



# Supreme Court Yearly Digest 2022

## Criminal Major Acts

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## **Code of Criminal Procedure 1973**

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

### **Section 2 (wa) - “victim”**

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

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

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

### **Section 11 - Courts of Judicial Magistrates**

**Code of Criminal Procedure, 1973; Sections 11, 12, 15, 16, 17, 19 and 35** - The Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be exercised under the Cr.PC

are concerned - The Chief Metropolitan Magistrate in addition, may have administrative powers. (*Para 10-10.1 R.D. Jain and Co. v. Capital First Ltd., 2022 LiveLaw (SC) 634 : AIR 2022 SC 4820*)

### **Section 24 - Public Prosecutors**

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

### **Section 25A - Directorate of Prosecution**

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

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

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

### **Section 41 - When police may arrest without warrant**

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

**Code of Criminal Procedure, 1973; Section 41 - Scope** - Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this

provision. (Para 21 -23) **Satender Kumar Antil v. Central Bureau of Investigation**, [2022 LiveLaw \(SC\) 577](#) : AIR 2022 SC 3386 : (2022) 10 SCC 51

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

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

#### ***Section 41A - Notice of appearance before police officer***

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

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

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

**Code of Criminal Procedure, 1973; Section 53A** - The lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted

to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder - Even if such a flaw had occurred in the investigation in a given case, the Court has still a duty to consider whether the materials and evidence available on record before it, is enough and cogent to prove the case of the prosecution. (Para 28) **Veerendra v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 480](#) : AIR 2022 SC 2396 : (2022) 8 SCC 668

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

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

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

**Section 88 - Power to take bond for appearance**

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

**Section 107 - Security for keeping the peace in other cases**

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

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

**Code of Criminal Procedure, 1973; Chapter VIII; Section 107,117** - The provisions of Chapter VIII are merely preventive in nature and are not to be used



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

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

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

#### **Section 122 - Imprisonment in default of security**

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

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

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

**Code of Criminal Procedure, 1973; Section 125** - The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute

- Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children - The object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. (Para 9-13) **Anju Garg v. Deepak Kumar Garg**, [2022 LiveLaw \(SC\) 805](#) : 2022 (14) SCALE 234

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

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

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

**Section 154 - Information in cognizable cases**

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

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

**Code of Criminal Procedure, 1973; Section 154** - If multiple First Information Reports by the same person against the same accused are permitted to be registered in respect of the same set of facts and allegations, it will result in the accused getting entangled in multiple criminal proceedings for the same alleged offence - The registration of such multiple FIRs is nothing but abuse of the process of law - The act of the registration of such successive FIRs on the same set of facts and allegations at the instance of the same informant will not stand the scrutiny of

Articles 21 and 22 of the Constitution of India. (Para 12) **Tarak Dash Mukharjee v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 731](#)

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

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

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

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

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

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

### ***Section 157 - Procedure for Investigation***

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

### ***Section 159 - Power to hold investigation or preliminary inquiry***

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

### ***Section 161 - Examination of witnesses by police***

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

**Code of Criminal Procedure, 1973; Section 161** - Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography statements - A confessional statement given by an accused before a Police officer is inadmissible as evidence - Statement given by an accused to police under Section 161 of CrPC is not

admissible as evidence. (Para 13) **Munikrishna @ Krishna v. State by Ulsoor PS**, [2022 LiveLaw \(SC\) 812](#)

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

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

**Section 164 - Recording of confessions and statements**

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 167(2) - Limb of Article 21** - A duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect.

Such a right cannot be taken away even during any unforeseen circumstances. (Para 34) **Satender Kumar Antil v. Central Bureau of Investigation**, [2022 LiveLaw \(SC\) 577](#) : AIR 2022 SC 3386 : (2022) 10 SCC 51

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

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

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

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

**Section 173 - Report of police officer on completion of investigation**

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

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

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

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

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

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

#### **Section 188 - Offence committed outside India**

**Code of Criminal Procedure, 1973; Section 188** - The Section gets attracted

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

### **Section 190 - Cognizance of offences by Magistrates**

**Code of Criminal Procedure, 1973; Section 190(1)(b)** - Appeal against High Court judgment which upheld the order passed by Magistrate summoning the appellant who was not named in police report - Dismissed - The name of the accused/appellant had transpired from the statement made by the victim under Section 164 CrPC - No error in the order of the Magistrate. **Nahar Singh v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 291](#) : (2022) 5 SCC 295

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

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

**Code of Criminal Procedure, 1973; Section 190(1), 204** - Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as



there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process. **N.S. Madhanagopal v. K. Lalitha**, [2022 LiveLaw \(SC\) 844](#)

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

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

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

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

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

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

### **Section 199 - Prosecution for Defamation**

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

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

### **Section 202 - Postponement of issue of process**

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

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

### **Section 204 - Issue of Process**

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

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

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

***Section 205 - Magistrate may dispense with personal attendance of accused***

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

**Code of Criminal Procedure, 1973; Sections 205 (2), 251 and 317 - Negotiable Instruments Act, 1882; Section 138** - The judgment in *M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.*: (2001) 7 SCC 401 does not deal with a claim for blanket exemption from personal appearance - Observations therein essentially co-relate with the facts of the said case - In appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel - Such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence. ***Mahesh Kumar Kejriwal v. Bhanuj Jindal, 2022 LiveLaw (SC) 394***

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

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

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

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

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

***Section 215 - Effect of Errors***

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

***Section 220 - Trial for more than one offence***

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

***Section 226 - Opening case for Prosecution***

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

### **Section 227 - Discharge**

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

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

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

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

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

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

### **Section 228 - Framing of Charge**

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

**Code of Criminal Procedure, 1973; Section 228** - The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial - Scope of Court's powers in respect of the framing of charges - Referred to *Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547 et al* - The trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (Para 21-27) **Ghulam Hassan Beigh v. Mohammad Maqbool Magrey**, [2022 LiveLaw \(SC\) 631](#) : AIR 2022 SC 5454

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

**Section 235 - Judgment of acquittal or conviction**

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

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

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

**Section 239 - When accused shall be discharged**

**Code of Criminal Procedure, 1973; Section 239 - Scope and ambit** - No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless- The word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be

considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever. (Para 60 - 74) **State v. R. Soundirarasu**, [2022 LiveLaw \(SC\) 741](#) : AIR 2022 SC 4218

**Section 293 - Reports of certain Government scientific experts**

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

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

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

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

**Section 309 - Power to postpone or adjourn proceedings**

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

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



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

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

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

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

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

***Section 313 - Power to examine the accused***

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

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

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

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

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

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

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

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

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

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

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

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

### **Section 354 - Language and contents of judgment**

**Code of Criminal Procedure, 1973 - Section 354(3) - Death Sentence** - The evolution of legal position and norms for dealing with the question of sentencing and the connotations of 'special reasons' for awarding death sentence discussed

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

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

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

#### ***Section 362 - Court not to alter judgment***

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

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

#### ***Section 372 - No appeal to lie unless otherwise provided***

**Code of Criminal Procedure, 1973; Section 372 and 378** - The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right- The victim has not to pray for grant of special leave to appeal- The victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like subsection (4) of Section 378 Cr.P.C. in the case of a complainant and in a case where an

order of acquittal is passed in any case instituted upon complaint. (Para 10.2) **Joseph Stephen v. Santhanasamy**, [2022 LiveLaw \(SC\) 83](#) : AIR 2022 SC 670

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

### **Section 374 - Appeals from Convictions**

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

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

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

### **Section 378 - Appeal in case of Acquittal**

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

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

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

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

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

### **Section 386 - Powers of the Appellate Court**

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

**Code of Criminal Procedure, 1973; Section 386 (e)** - Rape convict kept in prison beyond the period of sentence - When a competent court, upon conviction, sentenced an accused and in appeal, the sentence was modified upon

confirmation of the conviction and then the appellate judgment had become final, the convict can be detained only up to the period to which he can be legally detained on the basis of the said appellate judgment - Compensation to the tune of Rs.7.5 Lakhs to be paid by the State holding that it is vicariously liable for the act/omission committed by its officers in the course of employment. **Bhola Kumhar v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 589](#)

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

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

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

***Section 394 - Abatement of Appeals***

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

***Section 397 - Calling for records to exercise powers of revision***

**Code of Criminal Procedure, 1973; Section 397 - 401** - The revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the

facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure. (Para 76)

**State v. R. Soundirarasu**, [2022 LiveLaw \(SC\) 741](#) : AIR 2022 SC 4218

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

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

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

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



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

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

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

### **Section 401 - High Court's powers of revision**

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

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

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

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

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

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

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

***Section 427 - Sentence on offender already sentenced for another offence***

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

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

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

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

***Section 432 - Power to suspend or remit sentences***

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

**Code of Criminal Procedure, 1973; Section 432** - Remission or pre-mature release has to be considered in terms of the policy which is applicable in the State where the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this Court - The appropriate Government can be either the Central or the State Government but there cannot be a concurrent jurisdiction of two State Governments under Section 432(7) CrPC. (Para 13, 14) ***Radheshyam Bhagwandas Shah @ Lala Vakil v. State of Gujarat***, [2022 LiveLaw \(SC\) 484](#) : AIR 2022 SC 2371 : (2022) 8 SCC 552

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

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

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

#### **Section 436 - In what cases bail to be taken**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail** - The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial

interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail. **X v. Arun Kumar C.K.**, [2022 LiveLaw \(SC\) 870](#)

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

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

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

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

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



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

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

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 439 - Bail** - A recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general

observation that "the facts and the circumstances" have been considered - Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. (Para 13) **Ms. Y v. State of Rajasthan**, [2022 LiveLaw \(SC\) 384](#) : AIR 2022 SC 1910 : (2022) 9 SCC 269

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

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

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

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

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 439 - Bail -** No accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt

down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution. (Para 40) **Jagjeet Singh v. Ashish Mishra @ Monu**, [2022 LiveLaw \(SC\) 376](#) : AIR 2022 SC 1918 : (2022) 9 SCC 321

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

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

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

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

**Code of Criminal Procedure, 1973; Section 439 - Bail** - Rape accused granted bail by the High Court observing that allegations are matter of trial and there is no need of custodial trial - Even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. The same may have some relevance while considering the application for anticipatory bail - Relevant aspects which are

required to be kept in mind while considering the bail application are: Seriousness of the offence alleged; material collected during the investigation; statement of the prosecutrix recorded under Section 161 of Cr.PC, etc.- HC directed to reconsider the bail application afresh. **X v. State of Karnataka**, [2022 LiveLaw \(SC\) 972](#)

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 439** - While granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and 18 circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may

make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. **Centrum Financial Services v. State of NCT of Delhi, 2022 LiveLaw (SC) 103 : AIR 2022 SC 650**

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

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

#### **Section 440 - Amount of bond and reduction thereof**

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

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

#### **Section 446 - Procedure when bond has been forfeited**

**Code of Criminal Procedure, 1973; Section 446** - Discretionary power to the Court to remit any portion of the penalty mentioned and enforce payment in part only, after recording its reasons for doing so - Even when a person fails to show sufficient cause as to forfeiture of the bond amount, the Court is not bound to direct

payment or recovery of the entire bond amount. The Court can exercise its discretion and remit some portion of the bond owing to the nature of the offence, status and position of the person, and having regard to other facts and circumstances of the case or when the amount of bond is unduly excessive. (*Para 13 Istkar v. State of Uttar Pradesh*, [2022 LiveLaw \(SC\) 1000](#))

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

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

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

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

**Code of Criminal Procedure, 1973; Section 468** - If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the

control of the complainant or the prosecution. (Para 14) **Kamatchi v. Lakshmi Narayanan**, [2022 LiveLaw \(SC\) 370](#) : AIR 2022 SC 2932

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

**Section 482 - Saving of inherent power of High Court.**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 482** - Inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the Section, the

Court is duty bound to exercise its jurisdiction under Section 482 of the Cr.P.C. when the exercise of such power is justified by the tests laid down in the said Section. Jurisdiction under Section 482 of the Cr.P.C. must be exercised if the interest of justice so requires. (Para 35) **Sunita Palita v. Panchami Stone Quarry**, [2022 LiveLaw \(SC\) 647](#) : AIR 2022 SC 3548 : (2022) 10 SCC 152

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

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

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

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

**Palita v. Panchami Stone Quarry, [2022 LiveLaw \(SC\) 647](#) : AIR 2022 SC 3548 : (2022) 10 SCC 152**

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 482** - Scope and powers of High Court discussed - The inherent power of the High Court under Section 482 of the Cr.P.C. is wide and can even be exercised to quash criminal proceedings relating to non-compoundable offences, to secure the ends of justice or to prevent abuse

of the process of Court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 of the CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case. (Para 26-37) **Daxaben v. State of Gujarat**, [2022 LiveLaw \(SC\) 642](#) : AIR 2022 SC 3530

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 482** - The ground that "no useful purpose will be served by prolonging the proceedings of the case" cannot be a good ground and/or a ground at all to quash the criminal proceedings when a clear

case was made out for the offences alleged. (Para 6.3) **Satish Kumar Jatav v. State of U.P.**, [2022 LiveLaw \(SC\) 488](#) : 2022 (8) SCALE 284

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

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

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

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

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

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

**Code of Criminal Procedure, 1973; Section 482** - While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice - Courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct

nature of the law. (Para 28) *Hasmukhlal D. Vora v. State of Tamil Nadu*, [2022 LiveLaw \(SC\) 1033](#)

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

### **Evidence Act, 1872**

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

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

**Evidence Act, 1872** - The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion

on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it. (Para 17) **Rajesh Yadav v. State of U.P.**, [2022 LiveLaw \(SC\) 137](#) : 2022 (3) **SCALE 135**

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

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

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

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

### ***Dying Declaration***

**Evidence Act 1872 - Dying Declaration** - When can be relied upon - Conditions  
- It could thus be seen that the Court is required to examine as to whether the dying



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

### **“Matters”**

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

### **Chance Witness**

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

### **Classification of Evidence**

**Evidence Act, 1872 - Classification of Evidence** - Circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence,

substantive evidence, testimonial evidence, etc. ***Rajesh Yadav v. State of U.P., 2022 LiveLaw (SC) 137 : 2022 (3) SCALE 135***

### ***Definition of “Proved”***

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

### ***Extra - Judicial Confession***

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

### ***Hostile Witness***

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

### ***Ocular Evidence***

**Evidence Act, 1872 - Ocular Evidence** - Principles for appreciation of ocular evidence in a criminal case - In assessing the value of the evidence of the

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

### ***Related Witness***

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

### ***Section 3 - Interpretation-clause.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Evidence Act, 1872; Section 27 - Conditions necessary for the applicability of Section 27** - Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed

that he used it. (Para 64-68) **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 843 : AIR 2022 SC 5273](#)

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

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

**Evidence Act, 1872; Section 27** - Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the

person who had concealed it, least it can be presumed that he used it. (Para 45-46) **Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra, 2022 LiveLaw (SC) 596**

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

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

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

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

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

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

**Evidence Act, 1872 - Section 32 - Dying Declaration** - Principles as to the circumstances under which a dying declaration may be accepted, without corroboration: (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid

down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. **State of U.P. v. Veerpal**, [2022 LiveLaw \(SC\) 111](#) : (2022) 4 SCC 741

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

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

**Evidence Act, 1872; Section 32 - Dying Declaration** - Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case - The fact that the dying declaration is not in the form of questions and answers does not impact either its admissibility or its probative value - There is no rule mandating the corroboration of the dying declaration through medical or other



evidence, when the dying declaration is not otherwise suspicious. (Para 41-44, 50-52) **State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai**, [2022 LiveLaw \(SC\) 890 : AIR 2022 SC 5393](#)

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

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

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

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

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

**Section 45 - Opinions of Experts**

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

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

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

**Section 65B - Admissibility of electronic records**

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

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

**Section 106 - Burden of proving fact especially within knowledge**

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

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

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

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

**2022 SC 1967 : (2022) 7 SCC 443**

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

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

***Section 114 - Court may presume existence of certain facts***

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

***Section 129 - Confidential communications with legal advisers***

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

***Section 145 - [Cross-examination as to previous statements in writing](#)***

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

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

### ***Section 154 - Question by party to his own witness***

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

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

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

### **Penal Code, 1860**

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

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

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

**Penal Code, 1860** - Deceased was addicted to alcohol and used to constantly torment, abuse and threaten the accused (appellant) who was his brother - On the night of the occurrence, the deceased had consumed alcohol and had told the accused to leave the house and if not, he would kill the accused - There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final

and immediate provocation - There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires - The acts of provocation on the basis of which the accused caused the death of his brother were both sudden and grave and that there was loss of self-control - Conviction modified from Section 302 IPC to Section 304 Part I IPC. ***Dauvaram Nirmalkar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 650](#) : AIR 2022 SC 3620

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

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

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

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

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

**Penal Code, 1860 - Section 34** - Section 34 IPC comes into operation against the co -perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not

necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. (Para 18) **Krishnamurthy @ Gunodu vs State of Karnataka**, [2022 LiveLaw \(SC\) 220](#) : (2022) 7 SCC 521

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

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

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

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

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

**Penal Code, 1860; Section 34** - Co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be

formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention. **State of Rajasthan v. Gurbachan Singh**, [2022 LiveLaw \(SC\) 1028](#)

### **Section 45 - "Life"**

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

### **Section 96 - Things done in private defence**

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

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



### ***Section 120B - Punishment of criminal conspiracy***

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

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

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

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

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

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

### ***Section 124A - Sedition***

**Penal Code, 1860; Section 124A - Sedition** - All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused -

If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India - We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration. (Para 8) **S.G. Vombatkere v. Union of India**, [2022 LiveLaw \(SC\) 470](#) : (2022) 7 SCC 433

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

***Section 148 - Rioting, armed with deadly weapon***

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

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

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

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

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

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

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

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

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

**Penal Code 1860; Section 221** - Essential ingredients for invoking Section 211, I.P.C. are that the complaint must have falsely charged a person with having committed an offence; the complainant, at the time of giving the complaint must have known that there is no just or lawful ground for making a charge against the

person, this complaint must have been given with an intention to cause injury to a person. [Para 90] **Himanshu Kumar v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 598](#)

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

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

### **Section 294 - Obscene acts and songs**

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

### **Section 300 - Murder**

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

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

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

**Penal Code, 1860; Exception 1 to Section 300** - Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken - First, whether there was an intervening period for the passion to cool and for the accused to regain dominance

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

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

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

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

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

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

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

**Penal Code, 1860; Section 300, 302 - Murder case** - Trial Court convicted accused for alleged murder of his wife, four children and sentenced him to death - Allahabad High Court dismissed his appeal and confirmed death sentence - Allowing the appeal, the Supreme Court acquitted the accused - None of the pieces of evidence relied on as incriminating by the courts below, can be treated as incriminating pieces of circumstantial evidence against the accused. **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 843 : AIR 2022 SC 5273](#)

**Penal Code, 1860; Section 300, 302** - Whether the accused had an intention to commit the murder of the deceased or not would depend upon a combination of

several factors. There cannot be a straight-jacket formula for deciding whether there was intention to commit the murder or not. (Para 7-8) **Yatendrasingh Ajabsingh Chauhan v. State of Maharashtra**, [2022 LiveLaw \(SC\) 664](#)

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

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

### **Section 302 - Punishment for Murder**

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

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

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

**Penal Code, 1860; Section 302 - Brutal Murder - Sentencing** - In appropriate cases, imposing a fixed term sentence creates a possibility for the convict to re-integrate into society after serving his/her sentence. It strikes a delicate balance between the victims' plea for justice - This fixed term sentence can only be by the

High Court or this Court and not by the trial Court - If there is any circumstance favouring the accused such as lack of intention to commit the crime, possibility of reformation, young age of the accused, accused not being a menace to the society, no previous criminal record etc., the accused may avoid capital punishment - The crime is important but so is the criminal and hence the Supreme Court in recent past has substituted death penalty with fixed term sentences exceeding 14 years - The approach cannot be the vindictive but lack of appropriate sentence leaves the cry of justice of the society un-addressed apart from the fact that other persons who may have the propensity to carry out the crime feel they will get away with the lighter sentence, in case they are caught. **State of Haryana v. Anand Kindoo**, [2022 LiveLaw \(SC\) 780 : AIR 2022 SC 4315](#)

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

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

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

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

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

**Penal Code, 1860; Section 302,149** - Conviction of one surviving accused (nine others died during pendency of appeal before HC and SC) under Section 302/149 upheld - The effect and impact of reduction of the number of convicts pending an appeal owing to the death of co-convicts is bound to be different from the effect and impact of reduction of the number of accused/convicts on account of acquittal



- The meaning of abatement can only be taken in criminal proceedings as 'discontinuation of such proceedings owing to the death of the accused/convict pending such proceedings' - The abatement is certainly different from acquittal. (Para 12-16) **Gurmail Singh v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 854](#) : [AIR 2022 SC 5258](#)

### **Section 304B - Dowry Death**

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

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

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

### **Section 304A - Causing death by negligence**

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

### **Section 306 - Abetment of Suicide**

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

situation in an educational institution. *V.P. Singh v. State of Punjab*, [2022 LiveLaw \(SC\) 994](#)

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

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

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

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

### ***Section 307 - Attempt to murder***

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

**Penal Code, 1860; Section 307** - There is no minimum sentence under Section 307 IPC - Discretion has to be exercised judiciously and the sentence has to be imposed proportionately and looking to the nature and gravity of the offence

committed and by considering the principles for imposing sentence. (Para 9) **State of Rajasthan v. Banwari Lal**, [2022 LiveLaw \(SC\) 357](#) : 2022 (6) SCALE 71

### **Section 323 - Punishment for voluntarily causing hurt**

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

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

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

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

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

### **Section 341 - Punishment for wrongful restraint**

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

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

**Penal Code, 1860 - Section 354** - Accused was convicted under Section 354 IPC - Sessions Court/ High Court dismissed his appeal/revision - Before Apex Court the accused submitted that a compromise has been entered into between him and the complainant/victim - Dismissing his SLP, the Supreme Court held: No reason to grant any credence to such compromise which is being entered into after the

conviction has been confirmed by the High Court. ***Bimal Chandra Ghosh v. State of Tripura***, [2022 LiveLaw \(SC\) 157](#)

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

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

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

***Section 375 - Rape***

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

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

***Section 376 - Punishment for Rape***

**Penal Code 1860; Section 376(2)(n) - Offence of committing repeated rape on same woman** - The complainant has willingly been staying with the appellant and had the relationship - Now if the relationship is not working out, the same cannot

be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC - Observations while granting anticipatory bail to accused. **Ansaar Mohammad v. State of Rajasthan**, [2022 LiveLaw \(SC\) 599](#) : [AIR 2022 SC 3478](#)

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

#### ***Section 394 - Voluntarily causing hurt in committing robbery***

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

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

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

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

#### ***Section 403 - Dishonest misappropriation of property***

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

**Penal Code, 1860; Sections 403, 415** - Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code. **Neetu Singh v. State of U.P.**, [2022 LiveLaw \(SC\) 281](#)

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

**Section 406 - Punishment for criminal breach of trust**

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

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

**Section 405 - Criminal breach of trust**

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

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

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

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

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

#### ***Section 411 - Dishonestly receiving stolen property***

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

#### ***Section 415 - Cheating***

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

#### ***Section 416 - Cheating by personation***

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

#### ***Section 420 - Cheating and dishonestly inducing delivery of property***

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

**Penal Code, 1860; Section 420** - To make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to

deceive a person to deliver any property to any other person. (Para 8) **Rekha Jain v. State of Karnataka**, [2022 LiveLaw \(SC\) 468](#) : AIR 2022 SC 2268

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

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

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

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

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

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

**Penal Code, 1860 - Section 498A** - General and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged. (Para 22)



***Kahkashan Kausar @ Sonam v. State of Bihar, [2022 LiveLaw \(SC\) 141](#) : AIR 2022 SC 820 : (2022) 6 SCC 599***

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

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

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

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

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

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

**Penal Code, 1860; Sections 498A, 304B, 302, 306 - Dying Declaration** - In some circumstances, the evidence of a deceased wife with respect to cruelty could be admissible in a trial for a charge under Section 498A of the IPC under Section

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

### **Section 499 - Defamation**

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

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

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

**Penal Code, 1860; Section 499 - Defamation** - The claim made by a person involved in politics that the answers provided by his rival in public office to the questions posed by him, will expose his scam, cannot be per se stated to be intended to harm the reputation of the person holding office. The statements such

as "I will expose you", "I will expose your corrupt practices" and "I will expose the scam in which you are involved, etc." are not by themselves defamatory unless there is something more - Even if a person belonging to a political party had challenged a person holding public office by stating "I will expose your scam", the same may not amount to defamation. Defamatory statement should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. (Para 60-64) **Manoj Kumar Tiwari v. Manish Sisodia**, [2022 LiveLaw \(SC\) 853](#)

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

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