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LAWYERS' SOCIETY

A Digital Magazine for law students, lawyers, practicing advocates, and judicial service aspirants

January, 2024 #1

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CONTENTS

CLASS ACTION AND JOINT-COMPLAINTS UNDER THE CONSUMER PROTECTION ACT, 2019

Purchased a product and found it does not have all the contents promised in the advertisement, or that it is defective? Don't want to get into litigation on your own? File a joint consumer complaint along with your friends who also bought the same product, and have the same grievance!

Under the **Consumer Protection Act of 2019** (hereinafter "Act"), where there are numerous consumers having the same interest, a complainant could be one or more consumers[1]. This clause gives rise to "class action". That is, where there are several consumers having the same complaint, one or more of them could represent the rest of them before a consumer forum. This is similar to a representative civil suit as provided for under Order I, Rule 8 of the Civil Procedure Code, 1908 (hereinafter "Code"). The same is recognized under Section 38(11) of the Act, which reads,

"Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon".

Such representative suits make it mandatory to serve a notice regarding the institution of such a suit, to all those persons having such same interest as the plaintiff(s), or where such notice is not reasonably practicable, by public advertisement.[2]

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[1] *Section 2(5)(v).*
[2] *Order I, Rule 8, sub-rule (2).*

However, there may be cases where a plaintiff may not necessarily be interested in representing such other persons who might be having the same interest. In such cases, a suit they initiate will not fall under Order I, Rule 8 of the Code. Likewise, under the Act, there may be cases where the complainant consumer may not be interested in pursuing a class action, although there may be numerous others with the same interest. In these cases, the complainant is pursuing his own interest, therefore he falls under clause (i) of Section 2(5) of the Act, which provides that a complainant could be a consumer (in the singular).

Now what if two or more persons having the same interest file consumer complaints individually or together, but without representing the rest of them. Will the same be falling under Section 2(5)(i) or 2(5)(v) of the Act? To understand the concepts in simple terms, we shall see the observations of the Hon'ble Supreme Court in ***Brigade Enterprises Pvt. Ltd. v. Anil Kumar Virmani***[3], ***Alpha G184 Owners Association v. Magnum International Trading Company Pvt. Ltd.***[4] and those of the Hon'ble NCDRC in ***Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd. Seth Farms***[5] and ***Akshay Kumar v. Adani Brahma Synergy Pvt. Ltd.***[6]

In ***Ambrish Kumar Shukla (supra)***, a full bench of the Hon'ble NCDRC had observed that a class action would be maintainable where- *"(i) the consumers are numerous (ii) They have the same interest (iii) the necessary permission of the Consumer Forum is obtained and (iv) notice in terms of Sub-rule (2) of Rule 8 of Order I is given"*. It was further said that it *is not necessary that the cause of action available to all*

[3] *(2022) 4 SCC 138.*
[4] *2023 SCC OnLine SC 625.*
[5] *2016 SCC OnLine NCDRC 1117.*
[6] *Consumer Complaint No. 48/ 2021.*

the consumers should also be the same, but what is required is sameness of the interest and not the same cause of action.

"Same interest" was described as having the same grievance. Further, it was said that as long as the reliefs claimed are identical, a class action complaint would be maintainable. The Commission had given an illustration in this regard:- *"For instance, if a builder/developer has sold 100 flats in a project out of which 25 are three-bed room flats, 25 are two-bed room flats and 50 are one-bed room flats and he has failed to deliver timely possession of those flats, all the allottees irrespective of size of their respective flats/plots, the date of their respective purchase and the cost agreed to be paid by them have a common grievance i.e. the failure of the builder/developer to deliver possession of the flat/plot sold to them and a complaint filed for the benefit of or on behalf of all such consumers and claiming same relief for all of them, would be maintainable under Section 12(1)(c) of the Consumer Protection Act. The relief claimed will be the same/identical if for instance, in a case of failure of the builder to deliver timely possession, refund, or possession or in the alternative refund with or without compensation is claimed for all of them.*

*Different reliefs for one or more of the consumers on whose behalf or for whose benefit the complaint is filed cannot be claimed in such a complaint."***[7]

The NCDRC had also made a finding that in such class actions, *the pecuniary jurisdiction is to be determined on the basis of aggregate of the value of the goods purchased or the services hired or availed by all the consumers on whose behalf or for whose benefit the complaint is instituted and the total compensation claimed in respect of such consumers.* This view was affirmed by a 5-Member Bench of the NCDRC in ***Renu Singh v. Experion Developers Pvt. Ltd.***[8]

Subsequently, in a detailed break-down of these provisions by the Hon'ble SC in ***Brigade Enterprises Pvt. Ltd (supra)***, it was observed that it is not necessary that where there are more consumers than one, they must only take recourse to Order I, Rule 8 of the Code. It was said that they could even file a "joint complaint", standing in contrast to a class action complaint filed in representative capacity on behalf of several others with the same interest.

The following is a table comparing Section 2(5) of the Act with the "correct" interpretation of the same by the Hon'ble SC in paragraph 39 of it's judgment in ***Brigade Enterprises Pvt. Ltd (supra)***:

Section 2(5) of the Act	**Section 2(5) interpreted in *Brigade Enterprises Pvt. Ltd.***
(5) "complainant" means— (i) a consumer; or (ii) any voluntary consumer association registered under any law for the time being in force; or (iii) the Central Government or any State Government; or (iv) the Central Authority; or (v) one or more consumers, where there	.....a complaint may be filed (i) by a single consumer; (ii) by a recognised consumer association; (iii) by one or more consumers jointly, seeking the redressal of **their own grievances without representing other consumers** who may or may not have

[7] ***The provision given in this illustration is from the repealed Consumer Act, 1986.*

[8] *2021 SCC OnLine SC NCDRC 978.*

are numerous consumers having the same interest; or (vi) in case of death of a consumer, his legal heir or legal representative; or (vii) in case of a consumer being a minor, his parent or legal guardian.	the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or State Authority.

It was established that the word "consumer" as used in Section 2(5)(i) cannot just be read in a singular form, and cannot be interpreted as excluding more than one consumer. **Therefore, it can be seen that a few of the consumers may choose to only file a complaint in respect of their own common grievance, and such complaints must be treated as a "joint complaint". Such joint complaints are filed under Section 2(5)(i) and as such, Section 38(11) and Order I, Rule 8 of the Code will have no application.**

A Full-bench of the NCDRC in ***Akshay Kumar (supra)***, relied on ***Brigade Enterprises Pvt. Ltd. (supra)*** to observe that *"there is nothing in the Act which prohibits the few complainants from joining together and filing Joint Complaint. The word complaint includes plural i.e, complainants also. Thus, a joint complaint and it will be treated as one complaint"*.

The NCDRC applied the principle relating to pecuniary jurisdiction to a joint-complaint case, stating, *"the Principle laid down by the Larger Bench. in the case of Ambrish Kumar Shukla (supra), would also be applicable for determining the value of goods and services paid as consideration in the Complaint where the Complaint has been filed a Joint-Complaint by more than one person".*

Recently, this principle was re-iterated by the Hon'ble in ***Alpha G184 Owners Association (supra)***. Relying on ***Brigade Enterprises Pvt. Ltd. (supra)***, and applying the principles observed there in to the Consumer Act of 1986 (now repealed), it was held that *the definition of 'complainant' under Section 2(b)(i) of the 1986 Act, will include multiple consumers.*

Having discussed these, can you think of scenarios where there would be so many consumers with the same grievance/interest, but it would not be plausible to have a representative suit, hence the complainants would prefer to file individual or joint complaints, rather than filing a complaint on behalf of the rest?

-x-x-

OBSERVATIONS IN BRIEF

A Habeus Corpus petition cannot be filed for a direction to produce a daughter who has attained majority, and is in a living together relationship with another person who has attained majority - ***Muhammad Riyad v. The State Police Chief, Trivandrum (Kerala HC, 2018 (2) KLT 914).***

A statement made by a wife, giving up her right of maintenance or an agreement to that effect would not estop a wife, whether divorced or otherwise, from filing a petition for maintenance. Such a statement or agreement would be opposed to public policy and would violate Section 23 of the Indian Contract Act , 1872 being an agreement unenforceable in law. - ***Sadasivan Pillai v. Vijayalakshmi, (Kerala HC, 1987 Cri LJ 765), Ranjit Kaur v. Pavittar Singh (P&H HC, 1992 Cri LJ 262), Sushil Kumar v. Neelam (P&H HC, 2004 Cri LJ 3690), Usha Devi v. Mahinder (P&H HC, Crl. Revision Case No. 2362/ 2008 (O&M), Dt. 01.07.2009).***

Wife who is not a signatory cannot be prosecuted for a bounced cheque issued by her husband, where the account is not jointly owned by them. The complaint made against such wife can be quashed by the High Court using it's inherent power - ***Smt. Veenashri v. Sri. Shankar (Karnataka HC, Crl. Petition 2129/ 2019, Dt. 19.10.2019)***

EMPLOYMENT CONTRACTS AND INTERPRETATION

When an employer recruits an employee, he is looking for commitment. He ensures this by way of contractual terms that if he trains the employee for a said term, the employee would work for the said employer for a said term, and in the event he resigns before the end of such term-period, he would have to compensate the employer with some amount. This comes from the principle that where an employer imparts some skills in selective individuals, he does so with the idea that these individuals will serve his establishment, and not leave mid-way. In case they choose to resign, they will have to pay a penalty as agreed in the bond/contract.

Section 74 of the Indian Contract Act, 1872, deals with the contracts wherein the penalty is specifically agreed between the parties. As per a ***Constitution Bench of the Hon'ble SC***[9], where there is such agreed penalty, the party suffering the breach (the employer here) does not

[9] ***Fatesh Chand v. Balkishan Das, Constitution Bench, 1963 AIR 1405.***

have to show actual loss or damage arising from such breach. The Hon'ble SC further observed that such compensation/ penalty amount cannot be claimed where no **legal injury** has resulted.

The Madras HC in ***Toshniwal Brothers (P) Ltd. v. Eswarprasad E.***[10], relied on ***Fateh Chand (supra)*** to hold that ***"legal injury could be safely presumed to have resulted in a case where the employer or the management concerned was shown to have either incurred any expenditure or involved itself into financial commitments to either give any special training either within the country or abroad or in having conferred any special benefit or favour to the detriment of the claimant in favour of the violater involving monetary commitments, though an actual damage after the alleged violation or breach of the contract was shown to have separately resulted or not".***

The Madras HC further established that in such cases, the employer has *to demonstrate before the Court about the details of any such special or privileged training or favour of concession having been shown to the defendants to presume any legal injury automatically resulting from the breach of the commitment to serve for a minimum period by such defendants*, and that *in such cases in the absence of any special pleading or proof of any such commitments and expenditure having been made or incurred by the plaintiffs to their detriment, legal injury cannot be inferred from the mere default or breach committed by the employees concerned.*

Therefore, what we can understand is that a **"legal injury"** can occur from a breach of a employment bond, only when the employer has fulfilled his part of the bond/ contract, and he has to prove the same before the Court while claiming such amount.

[10] *1996 SCC OnLine Mad 36.*

- Now there are various scenarios possible with respect to such employment bonds. The **first scenario** we will see here is whether an employee will have to pay the penalty amount where the employer has trained him, but did not perform his part of the contract fully.

For instance, where as per the contract, the employer had to train a person A for 3 months, and thereafter send him to country X for work, and the employer after such period of 3 months has not sent A to country X for work, the employer *does not* stand at a position to say that if A resigns and/or takes up a different job, he would sue him for compensation/penalty as agreed in the contract.

In ***M. Sham Singh v. State of Mysore***[11], the Hon'ble SC had dealt with a bond that said *if within six months after the employee's training, the Mysore State Government (employer in that case) did not find employment for him they shall be deemed to have waived their right to claim his services and the employee shall, thereafter, be at liberty to seek employment elsewhere.* Hence in that case the Courts had to work around the six month period to determine the liability of the employee.

What if in such employment bonds, the time period is not specified? For instance, where it is said that after training, the employee would be sent to country X for work, but it hasn't been clarified as to time limit within which he would be sent there after training.

Let us first look at Sections 51 and 52 of the Contract Act, 1872:-

Section 51 reads,

"51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.—*When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise".*

Section 52 reads,

[11] *(1973) 2 SCC 303.*

*"**52. Order of performance of reciprocal promises.**—Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires."*

These provisions make it evident that where one party is not "ready and willing" to perform his part of the contract (his promise), the other party is not bound to perform his part of contract (his promise). Further, where there is a order fixed by the contract for the performance of these promises, the same shall be followed.

Applying this principle here, it can be said that where an employer does not show that he is ready and willing to send the trained employee abroad, such employee is not bound to perform his part of the promise, which is staying with and serving the employer's establishment/office for some fixed term.

The words **"ready and willing"** have also been interpreted by various Courts over the years. The Madhya Pradesh HC in the recent case of ***Kailash Chand Agrawal v. Rajendra Prasad Singla***[12] has said that "readiness" refers to the capacity of the party, including his financial capacity, and "willingness" has to be determined by properly scrutinizing his conduct, and the attending circumstances. It was further said that the Court may infer from the facts and circumstances whether the plaintiff was ready and willing to perform his part of the contract. The Court had taken into consideration several judgments of the Hon'ble SC before arriving at such a conclusion.

The Hon'ble SC in ***C.S. Venkatesh v. A.S.C. Murthy***[13], while dealing with an issue pertaining specific performance, held that, ***"The words ready and willing imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of***

[12] *2023 SCC OnLine MP 2127.*
[13] *(2020) 3 SCC 280.*

performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances".

Hence, where there is no fixed time limit mentioned in the employment bond, and the employee has resigned after a certain period or has found employment else where, the employer can file a suit for compensation and get a decree in that regard, only if the Court is able to infer from the facts and circumstances that the employer was ready and willing to send the employee abroad - say, the Visa process was still on-going, or the employer had readied necessary documents to send the employee abroad, so on and so forth. Obviously this is coupled with the employer's burden to prove *legal injury* as discussed above.

So, to sum up, in these train-and-send-employee-abroad cases, the employer has to prove the legal injury sustained by demonstrating the special training he had given the employee, and thereafter show he was ready and willing to send him abroad, but he resigned, therefore breaching the contract terms. <u>The same would also apply for those cases where work is supposed to be given/allotted after training (even if not abroad).</u>

- The **second scenario** is the employee resigning from service after serving for a certain period of time. In these cases, will the employee have to pay the entire compensation amount as agreed between the parties in the bond?

For this, we will have to look into 2 cases: ***Nazir Maricar v. Marshalls Sons and Company (India) Ltd.***[14]***,*** decided by a Division Bench of the Madras HC, and ***V.S. Saini v. D.C.M. Ltd.,***[15] decided by a Single Judge of the Delhi HC.

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[14] *2004 SCC OnLine Mad 776 : (2005) 1 MLJ 659.*
[15] *2012 SCC OnLine Del 2317.*

In ***Nazir Maricar (supra)***, the employment bond was for a period of 5 years after training, and the penalty was Rs. 30,000/-. The Court-below had ordered the appellant therein to pay such amount with an interest of 12% from the date of the decree. The Madras HC had reduced the amount to Rs. 21,000/- stating the appellant had already served 18 months, therefore such period (1.5 years) has to be deducted from the 5 year period, and the compensation has to be proportionately calculated. Further, the Court also reduced the interest rate to 6% (from the date of such order).

Similarly, in ***V.S. Saini (supra)***, the Delhi HC had an occasion to deal with an employment bond that stated that where the employee was terminated from service by the employer himself, then the compensation amount payable would be proportionate to the time such employee has not served. The employee had served a period of about 13 months out of the agreed period of 5 years, before resigning. He had paid a compensation of Rs. 3,75,000/- (proportionately, considering the time period he hadn't served) out of the total amount of Rs. 5,00,000/- as agreed in the bond. The employer had filed a suit for the recovery of the remaining Rs. 1,25,000/- along with an interest of 12% per annum. The Court observing that termination of service being a much more serious aspect than voluntary resignation, stated that ***"if because of the misconduct or any other serious act of an employee there is termination of services and still the respondent/plaintiff in such serious circumstances, mentioned in Clause 5 of the agreement, is entitled only to ask for proportionate payment for the unserved period of the service contract, then surely on a lesser issue of simple resignation from service, it is open to the appellants to content that only proportionate amount of the surety bond is payable."***

- **Another interesting scenario is where the bonds do not specify the penalty/ compensation amount.**

For instance in ***Permali Wallace Ltd., Bhopal v. K.T. Shamsunder***[16] , the Madhya Pradesh HC dealt with a bond that had a clauses stating, *"If the employer sends the Employee abroad for training or any other purposes and the*

[16] *1979 SCC OnLine MP 20.*

Employee leaves the services before expiry of the contract of service, the Employee shall be Sound to reimburse to the Employer all the expenses incurred by them for such foreign visit. The amount of such expenses calculated by the Employer shall be final and the Employee shall have no right to question the same", and "*It is hereby agreed and declared that if the Trainee desires to leave the services of the Company before the completion of five years, he can do so only after reimbursing to the Company all the expenses incurred by the Company for such foreign visit, and after complying with any other conditions included in his existing contract of service.*" *(Emphasis supplied)*

In this case, the employer had sent a notice spent a sum of Rs. 34,730 for his specialized training in U.K., and as such, the employee was, according to the terms and conditions of the services, liable to pay this sum and after the payment of this sum, he would be relieved on the date desired by him. (The complete facts and the decision rendered in this judgment is vast and not the subject of this discussion, hence I'm not going further into it).

What are the terms/clauses your employer has included in your employment bond?

If you need a legal opinion regarding your or your client's employment contract, you can consult me through e-mail (www.lawyerssocietyofficial@gmail.com) or through Whatsapp (+91 9840718196).

OBSERVATIONS IN BRIEF

The Madras High Court follows the principle laid down by it's Division Bench in ***G. Prabakaran v. The Superintendent of Police (2018 SCC OnLine Mad 14003: (2018) 5 CTC 623)***, as per which a petition under Section 482 of Cr.P.C., to direct the police to register an FIR can be filed only after **15 days** from the date of first providing the information to the SHO of a police station. That too, it is permissible only when the remedies provided u/s 154(3) nad 156(3) is availed first. Remedy u/s 156(3) may be eschewed only in exceptional and rarest of rare cases, depending on the "*monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment*".

Not notifying the informant/victim for hearing a bail application is a factor for the cancellation of bail granted - see Section 439(1A) Cr.P.C. - ***Jagjeet Singh v. Ashish Mishra @ Sonu, ((2022) 9 SCC 321)***. Such hearing is also expanded to include the victim's right to be heard even in petitions where an accused seeks anticipatory bail/ a convict seeks suspension of sentence, parole, furlough, or other such interim relief - ***Saleem v. State of NCT of Delhi, (2023 DHC 2622)***. In the event the informant/victim does not appear before the court despite service of notice, the concerned court shall proceed to consider the bail application on its merits after having recorded that service of notice on the informant/victim is completed - ***Informant v. State of Karnataka, (CDJ 2023 Kar HC 1585).***

The High Court can exercise its revisional jurisdiction in a revision petition filed by the first informant where the trial court overlooked material evidence - ***Menoka Malik v. State of West Bengal ((2019) 18 SCC 721), Honnaiah T.H. v. State of Karnataka (Crl. Appeal No. 1147/ 2022, 04.08.2022)***.

"If a person who loses his vehicle comes up with the complaint to the police, the police shall issue him a CSR receipt immediately. If after enquiry, it is found that the financier has not seized the vehicle and that the person had really lost the vehicle, the CSR should be converted to an FIR so that the victim does not lose his right to make a claim from the insurer on the ground of delay in lodging the complaint" - ***Sugesan Transport Pvt. Ltd. v. Assnt. Commissioner of Police (2016 (2) LW Crl. 499).***

Short Article: WRIT PETITION IN CIVIL DISPUTES - RECENT CASE LAWS

A writ petition is filed under Article 32 or 226 of the Indian Constitution against statutory authorities to enforce the fundamental rights of an individual. It goes without saying that a writ petition is not maintainable against private individuals/bodies to enforce rights arising out of contracts /disputes between such individuals/bodies.

Where questions of facts are involved in a civil dispute, the extraordinary jurisdiction that is the writ jurisdiction is not exercised to grant any relief. More so, where the dispute is between private individuals, the petition itself would not be maintainable. In ***Roshina .T v. Abdul Azeez K.T.***[17], the Hon'ble Supreme Court set aside an order of the Kerala High Court wherein it had granted an order in a writ petition where the dispute was between private individuals with regard to the possession of a flat. The Hon'ble SC observed,

"10. In our considered opinion, the writ petition filed by the respondent No. 1 under Article 226/227 of the Constitution of India against the appellant before the High Court for grant of relief of restoration of the possession of the flat in question was not maintainable and the same ***ought to have been dismissed in limine as being not maintainable****. In other words, the High Court ought to have declined to entertain the writ petition in exercise of extra ordinary jurisdiction under Article 226/227 of Constitution for grant of reliefs claimed therein."* (Emphasis supplied)

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[17] *(2019) 2 SCC 329.*

It was said that the material considerations involved in the petition were purely questions of fact that could be answered only by the Civil Court in a properly constituted civil suit, and not a writ petition filed under Article 226. It was further observed that a writ would not be maintainable unless there was any allegation of violation of a statutory duty by a statutory authority. Relying on it's earlier decision in ***Mohan Pande v. Usha Rani***[18] and ***Dwarka Prasad Agrawal v. BD Agrawal***[19], it said that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that constitutional jurisdiction shall not be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available, since it is not intended to replace the ordinary remedies by way of a suit or application available to a litigant.

Such decision in ***Roshina .T*** has been followed by the J&K High Court in ***Mst. Khati v. State of J&K***[20] and ***Paras Ram v. State of J&K***[21], the Calcutta High Court in ***Harbhajan Kaur v. State of West Bengal***[22], the Delhi High Court in ***Draka Gram Vikas Samiti (Regd) v. North Delhi Municipal Corporation***[23], the Madras High Court in ***K. Rajamanickam v. District Collector***[24], ***M.R. Abubacker v. Chief Executive Officer***[25] and ***I. Jayamurugan v. State***[26], the Gujrat High Court in ***Jaagabhai Indubhai Saraiya v. District Registrar Co-Operative Socieites***[27], the Jharkhand High Court in ***Chandar Devi v. Bharat Coking Coal Ltd.***[28], the Kerala High Court in ***Dr. C.S. Premavathy v. Divisional Forest Officer Nilambur***[29], the Allahabad High Court in ***Suman Singh v. District Magistrate***[30]. In all these cases, the High Courts have ruled against the petitioners/appellants since they could approach another appropriate forum in such civil disputes, and a writ is not maintainable to decide dispute between private individuals.

[18] *(1992) 4 SCC 61.*
[19] *(2003) 6 SCC 230.*
[20] *2018 SCC OnLine J&K 979.*
[21] *2019 SCC OnLine J&K 479.*
[22] *2020 SCC OnLine Cal 517.*
[23] *2020 SCC OnLine Del 2491.*
[24] *2022 SCC OnLine Mad 8081.*
[25] *2023 SCC OnLine Mad 2484.*
[26] *2023 SCC OnLine Mad 4449.*
[27] *2019 SCC OnLine Guj 2138.*
[28] *2020 SCC OnLine Jhar 1439.*
[29] *2022 SCC OnLine Ker 4498.*
[30] *2022 SCC OnLine All 720.*

Short Article: **FIGURING OUT THE RATIO-DECIDENDI OF JUDGMENTS**

The Hon'ble Supreme Court in the case of ***State of Gujarat v. Utility Users' Wellfare Association***[31], referred to Eugene Wambaugh's (a Harvard Law School professor) "The Study of Cases" published in the year 1892, in order to determine the ratio decidendi of a cited case. Professor Wambaugh had come up with what is called the "inversion test" that can be used to identify the *ratio decidendi* in any judgment. The following are the words of Professor Wambaugh quoted by the Hon'ble SC in ***Utility Users' (supra)***:-

".....In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also...."

A bare reading of Mr. Wambaugh's words seem to mean that a proposition of law discussed in a judgment will be the *ratio decidendi* of such judgment, when a word is inserted to reverse the meaning of it, and by changing the meaning of it, the decision rendered by the Court will have changed, considering the change in meaning as mentioned above.

The Hon'ble Supreme Court applied this principle taking it to mean that *the particular text has to be removed from the judgment as if it did not exist, and if the conclusion of the case*

[31] *(2018) 6 SCC 21.*

would still have been the same without examining the proposition (so removed), then it cannot be regarded as the ratio decidendi of the case.

This principle, as applied by the Hon'ble SC, has subsequently been followed in ***Nevada Properties (P) Ltd. v. State of Maharashtra***[32], ***Career Institute Educational Society v. Om Shree Thakurji Educational Society***[33], ***P. Vetrivel v. P. Dhanabal***[34], ***Sandeep Yashwantrao Sarode v. ECI, New Delhi***[35], ***Western Coal Fields Ltd., v. Presiding Officer, Appellate Authority***[36], ***Air India Ltd. v. Captain Vibha Parashar***[37], ***Ardwin Lyngdoh v. State of Meghalaya***[38], ***Vijay Suryakant Kakade v. Anushka Vijay Kakade***[39], ***Maroti v. Deputy Director & Member Secretary, Scheduled Tribe Caste Certificate Scrutiny Committee***[40], ***Devas Employees Mauritius Pvt. Ltd. v. Antrix Corporation Ltd.***[41]

-x-x-

OBSERVATIONS IN BRIEF

Appearance of power agents in matrimonial cases: There is no legal impediment under the Family Courts Act, for a Power of Attorney to appear on behalf of the Principal and the only legal embargo is that the recognised agent should not be a legal practitioner. Any person, not being a legal practitioner, can be nominated as an agent under Order 3 Rule 2 CPC, to prosecute or defend the parties and until the Family Court passess any specific order, directing appearance of the party, depending upon the facts and circumstances of the case. The Family Court before returning any application filed under Order 3 Rule 1 CPC., shall ascertain and get a declaration from the recognised agent that he is not a legal practitioner, preferably, in the supporting affidavit, filed along with the petition under Order 3 Rule 1 CPC - ***Terance Alex v. Mary Sowmya Rose (Madras High Court, 2011 2 L.W. 84)***

Family Court has the discretion to record evidence through video conferencing in a divorce case, where parties are residing abroad - ***Sudha Ramalingam v. Registrar General (2014 SCC OnLine Mad 957: (2014) 2 LW 599 Mad (DB).***

INTERIM COMPENSATION UNDER SECTION 143A OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - MANDATORY OR DIRECTORY - CASE LAWS DISCUSSED

Section 143A of the Negotiable Instruments Act, 1881 (hereinafter "Act"), was inserted by Act 20 of 2018, dated 02.08.2018 (w.e.f. 01.09.2018). This section provides the Court trying check-bounce offence with the power to direct the accused to pay an interim compensation to the complainant. As per this provision, in a summary trial or a summons case, the Court may order such interim compensation at the stage after the accused pleads not guilty to the accusation made in the complaint, and in any other case, upon framing of charge. Such compensation could be upto 20% of the cheque amount. The provision being relatively new, it is yet to be settled by the Hon'ble Supreme Court as far as the question of whether such compensation is mandatory or not, is concerned.

Photo credits: The New Indian Express

The earliest decision pertaining S. 143A of the Act can be seen in ***Ajay Vinodchandra Shah v. State of Maharashtra***[42], where the Bombay High Court observed that Section 143A ***"leaves discretion to the trial Court to pass such order of interim compensation and if such interim direction is given, the ceiling limit under section sub-section (2) of 20% of the cheque amount is prescribed."***

[42] *2019 SCC OnLine Bom 436.*

On the contrary, the Kerala High Court, in the case of ***Jisha v. State of Kerala***[43] had made an observation that the provision is mandatory, since at the time of an accused pleading not guilty or at the time of framing of charge, as the case may be, the allegation cannot be identified as "scrupulous or unscrupulous". Using such logic, a single Judge of the Court made a conclusion that although sub-section (1) of Section 143A uses the word "may", the same shall be interpreted as "shall", and an interim compensation must be imposed on all accused persons irrespective of the amount involved in the complaint.

In July 2019, the Madras High Court in ***L.G.R. Enterprises v. P. Anbazhagan***[44], held that the legislature has intentionally avoided using the word "shall", and made an observation that requiring an accused to mandatorily deposit such amount will directly affect his fundamental right to defend himself in a criminal case. It was said that the discretion when exercised, must be supported by reasons, failing which the exercise of such discretion will become arbitrary. The Learned Judge also laid down illustrative circumstances where the trial Court may order such interim compensation, *"whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and*

[43] *2019 SCC OnLine Ker 3437.*
[44] *2019 SCC OnLine Mad 38991.*

***brought before the Court after a long time** or **he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act**. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant."* (*Emphasis supplied*)

These factors were also mentioned by another Learned Judge of the Madras High Court in the case of ***K. Ranjithkumar v. K. Mathivanan***[45], where it eventually set aside an order of the trial Court that granted an interim compensation, since the reasons stated in such order were not proper, and the Court had exercised it's discretionary power suo-moto, in the absence of any application by the complainant.

The Chattisgarh High Court in ***Rajesh Soni v. Mukesh Verma***[46], considered the plight of the complainants who is ***"already suffering double-edged sword of loss of receivables by dishonor of the cheque and the subsequent legal costs in pursuing claim and offence".*** Relying on the purpose behind the provision, the Court concluded that the provision is mandatory in nature. Again taking a contrary view, the Karnataka High Court in ***Jahangir v. Sri. Farooq Ahmed Abdul Razak***[47], found Section 143A to be directory/ discretionary. However, there was no observance made in both ***Rajesh (supra)*** and ***Jahangir (supra)*** to any earlier decisions on this issue.

Subsequently, the Delhi High Court in ***JSB Cargo and Freight Forwarded Pvt. Ltd. v. State***[48], overruled an order of the trial Court that held Section 143A to be mandatory. The trial Court had been faced with the complainant relying on the decision of the Chattisgarh High Court in ***Rajesh Soni (supra)***,

[45] *2021 SCC OnLine Mad 12532.*
[46] *2021 SCC OnLine Chh 1761.*
[47] *Kalaburagi Bench, Crl. Petition No. 201213/ 2020.*
[48] *2021 SCC OnLine Del 5425.*

and the respondents relying on ***L.G.R. Enterprises (supra)*** and ***Jahangir (supra)***. After considering the arguments on both sides, the trial Court had concluded that *"a bare perusal of Section 143-A of the NI Act reveals that, at the stage of awarding interim compensation, the Court is not required to consider the strength of defence of the accused and the same is immaterial at this stage. Although, the arguments led on behalf of the accused may seem attractive at the first blush, the same cannot be gone into by the Court, at this stage, as it would amount to a mini trial".* The trial Court observed that there were no authoritative judgments on this issue pronounced by the Hon'ble Supreme Court or the Delhi High Court (to which it was subordinate), and even if the provision is held to be directory, it was inclined towards using such discretion against the accused in such case. The Delhi High Court overruled this by stating the provision is only directory.

The Jammu & Kashmir High Court too took the view[49] that the provision is only directory. It made similar observations to those made in ***L.G.R. Enterprises (supra)*** by the Madras High Court, and said, *"....Some of the reasons for granting interim compensation may be that the accused absconds and avoids to appear before the Court despite service or there is overwhelming material on record to show that the accused is liable to pay an enforceable debt or that the accused is guilty of protracting the proceedings by avoiding to cross-examine the witnesses or producing his evidence. There can be so many other reasons for a Magistrate to grant interim compensation in favour of the complainant but these reasons have to be recorded in the order so that the validity of the order is tested by the superior court if and when such an order is challenged."* *(Emphasis supplied)*

A comprehensive analysis of the aforesaid cases and several other precedents, was made by the Bombay High Court in the case of ***Ashwin Ashokrao Karokar v.***

[49] *Nazir Ahmad Chopan v. Abdul Rehman Chopan, 2022 SCC OnLine J&K 986.*

Laxmikant Govind Joshi[50], where the Court, after considering a series of case laws that called the provision mandatory, and those that called it directory, made an independent analysis before concluding that the provision does not create right that the complainant is entitled to enforce. The Court also laid out that such compensation may be granted after considering factors such as:- ***(a) whether the requirements of Section 138 of the N.I. Act, were fulfilled, (b) whether the pleadings disclose the drawing of the presumption, (c) whether the proceedings were within limitation, and (d) whether prima facie a legal debt or liability was disclosed from the complaint or the notice of demand preceding it.***

Despite these decisions rendered after ***Jisha (supra)***, the Kerala High Court still continues to follow the interpretation of Section 143A as laid down in ***Jisha (supra)***. Recently, in the case of ***Faizal Abdul Samad v. A.N. Sasidharan***[51], it reiterated such interpretation with acceptance, although it overruled an order of the trial Court since it's order lacked reasons for awarding 20% cheque amount as interim compensation. The Court, despite being aware of the law proposed in ***Jahangir (supra)***, ***Nazir Ahmad (supra)***, still sided with the view of it's co-ordinate bench in ***Jisha (supra)***.

Although it is upto the High Courts concerned to rely on the earlier decisions made by a co-ordinate or larger bench of the same High Court, it does not stop such High Courts from taking a contrary view, after being informed of such decisions of various other High Courts that were made subsequent to the decision made in your own. We shall have to wait to see whether there will soon be a ruling from the Hon'ble Supreme Court that will settle the issue, and if it does decide the provision is directory, it may well establish factors to be borne in mind by the trial Judge, before exercising his discretion.

The doctrine of ***State Decisis*** does not bind a High Court where the decision(s) of other High Court(s) is concerned. Therefore, the High Courts can each have varying views on the interpretation of provosions of a Central Act, except when there is an authoritative pronouncement on the same from the Hon'ble SC.

[50] *2022 SCC OnLine Bom 8577.*
[51] *CDJ 2023 Ker HC 1303.*

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HOLDING OVER - LEASE - INTERPRETATION OF S. 116 of TRANSFER OF PROPERTY ACT

Collecting rent after the lease period is over (or in legal terminology, determined), or otherwise assenting to the lessee or under-lessee to continue having possession of such property, is seen as implicitly **renewing** the lease itself.

This is covered by Section 116 of the Transfer of Property Act, 1882, which reads:

*"**116. Effect of holding over.**—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."*

As can be seen from this provision, the renewal happens only when there is no "agreement to the contrary".

In ***Shanti Prasad Devi v. Shankar Mahto***[52], the Hon'ble Supreme Court upheld the decisions of the Courts below stating that *mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lease even after expiry of the lease period.* It was so because the lease agreement itself

[52] *(2005) 5 SCC 543.*

had two clauses stating the manner in which the lease the lease had to be renewed. The Court held that such clauses in the lease agreement fell within the requirement of an **"agreement to the contrary"** provided under S. 116 of the Act. Paragraphs 18 and 19 of it's judgment are extracted down below:-

"18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying 'assent' to the continuance of the lessee even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in clause (7) read with clause (9) required fulfillment of two conditions; first the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions afor the renewed period of lease by mutual consent and in absence thereof through the mediation of local Mukhia or Panchas of the village. The aforesaid renewal clauses (7) & (9) in the agreement of lease clearly fell within the expression 'agreement to the contrary' used in Section 116 of the Transfer of Property Act Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specific clauses (7) & (9) for seeking renewal there could be no implied renewal by 'holding over' on mere acceptance of the rent offered by the lessee.

19. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was 'holding over' as a lessee within the meaning of Section 116 of the Transfer of Property Act."

On the other hand, in the case of ***Shriniwas Govind Mudholkar v. Dattatraya Mahadeo Ranade***[53], the Bombay High Court had an occasion to deal with a lease deed which had a clause stating, ***"If I am allowed to remain on the land as a tenant, I would execute a new rent note but that will solely depend upon the sweet will of the plaintiff No. 1 and if there is no new agreement about the lease, we would dispose of the structure constructed by us through you if the price is agreed upon and if I desire to vacate the suit land I would give you two months' notice. Otherwise, I would be liable for damages."***

In that case, the Court observed that since there were no terms in the lease agreement in respect of the renewal, that it only required the execution of a new rent note by the tenant, the same was only procedural, and because the landlord had accepted rent, his conduct showed that the lease was renewed. Paragraphs 21 and 22 of the said judgment are extracted here:

"21. In appreciating the above submission made on behalf of the plaintiff No. 1, it may be seen that the expression "an agreement to the contrary" used in Section 116 of the T.P. Act would mean in its proper context ***an agreement, which settles the terms of the holding over, viz. an express agreement which would determine the duration and the terms of the renewed lease.*** *The recitals in the lease-deed, Ex. 22, do not stipulate any terms about the renewed lease including its duration. The only thing which is indicated in the above recitals is that the defendant No. 1 would execute a new rent note. Therefore, in the absence of any terms being indicated by any express agreement the renewal of lease would be from year to year or from month to month according to the period for which the property is leased as provided in Section 106 of the T.P. Act.*

22.However, even assuming that the expression, "an agreement to the contrary" used in Section 116 of the T.P. Act were to mean that an agreement stipulating express prohibition for the

[53] *1987 SCC OnLine Bom 39.*

renewal of the lease, no such prohibition can be spelt out from the lease-deed, Ex. 22 the instant case. On the contrary, the above recitals in the lease deed show that the lease can be renewed by the plaintiff No. 1. It is true that it also provides that a new rent note should be executed. However, in my view, the above provision is merely procedural and if in fact the conduct of the parties shows that the lease is renewed or a new lease is created, then only because no document is executed, it would not mean that no new lease is created between the parties. The conduct of the plaintiff No. 1 in allowing the defendants to remain on the land and in accepting the rent from the defendant No. 1 would show that the lease is created by him in his favour by holding over as provided in Section 116 of the T.P. Act. As already pointed out the correspondence between the plaintiff No. 1 and the defendant No. 1, exhibits 51 to 55, would show that the plaintiff No. 1 had consented to the lease of the defendant No. 1 after the expiry of the initial lease as from time to time he has claimed from him enhanced rent. Therefore, merely because a new rent note is not executed it would not mean that there is no lease created between the parties in the instant case. At any rate, the above recitals in the lease deed do not militate against the creation of lease by holding over. The above contention on behalf of the plaintiff No. 1, therefore, deserves to be rejected." *(Emphasis Supplied)*

When we read the said clause in the lease deed, it is obvious that since tenant was subsequently allowed to remain on the property by the landlord, who also collected rent, the inference that can be drawn is that the landlord had consented to the renewal of the lease, with only the new rent note yet to be executed.

In ***Sarup Singh Gupta v. S. Jagdish Singh***[54], a suit was filed after 2 notices were served to quit, but while the suit was pending, the tenant had offered rent, which the landlord had accepted. The Hon'ble SC considered the law established in ***Shanti Prasad Devi (supra)***, and also took note of the fact that the landlord was still prosecuting the tenant while

[54] *(2006) 4 SCC 205.*

accepting the rents paid from time to time, before concluding that hence mere acceptance of rent did not mean that he had waived the notice to quit and treated the lease as subsisting. It was observed that, *"To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit* ***unless there be any other evidence to prove or establish that the landlord so intended****. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise."* *(Emphasis supplied)*

In another interesting case[55], the Calcutta High Court was approached by a tenant claiming his lease was renewed because the landlord had accepted rent for the month that came immediately after the lease period had ended. The landlord pleaded that he had accepted the rent under misconception as he was mislead by the date of execution of the deed of lease, and the moment he noticed such mistake, he immediately returned the rent to the lessee by money order. The Court observed,

"16. The basis of section 116 of the Transfer of Property Act is a bilateral contract between the erstwhile lessor and erstwhile lessee. Therefore, to create a new tenancy, there must be a bilateral act. There must be an offer of accepting a renewed or fresh demise and there must be a definite assent expressed by the lessor. Mere acceptance of an amount equivalent to rent by the erstwhile lessor cannot be regarded as evidence of new tenancy. The expression "holding over" means that relationship of landlord and tenant was allowed to continue with the consent of both the parties. It is for

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[55] ***Shila Roy Choudhury v. Nimai Charan Rakshit, Division Bench, 2006 SCC OnLine Cal 365.***

the lessee to prove the overt acts by which the relationship was allowed to continue."

From the above discussion, we may establish shortly that:-

1) Mere acceptance of rent will not mean that the landlord has renewed the lease, if there are express terms/clauses governing the procedure regarding the renewal of the lease, provided in the lease agreement/deed itself.

2) Where the landlord's conduct shows that he has insisted the tenant to quit, even though he was at the time receiving/accepting the rent being paid, it shall still mean that the lease was not renewed.

3) Where there are no express terms about the renewal of the lease mentioned in the lease agreement/ deed, and the landlord has collected/accepted rent after the lease period has ended, unless his conduct shows otherwise, it is to be treated that the lease had been renewed as per Section 116 of the Act.

-x-x-

OBSERVATIONS IN BRIEF

Not having a conclusive finding on the cause of an accident is not relevant in determining civil liability - ***Sanjay Gupta v. State of U.P., ((2022) 7 SCC 203).***

The mere fact that the cause of an accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant - ***Shyam Sunder v. State of Rajasthan ((1974) 1 SCC 690).***

"INCOMPLETE CHARGE-SHEET" AND STATUTORY BAIL

While it is the fundamental right of an accused person to be enlarged on bail once after his right to statutory/ mandatory bail accrues, the investigating agencies on the other hand have had their own technique to ensure continued custody of such accused persons. This technique is to file a chargesheet on or before the 60th or 90th remand day, as the case may be. Such filing of a chargesheet right before or on the last day of remand before which the right to statutory bail accrues to an accused, ensures the accused person is not let out on statutory bail by the Courts.

Recently, the Hon'ble Supreme Court, in the case of ***Ritu Chhabaria v. Union of India***[56], had allowed a Writ Petition filed by an accused person against whom a supplementary chargesheet had been filed by the CBI, observing that such chargesheet had been filed with a view to scuttle his right to

[56] *2023 SCC OnLine SC 502.*

default bail. The petitioner's husband had been arrayed as an accused only during further investigation made by the CBI. In this case, the counsel for the petitioner had argued that **the investigating officer had admitted in writing** in the supplementary report that the investigation was still on-going.

However, there are cases where the investigating officer does not admit in writing or in open court that the investigation was still on-going. For instance, in ***CBI v. Kapil Wadhawan***[57], the Hon'ble Delhi High Court had an occasion to deal with a similar case, i.e., statutory bail in light of an "incomplete chargesheet". In that case, the Sessions Judge had already ruled against the investigating agency, and the Delhi HC upheld such order stating, ***"Merely, filing of the chargesheet, whether incomplete or piecemeal cannot defeat the basic purpose of Section 167 (2) Cr. P.C. The Court at this stage, also cannot be expected to minutely appreciate the evidence, so as to ascertain whether the same is 'sufficient evidence or not'".***

In this case, there was no such admission made by the investigating officer, but **the counsels appearing for the respondent accused had made submissions in the form of tabular columns so as to compare the contents of the FIR with the contents of the chargesheet, and the averments made in the remand applications with the allegations in the chargesheet.** This was done in order to establish that the investigation was still at an early stage, considering the offence alleged was high in magnitude and a major part of the fraud was yet to be investigated, as the Court observed in it's concluding paragraphs.

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[57] *2023 SCC OnLine Del 3283.*

In these cases, it was either admitted by the investigating agency/officer that the investigation was still on-going, or it was evident from the available material that despite being given a certain remand period, the investigation had evidently not progressed from the contents of the FIR, and that even the averments made in the remand applications were not satisfied completely.

- Next up, **can an accused challenge a chargesheet as being "incomplete" on the ground that it dealt with only one or few of the accused persons, and the investigating agency is still investigating into the allegations made against the co-accused?**

The answer is **yes**. However, it must be seen that this ground cannot be taken in cases where the investigating officer is conducting a further investigation[58] based on material not available to him at the time of filing the chargesheet.

Supposing a situation where there are X number of accused persons, the officer cannot submit a report against certain accused and reserve the report against the rest. He may submit a negative report in respect of such other accused, but he cannot reserve the report, stating the investigation is still on-going in respect of such other accused. This was dealt with by the Hon'ble Madhya Pradesh High Court in the case of ***Hargovind Bhargava v. State of Madhya Pradesh***[59].

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[58] *Further investigation is one that is made after a chargesheet is filed. It comes under Section 173(8) of the Code. Such further investigation may result in a suppmentary report being submitted by the investigating agency.*

[59] *2016 SCC OnLine MP 12113.*

In ***Chitra Ramakrishna v. CBI***[60], the Hon'ble Delhi High Court made an observation that where the chargesheet is filed only in respect of certain offences in the FIR, leaving the rest as still pending, such chargesheet is "incomplete" and cannot defeat the accused person's right to default bail. Although the report was filed in respect of certain offences well within the 60 day remand period, the Court held in favor of the accused, granting him bail. The decision of the Court was upheld by the Hon'ble Supreme Court in ***SLP (Crl) 1550-1552/ 2023***, vide it's order of dismissal dated 13.02.2022.

Chitra (supra) was referred by the Hon'ble Delhi High Court subsequently in ***Riyazuddin v. State (NCT of Delhi)***[61] wherein the chargesheet was complete insofar as the allegations/offences in the FIR were concerned, but an investigation was still pending with regard to an offence subsequently uncovered during the course of the initial investigation. The Court held that since the investigation was completed in respect of those offences in the FIR, the chargesheet cannot be said to be "incomplete", and a supplementary report could be filed with respect to the offence uncovered during such investigation.

- However, there may be cases where such comparisons may be harder to draw (in the form of tabular columns), the investigating officers assert that the investigation is well and over, the report is complete as far as the existing accused are concerned, and also in respect of the offences named/ made out from the FIR. In such scenarios, **can the accused argue that the chargesheet is incomplete since Section 173(5) of the Code has not been complied with, and the investigating officer has not forwarded the relevant documents at the time of forwarding his report to the Court having power to take cognizance?**

[60] *2022 SCC OnLine Del 3124.*
[61] *2023 SCC OnLine Del 2073.*

Let us first see what is required as per Section 173(2) of the Code:

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

What is required under Section 173(5) of the Code (which need not be mandatorily required at the time of filing the chargesheet):

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

The earlier view can be seen in cases such as ***Matchumari China Venkatareddy v. State Of Andhra Pradesh***[62], ***Nagarajan v. State of Tamil Nadu***[63], and ***K.S.J. Kumar v. State***[64] where it has been said that a chargesheet not accompanied with those documents required under sub-section (5) of Section 173, are incomplete/defective chargesheets, and as such they cannot defeat the right of an accused to be released on default bail.

However, such view has changed subsequently, and this question has been settled by the Hon'ble Supreme Court in ***CBI v. R.S. Pai***[65] and ***Narendra Kumar Amin***[66]. According to the dictum laid down in both these cases, the word "shall" used in Section 173(5) of the Code is only directory and not mandatory, and the filing of a chargesheet fulfilling the particulars of Section 173(2) of the Code, amounts to filing of a complete chargesheet. Therefore, the absence of documents required u/s 173(5), does not by itself make a chargesheet "incomplete". This was further reiterated by the Hon'ble Bombay High Court in the case of ***Kapil Wadhawan v. CBI***[67], where it relied on ***R.S. Pai (supra)*** and ***Narendra Kumar Amin (supra)*** to conclude that not filing documents and statements of witnesses along with the chargesheet, does not make it incomplete, as long as the necessary information required to be provided u/s 173(2) of the Code has been complied with, and the ingredients of the offence alleged is present in it.

[62] *1994 Crl.L.J. 257.*
[63] *2004 (2) LW (Crl) 545.*
[64] *2006 (2) MWN (Crl) 414.*
[65] *3- Judges Bench, (2002) 5 SCC 82.*
[66] *Division Bench, (2015) 3 SCC 417.*
[67] *2020 SCC OnLine Bom 11655.*

➢ RECENT EVENTS:

Be it as it may, the Hon'ble Supreme Court, in ***Directorate of Enforcement v. Manpreet Singh Talwar***[68] is now considering the question of whether such ground can be taken by the accused persons claiming statutory/ mandatory bail, and has directed all Courts below to not grant such bail on such a ground. This is also an appeal made against one such order of the Hon'ble Delhi HC, where it has granted default bail on the ground of the chargesheet being incomplete. The Delhi HC had placed reliance on the judgment in ***Ritu Chhabaria (supra)***, and vide daily order dt. 01.05.2023, the Hon'ble SC has recalled such decision made in ***Ritu Chhabaria (supra)***, placing the matter before a Bench comprising of 3 Judges, in addition to observing that, *"In the meantime, in the event that any other applications have been filed before any other Court on the basis of the judgment of which recall is sought, they shall be presently deferred beyond 4 May 2023."* Such deferrence has been extended in subsequent daily orders, and a clarification was made vide daily order dt. 12.05.2023, wherein it has been stated that, ***"In continuation of the interim order of this Court dated 1 May 2023, we clarify that the order shall not preclude any trial court or, as the case may be, High Court from considering an application for the grant of default bail under Section 167 of the Code of Criminal Procedure 1973 independent of and without relying on the judgment dated 26 April 2023 in Writ Petition (Criminal) No 60 of 2023."***

At present, the Hon'ble Supreme Court is hearing a batch of cases, primarily considering the question whether a chargesheet can be termed "incomplete" for the purpose of

[68] ***Special Leave to Appeal (Crl). No. 5724/ 2023.***

granting statutory/ mandatory bail u/s 167(2) of the Cr.P.C.

CONCLUDING REMARKS:

In such background, we may ourselves draw some conclusions and await the decision of the Hon'ble SC in the said case. **The first of such conclusions** must obviously be that both the accused persons and the investigating agencies may exploit the decision of the SC, if it were not detailed enough to exclude such misuse. For instance, if the Hon'ble SC were to just discuss these precedents, and conclude that default bail may be granted in such cases, and leaves it there without giving a proper framework which would aid the Courts in deciding whether a chargesheet is complete or not, it would still end up giving rise to unnecessary litigation, and a lot of mischief, both on part of the accused persons, and on part of the investigating agencies.

The second conclusion is our own framework:-

1) A chargesheet is complete if the information required under Section 173(2) of the Code is provided in the report forwarded to the Court empowered to take cognizance.

2) A chargesheet is complete if the offences "made out" from the allegations in the FIR are all investigated completely. The term "made out" necessarily rules out those offences (penal provisions) the investigating officer may have missed to add in the FIR, or those offences (penal provisions) he added, but are not made out from the allegations in the FIR. This in essence means that the chargesheet is complete when the allegations (information provided u/s 154 CrPC) are investigation as such.

3) There maybe cases where no accused is named by the informant/de-facto complainant, or even in suo-moto cases. Such being the case, the investigation is complete if **all the accused** (whether named or not in the FIR) involved in committing the

offences so "made out" from the FIR, have been arrayed as accused persons, and the investigation against each of them is completed.

This means that where an offence not "made out" from the allegations per se is uncovered subsequently, the investigation with regard to such offence(s) and any accused (whether or not they are accused of the offences "made out" from the FIR) who is alleged to have committed such offence uncovered subsequently, will not be an issue while determining whether the chargesheet submitted in respect of the offences "made out" from the FIR (and the accused involved in them) is "complete" or "incomplete".

The investigation in respect of such offences uncovered during the course of the investigation, can be completed subsequently, and a supplementary report may be filed in such regard.

Illustration:

Say, A alleges B has committed a theft of Rs. 20,000/- from A's home, and a FIR is registered in respect of such allegation. During the course of the investigation, it is uncovered that B has also committed theft of an expensive watch at the same time of committing the theft of Rs. 20,000/-. But such offence not being a part of the allegations in the FIR, the details of such watch, and whether the accused sold it to somebody else, etc., need not form a part of the chargesheet for it to be "complete". The chargesheet needs to be complete only insofar as the theft of Rs. 20,000/- is concerned. Where B had claimed he had handed over such amount to a third party C to be kept in a locker, the chargesheet is complete only when the investigation into such claim is complete, and if found to be true, then in such case - the case against C has to be completed too. The investigation in respect of the stolen watch may be completed even subsequently and a supplementary report may be submitted for the same.

APPLICATION OF PROBATION OF OFFENDERS ACT, 1958

Section 4(1) of the **Probation of Offenders Act, 1958**, provides:-

"4. Power of court to release certain offenders on probation of good conduct.— *(1) When any person is found guilty of having committed an offence* ***not punishable with death or imprisonment for life*** *and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:*

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond." *(Emphasis supplied)*

The words "not punishable with death or imprisonment for life" have been given 2 different interpretations.

As per the Delhi High Court's observations in ***State v. Lucky***[69], if the minimum punishment for any offence is left to the discretion of the trial Court, then irrespective of the fact that such offence may have a maximum punishment of life or death, such offence is covered by Section 4 of the Act.

In paragraph 13 of it's verdict, the Court had held, ***"What would control and affect the applicability of the Probation of Offenders Act, 1961 would not be the maximum sentence prescribed for the offence, but whether the Court has a discretion to award a lesser sentence than the maximum, without there being any caveat with respect to the minimum sentence which has to be awarded for the offence. Since the Penal Code does not bar the exercise of judicial discretion in the matter of award of sentence for the offence under Section 394 IPC, Probation of Offenders Act, 1961 would be applicable".***

The Court relied on the Hon'ble Supreme Court's verdict in ***State of Gujarat v. Jamnadas G. Pabri***[70] wherein the word "expedient" in Section 4 of the Act had been interpreted to draw a conclusion that *Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.*

Taking this aspect it was concluded by the Delhi HC in paragraphs 14 and 15 as follows:-

"14. Any Court while exercising jurisdiction under Sections 4 & 6 of the Probation of Offenders Act, 1958 has to keep in view the nature of the offence and the conditions incorporated under the Act. It is only if the Court forms an opinion that it is expedient to release the convict on probation for good conduct, regard being had to the circumstances of the case, then only the benefit could be extended. The nature of offence

[69] *2017 SCC OnLine Del 8328.*

[70] *(1975) 1 SCC 138.*

is definitely one of the circumstances. The Court has the discretion to decide when and how it should form such an opinion..

15. Thus, merely because the maximum sentence of life could have been awarded under Section 394 of the Penal Code, 1860, it would be no ground for not granting the benefit of Probation of Offenders Act to the respondent. The Court has a discretion in matters of sentencing and the sentencing process would hinge on the nature and circumstances of the case".

Conversely, the Hon'ble SC itself held in ***Goverdhan Dass v. Chaman Lal***[71] that where an offence is punishable with life imprisonment (or death), there is no dispute that Section 360 of the Cr.P.C., 1973, or Section 4 of the Act are both inapplicable. In ***Goverdhan Dass (supra)***, such observation did not arise from a any analysis of precedents as such.

[71] *(2021) 14 SCC 757.*

- **Let us now try to understand why the interpretation given by the Delhi HC would work better:-**

There may be offences punishable with imprisonment for life, or with imprisonment which may extend to a number of years, or fine.

For instance, the offence of sedition u/s 124A of the Penal Code, 1872, is punishable with imprisonment for life, to which fine may be added, or with imprisonment which may extend to 3 years, to which fine may be added, or with fine.

Now, as per the interpretation given by the Hon'ble SC in ***Goverdhan Dass (supra)***, Section 4 of the Act cannot be applied for a conviction for offence u/s 124A of the IPC, since it is punishable with imprisonment for life (maximum).

Let us now take another case - an offence u/s 326B of the IPC (voluntarily throwing or attempting to throw acid) is punishable with minimum 5 years imprisonment and a maximum of 7 years imprisonment, along with fine. As per ***Goverdhan Dass (supra)***, Section 4 of the Act can be invoked to an offender convicted u/s 326B of the IPC.

That is, as per ***Goverdhan Dass (supra)***, although a minimum punishment for an offence u/s 124A is **fine** or imprisonment upto 3 years, Section 4 of the Act cannot be made applicable to it because the maximum punishment is imprisonment for life, and although the minimum punishment for offence u/s 326B is imprisonment for **5 years**, Section 4 of the Act can be invoked since the maximum is neither imprisonment for life or death.

Therefore it can be seen that the right and rational interpretation of Section 4 of the Act would be the one given by the Delhi HC in ***Lucky (supra)***, which is:

- ***Where an offence has a minimum punishment which is neither imprisonment for life or death, and the trial Court has discretion to give such a sentence, Section 4 may be invoked by such Court after considering the other parameters required to be considered for probation.***

- ***Where an offence is only punishable with imprisonment for life or death, Section 4 of the Act cannot be invoked.***

-x-x-

OBSERVATIONS IN BRIEF

CALLING FOR THE REPORT OF A PROBATION OFFICER IS MANDATORY:

"7. …The words "if any" occurring after the words "the court shall take into consideration the report" raise a doubt as to whether the Court is bound to call for a report from the Probation Officer. In the decisions referred to by me above, both the Orissa High Court and the Judicial Commissioner, Goa, Daman and Diu are of the view that obtaining such a report of the Probation Officer is mandatory since the sub-section says that the court shall consider the report of the Probation Officer and that the words "if any" does not mean that the court need not call for a report from the Probation Officer. ...

10. …Before deciding to act under S. 4 (1), it is mandatory on the part of the Court to call for a report from the probation officer and if such a report is received, it is mandatory on the part of the Court to consider the report. But if for one reason or the other such a report is not forthcoming, the Court has to decide the matter on other materials available to it…" - ***R. Mahalingam v. G. Padmavathi (Mad HC, 1978 LW (Cri) 182)***. Approved by SC in ***MCD v. State of Delhi ((2005) 4 SCC 605)***.

Complainant cannot challenge an order of probation by way of revision under Cr.P.C., since he can make an appeal under Section 11(2) of the Probation of Offenders Act. Such a revision petition will not be maintainable. But High Court may still use it's revisional powers depending on the facts of the case - ***(M.V. Nalinakshan v. M. Rameshan, 2009 Cr.L.J. 1703)***

NO FAULT LIABILITY INSURANCE CLAIMED BY THE BORROWER OF A VEHICLE: RECENT CASE LAWS

When X meets with an accident, and dies, or is permanently disabled, he need not plead that the driver of the offending vehicle was rash or negligent. Such owner of the offending vehicle or it's insurer will be liable to compensate X. This is called "no fault liability", and is covered by **Section 163A of the Motor Vehicles Act, 1988** (hereinafter "Act").

When Y borrows X's vehicle and meets with an accident, can Y claim compensation under Section 163A?

The answer can be explained in two-fold.

Firstly, to claim "no fault liability", the claimant has to be a third party to the accident.

Secondly, when Y borrows X's vehicle, he becomes the "owner" for the purposes of the Act. Since he is the owner, he cannot make a claim u/s 163A against the actual owner or insurer of the vehicle he has

borrowed. (Exception is when the person is employed under the actual owner, in which case he would be a third party, and a claim u/s 163A will be maintainable as against the actual owner or the insurer of such borrowed vehicle).

HOWEVER, a borrower can make a claim u/s 163A against the owner or the insurer of the offending vehicle, if any.

To explain this concept simply, we needn't go any further than peruse the judgment of the Hon'ble Supreme Court in ***Ramkhiladi v. United India Insurance Company***[72] where the claimant was a borrower, and the respondents were the actual owner and insurer of such borrowed vehicle. The Tribunal had ruled in favour of the claimant, whereas the High Court had set aside such order. In the appeal before the Hon'ble SC, it was observed,

"An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. ***Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle.*** *However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223.* ***It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company***

[72] *(2020) 2 SCC 550.*

of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponentowner Bhagwan Sahay. *Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable."* (Emphasis supplied)

It can be seen that the Hon'ble SC relied on the case of ***Ningamma v. United India Insurance Company***[73], where there was no offending vehicle, and the claimant, being a borrower, had made a claim against the actual owner and the insurer of the borrowed vehicle. In such a scenario in ***Ningamma (supra)***, it was observed that a claim can under Section 163A can only be made by a third party, not by a borrower against the actual owner or insurer of the vehicle so borrowed.

Whereas in ***Ramkhiladi (supra)***, the fact is that there was an offending vehicle, but the claimant had not added the owner or insurer of such offending vehicle as parties, and made a claim against them. Given such a scenario, the Hon'ble SC made a remark that if at all the borrower could have made a claim, it could've and must've been made against the actual owner and/or insurer of the offending vehicle.

This was once again reiterated in a subsequent paragraph, where it was said that, *"In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner,* ***the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.***" (Emphasis supplied)

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[73] *(2009) 13 SCC 710.*

The decision in ***Ramkhiladi*** has subsequently been followed in similar case-scenarios in ***New India Assurance Co. Ltd. v. Rama Vishram Gavas***[74], ***Divisional Manager M/s. United India Insurance Co. Ltd. v. C. Kumar***[75], ***United India Insurance Co. Ltd. v. Veena***[76], ***H. Subbraya Bhat v. Sulochana Bhat .H***[77]. In all these cases, there was an offending vehicle, but the claim was not made against the owner or insurer of such offending vehicle.

In ***C. Kumar (supra)***, it was observed by the Madras HC that the *owner and insurer of the TVS Suzuki motorcycle (offending vehicle) were not made as parties to the claim petition, hence, the petition is bad for non-joinder of necessary parties.* Therefore it was said that *the claim of compensation against the appellant is not maintainable as per law.*

Whereas in some other cases like ***New India Assurance Co. Ltd. v. Jothi***[78], ***Branch Manager, The United India Insurance Co. Ltd. v. K. Srikandan***[79], ***Jayalakshmi v. New India Assurance Company***[80], ***Divisional Manager, National Insurance Company Ltd. v. S. Muthu***[81], ***TATA AIG General Insurance Company v. A.C. Jagadeesann***[82], ***National Insurance Co. Ltd. v. Ravi Prakash Mishra***[83], ***Oriental Insurance Co. Ltd. v. Karuppuswami***[84] there was no offending vehicle at all.

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[74] *2022 SCC OnLine Bom 13.*
[75] *2020 SCC OnLine Mad 6264.*
[76] *2020 SCC OnLine Kar 4363.*
[77] *2021 SCC OnLine Kar 14956.*
[78] *2020 SCC OnLine Mad 8989.*
[79] *2021 SCC OnLine Mad 8375.*
[80] *2021 SCC OnLine Mad 7758.*
[81] *2022 SCC OnLine Mad 4221.*
[82] *2022 SCC OnLine Mad 4566.*
[83] *2023 SCC OnLine Del 7081.*
[84] *2021 SCC OnLine Ker 5997.*

- In all these cases, the view expressed in *Ramkhiladi (supra)* was re-iterated:-

✓ That where the owner has paid premium for ***personal accident coverage***, such amount as agreed in the terms of the insurance contract, may be claimed by even the borrower who has sustained an accident.

✓ That no claim can be made against the owner/insurer of the borrowed vehicle under Section 163A of the Act.

Therefore, we can ***conclude*** that if a client or client's family member had borrowed a vehicle, and met with an accident resulting in the client's permanent disability/the family member's death, a petition cannot be filed u/s 163A against the owner or insurer of the borrowed vehicle, but it can be filed against the owner or insurer of the offending vehicle, if any. In the absence of any offending vehicle, you may claim for the personal accident coverage as per the insurance contract terms of the borrowed vehicle.

OBSERVATIONS IN BRIEF

The Andhra Pradesh High Court in the case of ***Bharat Hybrid Seeds And Agro v. The State (1978 Cri LJ 61)***, has observed that an accused person needs to be given an oppurtunity of hearing before a Court condones delay under Section 473 of the Cr.P.C. It observed, *"When the Court extends that time, it means it is interfering with the rights of the accused which have vested in him by virtue of the expiry of the period of limitation. Therefore, even though there is no rule of law requiring the court to issue notice to the proposed accused and to give him an opportunity for meeting the case of the complainant in regard to the extension of time, interests of justice and principles of natural justice require that the condonation of the delay and extension of time can be done only after giving a reasonable opportunity to the proposed accused. It would be violating the very principles of natural justice and, in fact, the very spirit of the administration of justice, if a party is prosecuted in a Court of law after the period prescribed for the launching of the prosecution has been over and without giving him an opportunity to explain his case as to why the delay should not be condoned. Absence of a rule of law shall not enable the Courts to extend time for filing prosecution without hearing the proposed accused."*

STUDENTS SECTION

Basics of CrPC

How does an FIR come to be registered?

Section 154(1) - First Information Report in Cognizable Cases. What are cognizanble offences? Simply put, these are the offences for which a police officer does not need a warrant to arrest the accused. In simple words, we may presume the offences to be of serious nature.

What if you provide an information about the commission of a cognizable offence and the police officer does not register a FIR?

Section 154(3) - You can send a letter to the concerned Superintendent/ Commissioner of Police. It is understood that you must attach the complaint you had provided to the police under Section 154(1).

What if the concerned Superintendent/ Commissioner of Police does not take up the investigation or direct the registeration of a FIR?

Section 156(3) - You can file a petition before the concerned Magistrate. Such Magistrate may order the police to register a FIR and conduct investigation.

Section 200 - If you do not file a petition under Section 156(3), you can prefer a private complaint before the Magistrate under Section 200. This can also be done at any stage before, i.e., before Section 154(3) or even Section 154(1).

The Magistrate can convert a petition under Section 156(3) and treat it as one under Section 200, and take cognizance of the matter. Likewise, he may treat a private complaint under Section 200 as a petition under Section 156(3).

What is cognizance?

Cognizance taken by the Magistrate comes under Section 190. In general terms, it can be said that once a Magistrate, after perusing the materials available, takes the case into his hands (on his file), it can be said that cognizance has been taken.

FIR in non-cognizable cases?

When an information regarding non-cognizable offence is given, the police follows the mandate u/s 155 Cr.P.C. They will have to taken down the information in the police diary maintained for this purpose, and direct the informant to the Magistrate. Only after the Magistrate gives a direction to investigate, the police can register a FIR, and conduct an invesitgation into a non-cognizable offence.

What happens after a FIR is registered in any case?

The police will conduct an investigation as per the provisions contained in Chapter XII, and the rules framed by the concerned State Government in that regard.

What happens after the investigation is completed?

A police report is filed under Section 173 Cr.P.C. If no offence is made out, a negative police report is forwarded to the Magistrate having jurisdiction. Whereas, when an offence is made out, a positive police report/ charge-sheet is forwarded. The report shall consist of details provided u/s 173(2) Cr.P.C., and the police shall also forward all documents and statements recorded during investigation, as required u/s 173(5) Cr.P.C.

What happens after a police report is forwarded to the Magistrate having jurisdiction?

The Magistrate will take cognizance u/s 190 of the Code. The Magistrate can take cognizance irrespective of whether the report is negative or not.

The Magistrate may also order the police to conduct further investigation into the case, if he is not satisfied with the report.

Research Tip #1 for Law Interns

[This section will be updated monthly, with tips #2, #3, and so on being given in each issue]

When you (a law student) join any law chamber/ firm, one of the first areas where your senior looks for you is researching and finding case laws for some proposition. In some cases, it might be left to you to think of propositions. In some other cases, the senior might give you a proposition, but you may still apply your creative juices and come up with propositions that might interest your senior. But **BEWARE**, there may be seniors who are very specific, and may not immediately encourage you coming up with your own propositions, even if they are well-researched. But, there **ARE** seniors who will encourage and even enthusiastically approve your well-researched propositions, provided you are able to **CONVINCE** them with a neatly typed/ written version of it, and are able to give citations for the same. When you back your proposition with these, it might give the senior some confidence in your ability to individually apply yourself to the cases, look through the concerned provisions, find case laws, and finally type out a proper list of points conveying the same.

REMEMBER. When a senior asks for case laws, and gives specific propositions, you may not always be able to find them. **AND** the senior may not approve whatever you came up with either. **THEN**, it does not mean that you are wrong. It only means that the particular senior is more specific and demands only what he/she is looking for. With another senior, the scene may turn out differently!

Finding case laws is a **HABIT**. It requires time and patience, and the quality of your research will only **IMPROVE** over time. Some seniors will give access to journals like the SCC, LiveLaw, Manupatra, etc., Whereas most seniors do not have access to these journals, and in certain cases, even if they did, they may not immediately and willingly give you access to their account (which is understandable).

In a scenario where you do not have access to these journals (which is the majority, and so my first area of discussion here), you primarily rely on websites like indiakanoon, or casemine.

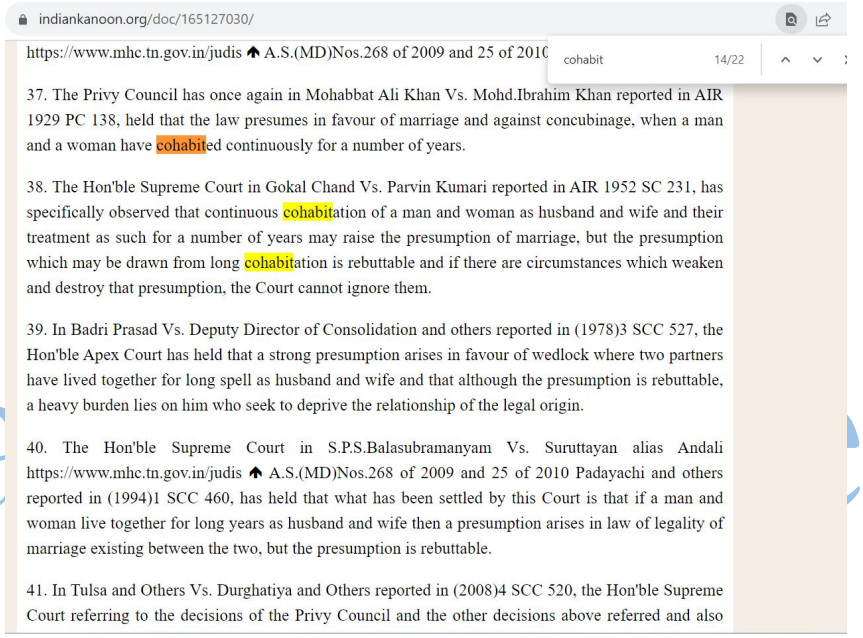
In journals, especially SCC, we find **HEADNOTES**, and pointers as to the important paragraphs in a given judgment. This gives a slight advantage and we can use these pointers to directly skip through the other paragraphs and move to the binding portions of the judgment. Whereas in indiakanoon, or casemine, there are no such headnotes, and we will have to find these paragraphs by ourselves.

This may be a simple task in relatively shorter judgments. But in a judgment that runs more than certain number of pages, you may wonder how to read through the entire case. The **KEY** is to understand the **KEYWORDS**, which could be related to the **PROVISIONS**, the **WORDS FROM THE PROPOSITION** that are

the key-words from such proposition, and so on.

For example, when you are looking for a judgment on the proposition that long cohabitation is proof of marriage, and you have found a judgment for it, you can use the search option to look for the word **"COHABITATION"**. The word may be repeated multiple times throughout the judgment, but only a few will come in handy. For identifying the useful areas, skip through all the others, until you find the area where the word **"COHABITATION"** has been used in a context that will serve your case.

Although the judgment may be on of a **HIGH COURT**, the case laws cited therein may be those of a **LARGER BENCH** of the same High Court or of the **SUPREME COURT**. As a result, you will now have more case laws for your senior.


indiankanoon.org/doc/165127030/

https://www.mhc.tn.gov.in/judis A.S.(MD)Nos.268 of 2009 and 25 of 2010

cohabit 14/22

37. The Privy Council has once again in Mohabbat Ali Khan Vs. Mohd.Ibrahim Khan reported in AIR 1929 PC 138, held that the law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years.

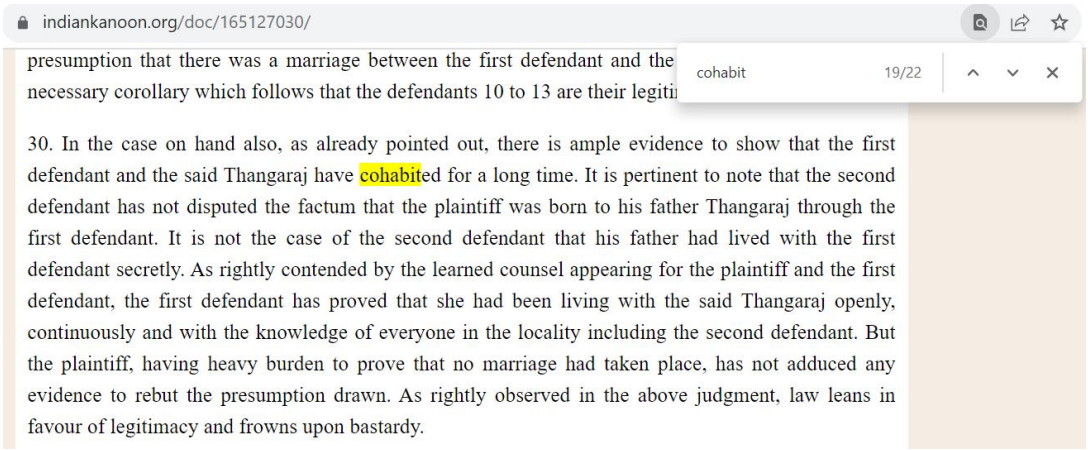
38. The Hon'ble Supreme Court in Gokal Chand Vs. Parvin Kumari reported in AIR 1952 SC 231, has specifically observed that continuous cohabitation of a man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

39. In Badri Prasad Vs. Deputy Director of Consolidation and others reported in (1978)3 SCC 527, the Hon'ble Apex Court has held that a strong presumption arises in favour of wedlock where two partners have lived together for long spell as husband and wife and that although the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of the legal origin.

40. The Hon'ble Supreme Court in S.P.S.Balasubramanyam Vs. Suruttayan alias Andali https://www.mhc.tn.gov.in/judis A.S.(MD)Nos.268 of 2009 and 25 of 2010 Padayachi and others reported in (1994)1 SCC 460, has held that what has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two, but the presumption is rebuttable.

41. In Tulsa and Others Vs. Durghatiya and Others reported in (2008)4 SCC 520, the Hon'ble Supreme Court referring to the decisions of the Privy Council and the other decisions above referred and also

Now, which portion of this judgment is the **CONCLUSION**? That can also be found by using the **KEYWORDS** in most cases: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presumption that there was a marriage between the first defendant and the

cohabit 19/22

necessary corollary which follows that the defendants 10 to 13 are their legiti

30. In the case on hand also, as already pointed out, there is ample evidence to show that the first defendant and the said Thangaraj have cohabited for a long time. It is pertinent to note that the second defendant has not disputed the factum that the plaintiff was born to his father Thangaraj through the first defendant. It is not the case of the second defendant that his father had lived with the first defendant secretly. As rightly contended by the learned counsel appearing for the plaintiff and the first defendant, the first defendant has proved that she had been living with the said Thangaraj openly, continuously and with the knowledge of everyone in the locality including the second defendant. But the plaintiff, having heavy burden to prove that no marriage had taken place, has not adduced any evidence to rebut the presumption drawn. As rightly observed in the above judgment, law leans in favour of legitimacy and frowns upon bastardy.

As an intern, you may be in situations where you are expected to find case laws when you are inside a Court-hall, and the case is about to come up, or is going on! If you develop the **HABIT** of skimming through judgments using **KEYWORDS**, you may be able to find case laws even while inside a Court-hall, despite all the nervousness that may come along with it.

ADDITIONALLY, one other important aspect you should be aware of is that while skimming through a judgment, you should also be aware of the **CONTEXT** in which the **KEYWORDS** are being used. For this, you must be aware of the **PRECEDING PARAGRAPH(s)**, and if necessary, the **SUCCEEDING PARAGRAPH(s)** too. The number of such preceding or succeeding paragraphs to be aware of, will vary from case to case. For example, an observation may be made in **POINT (h) WITHIN A PARAGRAPH**. You must be aware of the other points in the said paragraph, and at times, the preceding paragraph to understand what led to the paragraph itself. **UNLESS** you are aware of the **CONTEXT**, it may not go well for you.

So it is supposed to be **KEYWORDS + CONTEXT** while you try to find case laws.

Generally, you must be looking for case laws where the **CORE ISSUE** of

such case is connected to your proposition. It is not desired that your proposition is only coming by as a **PASSING OBSERVATION** *(in other words,* ***OBITER DICTA****)* in a judgment. Such passing observations are usually not binding. They do not have precedential value. They are not the **RATIO-DECIDENDI** of such a judgment. Hence, you will have to verify the judgment's core issue(s), and finally the conclusion arrived by the Court in respect of the **ISSUE** that your proposition is connected with.

Where there are **MULTIPLE ISSUES** dealt with in the judgment, the judgment will usually carry a paragraph that lists down all the issues to be considered and answered by the Court thereafter. You will have to find that paragraph, and thereafter the area where the particular issue you are looking for has been discussed, and the conclusion in respect of such issue.

In the next month's edition, I'll be writing about how to find the judgments using keywords, developing research acumen, etc.,

-x-x-

OBSERVATIONS IN BRIEF

LEGAL MAXIM - EVIDENCE - *"falsus in uno, falsus in omnibus" - "false in one thing, false in everything"* - It has been the position that this maxim is inapplicable in India - Testimony of a witness cannot be disregarded entirely because of some exaggerations or embellishments - *(Menoka Malik v. State of West Bengal, (2019) 18 SCC 721).*

MOOT PROBLEM #1

- The provisions regarding "Review" are contained under Order XLVII and Section 114 of the C.P.C.

- A Court sub-ordinate to the Madras High Court has passed a judgment in a case. Subsequently, both the Hon'ble Supreme Court, and a larger bench of the Madras HC have taken a contrary view on the law concerned.

- The party to the suit filed a review petition on the ground that the law on the matter has been subsequently changed/ differently interpreted, stating such change would have been in his favour had such subsequent judgments surfaced before the Court-below pronounced it's judgment.

Is the review petition maintainable? Give reasons and case laws for your answer.

MOOT PROBLEM #2

- Single Judge 'A' of the Bombay High Court pronounces an order in a Crl. Appeal on 21.01.2013, wherein he has interpreted the provisions contained in XYZ Act of 1975.

- Subsequently, Single Judge 'B' of the same High Court pronounced an order in another Crl. Appeal on 10.03.2013, wherein he had also interpreted the same provisions contained in XYZ Act of 1975. The interpretation made in this decision is contrary to that made in the firstly mentioned decision.

- On 20.07.2013, Party A has approached the Bombay HC with a Crl. Appeal, wherein the trial Court had convicted him for an offence under the XYZ Act, 1975.

- While hearing the Crl. Appeal, it was noticed that the trial Court had relied on a judgment of the Hon'ble SC dt. 16.11.2012, wherein the concerned provisions of XYZ Act, 1975, were interpreted. Further, it was brought to the notice of the Court that there were 2 contradictory opinions regarding the same provisions taken by 2 Learned Judges of the same Court, in 2 different cases.

- On a perusal of the trial Court judgment, it was seen that the both parties had relied on one of the 2 contradictory judgments of the Bom HC, but the trial Court having noted that both these judgments did not take note of the law laid down by the Hon'ble SC in another case, ended up relying on such judgment of the Hon'ble SC to convict the Party A. ***(Had the trial Court relied on the Bom HC's decision dt. 21.01.2013, Party A would have been convicted only for a lesser offence, and had the trial Court relied on the Bom HC's decision dt. 10.03.2013, Party A would have been acquitted by the trial Court).***

- Party A argued that the trial Court being sub-ordinate to the Bom HC, had to rely only on the law laid down by the Bom HC, and in

case there was any issue, it had to refer the matter to the High Court in accordance with the Cr.P.C.

- Party B, i.e., the State, argued that although there were judgments from the Bom HC, where there is a law laid down by the Hon'ble SC, the same is binding on all Courts in India. Further, he also pointed out that the Learned Single Judges of the Bom HC in both those cases did not take note of the judgment of the Hon'ble SC, and that in such a backdrop, the decision of the trial Court was well-reasoned, didn't need interference in the Appeal.

What do you think will be the right course to take for the Single Judge hearing the Crl. Appeal filed by Party A?

You can rely on case laws, legal principles, maxims, etc., to explain your points. The answer may be brief or detailed, as per your convenience.

The answers can be sent to :-

+91 9840718196 ***or*** *www.lawyerssocietyofficial@gmail.com*

There is no right or wrong answer. This is only an attempt to have interactive learning sessions with law students/ young lawyers. Interesting answers will be shared in the next issue! To know the author's answers, follow the next month's issue!

-x-x-

OBSERVATIONS IN BRIEF

LEGAL MAXIM - Actus Non Facit Reum Nisi Mens Sit Rea - *an act does not constitute guilt unless done with a guilty intention* - In case of insane persons, no culpability is fastened on them since they have no free well (furios is nulla voluntas est) - Section 84 IPC - *Bapu v. State of Rajasthan, (2007) 8 SCC 66.*

JUDICIAL EXAM QUESTIONS DISCUSSED WITH CASE LAWS

1) Karnataka - District Judge Exam, 2023 - Criminal Law Paper -

QUESTION 11(b): Procedure of search under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

DISCUSSION:

- Let us first look at Section 50 of the NDPS Act, 1985:

"50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such

person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior."

(Emphasis supplied)

- A bare reading of the sub-sections (1) and (2) show that the officer is only required to inform the accused of his right to be searched before a Magistrate or Gazetted officer, and **such requirement to inform the accused is mandatory.** Only if the accused so requires, the officer is supposed to follow the procedure given thereafter.

- This was analyzed by a Constitution Bench of the Hon'ble Supreme Court in the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat***[85]. Paragraphs 29, 31 and 32 of the judgment is extracted here:

*"29. In view of the foregoing discussion, we are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect, viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, **it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate.** We have no hesitation in holding that in so far as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, **it is mandatory and requires a strict compliance.** Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of*

[85] *(2011) 1 SCC 609.*

the accused during such search. Thereafter, ***the suspect may or may not choose to exercise the right provided to him under the said provision.***

31. We are of the opinion that the concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez (supra) and Prabha Shankar Dubey (supra) is neither borne out from the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case (supra). ***Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial****. It would neither be possible nor feasible to lay down any absolute formula in that behalf.*

32. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of (1974) 2 SCC 33 the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well". *(Emphasis supplied)*

- **Secondly, such requirement to inform the accused does not arise when the search is pertaining to that of vehicles or premises, since it is limited to the search of the person (body) of an accused/suspect.**

This was observed by a Division Bench of the Hon'ble SC in the case of ***Dilbagh Singh v. State of Punjab***[86]. Paragraph 12 of the judgment is extracted here:

"12. Whereas the conditions under which, the search as contemplated in ***Section 50 are limited only to the contingency of search of any***

[86] *(2017) 11 SCC 290.*

***person**, Section 57 prescribes that whenever any person makes any arrest or seizure under the Act, he would within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. As **it is no longer res integra that the application of Section 50 of the Act is comprehended and called for only in the case of search of a person as distinguished from search of any premises etc. having been authoritatively propounded by the two Constitution Bench rulings of this Court in State of Punjab vs. Baldev Singh – (1999) 6 SCC 172 and Vijaysinh Chandubha Jadeja vs. State of Gujarat – (2011) 1 SCC 609**, further dilation in this regard, in the attendant facts and circumstances of the case, is considered inessential. This is more so as the contraband in the case in hand had been recovered from inside the car in which the petitioner and the co-accused were travelling at the relevant point of time and not in course of the search of their person. Noticeably, it had also not been the plea of the defence ever that the alleged seizure according to the accused persons had been from their person. In the contextual facts therefore, Section 50 has no application to espouse the cause of the defence". (Emphasis supplied)*

- **Further, Section 50 is not applicable even for the search of bags, suit-cases and other such carriers.**

In the recent case of ***Rajan Kumar Chadha v. State of Himachal Pradesh***[87], the Hon'ble Supreme Court re-iterated the position of law as already held in ***Kalema Tumba v. State of Maharashtra***[88], ***Sarjudas v. State of Gujarat***[89], ***Birakishore Kar v. State of Orissa***[90], ***Kanhaiya Lal v. State of M.P.***[91], ***Gurbax Singh v. State of Haryana***[92], ***Madan Lal v. State of Himachal Pradesh***[93], ***State of Punjab v. Makhan***

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[87] *Crl. Appeal 2239-2240/ 2011, Dt. 06.10.2023.*
[88] *(1999) 8 SCC 257.*
[89] *(1999) 8 SCC 508.*
[90] *(2000) 9 SCC 541.*
[91] *(2000) 10 SCC 380.*
[92] *(2001) 3 SCC 28.*
[93] *(2003) 7 SCC 465.*

Chand[94], ***Saikou Jabbi v. State of Maharashtra***[95], to hold that Section 50 does not come into play where the search of bags are concerned.

2) TAMIL NADU - DISTRICT JUDGE PRELIMINARY EXAM - 07.04.2019 - A Series

QUESTION 95. Krishna filed a suit for ejectment against Sankar figuring him as a tenant. Sankar sets up independent title in the property. Krishna attempted to mark a certified copy of an insufficiently stamped lease deed which had been marked on his side as Ex A8 in another suit filed by him against Velan. The above document was marked in the above previous suit without paying any stamp duty penalty. Sankar is also not a party to the above lease deed and he was also not a party to that suit. Sankar objected to mark the document on the ground of insufficiency of stamp duty. In the later suit,

OPTIONS:

(A) The lease deed can be received in evidence for collateral purpose.

(B) The lease deed can be received in evidence only on payment of stamp duty with penalty.

(C) The insufficiently stamped lease deed can not be received as Sankar is not a party to lease deed that too without recovery of stamp duty with penalty.

(D) Section 35 of Stamp Act would not apply to the given situation.

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[94] *(2004) 3 SCC 453.*
[95] *(2004) 2 SCC 186.*

DISCUSSION:

- As per the **answer key**, the right answer is **(D)**. But, we shall now see why Section 35 of the Stamp Act, 1899, may be applicable to this fact-situation. **Section 35 provides,**

"35. Instruments not duly stamped inadmissible in evidence, etc.—
No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that–

(a) any such instrument shall, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act"

Section 36 of the Act provides,

"36. Admission of instrument where not to be questioned.—*Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the* ***same suit or proceeding*** *on the ground that the instrument has not duly stamped."*
(Emphasis supplied)

A bare reading of Ss. 35 and 36 reveal that a document not duly stamped is not admissible in evidence in any proceeding, unless the duty (and penalty, if any) is paid. As per Section 36, if it is already admitted in evidence, the same cannot be challenged at any stage of the **same suit** or **proceeding**.

- **Therefore, in this question, the fact that such document is already admitted in evidence in the earlier suit is no bar to challenge the same in the later suit.**

- Further, Section 35 is also applicable a certified copy. This was observed in the recent case of ***Vijay v. Union of India***[96]. The relevant paragraphs are extracted below:

"37. We may now consider Section 35 of the Stamp Act which forbids the letting of secondary evidence in proof of its contents. The section excludes both the original instrument and secondary evidence of its contents if it needs to be stamped or sufficiently stamped. This bar as to the admissibility of documents is absolute. Where a document cannot be received in evidence on the ground that it is not duly stamped, the secondary evidence thereof is equally

[96] *2023 SCC OnLine SC 1585.*

inadmissible in evidence.

38. In relation to secondary evidence of unstamped/insufficiently stamped documents, the position has been succinctly explained by this Court in ***Jupudi Kesava Rao (supra)*** *wherein it dealt with an issue, i.e., whether reception of secondary evidence of a written agreement to grant a lease is barred by the provisions of Sections 35 and 36 of the Stamp Act and answered it in affirmative. It observed:*

> *'12. The Indian Evidence Act, however, does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act. ...*
>
> *13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. "Instrument is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for the inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.*

If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit.'

39. This Court, in ***Hariom Agrawal v. Prakash Chand Malviya ((2007) 8 SCC 514)****, reiterated the principle laid down in* ***Judupi Kesava Rao (supra)*** *and observed that:*

"10. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899."

40. Thus, if a document that is required to be stamped is not sufficiently stamped, then the position of law is well settled that a copy of such document as secondary evidence cannot be adduced.....".

- **Therefore, it can be seen that even a certified copy is barred by Section 35 unless the duty (and penalty, if any) is paid.**

It is always an issue with multiple-choice questions with answer keys that do not provide any reasoning for the answers given therein. Thus, the aforesaid reasoning and answer given by me is right insofar as the two issues I have covered are concerned. However, we will need the reasoning for the answer given in the answer-key, inorder to discuss and debate the same completely!

CASE LAWS FOR REGULAR PRACTICE

◆ Obligation of both earning parents to maintain their children:

Rajnesh v. Neha[97]:

✓ *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children.*

✓ *Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. It should be a reasonable amount to be awarded for extra-curricular / coaching classes, and not an overly extravagant amount which may be claimed.*

✓ *Education expenses of the children must be normally borne by the father.*

✓ *If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.*

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[97] *(2021) 2 SCC 324.*

Chandru Sridevi v. Chandu Sesha Rao[98]:

- ✓ *Supreme Court approved the High Court's view that in a case where both the husband and wife are earning, they have a shared responsibility to maintain the children and provide them best education.*
- ✓ *Further, it has been said that the amount of maintenance for a child, in this regard, has to be fixed keeping in view ground realities.*
- ✓ *Merely because the appellant – wife has some source of livelihood does not absolve the respondent – husband from his responsibility to maintain and provide a good education for the children.*

Anshu Gupta v. Adwait Anand[99]:

- ✓ *The provisions of Section 125 (1) Cr. P.C. makes it clear that the liability to maintain a minor child is always on "any person", if he has sufficient means and neglects and refuses to maintain a minor child.*
- ✓ *The provisions of Section 125 Cr. P.C. has already been changed, and according to the language of the present Section 125 Cr. P.C., the word "person" would include both male and female and in reference to a minor child whether legitimate or illegitimate mother or father having sufficient means can be held liable to pay the maintenance of such child, if he or she neglects or refuses to maintain such child.*

[98] ***Civil Appeal No. 1159/ 2023, Dt. 14.02.2023, Supreme Court.***
[99] ***2023 SCC OnLine Utt 916.***

◆ Child's right to be with both parents while growing up, father's right to have custody/contact time with the child who is in the mother's custody:

Yashita Sahu v. State of Rajasthan[100]:

- ✓ *In deciding matters of custody of a child, primary and paramount consideration is welfare of the child.*
- ✓ *While deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration.*
- ✓ *The Courts should decide the issue of custody only on the basis of what is in the best interest of the child.*
- ✓ *It is the basic human right of a child that it requires the love, affection, company and protection of both parents.*
- ✓ *The Courts must weigh each and every circumstance carefully how and in what manner the custody of the child should be shared between the two*

[100] *(2020) 3 SCC 67.*

parents.

- ✓ *Even if the the custody is given to one parent, the other parent must have sufficient visitation rights.*
- ✓ *Only in extreme circumstances, the Court can deny contact with one of the parents, and the Court has to record reasons for the same.*
- ✓ *If the parents are in the same area, visitation rights are to be given during weekends. Where the parents are in different states or countries, visitation shall be given during long weekends, breaks and holidays.*
- ✓ *In addition to visitation rights, there must be contact rights given to the parent who is denied custody. Contact rights could be in the form of video calls or phone calls or e-mails, for atleast 5 to 10 minutes every day.*

Aneesh v. Aswathy[101]:

- ✓ *While the child is staying with the mother, the father has to be allowed to have interaction with the child.*
- ✓ *It is essential that the child maintains an emotional bondage and warmth with both parents which helps his proper upbringing.*

◆ Amendment of complaints made under Negotiable Instruments Act, 1881:

Bhim Singh v. Kan Singh[102]:

- ✓ *It was observed by the Rajasthan High Court that even though inherent power saved under Section 482 Cr.P.C. is only in favour of High Courts,*

[101] *O.P.(FC) NO. 557 OF 2022, Dt. 15.02.2023, Kerala HC.*
[102] *2004 Cri.L.J 4306.*

the subordinate criminal courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provisions provided there is no prohibition and no illegality or miscarriage of justice is involved.

- ✓ *Such power could be used to amend the typographical mistakes such as the cheque number and date of information by the Bank.*

Pandit Gorelal Vs. Rahul Punjabi[103]:

- ✓ *Amendment pertaining wrong cheque number was allowed by the Madhya Pradesh HC.*

Bhupendra Singh Thakur v. Umesh Sahu[104]:

- ✓ *The complainant had stated the name of bank as Punjab National Bank in place of HDFC Bank.*
- ✓ *The Court observed that the mistake is a simple infirmity which is curable by means of formal amendment, and by allowing such amendment, no prejudice would be caused to the applicant as there was no dispute about the issuance of cheque of HDFC bank by the petitioner/accused and same was annexed with complainant at the time of filing of complainant.*
- ✓ *Relying on the Hon'ble Supreme Court's decision in* ***U.P. Pollution Control Board Vs. Modi Distilleries***[105]*,* ***S.R. Sukumar Vs. S. Sunaad Raghurav***[106] *and the decision of a co-ordinate bench in* ***Pandit Gorelal Vs. Rahul Punjabi***[107]*, and held that where due to the inadvertence of the complainant, the name of the bank has been wrongly*

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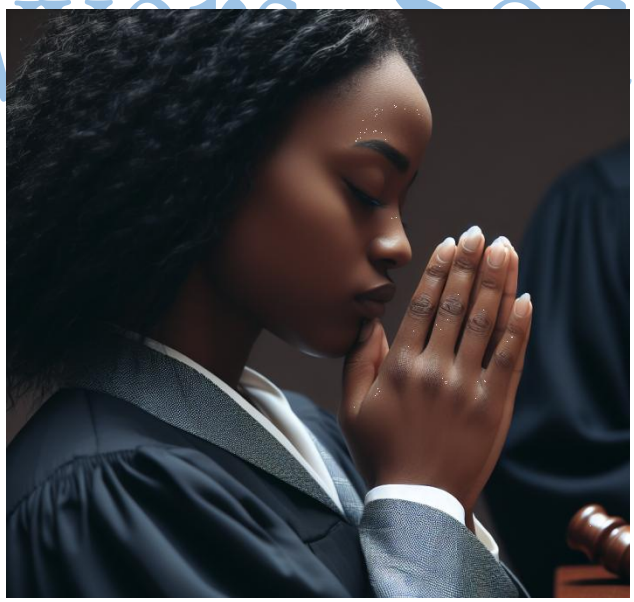
[103] *(2010) 2 M.P L.J. 115.*
[104] *MISC. CRIMINAL CASE No. 35101 of 2022, Dt. 26.07.2022, Madhya Pradesh High Court.*
[105] *(1987) 3 SCC 684.*
[106] *(2015) 9 SCC 609.*
[107] *(2010) 2 MPLJ 115.*

mentioned in complaint, the same would be a curable infirmity and that can be cured through amendment at any stage before pronouncement of the judgment and in a case of curable infirmity criminal Court can grant leave to amend the complaint by incorporating the name of the bank of which cheque was issued.

Suman Devi v. Chhatarpal[108]:

✓ *Punjab and Haryana High Court upheld an order allowing an amendment of complaint for the purpose of impleading a propreitorship firm, observing curable infirmities can be cured by filing for amendment at any stage.*

◆ Whether relief not prayed for can be granted by a Court?



Trojan & Co. Ltd.* v. *Rm.N.N. Nagappa Chettiar[109]:

"38. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be

[108] *CRM-M-6036-2018 (O&M), Dt. 04.01.2023, Punjab & Haryana High Court.*
[109] *(1953) 1 SCC 456.*

found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

V.K. Majotra v. Union of India[110]:

"8. .....With respect to the learned Judges of the High Court we would say that the learned Judges have over stepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to the notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise."

Bharat Amratlal Kothari* v. *Dosukhan Samadkhan Sindhi[111]:

"29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very vide discretion in granting relief, the

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[110] *(2003) 8 SCC 40.*
[111] *(2010) 1 SCC 234.*

court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

Akella Lalitha v. Konda Hanumantha Rao[112]:

"16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

19. In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground."

OBSERVATIONS IN BRIEF

"Under the inherent power of courts recognised by Section 151 of the Civil Procedure Code, a Court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the Court must be exercised subject to the Rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. In other words the Court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the same" - ***(Nain Singh v. Koonwarjee, 1970 (1) SCC 732).***

"Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the Court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law" - ***(Vinod Seth v. Devinder Bajaj, 2010 (4) CTC 546 (SC)).***

HINDU SUCCESSION ACT, 1956: Flowchart Explaining General Rules of Succession in the case of Female Hindus

Section 15 of the Hindu Succession Act, 1956 (hereinafter "Act") reads,

"***15. General rules of succession in the case of female Hindus.—****(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—*

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
(b) secondly, upon the heirs of the husband;
(c) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

Section 16 of the Act reads,

"***16. Order of succession and manner of distribution among heirs of a female Hindu.—*** *The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—*

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death".

Female Hindu DYING INTESTATE

Sons, Daughters, Husband (If a son/daughter has died before the Female Hindu, then the sons/daughters of such pre-deceased son/pre-deceased daughter) - Each person(s) alive will take equal share of the whole

If nobody exists from the above list, then the heirs of the husband - In such case, the property will devolve as per the rules of devolution applicable to the property of a Male Hindu dying intestate (SECTIONS 8 - 12).

EXCEPTION 1: In case of a property inherited by the Female Hindu dying intestate from her mother or father, in the absence of any son or daughter or children of any pre-deceased son or pre-decease daughter, the same will devolve upon the heirs of the father of such female Hindu (S. 15(2)(a)).

EXCEPTION 2: In case of a property inherited by the Female Hindu dying intestate from her husband or father-in-law, in the absence of any son or daughter or children of any pre-deceased son or pre-decease daughter, the same will devolve upon the heirs of the husband of such female Hindu (S. 15(2)(b)).

If nobody exists in the above list (heirs of husband), then the property will devolve upon the mother and father of the female Hindu dying intestate. The mother and father, if both are alive, will take equal share of the whole.

If nobody exists from the above list, the property will devolve upon the heirs of the father of the Female Hindu dying intestate. In such case, the property will devolve as per the rules of devolution applicable to the property of a Male Hindu dying intestate (SECTIONS 8 - 12)

If nobody exists from the above list, the property will devolve upon the heirs of the mother of the Female Hindu dying intestate. In such case, the property will devolve as per the rules of devolution applicable to the property of a Female Hindu dying intestate (SECTION 15 and 16)

(In the next month's issue, I'll write about the interpretation of Sections 15 and 16 of the Hindu Succession Act, 1956, in light of Supreme Court and High Court judgments). **If you have any doubts, you can contact the author!**

OBSERVATIONS IN BRIEF

Whether a child born from a second marriage is entitled to the ancestral property of the father?

VIEW 1 - A Hindu child born through a second marriage is a legitimate child, as per Section 16 of the Hindu Marriage Act of 1955, only for the purpose of claiming share in the father's property and he/she is not entitled to claim any share in the ancestral property of the father - ***Jinia Keotin & Others vs. Kumar Sitaram Manjhi ((2003)1 SCC 730), Neelamma and others vs. Sarojamma ((2006)9 SCC 612), Bharatha Matha & another vs. R.Vijaya Renganathan (AIR 2010, SC 2685).***

VIEW 2 - Section 16(3) of the Hindu Marriage Act, does not impose any restriction on the property right of such children except limiting it to the property of their parents. Therefore, such children will have a right to whatever becomes the property of their parents whether self acquired or ancestral - Different view taken from the one in ***Jinia Keotin (supra)***, ***Neelamma (supra)*** and ***Bharatha Matha (supra)*** on Section 16(3) of the Act - ***Revanasiddappa & Anr vs Mallikarjun ((2011) 11 SCC 1).***

(Matter has been referred to a larger bench, and the same is pending for 12 years)

LAW BOOK SUGGESTION

"MAINLY SCRIPTS AND TOUTS" by Mr. Justice Edmond Elmar Mack, I.C.S., Bar-At-Law Judge, High Court of Judicature, Madras.

The author of this book was a Judge of the Madras High Court from 1949 - 1956. Ascending from a European ancestry, Mr. Justice Elmar Mack has in his book made observant remarks on Indian judiciary from his experience. As the title suggests, he has discussed about the existence of multiple scripts in India, and how it has an effect on the judiciary, and the impact of legal quacks/ touts/ intermediaries at the root level. The book has various interesting chapters which take us back to the 1940s and 1950s, and many of it can be said to be relevant even to this day! For instance, Mr. Elmar talks about the ill-influence legal quacks have at the sub-ordinate Court level, and how their false advise results in these cases becoming incurable when it reaches the higher Courts. He further talks about the importance of firms, partnerships, which at the time seem to have been very few in number. **The book has also been recommended by retired Hon'ble Justice Mr. P.N. Prakash of the Madras High Court.** It is definitely worth a read, for those curious to compare the legal scenario back then with where we stand today. A brief account on Mr. Elmar can be found here: *https://lawandotherthings.com/intensely-human-a-brief-biographical-sketch-of-edmund-elmar-mack/*

THANKYOU FOR READING!

LET ME KNOW YOUR THOUGHTS, REVIEW AND SUGGESTIONS. IF YOU WANT TO READ ABOUT ANY SPECIFIC LEGAL CONCEPTS/ ISSUES, YOU CAN LET ME KNOW BY CONTACTING ME .

IF YOU HAVE NOT SUBSCRIBED YET, DO

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