facts and circumstances of each case and nature of offence committed and High Court must evaluate whether ends of justice would justify the exercise of inherent power – There may be criminal cases which have predominant element of civil dispute and they stand on different footing in so far as exercise of inherent power to quash is concerned – Instant case involves allegations of extortion, forgery and fabrication of documents – Supreme Court agrees with the view of High Court – Criminal appeal stands dismissed. ***25***

**NEGOTIABLE INSTRUMENTS ACT:**

---Secs.138, 139 & 143 - CRIMINAL PROCEDURE CODE,Sec.258 and 357(1) (b) – Question as to how proceedings for an offence U/Sec. 138 of NI Act can be regulated, where the accused is willing to deposit cheque amount – Whether in such a case, proceedings can be closed or exemption granted from personal appearance or any other order can be passed.

Respondent filed complaint alleging that appellants were to pay a monthly amount to her under an agreement – Cheque was given in discharge of legal liability but the same was returned unpaid for want of sufficient funds – In spite of service of legal notice amount was not paid.

Held – The object of Sec.138 of NI Act was described to be both punitive as well as compensatory – Complainant could be given not only cheque amount but

double the amount so as to cover interests and costs – The Law Commission in its 213th Report, noted that out of total pendency of 1.8 crores cases in the country, 38 lakh cases (about 20% of total pendency) are related to section 138 of NI Act – Where cheque amount with interest and costs as assessed by the court is paid by a specified date, the court is entitled to close proceedings in exercise of its powers U/S 143 of NI Act read with 258 Cr.P.C – It is open to court to explore possibility of settlement and consider provisions of plea bargaining – Trial can be on day to day basis and endeavour must be to conclude it within six months. ***35***

**PENAL CODE (INDIAN):**

---Secs. 120-B, 201, 302 and 364-A, CONSTITUTION OF INDIA, Art.137 - Applicants by their review petitions seeking review of Judgment of Hon'ble Supreme Court by which Judgment, Criminal appeals filed by applicants were dismissed and death sentence awarded by Trial Court and affirmed by High Court was maintained.

Trial Court convicted Vikram Singh, Jasvir Singh and Sonia (wife of Jasvir Singh) and awarded death sentence to all three accused – High Court confirmed death sentence of all the accused – In the Criminal appeal before apex court, death sentence awarded to Sonia was converted into life imprisonment – Review petitions filed by Vikram Singh and Jasvir Singh were dismissed by two-judge bench which heard criminal appeals – Application filed for reopening of review petitions.

Held – Review literally and even judicially means re-examination or reconsideration - Granting power of review to Supreme court by the Constitution is in recognition of universal principle that power of review is part of all Judicial system – In a criminal proceeding, review applications cannot be entertained except on ground of error apparent on the face of the record – By review application an applicant cannot be allowed to re-argue appeal on the grounds which were argued at the time of hearing of criminal appeal – Even if applicant succeeds in establishing that there may be another view possible on conviction or sentence of accused that is not a sufficient ground for review – Review applications are rejected. ***1***

**MOTOR VEHICLES ACT, 1988:**

---Secs.163-A & 166 – Methodology for computation of future prospects – Calculation of compensation suffer from several defects –Compensation cannot be a pittance - Necessary to state the correct legal position as Courts and Tribunals are using higher multiplier.

Following Conclusions were made by the Constitutional Bench of the Supreme Court of India :

* While determining the income, an addition of 50% of actual salary to the income of deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should me made. The addition should be 30%, if the age of deceased between 40 to 50 years. In case the deceased was between age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

* In case the deceased was self-employed or on a fixed salary, an addition of 40% of established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between age of 40 to 50 years and 10% where the deceased was

between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

* Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

* The age of the deceased should be the basis for applying the multiplier. **44**

**SC/ST PREVENTION OF ATROCITIES ACT:**

---Sec.3(2)(V) - INDIAN PENAL CODE, Secs.323, 376(2)(g) and 450 – Post amendment of the SC/ST Act, mere knowledge of the accused that the person upon whom the offence is committed belongs to SC/ST community suffices to bring home the charge under Section 3(2)(v) of the Act.

In the instant case so far as conviction U/S 376(2)(g), IPC is not interfered - Since unamended provisions of the SC/ST Act are applicable in the present case and evidence and materials on record do not show that appellant had committed rape on victim on the ground that she belonged to SC/ST community, the same cannot be sustained – Accused already undergone imprisonment for more than ten years, appellant is ordered to be released forthwith. ***90***

**TAMIL NADU COURT FEES AND SUIT VALUATION ACT:**

---Secs.25 & 40 - CIVIL PROCEDURE CODE,Sec.115 and Or.VII, Rule 11 – Valuation of Court Fee.

Held – Proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action – Civil Appeal is allowed. ***75***

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# Law Summary
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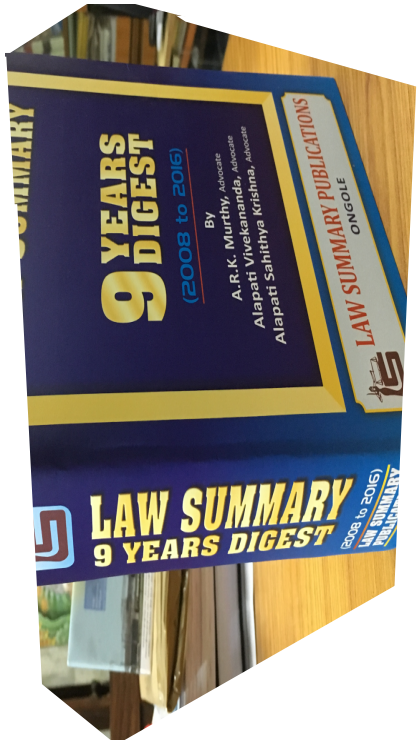


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