SUPREME COURT YEARLY CRIMINAL DIGEST 2022

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A

Anticipatory Bail

Anticipatory Bail - SLP Against Madras HC Judgment dismissing anticipatory bail with some observations about requirement of custodial interrogation- Dismissed - High Court, after having found no case for grant of pre-arrest bail, has otherwise not given any such direction of mandatory nature - Observations are essentially of the reasons assigned by the High Court in declining the prayer of the petitioner for pre-arrest bail. ***S. Senthil Kumar v. State of Tamil Nadu, 2022 LiveLaw (SC) 314***

Anticipatory bail granted to Trinamool Congress leader Sheikh Sufiyan in a case relating to the murder of a BJP supporter during the West Bengal post - poll violence. ***Sk. Supiyan @ Suffiyan @ Supisan v. Central Bureau of Investigation, 2022 LiveLaw (SC) 146 : 2022 (3) SCALE 42***

Arms Act, 1950

Arms Act, 1950; Section 27 - Supreme Court Patna High Court judgment which modified the judgment passed by the Trial Court convicting the appellants- accused under Section 307 read with Section 34 Indian Penal Code to Section 324 IPC and confirming their conviction under Section 27 of the Arms Act. ***Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar, 2022 LiveLaw (SC) 402 : AIR 2022 SC 2817***

Army Act, 1950

Army Act, 1950 - Section 125 - The criminal court will have jurisdiction to try a case against an army personnel if the Commanding Officer does not exercise the discretion under Section 125 of the Army Act to initiate court -martial with respect to the offence - If the designated officer does not exercise this discretion to institute proceedings before a court -martial, the Army Act would not interdict the exercise of jurisdiction by the ordinary criminal court. (Para 30) ***State of Sikkim v. Jasbir Singh, 2022 LiveLaw (SC) 116 : (2022) 7 SCC 287***

B

Bail

Bail - Appeal against Allahabad HC granting bail to an accused - Allowed - Order of High Court granting bail to co-accused was earlier set aside - Reasons which have weighed with this Court in cancelling the bail which was granted to the co-accused would equally apply to the case of the first respondent which also arises out of the same first information report and incident. ***Rishipal @ Rishipal Singh Solanki v. Raju, 2022 LiveLaw (SC) 344***

Bail - Economic Offences - The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another - It is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. *(Para 66)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Bail - Post-conviction bail – All persons who have completed 10 years of sentence and appeal is not in proximity of hearing with no extenuating circumstances should be enlarged on bail. ***Sonadhar v. State of Chhattisgarh, 2022 LiveLaw (SC) 788***

Bail - The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails. *(Para 72-73(a))* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Bail - While granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. (Para 9) ***Sunil Kumar v. State of Bihar, 2022 LiveLaw (SC) 85 : AIR 2022 SC 715 : (2022) 3 SCC 245***

C

CBI Investigation

CBI Investigation - Keralite Medical Student Death in Mangaluru in 2014 - Writ petition filed by his father seeking CBI investigation - Allowed - It appears prima facie that it is not a case of simple accident as opined by the Investigating Agency - CID, Bengaluru has failed to perform its duty by not thoroughly investigating the case and tried to find out the truth - It is unheard of that an abated charge-sheet can be filed against the deceased who is alleged to have been murdered/killed - Abated charge-sheet set aside. ***M.S. Radhakrishnan v. State of Karnataka, 2022 LiveLaw (SC) 918***

Circumstantial Evidence

Circumstantial Evidence - Five golden principles regarding appreciation of evidence when the case of the prosecution hinges on the circumstantial evidence discussed. (Para 22) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Circumstantial Evidence - In order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused only and none else. The circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. *[Para 33]* ***Rahul v. State of Delhi Ministry of Home Affairs, 2022 LiveLaw (SC) 926***

Code of Criminal Procedure 1973

Code of Criminal Procedure, 1973 - Appeal against High Court order setting aside criminal proceedings on the ground that taking cognizance by magistrate was barred by limitation - Allowed - The High Court made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009 - Rejected the contention that Sarah Mathew's case requires reconsideration on the ground that some of the factors related with Chapter XXXVI CrPC have not been considered. ***Amritlal v. Shantilal Soni, 2022 LiveLaw (SC) 248 : 2022 (4) SCALE 500***

Section 2 (wa) - “victim”

Code of Criminal Procedure, 1973; Section 2 (wa) - ‘Victim’ and ‘complainant / informant’ - It is not always necessary that the complainant / informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony. (Para 24) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 2 (wa) - Victim’s right to be heard - A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He / She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision - Where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. (Para 24, 25) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 2(wa), 372 - Right of appeal to the victims - Public, who are recipients of these services, also become victims, though indirectly, because the consequences of such appointments get reflected sooner or later in the work performed by the appointees - The appellant in one of these appeals, is a victim, as he could not get selected on account of the alleged corrupt practices. Therefore, the contention regarding the locus standi of the appellants is to be rejected. (Para 18- 24) ***P. Dharamaraj v. Shanmugam, 2022 LiveLaw (SC) 749 : AIR 2022 SC 4195***

Section 11 - Courts of Judicial Magistrates

Code of Criminal Procedure, 1973; Sections 11, 12, 15, 16, 17, 19 and 35 - The Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under the Cr.PC are concerned - The Chief Metropolitan Magistrate in addition, may have administrative powers. *(Para 10-10.1)* ***R.D. Jain and Co. v. Capital First Ltd., 2022 LiveLaw (SC) 634 : AIR 2022 SC 4820***

Section 24 - Public Prosecutors

Code of Criminal Procedure, 1973; Section 24 - Public Prosecutor - A public prosecutor occupies a statutory office of high regard. Rather than a part of the investigating agency, they are instead, an independent statutory authority who serve as officers to the court. The role of the public prosecutor is intrinsically dedicated to conducting a fair trial, and not for a "thirst to reach the case in conviction". *(Para 171 - 177)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Section 25A - Directorate of Prosecution

Code of Criminal Procedure, 1973 - Section 25A - Role of Director of Prosecution in the administration of Justice - The post of Director of Prosecution is a very important post in so far as the administration of justice in criminal matters is concerned. It is the duty of the Director of Prosecution to take prompt decision. Given that crimes are treated as a wrong against the society as a whole, the role of the Director of Prosecution in the administration of justice is crucial. He is appointed by the State Government in exercise of powers under Section 25A of the Code of Criminal Procedure. That his is a crucial role is evident from conditions such as in Section 25A (2) of the Code, which stipulates a minimum legal experience of not less than ten years for a person to be eligible to be Directorate of Prosecution and that such an appointment shall be made with the concurrence of the Chief Justice of the High Court. (Para 11) ***Jayaben v. Tejas Kanubhai Zala, 2022 LiveLaw (SC) 29*** **:** ***AIR 2022 SC 358 : (2022) 3 SCC 230***

Section 31 - Sentence in cases of conviction of several offences at one trial

Code of Criminal Procedure, 1973; Section 31 - Trial Court as well as Appellate Court has full discretion to order the sentences to run concurrently in case of conviction for two or more offences. *(Para 10-11)* ***Malkeet Singh Gill v. State of Chhattisgarh, 2022 LiveLaw (SC) 563 :*** *: AIR 2022 SC 3283 : (2022) 8 SCC 204*

Section 41 - When police may arrest without warrant

Code of Criminal Procedure, 1973; Section 41 - Power of Arrest - Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before they conduct an arrest - Supreme Court reiterates the guidelines for arrest laid down in the 2014 *Arnesh Kumar vs State of Bihar (2014) 8 SCC 273*. *[Para 27, 28]* ***Mohammed Zubair v. State of NCT of Delhi, 2022 LiveLaw (SC) 629 : AIR 2022 SC 3649***

Code of Criminal Procedure, 1973; Section 41 - Scope - Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. *(Para 21 -23)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 41(1)(b)(i) and (ii) - Notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present - Both the elements of 'reason to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the police officer. *(Para 27)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Sections 41, 41A - The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail - The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued in *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273* - Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action - State Governments and the Union Territories to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code. *(Para 73 (b-d))* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 41A - Notice of appearance before police officer

Code of Criminal Procedure, 1973; Section 41A - The observations made in the impugned judgment [*State of Telangana vs Ramachandra Barathi @ Sathish Sharma V.K.*] which are contrary to the observations made in the case of *Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273* would not be treated as a binding precedent in the State of Telangana. ***Ramachandra Barathi @ Sathish Sharma V.K. v. State of Telangana, 2022 LiveLaw (SC) 986***

Section 53A - Examination of person accused of rape by medical practitioner

Code of Criminal Procedure, 1973; Section 53A - In cases where the victim of rape is alive and is in a position to testify in court, it may be possible for the prosecution to take a chance by not medically examining the accused. But in cases where the victim is dead and the offence is sought to be established only by circumstantial evidence, medical evidence assumes great importance. The failure of the prosecution to produce such evidence, despite there being no obstacle from the accused or anyone, will certainly create a gaping hole in the case of the prosecution and give rise to a serious doubt on the case of the prosecution. *(Para 80)* ***Chotkau v. State of Uttar Pradesh, 2022 LiveLaw (SC) 804 : AIR 2022 SC 4688***

Code of Criminal Procedure, 1973; Section 53A - The lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder - Even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. *(Para 28)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Code of Criminal Procedure, 1973; Section 53A, 164A - While Section 53A enables the medical examination of the person accused of rape, Section 164A enables medical examination of the victim of rape. Both these provisions are somewhat similar and can be said approximately to be a mirror image of each other. But there are three distinguishing features - discussed. *(Para 79)* ***Chotkau v. State of Uttar Pradesh, 2022 LiveLaw (SC) 804 : AIR 2022 SC 4688***

Section 87 - Issue of warrant in lieu of, or in addition to, summons

Code of Criminal Procedure, 1973; Section 87 - 88 - Courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued- Issuing non-bailable warrants as a matter of course without due application of mind against the tenor of the provision. *(Para 31-32)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 88 - Power to take bond for appearance

Code of Criminal Procedure, 1973; Sections 88, 170, 204 and 209 - There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code. *(Para 73 (e))* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 107 - Security for keeping the peace in other cases

Code of Criminal Procedure, 1973; Section 107 - The scope and nature of Section 107 CrPC is preventive and not punitive - It aims at ensuring that there be no breach of peace and that the public tranquillity be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. *(Para 11)* ***Istkar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1000***

Code of Criminal Procedure, 1973; Chapter VIII - Powers of the Executive Magistrate to take bond for maintaining security and for keeping the peace and good behaviour by the citizens - Procedure explained. *(Para 7)* ***Devadassan v. Second Class Executive Magistrate, 2022 LiveLaw (SC) 260 : AIR 2022 SC 1406***

Code of Criminal Procedure, 1973; Chapter VIII; Section 107,117 - The provisions of Chapter VIII are merely preventive in nature and are not to be used as a vehicle for punishment - The object of furnishing security and/or executing a bond under Chapter VIII is not to augment the state exchequer but to avoid any possible breach of peace for maintaining public peace and tranquillity - The Magistrate while ordering security under Section 117 has to take into consideration the status and position of the person to decide the quantum of security/bond; and cannot alter the purpose of the provisions from preventive to punitive by imposing heavy quantum of security/bond, which a person might be unable to pay. The demand of excessive and arbitrary amount of security/bond stultifies the spirit of Chapter VIII of the Code, which remains impermissible. *(Para 11-12)* ***Istkar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1000***

Code of Criminal Procedure, 1973; Chapter XVII - Objects of provisions regarding framing of charge - To make the accused aware of the accusations against him on the basis of which the prosecution is seeking to convict him - Accused should be in a position to effectively defend himself. An accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. *(Para 16-17)* ***Kalicharan v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1027***

Code of Criminal Procedure, 1973; Part II of First Schedule - If the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be non-cognizable. *(Para 5.3)* ***Knit Pro International v. State of NCT of Delhi, 2022 LiveLaw (SC) 505 : (2022) 10 SCC 221***

Section 122 - Imprisonment in default of security

Code of Criminal Procedure, 1973; Section 122 - Appeal against High Court judgment which affirmed order passed against appellant by an Executive Magistrate under Section 122(1)(b) CrPC - Dismissed - The order passed by is after following the procedure, so prescribed and affording due opportunity to the appellant. ***Devadassan v. Second Class Executive Magistrate, 2022 LiveLaw (SC) 260 : AIR 2022 SC 1406***

Section 125 - Order for maintenance of wives, children and parents

Code of Criminal Procedure, 1973; Section 125 - Income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income. *(Para 10)* ***Kiran Tomar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 904***

Code of Criminal Procedure, 1973; Section 125 - The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute - Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children - The object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. *(Para 9-13)* ***Anju Garg v. Deepak Kumar Garg, 2022 LiveLaw (SC) 805***

Section 145 - Procedure where dispute concerning land or water is likely to cause breach of peace

Code of Criminal Procedure, 1973; Section 145 - While dropping the proceedings under Section 145 CrPC because of the pendency of civil litigations, the learned Magistrate could not be considered justified in making any observations or returning any findings as regards rights of the parties qua the property in question. ***Mohd Shakir v. State of Uttar Pradesh, 2022 LiveLaw (SC) 727***

Code of Criminal Procedure, 1973; Sections 145, 146 - Once the Civil Court is seized of the matter, the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end - The interse rights of the parties regarding title or possession are eventually to be determined by the Civil Court. ***Mohd. Abid v. Ravi Naresh, 2022 LiveLaw (SC) 921***

Section 154 - Information in cognizable cases

Code of Criminal Procedure, 1973; Section 154 - FIR -Police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence - Whether or not the offence complained of is made out is to be determined at the stage of investigation and / or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173 CrPC. However, it is not open to them to decline to register an FIR. *(Para 18)* ***XYZ v. State of Maharashtra, 2022 LiveLaw (SC) 676 : AIR 2022 SC 3957***

Code of Criminal Procedure, 1973; Section 154 - First Information Report - A F.I.R. cannot be treated as an encyclopedia of events. (Para 36) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 154 - If multiple First Information Reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence - The registration of such multiple FIRs is nothing but abuse of the process of law - The act of the registration of such successive FIRs on the same set of facts and allegations at the instance of the same informant will not stand the scrutiny of Articles 21 and 22 of the Constitution of India. *(Para 12)* ***Tarak Dash Mukharjee v. State of Uttar Pradesh, 2022 LiveLaw (SC) 731***

Code of Criminal Procedure, 1973; Section 154 - There can be no second FIR where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognizable offences - Once an FIR has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR - Barring situations in which a counter case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an "abuse of the statutory power of investigation". *(Para 12)* ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Section 156 - Police officer's power to investigate cognizable case

Code of Criminal Procedure, 1973 - Section 156(3) - Applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant -With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law. (Para 27 -29) ***Babu Venkatesh v. State of Karnataka, 2022 LiveLaw (SC) 181 : (2022) 5 SCC 639***

Code of Criminal Procedure, 1973; Section 156(3) - In cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. *(Para 25)* ***XYZ v. State of Maharashtra, 2022 LiveLaw (SC) 676 : AIR 2022 SC 3957***

Code of Criminal Procedure, 1973; Section 156(3) - Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning - Where not only does the Magistrate find the commission of a cognizable offence alleged on a *prima facie* reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation. *(Para 24)* ***XYZ v. State of Maharashtra, 2022 LiveLaw (SC) 676 : AIR 2022 SC 3957***

Code of Criminal Procedure, 1973; Section 156(3) - Magistrate is required to be conscious of the consequences while passing an Order under Section 156 (3) of the Cr.PC. It being a judicial order, relevant materials are expected to be taken note of. *(Para 11)* ***Suresh Kankra v. State of U.P., 2022 LiveLaw (SC) 35***

Section 157 - Procedure for Investigation

Code of Criminal Procedure, 1973; Section 157 (1) - The word "forthwith' in Section 157(1) of the Code is to be understood in the context of the given facts and circumstances of each case and a straight-jacket formula cannot be applied in all cases. But where ocular evidence is found to be unreliable and thus unacceptable, a long delay has to be taken note of by the Court. The mandate of Section 157(1) of the Code being clear, the prosecution is expected to place on record the basic foundational facts, such as, the Officer who took the first information report to the jurisdictional court, the authority which directed such a course of action and the mode by which it was complied. Explaining the delay is a different aspect than placing the material in compliance of the Code - The delay in forwarding the FIR may certainly indicate the failure of one of the external checks to determine whether the FIR was manipulated later or whether it was registered either to fix someone other than the real culprit or to allow the real culprit to escape. While every delay in forwarding the FIR may not necessarily be fatal to the case of the prosecution, Courts may be duty bound to see the effect of such delay on the investigation and even the creditworthiness of the investigation. *(Para 61- 66)* ***Chotkau v. State of Uttar Pradesh, 2022 LiveLaw (SC) 804 : AIR 2022 SC 4688***

Section 159 - Power to hold investigation or preliminary inquiry

Code of Criminal Procedure, 1973; Section 159 - Mere delay to send FIR to jurisdictional magistrate cannot be sole factor to reject prosecution's case. (Para 26, 27) ***Jafarudheen v. State of Kerala, 2022 LiveLaw (SC) 403 : AIR 2022 SC 3627 : (2022) 8 SCC 440***

Section 161 - Examination of witnesses by police

Code of Criminal Procedure, 1973; Section 161 and 164 - Indian Evidence Act, 1872; Sections 145,157 - Statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and its use is limited for the purposes as provided under Sections 145 and 157 of the Evidence Act - statement recorded under Section 164, Cr.P.C. can also be used only for such purposes. *(Para 20)* ***State of Maharashtra v. Dr. Maroti Kashinath Pimpalkar, 2022 LiveLaw (SC) 898*** *:* ***AIR 2022 SC 5595***

Code of Criminal Procedure, 1973; Section 161 - Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography statements - A confessional statement given by an accused before a Police officer is inadmissible as evidence - Statement given by an accused to police under Section 161 of CrPC is not admissible as evidence. *(Para 13)* ***Munikrishna @ Krishna v. State by Ulsoor PS, 2022 LiveLaw (SC) 812***

Section 162 - Statements to police not to be signed: Use of statements in evidence

Code of Criminal Procedure, 1973; Section 162 - Even a TIP conducted in the presence of a police officer is inadmissible. *(Para 29, 44)* ***Gireesan Nair v. State of Kerala, 2022 LiveLaw (SC) 955***

Section 164 - Recording of confessions and statements

Code of Criminal Procedure, 1973; Section 164 - Rape victim's statement made under Section 164 CrPC should not be disclosed to any person (including accused) till charge-sheet/final report is filed - *Referred to State of Karnataka by Nonavinakere Police vs. Shivanna alias Tarkari Shivanna (2014) 8 SCC 913 and A vs. State of Uttar Pradesh (2020) 10 SCC 505* - Appropriate modifications / amendments be made to the Criminal Practice/Trial Rules incorporating provisions consistent with the directions issued by this Court in these decisions. ***X v. M Mahender Reddy, 2022 LiveLaw (SC) 899***

Section 167 - Procedure when investigation cannot be completed in twenty-four hours

Code of Criminal Procedure, 1973 - Section 167(2) Proviso - Default Bail - Filing of a charge -sheet is sufficient compliance with the provisions of Section 167 CrPC - An accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. (Para 10) ***Serious Fraud Investigation Office v. Rahul Modi, 2022 LiveLaw (SC) 138 : AIR 2022 SC 902***

Code of Criminal Procedure, 1973 - Section 167(2) Proviso - Default Bail - There is no additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2), CrPC, failing which the accused would be entitled to default bail, even after filing of the charge -sheet within the statutory period. (Para 15) ***Serious Fraud Investigation Office v. Rahul Modi, 2022 LiveLaw (SC) 138 : AIR 2022 SC 902***

Code of Criminal Procedure, 1973 - Section 167(2) Proviso - The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. ***Serious Fraud Investigation Office v. Rahul Modi, 2022 LiveLaw (SC) 138 : AIR 2022 SC 902***

Code of Criminal Procedure, 1973; Section 167(2) - Limb of Article 21 - A duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect. Such a right cannot be taken away even during any unforeseen circumstances. *(Para 34)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 167(2) - The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21 - Prejudice is inherent and need not be established by the accused. *(Para 30-31)* ***Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat, 2022 LiveLaw (SC) 794 : AIR 2022 SC 4641***

Code of Criminal Procedure, 1973; Section 167(2) - Application for extension of time for investigation - Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality - The scope of the objections may be limited - The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) of Section 20 of the Control of Terrorism and Organised Crime Act, 2015 (Gujarat) to sub-section (2) of Section 167 of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted. *(Para 28-29)* ***Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat, 2022 LiveLaw (SC) 794 : AIR 2022 SC 4641***

Section 170 - Cases to be sent to Magistrate, when evidence is sufficient

Code of Criminal Procedure, 1973; Section 170 - Scope and ambit. *(Para 36)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 173 - Report of police officer on completion of investigation

Code of Criminal Procedure, 1973 - Section 173 - Magistrate to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. ***Luckose Zachariah @ Zak Nedumchira Luke v. Joseph Joseph, 2022 LiveLaw (SC) 230 : 2022 (4) SCALE 193***

Code of Criminal Procedure, 1973 - Section 173 - Magistrate to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. ***Luckose Zachariah @ Zak Nedumchira Luke v. Joseph Joseph, 2022 LiveLaw (SC) 230 : 2022 (4) SCALE 193***

Code of Criminal Procedure, 1973 - Section 173(2) - Evidentiary Value of a Final Report - Final Report, is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him. He takes note of the offence and thereafter, conducts an investigation to identify the offender, the truth of which can only be decided by the court - The final report itself cannot be termed as a substantive piece of evidence being nothing but a collective opinion of the investigating officer. (Para 25, 37) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Code of Criminal Procedure, 1973 - Sections 173(6) - Unlawful Activities (Prevention) Act, 1967 - Section 44 – National Investigation Agency Act, 2008 - Section 17 - The objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses. They are in the nature of a statutory witness protection. On the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, such an order can be passed. They are also in the context of special provisions made for offences under special statutes. (Para 24) ***Waheed -Ur -Rehman Parra v. Union Territory of Jammu and Kashmir, 2022 LiveLaw (SC) 216 : 2022 (4) SCALE 226***

Code of Criminal Procedure, 1973 - Sections 173(6), 161, 207 - Unlawful Activities (Prevention) Act, 1967 - Section 44 - Even for protected witnesses declared so under Section 173(6) CrPC read with Section 44 UAPA, the accused can exercise their right under Sections 207 and 161 of the Cr.P.C to obtain copies of their redacted statements which would ensure that the identity of the witness not disclosed. ***Waheed -Ur -Rehman Parra v. Union Territory of Jammu and Kashmir, 2022 LiveLaw (SC) 216 : 2022 (4) SCALE 226***

Code of Criminal Procedure, 1973; Section 173(8), 156(3), 190(1)(c) - Where the Magistrate is of the opinion that the result of investigation in the form of report filed before him is not satisfactory, he may also order investigation in terms of Sections 156(3) and/or 173(8) CrPC or he may straightway take cognizance under Section 190(1)(c) CrPC. *(Para 11.2)* ***Devendra Nath Singh v. State of Bihar, 2022 LiveLaw (SC) 835 : AIR 2022 SC 5344***

Section 188 - Offence committed outside India

Code of Criminal Procedure, 1973; Section 188 - The Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India - When a part of the offence was definitely committed on the soil of this country, going by the normal principles the offence could be looked into and tried by Indian courts - If the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there is no necessity of any sanction as mandated by the proviso to Section 188. *(Para 13, 14)* ***Sartaj Khan v. State of Uttarakhand, 2022 LiveLaw (SC) 321 : 2022 (5) SCALE 384***

Section 190 - Cognizance of offences by Magistrates

Code of Criminal Procedure, 1973; Section 190(1)(b) - Appeal against High Court judgment which upheld the order passed by Magistrate summoning the appellant who was not named in police report - Dismissed - The name of the accused/appellant had transpired from the statement made by the victim under Section 164 CrPC - No error in the order of the Magistrate. ***Nahar Singh v.***

State of Uttar Pradesh, 2022 LiveLaw (SC) 291 : (2022) 5 SCC 295

Code of Criminal Procedure, 1973; Section 190(1)(b) - For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose. *(Para 21)* ***Nahar Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 291 : (2022) 5 SCC 295***

Code of Criminal Procedure, 1973; Section 190(1)(b) - Jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. *(Para 20)* ***Nahar Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 291 : (2022) 5 SCC 295***

Code of Criminal Procedure, 1973; Section 190(1), 204 - Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process. ***N.S. Madhanagopal v. K. Lalitha, 2022 LiveLaw (SC) 844***

Code of Criminal Procedure, 1973; Section 190, 200 - The second complaint can be maintainable in exceptional circumstances, depending upon the manner in which the first complaint came to be dismissed. To say it differently, if the first complaint was dismissed without venturing into the merits of the case or on a technical ground and/or by returning a reasoning which can be termed as perverse or absurd in law, and/or when the essential foundation of second complaint is based upon such set of facts which were either not in existence at the time when the first complaint was filed or the complainant could not have possibly lay his hands to such facts at that time, an exception can be made to entertain the second complaint. *(Para 14)* ***B.R.K Aathithan v. Sun Group, 2022 LiveLaw (SC) 1022***

Section 195 - Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

Code of Criminal Procedure, 1973; Section 195, 340 - Whether Section 340 CrPC mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 CrPC by a Court - There is no question of opportunity of hearing in a scenario of this nature - Scope and ambit of such a preliminary inquiry. ***State of Punjab v. Jasbir Singh, 2022 LiveLaw (SC) 776***

Section 196 - Prosecution for offences against the State and for criminal conspiracy to commit such offence

Code of Criminal Procedure, 1973; Section 196 - Appeal against denial of sanction to prosecute Uttar Pradesh Chief Minister Yogi Adityanath in a case alleging making of hate speech in 2007 - Subsequent events have rendered the appeal into a purely academic exercise - Legal questions on the issue of sanction be left open to be considered in an appropriate case. ***Parvez Parwaz v. State of Uttar Pradesh, 2022 LiveLaw (SC) 716 : 2022 (12) SCALE 432***

Code of Criminal Procedure, 1973; Section 196 - The words "No Court shall take cognizance" employed in Section 196 CrPC and the consequential bar created under the said provision would undoubtedly show that the bar is against 'taking of cognizance by the Court' - It creates no bar against registration of a crime or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under Section 173, CrPC. *(Para 10)* ***Parvez Parwaz v. State of Uttar Pradesh, 2022 LiveLaw (SC) 716 : 2022 (12) SCALE 432***

Section 199 - Prosecution for Defamation

Code of Criminal Procedure, 1973; Section 199 - A person falling under the category of persons mentioned in sub-section (2) of Section 199 can either take the route specified in sub-section (4) or take the route specified in sub-Section (6) of Section 199 - The right of an individual is saved, under sub-section (6), even if he falls under the category of persons mentioned in subsection (2) - The special procedure is in addition to and not in derogation of the right that a public servant always had as an individual. He never lost his right merely because he became a public servant and merely because the allegations related to official discharge of his duties. *(Para 50-51)* ***Manoj Kumar Tiwari v. Manish Sisodia, 2022 LiveLaw (SC) 853***

Code of Criminal Procedure, 1973; Section 199(6), 237, 250 - Whether the protection available under Section 237 of the Code to the accused, will be lost if the public servant avoids the special procedure and lodges a complaint individually? - Whenever a person is prosecuted by a public servant in his individual capacity before a Magistrate by virtue of Section 199(6), the accused can always fall back upon Section 250, for claiming compensation on the ground that the accusation was made without reasonable cause. *(Para 52-55)* ***Manoj Kumar Tiwari v. Manish Sisodia, 2022 LiveLaw (SC) 853***

Section 202 - Postponement of issue of process

Code of Criminal Procedure, 1973; Section 202 - It is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature. ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Code of Criminal Procedure, 1973; Section 202 - Summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind. *(Para 47)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Section 204 - Issue of Process

Code of Criminal Procedure, 1973; Section 204 - Issuing a warrant may be an exception in which case the Magistrate will have to give reasons. *(Para 37)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 204 - The application of judicial mind and arriving at an erroneous conclusion are two distinct things. The Court even after due application of mind may reach to an erroneous conclusion and such an order is always justiciable before a superior Court. Even if the said Order is set aside, it does not mean that the trial court did not apply its mind. *(Para 16)* ***B.R.K Aathithan v. Sun Group, 2022 LiveLaw (SC) 1022***

Code of Criminal Procedure, 1973; Section 204 - The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reason. *(Para 28 - 30)* ***Lalankumar Singh v. State of Maharashtra, 2022 LiveLaw (SC) 833 : AIR 2022 SC 5151***

Section 205 - Magistrate may dispense with personal attendance of accused

Code of Criminal Procedure, 1973; Section 205 - There could be no justification for not dispensing with the personal appearance of the accused-directors, when the Company had entered appearance through an authorized officer. *(Para 47)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Code of Criminal Procedure, 1973; Sections 205 (2), 251 and 317 - Negotiable Instruments Act, 1882; Section 138 - The judgment in M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.: (2001) 7 SCC 401 does not deal with a claim for blanket exemption from personal appearance -

Observations therein essentially co-relate with the facts of the said case - In appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel - Such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence. ***Mahesh Kumar Kejriwal v. Bhanuj Jindal, 2022 LiveLaw (SC) 394***

Code of Criminal Procedure, 1973; Sections 205 (2), 251 and 317 - Negotiable Instruments Act, 1882; Section 138 - SLP against Punjab & Haryana HC judgment which refused petitioner's claim of blanket exemption from personal experience in case under Section 138 NI Act -Dismissed - It is difficult to appreciate that in the case of the present nature, the petitioners seek to avoid appearance even once in terms of the order of the learned Sessions Judge. ***Mahesh Kumar Kejriwal v. Bhanuj Jindal, 2022 LiveLaw (SC) 394***

Section 207 - Supply to the accused of copy of police report and other documents

Code of Criminal Procedure, 1973; Section 207 - Sec 207 of CrPC cannot be read as a provision etched in stone to cause serious violation of the rights of the accused as well as to the principles of natural justice - Can't always insist that documents can be shared only after court takes cognizance of the complaint. *(Para 56)* ***Reliance Industries Ltd. v. Securities and Exchange Board of India, 2022 LiveLaw (SC) 659 : AIR 2022 SC 3690 : (2022) 10 SCC 181***

Section 209 - Commitment of case to Court of Session when offence is triable exclusively by it

Code of Criminal Procedure, 1973; Section 209 - Power of the Magistrate to remand a person into custody during or until the conclusion of the trial - Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. *(Para 38)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 215 - Effect of Errors

Code of Criminal Procedure, 1973; Sections 215 and 464 - When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313. *(Para 20)* ***Kalicharan v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1027***

Section 220 - Trial for more than one offence

Code of Criminal Procedure, 1973; Section 220 (1) - trial for more than one offence - if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence - it is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction - the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not - a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria. - for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. *[Para 20.1 - 20.3]* ***Ms. P XXX v. State of Uttarakhand, 2022 LiveLaw (SC) 554 : AIR 2022 SC 2885***

Section 226 - Opening case for Prosecution

Code of Criminal Procedure, 1973; Section 226 - Before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution - Over a period of time, this provision has gone, in oblivion - It permits the prosecution to make the first impression regards a case, one which might be difficult to dispel. In not insisting upon its right under Section 226 of the CrPC, the prosecution would be doing itself a disfavour. *(Para 20, 15)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Section 227 - Discharge

Code of Criminal Procedure, 1973 - Sections 227, 164 - Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial. ***Hazrat Deen v. State of Uttar Pradesh, 2022 LiveLaw (SC) 134***

Code of Criminal Procedure, 1973; Section 227 - Simple and necessary inquiry to be conducted for a proper adjudication of an application for discharge for coming to a conclusion that a prima facie case is made out for the accused to stand trial - The threshold of scrutiny required to adjudicate an application under Section 227 Cr.P.C. is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. *(Para 12-18)* ***Kanchan Kumar v. State of Bihar, 2022 LiveLaw (SC) 763 : AIR 2022 SC 4288 : (2022) 9 SCC 577***

Code of Criminal Procedure, 1973; Section 227 - 228 - Cause of death of the deceased as assigned in the post mortem report being the "cardio respiratory failure" - Whether Trial Court could have discharged the accused from offence of murder - At the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the port mortem report on record - Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. *(Para 31)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Code of Criminal Procedure, 1973; Sections 227, 228 - The stage of discharge under Section 227 Cr.P.C. is a stage prior to framing of the charge (under Section 228 Cr.P.C.) - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. As per Section 228 Cr.P.C. only thereafter and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. *(Para 7)* ***Chandi Puliya v. State of West Bengal, 2022 LiveLaw (SC) 1019***

Code of Criminal Procedure, 1973; Sections 227, 228, 300 - It is at the stage of discharge that the court can consider the application under Section 300 Cr.P.C - Once the court rejects the discharge application, it would proceed to framing of charge under Section 228 Cr.P.C. *(Para 7-8)* ***Chandi Puliya v. State of West Bengal, 2022 LiveLaw (SC) 1019***

Code of Criminal Procedure, 1973; Sections 227-228, 239-240, 245 - The case may be a sessions case, a warrant case, or a summons case, the point is that a prima facie case must be made out before a charge can be framed. *(Para 19)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Section 228 - Framing of Charge

Code of Criminal Procedure, 1973; Section 228 - The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross -examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges - Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. *(Para 32)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Code of Criminal Procedure, 1973; Section 228 - The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial - Scope of Court's powers in respect of the framing of charges - Referred to

Dipakbhai Jagdishchndra Patel v. State of Gujarat (2019) 16 SCC 547 et al - The trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. *(Para 21-27)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Code of Criminal Procedure, 1973; Section 228 - There is an inbuilt element of presumption - Meaning of 'presumption'. *(Para 28)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Section 235 - Judgment of acquittal or conviction

Code of Criminal Procedure, 1973; Section 235 (2) - Accused must be given an opportunity to make a representation against the sentence to be imposed on him. A bifurcated hearing for convicting and sentencing is necessary to provide an effective opportunity to the accused. Adequate opportunity to produce relevant material on the question of death sentence shall be provided to the accused by the Trial Court. (Para 13) ***Bhagwani v. State of Madhya Pradesh, 2022 LiveLaw (SC) 60 : AIR 2022 SC 527***

Code of Criminal Procedure, 1973; Section 235 (2) - Appeal against Madhya Pradesh HC judgment which confirmed death sentence awarded to the appellant accused of rape and murder of 11 year old girl - Partly allowed - Commuted death sentence- Sentenced to life imprisonment for a period of 30 years during which he shall not be granted remission- No evidence has been placed by the prosecution on record to show that there is no probability of rehabilitation and reformation of the Appellant and the question of an alternative option to death sentence is foreclosed. The Appellant had no criminal antecedents before the commission of crime for which he has been convicted. There is nothing adverse that has been reported against his conduct in jail - The Appellant was aged 25 years on the date of commission of the offence and belongs to a Scheduled Tribes community, eking his livelihood by doing manual labour. ***Bhagwani v. State of Madhya Pradesh, 2022 LiveLaw (SC) 60 : AIR 2022 SC 527***

Code of Criminal Procedure, 1973; Section 235 (2) - The sentencing hearing contemplated under Section 235(2), is not confined merely to oral hearing but intended to afford a real opportunity to the prosecution as well as the accused, to place on record facts and material relating to various factors on the question of sentence and if interested by either side, to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty. *(Para 205 -212)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Section 239 - When accused shall be discharged

Code of Criminal Procedure, 1973; Section 239 - Scope and ambit - No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless- The word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever. (Para 60 - 74) ***State v. R. Soundirarasu, 2022 LiveLaw (SC) 741 : AIR 2022 SC 4218***

Section 293 - Reports of certain Government scientific experts

Code of Criminal Procedure, 1973; Section 293 - Ballistic Report forwarded by Director/ Deputy Director/ Assistant Director of a lab under the seal can be said to be in compliance with the statutory requirement under Section 239 Cr.P.C. *(Para 167-171)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Section 300 - Person once convicted or acquitted not to be tried for same offence

Code of Criminal Procedure, 1973; Section 300 (1) - Penal Code, 1860; Section 420 - Negotiable Instruments Act, 1881; Section 138 - Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial? - Referred to larger bench. ***J. Vedhasingh v. R.M. Govindan, 2022 LiveLaw (SC) 669 : AIR 2022 SC 3772***

Code of Criminal Procedure, 1973; Section 300 - Section 300 of the CrPC places a bar wherein, a person who has already been tried by a Court of competent jurisdiction for an offence arising out of the same facts, and has either been acquitted or convicted of such offence cannot be tried again for the same offence as well as on the same facts for any other offence as long as such acquittal or conviction remains in force. ***T.P. Gopalakrishnan v. State of Kerala, 2022 LiveLaw (SC) 1039***

Section 309 - Power to postpone or adjourn proceedings

Code of Criminal Procedure, 1973; Section 309 - Bail - While it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. *(Para 41)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 309 - Examination-in-chief followed with cross-examination is to be recorded either on the same day or on the day following. In other words, there should not be any ground for adjournment in recording the examination-in-chief/cross-examination of the prosecution witness, as the case may be. ***Mukesh Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 826***

Section 311 - Power to summon material witness, or examine person present

Code of Criminal Procedure, 1973; Section 311 - Merely because a different statement given by the same prosecution witness in another case that itself would not be a reason for recalling the witness. ***Saud Faisal v. State of Uttar Pradesh, 2022 LiveLaw (SC) 556***

Code of Criminal Procedure, 1973; Section 311 - Application cannot be dismissed merely on the ground that it will lead to filling in the lacunae of the prosecution's case - Even the said reason cannot be an absolute bar to allowing an application under Section 311 - The resultant filling of loopholes on account of allowing the application is merely a subsidiary factor and the Court's determination of the application should only be based on the test of the essentiality of the evidence - It is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. *(Para 38 - 40)* ***Varsha Garg v. State of Madhya Pradesh, 2022 LiveLaw (SC) 662 : AIR 2022 SC 3707***

Code of Criminal Procedure, 1973; Section 311 - Scope - Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court - The broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest. *(Para 28 - 32)* ***Varsha Garg v. State of Madhya Pradesh, 2022 LiveLaw (SC) 662 : AIR 2022 SC 3707***

Code of Criminal Procedure, 1973; Section 311 - The Court is vested with a broad and wholesome power to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. *(Para 42)* ***Varsha Garg v. State of Madhya Pradesh, 2022 LiveLaw (SC) 662 : AIR 2022 SC 3707***

Section 313 - Power to examine the accused

Code of Criminal Procedure, 1973; Section 313 - No conviction could be based on the statement of the accused recorded under section 313 of the Cr.P.C. and the prosecution has to prove the guilt of the accused by leading independent and cogent evidence- When the accused makes inculpatory and exculpatory statements, the inculpatory part of the statement can be taken aid of to lend credence to the case of prosecution. (Para 23) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Code of Criminal Procedure, 1973; Section 313 - Offering no explanation on incriminating circumstances mentioned above would become an additional link in the chain of circumstances. *(Para 47)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Code of Criminal Procedure, 1973; Section 313 - Questioning an accused under Section 313 CrPC is not an empty formality - Accused must be explained the circumstances appearing in the evidence against him so that accused can offer an explanation. After an accused is questioned under Section 313 CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. *(Para 22)* ***Kalicharan v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1027***

Code of Criminal Procedure, 1973; Section 313 - The purpose of Section 313 CrPC is to provide the accused a reasonable opportunity to explain the adverse circumstances which have emerged against him during the course of trial. A reasonable opportunity entails putting all the adverse evidences in the form of questions so as to give an opportunity to the accused to articulate his defence and give his explanation- If all the circumstances are bundled together and a single opportunity is provided to the accused to explain himself, he may not able to put forth a rational and intelligible explanation. Such, exercises which defeats fair opportunity are nothing but empty formality. Non- fulfilment of the true spirit of Section 313 may ultimately cause grave prejudice to the accused and the Court may not have the benefit of all the necessary facts and circumstances to arrive at a fair conclusion. Such an omission does not ipso facto vitiate the trial, unless the accused fails to prove that grave prejudice has been caused to him -The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. *(Para 25-28)* ***Jai Prakash Tiwari v. State of Madhya Pradesh, 2022 LiveLaw (SC) 658 : AIR 2022 SC 3601***

Section 319 - Power to proceed against other persons appearing to be guilty of offence

Code of Criminal Procedure, 1973; Section 319 - Power has to be excercised before the conclusion of the trial, which means before the pronouncement of the judgment. *(Para 33)* ***Sukhpal Singh Khaira v. State of Punjab, 2022 LiveLaw (SC) 1009***

Code of Criminal Procedure, 1973; Section 319 - Supreme Court Constitution Bench issues elaborate guidelines on the exercise of powers to summon additional accused. *(Para 33)* ***Sukhpal Singh Khaira v. State of Punjab, 2022 LiveLaw (SC) 1009***

Code of Criminal Procedure, 1973; Section 319 - The power under Section 319 of Cr.P.C. is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. *(Para 33)* ***Sukhpal Singh Khaira v. State of Punjab, 2022 LiveLaw (SC) 1009***

Code of Criminal Procedure, 1973; Section 319 - The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion. *(Para 33)* ***Sukhpal Singh Khaira v. State of Punjab, 2022 LiveLaw (SC) 1009***

Code of Criminal Procedure, 1973; Section 319 - Appeal against the High court order which set aside the Trial Court order refusing to summon appellant under Section 319 CrPC - High Court even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge. ***Sagar v. State of U.P., 2022 LiveLaw (SC) 265 : AIR 2022 SC 1420 : (2022) 6 SCC 389***

Code of Criminal Procedure, 1973; Section 319 - Discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant - The crucial test has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. *(Para 11-12)* ***Naveen v. State of Haryana, 2022 LiveLaw (SC) 897***

Code of Criminal Procedure, 1973; Section 319 - Power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. ***Sagar v. State of U.P., 2022 LiveLaw (SC) 265 : AIR 2022 SC 1420 : (2022) 6 SCC 389***

Section 354 - Language and contents of judgment

Code of Criminal Procedure, 1973 - Section 354(3) - Death Sentence - The evolution of legal position and norms for dealing with the question of sentencing and the connotations of 'special reasons' for awarding death sentence discussed - Court has found it justified to have capital punishment on the statute to serve as deterrent as also in due response to the society's call for appropriate punishment in appropriate cases but at the same time, the principles of penology have evolved to balance the other obligations of the society, i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society. This has led to the evolution of 'rarest of rare test' and then, its appropriate operation with reference to 'crime test' and 'criminal test'. The delicate balance expected of the judicial process has also led to another mid - way approach, in curtailing the rights of remission or premature release while awarding imprisonment for life, particularly when dealing with crimes of heinous nature. (Para 40) ***Pappu v. State of Uttar Pradesh, 2022 LiveLaw (SC) 144 : 2022 (3) SCALE 45***

Code of Criminal Procedure, 1973 - Section 354 (3) - Death Sentence - When the accused is not shown to be a person having criminal antecedents and is not a hardened criminal, it cannot be said that there is no probability of him being reformed and rehabilitated - His unblemished jail conduct and having a family of wife, children and aged father would also indicate towards the probability of his reformation. (Para 43.1) ***Pappu v. State of Uttar Pradesh, 2022 LiveLaw (SC) 144 : 2022 (3) SCALE 45***

Code of Criminal Procedure, 1973; Section 354 (3) - Death Sentence - The 'crime test' and the 'criminal test' require to be followed before awarding capital sentence - Consideration of the aggravating and mitigating circumstances with application of mind required. ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Section 362 - Court not to alter judgment

Code of Criminal Procedure, 1973; Section 362 - Appeal against High Court order which recalled an order passed by it in a criminal case - Dismissed - This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review. ***Ganesh Patel v. Umakant Rajoria, 2022 LiveLaw (SC) 283***

Code of Criminal Procedure, 1973; Section 362 - Application for recall of the order maintainable when it is an application seeking a procedural review, and not a substantive review. ***Ganesh Patel v. Umakant Rajoria, 2022 LiveLaw (SC) 283***

Section 372 - No appeal to lie unless otherwise provided

Code of Criminal Procedure, 1973; Section 372 and 378 - The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right- The victim has not to pray for grant of special leave to appeal-The victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like subsection (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. *(Para 10.2)* ***Joseph Stephen v. Santhanasamy, 2022 LiveLaw (SC) 83 : AIR 2022 SC 670***

Code of Criminal Procedure, 1973; Section 372, 378 & 401 - No revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal- He/she shall be relegated to prefer the appeal as provided under Section 372 or Section 378(4), as the case may be. *(Para 10.1)* ***Joseph Stephen v. Santhanasamy, 2022 LiveLaw (SC) 83 : AIR 2022 SC 670***

Section 374 - Appeals from Convictions

Code of Criminal Procedure, 1973 - Section 374 - Appeals from convictions - High Court cannot enhance the sentence of the accused without putting the accused to prior notice. ***Radheyshyam v. State of Rajasthan, 2022 LiveLaw (SC) 687***

Code of Criminal Procedure, 1973; Section 374 (2) - Already admitted appeal against conviction cannot be dismissed on the ground that the accused is absconding. *(Para 8)* ***Dhananjay Rai @ Guddu Rai v. State of Bihar, 2022 LiveLaw (SC) 597 : AIR 2022 SC 3346***

Code of Criminal Procedure, 1973; Section 374 (2) - Patna HC dismissed an appeal filed against conviction on the ground that appellant accused was absconding - Allowing appeal, Supreme Court observed: The anguish expressed by the Division Bench about the brazen action of the appellant of absconding and defeating the administration of justice can be well understood. However, that is no ground to dismiss an appeal against conviction, which was already admitted for final hearing, for non-prosecution without adverting to merits -The impugned judgment set aside and the appeal remanded to the High Court for consideration on merits. ***Dhananjay Rai @ Guddu Rai v. State of Bihar, 2022 LiveLaw (SC) 597 : AIR 2022 SC 3346***

Section 378 - Appeal in case of Acquittal

Code of Criminal Procedure, 1973; Section 378 - Appeal against acquittal - While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. (Para 25) ***Jafarudheen v. State of Kerala, 2022 LiveLaw (SC) 403: AIR 2022 SC 3627 : (2022) 8 SCC 440***

Code of Criminal Procedure, 1973; Sections 378, 386 - Jurisdiction of the High Court in Appeals against Acquittals. *(Para 73-77)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Code of Criminal Procedure, 1973; Section 378 - Appeal against Acquittal - Reasons which had weighed with the Trial Court in acquitting the accused must be dealt with, in case the appellate Court is of the view that the acquittal rendered by the Trial Court deserves to be upturned - With an order of acquittal by the Trial Court, the normal presumption of innocence in a criminal matter gets reinforced - If two views are possible from the evidence on record, the appellate Court must be extremely slow in interfering with the appeal against acquittal. *(Para 7)* ***Sanjeev v. State of Himachal Pradesh, 2022 LiveLaw (SC) 267 : (2022) 6 SCC 294***

Code of Criminal Procedure, 1973; Section 378 - Appeal against acquittal - While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. *(Para 8)* ***Ravi Sharma v Govt. of NCT of Delhi, 2022 LiveLaw (SC) 615 : AIR 2022 SC 4810 : (2022) 8 SCC 536***

Code of Criminal Procedure, 1973; Section 378 - Approach to be adopted while deciding an appeal against acquittal by the trial court - Principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the Trial Court - Discussed. *(Para 20-29)* ***Rajesh Prasad v. State of Bihar, 2022 LiveLaw (SC) 33 : (2022) 3 SCC 471***

Section 386 - Powers of the Appellate Court

Code of Criminal Procedure, 1973; Section 386 (e) - Power to make any amendment or any consequential or incidental order that may be just or proper would be available, of course in appropriate cases falling under any of the four categories of appeals mentioned under clauses (a) to (d) - The twin provisos under clause (d) carry restrictions in the matter of exercise of power under clause (e), with respect to enhancement of sentence and infliction of punishment - The power thereunder can be exercised only in rare cases. *(Para 18)* ***Bhola Kumhar v. State of Chhattisgarh, 2022 LiveLaw (SC) 589***

Code of Criminal Procedure, 1973; Section 386 (e) - Rape convict kept in prison beyond the period of sentence - When a competent court, upon conviction, sentenced an accused and in appeal, the sentence was modified upon confirmation of the conviction and then the appellate judgment had become final, the convict can be detained only up to the period to which he can be legally detained on the basis of the said appellate judgment - Compensation to the tune of Rs.7.5 Lakhs to be paid by the State holding that it is vicariously liable for the act/omission committed by its officers in the course of employment. ***Bhola Kumhar v. State of Chhattisgarh, 2022 LiveLaw (SC) 589***

Section 389 - Suspension of sentence pending the appeal; release of appellant on bail

Code of Criminal Procedure, 1973; Section 389 - "Presumption of innocence" and "bail is the rule and jail is the exception" may not be available to the appellant who has suffered a conviction - The power exercisable under Section 389 is different from that of the one either under Section 437 or under Section 439 of the Code, pending trial - Delay in taking up the main appeal or revision coupled with the benefit conferred under Section 436A of the Code among other factors ought to be considered for a favourable release on bail. *(Para 42-44)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 389 - Seeking relief of suspension of execution of sentence and to be released on bail is the statutory right of the appellant and there is no warrant for such a proposition that any appellant be debarred, from renewing his prayer for suspension of execution of sentence, for a particular period. As to whether such a prayer is to be granted or not is a matter entirely different but such kind of time-specific debarment is not envisaged by the law. *(Para 3, 4)* ***Krishan Kumar v. State of Haryana, 2022 LiveLaw (SC) 126***

Section 394 - Abatement of Appeals

Code of Criminal Procedure, 1973; Section 394 - Abatement of Criminal Appeal - Appellant died during pendency of appeal - The counsel, as an Amicus, cannot be treated as a near relative of the deceased appellant/convict - The application for continuance of the appeal having not been made within 30 days or even thereafter by any near relative, as per the provision of Section 394 of the Cr.P.C., this appeal would abate. ***Yeruva Sayireddy v. State of Andhra Pradesh, 2022 LiveLaw (SC) 257***

Section 397 - Calling for records to exercise powers of revision

Code of Criminal Procedure, 1973; Section 397 - 401 - The revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure. (Para 76) ***State v. R. Soundirarasu, 2022 LiveLaw (SC) 741 : AIR 2022 SC 4218***

Code of Criminal Procedure, 1973; Section 397 - The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 CrPC vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well- founded error which is to be determined on the merits of individual case - While considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. *(Para 8-9)* ***Malkeet Singh Gill v. State of Chhattisgarh, 2022 LiveLaw (SC) 563*** *: AIR 2022 SC 3283 : (2022) 8 SCC 204*

Code of Criminal Procedure, 1973; Section 397, 401 - Any order which substantially affects the right of the parties cannot be said to be an "interlocutory order - The expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon the important rights or liabilities of parties. *(Para 12)* ***Honnaiah T.H. v. State of Karnataka, 2022 LiveLaw (SC) 672***

Code of Criminal Procedure, 1973; Section 397, 401 - Maintainability of revision petition at the instance of de facto complainant - As the power of revision can be exercised by the High Court even *suo moto*, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen - The view of the High Court that a victim/ complainant needs to restrict his revision petition to challenging final orders either acquitting the accused or convicting the accused of a lesser offence or imposing inadequate compensation (three requirements mentioned under Section 372 CrPC) is unsustainable, so long as the revision petition is not directed against an interlocutory order. *(Para 14 - 15)* ***Honnaiah T.H. v. State of Karnataka, 2022 LiveLaw (SC) 672***

Code of Criminal Procedure, 1973; Section 397, 401 - The order of the trial court declining to mark the statement of the informant as an exhibit is an intermediate order affecting important rights of the parties and cannot be said to be purely of an interlocutory nature - if the statement of the informant is not permitted to be marked as an exhibit, it would amount to a gross miscarriage of justice. *(Para 13)* ***Honnaiah T.H. v. State of Karnataka, 2022 LiveLaw (SC) 672***

Code of Criminal Procedure, 1973; Sections 397 - Scope of interference and exercise of jurisdiction - At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied - The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding. (Para 22-23) ***X v. Amit Kumar Tiwari, 2022 LiveLaw (SC) 681***

Code of Criminal Procedure, 1973; Sections 397 and 482 - Although it is open to a High Court entertaining a petition under Section 482/ Section 397 CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence - At the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person - Once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has 19 come on record should not be entertained sans exceptional cases. (Para 21) ***X v. Amit Kumar Tiwari, 2022 LiveLaw (SC) 681***

Code of Criminal Procedure, 1973; Sections 397 and 482 - Appeal against Madhya Pradesh High Court Judgment discharging rape accused on the ground of delay to register FIR - Allowed - Perverse and utterly incomprehensible - Unfortunate father of the deceased had to come before this Court seeking justice - It was expected of the State to challenge the illegal order passed by the High Court. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book. ***X v. Amit Kumar Tiwari, 2022 LiveLaw (SC) 681***

Section 401 - High Court's powers of revision

Code of Criminal Procedure, 1973; Section 401 - Sub-section (3) of Section 401 Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction- If the order of acquittal has been passed by the trial Court, the High Court may remit the matter to the trial Court and even direct retrial. However, if the order of acquittal is passed by the first appellate court, in that case, the High Court has two options available, (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial. *(Para 9)* ***Joseph Stephen v. Santhanasamy, 2022 LiveLaw (SC) 83 : AIR 2022 SC 670***

Code of Criminal Procedure, 1973; Section 401 - Where under the Cr.P.C. an appeal lies, but an application for revision has been made to the High Court by any person, the High Court has jurisdiction to treat the application for revision as a petition of appeal and deal with the same accordingly as per sub-section (5) of Section 401 Cr.P.C., however, subject to the High Court being satisfied that such an application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do and for that purpose the High Court has to pass a judicial order, may be a formal order, to treat the application for revision as a petition of appeal and deal with the same accordingly. *(Para 11)* ***Joseph Stephen v. Santhanasamy, 2022 LiveLaw (SC) 83 : AIR 2022 SC 670***

Code of Criminal Procedure, 1973; Section 401 - While exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate Court would have a wider jurisdiction than the revisional jurisdiction. *(Para 10.1)* ***Joseph Stephen v. Santhanasamy, 2022 LiveLaw (SC) 83 : AIR 2022 SC 670***

Section 406 - Power of Supreme Court to transfer cases and appeals

Code of Criminal Procedure, 1973; Section 406 - Negotiable Instruments Act, 1881; Section 138 - Transfer Petition filed by a woman-accused seeking transfer of cheque bounce complaint - A complaint under Section 138 cannot be transferred as per the convenience of the accused - Being a woman and senior citizen, she can always seek exemption from personal appearance - Directed Trial Judge to favourable consider application if made by the petitioner for grant of exemption - The Trial Judge shall compel the petitioner to appear only when her presence is absolutely mandatory for the conduct of the trial. ***S. Nalini Jayanthi v. M. Ramasubba Reddy, 2022 LiveLaw (SC) 880***

Section 407 - Power of High Court to transfer cases and appeals

Code of Criminal Procedure, 1973; Section 407 - Fault or shortcoming on the part of the staff of the Subordinate Court and for that matter, any delay in compliance by the Court were hardly the reasons for the High Court to immediately adopt the course of transferring the matter. ***Nazma Naz v. Rukhsana Bano, 2022 LiveLaw (SC) 532***

Section 427 - Sentence on offender already sentenced for another offence

Code of Criminal Procedure, 1973; Section 427 - Supreme Court orders that sentences in nine cases against an appellant for theft of electricity shall run concurrently- The Court notes that serious miscarriage will be caused if the appellant is to serve 18 years of sentence for these offences. ***Iqram v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1032***

Section 428 - Period of detention undergone by the accused to be set off against the sentence of imprisonment

Code of Criminal Procedure, 1973; Section 428 - An indispensable requirement to invoke Section 428 of Cr.P.C. is that there must be a conviction. The conviction must be followed by a sentence of imprisonment. It must be for a term and it should not be imprisonment in default of payment of fine - However, for it to be invoked the existence of detention undergone by the convict during investigation, enquiry or trial in the 'same case' is indispensable. If these requirements are satisfied, the convict would be entitled to the set off for the period of detention which he has undergone. *(Para 12)* ***Vinay Prakash Singh v. Sameer Gehlaut, 2022 LiveLaw (SC) 974***

Code of Criminal Procedure, 1973; Section 428 - Period of detention undergone by the accused to be set off against the sentence or imprisonment - it cannot be lost sight that when reference is made in a set off for adjustment of periods, the reference is to proceedings within the country - the criminal law of the land does not have any extra-territorial application - thus, what happens in another country for some other trial, some other detention, in our view, would not be relevant for the purposes of the proceedings in the country - accused cannot claim a double benefit under Section 428 of the Cr.P.C - i.e., the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well. *[Para 50, 52]* ***Abu Salem v. State of Maharashtra, 2022 LiveLaw (SC) 578***

Section 432 - Power to suspend or remit sentences

Code of Criminal Procedure, 1973; Section 432 - No express executive power has been conferred on the Centre either under the Constitution or law made by the Parliament in relation to Section 302. In the absence of such specific conferment, it is the executive power of the State that extends with respect to Section 302, assuming that the subject-matter of Section 302 is covered by Entry 1 of List III. ***A.G. Perarivalan v. State, 2022 LiveLaw (SC) 494 : AIR 2022 SC 2608***

Code of Criminal Procedure, 1973; Section 432 - Remission or pre-mature release has to considered in terms of the policy which is applicable in the State where the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this

Court - The appropriate Government can be either the Central or the State Government but there cannot be a concurrent jurisdiction of two State Governments under Section 432(7) CrPC. *(Para 13, 14)* ***Radheshyam Bhagwandas Shah @ Lala Vakil v. State of Gujarat, 2022 LiveLaw (SC) 484 : AIR 2022 SC 2371 : (2022) 8 SCC 552***

Code of Criminal Procedure, 1973; Section 432 - Remission Policy - The application for grant of pre-mature release will have to be considered on the basis of the policy which stood on the date of conviction. *(Para 9)* ***Radheshyam Bhagwandas Shah @ Lala Vakil v. State of Gujarat, 2022 LiveLaw (SC) 484 : AIR 2022 SC 2371 : (2022) 8 SCC 552***

Code of Criminal Procedure, 1973; Section 432 (2) - Remission - An opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) - Relevant factors include assessing (i) whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of the convict's family - If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India (2000) 2 SCC 595, the government may request the presiding judge to consider the matter afresh. (Para 21-24) ***Ram Chander v. State of Chhattisgarh, 2022 LiveLaw (SC) 401 : AIR 2022 SC 2017***

Code of Criminal Procedure, 1973; Section 432 (2) - Remission - It cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission - This is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. (Para 21-22) ***Ram Chander v. State of Chhattisgarh, 2022 LiveLaw (SC) 401 : AIR 2022 SC 2017***

Section 436 - In what cases bail to be taken

Code of Criminal Procedure, 1973 - Section 436 - 439 - Bail - Grant of bail, though a discretionary order, requires such discretion to be exercised in a judicious manner and on the application of certain settled parameters. More heinous the crime, greater is the chance of rejection of bail, though the exercise also depends on the factual matrix of the matter - The Court, amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record, and should not be confused with examination in detail of the evidence on record to come to a conclusive finding. ***Jameel Ahmad v. Mohammed Umair Mohammad Haroon,* *2022 LiveLaw (SC) 222***

Section 436A - Maximum period for which an undertrial prisoner can be detained

Code of Criminal Procedure, 1973; Section 436A - Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. *(Para 64)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 436A - The word 'shall' clearly denotes the mandatory compliance of this provision - There is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused - While taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. *(Para 47)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 436A - The word 'trial' will have to be given an expanded meaning particularly when an appeal or admission is pending - In a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision. *(Para 46)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 437 - When bail may be taken in case of non-bailable offence

Code of Criminal Procedure, 1973 - Sections 437 and 439 - Bail Considerations - Gravity of the offences alleged and the evidence collected during the investigation, which are forming part of the charge sheet has to be considered. (Para 9.3) ***Jayaben v. Tejas Kanubhai Zala, 2022 LiveLaw (SC) 29*** **:** ***AIR 2022 SC 358 : (2022) 3 SCC 230***

Code of Criminal Procedure, 1973; Section 437 - Scope - The jurisdictional Magistrate who otherwise has the jurisdiction to try a criminal case which provides for a maximum punishment of either life or death sentence, has got ample jurisdiction to consider the release on bail. *(Para 53-55, 58)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 437, 439 - Bail - High Court order granting bail to murder accused - Allowed - The High Court has not at all considered the gravity, nature and seriousness of the offences alleged. ***Manno Lal Jaiswal v. State of Uttar Pradesh, 2022 LiveLaw (SC) 88 : AIR 2022 SC 704***

Code of Criminal Procedure, 1973; Section 437, 439 - Bail - Relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. *(Para 9)* ***Manno Lal Jaiswal v. State of Uttar Pradesh, 2022 LiveLaw (SC) 88 : AIR 2022 SC 704***

Code of Criminal Procedure, 1973; Section 437, 439 - The first proviso to Section 437 facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm - This has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. *(Para 58)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Section 437, 439 - While elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum - Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. *(Para 17-19)* ***Manoj Kumar Khokhar v. State of Rajasthan, 2022 LiveLaw (SC) 55 : AIR 2022 SC 364 : (2022) 3 SCC 501***

Code of Criminal Procedure, 1973; Sections 437, 439 - Bail - Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application. *(Para 73 (k))* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 438 - Direction for grant of bail to person apprehending arrest

Code of Criminal Procedure, 1978; Section 438 - Anticipatory Bail - Court is expected to pass orders in one way or other taking into account the merits of the matter at the earliest - Posting an application for anticipatory bail after a couple of months cannot be appreciated - Matter involves personal liberty. ***Sanjay v. State (NCT of Delhi),*** ***2022 LiveLaw (SC) 555***

Code of Criminal Procedure, 1973 - Section 438 - Indefinite adjournment in a matter relating to anticipatory bail, that too after admitting it, is detrimental to the valuable right of a person - When a person is before the Court and that too in a matter involving personal liberty, least what is expected is for such a person to be given the result one way or the other, based on the merit of his case and not push him to a position of uncertainty or be condemned without being heard, when it matters. ***Rajesh Seth v. State of Chhattisgarh,*** ***2022 LiveLaw (SC) 200***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - Adverse order against third party by High Court in an anticipatory bail proceedings - It is a peremptory direction affecting a third party. The adverse impact of the direction goes to the very livelihood of the appellant. It has also civil consequences for the appellant. Such a peremptory direction and that too, without even issuing any notice to the appellant was clearly unjustified. ***Kanchan Kumari v. State of Bihar,*** ***2022 LiveLaw (SC) 640***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - Ordinarily, no such mandatory order or directions should be issued while rejecting the application for pre-arrest bail that the accused person has to be arrested - When the prayer for pre-arrest bail is declined, it is for the investigating agency to take further steps in the matter. Whether the investigating agency requires custodial interrogation or not, is also to be primarily examined by that agency alone. We say no more. ***S. Senthil Kumar v. State of Tamil Nadu,*** ***2022 LiveLaw (SC) 314***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail Jurisdiction - cannot implead third party to proceedings - especially those parties who are neither necessary nor proper parties to the application under consideration - application under Section 438 of the Code of Criminal Procedure is limited to the cause of the concerned applicant, applying for grant of anticipatory bail in connection with offence already registered against him and apprehending his arrest in connection with such a case for extraneous reasons or otherwise - in such proceedings, the inquiry must be limited to the facts relevant and applicable to the concerned applicant who has come before the Court - no attempt should be made to inquire into matters pertaining to some third party much less beyond the scope of the complaint/FIR in question - even if the application is entertained by the High Court, the High Court should exercise circumspection in dealing with the application only in respect of matters which are relevant to decide the application and not to over-state facts or other matters unrelated to the applicant before the Court. ***Subrata Roy Sahara v. Pramod Kumar Saini,*** ***2022 LiveLaw (SC) 601***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail. ***X v. Arun Kumar C.K., [2022 LiveLaw (SC) 870]()***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - Anticipatory bail granted to the accused only till framing of the charge - It is the impugned order which would reflect the mind of the judge as to what were the peculiar facts and circumstances which warranted limiting the anticipatory bail for a particular period. The perusal of the entire order would reveal that there is no discussion at all with regard to the same - Part of the order which restricts the anticipatory bail upto framing of charge is quashed and set aside. ***Tarun Aggarwal v. Union of India, 2022 LiveLaw (SC) 885***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - SLP against order of HC that imposed anticipatory bail condition that accused will return the salary which she has received while working as a Panchayat Teacher - Allowed - Additional condition of returning the amount drawn by her as salary on appointment as Panchayat Teacher is neither justified nor required under the law while grant of pre-arrest bail to her - HC direction in not sustainable legally and hence set aside. ***Divya Bharti v. State of Bihar, 2022 LiveLaw (SC) 961***

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - Bombay HC direction to give to give 72 hours' notice to an accused in the event the State intends to arrest him - Manifestly Incorrect - Such a direction could not have been issued. ***Vijaykumar Gopichand Ramchandani v. Amar Sadhuram Mulchandani, 2022 LiveLaw (SC) 1010***

Code of Criminal Procedure, 1973; Section 438 - ISRO Espionage Case - SC set aside the orders passed by the Kerala High Court in 2021 granting anticipatory bail of five former police and intelligence bureau officials in the case related to the alleged framing of ISRO scientist Nambi Narayanan in 1994 ISRO espionage case -The Court remitted the bail applications back to the High Court and asked the High Court to decide the same as early as possible. ***CBI v. Siby Mathew, 2022 LiveLaw (SC) 1005***

Code of Criminal Procedure, 1973; Section 438 - Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - Appeal against High Court order that granted anticipatory bail on the ground that no recovery was effected from the accused and that they had been implicated only on the basis of the disclosure statement of the main accused - Allowed -The respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1 , perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted. ***State of Haryana v. Samarth Kumar, 2022 LiveLaw (SC) 622***

Code of Criminal Procedure, 1973; Section 438 - Once the prayer for anticipatory bail is made in connection with offence under the Prevention of Money Laundering Act, the underlying principles and rigors of Section 45 of the Prevention of Money Laundering Act, 2002 must get triggered although the application is under Section 438 of Code of Criminal Procedure. ***Asst. Director Enforcement Directorate v. Dr. V.C. Mohan, 2022 LiveLaw (SC) 16***

Code of Criminal Procedure, 1973; Section 438 - Petitions seeking relief of pre arrest bail are not money recovery proceedings - Supreme Court sets aside condition imposed by the Jharkhand High Court of depositing 7.5 Lakhs as "victim compensation" while granting pre-arrest bail. ***Udho Thakur v. State of Jharkhand, 2022 LiveLaw (SC) 815***

Code of Criminal Procedure, 1973; Sections 438, 439 - Bail applications must be decided as expeditiously as possible and not to be posted in due course of time. ***Tulsi Ram Sahu v. State of Chhattisgarh, 2022 LiveLaw (SC) 764***

Section 439 - Special powers of High Court or Court of Session regarding bail

Code of Criminal Procedure, 1973 - Section 439 - Bail - In the case of murder (under Section 302 IPC), it is expected that at least some reason would be given while reversing the order of the Trial Court, which had rejected the bail application by a reasoned order. (Para 4) ***Sabir v Bhoora @ Nadeem, 2022 LiveLaw (SC) 210 : 2022 (5) SCALE 89***

Code of Criminal Procedure, 1973 ; Section 439 (2) - Cancellation of bail cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bai - The powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused - In a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case - Unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered. *(Para 19 - 20)* ***Bhuri Bai v. State of Madhya Pradesh, 2022 LiveLaw (SC) 956***

Code of Criminal Procedure, 1973; Section 439 - Bail - A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail - This discretion is not unfettered - bail must be granted after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner. (Para 28) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 439 - Bail - A recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered - Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. (Para 13) ***Ms. Y v. State of Rajasthan, 2022 LiveLaw (SC) 384 : AIR 2022 SC 1910 : (2022) 9 SCC 269***

Code of Criminal Procedure, 1973; Section 439 - Bail - Appeal against Bail granted by the High Court in a murder case - Allowed - The High Court has granted bail to the -accused by passing a very cryptic and casual order, de hors cogent reasoning. We find that the High Court was not right in allowing the applications for bail filed by the accused. ***Kamla Devi v. State of Rajasthan, 2022 LiveLaw (SC) 272 : AIR 2022 SC 1524 : (2022) 6 SCC 725***

Code of Criminal Procedure, 1973; Section 439 - Bail - Appeal against bail granted by Allahabad HC to murder accused - Allowed -This Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Accused of his legitimate right to seek enlargement on bail on relevant considerations. ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 439 - Bail - Appeal against Rajasthan HC order granting bail to appellant accused of rape of his niece - Allowed - The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. ***Ms. Y v. State of Rajasthan, 2022 LiveLaw (SC) 384 : AIR 2022 SC 1910 : (2022) 9 SCC 269***

Code of Criminal Procedure, 1973; Section 439 - Bail - Appeal against Delhi High Court order granting bail to a man accused of kidnapping and murdering the 13-year-old son of a Delhi jeweler in 2014, whose body was found in a drain in East Delhi in November 2014 - Allowed - An important circumstance which should have, but has not been taken into consideration by the High Court is that crucial witnesses are yet to be examined. The release of the accused on bail, at this stage, would run a grave risk of impeding a fair trial. The apprehension that the witnesses may be tampered with cannot be regarded as lacking in substance. ***Mamta v. State (NCT of Delhi), 2022 LiveLaw (SC) 531 : (2022) 8 SCC 598***

Code of Criminal Procedure, 1973; Section 439 - Bail - Appellate Court required to analyze whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. (Para 11-15) ***Ms. Y v. State of Rajasthan, 2022 LiveLaw (SC) 384 : AIR 2022 SC 1910 : (2022) 9 SCC 269***

Code of Criminal Procedure, 1973; Section 439 - Bail - Cancellation of Bail - Cancellation of bail cannot be limited to the occurrence of supervening circumstances - Illustrative circumstances where the bail can be cancelled :- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record. b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim. c) Where the past criminal record and conduct of the accused is completely ignored while granting bail. d) Where bail has been granted on untenable grounds. e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice. f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified. g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case. *(Para 30-34)* ***Deepak Yadav v. State of U.P., 2022 LiveLaw (SC) 562 : AIR 2022 SC 2514 : (2022) 8 SCC 559***

Code of Criminal Procedure, 1973; Section 439 - Bail - Circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled - Discussed. (Para 24-26) ***Ms. P v. State of Madhya Pradesh, 2022 LiveLaw (SC) 448 : AIR 2022 SC 2183***

Code of Criminal Procedure, 1973; Section 439 - Bail - High Court or Sessions Court have a wide discretion in deciding an application for bail under Section 439 Cr.P.C. However, the said discretion must be exercised after due application of the judicial mind and not in a routine manner - Considerations for bail discussed. (Para 13- 19) ***Ms. P v. State of Madhya Pradesh, 2022 LiveLaw (SC) 448 : AIR 2022 SC 2183***

Code of Criminal Procedure, 1973; Section 439 - Bail - It is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. *(Para 26)* **Kamla Devi v. State of Rajasthan, 2022 LiveLaw (SC) 272** ***: AIR 2022 SC 1524 : (2022) 6 SCC 725***

Code of Criminal Procedure, 1973; Section 439 - Bail - No accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution. (Para 40) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 439 - Bail - Parameters which must be considered while granting bail discussed - certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused - At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. (Para 8-10) ***Ms. Y v. State of Rajasthan, 2022 LiveLaw (SC) 384 : AIR 2022 SC 1910 : (2022) 9 SCC 269***

Code of Criminal Procedure, 1973; Section 439 - Bail - Posters saying "Bhaiya is back" was put up to celebrate the release of a rape-accused on bail - Bail set aside - Brazen conduct of the accused has evoked a bona fide fear in complainant's mind that she would not get a free and fair trial if he remains enlarged on bail and that there is a likelihood of his influencing the material witnesses. ***Ms. P v. State of Madhya Pradesh, 2022 LiveLaw (SC) 448 : AIR 2022 SC 2183***

Code of Criminal Procedure, 1973; Section 439 - Bail - Principles that a Court must bear in mind while deciding an application for grant of bail discussed- A court should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine prima facie issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. (Para 30-33) ***Jagjeet Singh v. Ashish Mishra @ Monu, 2022 LiveLaw (SC) 376 : AIR 2022 SC 1918 : (2022) 9 SCC 321***

Code of Criminal Procedure, 1973; Section 439 - Bail - Principles governing grant of bail - There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations. *(Para 19-29)* ***Deepak Yadav v. State of U.P., 2022 LiveLaw (SC) 562 : AIR 2022 SC 2514 : (2022) 8 SCC 559***

Code of Criminal Procedure, 1973; Section 439 - Bail - Rape accused granted bail by the High Court observing that allegations are matter of trial and there is no need of custodial trial - Even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. The same may have some relevance while considering the application for anticipatory bail - Relevant aspects which are required to be kept in mind while considering the bail application are: Seriousness of the offence alleged; material collected during the investigation; statement of the prosecutrix recorded under Section 161 of Cr.PC, etc.- HC directed to reconsider the bail application afresh. ***X v. State of Karnataka, 2022 LiveLaw (SC) 972***

Code of Criminal Procedure, 1973; Section 439 - Bail - The Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. *(Para 26)* ***Kamla Devi v. State of Rajasthan, 2022 LiveLaw (SC) 272 : AIR 2022 SC 1524 : (2022) 6 SCC 725***

Code of Criminal Procedure, 1973; Section 439 - Bail - The offer of payment of ad interim compensation to the victim cannot be a ground to release the accused on bail. (Para 7) ***State of Jharkhand v. Salauddin Khan, 2022 LiveLaw (SC) 755***

Code of Criminal Procedure, 1973; Section 439 - Bail - When bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have arisen since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima -facie case against the accused. *(Para 29)* ***Kamla Devi v. State of Rajasthan, 2022 LiveLaw (SC) 272 : AIR 2022 SC 1524 : (2022) 6 SCC 725***

Code of Criminal Procedure, 1973; Section 439 - Prisoners in jail despite getting bail as they can't fulfil conditions - Supreme Court directs States to furnish data of undertrial prisoners who remain in bail as they can't satisfy surety or comply with other conditions. ***Sonadhar v. State of Chattisgarh, 2022 LiveLaw (SC) 1007***

Code of Criminal Procedure, 1973; Section 439 - Where a Court while considering an application for bail fails to consider the relevant factors, an Appellate Court may justifiably set aside the order granting bail. Appellate Court is thus required to consider whether the order granting bail suffers from a non-application of mind or a prima facie view from the evidence available on record. ***Centrum Financial Services v. State of NCT of Delhi, 2022 LiveLaw (SC) 103 : AIR 2022 SC 650***

Code of Criminal Procedure, 1973; Section 439 - While granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and 18 circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. ***Centrum Financial Services v. State of NCT of Delhi, 2022 LiveLaw (SC) 103 : AIR 2022 SC 650***

Code of Criminal Procedure, 1973; Section 439(2) - Bail conditions -The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed. *[Para 29]* ***Mohammed Zubair v. State of NCT of Delhi, 2022 LiveLaw (SC) 629 : AIR 2022 SC 3649***

Code of Criminal Procedure, 1973; Sections 439, 161 - Bail - Statements under Section 161 of Cr.P.C. may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence. ***Indresh Kumar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 610***

Section 440 - Amount of bond and reduction thereof

Code of Criminal Procedure, 1973; Section 440 - It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible of compliance would be defeating the very object of the release. In this connection, we would only say that Section 436, 437, 438 and 439 of the Code are to be read in consonance. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power under Section 88 of the Code also the said factum has to be kept in mind. ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Code of Criminal Procedure, 1973; Sections 440, 436A - Undertrials - The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release- While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind - An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court. *(Para 73 (h-j))* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Section 446 - Procedure when bond has been forfeited

Code of Criminal Procedure, 1973; Section 446 - Discretionary power to the Court to remit any portion of the penalty mentioned and enforce payment in part only, after recording its reasons for doing so - Even when a person fails to show sufficient cause as to forfeiture of the bond amount, the Court is not bound to direct payment or recovery of the entire bond amount. The Court can exercise its discretion and remit some portion of the bond owing to the nature of the offence, status and position of the person, and having regard to other facts and circumstances of the case or when the amount of bond is unduly excessive. *(Para 13)* ***Istkar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 1000***

Section 464 - Effect of omission to frame, or absence of, or error in, charge

Code of Criminal Procedure, 1973; Section 464 - Penal Code, 1860; Section 149 - Mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them - Mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby - If ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned. [Referred to Annareddy Sambasiva Reddy Vs. State of Andhra Pradesh, (2009) 12 SCC 546] (Para 7) ***State of Uttar Pradesh v. Subhash @ Pappu, 2022 LiveLaw (SC) 336 : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Section 468 - Bar to taking cognizance after lapse of the period of limitation

Code of Criminal Procedure, 1973 - Section 468 - The relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. ***Amritlal v. Shantilal Soni, 2022 LiveLaw (SC) 248 : 2022 (4) SCALE 500***

Code of Criminal Procedure, 1973; Section 468 - If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution. *(Para 14)* ***Kamatchi v. Lakshmi Narayanan, 2022 LiveLaw (SC) 370 : AIR 2022 SC 2932***

Code of Criminal Procedure, 1973; Section 468 - The relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. ***Amritlal v. Shantilal Soni, 2022 LiveLaw (SC) 248 : 2022 (4) SCALE 500***

Section 482 - Saving of inherent power of High Court.

Code of Criminal Procedure, 1973; Section 482 - While exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. ***Jagmohan Singh v. Vimlesh Kumar, 2022 LiveLaw (SC) 546***

Code of Criminal Procedure, 1973 - Section 482 - Complainants are defendants in civil suits with regard to the same transactions - Complaint under Section 156 (3) CrPC filed after a period of one and half years from the date of filing of written statement - Ulterior motive of harassing the accused - Continuation of the present proceedings would amount to nothing but an abuse of process of law. (Para 22, 30) ***Babu Venkatesh v. State of Karnataka, 2022 LiveLaw (SC) 181 : (2022) 5 SCC 639***

Code of Criminal Procedure, 1973 - Section 482 - Quashing of FIR - Case of fabrication of documents can't be quashed saying there is no revenue loss to state. ***Missu Naseem v. State of Andhra Pradesh, 2022 LiveLaw (SC) 132 : (2022) 4 SCC 807***

Code of Criminal Procedure, 1973 - Section 482 - Quashing of FIR - Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR. (Para 19) ***Shafiya Khan @ Shakuntala Prajapati v. State of U.P., 2022 LiveLaw (SC) 153 : AIR 2022 SC 1055 : (2022) 4 SCC 549***

Code of Criminal Procedure, 1973 - Section 482 - Quashing of FIR - Power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies. (Para 17) ***Shafiya Khan @ Shakuntala Prajapati v. State of U.P., 2022 LiveLaw (SC) 153 : AIR 2022 SC 1055 : (2022) 4 SCC 549***

Code of Criminal Procedure, 1973 - Section 482 - Though the powers of the High Court under Section 482 of the Code of Criminal Procedure are wide and are in the nature of inherent power yet, the said power cannot be exercised suo motu in a sweeping manner and beyond the contours of what is stipulated under the said Section. (Para 7) ***Registrar General v. State, 2022 LiveLaw (SC) 204 : 2022 (5) SCALE 215***

Code of Criminal Procedure, 1973; Section 482 - At the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash. (Para 6) ***Veena Mittal v State of Uttar Pradesh, 2022 LiveLaw (SC) 110***

Code of Criminal Procedure, 1973; Section 482 - Complainant alleged that his signature on a sale deed has been forged - Later filed civil suit seeking cancellation of sale deed - High Court refused to quash the complaint - While allowing the appeal, the Supreme Court said : A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, the High Court should have quashed the criminal proceeding to prevent abuse of process of court - This order (1) will not come in the way of instituting appropriate proceedings in future in case the Civil Court comes to the conclusion that the disputed sale deed is forged (2) shall not be cited as a precedent. ***R. Nagender Yadav v. State of Telangana, 2022 LiveLaw (SC) 1030***

Code of Criminal Procedure, 1973; Section 482 - Complaint on the basis of which FIR came to be registered does not disclose any act of the accused or their participation in the commission of crime - Criminal proceedings quashed. ***Ramesh Chandra Gupta v. State of U.P., 2022 LiveLaw (SC) 993***

Code of Criminal Procedure, 1973; Section 482 - Court has to go slow even while exercising jurisdiction under Section 482 Cr.PC or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others. (Para 42) ***P. Dharamaraj v. Shanmugam, 2022 LiveLaw (SC) 749 : AIR 2022 SC 4195***

Code of Criminal Procedure, 1973; Section 482 - Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature - In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society. *(Para 38)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Code of Criminal Procedure, 1973; Section 482 - Criminal proceedings cannot be quashed only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 Cr.P.C. to quash the criminal proceedings - The fact that the complaint may have been initiated by reason of political vendetta is not in itself ground for quashing the criminal proceedings. (Para 30, 39) ***Ramveer Upadhyay v. State of U.P., 2022 LiveLaw (SC) 396 : AIR 2022 SC 2044***

Code of Criminal Procedure, 1973; Section 482 - Drugs and Cosmetics Act, 1940 - No explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint - While inordinate delay in itself may not be ground for quashing of a criminal complaint, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint - While the court does not expect a full-blown investigation at the stage of a criminal complaint, however, in such cases where the accused has been subjected to the anxiety of a potential initiation of criminal proceedings for such a length of time, it is only reasonable for the court to expect bare-minimum evidence from the Investigating Authorities. *(Para 24-26)* ***Hasmukhlal D. Vora v. State of Tamil Nadu, 2022 LiveLaw (SC) 1033***

Code of Criminal Procedure, 1973; Section 482 - Grant of any stay of investigation and/or any interim relief while exercising powers under Section 482 Cr.P.C. would be only in the rarest of rare cases. *(Para 6)* ***Siddharth Mukesh Bhandari v. State of Gujarat, 2022 LiveLaw (SC) 653 : AIR 2022 SC 3930***

Code of Criminal Procedure, 1973; Section 482 - If no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed - When the complaint itself disclosed nothing more than a commercial relationship which broke, it is not possible to enlarge the scope of his complaint by merely adding the language used in the text of the Indian Penal Code. *(Para 15-18)* ***Wyeth Limited v. State of Bihar, 2022 LiveLaw (SC) 721***

Code of Criminal Procedure, 1973; Section 482 - Indian Penal Code, 1860; Section 306 - An FIR under Section 306 IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else - Section 306 IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. *(Para 50)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Code of Criminal Procedure, 1973; Section 482 - Inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the Section, the Court is duty bound to exercise its jurisdiction under Section 482 of the Cr.P.C. when the exercise of such power is justified by the tests laid down in the said Section. Jurisdiction under Section 482 of the Cr.P.C. must be exercised if the interest of justice so requires. *(Para 35)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Code of Criminal Procedure, 1973; Section 482 – Inherent powers of High Court – Accused cannot be made to pay *ad interim* victim compensation by the High Court in the exercise of their inherent powers as a precondition to get anticipatory bail without reasonable justification – Held, there was no reasonable justification for the High Court to call upon the appellant to submit a demand draft of Rs. 10 lakhs in availing the benefit of pre-arrest bail – Appeal allowed. ***Ravikant Srivastava @ Ravi Kant Shrivastava v. State of Jharkhand, 2022 LiveLaw (SC) 877***

Code of Criminal Procedure, 1973; Section 482 - Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking - In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence - Ends of justice would be better served if valuable time of the Court is spent on hearing appeals rather than entertaining petitions under Section 482 at an interlocutory stage which might ultimately result in miscarriage of justice. (Para 26-39) ***Ramveer Upadhyay v. State of U.P., 2022 LiveLaw (SC) 396 : AIR 2022 SC 2044***

Code of Criminal Procedure, 1973; Section 482 - Negotiable Instruments Act, 1881; Section 138,139 - The Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption - In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint - Quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence. *(Para 16, 11, 13)* ***Rathish Babu Unnikrishnan v. State, 2022 LiveLaw (SC) 413 : 2022 (6) SCALE 794***

Code of Criminal Procedure, 1973; Section 482 - Negotiable Instruments Act, 1881; Section 138, 141 - The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions, resulting in enactment of Sections 138 and 141 of the NI Act has to be borne in mind - A complaint should also not be read with a pedantically hyper technical approach to deny relief under Section 482 of the Cr.P.C. to those impleaded as accused, who do not have any criminal liability in respect of the offence alleged in the complaint. *(Para 39)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Code of Criminal Procedure, 1973; Section 482 - Negotiable Instruments Act, 1881; Section 138,141 - High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques - If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court. *(Para 47)* ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 LiveLaw (SC) 772 : AIR 2022 SC 4883***

Code of Criminal Procedure, 1973; Section 482 - Negotiable Instruments Act, 1881; Sections 138,139 - Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC. ***Yogesh Jain v. Sumesh Chadha, 2022 LiveLaw (SC) 879***

Code of Criminal Procedure, 1973; Section 482 - Perfunctory investigation cannot be a ground either to quash the criminal proceedings or even to acquit the accused. *(Para 14)* ***R. Nagender Yadav v. State of Telangana, 2022 LiveLaw (SC) 1030***

Code of Criminal Procedure, 1973; Section 482 - Prevention of Corruption Act, 1988 - Corruption by a public servant is an offence against the State and the society at large. The Court cannot deal with cases involving abuse of official position and adoption of corrupt practices, like suits for specific performance, where the refund of the money paid may also satisfy the agreement holder. (Para 44) ***P. Dharamaraj v. Shanmugam, 2022 LiveLaw (SC) 749 : AIR 2022 SC 4195***

Code of Criminal Procedure, 1973; Section 482 - Quashing of FIR - No mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered. *(Para 7)* ***State of U.P. v. Akhil Sharda, 2022 LiveLaw (SC) 594***

Code of Criminal Procedure, 1973; Section 482 - Scope and powers of High Court discussed - The inherent power of the High Court under Section 482 of the Cr.P.C. is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case. *(Para 26-37)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Code of Criminal Procedure, 1973; Section 482 - Scope of exercise of power under Section 482 - Exercise of power under Section 482 Cr.P.C. is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist - If FIR and the materials collected disclose a cognizable offence and the final report filed under Section 173(2), Cr.P.C. on completion of investigation based on it would reveal that the ingredients to constitute an offence under the POCSO Act and a prima facie case against the persons named therein as accused, the truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C. and undoubtedly they are matters to be done by the Trial Court at the time of trial. *(Para 18)* ***State of Maharashtra v. Dr. Maroti Kashinath Pimpalkar, 2022 LiveLaw (SC) 898** : **AIR 2022 SC 5595***

Code of Criminal Procedure, 1973; Section 482 - Scope of inherent power to quash FIR/Criminal proceedings discussed. *(Para 14-20)* ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Code of Criminal Procedure, 1973; Section 482 - The circumstances in which power to quash an FIR could be exercised. ***Gurukanwarpal Kirpal Singh v. Surya Prakasam, 2022 LiveLaw (SC) 519***

Code of Criminal Procedure, 1973; Section 482 - The court can exercise its powers to quash a criminal complaint, provided that the evidence adduced is clearly inconsistent with the accusations made, or no legal evidence has been presented - For the quashing of a criminal complaint, the Court, when it exercises its power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the complaint disclose the commission of a cognizable offence - Broad guidelines for quashing a criminal complaint. ***Hasmukhlal D. Vora v. State of Tamil Nadu, 2022 LiveLaw (SC) 1033***

Code of Criminal Procedure, 1973; Section 482 - The Criminal Proceeding cannot be quashed only because there is a settlement (including monetary settlement) between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. *(Para 50)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Code of Criminal Procedure, 1973; Section 482 - The ground that "no useful purpose will be served by prolonging the proceedings of the case" cannot be a good ground and/or a ground at all to quash the criminal proceedings when a clear case was made out for the offences alleged. *(Para 6.3)* ***Satish Kumar Jatav v. State of U.P., 2022 LiveLaw (SC) 488 : 2022 (8) SCALE 284***

Code of Criminal Procedure, 1973; Section 482 - The High Court has the inherent power to recall a judgment and/or order which was without jurisdiction or a judgment and/or order passed without hearing a person prejudicially affected by the judgment and/or order. *(Para 22)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Code of Criminal Procedure, 1973; Section 482 - The High Court must pass a speaking and reasoned order in such matters. *(Para 6.2)* ***Satish Kumar Jatav v. State of U.P., 2022 LiveLaw (SC) 488 : 2022 (8) SCALE 284***

Code of Criminal Procedure, 1973; Section 482 - The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC discussed -To non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. ***Rathish Babu Unnikrishnan v. State, 2022 LiveLaw (SC) 413 : 2022 (6) SCALE 794***

Code of Criminal Procedure, 1973; Section 482 - There being no bar to exercise of jurisdiction of Criminal Courts including the High Court, under Section 482 CrPC, the High Court is competent to entertain the petition under Section 482 CrPC. *(Para 14)* ***Abdul Vahab v. State of Madhya Pradesh, 2022 LiveLaw (SC) 243 : 2022 (4) SCALE 401***

Code of Criminal Procedure, 1973; Section 482 - When the dispute in question is purely civil in nature, the adoption of remedy in a criminal court would amount to abuse of the process of Court. ***Jayahari v. State of Kerala, 2022 LiveLaw (SC) 106***

Code of Criminal Procedure, 1973; Section 482 - While exercising its jurisdiction under Section 482 of the Cr.P.C., the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. *(Para 16)* ***R. Nagender Yadav v. State of Telangana, 2022 LiveLaw (SC) 1030***

Code of Criminal Procedure, 1973; Section 482 - While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice - Courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law. *(Para 28)* ***Hasmukhlal D. Vora v. State of Tamil Nadu, 2022 LiveLaw (SC) 1033***

Code of Criminal Procedure, 1973; Sections 482 and 173(8) - In an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation - The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice - The question of opportunity of hearing in such matters would always depend upon the given set of facts and circumstances of the case - While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted. *(Para 13, 18)* ***Devendra Nath Singh v. State of Bihar, 2022 LiveLaw (SC) 835 : AIR 2022 SC 5344***

Control of Terrorism and Organised Crime Act, 2015 (Gujarat)

Control of Terrorism and Organized Crime Act, 2015 (Gujarat) - To invoke this Act in respect of such an activity more than one charge-sheet must have been filed before a competent Court in the preceding ten years- Bail granted to accused as only one chargesheet has been filed against him. ***Mohamad Iliyas Mohamad Bilal Kapadiya v. State of Gujarat, 2022 LiveLaw (SC) 538***

Control of Terrorism and Organised Crime Act, 2015 (Gujarat) - Control of Organised Crime Act, 1999 (Maharashtra) - Where a person commits no unlawful activity after the invocation of the MCOCA. In such circumstances, the person cannot be arrested under the said Act on account of the offences committed by him before coming into force of the said Act, even if, he is found guilty of the same. However, if the person continues with the unlawful activities and is arrested, after the promulgation of the said Act, then, such person can be tried for the offence under the said Act. If a person ceases to indulge in any unlawful act after the said Act, then, he is absolved of the prosecution under the said Act. But, if he continues with the unlawful activity, it cannot be said that the State has to wait till, he commits two acts of which cognizance is taken by the Court after coming into force. The same principle would apply, even in the case of the 2015 Act. *(Para 51)* ***State of Gujarat v. Sandip Omprakash Gupta, 2022 LiveLaw (SC) 1031***

Section 3 - Punishment for terrorist act and organised crime.

Control of Terrorism and Organised Crime Act, 2015 (Gujarat); Section 3 - The offence of 'organised crime' could be said to have been constituted by at least one instance of continuation, apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years. *(Para 51)* ***State of Gujarat v. Sandip Omprakash Gupta, 2022 LiveLaw (SC) 1031***

Section 20 - Modified application of certain provisions of the code

Control of Terrorism and Organised Crime Act, 2015 (Gujarat); Section 20(2) - Code of Criminal Procedure, 1973; Section 167(2) - Application for extension of time for investigation - Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the said period of 90 days. Therefore, the extension of time is not an empty formality - The scope of the objections may be limited - The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by sub-section (2) of Section 20 of the 2015 Act to sub-section (2) of Section 167 of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted. *(Para 28-29)* ***Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat, 2022 LiveLaw (SC) 794 : AIR 2022 SC 4641***

Control of Terrorism and Organised Crime Act, 2015 (Gujarat); Section 20(5) - In State of Maharashtra v. Bharat Shanti Lal Shah (2008) 13 SCC 5, it was held that the expression "or under any other Act" appearing in sub-section (5) of Section 21 of the MCOCA was violative of Articles 14 and 21 of the Constitution and, therefore, it must be struck down. Hence, the same expression used in sub-section (5) of Section 20 of the 2015 Act infringes Articles 14 and 21 of the Constitution. *(Para 21)* ***Jigar @ Jimmy Pravinchandra Adatiya v. State of Gujarat, 2022 LiveLaw (SC) 794 : AIR 2022 SC 4641***

Control of Organised Crime Act, 1999 (Maharashtra)

Section 2(1)(d) - "Continuing Unlawful Activity"

Control of Organised Crime Act, 1999 (Maharashtra); Section 2(1)(d) - The matter of settlement because of cross-cases or a matter of acquittal because of the witnesses not turning up, could hardly be of any relevance so far as Section 2(1)(d) of MCOCA is concerned - What is significant and pertinent is the involvement of the person concerned in the referred activity and filing of charge-sheet and taking of cognizance in the offence as predicated. Acquittal or discharge is of no significance. *(Para 17.5)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Control of Organised Crime Act, 1999 (Maharashtra); Section 2(1)(d) - The threshold requirement in terms of clause (d) is that of the activity/activities undertaken by the accused persons either singly or jointly, as a member of an organized crime syndicate, which involves a cognizable offence punishable with imprisonment of 3 years or more and in respect of which, more than one charge-sheets have been filed before the competent Court within 10 years and cognizance had been taken. *(Para 17.1)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Control of Organized Crime Act, 1999 (Maharashtra); Section 2(1)(d) - More than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate. *(Para 79)* ***Zakir Abdul Mirajkar v. State of Maharashtra, 2022 LiveLaw (SC) 707***

Section 2(1)(e) - "Organised Crime"

Control of Organised Crime Act, 1999 (Maharashtra); Section 2(1)(e) - The expression 'other advantage' cannot be read in a restrictive manner and is required to be given its full effect. The High Court has rightly said that there could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. *(Para 14.2-14.4)*

Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282

Control of Organised Crime Act, 1999 (Maharashtra); Section 2(1)(e) - Actual use of violence is not always a sine qua non for an activity falling within the mischief of organised crime, when undertaken by an individual singly or jointly as part of organised crime syndicate or on behalf of such syndicate. Threat of violence or even intimidation or even coercion would fall within the mischief. *(Para 14.1)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Section 18 - Certain confessions made to police officer to be taken into consideration

Control of Organised Crime Act, 1999 (Maharashtra); Section 18 - The value attached to the confessional statement, while overriding the provisions of CrPC and the Evidence Act in terms of Section 18 of MCOCA, cannot be gainsaid and cannot be ignored. *(Para 18)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Control of Organized Crime Act, 1999 (Maharashtra); Section 18 - Confession recorded by an Additional Superintendent of Police [Addl. SP] is admissible in evidence - The posts of SP, Addl. SP, and DCP all fall within the same rank as they exercise similar functions and powers and operate within similar spheres of authority. *(Para 63)* ***Zakir Abdul Mirajkar v. State of Maharashtra, 2022 LiveLaw (SC) 707***

Section 23 - Congnizance of, and investigation into, an offence

Control of Organized Crime Act, 1999 (Maharashtra); Section 23(1)(a) - The order of approval need not name every accused person at the outset- Section 23(1)(a) MCOCA speaks of recording information about the commission of an offence of organized crime, and not of recording information about the offender. The competent authority may record information under Section 23(1)(a) once it is satisfied that an organized crime has been committed by an organized crime syndicate. *(Para 72)* ***Zakir Abdul Mirajkar v. State of Maharashtra, 2022 LiveLaw (SC) 707***

Section 3 - Punishment for organised crime

Control of Organized Crime Act, 1999 (Maharashtra); Section 3(2) - Those accused of abetting the commission of organized crime need not themselves be charged with committing a cognizable offence punishable with imprisonment of at least three years. They need only be abetting those who are guilty of committing a cognizable offence punishable with imprisonment of at least three years, which offence amounts to an organized crime. *(Para 76)* ***Zakir Abdul Mirajkar v. State of Maharashtra, 2022 LiveLaw (SC) 707***

Criminal Cases

Criminal Cases - Disposal of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and under the Probation of Offenders Act, 1958 - Guidelines issued. ***Re: Policy Strategy for Grant of Bail, 2022 LiveLaw (SC) 889***

Criminal Cases - Role of State - In criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interest of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book. (Para 11) ***Jayaben v. Tejas Kanubhai Zala, 2022 LiveLaw (SC) 29*** **:** ***AIR 2022 SC 358 : (2022) 3 SCC 230***

Criminal Cases - Where it is found that the accused are released on bail in serious offences, the State Government/legal department of State Government and the Director of Prosecution shall take prompt decision and challenge the order passed by the trial court and/or the High Court as the case may be. (Para 11) ***Jayaben v. Tejas Kanubhai Zala, 2022 LiveLaw (SC) 29*** **:** ***AIR 2022 SC 358 : (2022) 3 SCC 230***

Criminal Investigation

Criminal Investigation - Delay in recording Section 161 CrPC Statement -An inordinate and unexplained delay may be fatal to the prosecution's case but only to be considered by the Court, on the facts of each case. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the Investigating Officer. It only causes doubt in the mind of the Court, which is required to be cleared. Similarly, a statement recorded, as in the present case, the investigation report is expected to be sent to the jurisdictional Magistrate at the earliest. A long, unexplained delay, would give room for suspicion. (Para 28) ***Jafarudheen v. State of Kerala, 2022 LiveLaw (SC) 403: AIR 2022 SC 3627 : (2022) 8 SCC 440***

Criminal Investigation - There cannot be two investigating agencies with respect to the same FIRs/complaints arising out of the same incident/occurrence with respect to different co-accused - Supreme Court transfers FIRs against Times Now Anchor Navika Kumar over Prophet remarks to Delhi - Transfer applicable to Future FIRs likely to be registered over the same telecast. ***Navika Kumar v. Union of India, 2022 LiveLaw (SC) 796 : AIR 2022 SC 4615***

Criminal Investigation and Trial - In case of grave and serious non compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society. *(Para 39)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Test Identification Parade

Criminal Investigation - Test Identification Parade - Threefold object of conducting TIP - Necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade -TIP to be held without avoidable and unreasonable delay after the arrest of the accused - Healthy ratio between suspects and non-suspects during a TIP - TIP is not just an empty formality. *(Para 25 - 31)* ***Gireesan Nair v. State of Kerala, 2022 LiveLaw (SC) 955***

Criminal Investigation - Test Identification Parade - TIPs should normally be conducted at the earliest possible time to eliminate the chance of accused being shown to witnesses before the identification parade, which might otherwise affect such witnesses' memory - There is no hard and fast rule that delay or failure in holding the TIP ipso facto renders the evidence inadmissible or unacceptable; it however, affects the credibility and weight attached to such identification.*(Para 100)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Criminal Justice System

Criminal Justice System - The criminal justice system of ours can itself be a punishment - The present appeals were preferred assailing that order and interim stay was granted at the threshold. The trial of course naturally did not proceed in view of the stay by this Court. The matter has rested at that for the last thirteen years. ***V.P. Singh v. State of Punjab, 2022 LiveLaw (SC) 994***

Criminal Law

Criminal Law - Appeal against Uttarakhand HC judgment convicting accused appellant under Sections 363, 366-B, 370(4) and 506 of the IPC, and under Section 8 of the POCSO Act- Dismissed - The offences alleged against the appellant were rightly invoked and fully substantiated. ***Sartaj Khan v. State of Uttarakhand, 2022 LiveLaw (SC) 321 : 2022 (5) SCALE 384***

Criminal Trial

Criminal Trial - A mere chart giving description of offences, numbers and the sections of the offences and about the nature of offences cannot be taken into account at the stage of conviction - If the Prosecution wanted the Court to take note of the fact that there were other matters in which accused were involved, the concerned Chargesheets should have been produced on record along with sufficient details including the judgments or orders of conviction. A mere chart cannot be taken as proof of the involvement of the accused in other crimes either at the stage of conviction or sentence. (Para 32, 22) ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Criminal Trial - Appeal against High Court judgment reversing conviction of accused in a murder case - Allowed - The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole - Delay of seven hours in lodging FIR cannot be said to be fatal to the prosecution case - Conviction recorded by Trial Court restored. ***M. Nageswara Reddy v. State of Andhra Pradesh, 2022 LiveLaw (SC) 251 : (2022) 5 SCC 791***

Criminal Trial - Appeal against High Court judgment upholding conviction of accused in a murder case - dismissed - The prosecution proved its case beyond reasonable doubt - The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal. ***Karan Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 234 : (2022) 6 SCC 52***

Criminal Trial - Being a relative of the deceased is no reason to discredit their version. *(Para 19)* ***Gurmail Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 854 : AIR 2022 SC 5258***

Criminal Trial - Being related to the victim, by itself, is no reason at all to discredit the testimony of a witness. *(Para 34)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - Death sentence imposed on accused in case of rape and murder of 8 year old commuted to that of imprisonment for life with the stipulation that he shall not be entitled to premature release or remission before undergoing actual imprisonment for a period of 30 years - The present case cannot be considered as one falling in the category of 'rarest of rare cases'. ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - Defective investigation by the investigating authorities by itself does vitiate the case of the prosecution when there are credible eye-witness testimonies as well as other compelling pieces of evidence. *(Para 140)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Criminal Trial - Description of a witness as 'chance witness' cannot and will not by itself denude the admissibility or relevance of the evidence of such a witness if nothing was brought out to make his version suspicious and thereby unacceptable. *(Para 37)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - Early conclusion of the trial would enhance the faith of people in justice delivery system. The trial must come to its logical end at the earliest. ***Gali Janardhan Reddy v. State of Andhra Pradesh, 2022 LiveLaw (SC) 829 : AIR 2022 SC 4879***

Criminal Trial - Extra-judicial confession was a weak piece of evidence and unless there was some corroboration, the conviction solely on the basis of extra-judicial confession could not be sustained. *(Para 10)* ***State of Rajasthan v. Kistoora Ram, 2022 LiveLaw (SC) 663***

Criminal Trial - Guidelines for recording evidence of vulnerable witnesses in criminal matters' of the High Court of Delhi - The definition of "vulnerable witness" contained in Clause 3(a) expanded. *(Para 5 (i))* ***Smruti Tukaram Badade v. State of Maharashtra, 2022 LiveLaw (SC) 80***

Criminal Trial - Inquest report is not substantive evidence. The objective is to find out whether a person who has died under suspicious circumstances, what may be the apparent cause of his death. (Para 32) ***Pappu Tiwary v. State of Jharkhand, 2022 LiveLaw (SC) 107 : AIR 2022 SC 758***

Criminal Trial - Long adjournments being given after the completion of the chief examination, only helps the defense to win them over at times, with the passage of time - The trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible - The trial courts to take up the examination of the private witnesses first, before proceeding with that of the official witnesses. (Para 39) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Criminal Trial - Major difference in recording the number of injuries suffered by the deceased in the inquest report and the post-mortem report, not fatal to prosecution case. (Para 32) ***Pappu Tiwary v. State of Jharkhand, 2022 LiveLaw (SC) 107 : AIR 2022 SC 758***

Criminal Trial - Medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged - It is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. (Para 18) ***Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar, 2022 LiveLaw (SC) 402 : AIR 2022 SC 2817***

Criminal Trial - Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded. *(Para 10)* ***M. Nageswara Reddy v. State of Andhra Pradesh, 2022 LiveLaw (SC) 251 : (2022) 5 SCC 791***

Criminal Trial - Once the witness is in the witness box and is being cross examined every endeavour must be made to ensure that the cross examination is completed on that day. ***Neetu Tripathi v. State of Uttar Pradesh, 2022 LiveLaw (SC) 349***

Criminal Trial - Oral testimony may be classified into three categories, namely: (1) Wholly reliable. (2) Wholly unreliable. (3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. *(Para 21-22)*

Khema @ Khem Chandra v. State of Uttar Pradesh, 2022 LiveLaw (SC) 689 : AIR 2022 SC 3765

Criminal Trial - Previous enmity is a double- edged sword. On one hand, it provides motive to the crime and on the other, there is a possibility of false implication. *(Para 20)* ***Khema @ Khem Chandra v. State of Uttar Pradesh, 2022 LiveLaw (SC) 689 : AIR 2022 SC 3765***

Criminal Trial - The approximate time of death before examination, as indicated in the post -mortem report, cannot be applied as something of mathematical precision. (Para 36) ***Pappu v. State of Uttar Pradesh, 2022 LiveLaw (SC) 144 : 2022 (3) SCALE 45***

Criminal Trial - The court conducting the trial/appeal is not only obliged to protect the rights of the accused but also the rights of the victim, and the interest of the society at large. The Judge presiding over the criminal trial has not only to see that innocent man is not punished but has also to see that guilty man does not escape. Both are his public duties required to be discharged very diligently to maintain the public confidence and uphold the majesty of the law. (Para 35) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Criminal Trial - The court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. ***Karan Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 234 : (2022) 6 SCC 52***

Criminal Trial - The Courts have to label as to which category a discrepancy can be categorized. The material discrepancies corrode the credibility of the prosecution's case while insignificant discrepancies do not do so. *(Para 52)* ***Md. Jabbar Ali v. State of Assam, 2022 LiveLaw (SC) 856 : AIR 2022 SC 5420***

Criminal Trial - The evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court - Even assuming that the investigating officer has not deposed before the court or has not cooperated sufficiently, an accused is not entitled for acquittal solely on that basis, when there are other incriminating evidence available on record. (Para 25) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Criminal Trial - The evidence tendered by the related or interested witness cannot be discarded on that ground alone. However, as a rule of prudence, the Court may scrutinize the evidence of such related or interested witness more carefully. *(Para 26)* ***Surendran v. State of Kerala, 2022 LiveLaw (SC) 482 : AIR 2022 SC 2322***

Criminal Trial - The omission of some of the prosecution witnesses to mention a particular fact, or corroborate something, which is deposed to by other witnesses, therefore, does not ipso facto favour an accused. What is important, however, is whether the omission to depose about a fact is so fundamental that the prosecution version becomes shaky and incredulous - unless it is shown that the omission to examine a witness, who had previously participated during the investigation and whose statement was recorded by the police, undermines the prosecution case, or impacts on it significantly, the foundation of the fact or facts which are sought to be proved, remains unshaken as long as that fact is deposed to or spoken about by other witnesses, whose testimonies are to be seen in their own terms. Therefore, the omission to examine the individuals left out, but who the prosecution claimed, had participated during the investigation, did not affect its case, as far as the circumstances held to have been established by it, are concerned. *(Para 159-161)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Criminal Trial - The prosecution is required to prove its case beyond reasonable doubt and not beyond all iota of doubt. (Para 46) ***Karan Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 234 : (2022) 6 SCC 52***

Criminal Trial - The recovery of the dead body, which was in a concealed condition from an unused and dilapidated building based on the disclosure statement of an accused is a crucial incriminating circumstance - Discovery of the body at the instance of the accused is a crucial circumstance, in a case resting on circumstantial evidence. *(Para 41)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - The same treatment is required to be given to the defence witness(es) as is to be given to the prosecution witness(es). *(Para 20)* ***Mahendra Singh v. State of M.P., 2022 LiveLaw (SC) 543 : AIR 2022 SC 2631 : (2022) 7 SCC 157***

Criminal Trial - The test which is applied of proving the case beyond reasonable doubt does not mean that the endeavour should be to nick pick and somehow find some excuse to obtain acquittal. (Para 36) ***Pappu Tiwary v. State of Jharkhand, 2022 LiveLaw (SC) 107 : AIR 2022 SC 758***

Criminal Trial - The testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omissions - Only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. (Para 17) ***Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar, 2022 LiveLaw (SC) 402 : AIR 2022 SC 2817***

Criminal Trial - The testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission - Only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. ***Mekala Sivaiah v. State of Andhra Pradesh, 2022 LiveLaw (SC) 604 : AIR 2022 SC 3378 : (2022) 8 SCC 253***

Criminal Trial - There would be nothing wrong in relying on the testimony of police officers if their evidence is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence. *(Para 40)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - Unnecessarily weightage shall not be given to some minor contradictions - Deposition of injured eye witness has a greater reliability and credibility. *(Para 12)* ***M. Nageswara Reddy v. State of Andhra Pradesh, 2022 LiveLaw (SC) 251 : (2022) 5 SCC 791***

Criminal Trial - When other circumstances are available non-detection of blood group by itself would not be fatal. *(Para 44)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Criminal Trial - When the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. *(Para 48)* ***Md. Jabbar Ali v. State of Assam, 2022 LiveLaw (SC) 856 : AIR 2022 SC 5420***

Criminal Trial - Where there are credible injured eye-witness testimonies, certain minor variations, such as non-recovery of blood-stained clothes, certain other weapons etc. will not be fatal to the case of the prosecution. *(Para 164)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Criminal Trial - Witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is "wholly unreliable", neither conviction nor acquittal can be based on the testimony of such a witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. ***Mahendra Singh v. State of M.P., 2022 LiveLaw (SC) 543 : AIR 2022 SC 2631 : (2022) 7 SCC 157***

Alibi

Criminal Trial - *Alibi* - The burden on the accused is rather heavy and he is required to establish the plea of alibi with certitude- The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence. (Para 16, 17) ***Pappu Tiwary v. State of Jharkhand, 2022 LiveLaw (SC) 107 : AIR 2022 SC 758***

Circumstantial Evidence

Criminal Trial - Circumstantial Evidence - Circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established - Principles discussed. ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Criminal Trial - Circumstantial Evidence - Court has to see whether the chain of circumstances is complete and unbroken and keep in mind five golden principles or the panchsheell. *(Para 9)* ***Chotkau v. State of Uttar Pradesh, 2022 LiveLaw (SC) 804 : AIR 2022 SC 4688***

Criminal Trial - Circumstantial Evidence - In a case of circumstantial evidence, the Court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of an evidence and the evidence must point towards only one conclusion, which is the guilt of the accused - A very heavy duty is cast upon the prosecution to prove its case, beyond reasonable doubt - Parameters under which the case of circumstantial evidence is to be evaluated. *Referred to Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh AIR 1952 SC 343. (Para 12)* ***Munikrishna @ Krishna v. State by Ulsoor PS, 2022 LiveLaw (SC) 812***

Criminal Trial - Circumstantial Evidence - In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused. *(Para 47 - 49)* ***Subramanya v. State of Karnataka, 2022 LiveLaw (SC) 887 : AIR 2022 SC 5110***

Criminal Trial - Circumstantial Evidence - Principles applicable to appreciation of evidence in cases involving circumstantial evidence discussed. *[Referred to Sharad Birdi Chand Sarda v. State of Maharashtra (1984) 4 SCC 116 et al.] (149-151)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Criminal Trial - Circumstantial Evidence - Suspicion, howsoever strong, cannot substitute proof beyond reasonable doubt - There is not only a grammatical but also a legal distinction between 'may' and 'must'. For proving a case based on circumstantial evidence, it is necessary for the prosecution to establish each and every circumstance beyond reasonable doubt, and further, that the circumstances so proved must form a complete chain of evidence so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show, in all human probability, that the act has been done by the accused - The facts so established must exclude every hypothesis except the guilt of the accused. ***Ram Pratap v. State of Haryana, 2022 LiveLaw (SC) 1025***

Criminal Trial - Circumstantial Evidence - The chain of evidence has to be so complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused - The circumstances should be of a conclusive nature and tendency and should exclude every possible hypothesis except the one to be proved - The accused 'must be' and not merely 'may be' guilty before a Court can convict - Suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt. *(Para 18-20)* ***Ram Niwas v. State of Haryana, 2022 LiveLaw (SC) 670 : AIR 2022 SC 3748***

Criminal Trial - Circumstantial Evidence - The circumstances concerned "must or should be" established and not "may be" established - The accused "must be" and not merely "may be" guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the accused. ***Chandrapal v. State of Chhattisgarh, 2022 LiveLaw (SC) 529 : AIR 2022 SC 2542***

Criminal Trial - Circumstantial Evidence - The conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else - Circumstances howsoever strong cannot take place of proof and that the guilt of the accused have to be proved by the prosecution beyond reasonable doubt. (Para 11, 14) ***Satye Singh v. State of Uttarakhand, 2022 LiveLaw (SC) 169 : (2022) 5 SCC 438***

Criminal Trial - Circumstantial Evidence - The five golden principles laid down in the case of *Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 (Para 6)* ***S. Kaleeswaran v. State, 2022 LiveLaw (SC) 903*** *:* ***AIR 2022 SC 5535***

Criminal Trial - Circumstantial Evidence - Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. *(Para 10)* ***Ravinder Singh @ Kaku v. State of Punjab, 2022 LiveLaw (SC) 461 : AIR 2022 SC 2726 : (2022) 7 SCC 581***

DNA Reports

Criminal Trial - DNA Reports - The need to ensure quality in the testing and eliminate the possibility of contamination of evidence - Being an opinion, the probative value of such evidence has to vary from case to case - This court has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. *(Para 121)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Draft Criminal Rules of Practice, 2021

Criminal Trial - Draft Criminal Rules of Practice, 2021 - The prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules. *(Para 179)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Criminal Trial - Draft Rules of Criminal Practice 2021; Rule 4 - That some High Courts or governments of the States/ Union Territories have failed to comply with this court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused to receive this list of the statements, documents, material, etc. in the possession of the prosecution - To say that the judgment in Manoj vs State of Madhya Pradesh | 2022 LiveLaw (SC) 510 in relation to this, and the right of the accused to receive the said list of documents, material, etc. would only apply after the draft rules are adopted – would lead to an anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to an accused, in another. ***P. Ponnusamy v. State of Tamil Nadu, 2022 LiveLaw (SC) 923***

Extra judicial confession

Criminal Trial - Extra judicial confession - A weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession. *(Para 85)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

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Criminal Trial - Extra Judicial Confession - When the extra judicial confession is not duly proved, or does not inspire confidence or is not corroborated by any other reliable evidence, the conviction could not be based solely on such weak piece of evidence. *(Para 8)* ***S. Kaleeswaran v. State, 2022 LiveLaw (SC) 903 : AIR 2022 SC 5535***

Criminal Trial - Extra Judicial Confession - When there is a case hanging on an extra-judicial confession, corroborated only by circumstantial evidence, then the courts must treat the same with utmost caution. *(Para 15)* ***Ram Niwas v. State of Haryana, 2022 LiveLaw (SC) 670 : AIR 2022 SC 3748***

Eye Witness

Criminal Trial - Eye Witness - The evidence of eye -witness cannot be discarded only for the reason that he allegedly did not raise any alarm or did not try to intervene when the deceased was being ferociously assaulted and stabbed. ***Suresh Yadav @ Guddu v. State of Chhattisgarh, 2022 LiveLaw (SC) 217 : 2022 (4) SCALE 260***

Factors responsible for witnesses turning hostile

Criminal Trial - Factors responsible for witnesses turning hostile - Referred to Ramesh v. State of Haryana (2017) 1 SCC 529 - Witnesses who know the deceased victim may turn hostile because they wish to move on with their lives. Testifying as to the circumstances surrounding the rape and death of a loved one can be a deeply traumatizing event, which is only compounded by the slow pace of the criminal justice system. *(Para 53-54)* ***State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, 2022 LiveLaw (SC) 890 : AIR 2022 SC 5393***

Criminal Trial - Last seen theory – discussed. *(Para 32-32.5)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

False Explanation

Criminal Trial - Circumstantial Evidence - False Explanation - Before a false explanation can be used as an additional link, the following essential conditions must be satisfied: (i) Various links in the chain of evidence led by the prosecution have been satisfactorily proved. (ii) Such circumstances points to the guilt of the accused as reasonable defence. (iii) The circumstance is in proximity to the time and situation - If the aforesaid conditions are fulfilled only then a Court use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise - Prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. *(Para 96-98)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Last Seen Together Theory

Criminal Trial - Last Seen Together Theory - In absence of any other links in the chain of circumstantial evidence, the accused cannot be convicted solely on the basis of "Last seen together", even if version of the prosecution witness in this regard is believed. *(Para 14-17)* ***Chandrapal v. State of Chhattisgarh, 2022 LiveLaw (SC) 529 : AIR 2022 SC 2542***

Criminal Trial - Last Seen Together Theory - The failure of the accused, in a case based on circumstantial evidence which included "last seen together theory", to explain under Section 313 Cr.PC as to under what circumstances the victim suffered death, would also not be a ground to arrive at an irresistible conclusion that the accused were involved in the commission of the alleged crime - If there is considerable time gap between the persons seeing together and the proximate time of the crime, the circumstances of last seen together, even if proved cannot clinchingly fasten the guilt of the accused. *(Para 11-12)* ***S. Kaleeswaran v. State, 2022 LiveLaw (SC) 903*** : ***AIR 2022 SC 5535***

Motive

Criminal Trial - Circumstantial Evidence - Motive - Absence of motive in a case of circumstantial evidence weighs in favour of the accused - motive not relevant in a case of direct evidence. ***Nandu Singh v. State of Madhya Pradesh, 2022 LiveLaw (SC) 229*** : ***2022 (5) SCALE 329***

Criminal Trial - Circumstantial Evidence - Motive - absence of motive in a case of circumstantial evidence weighs in favour of the accused - motive not relevant in a case of direct evidence. ***Nandu Singh v. State of Madhya Pradesh, 2022 LiveLaw (SC) 229*** : ***2022 (5) SCALE 329***

Criminal Trial - Circumstantial Evidence - Motive - In a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance - Motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available - Failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. - Absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused. *(Para 87)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Criminal Trial - Motive - Only because the motive is established, the conviction cannot be sustained. *(Para 23)* ***Mahendra Singh v. State of M.P., 2022 LiveLaw (SC) 543 : AIR 2022 SC 2631 : (2022) 7 SCC 157***

Criminal Trial - Motive - Sufficiency or insufficiency of motive does not have a direct bearing on the actual evidence against the accused, particularly when the prosecution relies on direct evidence of injured eyewitnesse. *(Para 82-85)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Criminal Trial - Motive - Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. *(Para 14)* ***S. Kaleeswaran v. State, 2022 LiveLaw (SC) 903*** : ***AIR 2022 SC 5535***

Murder

Criminal Trial - Murder - Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murdered. Suspicion cannot take the place of proof. ***Tulesh Kumar Sahu v. State of Chattisgarh, 2022 LiveLaw (SC) 228***

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Non explanation of the injuries

Criminal Trial - Circumstantial Evidence - Non explanation of the injuries - Any non -explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non- explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot itself be a sole basis to reject such evidence, and consequently the whole case. *(Para 115)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Presumption of Innocence

Criminal Trial - Presumption of Innocence - Onus on the prosecution to prove the guilt before the Court -The agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied - Presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. *(Para 13-18)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Post Mortem Report

Criminal Trial - Post Mortem Report - The post mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence - It can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. *(Para 29)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Principles to be followed

Criminal Trial - Circumstantial Evidence - Principles to be followed - 1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; 2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature; 3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and 4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved. *(Para 46)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Related Witness

Criminal Trial - Related Witness - A close relative cannot automatically be characterized as an "interested" witness. However, even related witness statements need to be scrutinized more carefully. *(Para 10)* ***Jai Prakash Tiwari v. State of Madhya Pradesh, 2022 LiveLaw (SC) 658 : AIR 2022 SC 3601***

Sanction

Criminal Trial - Sanction - The validity of sanction could always be determined by the Trial Court during the course of trial where sanctioning authority could be examined and the appellant will have sufficient opportunity to contest the same, including that of cross-examining the sanctioning authority. *(Para 18.2)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Sentencing

Criminal Trial - Sentencing - 1988 Road Rage Case - Sentence awarded to Navjot Singh Sidhu enhanced to one year imprisonment - When a 25 year old man, who was an international cricketer, assaults a man more than twice his age and inflicts, even with his bare hands, a severe blow on his (victim's) head, the unintended consequence of harm would still be properly attributable to him as it was reasonably foreseeable - The indulgence was not required to be shown at the stage of sentence by only imposing a sentence of fine and letting him go without any imposition of sentence. ***Jaswinder Singh v. Navjot Singh Sidhu, 2022 LiveLaw (SC) 498 : AIR 2022 SC 2441 : (2022) 7 SCC 628***

Criminal Trial - Sentencing - Accused's involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law. The established involvement in other matters would then certainly be relevant while dealing with the question whether the concerned accused is required to be dealt with sternly or leniently. (Para 23) ***Venkatesh @ Chandra v. State of Karnataka,*** [***2022 LiveLaw (SC) 387***]

Criminal Trial - Sentencing - Appellant convicted under Section 376, 363, 366, 307, 354 and sentenced to life imprisonment sought modification of sentence- Sentenced to a term of 15 years' imprisonment - Appellant has undergone actual imprisonment for a period of 11 years as on date - The ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment. ***Vipul Rasikbhai Koli Jankher v. State of Gujarat,*** [***2022 LiveLaw (SC) 288***]

Criminal Trial - Sentencing - Gravity of crime is the prime consideration for deciding what should be the appropriate punishment - It is always the duty of the Court to balance aggravating circumstances and mitigating circumstances at the time of imposing sentence - If undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of people in efficacy of law - The judicial discretion is always guided by various considerations such as seriousness of the crime, the circumstances in which crime was committed and the antecedents of the accused. *(Para 12-13)* ***Sahebrao Arjun Hon v. Raosaheb Kashinath Hon,*** [***2022 LiveLaw (SC) 745***]

Criminal Trial - Sentencing - In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender - The principles of restorative justice find place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. *(Para 7, 8)* ***Vipul Rasikbhai Koli Jankher v. State of Gujarat,*** [***2022 LiveLaw (SC) 288***]

Criminal Trial - Sentencing - Necessity of maintaining a reasonable proportion between the seriousness of the crime and the punishment - While a disproportionately severe sentence ought not to be passed, simultaneously it also does not clothe the law courts to award a sentence which would be manifestly inadequate, having due regard to the nature of the offence, since an inadequate sentence would fail to produce a deterrent effect on the society at large - A long period had lapsed by the time the appeal was decided cannot be a ground to award the punishment which was disproportionate and inadequate. *(Para 25 -32)* ***Jaswinder Singh v. Navjot Singh Sidhu,*** [***2022 LiveLaw (SC) 498***] ***: AIR 2022 SC 2441 : (2022) 7 SCC 628***

Criminal Trial - Sentencing - Public opinion neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role. *(Para 227)* ***Manoj v. State of Madhya Pradesh,*** [***2022 LiveLaw (SC) 510***] ***: 2022 (9) SCALE 67***

Criminal Trial - Sentencing - Restorative Justice - To give opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail - The maximum punishment prescribed may not always be the determinative factor for repairing the crippled psyche of the offender. (Para 43) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Skull Superimposition Technique

Criminal Trial - Skull Superimposition Technique - Though identification of the deceased through superimposition is an acceptable piece of opinion evidence, however the courts generally do not rely upon opinion evidence as the sole incriminating circumstances, given its fallibility, and the superimposition technique cannot be regarded as infallible - When the super-imposition report is not supported by any other reliable medical evidence like a DNA report or post-mortem report, it would be very risky to convict the accused believing the identification of the dead body of the victim through the super-imposition test - When as per the case of prosecution, the dead body of the victim was discovered from the place shown by the accused, it is imperative on the part of the prosecution to prove that the dead body or the skeleton found at the instance of the accused was that of the victim and of none else. *(Para 13)* ***S. Kaleeswaran v. State, 2022 LiveLaw (SC) 903** : **AIR 2022 SC 5535***

Test Identification Parade

Criminal Trial - Test Identification Parade - When no TIP was conducted the first version of the complainant reflected in the FIR would play an important role - It is required to be considered whether in the FIR and/or in the first version the eye- witness either disclosed the identity and/or description of the accused on the basis of which he can recollect at the time of deposition and identify the accused for the first time in the Court Room - It would not be safe and/or prudent to convict the accused solely on the basis of their identification for the first time in the Court. *(Para 6.2 - 6.7)* ***Amrik Singh v. State of Punjab, 2022 LiveLaw (SC) 582 : (2022) 9 SCC 402***

Criminal Trial - Test Identification Parade (TIP) - If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless. *(Para 29)* ***Gireesan Nair v. State of Kerala, 2022 LiveLaw (SC) 955***

Vulnerable Witnesses

Criminal Trial - Vulnerable Witnesses - The fairness of the process of trial as well as the pursuit of substantive justice are determined in a significant measure by the manner in which statements of vulnerable witnesses are recorded - Creation of a barrier free environment where depositions can be recorded freely without constraining limitations, both physical and emotional - Directions issued. *(Para 3-5)* ***Smruti Tukaram Badade v. State of Maharashtra, 2022 LiveLaw (SC) 80***

D

Death Penalty

Death Penalty - Asessment as regards conduct of the accused, if made before the final submissions are advanced, will go a long way in rendering assistance- Court passed directions so that psychological evaluation of the concerned convict can be ascertained. ***Prakash Vishwanath Darandale v. State of Maharashtra,*** ***2022 LiveLaw (SC) 876***

Death Penalty - In all cases where imposition of capital punishment is a choice of sentence, aggravating circumstances would always be on record, and would be part of the prosecution's evidence, leading to conviction, whereas the accused can scarcely be expected to place mitigating circumstances on the record, for the reason that the stage for doing so is after conviction. This places the convict at a hopeless disadvantage, tilting the scales heavily against him. This court is of the opinion that it is necessary to have clarity in the matter to ensure a uniform approach on the question of granting real and meaningful opportunity, as opposed to a formal hearing, to the accused/convict, on the issue of sentence. Consequently, this court is of the view that a reference to a larger bench of five Hon'ble Judges is necessary for this purpose. Let this matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard. ***In Re: Framing Guidelines regarding Potential Mitigating Circumstances to be considered while imposing Death Sentences,*** 2022 LiveLaw (SC) 777

Death Penalty - Is Same day sentencing proper? Supreme Court refers issue to 5-judge bench in view of conflicting judgments. ***In Re: Framing Guidelines regarding Potential Mitigating Circumstances to be considered while imposing Death Sentences,*** 2022 LiveLaw (SC) 777

Death Penalty - It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the Courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures. ***Rahul v. State of Delhi Ministry of Home Affairs,*** ***2022 LiveLaw (SC) 926***

Death Penalty - Supreme Court acquits three persons who were sentenced to death by the trial court and the High Court for rape and murder of a 19-year old girl- Supreme Court notes lapses in investigation and trial - No Test Identification of accused done- Accused no identified during trial by witnesses- many witnesses no cross-examined- recoveries not proved. *[Paras 32-34]* ***Rahul v. State of Delhi Ministry of Home Affairs, 2022 LiveLaw (SC) 926***

Death Sentence

Death Sentence - Appeal against Madhya Pradesh HC judgment which confirmed Death Sentence of man accused of rape and murder of 4 year old girl - Conviction upheld - Death sentence commuted to life imprisonment - Imposed the sentence of imprisonment for a period of twenty years instead of imprisonment for the remainder of his natural life for the offence under section 376A, IPC. ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Death Sentence - Appellants' conviction under Section 302 IPC upheld but death sentence commuted to life imprisonment for a minimum term of 25 years. ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Death Sentence - Death sentence being awarded and maintained only in extreme cases, does not mean that the matter would be approached and examined in the manner that death sentence has be avoided, even if the matter indeed calls for such a punishment - The pursuit in collecting mitigating circumstances could also not be taken up with any notion or idea that somehow, some factor be found; or if not found, be deduced anyhow so that the sentence of death be forsaken - It has never been the effort of the Courts to somehow make this punishment (sentence of death) redundant and non-existent for all practical purposes. *(Para 54)* ***Manoj Pratap Singh v. State of Rajasthan, 2022 LiveLaw (SC) 557 : (2022) 9 SCC 81***

Death Sentence - Death sentenced imposed on man for rape and murder of 8 year old mentally and physically challenged girl upheld- The crime had been of extreme depravity, which shocks the conscience, particularly looking to the target (a seven-and-a-half-year old mentally and physically challenged girl) and then, looking to the manner of committing murder, where the hapless victim's head was literally smashed, resulting in multiple injuries including fracture of frontal bone - No probability of reformation and has criminal antecedents and also involved in crimes in jail post-conviction - There is absolutely no reason to commute the sentence of death to any other sentence of lesser degree. (Para 58) ***Manoj Pratap Singh v. State of Rajasthan, 2022 LiveLaw (SC) 557 : (2022) 9 SCC 81***

Death Sentence - Effect of delay in execution of death sentence due to pendency of Mercy Petition discussed. *(Para 12-17)* ***B.A. Umesh v. Union of India, 2022 LiveLaw (SC) 907***

Death Sentence - Practical guidelines issued to collect mitigating circumstances of the accused at the trial stage- The trial court must elicit information from the accused and the state -The state, must - for an offence carrying capital punishment - at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused - State, must in a time-bound manner, collect additional information pertaining to the accused - Information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities. *(Para 213-217)* ***Manoj v. State of Madhya Pradesh, 2022 LiveLaw (SC) 510 : 2022 (9) SCALE 67***

Death Sentence - Rarest of Rare doctrine discussed. (Para 41-42) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Death Sentence - There cannot be any universal formula for calling for a psychological evaluation report to determine whether the accused could be reformed or rehabilitated. *(Para 56.1)* ***Manoj Pratap Singh v. State of Rajasthan, 2022 LiveLaw (SC) 557 : (2022) 9 SCC 81***

Death Sentence - When there is challenge to the unity, integrity and sovereignty of India by acts of terrorism, such acts are taken as the most aggravating circumstances - The cumulative effect of the aggravating factors and the mitigating circumstances must be taken into account before the death sentence is awarded. *(Para 29-30)* ***Mohd. Arif @ Ashfaq v. State (NCT Of Delhi), 2022 LiveLaw (SC) 902***

Solitary Confinement

Death Sentence - Solitary Confinement - Accused sentenced to death for rape and murder of a housewife - The incarceration in solitary confinement and segregation from 2006 to 2013 was without the sanction of law and completely opposed to the principles laid down by this Court in Sunil Batra vs. Delhi Administration & Ors (1978) 4 SCC 494 - The incarceration in solitary confinement thus did show ill effects on the well-being - He is entitled to have the death sentence imposed upon him to be commuted to death sentence to life - He shall undergo minimum sentence of 30 years and if any application for remission is moved on his behalf, the same shall be considered on its own merits only after he has undergone actual sentence of 30 years - If no remission is granted, the sentence of imprisonment for life shall mean till the remainder of his life. ***B.A. Umesh v. Union of India, 2022 LiveLaw (SC) 907***

Theory of Residual Doubt

Death Sentence -The theory of residual doubt - After the final conclusion on the guilt and after pronouncing conviction, no concept of residual doubt as such is available for the purpose of sentencing. (Para 48 - 49) ***Manoj Pratap Singh v. State of Rajasthan, 2022 LiveLaw (SC) 557 : (2022) 9 SCC 81***

Detention

Detention - In the matter of considering representation made against detention order, the Competent Authority is duty bound to do so with utmost despatch - The time period of over two months spent in doing so, cannot countenanced. It does not require such a long time to examine the representation concerning preventive detention of the detenu. ***S. Amutha v, Government of Tamil Nadu, 2022 LiveLaw (SC) 25***

E

Evidence Act, 1872

Evidence Act, 1872 - A mere non -examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it. (Para 31) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Evidence Act, 1872 - Evidence Act is an "Adjective Law" highlighting and aiding substantive law - It is neither wholly procedural nor substantive, though trappings of both could be felt. (Para 12) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Evidence Act, 1872 - The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it. (Para 17) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Evidence Act, 1872 - When the court is convinced with the quality of the evidence produced, notwithstanding the classification, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. (Para 29) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Evidence Act, 1872 - When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a judge. It is only after undertaking the said exercise can he resume his role as a judge to proceed further in the case. (Para 18) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Evidence Act, 1872 - When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. *(Para 13)* ***Ravi Sharma v Govt. of NCT of Delhi, 2022 LiveLaw (SC) 615 : AIR 2022 SC 4810 : (2022) 8 SCC 536***

Evidence Act, 1872 - While appreciating the evidence as aforesaid along with the matters attached to it, evidence can be divided into three categories broadly namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If evidence, along with matters surrounding it, makes the court believe it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration, and in such a case, court can also take note of the contradictions available in other matters. (Para 20) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Dying Declaration

Evidence Act 1872 - Dying Declaration - When can be relied upon - Conditions - It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance. *(Para 9)* ***Makhan Singh v. State of Haryana, 2022 LiveLaw (SC) 677 : AIR 2022 SC 3793***

"Matters"

Evidence Act, 1872 - "Matters" - Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of "matters" is exhaustive, and therefore, much wider than that of "evidence". However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact - Matters do give more discretion and flexibility to the court in deciding the existence of a fact. ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Chance Witness

Evidence Act, 1872 - Chance Witness - A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. (Para 26) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Classification of Evidence

Evidence Act, 1872 - Classification of Evidence - Circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc. ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Definition of "Proved"

Evidence Act, 1872 - Definition of "Proved" - The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence. (Para 13) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Extra - Judicial Confession

Extra-judicial confession - A weak piece of evidence - Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified. ***Union of India v. Major R. Metri No. 08585N, 2022 LiveLaw (SC) 343 : AIR 2022 SC 1661 : (2022) 6 SCC 525***

Hostile Witness

Evidence Act, 1872 - Hostile Witness - Testimony of a witness turning to depose in favour of the opposite party -A witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to make an assessment, being a matter before it and come to the correct conclusion. (Para 21) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Ocular Evidence

Evidence Act, 1872 - Ocular Evidence - Principles for appreciation of ocular evidence in a criminal case - In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. *(Para 27-28)* ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, 2022 LiveLaw (SC) 596***

Related Witness

Evidence Act, 1872 - Related Witness - A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigor of cross examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose. (Para 28) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Section 3 - Interpretation-clause.

Evidence Act, 1872 - Section 3 - Definition of "Evidence" - Factor or material, lending a degree of probability through a logical inference to the existence of a fact. (Para 12) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Section 8 - Motive, preparation and previous or subsequent conduct.

Evidence Act, 1872; Section 8 - Although the conduct of an accused may be a relevant fact under Section 8 of the Evidence Act, yet the same, by itself, cannot be a ground to convict him or hold him guilty and that too, for a serious offence like murder. *(Para 74)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Evidence Act, 1872; Section 8 - Doctrine of *Res Gestae* - The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. A conduct of the accused after the incident may become admissible under Section 6 of the Evidence Act, though not in issue, if it is so connected with the fact in issue. *(Para 36)* ***Veerendra v. State of Madhya Pradesh, 2022 LiveLaw (SC) 480 : AIR 2022 SC 2396 : (2022) 8 SCC 668***

Evidence Act, 1872; Section 8 - The conduct of the accused alone, though may be relevant under Section 8 of the Act, cannot form the basis of conviction. *(Para 50)* ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, 2022 LiveLaw (SC) 596***

Evidence Act, 1872; Section 8 - The conduct of the accused alone, though may be relevant under Section 8 of the Evidence Act, cannot form the basis of conviction. *(Para 89)* ***Subramanya v. State of Karnataka, 2022 LiveLaw (SC) 887 : AIR 2022 SC 5110***

Evidence Act, 1872; Section 8, 27 - Even while discarding the evidence in the form of discovery panchnama the conduct would be relevant under Section 8 of the Act. The evidence of discovery would be admissible as conduct under Section 8 of the Act quite apart from the admissibility of the disclosure statement under Section 27. *(Para 48)* ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, 2022 LiveLaw (SC) 596***

Section 9 - Facts necessary to explain or introduce relevant facts.

Evidence Act, 1872; Section 9 - The evidence of a TIP is admissible under Section 9 of the Indian Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained. *(Para 26)* ***Gireesan Nair v. State of Kerala, 2022 LiveLaw (SC) 955***

Section 25 - Confession to police-officer not to be proved.

Evidence Act, 1872; Section 25 - Code of Criminal Procedure, 1973; Section 161 - Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography statements - A confessional statement given by an accused before a Police officer is inadmissible as evidence - Statement given by an accused to police under Section 161 of CrPC is not admissible as evidence. *(Para 13)* ***Munikrishna @ Krishna v. State by Ulsoor PS, 2022 LiveLaw (SC) 812***

Evidence Act, 1872; Section 25, 27, 8 - No part of a First Information Report lodged by an accused with the police as an implicatory statement can be admitted into evidence - However, the statement can be admitted to identify the accused as the maker of the report - Further, that part of the information in the statement, which is distinctly related to the 'fact' discovered in consequence of such information, can also be admitted into evidence under Section 27 of the Evidence Act, provided that the discovery of the fact must be in relation to a material object - The conduct of the accused is relevant and admissible under Section 8 of the Evidence Act. *(Para 5)* ***Dauvaram Nirmalkar v. State of Chhattisgarh, 2022 LiveLaw (SC) 650 : AIR 2022 SC 3620***

Section 27 - How much of information received from accused, may be proved.

Evidence Act 1872; Section 27 - Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of "confirmation by subsequent facts" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso. (Para 31) ***Jafarudheen v. State of Kerala, 2022 LiveLaw (SC) 403: AIR 2022 SC 3627 : (2022) 8 SCC 440***

Evidence Act 1872; Section 27 - The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the Court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act. (Para 32) ***Jafarudheen v. State of Kerala, 2022 LiveLaw (SC) 403: AIR 2022 SC 3627 : (2022) 8 SCC 440***

Evidence Act, 1872; Section 27 - Accused's statement recorded on a DVD and played in Court - Such a statement is in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act. If at all the accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. (Para 20) ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Evidence Act, 1872; Section 27 - Conditions necessary for the applicability of Section 27 - Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. *(Para 64-68)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Evidence Act, 1872; Section 27 - How the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 - If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. *(Para 53)* ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Evidence Act, 1872; Section 27 - How the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 - Conditions necessary for the applicability of Section 27 - Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. *(Para 78-87)* ***Subramanya v. State of Karnataka, 2022 LiveLaw (SC) 887 : AIR 2022 SC 5110***

Evidence Act, 1872; Section 27 - Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. *(Para 45-46)* ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, 2022 LiveLaw (SC) 596***

Evidence Act, 1872; Section 27 - Tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts - In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. (Para 19) ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Section 30 - Consideration of proved confession affecting person making it and others jointly under trial for same offence

Evidence Act, 1872; Section 30 - Confession of a co-accused could only be considered but could not be relied on as substantive evidence - Fine distinction between an extra judicial confession being a corroborative piece of evidence and a confession recorded under Section 15 of the TADA Act being treated as a substantive piece of evidence. *(Para 66 -68)* ***Subramanya v. State of Karnataka, [2022 LiveLaw (SC) 887](https://www.livelaw.in/) : AIR 2022 SC 5110***

Evidence Act, 1872; Section 30 - Extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession - The extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused. *(Para 11-12)* ***Chandrapal v. State of Chhattisgarh, 2022 LiveLaw (SC) 529 : AIR 2022 SC 2542***

Section 32 - Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Evidence Act 1872; Section 32 - Dying Declaration - Case of two dying declarations, both contradictory, both recorded by judicial magistrates- Court relies on the dying declaration recorded after medical examination. *(Para 16,17)* ***Makhan Singh v. State of Haryana, 2022 LiveLaw (SC) 677 : AIR 2022 SC 3793***

Evidence Act, 1872 - Section 32 - Dying Declaration - Principles as to the circumstances under which a dying declaration may be accepted, without corroboration: (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. ***State of U.P. v. Veerpal, [2022 LiveLaw (SC) 111](#) : (2022) 4 SCC 741***

Evidence Act, 1872 - Section 32 - Dying Declaration - There can be a conviction solely based upon the dying declaration without corroboration - If the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration. ***State of U.P. v. Veerpal, [2022 LiveLaw (SC) 111](#) : (2022) 4 SCC 741***

Evidence Act, 1872 ; Section 27 - Conditions necessary for the applicability of Section 27 of the Act - (1) Discovery of fact in consequence of an information received from accused; (2) Discovery of such fact to be deposed to; (3) The accused must be in police custody when he gave informations and (4) So much of information as relates distinctly to the fact thereby discovered is admissible - Two conditions for application – (1) information must be such as has caused discovery of the fact; and (2) information must relate distinctly to the fact discovered. *(Para 42)* ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, [2022 LiveLaw (SC) 596](#)***

Evidence Act, 1872; Section 32 - Dying Declaration - Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case - The fact that the dying declaration is not in the form of questions and answers does not impact either its admissibility or its probative value - There is no rule mandating the corroboration of the dying declaration through medical or other evidence, when the dying declaration is not otherwise suspicious. *(Para 41-44, 50-52)* ***State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, [2022 LiveLaw (SC) 890](#) : AIR 2022 SC 5393***

Evidence Act, 1872; Section 32 - Dying Declaration - There is no absolute proposition of law that in a case when at the time when the dying declaration was recorded, there was no emergency and/or any danger to the life, the dying declaration should be discarded as a whole (Para 6) - Merely because the weapon used is not recovered cannot be a ground not to rely upon the dying declaration. (Para 9) ***State of Uttar Pradesh vs Subhash @ Pappu, [2022 LiveLaw (SC) 336](#) : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Evidence Act, 1872; Section 32 - Dying Declaration - There is no absolute proposition of law that in a case when at the time when the dying declaration was recorded, there was no emergency and/or any danger to the life, the dying declaration should be discarded as a whole (Para 6) - Merely because the weapon used is not recovered cannot be a ground not to rely upon the dying

declaration. (Para 9) ***State of Uttar Pradesh vs Subhash @ Pappu, 2022 LiveLaw (SC) 336 : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Evidence Act, 1872; Section 32(1) - Penal Code, 1860; Sections 498A, 304B, 302, 306 - Dying Declaration - In some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section 32(1) of the Evidence Act , subject to meeting certain necessary pre-conditions (1) That her cause of death must come into question in the matter - For instance, matters where along with the charge under Section 498A of the IPC, the prosecution has also charged the accused under Sections 302, 306 or 304B of the IPC - As long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility. (2) Prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498A of the IPC must also relate to the circumstances of the transaction of the death. How far back the evidence can be, and how connected the evidence is to the cause of death of the deceased would necessarily depend on the facts and circumstances of each case. No specific straitjacket formula or rule can be given with respect to this. ***Surendran v. State of Kerala, 2022 LiveLaw (SC) 482 : AIR 2022 SC 2322***

Evidence Act, 1872; Section 32(1) - Test for Admissibility - The cause of death must come into question in that case, regardless of the nature of the proceeding, and that the purpose for which such evidence is being sought to be admitted should be a part of the 'circumstances of the transaction' relating to the death - The test is not that the evidence to be admitted should directly relate to a charge pertaining to the death of the individual, or that the charge relating to death could not be proved. *(Para 17)* ***Surendran v. State of Kerala, 2022 LiveLaw (SC) 482 : AIR 2022 SC 2322***

Section 33 - Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

Evidence Act, 1872 - Section 33 - Section 33 is an exception to the general rule which mandates adequate facility for cross examining a witness. However, in a case where a witness after the completion of the chief examination and while subjecting him to a substantial and rigorous cross examination, did not choose to get into the witness box on purpose, it is for the court to utilize the said evidence appropriately. The issues over which the evidence is completed could be treated as such by the court and then proceed. Resultantly, the issues for which the cross examination is not over would make the entire examination as inadmissible. Ultimately, it is for the court to decide the aforesaid aspect. (Para 24) ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

Section 45 - Opinions of Experts

Evidence Act, 1872; Section 45 - Expert Witness - A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court. *(Para 29)* ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey, 2022 LiveLaw (SC) 631 : AIR 2022 SC 5454***

Evidence Act, 1872; Sections 45, 47, 73 - Appeal against Orissa High Court judgment which quashed the order taking cognizance passed by the Sub-Divisional Judicial Magistrate, under Sections 467 and 471 of the Indian Penal Code, on the ground that the opinion of the handwriting expert on the disputed signatures was non-conclusive - Allowed. ***Manorama Naik v. State of Odisha, 2022 LiveLaw (SC) 297***

Evidence Act, 1872; Sections 45, 47, 73 - Opinion of the handwriting expert is not the only way or mode of providing the signature and handwriting of a person - The signatures and handwriting of the person can also be proved under Sections 45, 47 and 73. ***Manorama Naik v. State of Odisha, 2022 LiveLaw (SC) 297***

Section 65B - Admissibility of electronic records

Evidence Act, 1872; Section 65B - The decision in *Anvar P.V. vs. P.K. Basheer & Ors. (2014) 10 SCC 473* as clarified in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Ors. (2020) 7 SCC 1* is the law declared on Section 65B of the Evidence Act. *(Para 22-24)* ***Mohd. Arif @ Ashfaq v. State (NCT Of Delhi), 2022 LiveLaw (SC) 902***

Evidence Act, 1872; Section 65B(4) - Certificate under Section 65B(4) is a mandatory requirement for production of electronic evidence - Oral evidence in the place of such certificate cannot possibly suffice. *(Para 20-21)* ***Ravinder Singh @ Kaku v. State of Punjab, 2022 LiveLaw (SC) 461 : AIR 2022 SC 2726 : (2022) 7 SCC 581***

Section 106 - Burden of proving fact especially within knowledge

Evidence Act, 1872 - Section 106 - Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused - Burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act when the prosecution could not prove the basic facts as alleged against the accused. (Para 15 - 16) ***Satye Singh v. State of Uttarakhand, 2022 LiveLaw (SC) 169 : (2022) 5 SCC 438***

Evidence Act, 1872; Section 106 - Last Seen Theory - When 'last seen' evidence is cogent and trustworthy which establishes that the deceased was lastly seen alive in the company of the accused; and is coupled with the evidence of discovery of the dead body of deceased at a far away and lonely place on the information furnished by the accused, the burden is on the accused to explain his whereabouts after he was last seen with the deceased and to show if, and when, the deceased parted with his company as also the reason for his knowledge about the location of the dead body. (Para 31) ***Pappu v. State of Uttar Pradesh, 2022 LiveLaw (SC) 144 : 2022 (3) SCALE 45***

Evidence Act, 1872; Section 106 - Although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events. ***Sabitri Samantaray v. State of Odisha, 2022 LiveLaw (SC) 503 : AIR 2022 SC 2591***

Evidence Act, 1882; Section 106 - Last Seen Together - Once the theory of "last seen together" was established, the accused was expected to offer some explanation as to under which circumstances, he had parted the company of the victim -Section 106 of the Evidence Act does not shift the burden of the prosecution on the accused, nor requires the accused to furnish an explanation with regard to the facts which are especially within his knowledge, nonetheless furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution is proved against him, to know as to how and when the accused parted the company of the victim. (Para 26) ***Mohd Firoz v. State of Madhya Pradesh, 2022 LiveLaw (SC) 390 : AIR 2022 SC 1967 : (2022) 7 SCC 443***

Section 112 - Birth during marriage, conclusive proof of legitimacy.

Evidence Act 1872; Section 112 - DNA test - SC sets aside direction for DNA test of children - notes that children were not parties to the proceedings - the test will have the potential of exposing them to inheritance related complication. Section 112 of the Evidence Act, gives a protective cover to children from allegations of this nature. *(Para 7)* ***Inayath Ali & Anr. v. State of Telengana, 2022 LiveLaw (SC) 869***

Section 114 - Court may presume existence of certain facts

Evidence Act, 1872; Section 114 - If a man and a woman live together for long years as husband and wife, there would be a presumption in favour of wedlock. Although, the presumption is rebuttable, a heavy burden lies on him who seek to deprive the relationship of legal origin to prove that no marriage took place. *(Para 15 -20)* ***Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan, 2022 LiveLaw (SC) 549 : AIR 2022 SC 2841***

Section 129 - Confidential communications with legal advisers

Evidence Act, 1872; Section 129 - Privilege over legal advise - Legal privilege not applicable to legal opinion used by SEBI to initiate prosecution, as such opinion is part of investigation. *(Para 53-55)* ***Reliance Industries Ltd. v. Securities and Exchange Board of India, 2022 LiveLaw (SC) 659 : AIR 2022 SC 3690 : (2022) 10 SCC 181***

Section 145 - Cross-examination as to previous statements in writing

Evidence Act, 1872; Sections 145, 157 - Statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and its use is limited for the purposes as provided under Sections 145 and 157 of the Evidence Act - statement recorded under Section 164, Cr.P.C. can also be used only for such purposes. *(Para 20)* ***State of Maharashtra v. Dr. Maroti Kashinath Pimpalkar, 2022 LiveLaw (SC) 898*** *:* ***AIR 2022 SC 5595***

Section 154 - Question by party to his own witness

Evidence Act 1872; Section 154 - the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence. *(Para 67)* ***Neeraj Dutta v. State (GNCTD), 2022 LiveLaw (SC) 1029***

Section 165 - Judge's power to put questions or order production

Evidence Act, 1872; Section 165 - Section 165 of the Indian Evidence Act confers unbridled powers upon the trial courts to put any question at any stage to the witnesses to elicit the truth. The Judge is not expected to be a passive umpire but issupposed to actively participate in the trial, and to question the witnesses to reach to a correct conclusion. *[Para 34]* ***Rahul v. State of Delhi Ministry of Home Affairs, 2022 LiveLaw (SC) 926***

Extradition Act, 1962

Extradition Act, 1962 - Supreme Court holds that Union Government is bound to release Bombay Blast case convict Abu Salem by granting remission of him after he completes 25 years of sentence from the date on which he was detained for extradition to India (12.10.2005) as per the sovereign assurance given to Portugal. ***Abu Salem v. State of Maharashtra, 2022 LiveLaw (SC) 578***

Extradition Act, 1962 - The separation of Judicial and Executive powers and the scheme of the Indian Constitution cannot bind the Indian courts in proceedings under the Extradition Act. Thus, the courts must proceed in accordance with law and impose the sentence as the law of the land requires, while simultaneously the Executive is bound to comply with its international obligations under the Extradition Act as also on the principle of comity of courts, which forms the basis of the extradition. *[Para 39]* ***Abu Salem v. State of Maharashtra, 2022 LiveLaw (SC) 578***

F

Fair Investigation

Fair Investigation - Supreme Court criticises Madras High Court for keeping preliminary enquiry report in sealed cover without sharing with the accused- "When the State has not pleaded any specific privilege which bars disclosure of material utilized in the earlier preliminary investigation, there is no good reason for the High Court to have permitted the report to have remained shrouded in a sealed cover. *(Para 28)* ***S.P. Velumani v. Arappor Iyakkam, 2022 LiveLaw (SC) 507***

Fair investigation - The principles of natural justice demanded that the appellant be afforded an opportunity to defend his case based on the material that had exonerated him initially, which was originally accepted by the State. *(Para 22)* ***S.P. Velumani v. Arappor Iyakkam, 2022 LiveLaw (SC) 507***

Foreigners Act, 1946

Foreigners Act, 1946 - Appellant Engineer accused of facilitating visit by two Chinese citizens who were on tourist visas to Rewa Solar Plant Project site - No indication or allegation that the appellant was aware and had knowledge that the Chinese citizens had traveled on tourist visas - Criminal proceedings quashed. ***Abinash Dixit v. State of Madhya Pradesh, 2022 LiveLaw (SC) 218***

Forfeiture

Forfeiture - Forfeitures can be categorized as civil and criminal. On the civil side, there can be in rem or in personam forfeitures. Punitive forfeitures under the criminal law are in personam. Criminal forfeitures usually take place at the conclusion of a trial, when the guilt of the accused is established. Standards of evidentiary requirement differ greatly between civil and criminal forfeiture - The utility of independent provisions of forfeiture, distinct from criminal prosecution, needs to be utilised in a proportional manner, looking at the gravity of the offence. Few examples which may pass the muster of proportionality for having such stringent civil forfeiture, may relate to crimes involving terrorist activities, drug cartels or organised criminal activities - The application of such a provision to numerous other offences which are not of such grave severity, would be of serious risk of being disproportionate, if procedures independent of criminal prosecution are prescribed. *(Para 17.15, 17.28)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

G

Gangsters and Anti-Social Activities

Gangsters and Anti-Social Activities (Prevention) Act, 1986 (Uttar Pradesh); Section 2(b) - Even a single crime committed by a 'Gang' is sufficient to implant Gangsters Act on such members of the 'Gang' - There can be prosecution against a person even in case of a single offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Act provided such an anti-social activity is by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. *(Para 9-10)* ***Shraddha Gupta v. State of Uttar Pradesh, 2022 LiveLaw (SC) 411 : AIR 2022 SC 2062***

Gangsters and Anti-Social Activities (Prevention) Act, 1986 (Uttar Pradesh) - All provisions are to ensure that the offences under the Gangsters Act should be given preference and should be tried expeditiously and that too, by the Special Courts, to achieve the object and purpose of the enactment of the Gangsters Act. *(Para 8)* ***Shraddha Gupta v. State of Uttar Pradesh, 2022 LiveLaw (SC) 411 : AIR 2022 SC 2062***

Gujarat Riots 2002

Gujarat Riots 2002 - Plea for probe into alleged larger conspiracy by high state functionaries dismissed- Upholds SIT's closure report exonerating Narendra Modi and 63 other high officials - Held, Conspiracy cannot be readily inferred merely on the basis of the inaction or failure of the State administration -inaction or failure of some officials of one section of the State administration cannot be the basis to infer a pre- planned criminal conspiracy by the authorities of the State Government or to term it as a State sponsored crime (violence) against the minority community. *(Para 44 - 47)* ***Zakia Ahsan Jafri v. State of Gujarat, 2022 LiveLaw (SC) 558 : 2022 (9) SCALE 385***

H

Hate Speech

Hate Speech - Supreme Court directs Uttar Pradesh, Uttarakhand and Delhi Governments to take *suo motu* action against hate speech crimes without waiting for formal complaints irrespective of the religion of the offender - Respondent Nos. 2 to 4 shall ensure that immediately as and when any speech or any action takes place which attracts offences such as Sections 153A, 153B and 295A and 505 of the IPC etc., *suo moto* action will be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law. ***Shaheen Abdullah v. Union of India, 2022 LiveLaw (SC) 872***

I

Interpretation of Statute

Interpretation of Statutes - Maharashtra Control of Organised Crime Act, 1999 - the provisions of MCOCA need to be strictly construed and for their application, an unlawful activity has to fall within the periphery of organised crime. *(Para 12-12.3)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

Interpretation of Statutes - Penal Statutes - The rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated. *(Para 12.4-12.6)* ***Abhishek v. State of Maharashtra, 2022 LiveLaw (SC) 516 : AIR 2022 SC 2488 : (2022) 8 SCC 282***

J

Juvenile Justice

Juvenile Justice - Plea of juvenility could be raised in any court, at any stage even after the final disposal of the Special Leave Petition- Where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to forage determination in absence of the documents - While appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases. The inquiry contemplated is not a roving inquiry. The Court can accept as evidence something more than an affidavit i.e. documents, certificates etc. as evidence in proof of age. A mere opinion by a person as to the accused looking one or two years older than the age claimed by him (as the opinion of the head master in the present case) or the fact that the accused told his age to be more than what he alleges in the case while being arrested by the police officer would not hold much water. It is the documentary evidence placed on record that plays a major role in determining the age of a juvenile in conflict of law. And, it is only in the cases where the documents or certificates placed on record by the accused in support of his claim of juvenility are found to be fabricated or manipulated, that the Court, the Juvenile Justice Board or the Committee need to go for medical test for age determination. ***Vinod Katara v. State of Uttar Pradesh, 2022 LiveLaw (SC) 757 : AIR 2022 SC 4771***

Juvenile Justice (Care and Protection of Children) Act, 2000

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 7A - The plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the accused cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. (Para 38) ***Manoj @ Monu @ Vishal Chaudhary v. State of Haryana, 2022 LiveLaw (SC) 170 : AIR 2022 SC 1060 : (2022) 6 SCC 187***

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 7A - Date of Birth certificate be obtained after filing of the application under Section 7A of the Act cannot be relied upon. (Para 9) ***Manoj @ Monu @ Vishal Chaudhary v. State of Haryana, 2022 LiveLaw (SC) 170 : AIR 2022 SC 1060 : (2022) 6 SCC 187***

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 7A - Ossification test varies based on individual characteristics and hence its reliability has to be examined in each case - It cannot be reasonably expected to formulate a uniform standard for determination of the age of the union of epiphysis on account of variations in climatic, dietetic, hereditary and other factors affecting the people of the different States of India. (Para 15 -17) ***Manoj @ Monu @ Vishal Chaudhary v. State of Haryana, 2022 LiveLaw (SC) 170 : AIR 2022 SC 1060 : (2022) 6 SCC 187***

Juvenile Justice (Care and Protection of Children) Act, 2015

Juvenile Justice (Care and Protection of Children) Act, 2015 - Guidelines with respect to preliminary evaluation - appropriate and specific guidelines in this regard are required to be put in place - it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015. *[Para 87]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenile Justice (Care and Protection of Children) Act, 2015 - Proviso to Section 15 read as mandatory condition - for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts - where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psychosocial workers or other experts - however, in case the Board comprises of at least one such member, who has been a practicing professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it; and in case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefor. *[Para 76]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenile Justice (Care and Protection of Children) Act, 2015 - Rising rate of juvenile delinquency in India is a matter of concern and requires immediate attention - We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of goal of reformation is making them more and more emboldened in indulging in such heinous crimes - It is for the Government to consider whether its enactment of 2015 has proved to be effective or something still needs to be done in the matter before it is too late in the day. *(Para 79)* ***State of Jammu & Kashmir v. Shubam Sangra, 2022 LiveLaw (SC) 965***

Juvenile Justice (Care and Protection of Children) Act, 2015 - The benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus be extended to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence inspiring confidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he is alleged to have committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue. *(Para 72)* ***State of Jammu & Kashmir v. Shubam Sangra, 2022 LiveLaw (SC) 965***

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 15 - Preliminary assessment on four aspects - mental capacity to commit the offence; physical capacity to commit the offence; ability to understand the consequences of the offence; and circumstances under which allegedly the offence was committed. *[Para 62]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 15 - preliminary assessment requires holistic evaluation. *[Para 65, 66]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 15 - Ability to understand the consequences of the offence - The language used in section 15 is "the ability to understand the consequences of the offence" - the expression used is in plurality i.e., "consequences" of the offence and, therefore, would not just be confined to the immediate consequence of the offence but impact/consequences for other people connected with the victim and the child and other far-reaching consequences in the future - This evaluation of 'mental capacity and ability to understand the consequences' of the child in conflict with law can, in no way, be relegated to the status of a perfunctory and a routine task. *[Para 68, 69, 70, 71, 75]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenile Justice (Care and Protection of Children) Rules, 2007

Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12(3) - U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1970 - Birth certificate issued by corporation or municipal authority or a panchayat is a relevant document to prove the juvenility. The family register is not a birth certificate. Therefore, it would not strictly fall within clause (iii) of Rule 12(3) of the Rules. (Para 37) ***Manoj @ Monu @ Vishal Chaudhary v. State of Haryana, 2022 LiveLaw (SC) 170 : AIR 2022 SC 1060 : (2022) 6 SCC 187***

Juvenile Justice (Care and Protection) Act, 2000

Juvenile Justice (Care and Protection) Act, 2000 - Juvenility Plea of applicant whose murder conviction was affirmed by Supreme Court by dismissing SLP in 2009 - Juvenile Justice Board passed an order holding that, on the date of commission of the offence, his age was 17 years 07 months and 23 days - Applicant has undergone the sentence for 17 years and 03 days - It will be unjust to send the applicant to the Juvenile Justice Board - He shall be forthwith set at liberty provided he is not required to be detained under any other order of the competent Court. ***Sanjay Patel v. State of Uttar Pradesh, 2022 LiveLaw (SC) 369 : AIR 2022 SC 1852***

Juvenile Justice(Care and Protection of Children) Act, 2015; Section 15 - Mental Capacity to commit offence and ability to understand the consequences of offence are different -The Board and the Children's Court apparently were of the view that the mental capacity and the ability to understand the consequences of the offence were one and the same, that is to say that if the child had the mental capacity to commit the offence, then he automatically had the capacity to understand the consequences of the offence. This, in our considered opinion, is a grave error committed by them. *[Para 67]* ***Barun Chandra Thakur v. Master Bholu, 2022 LiveLaw (SC) 593***

Juvenility Claims

Juvenility Claims - Age Determination Techniques - There are better techniques available and are used for determination of age across the world. For example, the United States Immigration Department uses 'wisdom teeth' technique for determination of age - Another technique is 'epigenetic clock' technique - Such techniques should be introduced in our country as well. *(Para 75)* ***State of Jammu & Kashmir v. Shubam Sangra, 2022 LiveLaw (SC) 965***

Kathua rape-murder case

Kathua rape-murder case - SC sets aside the orders of the Chief Judicial Magistrate, Kathua and the Jammu and Kashmir High Court which held that one of the accused in the Kathua rape-murder case was a juvenile - The accused was not a juvenile at the time of commission of the offence and should be tried the way other co-accused were tried in accordance with the law. Law to take its own course. ***State of Jammu & Kashmir v. Shubam Sangra, 2022 LiveLaw (SC) 965***

M

Marital Rape

Marital Rape - Exception 2 to Section 375 of IPC - Exception 2 states that sexual intercourse by a man with his wife is not rape, unless she is below 15 years of age – Supreme Court leaves the constitutional validity of marital rape to be decided in appropriate proceedings but states that for the purpose of MTP Act, meaning of rape includes marital rape. *(Para 74, 75, 115)* ***X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, 2022 LiveLaw (SC) 809 : AIR 2022 SC 4917***

Marital Rape - Rape includes 'marital rape' for the purpose of MTP Rules - Rule 3B(a) -Survivors of sexual assault or rape or incest shall be considered eligible for termination of pregnancy up to twenty-four weeks – Supreme Court holds that meaning of rape must be understood as including marital rape, solely for the purposes of the MTP Act – Woman need not seek recourse to formal legal proceedings to prove sexual assault, rape or incest. *(Para 70, 75, 76)* ***X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, 2022 LiveLaw (SC) 809 : AIR 2022 SC 4917***

Media Trial

Media Trial - All matters relating to the crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with by a Court of Law and not through a TV channel. If at all there was a voluntary statement, the matter would be dealt with by the Court of Law. The public platform is not a place for such debate or proof of what otherwise is the exclusive domain and function of Courts of law. Any such debate or discussion touching upon matters which are in the domain of Courts would amount to direct interference in administration of Criminal Justice. (Para 21) ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Mens Rea

Mens Rea - Mens rea is an essential ingredient of a criminal offence - A statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England – and also accepted in India – to construe a statutory provision creating an offence in conformity with common law rather than against it, unless the statute expressly or by necessary implication excluded mens rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil which by itself is not decisive of the question as to whether the element of a guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only 33 where it is absolutely clear that implementation of the object of the statute would otherwise be defeated. *(Para 14.10)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

Mercy Petition

Mercy Petition - Procedure governing petitions for mercy in death sentence cases provides the mercy petition must be filed within seven days of the disposal of the appeal or dismissal of special leave petition - The concerned instructionrequires suitable modification so as to enable the convicted accused to file mercy petition after exhaustion of remedies in Court of law. *(Para 29)* ***B.A. Umesh v. Union of India, 2022 LiveLaw (SC) 907***

N

Narcotic Drugs and Psychotropic Substances Act, 1985

Narcotic Drugs and Psychotropic Substances Act, 1985 - Appeal against HC judgment upholding conviction of appellant under NDPS Act - Dismissed. ***Sukhdev Singh v. State of Punjab, 2022 LiveLaw (SC) 245***

Narcotic Drugs and Psychotropic Substances Act, 1985 - The physical nature of the material is not relevant for determining whether the contents of the sample analyzed were actually opium or not, and physical analysis is not prescribed under the provisions of the NDPS Act for testing the opium. ***Sukhdev Singh v. State of Punjab, 2022 LiveLaw (SC) 245***

Independent Witness

Narcotic Drugs and Psychotropic Substances Act, 1985 - Independent Witness - Independent witnesses turning hostile need not necessarily result in the acquittal of the accused, when the mandatory procedure is followed and the other police witnesses speak in one voice - But if the Court has -- (i) to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses; and (ii) to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy - If independent witnesses come up with a story which creates a gaping hole in the prosecution theory, about the very search and seizure, then the case of the prosecution should collapse like a pack of cards - Corroboration by independent witnesses is not always necessary. But once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats. *(Para 18)* ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh, 2022 LiveLaw (SC) 724 : AIR 2022 SC 4051***

Section 2(xvii) - "opium poppy"

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 2(xvii) - Once it is found that the seized material contain 'morphine' and 'meconic acid' it is sufficient to establish that the seized material comes within the definition of Section 2(xvii) of the NDPS Act (opium poppy). ***State of Himachal Pradesh v. Angejo Devi, 2022 LiveLaw (SC) 990***

Section 15 - Punishment for contravention in relation to poppy straw

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 15 - Once a Chemical Examiner establishes that the seized 'poppy straw' indicates a positive test for the contents of 'morphine' and 'meconic acid', it is sufficient to establish that it is covered by subclause (a) of Clause (xvii) of Section 2 of the 1985 Act and no further test would be necessary for establishing that the seized material is a part of 'papaver somniferum L'. In other words, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for bringing home the guilt of the accused under the provisions of Section 15 of the 1985 Act. *(Para 91)* ***State of Himachal Pradesh v. Nirmal Kaur @ Nimmo, 2022 LiveLaw (SC) 866***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 15 - For bringing home the guilt of the accused, it will be necessary to establish that the seized material collected is any part of 'opium poppy' except the seeds. *(Para 29)* ***State of Himachal Pradesh v. Nirmal Kaur @ Nimmo, 2022 LiveLaw (SC) 866***

Section 20 - Punishment for contravention in relation to cannabis plant and cannabis

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 20 - Supreme Court sets aside conviction - gives benefit of doubt after noting gaps in the prosecution case - arrest memo, body search memo not proved - site plan wrongly prepared - no independent witnesses. ***Amar Chand v. State of Himachal Pradesh, 2022 LiveLaw (SC) 1002***

Section 21 - Punishment for contravention in relation to manufactured drugs and preparations

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 21 - The quantity of the neutral substance is not to be excluded and to be taken into consideration along with the actual content of the weight of the offending drug while determining small and commercial quantities. ***State of Himachal Pradesh v. Karuna Shanker Puri, 2022 LiveLaw (SC) 173***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 21 - The quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances. ***Intelligence Officer, Thiruvananthapuram v. K.K. Naushad, 2022 LiveLaw (SC) 978***

Section 27A - Punishment for financing illicit traffic and harbouring offenders

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 27A, 37 - When applicability of Section 27A NDPS Act is seriously questionable in this case and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply. *(Para 16.4)* ***State of West Bengal v. Rakesh Singh @ Rakesh Kumar Singh, 2022 LiveLaw (SC) 580***

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 27A, 37 - Appeal against Calcutta High Court order granted bail to a person accused under Sections 21(b)/29/27A of NDPS Act - Dismissed - No reason to consider interference in the order passed by the High Court granting bail to the respondent with specific conditions. ***State of West Bengal v. Rakesh Singh @ Rakesh Kumar Singh, 2022 LiveLaw (SC) 580***

Section 32B - Factors to be taken into account for imposing higher than the minimum punishment

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 20(b)(ii)(C), 32B - While imposing higher than the minimum punishment, such of the factors which are to be taken into consideration have been provided under Section 32B of the NDPS Act - The old age of the accused, who is a poor illiterate lady completely unaware of the consequences - Sentence reduced. ***Budhiyarin Bai v. State of Chhattisgarh, 2022 LiveLaw (SC) 667***

Section 37 - Offences to be cognizable and non-bailable

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - Appeal against High Court order that granted anticipatory bail on the ground that no recovery was effected from the accused and that they had been implicated only on the basis of the disclosure statement of the main accused - Allowed -The respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1 , perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted. ***State of Haryana v. Samarth Kumar, 2022 LiveLaw (SC) 622***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - The expression "reasonable grounds" used in Section 37(1)(b) under NDPS Act would mean credible, plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. *(Para 14)* ***Narcotics Control Bureau v. Mohit Aggarwal, 2022 LiveLaw (SC) 613 : AIR 2022 SC 3444***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - Bail considerations - The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act. *(Para 17-18)* ***Narcotics Control Bureau v. Mohit Aggarwal, 2022 LiveLaw (SC) 613 : AIR 2022 SC 3444***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - Bail - The admissions made by the accused while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside - Confessional statement recorded under Section 67 of the NDPS Act inadmissible in the trial of an offence under the NDPS Act. *(Para 16)* ***Narcotics Control Bureau v. Mohit Aggarwal, 2022 LiveLaw (SC) 613 : AIR 2022 SC 3444***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - At the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail. *(Para 15)* ***Narcotics Control Bureau v. Mohit Aggarwal, 2022 LiveLaw (SC) 613 : AIR 2022 SC 3444***

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - NCB's appeal against Delhi HC order granting bail to accused - Allowed - Even dehors the confessional statements, the other circumstantial evidence brought on record by the NCB ought to have dissuaded the High Court from exercising its discretion in favour of the accused - The observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage - Set aside Bail order. ***Narcotics Control Bureau v. Mohit Aggarwal, 2022 LiveLaw (SC) 613 : AIR 2022 SC 3444***

Narcotic Drugs and Psychotropic Substances Act, 1985; Sections 37, 67 - Appeal against Bail granted to NDPS accused - Allowed - Validity and scope of statements under Section 67- *Referred to Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1* - The rigour of law lay down in Tofan Singh was held to be applicable even at the stage of grant of bail - *Referred to State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr. 2022 LiveLaw (SC) 69* - However, going by the circumstances on record, at this stage, the matter stands on a different footing - In the face of the mandate of Section 37 of the Act, the High Court could not and ought not to have released the accused on bail. ***Union of India (NCB) v. Khalil Uddin, 2022 LiveLaw (SC) 878***

Section 50 - Conditions under which search of persons shall be conducted

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 50 - Personal search did not result in recovery of any contraband material but the non-compliance of requirement of affording an option to be searched before a Magistrate of a competent Gazetted Officer - Accused acquitted. *(Para 9)*

Sanjeev v. State of Himachal Pradesh, 2022 LiveLaw (SC) 267 : (2022) 6 SCC 294

Narcotics Drugs and Psychotropic Substances Act, 1985; Section 50 - Whether the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated ? Cannot give such an extended view. ***Dayalu Kashyap v. State of Chhattisgarh, 2022 LiveLaw (SC) 100***

Section 54 - Presumption from possession of illicit articles

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 54 - Section 54 of the Act raises a presumption and the burden shifts on the accused to explain as to how he came into possession of the contraband. But to raise the presumption under Section 54 of the Act, it must first be established that a recovery was made from the accused. *(Para 33A)* ***Sanjeet Kumar Singh @ Munna Kumar Singh v. State of Chhattisgarh, 2022 LiveLaw (SC) 724 : AIR 2022 SC 4051***

Section 67 - Power to call for information, etc.

Narcotic Drugs and Psychotropic Substances Act, 1985; Section 67 - Confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. *(Para 10)* ***State by (NCB) Bengaluru v. Pallulabid Ahmad, 2022 LiveLaw (SC) 69 : 2022 (2) SCALE 14***

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 - Detention - If there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case. *(Para 20)* ***Sushanta Kumar Banik v. State of Tripura, 2022 LiveLaw (SC) 813 : AIR 2022 SC 4715***

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Narcotic Drugs and Psychotropic Substances Act, 1986; Section 37 - If detenue was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any prima facie case against him. *(Para 23)* ***Sushanta Kumar Banik v. State of Tripura, 2022 LiveLaw (SC) 813 : AIR 2022 SC 4715***

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law. (Para 21) ***State of Manipur v. Buyamayum Abdul Hanan @ Anand, 2022 LiveLaw (SC) 862***

Negotiable Instruments Act, 1881

Section 3 - Banker

Negotiable Instruments Act, 1881 - Section 3 - 'Banker' includes any person acting as a banker and any post office savings bank. In terms of this section, a post office savings bank is a banker under the NI Act. (Para 11) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139 : (2022) 6 SCC 351***

Section 8 - "Holder"

Negotiable Instruments Act, 1881 - Section 8 - A holder means a person (i) entitled to possession of a promissory note, bill of exchange or a cheque, and (ii) entitled to sue the maker, acceptor or indorser of the instrument for the recovery of the amount due thereon in his name - The requirements of Section 8 are two -fold, and both requirements have to be satisfied. (Para 15) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139 : (2022) 6 SCC 351***

Negotiable Instruments Act, 1881; Section 8 and 9 - An obligation has been imposed on the transferee of the promissory notes, to be deemed to be a 'Holder in due course', that the notes should have been acquired in good faith; after exercising reasonable care and caution about the holder's title. (Para 11.2) ***Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd., 2022 LiveLaw (SC) 7 : (2022) 3 SCC 56***

Section 10 - "Payment in due course"

Negotiable Instruments Act, 1881 - Section 10 - Definition of 'payment in due course' - Ascertainment of whether the act of payment is in good faith and without negligence is by examination of the circumstances in which payment is made. In other words, antecedent and present circumstances should not afford a reasonable ground for believing that the person to whom payment is made is not entitled to receive payment of the amount mentioned.9 While it would not be advisable or feasible to strait -jacket the circumstances, albeit value of the instrument, other facts that would raise doubts about the reliability and identity of the person entitled to receive payment and genuineness of the instrument in the payer's mind are relevant considerations. (Para 17) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139 : (2022) 6 SCC 351***

Negotiable Instruments Act, 1881 - Section 10 - Definition of 'payment in due course' - The requirement in Section 10 that the payment should be in both good faith and without negligence is cumulative. Thus, mere good faith is not sufficient. (Para 17) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Negotiable Instruments Act, 1881 - Section 10 - General Clauses Act, 1897 - Section 3(22) - Section 3(22) of the General Clauses Act which defines 'good faith' as an act done honestly, whether done negligently or not, is not sufficient to hold that the payment made was 'payment in due course' under the NI Act. (Para 18) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Section 13 - "Negotiable instrument"

Negotiable Instruments Act, 1881 - Section 13 - Different principles apply for discharge from liability when the negotiable instrument is payable to bearer or has been indorsed in blank, in which case payment must be made in terms of Section 10, whereas when the negotiable instrument is payable to order, the maker, acceptor or endorser would be discharged from liability when payment is made to the 'holder' of the instrument. (Para 14) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Negotiable Instruments Act, 1881 - Section 13 - Kisan Vikas Patra Rules, 1988 - Kisan Vikas Patras (KVPs) are negotiable instruments in terms of Section 13 of the NI Act - It cannot be said that the KVPs are simple bearer instruments payable to anyone who presents the same for encashment and discharge. (Para 12, 29) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Section 15 - Indorsement

Negotiable Instruments Act, 1881 - Sections 15 and 16 - 'Indorsement', 'indorsee', 'indorser' and 'indorsement in blank' and 'in full' - Indorsement for the purpose of negotiation is made by the maker or holder of the negotiable instrument when he signs on the back or face of thereof, on a slip of paper annexed thereto or on a stamp paper for the purpose of negotiation. The person signing is called the indorser. If the instrument is signed by the indorser in his name only, it is an indorsement in blank. If the indorser also specifies the person to whom payment is to be made, the indorsement is said to be 'in full', and the person so specified is called the indorsee. (Para 12) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Section 78 - To whom payment should be made

Negotiable Instruments Act, 1881 - Sections 8 and 78 - Payment made to a person in possession of the instrument, but not entitled to receive or recover the amount due thereon in his name, is not a valid discharge. (Para 15) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Section 118 - Presumptions as to negotiable instruments

Negotiable Instruments Act, 1881; Section 118(a) - Presumption - Every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. ***Frost International Ltd. v. Milan Developers & Builders, 2022 LiveLaw (SC) 340 : (2022) 8 SCC 633***

Negotiable Instruments Act, 1881; Section 118(a) - Presumption - Every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration. ***Frost International Ltd. v. Milan Developers & Builders, 2022 LiveLaw (SC) 340 : (2022) 8 SCC 633***

Negotiable Instruments Act, 1881; Sections 118, 138, 139 - Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 resply of the N.I. Act. ***Yogesh Jain v. Sumesh Chadha, 2022 LiveLaw (SC) 879***

Section 131 - Non-liability of banker receiving payment of cheque

Negotiable Instruments Act, 1881 - Sections 131 and 131A - The standard of care expected from a collecting banker does not require him to subject the cheque to a minute and microscopic examination, yet disregarding circumstances about the cheque, which on the face of it gives rise to suspicion, may amount to negligence on the part of the collecting banker. Further, the question of good faith and negligence is to be judged from the standpoint of the true owner towards whom the banker owes no contractual liability but statutory duty by these provisions - Allegations of negligence against the paying banker could provide no defence for the collecting banker who has not collected the amount in good faith and without negligence. (Para 20) ***Pradeep Kumar v. Post Master General, 2022 LiveLaw (SC) 139* : *(2022) 6 SCC 351***

Section 138 - Dishonour of cheque for insufficiency, etc., of funds in the account.

Negotiable Instruments Act, 1881, Section 138 - Even when the Criminal Court refers the matter under Section 138 of the Negotiable Instruments Act in order to make it executable, it will be treated as if it were a decree. ***New Okhla Industrial Development Authority (Noida) v. Yunus, 2022 LiveLaw (SC) 123 : AIR 2022 SC 847 : (2022) 9 SCC 516***

Negotiable Instruments Act, 1881, Section 138 - It is surprising that on the one hand, the bank managers have specifically deposed that no such bank account was opened and maintained in their bank while on the other hand the cheque drawn by the respondent in favour of the appellant, was returned with the remark "account frozen" in respect of the same cheque. The bank account has been mentioned on the cheque and the endorsement to the effect "Account Frozen" will presuppose that an account existed". ***Vikram Singh v. Shyoji Ram, 2022 LiveLaw (SC) 223***

Negotiable Instruments Act, 1881 - Section 138 and 142 - A.C. Narayanan vs. State of Maharashtra & Anr. (2014) 11 SCC 790 - The employment of the terms "specific assertion as to the knowledge of the power of attorney holder" and such assertion about knowledge should be "said explicitly" as stated in A.C. Narayanan (supra) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. What can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstance and the manner in which it has been averred and conveyed, based on the facts of each case. The manner in which a complaint is drafted may vary from case to case and would also depend on the skills of the person drafting the same which by itself, cannot defeat a substantive right. However, what is necessary to be taken note of is as to whether the contents as available in the pleading would convey the meaning to the effect that the person who has filed the complaint, is stated to be authorized and claims to have knowledge of the same. In addition, the supporting documents which were available on the record by themselves demonstrate the fact that an authorized person, being a witness to the transaction and having knowledge of the case had instituted the complaint on behalf of the "payee" company and therefore, the requirement of Section 142 of N.I. Act was satisfied. (Para 17, 14) ***TRL Krosaki Refractories Ltd. v. SMS Asia Pvt. Ltd., 2022 LiveLaw (SC) 196 : AIR 2022 SC 1315 : (2022) 7 SCC 612***

Negotiable Instruments Act, 1881 - Section 138 and 142 - Code of Criminal Procedure, 1973 - Section 482 - Entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial. (Para 17) ***TRL Krosaki Refractories Ltd. v. SMS Asia Pvt. Ltd., 2022 LiveLaw (SC) 196 : AIR 2022 SC 1315 : (2022) 7 SCC 612***

Negotiable Instruments Act, 1881 - Section 138 and 142 - When a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. Prima-facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorized person who has knowledge, would be sufficient - Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. (Para 17) ***TRL Krosaki Refractories Ltd. v. SMS Asia Pvt. Ltd., 2022 LiveLaw (SC) 196 : AIR 2022 SC 1315 : (2022) 7 SCC 612***

Negotiable Instruments Act, 1881; Section 138 - Complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. (Para 5-9) ***Gajanand Burange v. Laxmi Chand Goyal, 2022 LiveLaw (SC) 682***

Negotiable Instruments Act, 1881; Section 138 - Expeditious disposal of cases - Establishment of pilot courts presided over by retired judges in 5 districts of 5 states with the highest pendency (namely, Maharashtra, Rajasthan, Gujarat, Delhi and Uttar Pradesh) directed - Guidelines covering the pilot study issued. ***In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881, 2022 LiveLaw (SC) 508 : AIR 2022 SC 2481***

Negotiable Instruments Act, 1881; Section 138 - For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation - If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque - When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted. *(Para 30)* ***Dashratbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, 2022 LiveLaw (SC) 830 : AIR 2022 SC 4961***

Negotiable Instruments Act, 1881; Section 138 - Supreme Court imposes Rs 5 lakhs cost on convict who agreed to settle the dispute only after 10 years of litigation - Court cites wastage of precious judicial time and tyranny of justice caused to complainant. ***Santhosh J. v. V. Narasimha Murthy, 2022 LiveLaw (SC) 874***

Negotiable Instruments Act, 1881; Section 138 - Though a post- dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of maturity or encashment, then the offence under

Section 138 is not made out. *(Para 16)* ***Dashratbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, 2022 LiveLaw (SC) 830 : AIR 2022 SC 4961***

Negotiable Instruments Act, 1881; Section 138, 141 - The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned - It is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. *(Para 44)* ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 LiveLaw (SC) 772 : AIR 2022 SC 4883***

Negotiable Instruments Act, 1881; Section 138, 141 - Vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction - On the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. *(Para 47)* ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 LiveLaw (SC) 772 : AIR 2022 SC 4883***

Negotiable Instruments Act, 1881; Section 138, 56 - When a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment. *(Para 29)* ***Dashratbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, 2022 LiveLaw (SC) 830 : AIR 2022 SC 4961***

Negotiable Instruments Act, 1881; Sections 138, 139 - A drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the accused had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert - The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability. *(Para 4, 17)* ***Oriental Bank of Commerce v. Prabodh Kumar Tewar, 2022 LiveLaw (SC) 714***

Negotiable Instruments Act, 1881; Sections 138, 139 - Appeal against concurrent conviction in a cheque bounce case - Partly allowed - Upheld the conviction - Directed that sentence of imprisonment of one year vacated - Accused appellant sentenced to fine of Rs.5,000/- which he will deposit within a period of one month in the Trial Court. ***Tedhi Singh v. Narayan Dass Mahant, 2022 LiveLaw (SC) 275 : (2022) 6 SCC 735***

Negotiable Instruments Act, 1881; Sections 138, 139 - At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity - However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents, by pointing to the materials produced by the complainant himself, or through the cross examination of the witnesses of the complainant. *(Para 9)* ***Tedhi Singh v. Narayan Dass Mahant, 2022 LiveLaw (SC) 275 : (2022) 6 SCC 735***

Negotiable Instruments Act, 1881; Sections 138, 139 - Theory of 'probable defence' - The accused is not expected to discharge an unduly high standard of proof - All which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist - It becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence. *(Para 7, 9)* ***Tedhi Singh v. Narayan Dass Mahant, 2022 LiveLaw (SC) 275 : (2022) 6 SCC 735***

Negotiable Instruments Act, 1881; Sections 138, 141 - For maintaining the prosecution under Section 141 of NI Act, arraigning of the company as an accused is imperative and non-impleadment of the company would be fatal for the complaint. (Para 19-21) ***Pawan Kumar Goel v. State of U.P., 2022 LiveLaw (SC) 971***

Negotiable Instruments Act, 1881; Sections 138, 141, 142 - Whether the amendment in the complaint and the impleadment of an additional accused subsequent to filing of the complaint is pemissible? The argument that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under Section 142 of NI Act has expired. More particularly, in view of the fact that neither any effort was made by the petitioner at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to Section 142, to condone the delay for not making the complaint within the prescribed period of limitation. *(Para 22-23)* ***Pawan Kumar Goel v. State of U.P., [2022 LiveLaw (SC) 971](#)***

Negotiable Instruments Act, 1881; Sections 138,141 - Whether it is necessary to specifically state in the complaint that the person accused was in charge of, or responsible for the conduct of the business of the company - the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable. *(Para 26-31)* ***Pawan Kumar Goel v. State of U.P., [2022 LiveLaw (SC) 971](#)***

Negotiable Instruments Act, 1881; Section 138 - Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial? - Referred to larger bench. ***J. Vedhasingh v. R.M. Govindan, [2022 LiveLaw (SC) 669](#) : AIR 2022 SC 3772***

Negotiable Instruments Act, 1882; Section 138 - The judgment in M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.: (2001) 7 SCC 401 does not deal with a claim for blanket exemption from personal appearance - Observations therein essentially co-relate with the facts of the said case - In appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel - Such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence. ***Mahesh Kumar Kejriwal v. Bhanuj Jindal, [2022 LiveLaw (SC) 394](#)***

Negotiable Instruments Act, 1882; Section 138 - SLP against Punjab & Haryana HC judgment which refused petitioner's claim of blanket exemption from personal experience in case under Section 138 NI Act -Dismissed - It is difficult to appreciate that in the case of the present nature, the petitioners seek to avoid appearance even once in terms of the order of the learned Sessions Judge. ***Mahesh Kumar Kejriwal v. Bhanuj Jindal, [2022 LiveLaw (SC) 394](#)***

Negotiable Instruments Act, 1881; Section 138 - Transfer Petition filed by a woman-accused seeking transfer of cheque bounce complaint - A complaint under Section 138 cannot be transferred as per the convenience of the accused - Being a woman and senior citizen, she can always seek exemption from personal appearance - Directed Trial Judge to favourable consider application if made by the petitioner for grant of exemption - The Trial Judge shall compel the petitioner to appear only when her presence is absolutely mandatory for the conduct of the trial. ***S. Nalini Jayanthi v. M. Ramasubba Reddy, [2022 LiveLaw (SC) 880](#)***

Negotiable Instruments Act, 1881; Section 138,139 - The Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption - In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint - Quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence. *(Para 16, 11, 13)* ***Rathish Babu Unnikrishnan v. State, 2022 LiveLaw (SC) 413 : 2022 (6) SCALE 794***

Negotiable Instruments Act, 1881; Section 138, 141 - The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions, resulting in enactment of Sections 138 and 141 of the NI Act has to be borne in mind - A complaint should also not be read with a pedantically hyper technical approach to deny relief under Section 482 of the Cr.P.C. to those impleaded as accused, who do not have any criminal liability in respect of the offence alleged in the complaint. *(Para 39)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Negotiable Instruments Act, 1881; Section 138,141 - High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques - If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court. *(Para 47)* ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 LiveLaw (SC) 772 : AIR 2022 SC 4883***

Negotiable Instruments Act, 1881; Sections 138,139 - Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC. ***Yogesh Jain v. Sumesh Chadha, 2022 LiveLaw (SC) 879***

Negotiable Instruments Act, 1881; Section 138 and 141 - Moratorium - Liability of natural persons like a Director of the Company - The moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act. ***Narinder Garg v. Kotak Mahindra Bank, 2022 LiveLaw (SC) 428 : 2022 (7) SCALE 162***

Section 139 - Presumption in favour of holder

Negotiable Instruments Act, 1881; Section 139 - Presumption under Section 139 includes a presumption that there exists a legally enforceable debt or liability. However, the presumption under Section 139 of the N.I. Act is rebuttable and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. ***Jain P. Jose v. Santhosh, 2022 LiveLaw (SC) 979***

Section 141 - Offences by companies

Negotiable Instruments Act, 1881; Section 141 - Impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act - Specific averments have to be made in the pleadings to substantiate the said statement in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company - It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation. *(Para 42-46)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Negotiable Instruments Act, 1881; Section 141 - The burden is on the prosecution to show that the person prosecuted was in charge of and responsible to the company for conduct of its business. *(Para 7)* ***Dilip Hariramani v. Bank of Baroda, 2022 LiveLaw (SC) 457 : AIR 2022 SC 2258***

Negotiable Instruments Act, 1881; Section 141 - Vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability - Vicarious liability arises only when the company or firm commits the offence as the primary offender - Unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. *(Para 11-14)* ***Dilip Hariramani v. Bank of Baroda, 2022 LiveLaw (SC) 457 : AIR 2022 SC 2258***

Negotiable Instruments Act, 1881; Section 141 - When the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company - Prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company - A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. *(Para 30, 37)* ***Sunita Palita v. Panchami Stone Quarry, 2022 LiveLaw (SC) 647 : AIR 2022 SC 3548 : (2022) 10 SCC 152***

Negotiable Instruments Act, 1881; Section 141(1) Proviso - The onus to satisfy the requirements and take benefit of the proviso is on the accused. Still, it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 141 of the NI Act. *(Para 7)* ***Dilip Hariramani v. Bank of Baroda, 2022 LiveLaw (SC) 457 : AIR 2022 SC 2258***

Negotiable Instruments Act, 1881; Section 141(2) - The onus under Section 141(2) of the NI Act is on the prosecution and not on the person being prosecuted - Sub-section (2) to Section 141 of the NI Act does not state that the persons enumerated, can be prosecuted and punished merely because of their status or position as a director, manager, secretary or any other officer, unless the offence in question was committed with their consent or connivance or is attributable to any neglect on their part. *(Para 8)* ***Dilip Hariramani v. Bank of Baroda, 2022 LiveLaw (SC) 457 : AIR 2022 SC 2258***

Section 143A - Power to direct interim compensation

Negotiable Instruments Act, 1881; Section 143A - Failure of accused to pay interim compensation - The amount can be recovered as if it were a fine - The provision nowhere contemplates that an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses examined on behalf of the complainant. *(Para 12-14)* ***Noor Mohammed v. Khurram Pasha, 2022 LiveLaw (SC) 652 : AIR 2022 SC 3592 : (2022) 9 SCC 23***

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Penal Code 1860

Penal Code, 1860 - Appeal against judgment of Allahabad HC which acquitted accused by setting aside conviction recorded by Trial Court under Section 302 and 148 IPC - Partly allowed - Accused convicted under Section 304 Part I r/w Section 149 IPC and for the offence under Section 148 IPC. ***State of Uttar Pradesh vs Subhash @ Pappu, 2022 LiveLaw (SC) 336 : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Penal Code, 1860 - Appeal against judgment of Allahabad HC which acquitted accused by setting aside conviction recorded by Trial Court under Section 302 and 148 IPC - Partly allowed - Accused convicted under Section 304 Part I r/w Section 149 IPC and for the offence under Section 148 IPC. ***State of Uttar Pradesh vs Subhash @ Pappu, 2022 LiveLaw (SC) 336 : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Penal Code, 1860 - Appeal filed by two accused concurrently convicted in a murder case by invoking Section 34 IPC - Allowed - They are entitled to the benefit of doubt on the ground that it cannot be with certainty held that they had common intention - Given the acts attributed to them, the assault by the main accused and the resultant outcome were unexpected. ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220** : **(2022) 7 SCC 521***

Penal Code, 1860 - Deceased was addicted to alcohol and used to constantly torment, abuse and threaten the accused (appellant) who was his brother - On the night of the occurrence, the deceased had consumed alcohol and had told the accused to leave the house and if not, he would kill the accused - There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation - There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires - The acts of provocation on the basis of which the accused caused the death of his brother were both sudden and grave and that there was loss of self-control - Conviction modified from Section 302 IPC to Section 304 Part I IPC. ***Dauvaram Nirmalkar v. State of Chhattisgarh, 2022 LiveLaw (SC) 650 : AIR 2022 SC 3620***

If no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed - When the complaint itself disclosed nothing more than a commercial relationship which broke, it is not possible to enlarge the scope of his complaint by merely adding the language used in the text of the Indian Penal Code. *(Para 15-18)* ***Wyeth Limited v. State of Bihar, 2022 LiveLaw (SC) 721***

Section 34 - Acts done by several persons in furtherance of common intention

Penal Code, 1860 - Section 34 - A co -perpetrator, who shares a common intention, will be liable only to the extent that he intends or could or should have visualized the possibility or probability of the final act. If the final outcome or offence committed is distinctly remote and unconnected with the common intention, he would not be liable - Merely accompanying the principal accused may not establish common intention - A co -perpetrator, who shares a common intention, will be liable only to the extent that he intends or could or should have visualized the possibility or probability of the final act - The ambit should not be extended so as to hold a person liable for remote possibilities, which were not probable and could not be envisaged. (Para 13, 19) ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220** : **(2022) 7 SCC 521***

Penal Code, 1860 - Section 34 - For Section 34 to apply, it is not necessary that the plan should be pre -arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. (Para 18) ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220** : **(2022) 7 SCC 521***

Penal Code, 1860 - Section 34 - Relevant Facts - The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co -assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. (Para 18) ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220 : (2022) 7 SCC 521***

Penal Code, 1860 - Section 34 - Section 34 IPC comes into operation against the co -perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. (Para 18) ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220 : (2022) 7 SCC 521***

Penal Code, 1860 - Section 34 - The expression "common intention" should also not be confused with "intention" or "mens rea" as an essential ingredient of several offences under the IPC - For some offences, mental intention is not a requirement but knowledge is sufficient and constitutes necessary mens rea. Section 34 IPC can be invoked for the said offence also - In some cases, intention, which is ingredient of the offence, may be identical with the common intention of the co -perpetrators, but this is not mandatory. (Para 18) ***Krishnamurthy @ Gunodu vs State of Karnataka, 2022 LiveLaw (SC) 220 : (2022) 7 SCC 521***

Penal Code, 1860; Section 34 - A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance - The word “furtherance” indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion - Scope of Section 34 IPC discussed. (Para 26, 28) ***Jasdeep Singh @ Jassu v. State of Punjab, 2022 LiveLaw (SC) 19 : AIR 2022 SC 805 : (2022) 2 SCC 545***

Penal Code, 1860; Section 34 - Appeal against concurrent conviction of appellant by invoking Section 34 IPC - Allowed - The prosecution has failed to prove ingredients of Section 34 of IPC in this case - non- examination of two crucial eye witnesses makes the prosecution case about the existence of a prior concert and pre-arranged plan extremely doubtful. ***Gadadhar Chandra v. State of West Bengal, 2022 LiveLaw (SC) 287 : (2022) 6 SCC 576***

Penal Code, 1860; Section 34 - Common Intention - Once it has been established and proved by the prosecution that all the accused came at the place of incident with a common intention to kill the deceased and as such, they shared the common intention, in that case it is immaterial whether any of the accused who shared the common intention had used any weapon or not and/or any of them caused any injury on the deceased or not. *(Para 4.2)* ***State of MP v. Ramji Lal Sharma, 2022 LiveLaw (SC) 258 : AIR 2022 SC 1366***

Penal Code, 1860; Section 34 - Common intention pre-supposes prior concert. It requires meeting of minds, a pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. *(Para 9)* ***Gadadhar Chandra v. State of West Bengal, 2022 LiveLaw (SC) 287 : (2022) 6 SCC 576***

Penal Code, 1860; Section 34 - Co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention. ***State of Rajasthan v. Gurbachan Singh, 2022 LiveLaw (SC) 1028***

Section 45 - "Life"

Penal Code, 1860 - Section 45 and 53 - There can be imposition of life imprisonment without any remission till the last breath as a substitution of death sentence. (Para 3) ***Ravindra v. Union of India, 2022 LiveLaw (SC) 156***

Section 96 - Things done in private defence

Penal Code, 1860; Section 96-106 - Right of Private Defence - Accused need not prove the existence of private self-defence beyond reasonable doubt and that it would suffice if he could show that the preponderance of probabilities is in favour of his plea, just as in a civil case. *(Para 12)* ***Ex.Ct. Mahadev v. Director General, Border Security Force, 2022 LiveLaw (SC) 551 : AIR 2022 SC 2986 : (2022) 8 SCC 502***

Penal Code, 1860; Section 96-106 - Right of Private Defence - The right of private defence is necessarily a defensive right which is available only when the circumstances so justify it. The circumstances are those that have been elaborated in the IPC. Such a right would be available to the accused when he or his property is faced with a danger and there is little scope of the State machinery coming to his aid. At the same time, the courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended. This is not to say that a step to step analysis of the injury that was apprehended and the violence used is required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not. The Court's assessment would be guided by several circumstances including the position on the spot at the relevant point in time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting the in knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate action, etc. The underlying factor should be that such an act of private defence should have been done in good faith and without malice. ***Ex.Ct. Mahadev v. Director General, Border Security Force, 2022 LiveLaw (SC) 551 : AIR 2022 SC 2986 : (2022) 8 SCC 502***

Section 120B - Punishment of criminal conspiracy

Penal Code, 1860; Section 120B - Criminal Conspiracy - To make out a case of larger criminal conspiracy, it is essential to establish a link indicative of meeting of minds of the concerned persons for commission of the crime(s). *(Para 44)* ***Zakia Ahsan Jafri v. State of Gujarat, 2022 LiveLaw (SC) 558 : 2022 (9) SCALE 385***

Penal Code, 1860; Section 120B - The principal ingredient of the offence of criminal conspiracy under Section 120B IPC is an agreement to commit an offence - Such an agreement must be proved through direct or circumstantial evidence- Some kind of physical manifestation of agreement is required to be established- It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. *(Para 22-25)* ***Ram Sharan Chaturvedi v. State of Madhya Pradesh, 2022 LiveLaw (SC) 709 : AIR 2022 SC 4002***

Section 121A - Conspiracy to commit offences punishable by section 121

Penal Code 1860; Section 121A - As the explanation to Section 121A of the IPC discloses, for an offence of conspiracy, it would not be necessary that any act or illegal omission must take place in pursuance thereof. Thus, even though no untoward incident had actually of the IPC, the matter would still come within the four corners of Section 121A of the IPC. ***Mohammad Irfan v. State of Karnataka, 2022 LiveLaw (SC) 590***

Penal Code 1860; Section 121A - Conspiracy to wage war against India - The dictionary meaning of the expression "overawe" is to subdue or inhibit with a sense of awe. The expression "overawe" would thus imply creation of apprehension or situation of alarm and as rightly held by the Division Bench (in the case of *Mir Hasan Khan v. State (or Ramanand v. State)*, it would not be necessary that the danger should be one of assassination of or of bodily injury to the members of the machinery or apparatus of the Government but the danger might as well be to public property or to the safety of members of the general public. ***Mohammad Irfan v. State of Karnataka, 2022 LiveLaw (SC) 590***

Penal Code 1860; Section 121A - Supreme Court upheld the conviction and life sentence of four persons for causing the terror attack at the Indian Institute of Science in Bengaluru in December, 2005. ***Mohammad Irfan v. State of Karnataka,*** [***2022 LiveLaw (SC) 590***]

Section 124A - Sedition

Penal Code, 1860; Section 124A - Sedition - All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused - If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India - We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration. *(Para 8)* ***S.G. Vombatkere v. Union of India,*** ***2022 LiveLaw (SC) 470*** ***: (2022) 7 SCC 433***

Penal Code, 1860; Section 124A - Sedition -Centre's affidavit that it has decided to re-examine and re-consider the provision - it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law. *(Para 5)* ***S.G. Vombatkere v. Union of India,*** ***2022 LiveLaw (SC) 470*** ***: (2022) 7 SCC 433***

Section 148 - Rioting, armed with deadly weapon

Penal Code, 1860; Section 148 - Merely because three persons were chargesheeted / charged / tried and even out of three tried, two persons came to be acquitted cannot be a ground to not to convict the accused under Section 148 IPC when involvement of six to seven persons in commission of the offence has been established and proved. (Para 12) ***State of Uttar Pradesh vs Subhash @ Pappu,*** ***2022 LiveLaw (SC) 336*** ***: AIR 2022 SC 1651 : (2022) 6 SCC 508***

Penal Code, 1860; Section 148 - Merely because three persons were chargesheeted / charged / tried and even out of three tried, two persons came to be acquitted cannot be a ground to not to convict the accused under Section 148 IPC when involvement of six to seven persons in commission of the offence has been established and proved. (Para 12) ***State of Uttar Pradesh vs Subhash @ Pappu,*** ***2022 LiveLaw (SC) 336*** ***: AIR 2022 SC 1651 : (2022) 6 SCC 508***

Section 149 - Every member of unlawful assembly guilty of offence committed in prosecution of common object.

Penal Code, 1860; Section 149 - Object of Section 149 is to make specific that person whose case comes within its gamut cannot be permitted to put forth a defence that he did not, with his own hand, commit the offence committed in prosecution of the common object of the unlawful assembly. *(Para 17)* ***Gurmail Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 854 : AIR 2022 SC 5258***

Penal Code, 1860; Section 149 - There is no requirement to prove a common intention for an unlawful assembly under Section 149 IPC - Unlawful assembly and common object discussed. *(Para 143-147)* ***Ashok Kumar Chandel v. State of U.P., 2022 LiveLaw (SC) 915***

Penal Code, 1860; Section 149, 141 - It is an essential condition of an unlawful assembly that its membership must be five or more - Less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and other numbering in all more than five composed an unlawful assembly, these others being persons not identified and unnamed. ***Mahendra v. State of M.P., 2022 LiveLaw (SC) 22***

Penal Code, 1860; Section 149 - Mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them - Mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby - If ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned. [Referred to Annareddy Sambasiva Reddy Vs. State of Andhra Pradesh, (2009) 12 SCC 546] (Para 7) ***State of Uttar Pradesh v. Subhash @ Pappu, 2022 LiveLaw (SC) 336 : AIR 2022 SC 1651 : (2022) 6 SCC 508***

Section 221 - Intentional omission to apprehend on the part of public servant bound to apprehend.

Penal Code 1860; Section 221 - "charge" not defined under Cr.P.C. - a false "charge" in this Section must not be understood in any restricted or technical sense, but in its ordinary meaning - would include a false accusation made to any authority bound by law to investigate it or to take any steps in regard to it, such as giving information of it to the superior authorities with a view to investigation or other proceedings, and the institution of criminal proceedings includes the setting of the criminal law in motion - the expression "falsely charges" in this section, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial - "to falsely charge" must refer to the original or initial accusation putting or seeking to put in motion - the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial - the false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings - in other words, it must be embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made - the statement in order to constitute the "charges" should be made with the intention and object of setting criminal law in motion. [Para 91, 94] ***Himanshu Kumar v. State of Chhattisgarh, 2022 LiveLaw (SC) 598***

Penal Code 1860; Section 221 - Essential ingredients for invoking Section 211, I.P.C. are that the complaint must have falsely charged a person with having committed an offence; the complainant, at the time of giving the complaint must have known that there is no just or lawful ground for making a charge against the person, this complaint must have been given with an intention to cause injury to a person. [Para 90] ***Himanshu Kumar v. State of Chhattisgarh, 2022 LiveLaw (SC) 598***

Section 285 - Negligent conduct with respect to fire or combustible matter

Penal Code, 1860; Section 285 - Essential requirement of Section 285 of IPC w as that the accused must have done something with fire or any combustible matter in a rash and negligent manner to endanger human life. ***Gurukanwarpal Kirpal Singh v. Surya Prakasam, 2022 LiveLaw (SC) 519***

Section 294 - Obscene acts and songs

Penal Code, 1860; Section 294 - Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others - The test of obscenity under Section 294(b) is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. ***N.S. Madhanagopal v. K. Lalitha, 2022 LiveLaw (SC) 844***

Section 300 - Murder

Penal Code, 1860 - Section 300 - Point whether culpable homicide would tantamount to murder or not discussed. (Para 6) ***State of Uttarakhand v. Sachendra Singh Rawat, 2022 LiveLaw (SC) 131 : (2022) 4 SCC 227***

Penal Code, 1860 - Section 300 - The fact that the accused gave several blows/multiple blows on the vital part of the body – head which resulted into grievous injuries and he used “Phakadiyat” with such a force which resulted in Skull fracture and a frontal wound on left side and wounds with 34 stitches on the left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm, we are of the opinion that the case would fall under Clauses thirdly and fourthly of Section 300 IPC. (Para 7) ***State of Uttarakhand v. Sachendra Singh Rawat, 2022 LiveLaw (SC) 131 : (2022) 4 SCC 227***

Penal Code, 1860 – Section 300 and 376 – Rape and Murder - Death Sentence - Abhorrent nature of crime alone cannot be the decisive factor for awarding death sentence - Due consideration to be given to the equally relevant aspect pertaining to mitigating factors before arriving at a conclusion that option of any other punishment than the capital one was foreclosed. (Para 42) ***Pappu v. State of Uttar Pradesh, 2022 LiveLaw (SC) 144 : 2022 (3) SCALE 45***

Penal Code, 1860; Exception 1 to Section 300 - Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken - First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation - Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. *(Para 12)* ***Dauvaram Nirmalkar v. State of Chhattisgarh, 2022 LiveLaw (SC) 650 : AIR 2022 SC 3620***

Penal Code, 1860; Exception 1 to Section 300 - Sustained provocation principle - The last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control - The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation - This principle does not do away with the requirement of immediate or the final provocative act, words or gesture. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation - The provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation - Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. *(Para 12-14)* ***Dauvaram Nirmalkar v. State of Chhattisgarh, 2022 LiveLaw (SC) 650 : AIR 2022 SC 3620***

Penal Code, 1860; Exceptions to Section 300 - The burden of prosecution to prove the guilt of the accused should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. *(Para 15)* ***Dauvaram Nirmalkar v. State of Chhattisgarh, 2022 LiveLaw (SC) 650 : AIR 2022 SC 3620***

Penal Code, 1860; Section 300 - In order to make culpable homicide as murder the act by which death is caused should fall not only under any one or more of clauses firstly to fourthly under Section 300, IPC but they should also not fall under any of the five exceptions to Section 300, IPC. *(Para 21)* ***Gurmail Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 854 : AIR 2022 SC 5258***

Penal Code, 1860; Section 300 Exception 1 - Whether there was a grave and sudden provocation which would lead an accused to lose his power of self-control would depend upon the facts and circumstances of each case. It cannot be disputed that how a person responds to a particular situation would depend upon the temperament of a particular person. A hot-tempered person may react differently as compared to a cool-headed person. *(Para 8)* ***Yatendrasingh Ajabsingh Chauhan v. State of Maharashtra, 2022 LiveLaw (SC) 664***

Penal Code, 1860; Section 300, 302 - Appeal against Madras HC Judgment acquitting murder accused - Allowed - Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness - There can be a conviction on the basis of the deposition of the sole eye witness, if the said witness is found to be trustworthy and/or reliable. ***State v. Laly @ Manikandan, 2022 LiveLaw (SC) 851 : AIR 2022 SC 5034***

Penal Code, 1860; Section 300, 302 - Conviction of a man accused of killing his own father following a fight under the influence of liquor upheld - Maybe it was under the influence of liquor, but the nature of blows was such that the endeavour was to end the life of the deceased, the father. It was certainly an act in a cruel and brutal manner taking advantage of the situation even if there was no pre-meditation - There is no cause made out for application of Exception 4 of Section 300. ***Chherturam @ Chainu v. State of Chhattisgarh, 2022 LiveLaw (SC) 761 : AIR 2022 SC 4279 : (2022) 9 SCC 571***

Penal Code, 1860; Section 300, 302 - Murder case - Trial Court convicted accused for alleged murder of his wife, four children and sentenced him to death

- Allahabad High Court dismissed his appeal and confirmed death sentence - Allowing the appeal, the Supreme Court acquitted the accused - None of the pieces of evidence relied on as incriminating by the courts below, can be treated as incriminating pieces of circumstantial evidence against the accused. ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, 2022 LiveLaw (SC) 843 : AIR 2022 SC 5273***

Penal Code, 1860; Section 300, 302 - Whether the accused had an intention to commit the murder of the deceased or not would depend upon a combination of several factors. There cannot be a straight-jacket formula for deciding whether there was intention to commit the murder or not. *(Para 7-8)* ***Yatendrasingh Ajabsingh Chauhan v. State of Maharashtra, 2022 LiveLaw (SC) 664***

Penal Code, 1860; Section 300, 302, 304 Part II - Appeal against concurrent murder conviction of a husband accused of killing wife - Partly allowed - Modified to Section 304 Part II of IPC - there was no pre-mediation to cause the death and the incident had occurred at the spur of the moment and the appellant having realised his mistake had thereafter taken immediate steps to shift his wife to the hospital but unfortunately she breathed her last. ***Jai Karan Yadav v. State (NCT of Delhi), 2022 LiveLaw (SC) 992***

Penal Code, 1860; Section 300, 304 Part II - Conviction of appellants modified from Section 302 to Section 304 Part II - Considerations relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder. *(Para 17)* ***Ajmal v. State of Kerala, 2022 LiveLaw (SC) 609 : (2022) 9 SCC 766***

Section 302 - Punishment for Murder

Penal Code, 1860 - Section 302 - Appeal against concurrent conviction under Section 302 - Excessive number of injuries do not ipso facto lead to an inference about involvement of more than one person; rather the nature of injuries and similarity of their size/dimension would only lead to the inference that she was mercilessly and repeatedly stabbed by the same weapon and by the same person - The evidence of the eye -witness to the incident, remains unimpeachable and has been believed by the two Courts - Do not find the present one to be a case of manifest illegality so as to call for interference. ***Suresh Yadav @ Guddu v. State of Chhattisgarh, 2022 LiveLaw (SC) 217 : 2022 (4) SCALE 260***

Penal Code, 1860 - Section 302 - Trial Court does not have the jurisdiction to sentence an accused to life imprisonment which is to extend to the remainder of their life. ***Narendra Singh @ Mukesh @ Bhura v. State of Rajasthan, 2022 LiveLaw (SC) 247***

Penal Code, 1860; Section 302 - Appeal against High Court acquitting some of the accused in a murder case - Allowed - There are no material contradictions between the ocular and medical evidence. The presence of all the accused have been established and proved and the prosecution has also been successful in proving that all the accused shared the common intention - Trial Court judgment restored. ***State of MP v. Ramji Lal Sharma, 2022 LiveLaw (SC) 258 : AIR 2022 SC 1366***

Penal Code, 1860; Section 302 - Brutal Murder - Sentencing - In appropriate cases, imposing a fixed term sentence creates a possibility for the convict to 8 re-integrate into society after serving his/her sentence. It strikes a delicate balance between the victims' plea for justice - This fixed term sentence can only be by the High Court or this Court and not by the trial Court - If there is any circumstance favouring the accused such as lack of intention to commit the crime, possibility of reformation, young age of the accused, accused not being a menance to the society, no previous criminal record etc., the accused may avoid capital punishment - The crime is important but so is the criminal and hence the Supreme Court in recent past has substituted death penalty with fixed term sentences exceeding 14 years - The approach cannot be the vindictive but lack of appropriate sentence leaves the cry of justice of the society un-addressed apart from the fact that other persons who may have the propensity to carry out the crime feel they will get away with the lighter sentence, in case they are caught. ***State of Haryana v. Anand Kindoo, 2022 LiveLaw (SC) 780 : AIR 2022 SC 4315***

Penal Code, 1860; Section 302 - In order to convict an accused under Section 302, the court is required to first see as to whether the prosecution has proved the factum of homicidal death. *(Para 8)* ***Chandrapal v. State of Chhattisgarh, 2022 LiveLaw (SC) 529 : AIR 2022 SC 2542***

Penal Code, 1860; Section 302 - Merely because no fracture was noticed and/or found cannot take the case out of Section 302 IPC when the deceased died due to head injury - Injury on the head can be said to be causing injury on the vital part of the body. *(Para 7.2)* ***State of U.P. v. Jai Dutt, 2022 LiveLaw (SC) 72 : (2022) 3 SCC 184***

Penal Code, 1860; Section 302 - There cannot be any sentence/punishment less than imprisonment for life, if an accused is convicted for the offence punishable under Section 302 IPC. *(Para 5)* ***State of Madhya Pradesh v. Nandu @ Nandua, 2022 LiveLaw (SC) 732 : AIR 2022 SC 4077 : (2022) 9 SCC 184***

Penal Code, 1860; Section 302 - Trial Court does not have the jurisdiction to sentence an accused to life imprisonment which is to extend to the remainder of their life. ***Narendra Singh @ Mukesh @ Bhura v. State of Rajasthan, 2022 LiveLaw (SC) 247***

Penal Code, 1860; Section 302 and 376 - Rape and Murder of Six-Year-Old Girl - Appellant was convicted and sentenced to death - Acquitted - There are seriously inherent contradictions in the statements made by prosecution witnesses and both the Trial Court and the High Court have overlooked it completely - Court cannot make someone, a victim of injustice, to compensate for the injustice to the victim of a crime. ***Chotkau v. State of Uttar Pradesh, 2022 LiveLaw (SC) 804 : AIR 2022 SC 4688***

Penal Code, 1860; Section 302,149 - Conviction of one surviving accused (nine others died during pendency of appeal before HC and SC) under Section 302/149 upheld - The effect and impact of reduction of the number of convicts pending an appeal owing to the death of co-convicts is bound to be different from the effect and impact of reduction of the number of accused/convicts on account of acquittal - The meaning of abatement can only be taken in criminal proceedings as `discontinuation of such proceedings owing to the death of the accused/convict pending such proceedings' - The abatement is certainly different from acquittal. *(Para 12-16)* ***Gurmail Singh v. State of Uttar Pradesh, 2022 LiveLaw (SC) 854 : AIR 2022 SC 5258***

Section 304B - Dowry Death

Penal Code 1860; Section 304B - Offence of dowry death - the legislative intent of incorporating IPC section 304-B was to curb the menace of dowry death with a firm hand-in dealing with cases under section 304-B, such legislative intent has to be kept in mind- a strong message must go in the society that a person who commits such an offence of dowry death and/or the offences under the Dowry Prohibition Act shall be dealt with an iron hand. ***Ajhola Devi v. State of Jharkhand, 2022 LiveLaw (SC) 695***

Penal Code, 1860; Section 304B - “Soon before” is not synonymous to “immediately before”. (Para 15) ***State of Madhya Pradesh v. Jogendra, 2022 LiveLaw (SC) 37 : AIR 2022 SC 933 : (2022) 5 SCC 401***

Penal Code, 1860; Section 304B - Demand for money raised on the deceased for construction of a house as falling within the definition of the word “dowry”. (Para 12-14) ***State of Madhya Pradesh v. Jogendra, 2022 LiveLaw (SC) 37 : AIR 2022 SC 933 : (2022) 5 SCC 401***

Section 304A - Causing death by negligence

Penal Code, 1860; Section 304A - Doctrine of *res ipsa loquitur stricto sensu* would not apply to a criminal case - For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then establish direct nexus between negligence of the accused and the death of the victim. ***Nanjundappa v. State of Karnataka, 2022 LiveLaw (SC) 489*** : ***AIR 2022 SC 2374***

Section 306 - Abetment of Suicide

Penal Code, 1860; Section 306 - Abetment of Suicide - Student committed suicide following disciplinary Action by educational institution - FIR registered against the teacher, the Head of the Department and the Principal on the complaint filed by student's father that the suicide was instigated by them - Discharging the accused, the Supreme Court observed: We find not an iota of material on record even assuming the complete charge sheet to be correct which could lead to a conviction in a case of abetment as there was absence of the necessary ingredients to make the offence. While we appreciate the anguish of a father who has lost a young son, that cannot result in blaming the world (in the present case, the institution and its teachers) for what is a basic disciplinary action necessary for running the institute. A contra position would create a lawless and unmanageable situation in an educational institution. ***V.P. Singh v. State of Punjab, 2022 LiveLaw (SC) 994***

Penal Code, 1860; Section 306 - Abetment to commit suicide - Even an indirect act of incitement to the commission of suicide would constitute the offence of abetment of suicide. *(Para 16)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Penal Code, 1860; Section 306 - Each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record. *(Para 32)* ***Mariano Anto Bruno v. Inspector of Police, 2022 LiveLaw (SC) 834 : AIR 2022 SC 4994***

Penal Code, 1860; Section 306 - In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. *(Para 36-38)* ***Mariano Anto Bruno v. Inspector of Police, 2022 LiveLaw (SC) 834 : AIR 2022 SC 4994***

Penal Code, 1860; Section 306 - An FIR under Section 306 IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else - Section 306 IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. *(Para 50)* ***Daxaben v. State of Gujarat, 2022 LiveLaw (SC) 642 : AIR 2022 SC 3530***

Section 307 - Attempt to murder

Penal Code, 1860; Section 307 - Appeal against Rajasthan High court judgment which partly allowed a criminal appeal by maintaining the conviction of the accused for the offence under Section 307 IPC, but by reducing the sentence from three years rigorous imprisonment to the period already undergone by him in confinement (44 days) - Allowed - Merely because a long period has lapsed by the time the appeal is decided cannot be a ground to award the punishment which is disproportionate and inadequate- trial Court had already taken a very lenient view while imposing the sentence of only three years' rigorous imprisonment. Therefore, the High Court ought not to have interfered with the same. ***State of Rajasthan v. Banwari Lal, 2022 LiveLaw (SC) 357 : 2022 (6) SCALE 71***

Penal Code, 1860; Section 307 - There is no minimum sentence under Section 307 IPC - Discretion has to be exercised judiciously and the sentence has to be imposed proportionately and looking to the nature and gravity of the offence committed and by considering the principles for imposing sentence. *(Para 9)* ***State of Rajasthan v. Banwari Lal, 2022 LiveLaw (SC) 357 : 2022 (6) SCALE 71***

Section 323 - Punishment for voluntarily causing hurt

Penal Code, 1860; Section 323 - Even though any harm might not be directly intended, some aggravated culpability must be attached if the person suffers a grievous hurt or dies as a result thereof. *(Para 32)* ***Jaswinder Singh v. Navjot Singh Sidhu, 2022 LiveLaw (SC) 498 : AIR 2022 SC 2441 : (2022) 7 SCC 628***

Penal Code, 1860; Section 323 - The hand can also be a weapon by itself where say a boxer, a wrestler or a cricketer or an extremely physically fit person inflicts the same. This may be understood where a blow may be given either by a physically fit person or to a more aged person. *(Para 24)* ***Jaswinder Singh v. Navjot Singh Sidhu, 2022 LiveLaw (SC) 498 : AIR 2022 SC 2441 : (2022) 7 SCC 628***

Section 324 - Voluntarily causing hurt by dangerous weapons or means.

Penal Code, 1860; Section 324 - Arms Act, 1950 ; Section 27 - Once the charge against the appellants under Section 324 IPC of voluntarily causing injuries by firearm, which is a dangerous weapon stands established, they cannot escape the punishment for using arms prescribed by Section 27 of the Arms Act. (Para 22) ***Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar, 2022 LiveLaw (SC) 402 : AIR 2022 SC 2817***

Penal Code, 1860; Section 324 - The presence of following ingredients is a must which are as follows: 1. Voluntary hurt caused to another person by the accused, and 2. Such hurt was caused. (Para 21) ***Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar, 2022 LiveLaw (SC) 402 : AIR 2022 SC 2817***

Section 341 - Punishment for wrongful restraint

Penal Code, 1860; Section 341 - Wrongful restraint - It has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant. ***N.S. Madhanagopal v. K. Lalitha, 2022 LiveLaw (SC) 844***

Section 354 - Assault of criminal force to woman with intent to outrage her modesty

Penal Code, 1860 - Section 354 - Accused was convicted under Section 354 IPC - Sessions Court/ High Court dismissed his appeal/revision - Before Apex

Court the accused submitted that a compromise has been entered into between him and the complainant/victim - Dismissing his SLP, the Supreme Court held: No reason to grant any credence to such compromise which is being entered into after the conviction has been confirmed by the High Court. ***Bimal Chandra Ghosh v. State of Tripura, 2022 LiveLaw (SC) 157***

Section 366 - Kidnapping, abducting or inducing woman to compel her marriage, etc.

Penal Code, 1860; Section 366 - Appeal against High Court judgment which refused to quash criminal proceedings against the appellant accused of abducting/kidnapping a girl - Allowed - The abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own free will - No fruitful purpose would be served by relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise. ***Mafat Lal v. State of Rajasthan, 2022 LiveLaw (SC) 362 : (2022) 6 SCC 589***

Penal Code, 1860; Section 366 - Section 366 IPC would come into play only where there is a forceful compulsion of marriage, by kidnapping or by inducing a woman. This offence also would not be made out once the abductee has clearly stated that she was in love with the accused and that she left her home on account of the disturbing circumstances at her parental home as the said relationship was not acceptable to her father and that she married the accused on her own free will without any influence being exercised by the accused. ***Mafat Lal v. State of Rajasthan, 2022 LiveLaw (SC) 362 : (2022) 6 SCC 589***

Section 375 - Rape

Penal Code, 1860; Section 375 - Whether a woman is "habituated to sexual intercourse" or "habitual to sexual intercourse" is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. *(Para 62)* ***State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, 2022 LiveLaw (SC) 890 : AIR 2022 SC 5393***

Penal Code, 1860; Section 375 and 90 - The parties chose to have physical relationship without marriage for a considerable period of time - For some reason, the parties fell apart. It can happen both before or after marriage - FIR lodged three years thereafter - Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself Distinction between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. ***Mandar Deepak Pawar v. State of Maharashtra, 2022 LiveLaw (SC) 649***

Section 376 - Punishment for Rape

Penal Code 1860; Section 376(2)(n) - Offence of committing repeated rape on same woman - The complainant has willingly been staying with the appellant and had the relationship - Now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC - Observations while granting anticipatory bail to accused. ***Ansaar Mohammad v. State of Rajasthan, 2022 LiveLaw (SC) 599 : AIR 2022 SC 3478***

Penal Code, 1860 – Sections 376 and 450 – Statement of Prosecutrix – Indian Failure of Police to Send Seized Clothes to Forensic Laboratory – Once the court believes the version of a survivor of sexual assault, that is sufficient to establish an offence punishable under Section 376, IPC – Failure of the police to send seized articles to the forensic science laboratory would not affect the outcome in such a case – Held, there was no merit in the appeal by the appellant-accused – Appeal dismissed. ***Somai v. State of Madhya Pradesh, 2022 LiveLaw (SC) 989***

Section 394 - Voluntarily causing hurt in committing robbery

Penal Code, 1860; Section 394 - Appeal by accused convicted under Section 394 IPC - Allowed - Prosecution has not been able to discharge the burden to such an extent that the presumption of innocence weighing in favour of the accused stands displaced. ***Venkatesh @ Chandra v. State of Karnataka, 2022 LiveLaw (SC) 387***

Section 397 - Robbery, or dacoity, with attempt to cause death or grievous hurt

Penal Code, 1860; Section 397 - If the charge of committing the offence is alleged against all the accused and only one among the 'offenders' had used the firearm or deadly weapon, only such of the 'offender' who has used the firearm or deadly weapon alone would be liable to be charged under Section 397 IPC. (Para 17) ***Ram Ratan v. State of Madhya Pradesh, 2022 LiveLaw (SC) 14 : AIR 2022 SC 518***

Penal Code, 1860; Section 397 - The use of the weapon to constitute the offence under Section 397 IPC does not require that the 'offender' should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient. (Para 17) ***Ram Ratan v. State of Madhya Pradesh, 2022 LiveLaw (SC) 14 : AIR 2022 SC 518***

Section 403 - Dishonest misappropriation of property

Penal Code, 1860; Sections 403, 415 - Appeal against Allahabad High Court order that refused to quash FIR registered against a tenant under Section 415,403 IPC - Allowed - No criminal offence is made out, even if we accept the factual assertions made in the complaint, which was registered as the First Information Report. ***Neetu Singh v. State of U.P., 2022 LiveLaw (SC) 281***

Penal Code, 1860; Sections 403, 415 - Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code. ***Neetu***

Singh v. State of U.P., 2022 LiveLaw (SC) 281

Penal Code, 1860; Sections 406, 420 - Appeal against the judgment of the Calcutta High Court refusing to quash an FIR registered against appellant - Allowed - Two simultaneous proceedings, arising from the same cause of action amounted to an abuse of the process of the law which is barred - It cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 IPC. ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Section 406 - Punishment for criminal breach of trust

Penal Code, 1860; Sections 406,420 - Breach of contract cannot give rise to criminal prosecution for cheating - Fraudulent or dishonest intention is the basis of the offence of cheating - A mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. *(Para 34)* ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Penal Code, 1860; Sections 406,420 - In order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating, the complainant had suffered a wrongful loss and the same had resulted in wrongful gain for the accused. *(Para 42, 23-36)* ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Section 405 - Criminal breach of trust

Penal Code, 1860; Section 405 - "Entrustment" - It extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. (Para 24) ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Penal Code, 1860; Section 405 - "Property" - The definition in the section does not restrict the property to movables or immoveable alone - There is no good reason to restrict the meaning of the word 'property' to moveable property only when it is used without any qualification in Section 405. *(Para 25)* ***Vijay Kumar Ghai v. State of West Bengal, 2022 LiveLaw (SC) 305 : (2022) 7 SCC 124***

Penal Code, 1860; Section 405 - An alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment - The offence of criminal breach of trust contains two ingredients: (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it. *(Para 20-23)* ***M.N.G. Bharateesh Reddy v. Ramesh Ranganathan, 2022 LiveLaw (SC) 701 : AIR 2022 SC 5021***

Penal Code, 1860; Section 405, 406 - The sine qua non for attracting the provision is the entrustment of the property with the accused persons. ***Gurukanwarpal Kirpal Singh v. Surya Prakasam, 2022 LiveLaw (SC) 519***

Penal Code, 1860; Section 406, 420 - A man, well versed in commerce, would certainly be expected to check the valuation of the property before entering into any transaction. ***Jayahari v. State of Kerala, 2022 LiveLaw (SC) 106***

Section 411 - Dishonestly receiving stolen property

Penal Code, 1860; Section 411 - In order to bring home the guilt under Section 411 IPC, the prosecution must prove (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property. *(Para 21-22)* ***Shiv Kumar v. State of Madhya Pradesh, 2022 LiveLaw (SC) 746 : AIR 2022 SC 4170 : (2022) 9 SCC 676***

Section 415 - Cheating

Penal Code, 1860; Section 415, 420 - Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property. ***M.N.G. Bharateesh Reddy v. Ramesh Ranganathan, 2022 LiveLaw (SC) 701 : AIR 2022 SC 5021***

Section 416 - Cheating by personation

Penal Code, 1860; Sections 416, 420 - Essential ingredients of the offence of cheating are deception on the part of the accused or dishonest inducement by them, resulting in any person delivering any property to such accused or alteration or destruction of whole or any part of valuable security. ***Gurukanwarpal Kirpal Singh v. Surya Prakasam, 2022 LiveLaw (SC) 519***

Section 420 - Cheating and dishonestly inducing delivery of property

Clubbing of FIRs - FIRs lodged against accused under various provisions of the Indian Penal Code (Section 420 IPC etc) and other State enactments in various states - Directs clubbing of all the FIRs State-wise, which can proceed together for one trial as far as possible - Multiplicity of the proceedings will not be in the larger public interest. ***Abhishek Singh Chauhan v. Union of India, 2022 LiveLaw (SC) 608***

Penal Code, 1860; Section 420 - To make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. *(Para 8)* ***Rekha Jain v. State of Karnataka, 2022 LiveLaw (SC) 468 : AIR 2022 SC 2268***

Penal Code, 1860; Section 420 - Negotiable Instruments Act, 1881; Section 138 - Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial? - Referred to larger bench. ***J. Vedhasingh v. R.M. Govindan, 2022 LiveLaw (SC) 669 : AIR 2022 SC 3772***

Section 494 - Marrying again during life-time of husband or wife.

Penal Code, 1860; Section 494, 495 – Bigamy - Appeal against Gauhati HC order which dismissed petition seeking to quash criminal proceeding under Sections 494 and 495 of the Indian Penal Code (bigamy) despite the Family Court's finding that the wife did not have a subsisting prior marriage - Allowed - High Court was not justified in coming to the conclusion that the issue as to whether the appellant had a subsisting prior marriage was a 'highly contentious matter' which has to be tried on the basis of the evidence on the record. ***Rehana Begum v. State of Assam, 2022 LiveLaw (SC) 86 : 2022 (2) SCALE 272***

Section 498A - Husband or relative of husband of a woman subjecting her to cruelty

Penal Code, 1860 - Section 498A - Allowing prosecution in the absence of clear allegations against relatives of husband would simply result in an abuse of the process of law - If allegations made against them are general and omnibus, they do not warrant prosecution. (Para 19 - 21) ***Kahkashan Kausar @ Sonam v. State of Bihar, 2022 LiveLaw (SC) 141 : AIR 2022 SC 820 : (2022) 6 SCC 599***

Penal Code, 1860 - Section 498A - Concern over the misuse of section 498A IPC - the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in -laws of the husband when no prima facie case is made out against them. (Para 18) ***Kahkashan Kausar @ Sonam v. State of Bihar, 2022 LiveLaw (SC) 141 : AIR 2022 SC 820 : (2022) 6 SCC 599***

Penal Code, 1860 - Section 498A - General and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged. (Para 22) ***Kahkashan Kausar @ Sonam v. State of Bihar, 2022 LiveLaw (SC) 141 : AIR 2022 SC 820 : (2022) 6 SCC 599***

Penal Code, 1860 - Section 498A - Incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in -laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives. (Para 12) ***Kahkashan Kausar @ Sonam v. State of Bihar, 2022 LiveLaw (SC) 141 : AIR 2022 SC 820 : (2022) 6 SCC 599***

Penal Code, 1860; Section 498A - Appeal against the order of the High Court denying permission to Appellant to leave the country - Allowed - The High Court has also not considered the allegations against the Appellant. There is not even any prima facie finding with regard to liability, if any, of the Appellant to the complainant. ***Deepak Sharma v. State of Haryana, 2022 LiveLaw (SC) 52***

Penal Code, 1860; Section 498A - Concurrent conviction under Section 498A IPC upheld - Wife's submission that she would not like to contest the appeal and she wants to join her husband and revive their matrimonial life - In this proceeding, we cannot pass any order on that count. For that purpose, the wife may take such steps as may be advised. Considering the overall circumstances, the punishment of rigorous imprisonment reduced to the period already undergone by the appellant in incarceration. ***Randeep Singh v. State of U T Chandigarh, 2022 LiveLaw (SC) 962***

Penal Code, 1860; Section 498A - Expected approach of the High Court in the event of *bona fide* settlement of disputes - The duty of the Court to encourage the genuine settlement of matrimonial disputes. *(Para 8-9)* ***Rajendra Bhagat v. State of Jharkhand,*** 2022 LiveLaw (SC) 34

Penal Code, 1860; Section 498A - Taking custody of jewellery for safety cannot constitute cruelty within the meaning of Section 498A. ***Deepak Sharma v. State of Haryana, 2022 LiveLaw (SC) 52***

Penal Code, 1860; Section 498A - When an offence has been committed by a woman by meting out cruelty to another woman, i.e., the daughter-in-law, it becomes a more serious offence. If a lady, i.e., the mother-in-law herein does not protect another lady, the other lady, i.e., daughter-in-law would become vulnerable. (Para 8) ***Meera v. State, 2022 LiveLaw (SC) 40 : AIR 2022 SC 355 : (2022) 3 SCC 93***

Penal Code, 1860; Sections 498A, 304B, 302, 306 - Dying Declaration - In some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section 32(1) of the Evidence Act , subject to meeting certain necessary pre-conditions (1) That her cause of death must come into question in the matter - For instance, matters where along with the charge under Section 498A of the IPC, the prosecution has also charged the accused under Sections 302, 306 or

304B of the IPC - As long as the cause of her death has come into question, whether the charge relating to death is proved or not is immaterial with respect to admissibility. (2) Prosecution will have to show that the evidence that is sought to be admitted with respect to Section 498A of the IPC must also relate to the circumstances of the transaction of the death. How far back the evidence can be, and how connected the evidence is to the cause of death of the deceased would necessarily depend on the facts and circumstances of each case. No specific straitjacket formula or rule can be given with respect to this. ***Surendran v. State of Kerala,* *2022 LiveLaw (SC) 482* *: AIR 2022 SC 2322***

Section 499 - Defamation

Penal Code, 1860 - Section 499 - Defamation - Exceptions. (Para 18) ***Shri Babuji Rawji Shah v. S. Hussain Zaidi,* *2022 LiveLaw (SC) 213* *: 2022 (4) SCALE 440***

Penal Code, 1860; Section 499, 500 - First defamation complaint dismissed by Magistrate observing that there is no prima facie case as it falls under fourth exception - Revision petition before HC filed was withdrawn - Second complaint filed before Magistrate with same set of facts - High Court quashed the complaint - While dismissing appeal, the Supreme Court observed: Even if the order of Judicial Magistrate while dismissing the first complaint was erroneous in law, it does not amount to non-application of mind by the trial court. ***B.R.K Aathithan v. Sun Group,* *2022 LiveLaw (SC) 1022***

Penal Code, 1860; Section 499 - Code of Criminal Procedure, 1973; Section 482 - Defamation complaint against Mr. Aroon Purie (Editor in Chief of India Today) and author of an article and others - Nothing specific has been attributed to Editor-in-Chief and therefore, he cannot be held liable for the acts committed by the author of the Article - With regard to the role ascribed to author, his case stands on a different footing - Whether what he did was an act which was justified or not would be a question of fact to be gone into only at the stage of trial- In a given case, if the facts so justify, the benefit of an exception to Section 499 of the IPC has been extended and it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial. *(Para 21)* ***Aroon Purie v. State of Nct of Delhi,* *2022 LiveLaw (SC) 894***

Penal Code, 1860; Section 499 - Defamation - The claim made by a person involved in politics that the answers provided by his rival in public office to the questions posed by him, will expose his scam, cannot be per se stated to be intended to harm the reputation of the person holding office. The statements such as "I will expose you", "I will expose your corrupt practices" and "I will expose the scam in which you are involved, etc." are not by themselves defamatory unless there is something more - Even if a person belonging to a political party had challenged a person holding public office by stating "I will expose your scam", the same may not amount to defamation. Defamatory statement should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. *(Para 60-64)* ***Manoj Kumar Tiwari v. Manish Sisodia, 2022 LiveLaw (SC) 853***

Penal Code, 1860 - Section 499 - Defamation - Section 306 of the Indian Succession Act which speaks of the rights of administrators and executors of the estate of the deceased, does not bar family members and near relatives covered by Section 499 of the Indian Penal Code from seeking injunction - A right in tort may arise when any imputation concerning a deceased person harms the reputation of that person, if living or is intended to be hurtful to the feelings of his family members or other near relatives. (Para 19) ***Shri Babuji Rawji Shah v. S. Hussain Zaidi, 2022 LiveLaw (SC) 213 : 2022 (4) SCALE 440***

Personal Law (Goan) – Inventory proceedings – Licitation – Owelty – Portuguese Civil Procedure Code – Chapter XVII (Articles 1369 to 1447) – Articles 1737, 2126, 2127 – Right to property of highest bidder in licitation heritable and not mere personal rights, even if no owelty demanded and paid – Court refused plea for reauction of disputed property – Demise of highest bidder before determination and payment of owelty amount – Held, not ground for setting aside the auction – Owelty only to be paid when demanded – Position and right as a successful bidder, as well as obligation to pay amount heritable by heirs and legal representatives – Amount determined to be paid by successors when called upon to do so. *[Paras 18, 20-24]* ***Ethel Lourdes D'Souza Lobo v. Lucio Neville Jude De Souza, 2022 LiveLaw (SC) 795 : AIR 2022 SC 4527***

Pharmacy Act, 1948 - Pharmacy Practice Regulations, 2015 - It is the duty of Pharmacy Council and State Government to see that the hospitals/medical stores, etc., are not run by the fake pharmacist and are run by the registered pharmacist only - Running the hospitals/dispensaries in absence of any registered pharmacist and/or running such hospitals by fake pharmacist and even running the medical stores by fake pharmacist and without even any pharmacist will ultimately affect the health of the citizen. ***Mukesh Kumar v. State of Bihar, 2022 LiveLaw (SC) 995***

Pleadings - Decree or direction beyond what was sought cannot be granted - Limits of a court to grant reliefs beyond the prayer and pleadings of the parties discussed. *(Para 36)* ***R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple, 2022 LiveLaw (SC) 612***

Prevention of Corruption Act, 1988

Prevention of Corruption Act, 1988 - Constitution Bench answers reference on whether circumstantial evidence can be used to prove demand of illegal gratification- In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution. *(Para 70)* ***Neeraj Dutta v. State (GNCTD), 2022 LiveLaw (SC) 1029***

Prevention of Corruption Act, 1988 - In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. *(Para 68)* ***Neeraj Dutta v. State (GNCTD), 2022 LiveLaw (SC) 1029***

Prevention of Corruption Act, 1988 - In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant. ***Neeraj Dutta v. State (GNCTD), 2022 LiveLaw (SC) 1029***

Prevention of Corruption Act, 1988 - Section 17A - Section 17A does not have retrospective operation - It could not possibly have been the intent of the legislature that all pending investigations upto July, 2018 should be rendered infructuous. (Para 11 -12) ***State of Rajasthan v. Tejmal Choudhary, 2022 LiveLaw (SC) 158***

Prevention of Corruption Act, 1988 - Section 7, 13 - The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act - The Failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder. (Para 7) ***K. Shanthamma v. State of Telangana, 2022 LiveLaw (SC) 192 : AIR 2022 SC 1134 : (2022) 4 SCC 574***

Prevention of Corruption Act, 1988 - the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act. *(Para 68)* ***Neeraj Dutta v. State (GNCTD), 2022 LiveLaw (SC) 1029***

Prevention of Corruption Act, 1988; Section 13(1)(e) - it is for the prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. (Para 80) ***State v. R. Soundirarasu, 2022 LiveLaw (SC) 741 : AIR 2022 SC 4218***

Prevention of Corruption Act, 1988; Section 13(1)(e) - Prosecution not required to conduct an open ended or rowing enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the explanation refers to income received from legal/lawful sources. (Para 41) ***State v. R. Soundirarasu, 2022 LiveLaw (SC) 741 : AIR 2022 SC 4218***

Prevention of Corruption Act, 1988; Section 19 - The period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act - Upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court and seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. *(Para 37-38)* ***Vijay Rajmohan v. State, 2022 LiveLaw (SC) 832 : AIR 2022 SC 4974***

Prevention of Corruption Act, 1988; Section 19 - The statutory scheme under which the appointing authority could call for, seek and consider the advice of the CVC can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration. The opinion of the CVC is only advisory. It is nevertheless a valuable input in the decision-making process of the appointing authority. The final decision of the appointing authority must be of its own by application of independent mind - There is no illegality in the action of the appointing authority, the DoPT, if it calls for, refers, and considers the opinion of the Central Vigilance Commission before it takes its final decision on the request for sanction for prosecuting a public servant. *(Para 18)* ***Vijay Rajmohan v. State, 2022 LiveLaw (SC) 832 : AIR 2022 SC 4974***

Prevention of Dangerous Activities

Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food

Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act ,1986 (Telangana); Section 3(1) - A bare reading of the aforesaid provision shows that the "maintenance of public order" has a crucial bearing here and unless the government is justified in holding that the act of the detenu is prejudicial to the maintenance of public order, the preventive detention would be bad and would be in violation of Articles 21 and 22 of the Constitution of India as it encroaches upon the liberty and freedom of an individual. *(Para 9)* ***Shaik Nazneen v. State of Telangana, 2022 LiveLaw (SC) 559***

Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act ,1986 (Telangana) - A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order" - Callous exercise of the exceptional power of preventive detention by the detaining authorities and the state - Respondents directed to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards. *(Para 17)* ***Mallada K. Sri Ram v. State of Telangana, 2022 LiveLaw (SC) 358 : 2022 (6) SCALE 50***

Prevention of Food Adulteration Act, 1954; Section 16(1)(a)(i) – Section 2(ia)(m) – Definition of Adulteration – Proviso – Public Analyst report must examine whether primary foods did not meet prescribed standards or had constituents in quantities outside the permissible threshold as a result of inescapable natural causes – Whether proviso is attracted, has to be seen – Held, – There was no whisper in the complaint or in the evidence as to whether the case would fall under the proviso – Questions such as whether increase in moisture content due to natural causes, unsatisfactory milk fat content due to quality of milk, not examined by Public Analyst – Therefore, appeal allowed and conviction of sweetmeat shop under Section 16(1)(a)(i) read with Section 2(ia)(m) for allegedly selling "adulterated" paneer set aside. ***Bhattacharjee Mahasya v. State of West Bengal, 2022 LiveLaw (SC) 873***

Prevention of Money Laundering Act, 2002

Prevention of Money Laundering Act 2002 - Money laundering is an independent offence. *(Para 7)* ***Dr. Manik Bhattacharya v. Ramesh Malik, 2022 LiveLaw (SC) 867***

Prevention of Money Laundering Act 2002 - Protective order passed against one investigating agency cannot operate against another investigating agency even if there are factual similarities in allegations- Interim protection granted against coercive action by the CBI cannot operate against ED. ***Dr. Manik Bhattacharya v. Ramesh Malik, 2022 LiveLaw (SC) 867***

Prevention of Money Laundering Act 2002 - While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding stated by a different agency, even if there are factual similarities vis-à-vis the allegations. *(Para 7)* ***Dr. Manik Bhattacharya v. Ramesh Malik, 2022 LiveLaw (SC) 867***

Prevention of Money Laundering Act, 2002 - ECIR vis-a-vis FIR - there is no need to formally register ECIR - ECIR is internal document - there is not requirement in law to furnish copy of ECIR to accused - non-recording of ECIR does not prevent the authorities from proceeding with inquiry/investigation for attachment - it is sufficient if at the time of arrest the person is informed the grounds on which the arrest is being made; sufficient compliance of A 22(1) of the Constitution; the Court before whom the accused is produced can call ED officers for relevant records. *[Para 176-179]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Prevention of Money Laundering Act, 2002 - ED Manual - is internal document and in the nature of administrative orders - common public may not be entitled to access such confidential administrative instructions for internal guidance of ED - there is no investigation but inquiry akin to civil action of attachment - since the inquiry ends in identifying the offender and then they are prosecuted, Authorities can considered outlining some crucial procedures and explore the feasibility of placing document on official website of ED. *[Para 180-181]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Prevention of Money Laundering Act, 2002 - Schedule of 2002 Act - classification or grouping of offences for treating the same as relevant for constituting offence of money- laundering is a matter of legislative policy. *[Para 175-175A]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Prevention of Money Laundering Act, 2002 - Supreme Court upholds constitutionality of powers of Enforcement Directorate for arrest, search and seizure, attachment - Court upholds the constitutionality of reverse burden of proof (Section 24) and twin conditions of bail (Section 45). ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 3 - Offence of money-laundering

Prevention of Money Laundering Act, 2002; Section 3 - Appeal against High Court quashed PMLA proceedings against 'Bribe Giver' - Allowed - So long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person. ***Directorate of Enforcement v. Padmanabhan Kishore, 2022 LiveLaw (SC) 896***

Prevention of Money Laundering Act, 2002; Section 3 - offence of "money laundering" - widely worded; meant not only to investigate offence but also regulate it - involved in any process or activity with the proceeds of crime - including concealment, possession, acquisition, use, projecting/claiming tainted money to be untainted - all these processes or activities independently constitute offence of money laundering - projection/claiming proceeds of crime to be untainted is not the only process or activity which constitutes offence of money laundering - "and" proceeding "projection or claiming" is to be read as "or" - Explanation added by Finance Bill, 2019 - 2019 amendment to Section 3 is only clarificatory in nature - whether brought in by way of a Finance Bill or not would not affect the original main provision - relevant date under the Statute is not linked to the date on which the scheduled offence was committed, but the one on which the person indulged in the "process or activity" connect with proceeds of crime - authorised officers can prosecute for money laundering only when there exists proceeds of crime - authorised officers cannot proceed to attach and confiscate property on the basis of assumption but on the basis of credible evidence indicating involvement in "process or activity" with proceeds of crime. *[Para 37-55]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Prevention of Money-Laundering Act, 2002; Section 3 - When the accused stand discharged of the scheduled offence, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence. ***Indrani Patnaik v. Enforcement Directorate, 2022 LiveLaw (SC) 920***

Prevention of Money-Laundering Act, 2002; Section 3 - Accused no.1 acquitted of scheduled offence - Prosecution of Wife and son of the accused under PMLA Act - The view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence. ***Parvathi Kollur v. State by Directorate of Enforcement, 2022 LiveLaw (SC) 688***

Section 4 - Punishment for money-laundering

Prevention of Money Laundering Act, 2002; Sections 3, 4 - Even in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities - The allegation must be proved beyond 20 reasonable doubt in the Court -It is incumbent upon the Court to look into the allegation and the material collected in support thereto and to find out whether the prima facie offence is made out. Unless the allegations are substantiated by the authorities and proved against a person in the court of law, the person is innocent. (Para 18) ***J. Sekar @ Sekar Reddy v. Directorate of Enforcement, 2022 LiveLaw (SC) 456 : (2022) 7 SCC 370***

Section 5 - Attachment of property involved in money-laundering

Prevention of Money Laundering Act, 2002 - Section 5 - The satisfaction to be recorded by the authorised officer in terms of Section 5 of the PMLA is in two respects. The first is that the property in question had been acquired through proceeds of crime and involved in an offence of money laundering; and the second satisfaction specific in terms of Section 5(1) of the Act is that the owner/occupant of the property, who is in possession, is likely to conceal, transfer or deal with the same in any manner. This satisfaction is recorded for the purpose of interim arrangement during the pendency of the adjudication proceedings for securing the property in question. ***Kaushalya Infrastructure Development Corporation Limited v. Union of India, 2022 LiveLaw (SC) 161***

Prevention of Money Laundering Act, 2002 - Section 5(1) - The fact that the provisional attachment order is set aside by the High Court, does not per se result in nullifying the adjudication proceedings, which can proceed and need to be taken to its logical end by the Adjudicating Authority in accordance with law. ***Kaushalya Infrastructure Development Corporation Limited v. Union of India, 2022 LiveLaw (SC) 161***

Prevention of Money Laundering Act, 2002 - Section 5(1) - The power to provisionally attach tainted property is only of the authorised officer upon being satisfied about the existence of circumstances referred to in Section 5(1).

Kaushalya Infrastructure Development Corporation Limited v. Union of India, 2022 LiveLaw (SC) 161

Prevention of Money Laundering Act, 2002; Section 5 - Attachment, adjudication and confiscation - inbuilt safeguards provided - only Director and officers not below rank of Deputy Director can issue provisional attachment order - only upon satisfaction that the person possesses proceeds of crime; is charged with commission of scheduled offence; there is likelihood of concealment, can the officer proceed to issue provisional attachment order - provisional order operates for 180 days - On issuing order of provisional attachment copy of the order to be forward to Adjudicating Authority - officer passing such order to forward copy of order to Adjudicating Authority - officer to file complaint within 30 days of the order - 2015 amendment has rightfully removed the requirement of registering scheduled offence and also show substantial progress in investigation to pass provisional attachment order - if scheduled offence is not registered with local police it is open to ED officers to proceed with provisional attachment while contemporaneously sending information to the police. *[Para 56-70]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633*** *:* ***2022 (10) SCALE 577***

Section 8 - Adjudication

Prevention of Money Laundering Act, 2002 - Section 8 - The adjudication under Section 8 entails finally in confiscation of the tainted property or release thereof. ***Kaushalya Infrastructure Development Corporation Limited v. Union of India, 2022 LiveLaw (SC) 161***

Prevention of Money Laundering Act, 2002; Section 8 - In the period between the confirmation of provisional attachment under Section 8 of the Prevention of Money Laundering Act, 2002 and the passing of the formal order of confiscation, the person interested in the immovable property can enjoy it - direction under Section 8(4) to take possession of the property before a formal order of confiscation is passed, merely on the basis of confirmation of provisional attachment order, should be an exception and not a rule - FAFT permits non-conviction based confiscation model. *[Para 71-76]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633*** *:* ***2022 (10) SCALE 577***

Prevention of Money Laundering Act, 2002; Section 8 - Interim possession by authority before conclusion of final trial to exceptional cases - Ratio in *Vijay Madanlal Choudary & Ors v. Union of India 2022 LiveLaw (SC) 633* requires further expounding in an appropriate case, without which, much scope is left for arbitrary application. *(Para 17.27)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

Section 17 - Search and Seizure

Prevention of Money Laundering Act, 2002 - Section 5, 17 and 18 - The adjudication gets triggered after the complaint under Section 5(5) is filed before the adjudicating authority or on an application under Section 17(4) and also

18(10) of the Act. ***Kaushalya Infrastructure Development Corporation Limited v. Union of India, 2022 LiveLaw (SC) 161***

Prevention of Money Laundering Act, 2002; Section 17 - Searches and Seizures - 2002 Act is a self contained code - inbuilt safeguards present - only Director and officers not below the rank of Deputy Director can authorise officers to carry out search and seizure - provision to record reasons shows it requires application of mind - officer conducting search is to forward a copy of the reasons recorded and materials in his possession to the Adjudicating Authority in a sealed envelope - officer seizing property obligated to submit application before the Adjudicating Authority within 30 days for retention of record - officers carrying out search and seizure made accountable; can be punished under Section 62 - process of searches and seizure is not only for inquiry into the process of money-laundering, but also prevention - for strengthening mechanism Parliament has rightfully dropped the condition that no search shall be conducted unless there is a police report or a private complaint in relation to the scheduled offence. *[Para 77-86]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 18 - Search of persons

Prevention of Money Laundering Act, 2002; Section 18 - Search of persons - officers to adhere to identical inbuilt safeguards as in exercise of power under Section 17 - search of person is a fair and reasonable procedure (search and seizure) - search to be carried out in presence of two witnesses - officers to prepare a list of record of seized property - search of a female person can be done only by a female - upon seizing property concerned office to submit application before Adjudicating Authority - opportunity to be given to concerned person to defend their property. *[Para 87]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 19 – Power of Arrest

Prevention of Money Laundering Act, 2002; Section 19 - Arrest - inbuilt stringent safeguards - power to arrest on high-ranking officers - provision to record reason regarding involvement in money-laundering - grounds of arrest to be informed to the person at the time of making arrest - copy of order along with material to be sent to Adjudicating Authority - arrested person is required to be procedure in Special Court within 24 hours of arrest. *[Para 88-90]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 24 - Burden of Proof

Prevention of Money Laundering Act, 2002; Section 24 - Burden of Proof - application not limited to proceedings before Special Court - to apply to proceedings before the Adjudicating Authority regarding confirmation of provisional attachment order and order of confiscation vesting the attached property in the Central Government - would also apply to proceedings before

Special Court upon presentation of complaint by officer under Section 44(1)(b) - before the Adjudicating Authority it is not necessary to follow proof beyond reasonable doubt, but would apply before the Special Court - on establishing that there exists proceeds of crime and the person in involved/linked in any process or activity connected with such proceeds, a legal presumption would arise that the proceeds of crime are involved in money -laundering - the onus merely shifts on the person facing charges to rebut the legal presumption - the presumption under Section 24(b) is not a mandatory legal presumption; but presumption under Section 24(a) is. *[Para 91-103]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 44 - Offences triable by Special Courts

Prevention of Money Laundering Act, 2002; Section 44(1)(a) - Special Courts -an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed - Section 44(1)(a) is directory in nature - it is read down to mean that the Special Court may exercise judicial discretion on case-to-case basis. *[Para 104-114]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 45 - Offences to be cognizable and non-bailable

Prevention of Money Laundering Act, 2002 - Section 45 - Once the prayer for anticipatory bail is made in connection with offence under the Prevention of Money Laundering Act, the underlying principles and rigors of Section 45 of the Prevention of Money Laundering Act, 2002 must get triggered although the application is under Section 438 of Code of Criminal Procedure. ***Asst. Director Enforcement Directorate v. Dr. V.C. Mohan, 2022 LiveLaw (SC) 16***

Prevention of Money Laundering Act, 2002; Section 45 - Bail - Post *Nikesh Tarachand Shah v. Union of India* (held Section 45 pre- 2018 Amendment as unconstitutional) the provision was not obliterated from the statute book; it merely held that the provision as it stood then was violative of A. 14 and 21 - it was open for the Parliament to cure the defect - once cured, the provision got revived - observations in Nikesh distinguishing the challenge to twin bail condition under PMLA from Kartar Singh v. State of Punjab dealing with TADA Act (calling PMLA less heinous than terrorism) overruled - twin condition though strict does not impose absolute restraint on garnet of bail - similar twin conditions is provided in several other special legislations - the twin bail conditions is also applicable for anticipatory bail - Section 436A CrPC providing maximum period for which under-trial prisoner can be detained, could be invoked by person accused under 2002 Act. *[Para 115-149]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Prevention of Money Laundering Act, 2002; Section 45 - Code of Criminal Procedure; Section 438 - Once the prayer for anticipatory bail is made in connection with offence under the Prevention of Money Laundering Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered although the application is under Section 438 of Code of Criminal Procedure. ***Asst. Director Enforcement Directorate v. Dr. V.C. Mohan, 2022 LiveLaw (SC) 16***

Section 50 - Powers of authorities regarding summons, production of documents and to give evidence, etc.

Prevention of Money Laundering Act, 2002; Section 50 - Summoning Power - the officers under the act conducts inquiry to ascertain existence of proceeds of crime and involvement of persons in money-laundering - PMLA is not a penal statute - Section 45(1A) clarifies that regular police officer cannot take cognisance of offence of money laundering - provisions of CrPC and Evidence Act does not apply to the inquiry carried out by the ED officers - it is a sui generis legislation, not only dealing with the prevention, detection, attachment, confiscation, vesting and making it obligatory for the banking companies, financial institutions and intermediaries to comply with certain essential formalities and make them accountable for failure thereof, and also permits prosecution of the persons found involved in the money- laundering activity - ED officers are not police officers - statement recorded by them cannot be hit by Articles 20(3) and 21. *[Para 150-173]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Section 63 - Punishment for false information or failure to give information, etc.

Prevention of Money Laundering Act, 2002; Section 63 - Punishment for willfully providing false information causing arrest or search - not an unreasonable provision. *[Para 174]* ***Vijay Madanlal Choudhary v. Union of India, 2022 LiveLaw (SC) 633 : 2022 (10) SCALE 577***

Preventive Detention

Preventive Detention - Appeal against Telangana HC judgment which dismissed challenge against a preventive detention order - Allowed - The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority - Detention order quashed. ***Mallada K. Sri Ram v. State of Telangana, 2022 LiveLaw (SC) 358 : 2022 (6) SCALE 50***

Preventive Detention - It emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. *(Para 26)* ***Sushanta Kumar Banik v. State of Tripura, 2022 LiveLaw (SC) 813 : AIR 2022 SC 4715***

Preventive Detention - The personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. *(Para 15)* ***Mallada K. Sri Ram v. State of Telangana, 2022 LiveLaw (SC) 358 : 2022 (6) SCALE 50***

Preventive Detention - The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to. *(Para 28)* ***Sushanta Kumar Banik v. State of Tripura, 2022 LiveLaw (SC) 813 : AIR 2022 SC 4715***

Principle of Estoppel & Acquiescence - It is settled principle that principle of estoppel cannot override the law. The manual duly approved by the Executive Council will prevail over any such principle of estoppel or acquiescence- there can be no estoppel against law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. *(Para 23)* ***Krishna Rai v. Benarus Hindu University, 2022 LiveLaw (SC) 553 : (2022) 8 SCC 713***

Principle of Restitution - An unsuccessful litigant who had the benefit of an interim order in his favour cannot encash or take advantage of the same - Restitutionary jurisdiction is inherent in every court, to neutralise the advantage of litigation. *(Para 15 - 16)* ***Faizabad-Ayodhya Development Authority v. Dr. Rajesh Kumar Pandey, 2022 LiveLaw (SC) 504 : AIR 2022 SC 2558***

Principles of natural justice - The duty to act fairly by SEBI, is inextricably tied with the principles of natural justice, wherein a party cannot be condemned without having been given an adequate opportunity to defend itself. *(Para 43)* ***Reliance Industries Ltd. v. Securities and Exchange Board of India, 2022 LiveLaw (SC) 659 : AIR 2022 SC 3690 : (2022) 10 SCC 181***

Prison Act, 2000 (Delhi); Section 2(h) - Delhi Prison Rules, 2018; Rule 1222-1223 - Getting remission is not a pre-requisite for obtaining furlough - Even if a prisoner is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, neither the requirements of his maintaining good conduct are whittled down nor the reformative approach and incentive for good conduct cease to exist in his relation. Thus, if he maintains good conduct, furlough cannot be denied as a matter of course - Depriving of even the concession of furlough and thereby taking away an incentive/motivation for good conduct would not only be counter-productive but would be an antithesis to the reformative approach otherwise running through the scheme of Rules of 2018. *(Para 14-15)* ***Atbir v. State of NCT of Delhi, 2022 LiveLaw (SC) 427 : AIR 2022 SC 2911***

Prison Rules, 2018 (Delhi); Rule 1223 - The eligibility requirement to obtain furlough is of '3 Annual good conduct reports' and not '3 Annual good conduct remissions'. The expressions employed in Clause (I) of Rule 1223 of the Rules of 2018 are that the prisoner ought to maintain 'Good conduct in the prison and should have earned rewards in last 3 Annual good conduct report' and further that he should continue 'to maintain good conduct'. Even these expressions cannot be read to mean that the prisoner ought to earn 'good conduct remissions' - It cannot be said that earning rewards is equivalent to earning remissions. *(Para 12)* ***Atbir v. State of NCT of Delhi, [2022 LiveLaw (SC) 427](#) : AIR 2022 SC 2911***

Prohibition of Benami Property Transactions Act, 1988

Prohibition of Benami Property Transactions Act, 1988; Chapter IV - Characterization of the confiscation proceedings under Chapter IV of the 2016 Act as Civil may therefore not be appropriate. There is an implicit recognition of the forfeiture being a punitive sanction, as the Officer is mandated to build a case against the accused for such confiscation, wherein the presumption of innocence is upheld structurally. *(Para 17.31)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

Prohibition of Benami Property Transactions Act, 1988; Section 3(2) - Benami Transactions (Prohibition) Amendment Act, 2016 - Section 3(2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution. *(Para 18.1)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

Prohibition of Benami Property Transactions Act, 1988; Section 5 - Benami Transactions (Prohibition) Amendment Act, 2016 - In rem forfeiture provision under Section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary - In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively - Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 25.10.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed. *(Para 18.1)* ***Union of India v. Ganpati Dealcom Pvt. Ltd., 2022 LiveLaw (SC) 700 : AIR 2022 SC 4558***

Prohibition of Cow Slaughter

Prohibition of Cow Slaughter Act, 2004 (Madhya Pradesh); Section 11 - In a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding. *(Para 21)* ***Abdul Vahab v. State of Madhya Pradesh, 2022 LiveLaw (SC) 243 : 2022 (4) SCALE 401***

Prohibition of Cow Slaughter Act, 2004 (Madhya Pradesh); Section 13A - The burden on the State authority to legally justify the confiscation order, cannot be shifted to the person facing the confiscation proceeding. *(Para 19)* ***Abdul Vahab v. State of Madhya Pradesh, 2022 LiveLaw (SC) 243 : 2022 (4) SCALE 401***

Prohibition of Cow Slaughter Act, 2004 (Madhya Pradesh); Section 11 - M.P Govansh Vadh Pratishedh Rules, 2012; Rule 5 - The confiscation proceeding, before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. *(Para 21)* ***Abdul Vahab v. State of Madhya Pradesh, 2022 LiveLaw (SC) 243 : 2022 (4) SCALE 401***

Protection of Child from Sexual Offences Act, 2012

Protection of Child from Sexual Offences Act, 2012; Section 5, 6 - Conviction of accused set aside after noticing that he married the victim and has two children - Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle. ***Dhandapani v. State, 2022 LiveLaw (SC) 477***

Protection of Children from Sexual Offences (POCSO) Act, 2012, Section 6 - Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO. ***X (Minor) v. State of Jharkhand, 2022 LiveLaw (SC) 194***

Protection of Children From Sexual Offences Act, 2012 - Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner - Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure. (Para 10) ***Nawabuddin v. State of Uttarakhand, 2022 LiveLaw (SC) 142 : AIR 2022 SC 910 : (2022) 5 SCC 419***

Protection of Children from Sexual Offences Act, 2012 - Appeal against HC order that granted bail to POCSO Accused who allegedly raped and murdered his 11 year old daughter - Allowed - Ex facie, the allegations are grave, the punishment is severe and it cannot be said that there are no materials on record at all - Order set aside. ***Indresh Kumar v. State of Uttar Pradesh, 2022 LiveLaw (SC) 610***

Protection of Children from Sexual Offences Act, 2012 - Appeal against Kerala HC order which granted conditional anticipatory bail to POCSO Accused who allegedly sexually assaulted his minor neice - Allowed - The fact that the victim – girl is traumatized to such a high degree that her academic pursuits have been adversely impacted alone, coupled with the legislative intent especially reflected through Section 29 of the POCSO Act, are sufficient to dissuade a Court from exercising its discretionary jurisdiction in granting pre-arrest bail. ***X v. Arun Kumar C.K., 2022 LiveLaw (SC) 870***

Protection of Children From Sexual Offences Act, 2012 - No leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law - By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. (Para 10) ***Nawabuddin v. State of Uttarakhand, 2022 LiveLaw (SC) 142 : AIR 2022 SC 910 : (2022) 5 SCC 419***

Protection of Children From Sexual Offences Act, 2012 - Section 3(b) - Penetrative sexual assault - When it has been established and proved that the accused penetrated his finger in the vagina and because of that the victim girl felt pain and irritation in urination as well as pain on her body and there was redness and swelling around the vagina found by the doctor, the case would fall under Section 3(b) of the POCSO Act. (Para 8) ***Nawabuddin v. State of Uttarakhand, 2022 LiveLaw (SC) 142 : AIR 2022 SC 910 : (2022) 5 SCC 419***

Protection of Children from Sexual Offences Act, 2012; Section 19(1) - When a minor approaches a Registered Medical Practitioner for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged to provide information to concerned authorities – Supreme Court states that the RMP need not disclose the identity and other personal details of the minor in the information. *(Para 79, 80, 81)* ***X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, 2022 LiveLaw (SC) 809 : AIR 2022 SC 4917***

Protection of Children from Sexual Offences Act, 2012; Section 19(1), 21 - Non-reporting of sexual assault against a minor child despite knowledge is a serious crime and more often than not, it is an attempt to shield the offenders of the crime of sexual assault - Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. *(Para 12-15, 22)* ***State of Maharashtra v. Dr. Maroti Kashinath Pimpalkar, 2022 LiveLaw (SC) 898 : AIR 2022 SC 5595***

Protection of Children from Sexual Offences Act, 2012; Section 23 - Code of Criminal Procedure, 1973; Section 155(2) - Whether Section 155(2) Cr.P.C. will apply to the investigation of an offence under Section 23 of POCSO Act - Divergent views by judges in the Division Bench - Registry directed to place the matter before CJI for assignment before an appropriate Bench. ***Gangadhar Narayan Nayak @ Gangadhar Hiregutti v. State of Karnataka, 2022 LiveLaw (SC) 301 : 2022 (5) SCALE 119***

Protection of Women from Domestic Violence Act, 2005

Protection of Women from Domestic Violence Act, 2005 - Appeal against the Madras HC judgment which quashed proceedings under Domestic Violence Act on the ground of limitation - Allowed - High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence. ***Kamatchi v. Lakshmi Narayanan, 2022 LiveLaw (SC) 370 : AIR 2022 SC 2932***

Protection of Women from Domestic Violence Act, 2005; Section 12 - The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued - The dictum in Adalat Prasad v. Rooplal Jindal (2004) 7 SCC 338 would not get attracted at a stage when a notice is issued under Section 12 of the Act. *(Para 22)* ***Kamatchi v. Lakshmi Narayanan, 2022 LiveLaw (SC) 370 : AIR 2022 SC 2932***

Protection of Women from Domestic Violence Act, 2005; Section 12 - There should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting - Even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act. *(Para 52, 42-44)* ***Prabha Tyagi v. Kamlesh Devi, 2022 LiveLaw (SC) 474 : AIR 2022 SC 2331***

Protection of Women from Domestic Violence Act, 2005; Section 12 - Not mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order- Even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both ex parte or interim as well as a final order - The Magistrate is obliged to take into consideration any Domestic Incident Report received by him when the same has been filed from the Protection Officer or the service provider in a case where the application is made to the Magistrate on behalf of the aggrieved person through a Protection Officer or a service provider. *(Para 52, 45-51)* ***Prabha Tyagi v. Kamlesh Devi, 2022 LiveLaw (SC) 474 : AIR 2022 SC 2331***

Protection of Women from Domestic Violence Act, 2005; Section 12, 31 - Code of Criminal Procedure, 1973; Section 468 - If there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act. *(Para 15)* ***Kamatchi v. Lakshmi Narayanan, 2022 LiveLaw (SC) 370 : AIR 2022 SC 2932***

Protection of Women from Domestic Violence Act, 2005; Section 12, 31 - Filing of an application under Section 12 of the Act cannot be equated to lodging of a complaint or initiation of prosecution. *(Para 20)* ***Kamatchi v. Lakshmi Narayanan, 2022 LiveLaw (SC) 370 : AIR 2022 SC 2932***

Protection of Women from Domestic Violence Act, 2005; Section 17(1) - Every woman in a domestic relationship has a right to reside in the shared household even in the absence of any act of domestic violence by the respondent - She cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence - She can accordingly enforce her right under Section 17(1) of the D.V. Act *(Para 25-30,40)* ***Prabha Tyagi v. Kamlesh Devi, 2022 LiveLaw (SC) 474 : AIR 2022 SC 2331***

Protection of Women from Domestic Violence Act, 2005; Section 17,19 - It is not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief. If a woman has the right to reside in a shared household, she can accordingly enforce her right under Section 17(1) of the D.V. Act. If a woman becomes an aggrieved person or victim of domestic violence, she can seek relief under the provisions of the D.V. Act including her right to live or reside in the shared household under Section 17 read with Section 19 of the D.V. Act. *(Para 52, 22-41)* ***Prabha Tyagi v. Kamlesh Devi, 2022 LiveLaw (SC) 474 : AIR 2022 SC 2331***

Protection of Women from Domestic Violence Act, 2005; Sections 2(f), 17 - The expression 'joint family' cannot be understood as understood in Hindu Law - The expression 'family members living together as a joint family', means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under Sub-Section (1) of Section 17 of the D.V. Act. When such a girl child or woman becomes an aggrieved person, the protection of Section 17(2) comes into play. *(Para 36)* ***Prabha Tyagi v. Kamlesh Devi, 2022 LiveLaw (SC) 474 : AIR 2022 SC 2331***

R

Rajiv Gandhi Assassination Case

Rajiv Gandhi Assassination Case - Supreme Court orders premature release of all 6 convicts. ***R.P. Ravichandran v. State of Tamil Nadu, 2022 LiveLaw (SC) 954***

Red Fort Attack case 2000

Red Fort Attack case 2000 - Death penalty awarded to Lakshar-e-Toiba militant Mohammed Arif affirmed by dismissing Review Petition - Even after eschewing circumstances which were directly attributable to the CDRs relied upon by the prosecution, the other circumstances on record do clearly spell out and prove beyond any doubt his involvement in the crime in question - The suggestion that there is a possibility of retribution and rehabilitation, is not made out from and supported by any material on record - The aggravating circumstances evident from the record and specially the fact that there was a direct attack on the unity, integrity and sovereignty of India, completely outweigh the factors which may even remotely be brought into consideration as mitigating circumstances on record. ***Mohd. Arif @ Ashfaq v. State (NCT Of Delhi), 2022 LiveLaw (SC) 902***

Remission

Remission - Premature Release - Supreme Court says due consideration of remission policy must be given to all eligible prisoners - Issues slew of directions to UP Govt - Holds that application by eligible prisoner must not be insisted- Benefit of policy which is more beneficial to the prisoner must by given. ***Rashidul Jafar @ Chota v. State of U.P., 2022 LiveLaw (SC) 754***

Repatriation of Prisoners Act, 2003

Repatriation of Prisoners Act, 2003 - The object is to provide an opportunity to the convicts to be repatriated to their country so that they can be closer to their families and have better chances of rehabilitation. *(Para 11)* ***Union of India v. Shaikh Istiyaq Ahmed, 2022 LiveLaw (SC) 41 : AIR 2022 SC 491***

Repatriation of Prisoners Act, 2003; Sections 12, 13 - Agreement between the Government of India and Government of Mauritius on the Transfer of Prisoners - The question of adaptation of the sentence can only be when the Central Government is convinced that the sentence imposed by the Supreme Court of Mauritius is incompatible with Indian law - Incompatibility with Indian law is with reference to the enforcement of the sentence imposed by the Supreme Court of Mauritius being contrary to fundamental laws of India. It is only in case of such an exceptional situation, that it is open the Central Government to adapt the sentence imposed by the Supreme Court of Mauritius to be compatible to a sentence of imprisonment provided for the similar offence. Even in cases where adaptation is being considered by the Central Government, it does not necessarily have to adapt the sentence to be exactly in the nature and duration of imprisonment provided for in the similar offence in India. In this circumstance as well, the Central Government has to make sure that the sentence is made compatible with Indian law corresponding to the nature and duration of the sentence imposed by the Supreme Court of Mauritius, as far as possible. *(Para 15, 16)* ***Union of India v. Shaikh Istiyaq Ahmed, 2022 LiveLaw (SC) 41 : AIR 2022 SC 491***

Repatriation of Prisoners Act, 2003; Sections 12, 13 - Agreement between the Government of India and Government of Mauritius on the Transfer of Prisoners - The sentence imposed by the Supreme Court of Mauritius in this case is binding on India. *(Para 15)* ***Union of India v. Shaikh Istiyaq Ahmed, 2022 LiveLaw (SC) 41 : AIR 2022 SC 491***

S

Schedule Castes and Backward Classes

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 - Contention that only Special Court could take cognizance of offences under the Atrocities Act rejected. ***Ramveer Upadhyay v. State of U.P., 2022 LiveLaw (SC) 396 : AIR 2022 SC 2044***

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 - SLP against Allahabad HC judgment which refused to quash order summoning the accused- Dismissed - The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. ***Ramveer Upadhyay v. State of U.P., 2022 LiveLaw (SC) 396 : AIR 2022 SC 2044***

Trial in cases of Sexual Harassment / Violence

Trial in cases of Sexual Harassment/Violence - The importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner reiterated- Guidelines: a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence; b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded; c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman; d. Completing cross-examination in one sitting, as far as possible. *(Para 30-35)* ***XYZ v. State of Maharashtra, 2022 LiveLaw (SC) 676 : AIR 2022 SC 3957***

Two Finger Test

Two Finger Test - The "two-finger test" or pre vaginum test must not be conducted - It has no scientific basis and neither proves nor disproves allegations of rape. It instead re-victimizes and re-traumatizes women who may have been sexually assaulted, and is an affront to their dignity - It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active - Referred to Lillu v. State of Haryana (2013) 14 SCC 643 - Directions issued to the Union Government as well as the State Governments - Ensure that the guidelines formulated by the Ministry of Health and Family Welfare are circulated to all government and private hospitals - Conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape - Review the curriculum in medical schools with a view to ensuring that the "two-finger test" or per vaginum examination is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape. *(Para 61-66)* ***State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, 2022 LiveLaw (SC) 890 : AIR 2022 SC 5393***

U

Unlawful Activities (Prevention) Act, 1967

Unlawful Activities (Prevention) Act, 1967; Section 43D(2)(b) - Magistrate would not be competent to consider the request for extension of time to complete investigation - The only competent authority to consider such request would be "the Court" as specified in the proviso in Section 43-D (2)(b) of the UAPA - Review petition filed by the State dismissed. ***State of Madhya Pradesh v. Sadique, 2022 LiveLaw (SC) 290***

Unlawful Activities (Prevention) Act, 1967; Section 43D(5) - Appeal against Rajasthan HC order denying bail to UAPA accused- under trial - Allowed - In the nature of the case against the appellant, the evidence which has already unfolded and above all, the long period of incarceration that the appellant has already undergone, time has arrived when the appellant be enlarged on bail. ***Jahir Hak v. State of Rajasthan, 2022 LiveLaw (SC) 372 : AIR 2022 SC 3047***

Unlawful Activities (Prevention) Act, 1967; Section 43D(5) - The condition in Section 43D(5) of the Act of 1967 has been understood to be less stringent than the provisions contained in Narcotic Drugs and Psychotropic Substances Act, 1985. *(Para 11)* ***Jahir Hak v. State of Rajasthan, [2022 LiveLaw (SC) 372](https://www.livelaw.in) : AIR 2022 SC 3047***

V

Vulnerable Witnesses Deposition Centres (VWDCs)

Vulnerable Witnesses Deposition Centres (VWDCs) - The use of VWDCs should, in addition to criminal cases, be allowed for other jurisdictions, including, civil jurisdictions, family courts, juvenile justice boards and Childrens' courts. Permission should be granted for recording the evidence of vulnerable witnesses in cases across all jurisdictions. (Para 3) ***Smruti Tukaram Badade v. State of Maharashtra, 2022 LiveLaw (SC) 380***

W

Words and Phrases

Bail

Words and Phrases - Bail - A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the Court or by the police or by the Investigating Agency. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial - Bail is the rule and jail is the exception. *(Para 8-12)* ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***