# Contribution of the High Court of Delhi to the Development of Law in 2012

## CRIMINAL LAW AND HUMAN RIGHTS

**Compiled by:**

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With the Assistance of a Team of Law Researchers

# PREFATORY NOTE

This is a compilation of the summaries of selected decisions rendered by the judges of the Delhi High Court in the branch of Criminal and Human Rights for the period from 1st January till 31st December 2012.

The summaries were prepared by law researchers, interns and students of the National Law University, Dwarka and the Indian Law Institute, Delhi under the supervision of the judges.

It is possible that in the period subsequent to their pronouncement some of the decisions may have been affirmed, overruled or modified in appeal.

We wish to thank the law researchers, interns and students who have contributed their efforts in bringing about this compilation. We welcome suggestions for its improvement.

# LIST OF ABBREVIATIONS

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|---|---|---|
| **AD** | - | Apex Decisions |
| **CriLJ** | - | Criminal Law Journal |
| **D.B.** | - | Division Bench |
| **DE** | - | Delhi |
| **DLT** | - | Delhi Law Times |
| **DRJ** | - | Delhi Reported Judgments |
| **F.B.** | - | Full Bench |
| **MANU** | - | Manupatra |
| **S.B.** | - | Single Bench |

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# CRIMINAL LAW

***Section 67 of Narcotic Drugs and Psychotropic Substances Act, 1985- A retraction statement made on behalf of the Accused has to be brought to the notice of the Court as well as the detaining authority***

## Idu Khan v. Union of India

Citation: 2012 II AD (Delhi) 741

Decided on: 2nd January 2012

Coram: Badar Durrez Ahmed, **Veena Birbal,** JJ

**Facts**: The petitioner prayed for quashing of the preventive detention order as well as subsequent orders rejecting the Petitioner's representations against the detention order. The Petitioner was arrested for holding a fake license and running a business of manufacture and sale of poppy straw and poppy powder. Notice was issued and confessional statements of four persons including the Petitioner were recorded in furtherance of which, the detaining authority passed the impugned order of detention under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT-NDPS Act). The Petitioner had moved an application when produced before the Special Judge, Bhind, for retraction of statement recorded under Section 67 of the NDPS Act, 1985 which was however not considered by the Respondents. The orders were challenged by the Petitioner in the petition on the ground that there was no other documentary evidence other than the confessional statement, to justify the detention order.

**Issue**: Whether the detention order passed by the Respondents was lawful?

**Held**: No mention of retraction of statement was made by the Petitioner except in the rejoinder affidavit wherein also there was no mention of when it was retracted. Even if it were assumed that the Petitioner made an application at the time of being produced before the Special Judge, Bhind, he failed to substantiate that the said application was brought to notice of the Respondents prior to the passing of the detention order. There was nothing on record to substantiate that the name of Petitioner was included in that application. Neither sponsoring authority nor detaining authority was ever made aware that purported retraction had been made. It could thus not be said that detaining authority had failed to consider alleged retraction of confessional statement of the Petitioner. The petition was dismissed.

***First Information Report for offence punishable under Section 174-A Indian Penal Code, 1860 is an independent cause of action and cannot be quashed.***

## Maneesh Goomer v. State

**Citation:** 2012 (1) JCC 465

**Decided on:** 4th January 2012

**Coram:** **Mukta Gupta**, J.

**Facts:** The Petitioner had withdrawn an earlier petition and filed the present petition with additional grounds for seeking the quashing of a First Information Report (FIR) under Section 174-A, Indian Penal Code, 1860 (IPC). A complaint under Section 138 Negotiable Instruments Act (N.I. Act) was filed against the Petitioner. During the said proceedings summons were not served on the Petitioner and without service of summons, the next process of issuing warrants and non-bailable warrants were resorted to. The Petitioner settled the matter with the Complainant and the complaint had been withdrawn, the proclamation against him under Section 83 Code of Criminal Procedure, 1973 (CrPC) was recalled.

**Issue:** Whether a FIR for an offence under section 174-A of the IPC be quashed when a complaint case under which such an FIR was registered stood settled.

**Held:** Whereas all other offences under chapter X of the CrPC were non-cognizable, offence punishable under Section 174-A IPC was a cognizable offence. Thus, the police officer on a complaint under Section 174-A IPC was competent to register an FIR and after investigation thereon filed a charge-sheet before the Court of Magistrate who could then take cognizance of the same. Hence, an FIR registered for an offence punishable under Section 174-A IPC was an independent cause of action and merely because the complaint case under Section 138 N.I. Act was settled, there was no reason that the FIR be also quashed. The petition was dismissed.

**CRIMINAL LAW**

***Criminal proceedings under Section 340 of the Code of Criminal Procedure, 1973 – Preliminary enquiry and finding thereof with respect to the offence, is a condition precedent for initiating proceedings under Section 340 of the Code of Criminal Procedure.***

## S.B. Yadav v. State

**Citation:** 2012 I AD (Delhi) 941

**Decided on:** 9th January 2012

**Coram:** **Suresh Kait**, J.

**Facts:** The instant appeal by the Appellant-Station House Officer (SHO), Jahangirpuri was filed under Section 341 of Code of Criminal Procedure, 1973 (CrPC) against the order passed by the Additional Sessions Judge (North West) Rohini Courts, Delhi, whereby, the Court formed an opinion that a complaint under Section 195 of the CrPC was to be filed against the Appellant for conspiring with the Complainant and other police officers to set up a false case against the accused persons and thereafter, a complaint was filed under Sections 193/195/211 read with Section 120B of the Indian Penal Code, 1860 (IPC) against the Appellant and others. A case was registered and investigated by the Appellant-SHO against four accused persons pursuant to a complaint of theft at knife-point, by the Complainant. However, during his cross examination, the Complainant admitted that he had deposed the aforesaid facts at the instance of the Appellant. The Trial Court ordered an inquiry into the matter from the Crime Branch of Delhi Police and pursuant to the report submitted thereto, ordered a complaint to be filed against the Appellant for offences under Sections 193/195/211 IPC, for indulging in a conspiracy along with the Complainant and other police persons against the accused persons.

**Issue:** Whether the Trial Court ought to have conducted a preliminary enquiry by issuing a show-cause notice before ordering for filing of a complaint under Section 195 IPC against the Appellant.

**Held:** The trial Judge failed to observe the provisions under Section 278(2) of CrPC, which apparently, vitiated subsequent steps in the matter, for the reasons that at the time of examination of the Complainant in pre-lunch session, the Judge had used powers under Section 165 of the Evidence Act, 1872 while putting various Court questions to the witness, in order to discover or to seek proper proof of relevant facts, and thus there was no occasion for the Judge to again use their powers under Section 311 of CrPC, being under obligation to form an opinion to the effect that re-examination of the Complainant, who was already examined on that day itself, was essential just for decision of the case, to exercise the power. Since no such opinion was formed by the Judge, therefore, re-examination of the Complainant again, was beyond her jurisdiction.

Thus, the Judge committed an illegality, when she failed to adhere to the provision of Section 311 of CrPC.

The Judge also violated the provisions of CrPC when she ordered a further probe by the Crime Branch of Delhi Police. Chapter XVIII of CrPC provides procedure for trial before Court of Sessions but there was no provision, either in Chapter XVIII or elsewhere in CrPC, which may empower a Sessions Judge to order Crime Branch of Police to conduct an enquiry, submit its report and then use that report as an evidence and pronounce a verdict against the prosecution or the defence.

Hence, the non compliance of the basic attributes of evidence jurisprudence and trial proceedings, specifically non-compliance of Sections 278(2) and 311 CrPC, could not be the premise of proceedings under Section 340 CrPC and the Trial Court ought to have conducted a preliminary enquiry by issuing a show-cause notice, which it failed to do so. The appeal was thus allowed.

***Testimony of a single witness in a criminal trial- when acceptable- The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, and must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness***

## Ashok Narang v. State

**Citation:** 2012 II AD (Delhi) 481

**Decided on:** 12th January 2012

**Coram:** **Suresh Kait,** J.

**Facts:** The Appellant accused challenged the judgment of the Trial Court finding him guilty and convicting him for the offence under Section 363 read with Section 34 Indian Penal Code, 1860 (IPC). The Appellant contended that his conviction was based solely on the uncorroborated testimony of the prosecutrix who was untrustworthy on account of materially contradictory statements given by her at various stages. Further, there was fabrication and manipulation of the medical evidence.
The case of the prosecution was that the Appellant along with the co-accused (since declared a proclaimed offender) had in furtherance of a common intention kidnapped the victim from the lawful guardianship of her parents. They then wrongfully confined the victim in a shop where they committed rape upon her. The Accused was charged with the offences punishable under Sections 363/342/376 read with Section 34 of IPC. The Court convicted the Appellant based on the testimony of the victim.

**Issue:** Whether the accused could be convicted on the basis of the evidence produced.

**Held:** The offence of rape a heinous one which carried grave implications for the accused if convicted. Therefore, the degree of proof had to be of a high standard and not a mere possibility of committing the said offence. In other words, the prosecution was required to prove its case beyond reasonable doubt against the Accused in a criminal case and not merely dwell upon the shortcomings of the defence.

The human semen and blood group found in the semen was not established to be of the Accused. Also the prosecutrix was found to have given contradictory statements at different stages of the investigation and trial. There was a long distance between the phrase “may be true” and “must be true”. It was difficult to rely on the sole testimony of the victim of sexual assault to convict the Accused.

On the basis of the testimony of a single eye witness a conviction may be recorded, but it had also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness was of such sterling quality that the court found it safe to base a conviction solely on the testimony of that witness. In doing so the court should test the credibility of the witness by reference to the quality of his evidence. The evidence should be free of any blemish or suspicion, should impress the court as wholly truthful, and should appear to be natural and so convincing that the court had no hesitation in recording a conviction solely on the basis of the testimony of a single witness. The appeal was allowed.

## CRIMINAL LAW

***Totality of evidence on record and its credibility eventually determine whether the prosecution has proved the charge against the Appellants or not.***

**Jamal Mirza v. State**

**Citation:** 2012 II AD (Delhi) 366

**Decided on:** 27th January 2012

**Coram:** S. Ravindra Bhat**, S.P. Garg,** JJ

**Facts:** The appeal was directed against the order of conviction and sentence whereby the Appellants were held guilty for commission of offences under Section 396 read with 397 Indian Penal Code, 1860 (IPC) and challenge was on the ground of lack of any recoveries of jewellery or cash or weapons from the accused; material contradictions, inconsistencies and improvements in the statements of prosecution witnesses and lack of assistance by Consular Officers of their country, i.e., Bangladesh, contrary to provisions of the Vienna Convention on Consular Relations, 1963, which made it unsafe to record a conviction against the Appellants.

**Issue:** Whether the discrepancies in the testimony of prosecution witnesses and lack of assistance by the Consular Officers of Bangladesh towards the Appellants, made it unsafe to record a conviction against the Appellants.

**Held:** While appreciating the testimonies of witnesses, it was necessary that the Courts be realistic in their expectations from witnesses and go by what would be reasonable based on ordinary human conduct with ordinary human frailties of memory, the power to register events and recall the details. It was to be the totality of evidence on record and its credibility that should eventually determine whether the prosecution was able to prove the charge against the Appellants or not and slight discrepancies which did not shake the basic version of the witnesses should not be given undue weightage or importance to dislodge the prosecution's case.

Since the testimonies of all the witnesses established, beyond doubt, the presence and specific role of each of the accused at the time and place of occurrence and their participation in the commission of the offence and since no ill-will or ulterior motive could be imputed to the witnesses in their cross-examination or anything material be elicited to disbelieve the facts deposed by them, it was held that there was no illegality or irregularity in the findings recorded by the Trial Court basing conviction of the Appellants on the evidence as provided by the prosecution witnesses as minor contradictions or discrepancies in the statements of prosecution witnesses were bound to occur since they were recorded after lapse of a long time. Further, the plea of the Appellants that, they were not the perpetrators of the crime and were falsely implicated by the police just to solve the case, could not be believed as it could not be assumed that the police would engage in an inter-state conspiracy to falsely implicate the Appellants nor

could the plea that there was a fatal irregularity in the trial of the Appellants on account of not being accorded the rights assigned to them under the Vienna Convention on Consular Relations, 1963, be accepted, as the safeguard provided for in the Convention, was to ensure that the foreign national who had been arrested or detained was not denied his basic human rights and afforded effective legal assistance in a criminal trial. Since, the Appellants were given due legal representation, the object of Article 36(1)(b) of the Convention was considered to be satisfied and the non-compliance with a procedural safeguard of notifying the consulate or embassy of the foreign national, that he was facing trial, could not in such an event lead to such prejudice as to vitiate the trial itself. The appeals were accordingly dismissed.

***High Court did enjoy inherent power under Section 482 CrPC, to entertain petitions in cases where Section 397(3) CrPC laid a statutory bar on a second revision petition.***

***Section 468 Code of Criminal Procedure, 1973- The date of the complaint and not the date on which the cognizance was taken was the relevant date for the purpose of computing the period of limitation.***

## Surender Kumar Jain v. State

**Citation:** 2012 V AD (Delhi) 267

**Decided on:** 30th January 2012

**Coram:** **M.L.Mehta**, J.

**Facts:** The petition was preferred assailing the order of the Additional Sessions Judge (ASJ) upholding the decision of the Metropolitan Magistrate (MM) whereby charges under Section 406 Indian Penal Code, 1860 (IPC) were framed against the Petitioner on the basis of the complaint filed by the Complainant under Sections 406/420 IPC alleging that a file of the Complainant containing sales tax forms had been misappropriated by the Petitioner. The Petitioner challenged the said framing of charges on the ground that the cognizance taken by the MM was beyond the period of limitation as the alleged offence took place in the year 1996 whereas the cognizance of the offence by the Court was taken in the year 2002 and therefore, the statutory limitation period being 3 years, the cognizance was bad in law. The petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) was filed assailing the order of the ASJ that rejected the Petitioner's revision petition and upheld the order of the Trial Court.

**Issue:** (1) Whether a petition under Section 482 CrPC against the order of the ASJ was maintainable as it may amount to a second revision which was barred under Section 397(3) CrPC.

(2) Whether the relevant date for calculating the period of limitation under Section 468 CrPC, was the date of the complaint or the date on which the cognizance came to be taken by the Magistrate.

**Held:** The power of the High Court and that of the Court of Sessions, so far as a revision was concerned, were concurrent. The intention of the Legislature under Section 397(3) CrPC was definite, unambiguous and clear as it curtailed the chance of an unsuccessful revisionist in the Court of Sessions to be entertained for the second time by the High Court. Even though, the High Court did enjoy inherent power under Section 482 CrPC, to entertain petitions in cases where Section 397(3) CrPC laid a statutory bar on a second revision petition, the power was to be exercised sparingly and with great caution, particularly, when the person approaching the High

Court had already availed remedy of first revision in the Sessions Court. However, the case did not fall within the parameters of invoking inherent and extraordinary jurisdiction under Section 482 CrPC or under Article 227 of the Constitution of India.

Further, in an offence of criminal breach of trust, the offence commenced on the date the person was entrusted with the property, refused to return the property or misappropriated the property with which he was entrusted. Thus, for the purpose of computing the period of limitation, it was the date of the complaint which was material and not the date on which the cognizance came to be taken by the Magistrate or the process was issued against the Petitioner as the time utilized during investigation, examination of witnesses, taking cognizance and summoning the Accused, was beyond the control of the Complainant. Thus, the relevant date from which the period of limitation would be said to have commenced would be the day when the Petitioner refused to return the sales tax file to the Complainant and not the date when the file was entrusted to the Petitioner by the Complainant. Also, the cognizance of the offence was not time barred under Section 468 CrPC as the complaint was filed within the period of limitation i.e., 3 years.

Since it was at the stage of framing of charges and that both the Courts above had correctly appreciated the allegations against the Petitioner and formed a prima facie view of the framing of charges under section 406 IPC and because the case did not call for interference under Section 482 CrPC or Article 227 of the Constitution either, the petition was dismissed.

***The sanctioning Authority was only required to take a prima facie view whether there was sufficient material against the Accused on record to grant sanction or not.***

## Ravinder Kumar Chandolia v. Central Bureau of Investigation

**Citation:** 2012 (3) Crimes 230

**Decided on:** 6th February, 2012

**Coram:** **M.L. Mehta,** J.

**Facts:** The petition challenged the order of the Special Judge, CBI whereby the Trial Court dismissed the application of the Petitioner for dropping of proceedings, on the ground that the sanction order under Section 19 of Prevention of Corruption Act, 1988 (PC Act) showed non application of mind as the sanctioning Authority had not considered the role of the Applicant, documents, statement of witnesses etc. Secondly, no sanction under Section 197 of the Code of Criminal Procedure, 1973 (CrPC) was obtained for prosecution of the Petitioner and thirdly, the investigation was bad as it was without permission under Section 6A of the Delhi Special Police Establishment Act, 1946.

CBI had filed a charge sheet against twelve accused persons including the Petitioner, a public servant of the Joint Secretary level i.e. P.S. to Minister of Communication & Information Technology (MOC&IT) and an active participant in the alleged criminal conspiracy hatched by A. Raja, MOC&IT, for having participated in the conspiracy along with A. Raja to wrongly benefit and ensure better prospects to A. Raja's favoured companies by manipulating the processing of applications for new UAS licences in Department of Telecommunications (DOT) and accommodating applications of such companies into the consideration zone for all circles applied for, despite inadequate availability of spectrum in many circles including Delhi ahead of the other companies standing in queue for these UAS licences.

**Issue:** Whether there was lack of application of mind by the competent Authority while issuing the Sanction Order.

**Held:** The Sanction Order was only an administrative decision and the competent Authority was at liberty to consider all the relevant documents, which formed the crux of the allegations but was not required to consider each and every document himself. The sanctioning Authority was only required to take a prima facie view whether there was sufficient material against the Accused on record to grant sanction or not. The order of sanction apparently disclosed that the competent Authority had considered the evidence and other material placed before it. Thus, even

though it might be desirable that the facts should have been referred to in the Sanction Order itself, but if they did not appear on the face of it, the of prosecution could establish the same by adducing the evidence that those facts were placed before the sanctioning authority.

Pertaining to the second ground of challenge, the Court held that in sum and substance, not every offence committed by a Public servant while being actually engaged in the performance of his official duties, required sanction for prosecution under Section 197(1) CrPC. However, if the act complained of was directly connected with his official duty, so that it could be claimed to have been done by virtue of his office, then the sanction would necessarily be required. In other words, if the offence was entirely unconnected with the official duty, there could be no protection but, if it was committed within the scope of the official duty or in excess of it, then the protection was certainly available.

Applying the test of the dictum of the law in the instant case, it could be noted that there was sufficient material against the Petitioner to demonstrate that acts complained of were not part of his duty as a Public Servant. Hence, no sanction under Section 197 CrPC was required in the instant case as the alleged acts of the Petitioner did not fall within the scope of his official duties. There was also prima facie incriminating material against the Petitioner and the sanctioning Authority had granted sanction of prosecution under Section 19 of PC Act after due application of mind. Thus, finding no merit in the appeal, it was accordingly dismissed.

## CRIMINAL LAW

***Section 353, Code of Criminal Procedure, 1973- The judgment having been pronounced, the trial comes to an end and the Trial Court becomes functus officio.***

***The Trial Court could not have passed order on the application under Section 319 CrPC after pronouncing the judgement.***

### Rakesh Kanojia v. State Govt. of NCT of Delhi

**Citation:** 2012 IV AD (Delhi) 690

**Decided on:** 7th February 2012

**Coram:** **Mukta Gupta**, J.

**Facts:** The petition was filed by the Petitioner being aggrieved by the order of the Additional Sessions Judge, summoning the Petitioner under Section 319 of the Code of Criminal Procedure, 1973 (CrPC) as an additional Accused after an order of conviction under Sections 307/498A/34, Indian Penal Code, 1860 (IPC) was already passed against the other family members of the Petitioner. The Petitioner challenged the order on the ground that once a judgment was dictated and pronounced, the trial had come to an end and thus the Court had no jurisdiction to summon an additional Accused under Section 319, CrPC.

**Issue:** Whether the Court should invoke its jurisdiction under Section 319 CrPC when the trial had already concluded and judgment was passed.

**Held:** According to Section 353 CrPC, pronouncement of judgment was a post culmination trial procedure i.e. the judgment having been pronounced, the trial was understood to have come to an end and the Trial Court became functus officio thereafter. Thus, even though the application under Section 319, CrPC was moved by the Public Prosecutor before the conclusion of the trial, there was no doubt that the order was passed after the pronouncement of judgment of conviction of the other family members of the Petitioner even though on the same day. Hence, the Trial Court could not have passed the order on the application under Section 319 CrPC after pronouncing the judgment. Consequently, the order summoning the Petitioner was quashed. The petition and the application were disposed of.

***Unless the contradictions in the narrations of witnesses are of material dimension, the same should not be rejected in entirety.***

## State (NCT of Delhi) v. Prakash

**Citation:** 2012 II AD (Delhi) 593

**Decided on:** 8th February, 2012

**Coram:** S. Ravindra Bhat, **S.P. Garg**, JJ.

**Facts:** The first-appeal by the Respondent challenging his conviction under Sections 302/201/436 of Indian Penal Code, 1860 (IPC) was allowed on the ground that the Trial Court had not recorded the testimony of the child witness in accordance with law i.e. to the Court's satisfaction, which the witness understood that he was deposing in Court and also the consequences of his deposition was not recorded. Hence, the Trial Court was directed to take corrective measures.

Thereafter, upon reconsideration of the testimony of the child-witness, the Trial Court rejected it on the ground that it was not corroborated by any public witness and there were vital discrepancies and contradictions in it and thus acquitted the Respondent. Hence, the appeal was preferred by the State against the order of acquittal of the Respondent.

**Issue:** Whether the inconsistencies in the testimony of the child eye witness were so material so as to immediately result in rejection or not.

**Held:** Since a re-trial of the Respondent was directed by the Trial Court on the ground that the Court had omitted to record its satisfaction as regards the testimony of the child witness, the net result was that the eye-witness had to depose de novo about 9 years after the incident. Also, the witnesses' memory could not be expected to be perfect or razor sharp and some inconsistencies were bound to occur. Nevertheless, the deposition of the eye-witness had been consistent vis-à-vis the Respondent's role in the alleged offence. Hence, the testimonies could be considered as consistent as regards the crucial particulars and the contradictions as pointed out by the Respondent were not so serious or vital so as to disregard the testimony altogether.

Hence, the Trial Court had misread the evidence in holding that the testimony of the eye-witness could not be accepted because of its discrepancies and that other witnesses did not corroborate his presence. Thus, the findings of acquittal was unsustainable and thus set aside.

***If premeditation or previous enmity between the Accused and the deceased is not established, the offence of causing such bodily injuries as were likely to cause death, shall come under the ambit of Exception 4, Section 300, Indian Penal Code, 1860.***

## Attro Devi v. State

**Citation**: 187 (2012) DLT 487

**Decided on**: 8th February 2012

**Coram**: S. Ravindra Bhat, **S.P. Garg**, JJ.

**Facts**: The Appellant-Accused challenged the order of the Additional Sessions Judge convicting and sentencing her under Section 302 Indian Penal Code 1860 (IPC), on the ground that there was no worthwhile evidence or ulterior motive made out and that she had been falsely implicated by the brothers of the deceased with the intention of grabbing her property. Alternatively, it was contended that the Appellant had no motive and intention to set the deceased on fire and thus the offence was at best of culpable homicide not amounting to murder under Exception 4 to Section 300 IPC.

**Issue**: Whether the Appellant could claim the benefit of Exception 4 to Section 300 IPC.

**Held**: The Appellant had failed to give any plausible explanation how and under what circumstances the deceased had got burnt and that the dying declaration made by the deceased to all the witnesses was true, reliable and not the result of any tutoring. It was the Appellant who had set the deceased on fire at her house, as a result of which he had sustained burn injuries and expired subsequently. Once the prosecution had proved that the act committed by the Appellant had resulted in the death of a person, then to avail the benefit of the Exception 4 to Section 300, it was for the Appellant to prove that the act was committed without premeditation in a sudden fight upon a sudden quarrel and that she had not taken undue advantage or acted in a cruel and unusual manner.

The Appellant had succeeded in highlighting that there was no previous enmity and that the offence had been rather committed upon a sudden quarrel and sudden loss of self control. However, even if it could be assumed that the Appellant did not intend to cause death, she could 103 certainly be assumed to know that the act of pouring kerosene oil and setting the deceased on fire would result in causing such bodily injuries as were likely to cause death. Therefore, the Appellant's case could not be said to fall under Section 304 Part II IPC but under Section 304 Part I IPC. The conviction was converted accordingly and the Appellant sentenced to the period undergone.

## CRIMINAL LAW

***In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the Accused.***

**Riaz Ali v. State (Govt. of NCT) Delhi**

**Citation:** 2012 V AD (Delhi) 308

**Decided on:** 22nd February, 2012

**Coram:** **Gita Mittal,** J.R. Midha, JJ.

**Facts:** The Appellant challenged the judgment and order of sentence of the Trial Court whereby he was held guilty and convicted under Sections 364/302 Indian Penal Code, 1860 (IPC), on the ground that there were material contradictions in the testimonies of the prosecution witnesses, thus, rendering the evidence unworthy of credence.

**Issue:** Whether prosecution failed to establish the unbroken convincing chain which was to be proved by it which would lead to the only conclusion of guilt and culpability of the Appellant and which completely ruled out the hypothesis of innocence of the Appellant.

**Held:** The case at hand rested purely on circumstantial evidence and there was no direct evidence with regard to any aspect of the matter. Relying on the decision in ***Hanumant v. State of Madhya Pradesh [1953 Cri.LJ 129]***, wherein it was held that in cases where the evidence was of a circumstantial nature, the circumstances from which the conclusion of guilt was to be drawn were, in the first instance, required to be fully established and all the facts so established were necessary to be consistent only with the hypothesis of the guilt of the Accused. Again, the circumstances should have been of a conclusive nature, tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there was to be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the Accused and it was to be such as to show that within all human probability the act must have been done by the Accused.

However, the prosecution could not prove a single circumstance leading to the murder of the child beyond reasonable doubt. There was no evidence as to the manner in which the body of the deceased reached the public place from where it was recovered, while the last seen evidence was clearly separated both by time as well as place from the commission of the offence. Further, the time gap between the deceased being last seen alive with the Appellant and the proximate time of offence as well as the distance which had been covered during that period rendered it difficult to

clinchingly fasten guilt for the offence of murder on the Accused. Also, no motive was attributed to the Appellant which led to the kidnapping or murder of the child.

Thus, the prosecution had miserably failed to prove the chain of evidence by which the Court could clearly and unequivocally reach to a conclusion which pointed only to the guilt of the Appellant with regard to the commission of the crime. Hence, the appeal was allowed and the order was set aside and quashed.

## CRIMINAL LAW

***In a case based on circumstantial evidence the circumstances from which an inference of guilt was sought to be drawn were to be cogently and firmly established.***

## Sheesh Pal v. State

**Citation:** 2012 III AD (Delhi) 1

**Decided on:** 24th February, 2012

**Coram:** Badar Durrez Ahmed, **Veena Birbal**, JJ.

**Facts:** The appeal was filed challenging the judgment and order of sentence passed by the Additional Sessions Judge by which the Appellant was convicted under Sections 363/302/201 Indian Penal Code, 1860 (IPC), on the ground that the evidence being either not proved or not believable, was not sufficient to base conviction of the Appellant on it.

**Issue:** Whether a conviction could be upheld on the basis of the circumstantial evidence produced.

**Held:** A case based on circumstantial evidence, the circumstances from which an inference of guilt was sought to be drawn were to be cogently and firmly established. The circumstances so proved were required to conclusively point towards the guilt of the Accused and it should form a chain so complete that there was no escape from the conclusion that the crime was committed by the Accused and none else. It was to be considered within all human probability and not in a fanciful manner.

It was noticed that the various witnesses had made different statements at different stages and there were several breaks in the chain of circumstances. Serious contradictions were found in the evidence of the witnesses as regards the allegations of kidnapping and were thus not worthy of being relied upon. Further the circumstantial evidence on record had also failed to conclusively point towards the guilt of the Appellant. The Appellant was thus entitled to the benefit of doubt and was acquitted of all charges and the judgment and order of sentence was set aside.

## CRIMINAL LAW

***The issuance of notification as under Section 105 of the Code of Criminal Procedure, 1973 was not a mandatory procedure and could not negate the binding nature of the exchange of letters between two countries.***

### Swiss Timing Ltd. v. CBI

**Citation:** 2012 III AD (Delhi) 521

**Decided on:** 5th March 2012

**Coram:** **Mukta Gupta**, J.

**Facts:** The challenge in the petition was to the orders of the Special Judge, CBI Court, Patiala House whereby the Special Judge held that the purported service of summons upon the Petitioner was valid in law and consequently observed that the act of the Petitioner to deliberately avoid appearance before the Trial Court only to further delay the trial, would attract legal consequences. The order was a result of the Petitioner having refused to admit that the service of summons was legal and valid in accordance with law and that he had been legally served by the Trial Court.

**Issue:** Whether the exchange of letters between two countries constituted a binding treaty and related to the process of enquiry and trial to compel presence of an Accused before the Court and whether a notification under Section 105 Code of Criminal Procedure, 1973 (CrPC) was mandatory in nature.

**Held:** As per Section 105 CrPC, though the service or execution of summons at a place or country was mandatory, however, sending of such summons to Court, Judge or Magistrate and to such authorities for transmission as may be notified under this Section was only directory. Further, the reason for the second portion of Clause (ii) of Section 105(1) being directory in nature was that the Indian Government could not determine the authority, Court and Magistrate of another sovereign State. Also, the issuance of notification as provided for under Section 105 CrPC was not a mandatory procedure as the word used in Section 105(1)(ii) was "may" and thus the non-issuance of the notification could not render nugatory the binding nature of the exchange of letters between the two Countries.

Further, the exchange of letters was binding and that it related to not only mutual assistance with regards to matters pending investigation but also pending trial. Also, the expression "criminal proceedings" in the exchange of letters included trial of a person for an offence or a proceeding, to determine whether to place a person who was accused of an offence on trial for that offence. Further, the as per the agreement, assistance was required to be granted in accordance with law

of the requested State in the investigation or prosecution of criminal offence including embezzlement, abuse of official powers or institution to obtain unlawful profits, bribery, etc. and also that such a request was to be transmitted through diplomatic channels. Thus, the petition was accordingly dismissed.

## CRIMINAL LAW

***The State is expected to exercise its power of remission keeping in view any such benefit to be construed liberally in favour of the convict.***

## Sikander Mohd. Sahfi v. State NCT of Delhi

**Citation:** 2012 III AD (Delhi) 205

**Decided on:** 5th March 2012

**Coram:** **Mukta Gupta**, J.

**Facts:** The Petitioner sought direction to Respondent No.1 to expeditiously place the case of the Petitioner before the Sentence Reviewing Board (SRB) with direction to dispose of the same within a fortnight.

The Petitioner was convicted for an offence under Section 302 IPC and was awarded death sentence by the Additional Sessions Judge and the reference for confirmation of death sentence was sent to this Court. This Court answered the reference in negative and the Petitioner was awarded life sentence. A writ petition filed by the Petitioner for remission of sentence was disposed of by the Court with directions to treat the writ petition as a representation and consider the case of the Petitioner for placing before the SRB. However, the Superintendent, Tihar Jail stated in response that since the Petitioner had been awarded life sentence for commission of a heinous crime such as multiple murders and was a convict whose death sentence had been commuted to life, he would be eligible for premature release only after 20 years of imprisonment with remission.

**Issue:** (1) Whether the Petitioner was a convict whose death sentence had been commuted.

(2) Whether the provisions of the Delhi Jail Manual as applicable in the year 1991 when the

Petitioner was convicted or guidelines dated 5th March, 2004, which were subsequently revised on 16th July, 2004, would be applicable to the Petitioner.

**Held:** Finding of the Superintendent that the Petitioner was a convict whose death sentence had been commuted to life, was erroneous to the extent that the Petitioner's death sentence was never confirmed by the High Court and in the absence of such confirmation, no death sentence could have been awarded to the Petitioner.

The policy for remission applicable to the Petitioner would be ascertained as one which was in vogue on the date of his conviction i.e. Delhi Jail Manual. However, as noted by the Court, since the Petitioner completed his 14 years actual imprisonment in 2009 the policy in vogue,was the guidelines as notified on 16th July, 2004. In the guidelines of 2004, two categories were carved

out of the persons serving sentence of life. As per the first category, convicts, who were convicted for offence of murder, were to be considered for release on completion of 14 years imprisonment and in no case the same was to extend beyond 20 years with remission. In other category, which related to persons involved in heinous crimes such as murder with rape, murder with dacoity, multiple murder, convict's case for premature release was to be considered on his completion of imprisonment for 20 years including remission with an outer limit of 25 years with remission being the maximum period of incarceration. The guidelines that provided for an outer limit of imprisonment which was otherwise absent in the 1991 Delhi Jail Manual, were more beneficial to the Petitioner. Some of the factors to be considered while considering a case before the SRB, were the nature and gravity of the offence and misuse of concessions of bail or parole, the 2004 guidelines were more beneficial to the Petitioner. The Petitioner's case could be put up before the SRB upon completion of 20 years with remission and the Petitioner could be kept in prison for a maximum period of 25 years including remission.

Hence, the petition and application were disposed of.

**CRIMINAL LAW**

***Section 222 of the Code of Criminal Procedure, 1973- It is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge had been framed for a major offence.***

## Sheela Devi v. State

**Citation:** MANU/DE/1062/2012

**Decided on:** 14th March 2012

**Coram:** Pradeep Nandrajog**, Pratibha Rani,JJ.**

**Facts:** The appellants challenged the judgment and order of sentence convicting them for having committed offences punishable under Sections 498A/302/34 Indian Penal Code, 1860 (IPC) on the basis of two dying declarations and testimony of various witnesses, on the ground of being completely innocent. This was primarily a case where there were multiple dying declarations.

**Issue:** If the Accused had been charged under Section 302 IPC and the said charge was not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 of Code of Criminal Procedure, 1973 (CrPC).

**Held:** Even though the law regarding dying declarations was well settled by the Apex Court, however inconsistencies in multiple dying declarations may prove fatal to the case of the prosecution. The language used in the two dying declarations was not in consonance with the language used by the deceased and the truth had actually emerged from the personal diary maintained by the deceased. Holding the case to be of suicide rather than homicide, the chief question of law that thus arose was whether the Appellants were liable to be convicted for offence punishable under Section 306 of the IPC i.e. abetment of the commission of suicide by the deceased.

Relying on the Supreme Court judgment of Dalbir Singh v. State of U.P. [AIR 2004 SC 1990],wherein it was held that Section 222 CrPC was in the nature of a general provision which empowered the Court to convict an Accused for a minor offence even though charge had originally been framed for a major offence. In other words, in accordance with sub-section (2) of Section 222 CrPC, when a person was charged with an offence and facts were proved which reduced it to a minor offence, he could be convicted of the minor offence, although he was not charged with it. While acquitting the brother-in-law entirely, mother-in-law and husband of the deceased were found guilty of having abetted her suicide and maintained their conviction under Section 498A/34 IPC.

**CRIMINAL LAW**

***Prosecution was required to establish an unbroken chain of circumstances leading to only one conclusion which was guilt and culpability of the accused person.***

## Ravinder Singh v. State (NCT) of Delhi

**Citation:** Crl. A. No. 394 of 2010

**Decided on:** 28th March, 2012

**Coram:** **Gita Mittal**, J.R. Midha, JJ.

**Facts:** The Appellant challenged the judgment of the Trial Court, whereby he was found to be guilty and convicted for commission of offences under Sections 302/201 of the Indian Penal Code, 1860 (IPC), on the ground that the prosecution had been unable to prove any of the allegations laid upon against the Appellant in a case of circumstantial evidence, where the prosecution was required to establish an unbroken chain of circumstances leading to only one conclusion which was guilt and culpability of the accused person and did not in any manner suggest or support the hypothesis of innocence of such person.

**Issue:** (1) Whether the whole trial could be said to be vitiated at the threshold, on account of the Accused being unrepresented by a counsel during his trial for a heinous crime.

(2) Whether, the last seen circumstance was so proximate to the time of the alleged offence so as to conclusively establish the culpability of the Appellant-accused.

**Held:** It could not be denied that Section 313 of the Code of Criminal Procedure, 1973 (CrPC) was an extremely important and salutory provision and by virtue of it, the law mandated that an opportunity was to be given to the Accused to personally explain any circumstance that appeared in the evidence against him by the Court. Also, the Supreme Court had repeatedly mandated that an Accused was entitled to an adequate and appropriate legal assistance at every stage of the trial. However, it was highlighted that the Accused had been put to a large number of such questions based on material which was completely inadmissible in evidence. The Appellant had the assistance of a counsel, when the evidence was being put to the Appellant, the counsel would have pointed out the impressibility of the questions and the statutory prohibitions to the Court and would have also guided the Appellant on the importance of the statement. Thus without the assistance of a counsel the inability of the accused person to understand the import of the statement which the Court was recording by itself per se would have resulted in prejudice to him and would tantamount to unfairness of procedure and the trial which the Appellant had undergone.

It was observed that apart from the disclosure statement of the Accused, the prosecution case primarily rested on the evidence of the deceased allegedly being last seen alive in the Company of the Appellant. Relying on the Supreme Court decision in State of U.P. v. Satish [2005 SCC (Cri) 642], whereby it was held that the last seen theory came into play when the time gap between the point of time when the Accused and the deceased were seen last alive and when the deceased was found dead was so small that possibility of any person other than the Accused being the author of the crime became impossible, even though the deceased had been seen entering the alleged place of occurrence of offence i.e. school, in the Company of the Appellant, however the prosecution had failed to establish conclusively the time of death of the deceased or the ingress or egress if any that could have taken place at the other entrances/exits of the school. Thus if the evidence of the prosecution, that the deceased was last seen alive in the Company of the Appellant was accepted, there was no evidence to establish that the same was proximate to the time when he was murdered or that there was no intervention by any other person. There was also no evidence that the Appellant or the deceased were both in the school premises at the time of the murder or whether any other person entered or exited from the other gates. Thus there could be no conclusive evidence that could lead to the inevitable and only hypothesis that the Accused was only responsible for the murder and no other person.

In light of the above as well as other grounds raised in the appeal, the Court allowed the appeal and the judgment for the offence under Sections 302 and 201 IPC passed by the Additional Sessions Judge were set aside and quashed.

## CRIMINAL LAW

***Section 190, Code of Criminal Procedure, 1973 - The Magistrate only takes cognizance of an offence and not the offender at the stage of taking cognizance.***

## Bimal Barthwal v. State through CBI

**Citation:** 2012 V AD (Delhi) 436

**Decided on:** 29th March, 2012

**Coram:** **M.L. Mehta, J**.

**Facts:** The Petitioners challenged orders of the Metropolitan Magistrate (MM) summoning the Petitioners as accused, based on an application by the main accused in the case. It was contended that with cognizance of the offence having already been taken by the MM against the accused persons, a second cognizance qua the Petitioners without revelation of any new material evidence incriminating the Petitioners in the offence was bad in law.

**Issue:** Does a Magistrate have, at the pre-charge stage, the power to take cognizance against a person against whom incriminating material was available but who had been cited as a witness by the prosecution.

**Held:** Relying on the decision in Raghubans Dubey v. State of Bihar [AIR 1967 SC 1167], it was held that the MM was within his powers to issue summons against the Petitioners after taking note of their role in the alleged conspiracy. At the stage of summoning, the MM was not required to weigh the evidence meticulously but only to ascertain whether or not there was "sufficient ground for proceeding against the accused". The factum of the involvement of the Petitioners in the alleged conspiracy was sufficient for the MM to take cognizance and summon them. The petitions were dismissed.

## CRIMINAL LAW

***The testimony of eye witnesses, when their presence is doubtful or when their conduct is highly unnatural, cannot be relied upon without independent corroboration.***

### Satnam Singh @ Harjeet Singh v. State

**Citation:** Criminal Appeal No. 398 of 1997

**Decided on:** 30th March, 2012

**Coram:** S. R. Bhat, **S.P. Garg,** JJ.

**Facts:** The appeal was directed against the order of conviction of the Appellant under Sections 302/307 Indian Penal Code, 1860 (IPC) and challenged the order on the ground that ocular testimonies of alleged eye witnesses could not be accepted because they were closely related to the deceased and their conduct was highly unnatural. Also the Accused had no ulterior motive to inflict injuries on the victim with whom he had no prior acquaintance.

**Issue:** Whether the testimonies of eye witnesses are reliable even without independent corroboration when their presence is doubtful or their conduct is highly unnatural.

**Held:** The Court must carefully examine the entire available record and the allegations directly attributed to the Accused before convicting him. Considering the testimonies of all the eye witnesses it was held that their conduct was highly unnatural, they omitted to intervene to save the victim or to inform the police or any of deceased's close relation about the incident and therefore, their testimonies deserved outright rejection.

Neither any other circumstantial evidence connecting the Accused with the crime nor the motive of the Accused to inflict the fatal stab blow to a person with whom he had no prior acquaintance was proved. The appeal was therefore allowed and his conviction was set aside.

***Section 302 Indian Penal Code, 1860- The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given were held to be the relevant factors to be considered.***

## Seema v. State (NCT) of Delhi

**Citation:** 2012 IV AD (Delhi) 548

**Decided on:** 30th March, 2012

**Coram:** S. R. Bhat, **S.P. Garg,** JJ.

**Facts:** The appeal was directed against the order of conviction of the Appellants under Sections 302/307/34 of the Indian Penal Code, 1860 (IPC) challenging it on the ground of exclusion of independent witnesses, where all the material witnesses were interested witnesses being relatives of the deceased and that the Trial Court had erred in relying on their testimonies without caution and corroboration and without appreciating the vital improvements and contradictions in their testimonies. The Appellants also contended that even if taken at face-value, the offence did not attract prosecution under Section 302 IPC, the alleged stabbing having been taken place suddenly, without pre-meditation and in a fit of rage.

**Issue:** Whether the testimony of injured witnesses was reliable or not. whether a single blow ruled out the possibility of Section 302 IPC out rightly.

**Held:** The deposition of the injured witnesses should be relied upon unless there were strong grounds for rejection of their evidence such as major contradictions and discrepancies therein. If all the material witnesses were close relatives of the deceased, a closer scrutiny of their testimonies was required but the evidence of such witnesses could not be rejected *intoto* and could be considered if otherwise acceptable. Since there was no delay in registering the First Information Report (FIR), thereby excluding any possibility of fabrication or concoctation of a false story, specific roles had been assigned to each Accused in the commission of the crime, the genesis of altercation had been fully narrated and the testimonies of the witnesses stood unshaken despite lengthy cross-examinations, therefore minor contradictions/improvements on trivial matters could not be held to render the witnesses' deposition as untrustworthy. Hence, the Trial Court was fully justified in wholly relying on the testimonies of the witnesses to convict the Appellant for the commission of offence under Sections 302/307 IPC.

However, upon a close scrutiny of the testimonies of the crucial eye-witnesses pertaining to the roles of other co-Accused, there were many improvements in them and each of their testimonies

contradicted the other while assigning a role to the co-Accused in the alleged offence. Mere fact that the Accused were together at the time of the incident and ran away together could not be rendered as conclusive evidence of common intention in the absence of more positive evidence. Mere circumstance of a person being present on an unlawful occasion did not raise a presumption of that person's complicity in the offence then committed. Hence finding no cogent, reliable and trustworthy evidence against the co-Accused, they were held entitled to the benefit of doubt.

As to whether the act of inflicting only a single blow, could be covered under Section 302 IPC, it could not be said as a rule of universal application that if only one blow was given, Section 302 IPC stood ruled out. Number of injuries was held to be irrelevant in ascertaining the intention. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault and the part of the body where the blow was given were held to be the relevant factors to be considered instead. Since, the main-Accused had stabbed the deceased using a knife used for slaughtering pigs, his guilt under Section 302 IPC stood firmly established and the Court felt no reason to interfere with the findings of the Trial Court. However, conviction of the co-Accused with the aid of Section 34 IPC could not be sustained and were thus acquitted.

## CRIMINAL LAW

***The doctrine of Res Ipsa Loquitor was applied so that the burden of proof shifted on the defendant.***

# Chob Singh v. Government of NCT of Delhi

**Citation:** 2012 (192) DLT 100

**Decided on:** 9th April, 2012

**Coram:** **Vipin Sanghi,** J.

**Facts:** The petitioner's son aged eleven years died by falling into a sewer tank. He claimed compensation of Rs. 10 Lakhs from the Govt. of NCT of Delhi (GNCTD) and the Delhi Jal Board (DJB).

**Issues:** (i) Whether the writ petition was maintainable?

(ii)Whether the death of the child occurred due to the negligence of either or both of GNCTD and the DJB?

(iii) What compensation was the petitioner entitled to?

**Held:** (i) Following *Varinder Prasad v. BSES Rajdhani Power Ltd.* [W.P.(C.) No. 8924/2007] and *Ram Kishore v. MCD*, [2007(97) DRJ 445] it was held that a writ petition under Article 226 of the Constitution of India to claim compensation was maintainable in case there was violation of fundamental rights.

(ii) The mere fact that the entry of children was allowed into a prohibited area showed sheer negligence on the part of the respondents who owed a duty of care to the said children. The said area where poisonous gases were being produced posed a high risk to any stranger – much more to small children. The doctrine of *res ipsa loquitor* was applicable and the burden of proof shifted to the respondents. Thus, the principle of strict liability was applicable and the DJB was liable to pay compensation, as it was at the pumping station of DJB that the accident took place.

(iii) The petitioners were entitled to grant of compensation for breach of the fundamental right under Article 21 of the Constitution of India. The Courts had evolved a two-tier compensation mechanism in such cases. It had two components, i.e. the conventional sum, and pecuniary compensation. Relying on ***Kamala Devi V. Govt. of NCT of Delhi*** [2004 (76) DRJ 739], it was held (a) standard compensation or conventional amount for non pecuniary losses which had to be raised from time to time to counter inflation and (b) compensation for pecuniary loss of dependency on the basis of loss of earnings for which the multiplier method was to be employed.

Thus, the total compensation to which the petitioner was entitled to was Rs.7, 11,546.38. This amount should carry simple interest @ 6% p.a. from the date of filing this petition till the date of payment. The writ petition was allowed in the above terms.

## CRIMINAL LAW

***Section 222 Code of Criminal Procedure, 1973 - When a person is charged for a major offence, but not found guilty thereunder, he may be convicted for an attempt to commit such an offence.***

**Jameel v. State**

**Citation:** 2012 IV AD (Delhi) 127

**Decided on:** 16th April, 2012

**Coram:** **Suresh Kait,** J.

**Facts:** The appeal was against the order of conviction and sentence of the Appellant-Accused under Section 376, Indian Penal Code, 1860 (IPC) on the ground that the Trial Court failed to appreciate the discrepancies and the need for corroboration of the testimony of the prosecutrix and had thus erred in relying solely on the testimony of the unsound prosecutrix while convicting the Appellant for the offence of rape.

**Issue:** Whether the Accused was entitled to the benefit of doubt based on the inconsistencies in the testimony of the prosecutrix.

**Held:** Section 376 IPC being a very serious offence, the prosecution was required to prove its case beyond reasonable doubt to establish the guilt of the accused. Wherein the prosecutrix appeared to be of unsound mind and inconsistent with her statements, benefit of doubt could be granted to the Appellant. Hence the Court opined that the Appellant could not be held guilty for the offences punishable under Section 376, IPC. However, since the prosecutrix was consistent in deposing that she was called to the Appellant's house by the Appellant who then opened her salwar and pressed her breast, the guilt of the Appellant stood established for a lesser offence of attempt to rape.

Hence, applying the principle under Section 222, Code of Criminal Procedure, 1973 (CrPC), wherein any person charged for an offence could be convicted for attempt to commit such offence, the Court modified the judgment and order of sentence convicting the Appellant for the offences punishable under Section 376 read with Section 511, IPC.

***Power under Section 482 of Code of Criminal Procedure, 1973 can be exercised where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the Accused***

## Kashibatla Ramakrishna v. CBI

**Citation:** MANU/DE/1656/2012

**Decided on:** 16th April, 2012

**Coram:** **Suresh Kait**, J.

**Facts:** In the petition, the Petitioner had sought to quash the criminal case registered for the offences punishable under Section 120B read with Section 409/420 of Indian Penal Code, 1860 (IPC) and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 pending before the Additional Sessions Judge, against the Petitioner. It was alleged that the Petitioner being the Zonal Manager, of the New Delhi Zone of the United Bank of India, dishonestly and deceitfully recommended for enhancement of credit limit of the Company. However, the Petitioner challenged the said allegation on the ground that such recommendation was made on the basis of recommendation forwarded by the then Branch Manager, Janpath Branch to the Regional Manager, North India Region to the Petitioner. Further, it travelled from the Petitioner to many senior officers and finally to the Board of Directors.

**Issue:** Whether the Petitioner could be solely criminally prosecuted for a decision which was finally taken and approved by the Board of Directors.

**Held:** The record revealed that the Head Office had advised the Branch Manager, Janpath Branch to obtain requisite documents for credit enhancement proposal of the Company through a written communication, which was also endorsed to the Regional Manager and Zonal Manager. The Petitioner, who had assumed the charge of Zonal Manager hardly a month back, sent his recommendation based on the recommendation of the Regional Manager and Branch Manager, Janpath Branch.

The CBI had got the sanction for prosecution against the Petitioner only because the Petitioner was now retired from the bank and even then had taken 7 years in providing the legible documents to the Petitioner. The standard of proof required to establish the guilt in a criminal case was far higher than that required to establish the guilt in departmental proceedings and that power of quashing of a criminal proceeding was to be exercised very sparingly and in the rarest

of rare cases, however after examining the entire material witnesses, if the proceedings continued before the Trial Court against the Petitioner, it would be an abuse of process of Court which would result in injustice and would be against the promotion of justice. Further, even if the trial of the Petitioner was allowed to go on and evidence on record remained un-rebutted, even then, the Petitioner could not be held guilty and thus there would be no purpose to proceed with the trial against the Petitioner. Accordingly, the First Information Report (FIR) under Section 120B read with Section 409/420 IPC and Sections 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 with the proceedings emanating against the Petitioner were thereby quashed.

***For offences punishable under Section 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the suspect or accused was entitled to bail and if he or she was prepared to give, had to be granted bail, in terms of Section 436 of CrPC, without the necessity of his (or her) seeking it in the court.***

## Minnie Khadim Ali Kuhn. v. State NCT of Delhi

**Citation:** MANU/DE/2592/2012

**Decided on:** 8th May 2012

**Coram:** **S.Ravindra Bhat**, S.P.Garg, JJ.

**Facts:** The writ petition under Article 226 of the Constitution of India was filed by the Detenu's mother seeking a direction to quash her son's detention, on the ground that such detention of her son by the Respondents and refusal to grant bail was unlawful.

The petitioner's son was detained by the police alleging that his bag was found with 100 gms of a black substance which was declared to be charas by the police without having conducted any testing of the substance. The petitioner's son was arrested for an offence punishable under Sections 20 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and refused bail despite having been arrested for a bailable offence. Further the petitioner was not supplied a copy of the FIR for until a day after it was registered. The petitioner pleaded that even though her son was granted bail by the Metropolitan Magistrate (MM), the proceedings were required to be continued as release of the Detenu could not take away the illegality of the detention. It was prayed by the petitioner that the court should declare that whenever possession of a small quantity of charas under Sections 20 and 21 of the NDPS Act was alleged, the offence being bailable, the suspect was entitled to be enlarged on bail, by the police as in the case of any other petty offences.

**Issue:** Whether offences punishable under Sections 20 and 21 of the NDPS Act would be governed by the provisions of Section 37 of the NDPS Act, which imposed restrictions on the Court's power to grant bail, by imposing additional norms.

**Held:** Subsequent to amendments in the NDPS Act, "small quantity" and "commercial quantity" were defined under Section 2 (xxiiia) as 100 gms and Section 2(viia) as One Kilogram and proportionate sentencing for possession of small, intermediate and commercial quantities of offending material were introduced.

Further, this policy and legislative change was also automatically reflected in the bail regime. Instead of the previous classification of offences which were punishable with less than 5 years, Parliament now restricted the category of offences where bail could be granted after applying

additional norms to ‘ offences under Section 19 or Section 24 or Section 27 A and also for offences involving commercial quantity’. Thus, except in respect of offences specifically enumerated under Section 37, i.e. offences punishable under Sections 19, 24 and 27 and those cases involving commercial quantities, the normal law, i.e. the Code of Criminal Procedure was applicable whenever the question of bail arose. Thus, if the offences were punishable, like in the case of possession of small quantities of the concerned substance or drug, under Sections 21 and 22, the suspect or accused was entitled to bail and if he or she was prepared to give, had to be granted bail, in terms of Section 436 of CrPC, without the necessity of his (or her) seeking it in the court.

The offence of possession of a small quantity (upto 100 gms) of charas, under Section 21 of the NDPS Act, if proved, was punishable upto six months and fine and cognizable by virtue of Section 37 (1) of the NDPS Act. However, this class of offence was clearly bailable. Hence, only two packets were allegedly seized, one was weighing 40 gms. And other 60 gms. , the total amount allegedly seized was 100 gms., which was a small quantity. Therefore, the petitioner’s son was entitled to be released, without him applying for bail in Court, once he had showed willingness to give bail, in terms of Section 436 of CrPC. The court therefore, directed the Police Commissioner to issue necessary guidelines and instructions to all police officials bringing to their notice the effect of this judgement, so that they were suitably instructed in future cases, that whereever offences were bailable, they were to release the suspects if bail was offered in terms of Section 436 of CrPC, read with Item 3 of Part II to the First Schedule of the NDPS Act. The writ petition was disposed of.

## CRIMINAL LAW

***A Muslim girl could marry without the consent of her parents once she attained the age of puberty, also had the right to reside with her husband. Such a marriage would not be a void marriage.***

## Tahra Begum v. State of Delhi

Citation: MANU/DE/2154/2012

Decided on: 9th May 2012

Coram: **S.Ravindra Bhat**, S.P.Garg, JJ.

**Facts**: The petitioner was seeking a writ of habeas corpus for the production of her daughter (Shumaila). It was alleged that Shumaila was a minor (aged 15) when she was kidnapped by Mehtab. The petitioner's husband reported the kidnapping to the Gokalpuri police and an FIR No. 123 of 2011was registered. After notice was issued, the police traced Shumaila, who appeared before this Court and stated that she voluntarily went away with Mehtab and had married to him; they had been living as husband and wife since then and wanted to continue to stay with her husband.

**Issue**: Whether a Muslim girl could marry without the consent of her parents once she attained the age of puberty and had the right to reside with her husband. Whether such a marriage would be void or voidable marriage.

**Held**: The Court relied on Md. Idris vs. State of Bihar [1980 Crl.L.J. 764] wherein it was observed that "Article 251 of Mulla's Principles of Mahomedan Law which laid down that every Mahomedan of sound mind, who had attained puberty, may enter into a contract of marriage. The explanation to the said article said that the puberty was presumed, in absence of evidence, on completion of the age of 15 years. Even in Tyabji's Muslim Law under Article 27 mentioned that a girl reaching the age of puberty could marry without the consent of her guardian. Hence, it was held that under Mahomedan Law a girl, who has reached the age of puberty, i.e. in normal course at the age of 15 years, could marry without the consent of her guardian".

According to Mohammedan Law, a girl could marry without the consent of her parents once she attained the age of puberty and she had the right to reside with her husband even if she was below the age of 18. Muslim girl who had attained puberty i.e. 15 years could marry and such a marriage would not be a void marriage. However, she had the option of treating the marriage as voidable, at the time of her attaining the age of majority, i.e. 18 years. It was held that Shumaila should be allowed to live with her husband, in the matrimonial home. The writ petition was disposed of.

**CRIMINAL LAW**

***The power of seeking withdrawal of the prosecution was essentially an executive function and the Special Public Prosecutor, unlike a Judge, was supposed to receive a request seeking withdrawal of the prosecution from the Executive.***

## State of NCT of Delhi v. Abu Salem Abdul Qayoom Ansari

**Citation:** 192 (2012) DLT 687

**Decided on:** 11th May 2012

**Coram:** **V.K.Shali,** J.

**Facts:** Petition was filed under Section 482 Cr.PC. for setting aside the order passed by the Designated Court MCOCA/POTA/TADA (Designated Court), dismissed the application of the petitioner under Section 321 of the Cr.PC. seeking withdrawal of charges under Sections 3(2) and 3(4) of Maharashtra Control of Organised Crime Act (MCOCA) read with Section 120-B of the IPC.

The accused was detained at Portugal and extradited to India on the solemn assurance that he would not be tried and visited by death penalty or imprisonment for a term beyond 25 years. Therefore, he could not be tried for the offence under Sections 3(2) and 3(4) of MCOCA and Section 120-B of the IPC. The Special Public Prosecutor filed an application under Section 321 Cr.PC seeking withdrawal of prosecution of the accused for offences under Sections 3(2) and 3(4) of the MCOCA and Section 120 B IPC. The Designated Court rejected the application.

**Issue:** Whether the seeking the withdrawal of prosecution under Section 3(2) and 3(4) of MCOCA and Section 120-B of the IPC was bonafide.

Whether the public prosecutor had applied his mind to the request seeking withdrawal of the charges.

**Held:** The power of seeking withdrawal of the prosecution was essentially an executive function and the Special Public Prosecutor, unlike a Judge, was supposed to receive a request seeking withdrawal of the prosecution from the Executive. It was after the receipt of such request from the Executive that the Special Public Prosecutor was required to apply his mind and then decide as to whether the case was fit to be withdrawn from the prosecution or not and the reasons for seeking withdrawal of the prosecution could be social, economic or even political.

The withdrawal of the prosecution must be bonafide for a public purpose and in the interest of justice and further while undertaking such an exercise, the Special Public Prosecutor was not required to shift the evidence, which had been gathered by the prosecution as sought to be produced or was produced before the Court.

The Designated Court had failed to appreciate the concern of the Government of India in making a request to the Special Public Prosecutor to seek withdrawal only because of this reason and which had been bonafidely approved by the Special Public Prosecutor. The Court's power was only supervisory in this regard.

Thus, order, which had been passed by the Designated Court, was totally erroneous, bereft of any rationality and was not in consonance with the law. The petitioner was permitted to withdraw the prosecution of the respondent/accused for offences under Sections 3(2) and 3(4) of MCOCA and Section 120-B of IPC.

***Permission of the High Court was not mandatory for proceeding with a complaint case disclosing commission of cognizable or non-cognizable offence, except for, if the complaint was against a Judicial Officer.***

## Minni v. High Court of Delhi

**Citation:** 2012 IV AD (Delhi) 685

**Decided on:** 11th May 2012

**Coram:** S.Ravindra Bhat, **S.P.Garg**, JJ.

**Facts:** In the writ petition, the Petitioner challenged the order of the Additional Chief Metropolitan Magistrate-02, (North) Delhi whereby she was directed to obtain permission of the Court as a condition precedent to proceed with the complaint case filed by her against an officer of Delhi Judicial Service alleging commission of offences punishable under Sections 341/354/499/506 of Indian Penal Code, 1860.

The Trial Court had declined to proceed with the complaint case filed under Section 200 of the Code of Criminal Procedure, 1973 as it contained scandalous allegations against the Judicial Officer and the Petitioner had not obtained sanction/permission of the Court. Subsequently, the Court, on administrative side, declined to grant sanction for registering an FIR against the Judicial Officer observing that the allegations in the complaint case did not disclose commission of cognizable offences warranting registration of an FIR.

**Issue:** Whether the order was premature in light of the fact that the Trial Court had yet to form its opinion to direct registration of an FIR or rejection of the complaint.

**Held:** It was observed that the CrPC, does not mandate that to proceed with a complaint case disclosing commission of cognizable or non-cognizable offence, the permission of this Court was first required. The only bar to protect the independence of the judiciary was that there could be no registration of an FIR against a Judicial Officer without seeking the permission of the Chief Justice of this Court.

The Trial Court had not yet formed its opinion to direct registration of an FIR against the Judicial Officer or rejection of the complaint. Under Section 200 of the CrPC, on receiving the complaint, the Magistrate was required to apply his mind with respect to the allegations, and then proceed at once to take cognizance or order it to be sent to the police station for being registered and for investigation. The Trial Court was yet to decide if it intended to proceed itself under Section 200 of the CrPC or wished to get the case investigated under Section 156(3) of the CrPC. If the Trial Court after seeking status report from the concerned police station ordered registration of an FIR under Section 156(3) of the CrPC, the Petitioner would be required to first seek permission of the

Chief Justice of this Court. If the Trial Court investigated the matter itself, either at the initial stage or after getting the status report under Section 156(3) of the CrPC there would be no requirement of such permission. Thus, the matter was held to be still at an initial stage and it was premature to direct the Petitioner to approach this Court for permission/sanction.

Therefore, since no FIR had been ordered to be registered against the Judicial Officer, the order directing the Petitioner to obtain the permission/sanction of this Court could not be sustained and was thus held liable to be set aside. However, if at a later stage the Trial Court concluded that an FIR was required to be registered, then the order would be kept in abeyance till the Chief Justice of this Court granted the requisite permission. The petition was disposed of.

**CRIMINAL LAW**

***A Director cannot escape from his liability under the Negotiable Instruments Act, 1881 even if he had resigned from the company before the presentation of the dishonoured cheques.***

## Munish Soni v. Ravinder Kumar Jain

**Citation:** 2012 (295) DLT 489

**Decided on:** 23rd May, 2012

**Coram:** **M.L.Mehta,** J

**Facts:** The petition challenged the summoning order passed by the MetropolitanMagistrate registered under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). The complaint was filed against M/s Pearl Appliances Pvt. Ltd. and its Directors, Munish Soni (petitioner) and Dinesh Soni for dishonour of the 4 post dated cheques with remarks “payment stopped by drawer”.

**Issue:** Whether the petitioner could escape liability under the NI Act on account of dishonoured cheques being presented after he had resigned from the company

**Held:** Under Section 139 of the NI Act, a legal presumption was raised in favour of the holder of the cheque that it was given in discharge of an antecedent liability and such presumption could be rebutted only by the drawer of the cheque adducing evidence. Such presumption was raised against the petitioner also. It could be rebutted by him before the trial Court after adducing evidence. It was not open for him to out rightly shrug the liability off at the initial stage.

The liability for the issue of the dishonoured cheque began from the date of issuance of the cheque in discharge of a liability and not on the date of its presentation. Even if it was presumed that the petitioner had resigned from the company before the presentation of the cheques in question, still he could not escape from his liability under the NI Act. The petition was dismissed.

***Unless 'dishonest intention' and 'dominion over property' are established, breach of trust cannot be said to amount to cheating.***

## Wolfgang Reim v. State

**Citation:** 2012 VI AD (Delhi) 568

**Decided on:** 2nd July, 2012

**Coram:** **V.K. Shali,** J.

**Facts:** Amongst the two petitions, while one was filed by five Petitioners-Accused, the other was filed by the sixth Accused person in the same First Information Report (FIR), seeking quashing of the complaint case and the order passed by the Metropolitan Magistrate (MM), New Delhi under Section 156(3) of the Code of Criminal Procedure (CrPC) on the basis of which FIR, under Sections 381/403/406/408/417/420/427/500 Indian Penal Code, 1860 (IPC) read with Section 120B IPC was registered and the consequent proceedings were being taken in pursuance to the same. The Petitioners-Accused challenged the order on the ground that the dispute between the parties was of a civil nature and a criminal colour was attempted to be given to the dispute in order to exert undue pressure on the Petitioners.

As per the Complainant-Company which was engaged in the business of manufacturing and sale of medical equipments and appliances for machines, by developing their own design, drawing, catalogues and brochures, the Petitioners-Accused had in pursuance to a criminal conspiracy, pilfered confidential information regarding a data bank of customers for installations throughout the country in terms of the prospective clients of the Complainant-Company, with the aid of ex employees of the Complainant-Company. The Additional Chief Metropolitan Magistrate (ACMM) on the basis of an application under Section 156(3) CrPC directed registration of an FIR while observing that a matter of such nature could not be investigated or evidence could not be produced by the Complainant itself.

**Issue:** Whether access to confidential information could be considered to be cheating if the person so accused was in proximity or was holding a position to have normally had the access to such information.

**Held:** For an offence of breach of trust to be made out, there must be dominion over the property handed over to the accused persons by the Respondent/Complainant by way of entrustment. Correspondingly, one of the main ingredients in an offence of cheating was that there required to be dishonest intention at the time of the commission of the offence. If there was no dishonest

intention on the part of any of the party at the time when the transaction was entered into and merely because subsequently the transaction had fallen through, as there was a breach of contract, that could not be said to result in commission of an offence of cheating. Secondly for an offence of breach of trust, there required to be dominion over the property handed over to the accused persons by the Respondent/Complainant by way of entrustment.

The entire thrust of the Respondent No.2/Complainant's case in the FIR was that the Petitioners, who were the foreign directors or the employees of the Joint Venture Company, had committed the offence of breach of trust, cheating and a conspiracy by stealing designs, software and data of the Complainant-Joint Venture Company. However, since the Petitioners were established to be the directors and the employees of the company obviously, then it could be said that by virtue of their proximity or holding of a particular position in the Joint Venture Company they were to handle the said products and therefore it could not be said that they only enjoyed dominion over the property or that there was entrustment. Therefore, the two ingredients which were essential to be established in the case of criminal offence prima facie could not be said to be satisfied.

Further, at best there could have been a breach of contract or breach of agreement between the parties and that further no offences pertaining to theft, breach of trust, cheating, defamation or the criminal conspiracy could be said to be made out, even upon a superficial analysis of the FIR. Also, the Complainant had converted a civil dispute into a criminal dispute not just with a mala fide intention but had also indulged in gross abuse of the process of law. Hence, the invocation of Section 156(3) CrPC by the Complainant/Respondent in the instant case was a gross abuse of the processes of law and thus in exercise of the powers under Section 482 CrPC, the complaint and the consequent proceedings arising from it were quashed.

## CRIMINAL LAW

***Case when rested purely on circumstantial evidence, such evidence should satisfy three tests. Firstly, the circumstances from which an inference of guilt was sought to be proved should be cogently and firmly established. Secondly, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and no one else.***

## Ashok Singh v. State

**Citation:** MANU/DE/3150/2012

**Decided on:** 12th July 2012

**Coram:** Sanjiv Khanna, **S.P.Garg**, JJ.

**Facts:** The appellant Ashok Singh challenged the impugned judgment and order on sentence of Additional Sessions Judge by which he was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of Rs.2,000/-.

A dead body with ligature marks on its neck was found lying inside a gunny bag in the fields. At the spot, various articles were seized including hair found stuck in the deceased's finger; letter found in the pocket of the shirt, gunny bag and the plastic 'niwar patti' with which the gunny bag was tied.

**Issue:** Whether the hair strands of the accused during investigation without prior permission of the Magistrate would be admissible or not.

**Held:** Sampling and analysis of hair samples suffered from many limitations; most notably, standard procedures had not been published for collecting, washing and analysing hair samples. CFSL report did not elaborate how the expert came to the conclusion that there was 'similarity' between the questioned hair strands and the specimen hair of the accused. The characteristics like scale-count (number of scales per cm), shaft diameter and its variation from root to tip, medullary index (the ratio of the medulla diameter and the shaft diameter), pigment and shape of the cross-section have not been dealt in the report. It was not certain if the hair strands examined by the expert were full hair with root and tip intact and were representative of the body part/ parts concerned.

It was well settled that when a case rested purely on circumstantial evidence, such evidence should satisfy three tests. Firstly, the circumstances from which an inference of guilt was sought to be proved should be cogently and firmly established. Secondly, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances taken cumulatively should form a chain so complete that there was no escape from

the conclusion that within all human probability the crime was committed by the accused and no one else.

Hence, the prosecution had failed to satisfy the above tests and thus, the impugned judgment could not be sustained and was set aside. The appeal was allowed.

## CRIMINAL LAW

***At the time of considering the application for grant of bail, the Court had to take into account the nature and gravity of the offence, severity and punishment***

## Tarun Kumar Arora v. State

**Citation:** MANU/DE/6353/2012

**Decided on:** 24th July 2012

**Coram:** **Pratibha Rani,** J.

**Facts:** The petitioner moved an application under Section 439 Cr.PC for grant of regular bail under Sections 498 A/304B/34 IPC. The deceased Vividha got engaged to the petitioner, after the engagement, due to alleged misbehaviour by the petitioner and by a written agreement the alliance was put to an end by the parties. Despite that the petitioner and Vividha got married. Later, the deceased started complaining to her family about her maltreatment.

**Issue:** Whether the petitioner could be granted bail under Section 439 Cr.PC .

**Held:** At the time of considering the application for grant of bail, the Court had to take into account the nature and gravity of the offence, severity and punishment. The Court had also to look into the aspect as to whether the accused had roots in the society or there was a chance of his/her fleeing from justice, if released on bail. Not only that, the Court had also to keep in mind as to whether there was any reasonable apprehension of the witnesses being influenced or evidence being tampered with or the course of justice being thwarted, if bail was granted to the accused.

The deceased married the petitioner against the wishes of her parents and thereafter she was not having any social contact with her family. Even otherwise, in such run-away marriages, generally dowry was not an issue.

There was no apprehension of the petitioner fleeing from justice and at the same time witnesses being close family members of the deceased, there was hardly any possibility of tampering with the evidence or influencing the witnesses. The possibility of tampering with the evidence was out of question as necessary evidence had already been collected and charge-sheet filed against the petitioner before the concerned Court. There was no material to show that if released on bail, the petitioner would misuse the liberty granted to him to subvert the justice. Hence the bail application was allowed.

## CRIMINAL LAW

***The marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one.***

# Court on its Own Motion (Lajja Devi) v. State

**Citation:** 2012 (6) AD (Delhi) 465

**Decided on:** 27th July 2012

**Coram:** **Acting Chief Justice**, Sanjiv Khanna, V.K Shali, J.

**Facts:** A letter was addressed and it was alleged by the petitioner that her daughter Ms.Meera, around 14 years of age was kidnapped by Promod, Vinod, Satish, Manoj S/o Shri Raj Mal. The kidnapping was purported to have taken place when Ms. Meera had visited Delhi to meet the brother-in-law of the Complainant. On the basis of the said information, an FIR bearing No.113/2008 under Section 363 IPC had been registered at P.S. Sultanpuri against the aforesaid accused persons. The letter was treated as a writ petition. Hence, three writ petitions were filed.

**Issue:** (i) Whether a marriage contracted by a boy with a female of less than 18 years and a male of less than 21 year could be said to be valid marriage and the custody of the said girl be given to the husband (if he is not in custody)?

(ii) Whether a minor could be said to have reached the age of discretion and thereby walk away from the lawful guardianship of her parents and could refuse to go in their custody?

(iii) If yes, could she be kept in the protective custody of the State?

(iv) Whether the FIR under Section 363 IPC or even 376 IPC could be quashed on the basis of the statement of such a minor that she had contracted the marriage of her own?

(v) Whether there would be other presumptions also which would arise?

**Held:** (i) That the marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one, which would become valid if no steps were taken by such "child" within the meaning of Section 2(a) of the Prohibition of Child Marriage Act, 2006 under Section 3 of the said Act seeking declaration of this marriage as void.

(ii) and (iii) The considerations which were to be kept in mind while deciding as to whether custody was to be given to the husband or not. There would be many other factors which the Court would have to keep in mind, particularly in those cases where the girl, though minor, eloped with the boy (whether below or above 21 years of age) and she did not want to go back to her parents. Question may arise as to whether in such circumstances, the custody could be given to the parents of the husband with certain conditions, including the condition that husband would

not be allowed to consummate the marriage. Thus, held that there could not be a straight forward answer to the second part of this question and depending upon the circumstances the Court would have to decide in an appropriate manner as to whom the custody of the said girl child was to be given.

(iv) Held that if the girl was more than 16 years, and the girl made a statement that she went with her consent and the statement and consent was without any force, coercion or undue influence, the statement could be accepted and Court would be within its power to quash the proceedings under Section 363 or 376 IPC. Here again no straight jacket formula could be applied. The Court had to be cautious, for the girl had the right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. had to be taken into consideration.

(v) No further observations were needed to be made in so far as this question was concerned. Hence, these writ petitions were disposed of.

## CRIMINAL LAW

***The pre- conditions in Section 299 of the Code of Criminal Procedure, 1973 and Section 33 of the Evidence Act, 1872 must be duly established by the prosecution.***

### State v. Punnu

**Citation:** 2012 (195) DLT 496

**Decided on:** 12th September, 2012

**Coram:** **Sanjiv Khanna**, S.P. Garg,JJ

**Facts:** An appeal by the State against the judgment of the trial court in which the respondent had been acquitted for offences under Section 120B/376 (g)/344/506 of the Indian Penal Code, 1860 (IPC) and under Section 5 (1)(C ) of the Immoral Traffic (Prevention) Act, 1956.

The prosecutrix a minor was brought up by her father. After the death of her father, the respondent and his wife (the relatives of the prosecutrix) brought the prosecutrix to live with them. The prosecutrix was raped and was used as a prostitute and the accused used to earn money. Later, she started working as domestic servant.

**Issue:** Whether the pre-conditions stipulated in Section 299 of Cr.PC. and Section 33 of the Evidence Act were duly established by the prosecution?

**Held:** Relying on **Nirmal Singh vs. State of Haryana**, [2000(4) SCC 41] it was held that the pre- conditions in Section 299 of the Code of Criminal Procedure and Section 33 of the Evidence Act must be established by the prosecution and it was only then, the statements of witnesses recorded under Section 299 Cr.PC. before the arrest of the accused could be utilised in evidence in trial after the arrest of such accused only if the persons were dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure was established.

The trial had proceeded in haste after the charges were framed against the appellant. Only one opportunity was granted to the State to produce the prosecutrix. It was also apparent that Section 299 Cr.PC. and Section 33 of the Evidence Act had escaped notice of the trial court and this resulted in a miscarriage of justice. No opportunity or chance was given to the prosecution to move any application or make any further attempt to prove and establish its case.

The trial Court would examine whether the conditions of Section 299 of Cr.PC. and Section 33 of the Evidence Act were satisfied and the statement of the prosecutrix recorded on earlier occasion in the same proceedings could be taken into consideration. The judgment of the trial court was set aside.

## CRIMINAL LAW

***Dying declaration may be acted upon without corroboration. However, caution and care should be exercised as the accused did not get an opportunity to cross-examine the maker of the dying declaration***

## Suraj Chauhan v. State

**Citation:** 195 (2012) DLT 441

**Decided on:** 17th September 2012

**Coram:** **Sanjiv Khanna,** S.P.Garg**,** JJ.

**Facts:** The appellant was convicted under Section 302 of Indian Penal Code 1860 (IPC) for murder of his wife. The prosecution alleged that the appellant had poured kerosene oil on his wife, Pooja and burnt her in their residence and the case was primarily based on dying declaration of his wife.

**Issue:** Whether the appellant had thrown kerosene and burned the deceased?

**Held:** Section 32(1) of the Evidence Act makes dying declarations by the victim admissible in respect of "any of the circumstances of the transaction which resulted in his death". The words "resulted in his death" most certainly included "caused his death" and had much wider scope. A dying declaration may be acted upon without corroboration. However, caution and care should be exercised as the accused did not get an opportunity to cross-examine the maker of the dying declaration. Care had to be taken to ensure that the dying declaration was not tutored. It should not be a product of imagination or prompting. The court should be also satisfied that the deceased was in a fit state of mind to make the statement and had an opportunity to observe and identify the assailant. The statement should be without any rapaciousness or rancor. It should be voluntary.

Hence, that the appellant had been rightly convicted, for committing murder of Pooja by pouring kerosene oil and setting her on fire. His conviction under Section 302 IPC and sentence of life imprisonment and fine were accordingly sustained and upheld. The appeal was dismissed.

## CRIMINAL LAW

***The specimen handwriting and signature of the appellant could have been certainly taken, under Section 73 of the Evidence Act, but after the charge sheet was filed before the court.***

### Raj Kumar v. State

**Citation:** 2012 IX AD (Delhi) 266

**Decided on:** 18th October 2012

**Coram:** **Sanjiv Khanna**, S.P.Garg, JJ.

**Facts:** An application had been filed by the State, under Section 391 read with Section 482 Cr.PC., for taking specimen handwriting of the appellant Raj Kumar, before the Court, for the purpose of comparison with the handwriting on the ransom letters. The appellant Raj Kumar and other co-accused, had been convicted under Section 302/364A/201/120B IPC, for having abducted/ kidnapped Ashok @ Bunty for ransom and for his murder.

**Issue:** Whether the sample finger prints, given by the accused during investigation under Section 4 of the Identification of Prisoners Act, 1920 without prior permission of the Magistrate under Section 5 of the Act, would be admissible or not.

**Held:** There had been considerable debate and controversy surrounding Sections 3,4 and 5 of the Identification of Prisoner's Act,1920 on the moot question of whether or not an investigating officer was entitled to obtain "measurements", of an accused, during investigation, under Section 4 of the 1920 Act, without taking recourse to Section 5 of the 1920 Act.

Division Bench of this Court in **Harpal Singh vs. State**, Crl. Appeal No. 362/2008 decided on 25th May, 2010 and **Satyawan vs. State**, Crl. Appeal No. 34/2001 decided on 9th July, 2009, had held that reports of the handwriting expert should be excluded because the investigating officers, in the respective cases, had not taken the specimen handwriting before a Magistrate and therefore had violated the provisions of 1920 Act. Thus, the view expressed in the above two cases were not correct and therefore, were overruled, and was referred to a larger bench in Crl. Appeal No. 1005/2008 in **Bhupender Singh vs. State** and Crl. A. No. 408/2007 in **Drojan Singh vs. the State**.

Second reference made to a Bench of three Judges, in the case of **Sapan Haldar vs. State**, Crl. A. 804/2001 was pronounced on 25th May, 2012. In the said judgment, the Full Bench referred to Section 2(a) of the 1920 Act, wherein the term "measurement" had been defined as under: - "(a) "measurements" include finger impressions and foot-print impressions." It was held that it was apparent that neither Section 4 nor Section 5 of The Identification of Prisoners Act 1920 would encompass handwriting. Thus, neither a police officer during investigation, nor even a Magistrate could direct a person accused of committed an offence to give his sample signature or

handwriting sample, the former under Section 4 and the latter under Section 5. The power was that of the Court concerned and was to be found in Section 73 of the Indian Evidence Act 1872. It was held that handwriting obtained from a person accused of committed an offence or from any person during investigation, the law was entirely different vis-à-vis finger print impressions and handwriting. With respect to handwriting neither could the investigating officer obtained sample writing nor could even a Magistrate so direct. The Identification of Prisoners Act, 1920 was applicable only to measurements which include finger print impressions but not to handwriting or signatures.

In the present case, it was held that the FSL Report (Ex. PW16/O) would have to be disregarded, as the Investigating Officer had not taken handwriting samples through a court order. Section 311A Cr.P.C. was not applicable, as the charge sheet was filed prior to enactment of the said Section i.e. 23rd June, 2006. The specimen handwriting and signature of the appellant could have been certainly taken, under Section 73 of the Evidence Act, but after the charge sheet was filed before the court. As explained and held, Section 73 of the Evidence Act enabled the Court to direct any person, appearing before the Court, while proceedings were pending, to give specimen signatures or handwriting. This enabled the Court to make a comparison. However, recourse to the said Section was not taken, as it was apparent that the trial court and prosecution felt that the investigating officer had the requisite power.

Power of the appellate court, under Section 391 Cr.P.C., was wide and appellate court could take additional evidence when it considered it necessary, for reasons to be recorded. The underline principle was that justice should be done. In the present case, additional evidence was not a disguise for retrial and did not result into a change in nature of the case. Evidence was collected, by the prosecution, but for technical and legal reasons the same had to be ignored. The legal principle itself was highly debatable and subject matter of different opinions.

The appellant Raj Kumar should appear, before the trial court, and should be asked to submit samples of his handwriting for the purpose of comparison. Thereafter, a fresh FSL Report, with regard to ransom notes, be obtained and filed. The court, for the purpose of comparison could ask the accused to furnish his signatures, handwriting etc. However proceedings should be pending before the court at the said time, when such direction, under Section 73, was issued.

Hence, the application was allowed. The appellant Raj Kumar would appear before the trial court and would be asked to give his specimen handwriting. The said specimen signature and handwriting and the original ransom notes would be sent for comparison, before the Government Examiner of questioned documents, Simla who shall submit the report, before the trial court within one month.

***The evidence of child witness cannot be rejected out-rightly. It should be evaluated more carefully and with greater circumspection because a child was susceptible to be swayed by others and could be tutored.***

## Amrit Sharma v. State

**Citation:** 194 (2012) DLT 388

**Decided on:** 18th October 2012

**Coram:** Sanjiv Khanna, **S.P.Garg**, JJ.

**Facts:** The petitioner was convicted for committing offences punishable under Sections 363/366/376 (2) (F) IPC and sentenced to undergo imprisonment for life with fine. A girl aged 3-4 years was lying unconscious and was admitted at Hospital. The child was unfit to make the statement; on the other hand, friend of the victim disclosed that the rickshaw puller had committed rape on her.

An Appeal was filed to challenge the impugned decision of Trial Court that the appellant was the perpetrator of the crime. The accused was arrested on the identification of material witnesses including a child witness and prosecutrix herself.

**Issue:** Whether the appellant was the perpetrator of the crime or whether he had been falsely implicated.

**Held:** Child witness had no motive to falsely name and identify the accused. She was a material witness as she had seen the prosecutrix in the company of the accused soon before the incident.

Under Section 118 Evidence Act, no specific age had been prescribed and a child of any age could be a competent witness. Under Section 119 Evidence Act, even a deaf and dumb could be a competent witness. There was no fixed age on which a child should have arrived in order to be competent as a witness. Competency was determined at the time the child testified rather than at the time the incident occurred.

It held that the evidence of child witness cannot be rejected out-rightly. It should be evaluated more carefully and with greater circumspection because a child was susceptible to be swayed by others and could be tutored. Small children could make false identification not because they would want to depose and state false facts but because they would not be guided and be fully aware and conscious of the adverse consequence and the effect of making false positive identification.

After the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23rd June, 2006 it had become necessary for the prosecution to go in for DNA Test facilitating the prosecution to prove its case against the accused. However, in this case, the Investigating Officer did not resort to the procedure of getting the DNA Test or analysis. This lapse was not fatal as factum of rape was not under challenge and on the basis of testimony of witnesses and prosecutrix; the order on conviction and sentence was upheld. Therefore, the appeal was dismissed.

**CRIMINAL LAW**

***Validity of notification dated 18th November 2009 issued by the central government under the Narcotics Drugs and Psychotropic Substances Act, 1985 clarifying that for determining 'commercial quantity', the entire mixture and not just the pure drug content has to be considered.***

## Abdul Mateen v. Union of India

**Citation**: 2012 (194) DLT425

**Decided On**: 6th November 2012

**Coram: Badar Durrez Ahmed** , Veena Birbal, JJ.

Narcotics Drugs And Psychotropic Substances Act, 1985 (NDPS Act) – Sections 3, 18, 21(c)

**Facts:** An alleged recovery of 500 grams of heroin was made from the petitioner who was a citizen of Afghanistan. He was facing trial in the case registered under Section 21(c) of the NDPS Act. The Forensic Science Laboratory report indicated that the substance allegedly recovered comprised of 44.5% diacetylmorphine (heroin). The Petitioner contended that if this percentage was taken into account, then, the actual weight of heroin in the alleged recovery would be 222.5 grams which would be less than the commercial quantity of 250 grams specified under notification S.O. 1055 (E) dated 19.10.2001 and the punishment could be for a term which could extend to 10 years with fine which could extend to Rs. 1 lakh. If the petitioner's contention was rejected then the alleged recovery would be of a commercial quantity and the punishment would be not less than 10 years and may extend to 20 years with fine which cannot be less than Rs. 1 lakh and may extend to Rs. 2 lakh.

Notification S.O. No. 2941 (E) dated 18.11.2009 was issued by the Ministry of Finance, Department of Revenue, Government of India in terms of which the entire mixture and not just the pure drug content has to be considered. This was challenged on the ground that it is ultra vires the NDPS Act. Reliance was placed on the decision of the Supreme Court in *E. Micheal Raj v. Intelligence Officer Narcotic Control Bureau 2008 (5) SCC 161*. It was submitted that while the legislature could have provided that the mixture of heroin and neutral substances should be considered in totality, the Central Government could not do so by issuing a notification. It was submitted that the Central Government could have done so only if the legislature had empowered the Central Government to do so.

**Issue**: Whether the Central Government had the power to bring out such a notification?

**Held**: While the case of a mixture of two drugs and combination of more than one drug and psychotropic substance was specifically dealt with under Sl. No. 239 of the notification dated 19.10.2001, there was no provision for dealing with the situation where the mixture was of just

one narcotic drug or psychotropic substance with neutral material. It is in the context of the notification dated 19.10.2001 prior to its amendment in 2009 that the decision in *E. Micheal Raj* (supra) had been rendered. Now a specific note (i.e. note 4) has been added by virtue of the notification dated 18.11.2009 so as to include the case of a narcotic drug or psychotropic substance mixed with a neutral material. The distinction between S.L. No. 239 and note 4 is that while S.L. No. 239 required that the mixture was of one narcotic drug with another narcotic drug or psychotropic substance which may or may not also include neutral material, Note 4 widens the scope by introducing a mixture of one drug or psychotropic substance with a neutral substance. It is not at all necessary that the mixture must contain more than one drug or psychotropic substance along with neutral material for the said Note 4 to apply.

The Central Government has been given the power to specify, by a notification in the official gazette, the quantity representing the small quantity or commercial quantity in relation to each narcotic drug and psychotropic substance. A preparation containing 'any' diacetylmorphine would be regarded as an opium derivative. The word "preparation" includes reference to a mixture of one narcotic drug with a neutral material. The Central Government had the power to specify the quantities shown in column 5 and 6 of the Table appended to the notification dated 19.10.2001 with reference to the entire mixture and not just its pure drug content. This is so because all preparations which contain diacetylmorphine would be opium derivatives which, in turn, would be manufactured drugs and that would lead to the said expression as used in Section 21 of the NDPS Act. The petition was dismissed.

**CRIMINAL LAW**

***The court should consider the balance sheet which consisted of the aggravating and mitigating circumstances, while dealing with the reference for death sentence.***

## State v. Navin Ahuja

**Citation:** MANU/DE/5590/2012

**Decided on:** 20th November, 2012

**Coram:** S.Ravindra Bhat, **Pratibha Rani**, J.

**Facts:** An appeal was filed challenging the judgment and the order of the Trial Court which awarded death penalty to the appellant for committing murder of his wife and his two children. The death reference was made to the High Court for confirmation. The contents of the disclosure statement made under Section 313 Cr.PC were challenged.

**Issue:** Whether the statement made under Section 313 Cr.PC could have formed as a basis of conviction.

Whether the case was of "rarest of rare" category which deserved the award of death penalty.

**Held:** The contents of the disclosure statement made under Section 313 Cr.PC regarding financial distress and huge liability to be the motive for crime for the appellant, it was held that he was under no financial stress as to commit the murder of his own wife and children. Thus, the prosecution failed to prove the motive which could not be corroborated through any oral or documentary evidence as well as circumstantial evidence.

The entire case of the prosecution was based on circumstantial evidence. The circumstances so proved must unerringly point to the guilt of the accused; they must form a chain of evidence on reasonable ground for conclusion of the innocence of the accused.

Held that it was a well thought and pre-planned murder and the view of the trial court that the evidence on record which conclusively established the guilt of the appellant excluding every hypothesis consistent with his innocence. All circumstances alleged were proved beyond reasonable doubt as also all the links in the chain of circumstances and that every hypothesis of the accused's innocence was ruled out; there was no possibility of anyone except the appellant having committed the crime.

The court commuted death sentence to life imprisonment observing that the court expected to exhibit sensitivity in the matter while awarding a sentence especially if a case involved the question of death penalty. The manner in which the crime was committed, the weapons used and the brutality or the lack of it were some of the considerations which must be present in the mind of the court. The court should consider the balance sheet which consisted of the aggravating and

mitigating circumstances, while dealing with the reference for death sentence. Motiveless and mindless crime indicated grave and aggravating circumstance. Lack of criminal record, the age at the commission of the crime, the mental condition, anxiety, character of the offender and probability of the offender's rehabilitation, reformation and readaptation in society were mitigating circumstances. Thus, the court should not ignore or overlook the mitigating circumstances.

Even though the heartless nature of the crime was shocking, but, it cannot be said that the appellant was irredeemable as a human being. Hence, the sentence of death imposed by the Trial Court was not confirmed; it was accordingly reduced to life imprisonment, (i.e. rest of his life). The appeal was allowed in part.

## CRIMINAL LAW

***Even in the absence of agreement as to means for which purpose was to be accomplished, once the illegal act was completed on the basis of the criminal conspiracy, that was sufficient and the agreement as to the means need not always proved by clinching evidence.***

## State v. Mohd.Naushad

**Citation:** MANU/DE/5597/2012

**Decided on:** 22nd November, 2012

**Coram:** **S.Ravindra Bhat**, G.P.Mittal, JJ.

**Facts:** The matter pertained to a bomb blast on the evening of 21st May 1996 in Lajpat Nagar. The incident resulted in 13 deaths and 38 injuries, besides extensive loss of properties. One of the witnesses informed about the incident to the police and thus, FIR was lodged and investigation was conducted. The Additional Sessions Judge convicted A3, A5, A6 and A9 under Section 120-B, Section 411 and Section 302/307/436 read with Section 120-B Indian Penal Code, 1860 (IPC) and Section 5 of the Explosives Substances Act, 1908.

While A9 was awarded life imprisonment, the trial Court sentenced that A3, A5 and A6 to death and referred the sentence to the High Court for confirmation. The appellants questioned their conviction.

**Issue:** (i) Whether the appellants were guilty of the offence for which they were charged.

(ii) Whether the case was of "rarest of rare" category which deserved the award of death penalty.

**Held:** With respect to issue (i) there were ten circumstances alleged by the trial court against the appellants which were held to be proved but, only 3 were upheld by this court. The court referred to **Yash Pal Mittal V. State of Punjab** (1977 (4) SCC 540) and held that even if there was no actual link between the accused or there was no connection between the acts said to have been performed by each accused, one could not so easily escape, if the conspiracy is proved on the basis of the agreement and the determination to commit the offence. Even in the absence of agreement as to the means by which the purpose was to be accomplished, once the illegal act was completed on the basis of the criminal conspiracy, that was sufficient and the agreement as to the means need not always proved by clinching evidence.

Thus, the charge of criminal conspiracy under Section 120-B IPC was established.

With respect to issue (ii) the prosecution lapsed with regard to various issues, such as lack of proof which connected some of the accused with the bomb incident, failure to hold TIP of

articles and the accused, not recording the statements of vital witnesses. This reflected the casual approach and lackadaisical manner of the prosecution in the conduct of the appeals and the death reference were highlighted. In death references where the State seeks confirmation of the sentence it was the duty of the Standing Counsel to appear and argue instead of Additional Public Prosecutor. In matters of liberty, the weakness of the State surely could not be an excuse for lowering time tested standards, especially in serious crimes, where the accused stood to forfeit their life, or, the most part of it.

The prosecution failed to establish that A-3 (Mohammed Naushad) himself planted or participated in the actual explosion of the bomb but he was proved as a conspirator to have aided in the conspiracy to cause bomb explosion which resulted in immense loss of life and property. Hence, this case did not fall into the “rarest of rare” category. Consequently, the award of death penalty to A-3 could not be confirmed. A-3 was sentenced to life imprisonment for the offence punishable under Section 120B read with Section 302 IPC.

The conviction and sentence of A-5 and A-6 were set aside; they were acquitted of the charges. Their appeals were allowed.

The conviction and sentences as against A-9 were sustained and his appeal was dismissed.

# HUMAN RIGHTS

**HUMAN RIGHTS**

***Section 20 of the Unlawful Activities (Prevention) Act, 1967- Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities cannot be incriminated merely on the basis of their membership.***

## Abdul Baki Mandal v. State

**Citation:** MANU/DE/1175/2012

**Decided on:** 27th February 2012

**Coram:** **Suresh Kait**, J.

**Facts:** The appellant was held guilty and convicted for the offence punishable under Section 20 of the Unlawful Activity (Prevention) Act, 1967. There was a 'Fidayeen' attack by militants at Ram Janam Bhumi-Babri Masjid site in Ayodhaya in which five militants were gunned down by the Security Forces. One mobile phone was recovered from the possession of one of the deceased militant. To work out the conspiracy and the outfits involved in the 'Fidayeen' attack, a team was constituted. From the technical surveillance, it was revealed that one Abdul Baki @ Raju, resident of West Bengal used to ferry the militants from Bangladesh to their safe hideouts in Delhi and vice versa and that one Amir, resident of Assam was also instrumental in providing hideouts to the Jaish-e-Mohammad (JeM) militants in Delhi and adjoining areas. The accused was alleged to have made a disclosure statement in which he was supposed to have admitted that he was a member of JeM. Allegedly, three identity cards were recovered, one belonging to the Appellant which showed him to be a member of JeM.

**Issue:** Whether membership of a banned organization by itself was enough to convict an accused.

**Held:** Mere membership of a banned organisation cannot incriminate a person unless he was proved that he resorted to the acts of violence or incited people to imminent violence, or did an act intended to create disorder or disturbance of public peace by resort to imminent violence. Admittedly, there was no prior criminal case against the Appellant. It held that those who joined an organization, but did not share its unlawful purposes and who did not participate in its unlawful activities surely posed no threat.

Held that the statutory provisions could not be read in isolation, but had to be read in consonance with the Fundamental Rights guaranteed by our Constitution. It was well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, made it reasonably clear that the sections aimed at rendering penal only such activities as would

be intended, or had a tendency, to create disorder or disturbance of public peace by resort to violence.

Thus, the appellant had already undergone 6 ½ years out of 7 years awarded by the Trial Court , this Court acquitted the Appellant of all the charges and allowed his appeal.

## HUMAN RIGHTS

***Right to form Associations or Unions under Article 19 (1) (c). Members of the Union had right to demonstrate and could use legitimate means to achieve their legitimate demands but they cannot use illegal or illegitimate means to achieve any of their demands whether legitimate or illegitimate.***

## G4S Security Services (India) Pvt. Ltd. v. G4S Krantikari Karamchari Union

**Citation:** 2012 IV AD (Delhi) 249

**Decided on:** 29th March 2012

**Coram:** **A.K. Pathak**, J.

**Facts:** Plaintiff, a private limited company incorporated under the Indian Companies Act, 1956 engaged in the business of providing security and other services to its clients, , filed a suit for permanent injunction, praying that the Defendant, its office bearers, members, agents, supporters, workers etc. be restrained from shouting slogans, holding dharnas, demonstrations, meetings, creating nuisance, obstruction, using abusive language, picketing, intimidating etc. within the radius of 100 meters from the gates/boundary wall of the registered office/Delhi region office of the Plaintiff, its Corporate office and the residences of its Regional President and Regional Managing Director and also from blocking the ingress and egress of the Plaintiff's employees, officers, staff, workers, visitors and vehicles in any manner to the aforesaid premises.

**Issue:** Whether labour unions could be granted allowance to use illegal or illegitimate means to achieve any of their demands, legitimate or illegitimate.

**Held:** While the employees and unions of workers had a right to demonstrate for the purpose of achieving their legitimate demands, however they did not have any right to use abusive language or commit violence or prevent ingress and egress of other employees, officers or visitors of such organization. Members of the unions can use legitimate means to achieve their legitimate demands but they cannot use illegal or illegitimate means to achieve any of their demands whether legitimate or illegitimate. Keeping in mind the fact that tempers run high when demonstrations of such nature are organized by workers' union, the employees and officers who may be willing to work, as also the visitors may be targeted and manhandled in order to prevent them from entering in the premises of such an organization and it may also become difficult to control the mob which may even make the property of the employer a target during such demonstrations/dharnas. Thus, the Plaintiff was justified in being apprehensive of breach of peace and law and order in case such demonstrations, dharnas, etc. were allowed to be held in the vicinity of the premises of the organization where the workers were employed and unless such unlawful activities were curbed, personal safety of employees, officers and visitors ran the risk of getting jeopardized. The Plaintiff was held to be entitled to a decree of permanent injunction.

## HUMAN RIGHTS

***Right against cruel, inhuman or degrading treatment or torture - Onus lies on the Accused to rebut the presumption of Section 113B of the Indian Evidence Act, 1872 relatable to Section 304 Indian Penal Code, 1860.***

### State, Government of National Capital Territory of Delhi, New Delhi v. Puran Chand

**Citation:** 2012 IV AD (Delhi) 81

**Decided on:** 11th April 2012

**Coram:** **M.L. Mehta,** J.

**Facts:** The revision petition was preferred by the State under Section 397 Code of Criminal Procedure,1973 (CrPC) read with Section 482 CrPC challenging the order passed by the Additional Sessions Judge, whereby even though a prima facie case was made out against the accused persons under Section 498A Indian Penal Code, 1860 (IPC), the accused persons/ Respondents were discharged of the offences under Sections 304B/34 IPC, on the ground that the Trial Court had failed to appreciate the facts and evidence on record and had also erred in observing that there were no allegations of any cruelty or harassment of the deceased soon before her death.

**Issue:** Whether on the basis of material on record, a prima facie case against the accused persons can be made under Section 304B IPC or not .

**Held:** According to well settled principles of law, where the death of a woman was caused by any burns or bodily injury or occurred otherwise than under normal circumstances within 7 years of marriage and it was shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry, such death shall be called dowry death and punishable under Section 304B IPC. The legislature in its wisdom had used the word "shall" thus, making a mandatory application on the part of the Court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with or demand of dowry.

It was unlike the provisions of Section 113A of the Evidence Act where discretion had been conferred upon the court to raise presumption of abetment of suicide by a married woman. The word used in this Section 113A was 'may' which gave discretion to the Court to raise presumption or not depending upon the circumstances of the case. Therefore, in view of the above, onus lied on the accused to rebut the presumption of Section 113B relatable to Section 304 IPC.

The deceased had died under abnormal circumstances as specific allegations were made against the husband and in-laws of the deceased that she was subjected to cruelty which led her to taking the extreme step. Almost identical statements of a number of relatives of the deceased recorded under Section 161 CrPC clearly showed that the deceased had been ill-treated for no other reason but demand for dowry. All the requirements of Section 113B of the Indian Evidence Act were established by the prosecution beyond any reasonable doubt to draw a presumption against the accused persons to invoke Section 304B IPC. Therefore, the order of the Trial Court was modified to the extent that while maintaining the charge under Section 498A against the accused persons, they were also to be charged under Section 304B IPC.

## HUMAN RIGHTS

***Access to Justice - The Courts have an inherent power to control and prevent frivolous and vexatious litigation and litigants.***

### Deepak Khosla v. Montreaux Resorts Pvt. Ltd.

**Citation:** MANU/DE/1772/2012

**Decided on:** 24th April, 2012

**Coram:** **Sanjiv Khanna**, R.V. Easwar, JJ.

**Facts:** The Single Judge directed that the Appellant, who appeared both in person and on behalf of co-litigants, would not appear in any Court either in person or as an attorney of a third party, as he did not have inherent right to appear and argue. The Appellant was directed to be medically examined to ascertain whether he was suffering from any mental disorder. An Intra Court appeal was filed against the said order.

**Issue:** Whether the Court was competent, and was it permissible in law to direct/injunct a self-represented litigant or a pro se litigant from appearing in person or for co-Suitors. If yes, then under what circumstances.

**Held:** That the dispensation of justice is a serious matter. There are two parties before the court; one who approaches and the one who defends. Courts of law, in a democratic system governed by Rule of Law, were regulated by practices in form of statutory provisions as well as customs and traditions**.** The hearing before the Court had to be conducted in an orderly and punctilious manner. Although the right of audience in Court was a potent and cherished one, it was subject to control and supervision of the Court and could be withdrawn if it was repeatedly and persistently misused and abused. Habitual refusal even after a warning to obey and abide by the basic fundamental canons or rules of appearance or audience, or when it amounts to willful or deliberate misconduct, could not and should not be tolerated, otherwise the adjudicatory institution itself would suffer. Similarly, baseless, frivolous or vexatious filing put the machinery of justice under burden and put the opposite party to needless expense and delay. The judicial or Court time is precious and it is the duty of the parties also to ensure that judicial time is not diverted and spent on pointless, repetitive, frivolous or vexatious litigation and that the justice due to other litigants is not delayed. A pro se litigant may be under a disadvantage as regards being unfamiliar with the art and skills of advocacy and rules of procedure. At the same time, the role of the judges is important as they have to ensure that there should be a fair hearing. There are illiterate indigent litigants and those without adequate resources and means. Such persons, when opposed Advocates or Senior Advocates, possibly feel that they are at a disadvantage and are discriminated in a system, where they have been pitted against experts. This is perceived as an adequate justification or support for their conduct when appearing in person and for indulging in repetitive litigation even after failure. However, in respect of a quarrelsome, belligerent and combative litigant who was persistently found to indulge in intimidation, making gross

imputations and casting aspersions causing breakdown or frequent adjournments of the judicial proceedings, the inherent power to control the proceedings in an appropriate manner was required to be exercised by the Court.

Held that the real dilemma lied in balancing the two rights/ principles; Self- represented litigant's right to address and the inherent power of the court to deny a pro se vexatious litigant from appearing or addressing the court or from filing vexatious, frivolous or repetitive litigation. The said power or inherent right should be exercised with caution, with restraint and sparingly. The power is very potent and harsh and, therefore, the exercise of discretion has to be with great care and caution. The harsher the sanction, the more is the need and requirement that the discretion should be justified. It should be exercised in an extreme situation. The exercise of discretion in such cases must, and should, meet the following test:

(1) The pro se litigant had indulged in repetitive or frivolous or vexatious litigation or has acted as a vexatious litigant.

(2) The sanction could be imposed if and only if there was no other way the pro se litigant/litigation could be dealt with. First an attempt should be to explain and warn the litigant. Then, cost could be imposed and only if thereafter the abuse continued, appropriate and mandated sanction order could be passed.

(3)The nature and type of sanction imposed should be commensurate with and should be proportionate to the abuse. It should not be excessive and disproportionate.

Held that the power of the Court to regulate the right to appear and address arguments was distinct from the power of contempt.

The last part of Clause 8 of the Letters Patent Act, 1865 was applicable only to High Courts and not to the District Courts. It merely permitted a Suitor to appear and act on his own behalf and on behalf of a co-Suitor. The said right in no way affected the inherent power of the Court to ensure that the Court proceedings were conducted in an orderly and proper manner and that frivolous, repetitive or vexatious litigations were not brought to Court and the Court's time was not wasted by a party acting in an obstructive manner to prevent continuation of the legal proceedings.

In view of the aforesaid, it held as under and issued the following directions:-

(i) The High Court had inherent power distinct and separate from power of contempt to injunct/sanction vexatious or frivolous litigation, vexatious/habitual litigants, contumelious litigant and could issue appropriate directions, including prohibiting the said litigant from appearing and arguing matters in person and for others and from initiating or filing proceedings, except with permission of the Court.

(ii) The two directions given in the impugned order dated 4th January, 2012 were set aside.

(iii) Order dated 4th January, 2012 would be treated as a show cause notice. The learned single Judge would examine other allegations, which had been made by the

respondents and would issue a supplementary show cause notice, if deemed appropriate and necessary.

(iv) The appellant would be entitled to respond and file reply to the show cause notice. He would not be orally heard or given audience. He could, however, appoint an advocate to appear for him and make oral submissions.

(v) Till the decision, there would be stay of the pending proceedings or initiation of new proceedings before the High Court and in the District Courts. This direction would not apply and prevent Deepak Khosla from filing writ petitions under Article 226 and moving any application for bail/anticipatory bail, if required and necessary. Deepak Khosla, however, would not be permitted and allowed to appear for any third party till the decision. This would not apply to any proceedings before the Supreme Court or in any courts outside Delhi. In case immediate orders were required, the parties (including the respondents) could approach the learned single Judge for appropriate directions or permission to continue with the pending proceedings or initiate new proceedings.

(vi) An order disposing of the show cause notice would be passed expeditiously as soon as possible. In such matters, it was apparently desirable that the proceeding should be concluded as soon as possible as it caused prejudice to the parties in litigation.

Hence,the appeal and all pending applications were accordingly disposed of.

***Article 14- Right of Persons -Making persons ineligible for furlough merely on the basis of the nature of crime committed by them, amounts to discrimination and arbitrariness and cannot be said to have any rational nexus.***

## Dinesh Kumar v. Govt. of NCT of Delhi

**Citation:** 2012 (129) DRJ 502

**Decided on:** 1st May, 2012

**Coram:** **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ

**Facts:** In all these writ petitions, challenge was to the constitutional validity of Clause 26.4 of the Parole/Furlough: Guidelines, 2010 (Guidelines), which stipulated that any prisoner who had been convicted for an offence of robbery, dacoity, arson, kidnapping, abduction, rape and extortion was not eligible for grant of furlough, provided for under Clause 24 of the Guidelines. The Petitioners challenged this clause on the ground that it was arbitrary and unreasonable and not based on any intelligible differentia and hence violative of Article 14 of the Constitution as also the fundamental right to life and liberty under Article 21 of the Constitution.

**Issue:** Whether the commission of a serious crime by itself be treated as an embargo to the grant of furlough, as was done vide Clause 26.4 of the Guidelines. Or it should be the propensity of such a convict to commit a crime again which had to be judged from some other standards like the good conduct of the prisoner in the prison.

**Held:** The purpose of the aforesaid Guidelines was to regulate applications for parole and furlough and to ensure that they were considered in a fair and transparent manner. Regarding Clause 26.4 of the Guidelines which stipulated the eligibility conditions for grant of furlough and excluded convicts of certain grave and serious offences, the Court opined that it may be farfetched and illogical to generalise the underlying presumption that the convict specified as ineligible under Clause 26.4, would have become a ‘habitual offender’ and was incapable of being reformed. Furthermore, if such a convict was rendered totally ineligible for furlough, it would negate the very purpose of grant of furlough viz affording him opportunity to maintain links with the society; solving personal and family problems; breathing fresh air for at least some time; and the opportunity of becoming a good citizen.

However, by no means was it suggested that convicts of the offences specified in Clause 26.4 were to be granted furlough. If this category was not excluded, at the most, they would become eligible for consideration. The Court held that the authorities may be extra cautious and have stricter standards in mind while granting a furlough to an inmate convicted of a serious crime and/or whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of the offence. Reports from the counsellors, psychiatrists and other concerned officials of Jail who were closely monitoring him could also be obtained for this purpose. However, their exclusion per se making them ineligible at the outset even from

consideration to obtain furlough was discriminatory and arbitrary and it could not have any rational nexus.

Clause 26.4 of the Guidelines in the present form did not stand judicial scrutiny and amounted to snatching the rights of the ineligible convicts to at least have their cases considered for grant of furlough. The provision was struck down as unconstitutional and infringing Article 14 as well as Article 21 of the Constitution. The appropriate authority was directed to make suitable amendments while redrafting Clause 26.4 of the Guidelines. However, having regard to the nature of offences specified therein, there may be strict and stringent conditions attached for consideration of cases of such convicts for grant of furlough. These writ petitions were disposed of in the aforesaid terms.

## HUMAN RIGHTS

***Article 14 – Right to Equality - The basis of the separate justice system for juveniles was that the adolescents were different from adults, less responsible for their transgressions and more amenable to rehabilitation.***

## Court on its own Motion v. Dept. of Women and Child Development

**Citation:** 2012 (4) AD (Delhi) 641

**Decided on:** 11th May, 2012

**Coram:** **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ

**Facts:** In this letter petition, a very serious issue touching upon the rights of juvenile in conflict with law was raised. Relying upon information received under the Right to Information Act, 2005 it was contended that proper care was not taken by the police authorities at the time of arrest of an accused to find out whether the concerned person was a juvenile or adult, and irrespective of this fact, were lodged in Tihar Jail and subjected to the hardship of Adult Criminal Justice System. It was also contended that not only did the police authorities ignore proof of age of juveniles produced by their families but also that the juveniles were shifted to Observation Homes only when enquiry was conducted determining the age of the accused persons.

**Issue:** Whether there was a need for specific and imminent directions/guidelines to be issued to all the appropriate authorities, while dealing with juvenile offenders.

**Held:** Lodging of juveniles along with hardened adult criminals would result in drastic implications on the physical and mental well being of a juvenile offender and that the adult prison facilities were lacking the resources to address the psychological or social issues of a juvenile offender as part of his rehabilitation. Trying minors in adult Courts and sentencing them in adult prison was totally against the object and purpose of the JJ Act. If the youth was sent to an adult prison, then it was more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive. Juveniles confined within an adult prison may not have social services they need but with constant access to criminal minds, there were more chances of them becoming a recidivist. The basis of the separate justice system for juveniles was that the adolescents were different from adults, less responsible for their transgressions and more amenable to rehabilitation.

Lodging of juveniles in the adult prison clearly amounted to violation of their fundamental right guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act) apart from adverse psychological impact on these children. Hence the Court felt the need to issue specific and detailed directions to all the appropriate authorities for compliance so as to obviate the recurrence of the incarceration of children inconflict with law, in the jails or their subjection to

the Adult Criminal Justice System and also for proper verification of those lodged in Jail who appeared to be minors. The court issued the following directions:-

(i) Those inmates in jail about whom investigations were made by the teams of NCPCR /DLSA etc. and who were suspected to be juvenile as per initial investigations, should be kept by the Supdt., Tihar Jail separately, insulated and segregated from all other prisoners. They should be produced in batches before the JJB. Further enquiry into the matter to conclusively determine their age should be conducted by the JJB. Those who were ultimately found to be juvenile should be shifted from the jail to observation home by the JJB.

(ii) Teams of NCPCR /DLSA should visit Tihar Jail. Those who appeared to be juvenile, procedure for ascertainment of their ages should also be followed in a similar manner as aforesaid by producing them before the JJB. These teams, should document the cases and forward the list to jail authorities as well as JJB.

(iii) The investigating officers, while making arrest should reflect the age of the prisoner arrested in the Arrest Memo. It would be the duty of the Police Officer to ascertain the said age by making inquiry from the prisoner arrested if such prisoner was in possession of any age proof etc. In other cases if prisoner, from appearance, appeared to be juvenile and the police officer had belief that the prisoner was a juvenile, he should be produced before the JJB instead of criminal court.

(iv) The police authorities shall introduce "Age Memo" on the line of "Arrest Memo". A concrete and well thought scheme in this behalf was needed to be evolved by Special Juvenile Police Unit to address the concern. The Special Juvenile Police Unit was directed to evolve such a scheme and place before us on the next date of hearing.

(v) When a young person was apprehended/arrested and he was produced before the Magistrate, it would be the duty of the Magistrate also to order ascertainment of age of such a person.

While conducting the inquiry, the court issued the following directions:-

(i) I.O. should ask the person if he had been a part of formal schooling at any point of time and if the child answered in affirmative the I.O. should verify the record of such school at the earliest.

(ii) If the parents of the person were available, this inquiry should be made from them. The I.O. should ask the parents if they had got the date of birth of the child registered with the MCD or gram pradhan etc. as provided under law.

(iii) Where no such document was found immediately and the I.O. had reasonable grounds to believe that such document might be existing he should produce such person before Board and should seek time for obtaining these documents.

(iv) An inquiry of previous criminal involvement of the juvenile should necessarily be made with the effort to find if there was any past declaration of juvenility. For this the

police should also maintain data of declaration of juvenility. The inquiry conducted in each case shall be recorded in writing and shall form a part of investigation report in each case where a child claims his age up to 21 years irrespective of whether he was found a juvenile or an adult.

(v) Special Juvenile Police Unit should set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.

(vi) An advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs/JWOs. Such advisory/Circular/Standing Order should also include the procedure which needed to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.

(vii) Where the police officer arrested a person as adult and later on such person turns out to be a juvenile, DCP concerned should undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

For the Magistrates, there should be a special course/training programme conducted by the Delhi Judicial Academy. The programme should be devised by the Delhi Judicial Academy in consultation with DLSA and the Delhi Judicial Academy should start orientation programme on these lines within one month.

Further guidelines and directions were issued which were to be kept in mind for taking suitable measures were as follows:-

A. **For Commissioner of Police**

(i) Commissioner of Police should issue a Standing Order clarifying the roles and responsibilities of police officers, Investigation Officers, Inquiry by DCPs in case of lapse, Juvenile or Child Welfare Officers, SHOs and DCPs in view of the provisions of JJ Act and Rules.

(ii) Commissioner of Police on receipt of half yearly report should pass necessary directions to give effect to the recommendations and to address the concerns as may be raised in such reports. An Action Taken report of the same should also be forwarded to the Juvenile Justice Committee of this Court.

B. **For Deputy Commissioners of Police, In-charge of Districts concerned**

(i) Incase of a complaint to the DCP that Police was not taking notice of juvenility of any offender and was refusing to take on record the documents being provided to suggest juvenility and instead treating a child as adult; it should be the duty of DCP concerned to do an immediate inquiry into such complaint. Such inquiry should be completed within 24 hours and if the complaint turned out to have merit and truth, DCP concerned should make orders to the concerned police officers to immediately take corrective steps and should also initiate

disciplinary action against erring police official.

(ii) In cases where any action was taken against an erring police officer, a quarterly report of the same containing the nature and reasons of such lapse and details of action taken should be furnished by the DCP concerned to the concerned JJB having jurisdiction over that district along with a copy to the Nodal Head of Special Juvenile Police Unit for their record and intimation.

(iii) DCPs should ensure that their subordinate police officers don't show children as adults took all necessary steps to verify the age of accused persons and were in overall compliance with the provisions of JJ Act & Rules and also ensure that all the police stations under their jurisdiction put in place the required setup and required notice boards etc.

(iv) Any lapse having been committed on age investigation as intimated by JJB's, DCP concerned should institute an inquiry and take such action as may be required or appropriate. An action taken report shall be submitted to the JJB by the DCP concerned within a month from the receipt of such intimation.

C. **For Nodal Head/ In-Charge of Special Juvenile Police Unit**

(i) Nodal Head of Special Juvenile Police Unit should cause quarterly (once in three months) inspection of all the police stations through an official not below the rank of ACP.

(ii) A report should be prepared by such ACPs of such visits documenting the best practices or shortcoming noticed at the police stations and should be submitted to the Nodal Head of SJPU within 10 days of such visit.

(iii) Nodal Head of SJPU should make a report on half yearly basis and should submit it to the Commissioner of Police with recommendations. A copy should also be submitted to Juvenile Justice Committee of this Court.

(iv) District Level units of SJPU should on a regular basis monitor the functioning of police stations of that district vis a vis implementation of JJ Act and Rules and direction of this Court and should provide necessary guidance and trainings to the police.

D. **For the Officer In Charge of the Police Station**

(i) It should be the duty of the Officer Incharge of the Police Station to ensure that police officers of his or her police station had taken all measures to ensure that proper inquiry or investigation on the point of age had been carried out and that all the required formalities, procedure had been carried out and required documents had been prepared in this regard.

(ii) He should also ensure that a notice board , prominently visible , in Hindi, Urdu and English language informing that persons below the age of 18 years were

governed under the provisions of JJ act and cannot be kept in police lock up and jails and were not to be taken to the Adult Criminal Courts. Such notice Board should also contain the names and contact details of Juvenile Welfare Officers, Probation Officers and Legal Aid Lawyers of DSLSA.

E. **For the Investigating Officer or any other police officer acting under the instruction of Investigation Officer**

(i) Every Police officer at the time of arresting/apprehending young offenders should be under obligation to inform the alleged offender about his right to be dealt with under the provisions of Juvenile Justice Act if he was below 18 years of age and a proper counselling should be done on the point of age.

(ii) IO or any other police officer affecting the arrest/ apprehension should also prepare the Age Memo. A copy of such Age Memo should also be delivered to the alleged offender and his parents/ guardians/ or relative who had been intimated about his arrest.

(iii) At the time of forwarding the copy of FIR to the Ilaka Magistrate within 24 hours, IO should be under duty to file the preliminary age memo along with the FIR in case arrest /apprehension was made before forwarding the FIR.

(iv) On completion of age inquiry, to be done within one week of arrest/apprehension, the completed age memo be filed before the court concerned.

(v) At the time of first production of an offender who is between 18 to 21 years of age before the Court, IO or the Police officer responsible for producing the offender before the Court, should produce alleged offender, along with a copy of the FIR and age memo before the Secretary of respective District Legal Services Authority, irrespective of whether the alleged offender was being represented by a legal aid lawyer or not.

(vi) At the time of first production of offender before Court or JJB, it should be the duty of IO to ensure that parents or relatives of such offender were duly informed about (1) date, (2) time and (3) particulars of the court of such production and a copy of such intimation should be produced before the Court at the time of first production.

F. **For the Juvenile Welfare Officers (JWOs)**

(i) To obtain the copy of age declaration done by JJB or CWC and to forward such copy to the Special Juvenile Police Unit for entry into the record and to obtain a certificate that such entry had been done with SJPU and a copy of such certificate should be deposited to the JJB or CWC concerned.

(ii) To ensure that any offender at the Police station who might be a juvenile was not treated as adult and if he noticed any such incident, he should immediately

report to the Officer in Charge of the Police Station concerned with an intimation to District SJPU.

(iii) Any police officer approached by any person alleging that some one who was a juvenile and had been treated as an adult by any officer of that Police Station, it should be the duty of such police officer to record the statement of such complainant and then to register a DD Entry to this effect immediately and take up the issue with the Juvenile Welfare Officer or Investigation Officer concerned or the Officer In Charge concerned and cause corrective steps to be taken by such police officer. JWO should furnish a copy of such DD Entry to the aggrieved person/ complainant. A report about such complaint, copy of DD entry, details of action taken or proposed to be taken should be forwarded to the District SJPU within 24 hours of receiving such complaint.

G. **For Tihar & Rohini Jails**

(i) "Visitors‟ Boards" prescribed in Rule 12 and 13 of the Delhi Prison (Visitors of Prisons) Rules, 1988, should specifically mention in their reports the status of young offender found in the jails and also recommend follow up action to be taken up by the Jail Authorities.

(ii) The Jail Authorities would not get the medical examination test done at the first instance on its own. Such cases would be immediately intimated to the DSLSA with complete details such as FIR No, Court name, next date of hearing and other required details to enable DSLSA to take appropriate follow up action.

(iii) If Jail authorities were of the view that any person brought in the Jail may be a probable juvenile, it should send a letter addressed to the Court Concerned within 24 working hours, requesting for an age inquiry to be conducted. Copy of such letter should also be attached with the Warrant of the prisoner. It should be the prerogative and responsibility of the Court concerned to initiate an age inquiry as per law and make a decision accordingly. Jail authorities could maximum bring the fact of possible juvenility to the notice of Courts by way of a proper communication.

(iv) Every Jail should display at a prominent place in all the wards, canteen and visitors‟ area noticeboards informing inmates that persons who age was below 18 years at the time of commission of offense were not supposed to be in Jail and were entitled to kept in children Homes and be treated under the Provisions of Juvenile Justice Act and be dealt with by the Juvenile Justice Board which make efforts for reformation and rehabilitation.

(v) Jail authorities / Superintendent should make available the details of each inmate, as maintained by them, to the panel visitors of NCPCR, which should include but not be limited to name, address, age on record, previous history of

institutionalization in jails , medical reports.

H. **For Juvenile Justice Boards**

(i) It should conduct proper age inquiry of each child brought before it as per the procedure laid down in Rule 12 of the Delhi Juvenile Justice ( Care & Protection of Children) Rules 2009.

(ii) When the case of a juvenile was transferred from the adult court to the JJB and the juvenile was transferred from jail to the concerned Observation Home, the JJB should interact with the juvenile and record his/her version on how he came to be treated as an adult. If from the statement of the juvenile and after appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall intimate the concerned DCP.

(iii) It should determine the age of a person by way recording the evidence brought forth by the Juvenile and the prosecution/ complainant and the parties should be given an opportunity to examine, cross examine or re-examine witnesses of their choice.

(iv) The parties should be given copies of the medical age examination report immediately by the JJBs. The parties should have the right to file objection thereto, including the right to cross-examine before final age determination was done.

(v) Before commencing the age inquiry, a notice thereof shall be served upon the complainant by the JJB or the Court Concerned, however the the age inquiry would be concluded within the stipulated time limit of one month.

(vi) To ensure that every juvenile in whose respect age inquiry was being conducted was being represented by a Counsel and in those cases, where there was no lawyer present before the Board at the time of hearing of case; Board should provide a Legal Aid Lawyer.

(vii) It should give copy of age declaration to JWO to get it recorded with Nodal Officer of SJPU and certified copy of the age declaration should be mandatorily given to the juvenile or his/ parents.

I. **For National Commission for Protection of Child Rights (NCPCR)**

(i) It should constitute a panel of at least ten (10) persons to make visits to various jails in Delhi, Members of such panel could visit various jails as per the schedule drawn in consultation with/ intimation to the Jail Authorities.

(ii) It should make arrangements to pay for a reasonable honorarium and incidental expenses on travel etc. to the members of this panel whose services would be obtained by NCPCR from time to time.

(iii) It should provide training and orientation to all the members of the panel on JJ

Act, method of Age inquiry, jail rules & discipline, and method of filling up the proforma etc.

J. **For Legal Aid Lawyers & Delhi Legal Services Authority**

(i) Legal Aid Lawyers from Delhi State Legal Services Authority should visit Jails and intimate the details of inmates who may be juveniles to the Secretaries of the respective District Legal Services Authorities.

(ii) Superintendent of each jail shall intimate to the DSLSA on a fortnightly basis about the names, case details, court and date of next hearing of those inmates who may be juveniles.

K. **For the Courts concerned**

(i) Alleged offender produced before a court, not being the JJB or CWC, it should on the very first date of production question the offender about his/her age and should inform such offender about the benefits of the JJ Act. If the offender claimed or appeared to be 18-21 years, it should direct the IO to produce the alleged offender at the Office of the Secretary of District Legal Services Authority. The Court should by way of an inquiry under Rule 12 of the Delhi JJ Rules 2009 satisfy itself that the offender is not a juvenile.

(ii) If the court concerned was of the view that the offender produced before it may be a juvenile, it should order for immediate transfer to Observation Home and production of such offender before the JJB concerned.

(iii) If a claim of juvenility under Section 7A of the JJ Act was raised before any court at any point of time, the Court should conduct an age inquiry as per the Rule 12 of the Delhi JJ Rules 2009 and if a person was established to be a juvenile, should order for same day transfer to Observation Home ( if offender is below 18 years) and to the Place of Safety ( if the person had become an adult).

L. **For the Government Hospitals and Medical Boards**

(i) All Government Hospitals should constitute Medical Boards to carry out medical age examinations and should give report not later than 15 days.

(ii) All the members of medical Board should give their individual reports based on their respective examinations and the same should be mentioned in the report , based on which the Chairperson should give the final opinion on the age within a margin of one year.

M. **Guidelines for Legal Services in Juvenile Justice Institutions**

(i) When a child was produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer, juvenile and his/her family/parents should be made to understand that it was their right to free legal aid.

(ii) JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing. It should mention in its order that legal aid lawyer had been assigned and name and presence of legal aid lawyers was mentioned.

(iii) JJB should make sure that not a single juvenile"s case goes without having a legal aid counsel. It should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.

(iv) In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.

(v) Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.

(vi) Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel and should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.

Hence, the Writ petition was disposed of in the aforesaid terms.

***Right to Information- The law requires suo moto disclosure by the public authority 'while' formulating important policies and not 'after' formulating them under the Right to Information Act, 2005.***

## Union of India v. G. Krishnan

**Citation:** MANU/DE/2128/2012

**Decided on:** $17^{th}$ May 2012

**Coram:** **Vipin Sanghi,** J.

**Facts:** In the petition, the Petitioner, challenged the order passed by the Central Information Commission (CIC), whereby the second appeal preferred by the Respondent, was allowed, and a direction was issued to the Petitioner to provide an attested copy of the summary of the Western Ghats Ecology Expert Panel (WGEEP) Report and the Report on the Athirappilly Hydro Electric Project, Kerala to the Respondent before the stipulated date. It had further been directed that the WGEEP Report be placed on the website of the Ministry of Environment and Forest (MOEF). A further direction was also issued to the MOEF to publish all reports of commissions, special committees or panels within 30 days of receiving the same, unless it was felt that any part of such report was exempted under the provisions of Section 8(1) and Section 9 of the Right to Information Act, 2005 (RTI Act).

**Issue:** Whether the WGEEP Report was required to be disclosed to the public and civil rights' groups before the related policies were formulated under Section 4(1)(c) of the RTI Act.

**Held:** It was not the Petitioner's contention that the WGEEP report was not the final document prepared by the panel headed by Prof. Madhav Gadgil in relation to the Western Ghats Ecology and Athirappilly Hydro Electric Project, Kerala. And so far as the said panel was concerned, they had tendered their Report to the MOEF. Thus, it was for the MOEF, in consultation with the affected States, to act on the said Report. It was for the MOEF and the affected States to either accept/reject, wholly or partially, or with conditions/qualifications/modifications the said Report, by taking into account the interests of all stakeholders, and by taking into account the relevant laws, including those applicable in relation to the protection of environment and ecology and if there were found to be any shortcomings or deficiencies in the said Report, the said factor would go in the decision making process of the MOEF but it could not be said that such shortcomings would render the Report as not final.

Further, contrary to how the consultative and participatory process with the civil rights' groups should have been, the Petitioner appeared to try and withhold the WGEEP Report so as to curb the civil groups' participation in the debate that was required to take place before the policy was formulated. There was no reason for the Petitioner to entertain the apprehension that the

disclosure of the said Report, at the present stage, would impede the decision making process and also adversely affect the scientific or economic interests of the States.

The scientific, strategic and economic interests of the States could not be at cross purposes with the requirement to protect the environment in accordance with the Environment Protection Act, 1986, which was a legislation framed to protect the larger public interest and for promotion of public good. Policies framed with the sole object of advancing the scientific and economic interests of the States, but in breach of the States' obligations under the Environment Protection Act, and other such like legislations, would be vulnerable to challenge and may eventually not serve the purpose for which such a policy was framed. Therefore, while formulating its policies, the State was held to be obliged to take into account all the relevant laws and the statutory obligations which it was obliged to fulfill, lest the policy of the States became one sided and imbalanced. The petition was accordingly dismissed.

## HUMAN RIGHTS

***Every person had a right to a fair trial by a competent Court in the spirit of the right to life and personal liberty.***

## Sunil Arora v. State

**Citation:** 192 (2012) DLT 88

**Decided on:** 16th July 2012

**Coram:** **Pratibha Rani,** J.

**Facts:** Revision petition filed by the petitioner under Section 397 read with Sections 401 and 482, Cr.P.C., for setting aside the order passed by the Metropolitan Magistrate in case FIR No. 433/2008 thereby framed a charge against the petitioners under Sections 452 /506 /34, IPC. The grievance of the petitioner was that MM had ordered for framing of charge under Sections 452 /506 /34, IPC without even providing any legal aid to the petitioners and without giving an opportunity of being heard before passing the order framing the charge for committing the alleged offences under Sections 452 /506 /34, IPC.

**Issue:** Whether an order for framing of charges under Sections 452/506/ 34 IPC was liable to be set aside as the petitioner was not given an opportunity to be heard.

**Held:** Every person had a right to a fair trial by a competent Court in the spirit of the right to life and personal liberty. The object and purpose of providing competent legal aid to undefended and unrepresented accused persons was to see that the accused gets free and fair, just and reasonable trial of charge in a criminal case.

It was apparent from the proceedings of the learned Trial Court that when the case was listed for framing of charge, the Court after marking the presence of the parties passed the impugned order framing charge and did not even care to ask them whether they were in a position to engage a Counsel to defend them and if not, to ensure that legal aid was provided by appointing an Advocate to defend them. It was the mandatory duty of the Court to ensure free and fair trial after giving an opportunity of being heard.

Since, the petitioners were not in a position to engage a Counsel and did not get the opportunity of being heard, the impugned order framing charge against the petitioners was hereby set aside.

**HUMAN RIGHTS**

***Infliction of corporal punishment upon children was inhuman and against Article 21 of the Indian Constitution.***

## Kishor Guleria v. Director of Education Directorate of Education

**Citation:** 195 (2012) DLT 189

**Decided on:** 3rd July 2012

**Coram:** **Suresh Kait,** J.

**Facts:** In the petition, the petitioner was seeking in setting aside the order passed by Presiding Officer of Delhi School Tribunal whereby the appeal filed by the petitioner had been dismissed. The petitioner was working as a Physical Education Teacher (PET) in the New Era Public School as placed in PGT Grade. The petitioner punished the students of the school by way of slapping them on their body which tantamount to corporal (physical) punishment.

**Issue:** Whether the petitioner breached sub-clause (xvii) of Clause (n) of Sub Rule 1 of Rule 123 of DSER, 1973.

**Held:** The High Court/Tribunal while exercising the power of judicial review could not normally substitute its own conclusion on penalty and impose some other penalty, unless it shocks the conscience of the High Court/Tribunal, in exceptional and rare cases where the disciplinary authority had imposed punishment without cogent reasons in support thereof.

The validity of any administrative order or statutory discretion was to be applied to find out if the decision of the disciplinary authority was illegal or suffered from any procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him.

The position in our Country in administrative law, where no fundamental freedoms as aforesaid are involved, was that the Courts/Tribunals would only play a secondary role while the primary judgment as to reasonableness would remain with the executive or administrative authority. Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocked the conscience of the Court/Tribunal, there was no scope for interference.

Infliction of corporal punishment upon children was inhuman. The Preamble to the Convention on the Rights of the Child reflected that the State parties thereto, recognized the importance of

the Child considered the necessity of bringing up the child in the spirit of the ideals proclaimed in the Charter of the United Nations, particularly in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The Preamble recalled that in the Universal Declaration of Human Rights, the United Nations had proclaimed that childhood was entitled to special care and assistance.

The Convention under Article 37(a) declares that no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Articles 39 and 40 recognised the right of the child to be protected from any form of neglect, exploitation, or abuse, or any other form of cruel, inhuman or degrading treatment or punishment and to be treated in a manner consistent with his sense of dignity.

The UNICEF's report and studies have shown that spanking of the children result in undesirable effects. They become withdrawn and exhibit anti-social behavior. Fear of corporal punishment discouraged regular attendance at schools and increases dropout rates. This obviously hampered and obstructed education and affected their right to education, which was a fundamental right flowing from Article 21 of the Indian Constitution. The corporal punishment to a school child was barred by law. Any act of awarding corporal punishment to children, not to be taken lightly by the disciplinary authority. The punishment awarded to the petitioner in the present case was hence not disproportionate vis-à-vis charge levelled against him. The petition was dismissed.