EFFECT OF NON-RECOVERY OF CRIME WEAPON AND OTHER INCRIMINATING MATERIAL

presented by
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I Additional Junior Civil Judge,
Srikakulam.

I. "Weapon" means anything used, designed to be used or intended for use ……

(a) in causing death or injury to any person, or

(b) for the purpose of threatening or intimidating any person

And without restricting the generality of the forgoing,

includes a fire arm.

1. Any instrument or device for use in attack or defense in combat fighting or war as a sword, refile or cannon.

2. Anything used against an opponent adversary or victims the deadly weapon of satire.

Weapon is not directly defined in law, articles of any description designed or adopted as weapon for the offence or defence, and includes fire-arms, sharp edged and other deadly weapons and parts of, and machinery for manufacturing arms, including items used in injuring a person.

The discovery and recovery at the instance of the Accused are governed by Sec.27 and Sec.8 of Indian Evidence Act.

In a criminal case appreciation of evidence plays a vital role in considering the prosecution case.

Rang Bahadur Singh Vs. State of U.P. reported in AIR 2000 SC 1209 it has been has held as follows: "The time-tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the ***guilt of the accused beyond reasonable doubt*** *a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits."*

In view of the principle that the prosecution must establish the guilt of the accused beyond reasonable doubt, The Evidence Act 1872 provides protections in the form of Sec.24, Sec.25 and Sec.26.

In *State, Rep. by Inspector of Police and Others, Vs. N.M.T.Joy Immaculate (AIR 2004 SC 2282)* the Hon'ble Supreme Court of India held that "*The admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other Law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and* ***seizure.*** *Hence, the direction given by the High Court that the*

confession and alleged recovery has no evidentiary value as it was obtained under an illegal order of remand is clearly illegal and has to be set aside.

In AIR 2004 SC 2865 the Hon'ble Supreme Court of India held that – *Sec.27 of Evidence Act is in nature of exception to preceding provisions particularly S.25 and S.26 - Conditions necessary for bringing S. 27 in operation stated".*

"*The expression 'provided that' together with the phrase 'whether it amounts to a confession or not' in S. 27 show that the section is in the nature of an exception to the preceding provisions particularly Ss. 25 and 26. The first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'. The word has been advisedly used to limit and define the scope of the provable information. The phrase 'distinctly' relates 'to the fact thereby discovered' and is linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. The various requirements of the section can be summed up as follows :*

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

In – Pandu Rangu Kalupati and Another Vs. State of Maharastra. AIR

2002 SC 733 The honble Supreme Court held that the Discovery of a fact cannot equated with the recovery of the object though later may help in the final shape of what exactly the fact discovered pursuant to the information elicited from the accused.

It has been further held by the High Court of Kerala that "*there is no necessity of obtaining the signature of the accused in the disclosure statement so as to make it admissible.* Recovery of the weapons, articles and other incriminating materials at the instance of the accused has always been found as relevant and in the same manner recoveries made from places accessible to all and sundry, were not admitted as relevant as incriminating evidence against the accused (2000 All MR Crl. 1155).

In Krishna Mochi & Ors. Vs. State of Bihar [(2002) 6 SCC 81], Hon'ble Supreme Court of India held : "*It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable."*

In Lakshmi Vs. State reported in (2002) 7 SCC 198, it was held that it is not an inflexible rule that weapon of assault must be recovered and the Hon'ble Supreme Court did not accept as a general and broad proposition of law that in case of non-recovery of the weapon of assault, the whole prosecution case gets torpedoed.

In State of Rajasthan Vs. Arjun Singh and Ors. AIR 2011 SC 3380 and 2011 -9-SCC 115

The Hon'ble Supreme Court held that *Recovery evidence - Absence of recovery of pellets from scene of occurrence or from body of injured persons Cannot be taken or construed as no occurrence of firing as suggested by prosecution has taken place - Mere non-recovery of pistol or cartridge does not detract case of prosecution where clinching and direct evidence is acceptable - Moreso, when gunshot injuries tallied with medical evidence.*

In Mritunjoy Biswas Vs. Pranab alias Kutti Biswas and Another AIR 2013 SUPREME COURT 3334 : (2013) 12 SCC 769.

The Hon'ble Supreme Court held that "T*here is ample unimpeachable ocular evidence corroborated by medical evidence - Mere non-recovery of weapon from accused does not affect prosecution case".*

In Krishna Gope Appellant v. State of Bihar Respondent. - AIR 2003 SUPREME COURT 3114

The Hon'ble Supreme Court of India Held that *Wordy altercation between deceased and accused over grazing of cow - Accused-appellant firing at deceased by country made rifle - Incident seen by eye-witness – Eyewitness knowing accused and was only 30 feet away - Version of eye-witness corroborated by other witness who saw accused running from scene -*

Statement given by deceased to police treated as FIR - Failure of I.O. to correctly state as to who recorded statement of deceased - Not of much importance - Delay of only one day in sending FIR to Magistrate – Accused liable to be convicted on evidence adduced - Non-recovery of weapon from the house of accused-appellant does not inure to his benefit."

In Nirmal Kumar Appellant v. State of U.P Respondent - AIR 1992 SC 1131, the Hon'ble Supreme Court held that "*Occurrence taking place in family house, at night - Prosecution case resting on child evidence - Child deposing that she had seen accused in lantern light and giving out their names - Fact that lantern was burning however not stated before police - Names of accused also not mentioned to police officer who examined her - Contradictions are material - **Recovery of weapon at instance of accused Not a corroborative evidence of significance - Accused entitled to be acquitted."*** In this judgement the court held that "*mere recovery of the weapon is not a proof that the accused has committed the crime.*

In Pradumansinh Kalubha Vs.State of Gujarat – AIR 1992 SC 881, the Hon'ble court held that "*- Appreciation of evidence – Tension prevailing in immediate past between two communities - Testimony of eyewitnesses without independent corroboration not reliable - Medical evidence corroborated testimony of witnesses as to stabbing - No inference can be drawn that there was attempt to foist case on accused - Nothing suspicious in steps taken by investigating officer - Involvement of accused in crime proved beyond doubt by evidence on record - Acquittal of accused by trial Court on conjecture and strained reasoning – Illegal*" and further held that "- Seizure of weapon - Not very material where there is a direct evidence"**.** This judgment shows the direct evidence of the eye witness plays pivotal role as against the presence or recovery of the weapon. Discovery – Weak kind of evidence

In Mani Vs. State of Tamil Nadu reported in AIR 2008 SC 1021, the Hon'ble Supreme Court has held that "*discovery is a weak kind of evidence*

*and cannot be wholly relied upon in a serious matter and in the circumstances, where the prosecution discovered some articles ten days after murder barely three hundred feet away from teh dead body of the deceased and no attempt was made by the prosecution to prove that the discovered articles belong to the accused and there was also no evidence of motive of murder and in these circumstances the Hon'ble Court held it to be a '**clear case of benefit of doubt**'* .

Discovery of weapon – Non-examination by F.S.L. **in State of**

Rajasthan Vs. Wakteng reported in AIR 2007 SC 2020, it was held by the Hon'ble Supreme Court that "*Recovery on disclosure statement made by accused - Weapon of murder recovered - Weapon however not sent to Forensic Science Laboratory - Accused also not quizzed u/S. 313, Criminal P.C. on question of recovery - Evidence of recovery - Cannot be relied upon for conviction".*

In Syed Chand and other Vs. State of A.P. 2016(2) ALD (Crl)792
-- Discovery evidenre reliability.
-- Confession leading to recovery of weapon of offence recovery of knife from possession of accused or recovery panchanama, even panch witness turned hostile, and there was no variation of weapon recovered from possession of accused or not may not have much relevance or significance. When evidence on record which includes that of direct evidence, clearly proved involvement of accused in commissionof offence, as his confession Investigating officer recovered the weapon knife, even failure of prosecution to produce same weapon as was reovered from accused will not be fatal to prosecution fase. When medical evidence clearly showed the injuries were caused by a sharp object, like seizer weapon, same was held in ***Chintakayala Kurmaiaha Vs. State of A.P 2016(2) ALD(Crl) 777 by justice C.V.Nagarjuna Reddy and G.Shaym Prasad.***

It has been held in catena of decisions that "*Non recovery of the weapons of offence"* is not fatal to the case of the prosecution, when there is direct, cogent and reliable evidence and trustworthy of the prosecution witnesses and further more chine of each event connecting to the witnesses evidence is proved. The accused are liable for punishment. The circumstances in which and the case in which the courts have found accused guilty though the crime weapon or incriminating material is found absent. We have mainly concentrated on the following aspects. **When non recovery of crime weapon and other incriminating material In Virendra Kumar Gara Vs. State reported in 2001 II AD (Delhi)**

it was held that "that the accused absconded immediately after the incident and such conduct of the accused absconding from the incident is a strong factor to prove his guilt and the question of recovery of the weapon or otherwise would not affect the prosecution case and accused is liable for conviction. In a similar matter Amruthlal Someswara Joshi Vs. State of Maharastra reported in AIR 1994 SC 2516, the Hon'ble Supreme Court of India held that "*Where an accused, a domestic servant serving with a family committed murder of its three members (an old man aged 77 years, a helpless lady and a child aged 3 years)by causing multiple stab injuries on deceased persons with a big knife, and committed robbery of cash, jewellery and valuable goods worth about rupees two lakhs, he was liable to be convicted under S. 302 and S. 394 and the circumstances warranted imposition of death sentence.*

"*The attack was so brutal and the same established that the accused left no chance for anybody's survival lest they may figure as a witness and this heinous crime had been committed in cruel and diabolical manner only with a view to commit robbery. The subsequent conduct and his movements would show that the accused is a clever criminal prepared to go to any extent in committing such serious crimes for his personal gain and the murders*
committed by him manifest an exceptional depravity".

"*The circumstantial evidence in instant case could not at all be said to be qualitatively inferior in any manner. It is well settled that if there is clinching and reliable circumstantial evidence, then that would be the best evidence to be safely relied upon. The case came within the category of `rarest of rate cases' and awarding the death sentence is proper. It is only with a view to commit robbery, he committed these ghastly murders. The motive is heinous and the crime committed is cold-blooded, cruel and diabolical. There are absolutely no mitigating circumstances relevant for awarding lesser sentence".*

In Mangat Rai Vs. State of Punjab, reported in AIR 1997 SUPREME COURT 2838, the Hon'ble Supreme Court of India held that "*Circumstantial evidence - Accused husband alleged to have killed deceased wife by poisoning - Death of deceased occurring at residential house of accused - Insufficient dowry constituting alleged motive – Medical evidence showing death of deceased was due to administration of poison - Falsifying defence version that deceased committed suicide by hanging herself – Accused being medical practitioner having every facility and opportunity of administering poison to deceased - Injuries on body of deceased showing her resistance before intake of poison - Subsequent conduct of accused in not immediately informing to his in-laws and absconding is unnatural - Chain of circumstantial evidence complete - Guilt of accused proved beyond reasonable doubt - Conviction of accused, proper*".

The conduct of accused immediately:-

After incident as he absconded is a strong favour to prove his guilty. Further to determine the nature of offence committed relevant consideration. Stage of mind of accused gathered from available evidence, surrounding circumstances and the intention of the accused in causing injuries.

Threatened the accused:-

Where a person entered the victims house during midnight armed with a knife and threatened with death any one who came between himself and the victim.

In view of that fact that the parties were on criminal terms, each and every piece of evidence available on record has to be scrutinized and analyzed carefully.

Chunni Lal Vs State of U.P. 05.07.2013:-

Another eye witness who testified that injured is present at seen, the testimony of witness is cogent, coherent and reliable.

Any independent person of the locality has been examined.

Even if not produced any independent witness to the incident took place, For example. Bus stands, heavy general public access, the prosecution case cannot thrown out or doubted on that ground alone.

Injured Witness and significance thereof

It is a settled law that testimony of an injured witness stands on a higher

pedestal than any other witness in as much as he sustained injuries in the offence. As such there is an inbuilt assurance regarding his presence at the scene of crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other person.

It was held in Abdul Sayeed Vs. State of M.P. reported in 2010 AIR SCW 5701, that "*the law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong groundsm for rejection of his evidence on the basis of major contradictions and discrepancies therein*".

Ashok @ Dangra Jaiswal Vs. State of Madhya Pradesh 05.4.2011.

Non Production of the seized drugs and non Examination of Investigating officer and punch witnesses turned hostile. Then the accused entitled the bonefit of doubt.

But when there is direct eye witness evidence and non production of material object was a mere procedural irregularity and it can be cured by Section 465 of Crpc and did not cause prejudice to the accused

In Duvvur Narayana and Others Vs. State of A.P. Represented by its Public Prosecutor 14.11.2011.

Honurable Mr. Justice K.G.Shankar held in 13 para *"I am in agreement that the contention of the learned Additional Public Prosecutor the two victims and the two doctors and who treated the victims were examined by the prosecution, Ramakrishnaiah could not be examined by the prosecution, because Ramakrishnaiah is no more. The prosecution also examined a resident of Harijanawada who witnessed the incident as PW3. He was an eye witness for the attack caused PW1. As rightly submitted by the learned public prosecutor, the evidence of these witnesses as trial corroborative of each other. The evidence of the witness does not suffer from any infirmity and inconsistency. The prosecution thus clearly established the incident. The only in consistency is that the prosecution failed to produce the weapons including*

stones so much so the conviction deserves to be U/Sec.323, 325 Indian penal code and not under section 324 and 326 Indian penal code as the prosecution fails to established that the detail witness were used any attack PW1 and 2 the conviction recorded by the trial court and confirmed by the appellate court consequently deserved to be modified as conviction under section 323,324 Indian penal code.

In Evidence Act section 3 "*Omissions, contractions and discrepancies in evidence of witnesses - Not to be given importance unless they shake basic version of witness" and further held that Section 302 Indian penal code*

- Accused putting on fire bus full of girl students - Causing death of 3 girls and burn injuries to many - Girls were innocent, unarmed and helpless - No provocation was given by them - Offence had been committed after previous planning and with extreme brutality - It is shocking to collective conscience of society. The Basic principal and criminal response is that the accused is presumed to be innocence and this presumption of innocence of accused can be rebutted by the prosecution by leading evidence and proving its case beyond reasonable doubt.

The Motive and Intention of Accused:-

Ramesh Vs. State of Rajasthan 22.2.2011 Honourable Supreme Court held that *"The Incriminating circumstances would be have to be individually weighted Vis-Vis each accused and it would have to be seen as to whether such examination Justifies the conviction, If there is no such evidence against him of his having taken part in the actual act it is only on the basis of the discovery by him of ornaments and the machinery to meet gold, that he has been book.*

Confessional Statements made in police custody led to recovery of incriminating articles. The court said that such evidence, could not excluded on the ground that the statement was obtianed while the accused was under an illegal order of remand of police custody, State Vs. NMT Joy Immoculate AIR 2004 S.C.228.

under Sec.313 of Cr.P.C. if the false answers are with regard to proved facts and such inference under Sec.106 of Indian Evidence Act shall become an additional circumstance to prove the guilt of the accused. In this particular case Manusharma who was accused was holder of a pistol .22" bore P Berretta, made in Italy duly endorsed on his arms license. It was his duty to have kept the same in safe custody and to explain its whereabouts. It is proved beyond reasonable doubt on record that extensive efforts were made to trace the pistol and the same could not be recovered. Moreover as per the testimony of CN Kumar, PW-43, DSP/NCRB, RK Puram there is no complaint or report of the said pistol. Thus an adverse inference has to be drawn against the accused-Manu Sharma for non-explanation of the whereabouts of the said pistol. Similarly another plea not supported by any positive evidence led by the appellant-Manu Sharma is that his pistol i.e. the weapon of offence and the arms licence was recovered from his farm house on 30.04.1999, when in fact it is an established fact that the pistol could not be recovered and that the licence was surrendered on 06.05.1999 at the time of his arrest. It defies all logic and ordinary course of conduct to allege that the prosecution has withheld the pistol after seizing the same from his farmhouse. The fact that he has failed to produce the pistol, a presumption shall arise that if he has produced it, the testing of the same would have been to his prejudice. The burden thus shifts on him and accordingly the Hon'ble Supreme Court of India drawn an adverse inference and dismissed the appeal filed by Manu Sharma.

In view of the number of pronouncements of the Hon'ble Supreme Court of India and various High Courts and compelling ratios laid down

therein, it can be safely concluded that in a given case where there is direct, ocular evidence cogent enough, irrespective of the fact that weapon of offence was not recovered or incriminating material is not found or if found it was scientifically not examined and even in the absence of Forensic Evidence attributable to the accused, still the accused is liable for conviction if by the conduct or otherwise it has been proved that he is guilty of the offence beyond reasonable doubt. As a matter of fact any short coming or lacuna which would affect the very foundation of the prosecution case would invariably leads to doubts and such doubt may lead to the benefit of the accused and in which circumstance the accused may be entitled for an acquittal.

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Disposal of Property in Criminal Cases

(Sections 451, 452, 457 CrPC & under Special Acts)

presented by
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1. Scope of release of case property u/s 451 CrPC : The object and scheme of the various provisions contained in the CrPC appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of property by the police amounts to a clear entrustment of the property to government servant, the idea is that the property should be restored to the original owner after the necessity to return it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the delivery of the property to the owner or otherwise in the interest of justice. The object of the Code of Criminal Procedure seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles should be handed over to the complainant after :

(i) Preparing detailed proper panchnama of such articles,

(ii) Taking photographs of such articles and a bond that such articles would be produced if required at the time of trial, and

(iii) After taking proper security. See :

(i) **Multani Hanifbhai Kalubhai Vs. State of Gujarat & Another, (2013) 3 SCC 240**

(ii) Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)

(iii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC)

2. Prompt exercise of power by Court u/s 451 CrPC for disposal of property necessary : Cautioning the Magistrates for taking prompt action u/s 451 CrPC

for the release/disposal of case property seized by police, the Hon'ble Supreme Court has issued its directions thus : "*We hope and trust that the concerned Magistrates would take immediate action for seeing that the powers u/s 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case for not more than 15 days to one month. This object can also be achieved if there is proper supervision by the registry of the concerned High Courts in seeing that the rules framed by the High Court with regard to such articles are implemented properly*". See : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC).**

3. **Physical production of vehicle and personal bond of insured vehicle to be distanced with :** Relying on its previous two decisions rendered in the cases of (i) Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002) 10 SCC 283 and (ii) General Insurance Council Vs. State of AP, (2007) 12 SCC 354, the Hon'ble Supreme Court has, in the case noted below, held as under : It is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai considering the mandate of Section 451 read with Section 457 CrPC, the following further directions with regard to the seized vehicles are required to be given :

(i) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified and a detailed panchnama may be prepared before such release.

(ii) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(iii) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalized so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director

Generals of Police shall ensure micro-implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles, be taken care of by the Inspector General of Police of the Division/Commissioner of police concerned of the cities/Superintendent of Police concerned of the district concerned. In case, any non-compliance is reported either by the petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. See : **General Insurance Council Vs. State of AP, (2010) 6 SCC 768. (paras 13, 14 & 15)**

4(A-1).Seized article kept in police station should be returned to its rightful owner : In the case noted below, the police personnel were involved as accused in the commission of offences punishable u/s 429, 420, 465, 468, 477-A & 114 IPC and had criminally and unauthorizedly misappropriated the seized case properties like golden ornaments by replacing the same by other spurious articles. Misappropriation of the amount kept at the police station, unauthorized auction of the property seized and kept in the police custody and tampering with the records of the police station were committed by the police personnel. The Hon'ble Supreme Court directed for return of the seized articles to their rightful owners. See : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC)**.

4(A-2).Vehicle/truck seized for non-production of papers should be released in favour of its registered owner : Where a truck was seized for non-production of papers, it has been held by the Supreme Court that the truck should be released in favour of its registered owner. See : **Ramesh Chand Jain Vs. State of Haryana, (2007) 15 SCC 126**

4(B). In the event of dispute of title, vehicle should be released temporarily in favour of its ostensible nameholder in the RC : In the event of dispute of title, vehicle should be released temporarily u/s 451 CrPC in favour of its ostensible name holder in the registration certificate till the stage when the court passes the order regarding disposal of property on conclusion of the trial. It is not necessary to keep seized vehicle in court compound indefinitely for a long time till disposal of the case. It is more advisable to entrust the vehicle to its registered owner on behalf of the Court. See :

(i) Ashok Kumar Vs. State of Bihar, 2000 (41) ALR 170 (SC)

(ii) Rajendra Prasad Vs. State of Bihar, 2000 (2) JIC 440 (SC)

4(C). Police cannot release vehicle seized by it : Where car suspected to be stolen seized by police was entrusted to its owner by the police on execution of bond in favour of police, it has been held by the Supreme Court that release of vehicle by police is invalid as police can only report the seizure to the Magistrate and only Magistrate can release the seized property. See : **Anwar Ahmad Vs. State of UP, AIR 1976 SC 680.**

4(D). Seized vehicle to be returned to its owner only pursuant to an order of competent court : Once a vehicle (car) is seized in connection with a case, it can be returned pursuant to an order of a competent court only. See : **George Vs. State of Kerala, AIR 1998 SC 1376.**

4(E). Registration of vehicle not conclusive proof of ownership of legal title to vehicle : Registration of vehicle is not conclusive proof of ownership of legal title to vehicle. Section 2(30) of the MV Act, 1988 creates legal fiction of ownership in favour of lessee only for purposes of the MV Act, 1988 but not for purpose of law in general. See : **Industrial Credit and Development Syndicate Limited Vs. Commissioner of Income Tax, Mysore, (2013) 3 SCC 541**

4(F). When third person other than registered owner driving vehicle—liability of insurer ? : Under Section 110-D of the MV Act, 1988, when the vehicle is used by a third person other than the registered owner with the permission of the registered owner, the insurer is still liable to pay compensation. Insurance is of the vehicle and not of the owner. See :

(i) Oriental Fire and General Insurance Co. Moradabad Vs. Smt. Devi, 2007 (69) ALR 706 (All)

(ii) Rikhi Ram Vs. Sukhiram (Smt.), (2003) 3 SCC 97

(iii) OIC Ltd. Vs. Tilak Singh, (2006) 4 SCC 404

4(G). Vehicle involved in commission of offences u/s 302, 307 IPC not to be released : Where the vehicle was used at the time of commission of offences u/s 302, 307 IPC, it has been held by the Allahabad High Court that the vehicle was a material evidence and application for its release was rightly rejected by the lower court. See : **Sarjoo Prasad Vs. State of UP, 1989 ACC 547 (All)**

Note : But in view of the law declared by the Supreme Court in Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC), the above Allahabad High Court ruling now stands impliedly overruled.

4(H).Vehicle used in commission of offence u/s 302 IPC released in favour of its registered owner : Where the release of a motorcycle used in the commission of offence of murder u/s 302 IPC was refused by the Chief Judicial Magistrate, Allahabad on the ground that the same was a case property and would be required at the time of trial, the High Court set aside the order of the CJM and directed for release of the vehicle in favour of its registered owner. See : **Ram Prakash Prajapati Vs. State of UP, 1994 ACC 185 (All).**

4(I). **Vehicle involved in commission of dacoity u/s 395, 397 IPC released in favour of its registered owner :** Relying upon the decision of the Hon'ble Supreme Court rendered in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223(SC), the Hon'ble Allahabad High Court has held that a vehicle which was involved in the commission of offences u/s 395, 397 of the IPC should have been released in favour of its owner otherwise keeping the vehicle at the police station for a long time may diminish its value and ultimately

the vehicle may become junk. See : **Manoj Kumar Vs. State of UP, 2011 (74) ACC 846 (All)**

4(J). **Last registered person entitled to the custody of vehicle :** Where there are two or more registered owners of a vehicle, the last registered person in the registration certificate would be entitled for interim custody of vehicle u/s 451 CrPC. See **: Shafiq Ahmad Vs. State of UP, 2000 ALJ 428 (All)**

4(K). **Motor vehicle seized by ARTO u/s 207(1) of the MV Act, 1988 can be released by the Magistrate u/s 207(2) of the said Act only when the complaint is filed in the Court :** Motor vehicle seized by ARTO u/s 207(1) of the Motor Vehicles Act, 1988 can be released by the Magistrate u/s 207(2) of the said Act only when the complaint is filed in the Court. See :

(i) Jugal Kishore Vs. State of UP, 1995 ALJ 1539 (All)(DB)

(ii) Ram Sewak Jaiswal Vs. State of UP, 1995 (3) AWC 1376 (All)

(iii) Mazhar Ali Khan Vs. State of UP, 1995 (2) AWC 849 (All)

(iv) Pramod Kumar Pandey Vs. ARTO, Ballia, 1997 (34) ACC 650 (All)

4(L). **Vehicle involved in accident u/s 279, 304-A IPC to be returned to its owner :** Vehicle involved in accident u/s 279, 304-A IPC should be returned to its owner or driver or to any person in-charge of the vehicle within 24 hours after it was inspected without asking for various particulars of the vehicle. See :

(i) **Aadesh Kumar Vs. State of UP, 2007 (59) ACC 869 (All)**

(ii) Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)

(iii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977 (14) ACC 220 (SC)

(iv) **M.B. Venktappa Vs. State of UP, 2000 (3) ALR 8 (Summary) (All).**

5. Release of Ornaments u/s 451 CrPC : The object and scheme of the various provisions contained in the CrPC appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of property by the police amounts to a clear entrustment of the property to government servant, the idea is that the property should be restored to the original owner after the necessity to return it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The object of the Code of Criminal Procedure seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall

control on the actions of the police officers in every case where it has taken cognizance. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles should be handed over to the complainant after **(i)** preparing detailed proper panchnama of such articles, **(ii)** taking photographs of such articles and a bond that such articles would be produced if required at the time of trial and **(iii)** after taking proper security. See :

(i) Sunder Bhai Ambalal Desai Vs. State of Gujrat, AIR 2003 SC 638

(ii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220 (SC)

6. Release/disposal of liquor u/s 451 CrPC : For articles such as seized liquor, prompt action should be taken in disposing it of after preparing necessary panchnamma. If sample is required to be taken, sample may be kept properly after sending it to the chemical analyzer, if required but in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing. See :

(i) Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC)

(ii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC).

7. Disposal of Narcotic Drugs under NDPS Act : For the Narcotic Drugs for its identification, procedure u/s 451 CrPC should be followed for recording evidence and disposal. Its identity can be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the chemical analyzer so that subsequently contention may not be raised that the article which was seized was not the same. See :

(i) Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)

(ii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC).

8. Release of vehicle under NDPS Act : Where the narcotics was recovered from the truck when the accused, the brother of the owner of the truck, was sitting therein but the owner of the truck though a co-accused but was not arrested on the spot nor there was any evidence that carrying of the narcotics was in his knowledge, the High Court held that in view of the law propounded by the Supreme Court in the case of Sundarbhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC), the truck should be released in favour of its registered owner u/s 451, 452 CrPC**.** See :

(i) Samarjeet Vs. State of UP, 2014 (86) ACC 505 (All)

(ii) Prateek Gupta Vs. State of UP, 2010 (70) ACC 82 (All)

10(C). Release of Vehicle in the event of disputed title : In the cases noted below, where the vehicle seized by police was kept in the premises of the police station and there was also dispute of title and correctness of transaction, it has been laid down by the Hon'ble Supreme Court that the vehicle should temporarily

be released in favour of its ostensible name holder in the registration certificate till the stage when the court passes the order regarding disposal of the property on the conclusion of the trial :

(i) Ashok Kumar Vs. State of Bihar, 2000 (41) ALR 170 (SC)

(ii) Rajendra Prasad Vs. State of Bihar 2000 (2) JIC 440 (SC)

11(A). Rifle/gun/revolver to be returned to its licence holder : Where sessions trial for offences u/s 147, 148, 149, 307 IPC and u/s 25/27 Arms Act was pending and the application for release of gun was moved by the license holder who was father of the accused and not himself an accused was rejected by the Addl. Sessions Judge, the High Court set aside the order of the ASJ and directed release of the gun in favour of the non-accused applicant/license holder. Rifle/gun/revolver should be returned to its license holder if the license is still valid. See : **Shail Kumar Singh Vs. State of UP, 2001 (1) JIC 262 (All)=2000 (41) ACC 653 (All).**

11(B).:Revolver used in commission of offence u/s 307 IPC should not be kept beyond 15 days in the police station and should be released by the court in favour of its licence holder : Where the application for release of revolver used in the commission of offence u/s 307 of the IPC was rejected both by the the Judicial Magistrate and the Sessions Judge, Gorakhpur, it has been held by the Hon'ble Allahabad High Court that articles recovered by the police should not be kept for long time at police station, in any case for more than fifteen days to one month. Setting aside the orders of the Courts below, the Hon'ble High Court directed to release the revolver u/s 451 of the CrPC. See : **Virendra Jaiswal Vs. State of UP, 2012 (77) ACC 876 (All)**

12(A).Person in possession of the vehicle under hypothecation to be treated as owner of the vehicle : There is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasize, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration. See : **HDFC Bank Limited Vs. Reshma & Others, (2015) 3 SCC 679 (Three-Judge Bench)***(para 23)***.**

12(B).In a hire purchase agreement, financer can seize the vehicle in the event of non-payment of installments: In an hire purchase agreement, purchaser remains merely a trustee/bailee on behalf of the financer/financial institution and ownership remains with the financer. No criminal action can be taken against the financer if the vehicle is seized by him against the non-payment of installments as he is repossessing the goods (vehicle) owned by him. See :

(i) Anil Kumar Rastogi Vs. State of UP, 2006 (63) ALR 591(All)(DB)

(ii) Trilok Singh Vs. Satyadeo Tripathi, AIR 1979 SC 850

(iii) K.A. Mathai Vs. Kora Bibbikutty, 1996 (7) SCC 212.

(iv) Charanjit Singh Chadha Vs. Sudhir Mehra, (2001) 7 SCC 417

12(C) Hire purchase agreement and release of vehicle : Where the ownership of the vehicle was not absolute and the registration certificate was subject to hire purchase agreement which was indicative that ownership of said vehicle was subject to terms and conditions agreed between hirer and owner, it has been held that the vehicle ought to be released u/s 451 CrPC in favour of the owner (revisionist) and not in favour of the hirer. See :

(i) Ashok Leyland Finance Ltd Vs. State of U.P, 2011 CrLJ 2011(All)

(ii) Manipal Finance Corp. Ltd Vs. T. Bangarappa, AIR 2001 SC 3721

12(D) In an hire purchase agreement, bank cannot hire goons to take vehicle by use of force : Bank cannot hire goons to recover loan and the vehicle cannot be taken possession of by use of force. See : **Manager ICICI Vs. Prakash Kaur, AIR 2007 SC 1349.**

13(A).Release of vehicle not wanted in any crime cannot be refused merely because the engine No. or chesis No. is erased : Where a motorcycle was seized from the possession of the son of the applicant/registered owner by the police but the vehicle was not wanted in any crime but release of vehicle by the ACJM, Mirzapur and the ASJ, Mirzapur (in revision) was refused on the ground that the engine and chesis numbers of the vehicle were tampered and illegible, the Hon'ble High Court directed release of the vehicle by criticizing the ACJM and the ASJ, Mirzapur and the UP Police for its likely role in erasing the engine and chesis numbers of the vehicle. See : **Shyam Bihari Vs. State of UP, 2013 (80) ACC 882 (All)**

13(B).Unclaimed (*lawaris*) property & duty of police & Magistrate : Section 25 of the Police Act, 1861 provides that it shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the district. The police officer shall be guided as to disposal of such property by such orders as they shall receive from the Magistrate of the district. Section 459 CrPC shall be relevant to the detention and proclamation of such property by the Magistrate. Also see : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC)**

13(C).Custody & disposal of unclaimed property when the same not connected with any crime : Kindly See : Para 165(v)(i) & para 169 of the UP Police Regulations.

14(A). Release of vehicle seized under Indian Forest Act, 1927 : In view of the bar contained u/s 52-D of the Indian Forest Act, 1927, Judicial Magistrate or the Sessions Judge have no power to order release of vehicle detained under the said Act. See : **Mohd. Aslam Vs. State of U.P., 2013 (80) ACC 895 (All).**

14(B). Criminal courts cease to have jurisdiction to release vehicle after start of confiscation proceedings : Once the confiscation proceedings are initiated, jurisdiction of criminal courts gets barred and even High Court u/s 482 CrPC cannot release the vehicle seized under the Forest Act in relation to the

commission of an offence as to forest produce etc. See : **State of WB Vs. Sujit Kumar Rana, AIR 2004 SC 1851.**

14(C). Release of vehicle seized under Wild Life Protection Act, 1972 : In the case noted below, truck loaded with wood of forest department was used in commission of offences u/s 26 of the Indian Forest Act, 1927 and u/s 29, 39, 50 & 51 of the Wild Life Protection Act, 1972. Truck was confiscated and driver was arrested. Owner of the truck had no knowledge that his truck was used in commission of the said offences. Owner was not accused in the case. The High Court found it proper to direct the lower court to release the truck in favour of its owner with necessary conditions. See : **Arvind Kumar Dube Vs. State of UP, 2005 (3) AWC 2970 (All).**

14(D). Section 52-D of the Forest Act, 1927 ousts jurisdiction of all courts to release vehicle : Section 52-D of the Forest Act, 1927, as amended in Uttar Pradesh, ousts jurisdiction of all courts to release vehicles and forests produced etc. seized u/s 52(1) of the Forest Act, 1927.

14(E).Release of vehicle etc. under Indian Forest Act, 1927 & Wild Life Protection Act, 1972 after acquittal or confiscation : Merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise, did not necessarily entail in nullifying the order of confiscation of seized timber or forest produce by the authorized officer. See : **Divisional Forest Officer Vs. Sudhakar Rao, AIR 1986 SC 328.** 13 **14(F). Duty of Magistrate while dealing with the release of forest produce or vehicle :** The Magistrate while dealing with the case of any seizure of forest produce under the Indian Forest Act, 1927 should examine whether the power to confiscate the seized forest produce is vested in the authorized officer under the Act and if he finds that such power is vested in the authorized officer then he has no power to pass an order dealing with interim custody/release of the seized material. See : **State of Karnataka Vs. K.A. Kuuchindammed, (2002) 9 SCC 90.**

14(G). Seizure & confiscation of vehicle/other property under Indian Forest Act, 1927 etc. : Certain important rulings on seizure, confiscation and release etc. of the forest produce and vehicle etc. are as under :

(i) State of Karnataka Vs. K. Krishnan, AIR 2000 SC 2729.

(ii) Indian Handicrafts Emporium & Others Vs. Union of India, (2002) 7 SCC 589

(iii) Balram Kumawat Vs. Union of India & Others, (2003) 7 SCC 628

(iv) State of Bihar & Another Vs. Kedar Sao & Another, AIR 2003 SC 3650

(v) Indrapal Singh Vs. State of UP, 2007 (66) ALR 728 (Alld).

15(A). Release of vehicle involved in offence u/s 60/63 of the Excise Act : Where a vehicle carrying 10 bags of illegal liquor was seized by police u/s 60/63 of the Excise Act, the Hon'ble Allahabad High Court while allowing the revision by relying on Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC) held that no useful purpose would be served by keeping the vehicle in

question in police station concerned and there will be likelihood of the condition of the vehicle being deteriorated and ultimately vehicle may become junk and, therefore, the Magistrate should not have rejected application of the revisionist for release of the vehicle in question and the vehicle should have been released in favour of its registered owner. See : **Khursheed Vs. State of UP, 2014 (84) ACC 979 (All).**

15(B).Pendency of confiscation proceedings not to operate as bar against release of vehicle seized u/s 60 of the Excise Act : Pendency of confiscation proceedings before Collector u/s 72 of the UP Excise Act shall not operate as bar against the release of vehicle seized u/s 60 of the Excise Act. See : **Kamaljeet Singh Vs. State of UP, 1986 UP Criminal Rulings 50 (All).**

16(A).Vehicle/truck to be released in favour of its registered owner even when trade tax not paid : Where a truck loaded with goods was taken into custody in connection with offences u/s 332, 353, 419, 420 IPC etc., it has been held by the Allahabad High Court that the goods being perishable, the same would be released. Release of the goods would not be refused on the ground of mere non-payment of trade tax. See : **Kishan Lal Vs. State of UP, 2006 CrLJ 227 (All).**

16(B).Perishable items like rice etc. can be sold by court by public auction : In case of perishable items/goods like paddy/rice seized, the court would pass order for its sale by public auction or otherwise expeditiously. See : **Agro Industries Vs. State of Punjab, 2009 CrLJ 387 (SC).**

16(C).Perishable wheat seized ought to be released or sold : Where wheat was seized and kept in Mandi Samiti, it has been held by the Allahabad High Court that the wheat was a perishable item and possibility cannot be ruled out that by lapse of time, it may perish. The authorities were directed to sell the same in open market or by selling same in Govt. shops and money collected to be deposited in court concerned or with the authority concerned subject to the result of the case. See : **Anshu Vs. State of UP, 2010 CrLJ (NOC) 1224 (All)**

17(A).Currency notes can be released in favour of the rightful claimant : Where the accused did not claim the currency notes, it has been held that a part of such currency notes may be kept for the purpose of identification at trial and the balance can be returned to its rightful claimants. See :

(i) Imtiaz Ahmed Vs. State of UP, 1994 (1) Crimes 242 (All)

(ii) Sunil Kumar Verma Vs. State of UP, 1994 (2) Crimes 276 (All)

17(B). Parties to be directed to approach civil court when none of them could prove his entitlement to the property (currency notes) before the criminal court : Rs. four lacs were recovered in connection with an offence u/s 394 IPC. Accused was acquitted and the said amount was forfeited in favour of the State Govt. and the application for its release was rejected by the Magistrate. In criminal revision filed against the order of the Magistrate, Addl. Sessions Judge was of the view that there was no sufficient material for passing the order

regarding disposal of the money. The High Court held that proper procedure for the Addl. Sessions Judge was to direct the parties to file a civil suit in respect of the title to the money and the same should have been directed to be returned to the party who succeeds in the civil suit but the amount could not have been forfeited in favour of the State Govt. See : **District Co-operative Bank, Fatehpur Vs. State of UP, 2006 (56) ACC 640 (All)**

18(A). Cattle seized under Prevention of Cruelty to Animals Act, 1960 can be released on conditions : Interim custody of the cattle seized under the Prevention of Cruelty to Animals Act, 1960 and the Uttar Pradesh Prevention of Cow Slaughter Act, 1956 may be given to the cattle owner on filing affidavit that it is his first offence and that on release the cattle shall not be subjected to the cruelty. See : **Raju Singh Vs. State of UP, 2002 CrLJ 124 (All).**

18(B).Supreme Court rulings on various aspects of Prevention of Cow Slaughter Act :

(i) Mohd. Hanif Quareshi case of Bihar, AIR 1958 SC 731 (Five-Judge Bench)

(ii) Mohd. Faruk Vs. State of Madya Pradesh, (1969) 1 SCC 853

(iii) Haji Usmanbhai Hasanbhai Qureshi Vs. State of Gujarat, AIR 1986 SC 1213

(iv) State of West Bengal Vs. Ashutosh Lahiri, (1995) 1 SCC 189

(v) State of Gujarat Vs. Mirzapur Moti Kureshi, AIR 2006 SC 212 (Seven-Judge Bench)

19. Elephant restored to its owner : Where the only allegation against the owner of the elephant was that he was not having license, the elephant was given in the custody of its owner. See : **Gunnaseelam Vs. State of TN, AIR 1984 SC 1816.**

20. Case property can be released u/s 452 CrPC even after pronouncement of judgment : There is nothing to limit the jurisdiction of the court to pass an order u/s 452 CrPC subsequent to the judgment. See : **1977 CrLJ 1298 (All).**

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JUDGMENT WRITING

presented by
Smt. L.DEVI RATHNA KUMARI,
I Additional Junior Civil Judge,
Srikakulam.

AN INTRODUCTION:-

A judgment is the statement given by the Judge, on the grounds of adecree or order. It is the end product of the proceedings in the Court. The writing of a judgment is one of the most important and time consuming task performed by a Judge. The making and the writing of a judgment and the style in which it is written, varies from Judge to Judge and reflects the characteristic of a Judge. Every Judge, of every rank has his own distinct style of writing. A judgment is distinct from a formal order as it gives reasons for arriving at a conclusion. In United States it is called the 'opinion'; the explanation given by a Judge for the order finally proposed or made. The backlog of cases has put a great pressure on the Judges. It is no longer prudent to write a long and verbose judgment, with uncontrolled expressions and citations. The pressure of work and stress on most of the Judges today, demands improving skills in writing judgment, which are brief, simple, and clear without compromising with the quality.

MEANING:-

According to The Code of Civil Procedure, 1908 in Section 2(9) Judgment is defined as "*the statement given by the Judge, on the grounds of a decree or order".*

The "order" under Section 2(14) is defined as "*formal expression of any decision of a Civil Court, which is not a decree".*

The "decree" in section 2(2) means "*formal expression of an adjudication".*

Which, so far as regards the Court expressing it, conclusively determination the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. The rejection of a plaint and determination of any question under Section 144 is also a decree.

TYPES OF JUDGMENTS:-

In civil matters, the judgments according to the requirement of law, may be broadly classified into two categories namely:

1. Long Judgments 2. Short Judgments.

In original suits, the final decision of a case requires writing of a *Long and reasoned judgment.* These includes suits for permanent or prohibitory injunction;

possession and mesne profit; specific performance of contract; cancellation of documents; partition and possession; dissolution of firm and accounting; redemption or foreclosure of mortgage etc. As compared to it, a Judge is required to write *Short judgments*, in the matter of interlocutory orders; summary suits; preliminary issues; review; restoration; accepting compromise etc.

INGREDIENTS OF THE JUDGMENTS:-

 Order XX of the Code also deals with “Judgment and Decree”, Rule 4 (1) provides that judgment of Court of Small Causes need not contain more than the points for determination and the decision thereon.

Sub-Rule (2), provides for a judgment of other Courts to contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decisions.

Rule 5 mandates that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons there of, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

JUDGMENT IN CRIMINAL MATTERS

- AN OVERVIEW:-

Chapter XXVII of the Code of Criminal Procedure, 1973 provides for ‘the Judgment’. Section 353 requires the judgment in every trial to be pronounced in open Court immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders. The judgment as provided in Section 354, is to be written in the language of the Court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision. The section further provides that the judgment shall specify the offence (if any) of which, and the section of IPC, or other law under it, accused is convicted and punishment to which he is sentenced. If the judgment is of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty. In case of conviction for an offence punishable with death or in the alternative with imprisonment for life, the judgment has to state the reasons for sentence awarded and special reasons for death sentence. In case of conviction with imprisonment for a term of one year or more, a shorter term of less than three months, also requires the Court to record reasons for awarding such sentence unless the sentence is one of imprisonment, till the rising of the Court or unless the case was tried summarily under the provisions of the Code.

JUDGMENT WRITING - A GLANCE:-

A Judge is a human being. He possesses the same strength and weakness in character as a common man. Like all human being a Judge possesses personal preferences and pre-dispositions.

It is advisable for a Judge to follow settled norms and practice for writing judgment, in the beginning of his career. With experience he may take liberties of

adopting new methods and innovate. The logical reasoning, however, must follow in reaching to a conclusion. A Judge is not free from partiality and bias. There may be a lurking or sub-conscious bias, which may not be known to the Judge himself. The bias may have arisen on account of any factor, which ordinarily affect the life of the human being.

The Judge may be influenced by the subjective preferences or biases in an unacceptable way. With experience a Judge may identify such bias and may win over it. The best way to overcome the judgment to be affected by such outside and unknown factor is to follow logical reasoning.

The judgment writing consumes the major part of Judge's work. Taking into account the mounting arrears, and the number of cases in the daily cause list, the burden in judgment writing sometimes becomes intolerable. The Judges by their experience, find methods to reduce this burden, by writing brief opinions. The judgment, however should serve then requirement of law without compromising with the quality.

The judgment is also a reflection of the conscience of a Judge, who writes it, and evidences his impartiality, integrity and intellectual honesty.

The judgment writing provides opportunities for judicial officers to demonstrate his own ability and his worthiness to be a participant in the high tradition of moral integrity and social utility.

The Code of Civil Procedure, 1908 and Code of Criminal

Procedure, 1973 have provided sufficient guidelines for writing judgment.

These, however, are not exhaustive. There is a wide discretion left with the Judges to choose their style of writing, language, manner of statement of facts, discussion of evidence and reasons for the decision.

A judgment is not written only for the benefit of the parties. It is also written for benefit of legal profession, other judges and appellate Courts. The losing party is the primary focus of concern. The winner is not much interested in the reasons for success, as he is convinced of the righteousness of the cause. The looser, however, in the expensive litigation is entitled to have a candid explanation of the reasons for the decision. It is not only for exercise of any appellate right but also to uphold the intellectual integrity of the system of law, impartiality and logical reasoning. The lawyer is interested in the judgment as he understands the analysis and expositions of legal precedents and principles. The lawyers also examine the judgments for learning they provide, and for the reassurance of the quality of judiciary. They can easily distinguish, the lazy Judge, the Judge prone to errors in fact finding, the Judge having difficulty in understanding of laws of evidence, or the Judge, who has difficulties with complex propositions of law. The other Judges lower in hierarchy, facing common legal problems or in the same Court are also interested in the decisions. The judge is also aware that his decision may be reported and that it may

establish a legal principle, binding, until it is set aside by the appellate Court. The best Judges perform their reasoning opinion honestly to the best of their ability without undue concern that the appellate Court may find error or reach a different conclusion. The Judge must state the facts explicitly and consciously as they are found and the reasons for the decision. The Judges and their judgments can be broadly divided into three, categories, they are; 1) Philosophers, 2) Scientists and 3) Advocates.

--Lord Templeton

Before writing a judgment a Judge must remember that he/she is performing a public act of communicating his/her opinion on the issues brought before him/her and after the trial by observing fair procedures. He/she is required to tell the parties of the decision, on the facts brought before him/her, with application of sound principles of law, his/her decision, and what the parties are supposed to do as a necessary consequent to them judgment or to appeal against it. It is basically a communication to the parties coming before him/her for a decision.

A judgment must begin with clear recital of facts of the case, cause of action and the manner in which the case has been brought to the Court. A Judge must have essential facts in mind, and its narration should be without any mistake. The facts must come from the record and not from the abstract and briefs without any partisanship or colour to its narration.

The importance of first paragraph of the judgment cannot be overemphasized. It must answer the questions as *to how, when, where, what and why*, which is an advice given to judicial cubs.

The readability of the opinion improves if the opening paragraph answers three questions namely:

1) What kind of case is this,

2) What roles plaintiffs and defendants had in the trial, and

3) What are the issues.

Ofwhich the Court has to decide and answer, giving sufficient information to the reader to proceed with reading the judgment. Ordinarily a brief statement of fact is sufficient, if it indicates the context of the dispute, so that, legal principle chosen for decision can be understood. At times, however, it may be necessary for judgment to record substance of factual context and the details of evidence placed before the Court. If the complexity of the case requires, the Judge may choose to statem the facts chronologically, to understand what is decided. In such case, the Judge may ask the respective counsel a chronological statement of facts to focus the attention of the parties to shorten the argument and make it easier to write the judgment. It is easier to write short judgment, where legal issues are involved. Where the facts are in dispute, the Judge may prefer to narrate the facts in greater detail. The facts, which are part of the essential reasoning process of the Judge’s decision should be indicated and recorded.

The issues are settled between the parties before taking evidence. In criminal cases, charges framed by the Court lead to the trial.

The judgment must quote the issues/or charges as the case may be immediately after the narration of facts. It is always feasible to decide preliminary issues like jurisdiction of Court before going into the merits of the case.

The formulation of issues, should be initiated as early in the proceedings as possible. Once the parties are clear in their mind, about the essential questions, they may shorten the proceedings. It also helps to focus the mind of the judge on the precise matters to be determined. When the essential questions of law are clear, the procedure becomes simpler. It is always helpful to quote the statute and the settled law, if it can be found in authority, to proceed further with discussing the evidence.

"*In formulating the question, the judge will no doubt employ the assistance, which can be derived from the counsel. It is, I think, dangerous to attempt to impose the judge's formulation of the determinative question upon counsel. The form of that question must be drawn out by dialogue with counsel for each side. Unless counsels are involved in formulating the question, they are not committed to form of it. And dialogue with counsel is important. There is practical wisdom in the aphorism: "How do I know what I think until I hear what I say."*

--Hon'ble Dennis Mahoney

The judge must give the details of the evidence led before it. However, only the relevant evidence must be narrated and that too very briefly giving the purpose for such evidence was led. The documents admitted in evidence after they are proved on record must find their mention along with oral evidence by which they were proved. A brief narration, however, will suffice if it is precise and is clearly stated.

A Judgment must briefly state the contentions of the counsels on the points of determination. So far as possible, all the contentions raised by the counsels except those, which are wholly frivolous must be mentioned on the record. After the Judge has met with all the contentions he must record, that no other point was pressed. This statement recorded in the judgment, will take care of challenge to judgment on the points, which were not raised before the Judge. The Supreme Court has given sanctity to the statements given in the judgment and insist that where the lawyer challenges any incorrect statement, he should to first file a review petition, to remind the Judge of any error, which may have crept in the judgment.

Before deciding an issue or recording finding on a charge, the relevant evidence must be discussed. Every Judge has his own style of discussing the evidence. It is however, always better to discuss the evidence before giving an opinion to rely upon it.

The soul of a judgment are *the reasons for arriving at the findings*.

These are also called ‘the opinion’ of a Judge. There is no rigid rule, as to how a finding may be recorded. The Judge, however, should give his reasons. It is not sufficient to say that he believes the evidence or agrees with the argument. The Judge must give his reasons for such belief and agreement. An elaborate argument does not always require elaborate answer. The method of arriving at a conclusion is the most important part of judgment writing. The process by which the conclusion is arrived, and the statement in the judgment of that process, tests a Judge of his ability and integrity. It may either be by syllogistic process, inferential process or intuitive process. ‘Syllogism’ means, a deductive scheme of a formal argument consisting of a major and a minor premise and a conclusion. In syllogistic process the Judge adopts a deductive process in which he accepts an argument on a major premise, which over weighs the minor premise to draw his own conclusion. In case of inferential process the Judge relies upon the evidence and reaches to a conclusion. In the intuitive process, the Judge adopts psychological process by which the conclusion is arrived at more by intuition rather than reasons. In such a method the Judge may believe a witness in part or whole and then draw the conclusion by justifying it from the reasoning supplied by him either by belief or experience. In both the methods, in case what is being done is to arrive at a truth, the method may be justified.

There is a difference between neutrality and impartiality. Impartiality requires cool reason uncontaminated thinking without being influenced by personal commitments, biases and preconceptions. The neutrality on the other hand means the Judge is non-aligned. A Judge may begin being neutral and continue to be so in the process of the trial, but at the end he has to decide the case in favour of either of the parties without any partiality.

Impartiality requires a Judge to rise above all values and perspectives. A Judge must clearly write the operative portion of the judgment, which pronounces his conclusion over the issues brought before him. He must give clear and precise direction and the manner in which the directions have to be obeyed in conformity with the prayers made in the plaint.

The object of good judgment is to conclude the dispute and not to leave the matter undecided. The judgment should leaving nothing to be brought back to the Court. The operative portion of the order should as far as possible self-executing and self-contained.

In criminal matters after recording conviction, the Judge has an important task of giving sentence, fine or compensation. The law requires the accused to be heard before awarding sentence. The Judge must give reasons for giving sentence, fine and apportion the compensation to the victim for the sufferance, commensurate with severity of the offence.

GUIDELINES FOR PLAIN LANGUAGE:

 Achieve a reasonable average sentence length.

 Prefer short words to long ones, simple to fancy. Minimize jargon and technical terms.

 Avoid double or triple negatives. No reader wants to wrestle with sentences.

 The document need not be checked unless it is desired by a party.

 The document may be checked, if it is desired by party.

 He could not have created the trust, except for the benefit of the defendant.

 He could have created trust only for the benefit of the defendant.

 Prefer the active voice; single very-object-sentence. Notice must be given.

Example:-

Passive Voice : He was acquitted by *the Court.*

Active Voice : The Court acquitted him.

Passive Voice : It was reported by the Court Commissioner that the disputed land was covered by water.

Active Voice : The Court Commissioner reported that the land was covered by water.

 Keep related words together, specially subject and very, verb and object.

 Break up the text with headings and subheadings.

 Use parallel structures for enumerations.

 Avoid excessive cross references, which create linguistic mazes.

 Avoid over defining.

 Use recitals and purpose clauses.

 Avoid legalism to make your judgment reader friendly.

Brevity is the virtue of a wise man and is familiarized by those, who have clarity in mind. No one likes to read long judgments. Brief opinions are comfortable in reading.

“Soon after he became prime minister, Winston Churchill wrote to the First Lord of the Admiralty to ask, ‘Pray Sir, tell me on one side of the sheet of paper, how the Royal Navy is preparing for the war,’ Churchill knew that if he did not qualify his request, he would have received a unreadable 400 page report. Brevity is a great virtue, and nowhere more needed than in India. Our judges write judgments that are too long; our lawyers ramble on; our executives try to impress with lengthy memos; our politicians well try to get in a word.

BEFORE PRONOUNCING JUDGMENT:-

The judgment must be designed and structured so that readers find their way through it easily and quickly. There is no such thing as good writing. There is only good rewriting. It is absolutely necessary to revise the judgment. A revised judgment takes care of errors and reassures the Judge of the correctness of his opinion. It also ensures to avoid silly mistakes. It is advisable to the Judges, to read their judgments after a few years, to ensure that same mistakes are not repeated. There is always a room for improvement. The judgments are either

given extempore or reserved to be pronounced later. The practical experience shows that extempore judgments given at the close of the arguments, are addressed to the counsels and the parties. The extempore judgments rarely attempt to decide important questions of fact or law. The reserved judgments, on the other hand, survive longer in deciding the issues and in the memory of those for whom it is written.

The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A judge, however, is not expected to drift away from pronouncing upon a controversy, and to sit in judgment over the conduct of the judicial or quasi judicial authority, or the parties before him and indulge in criticism and commenting thereon unless such conduct comes, of necessity under review and the expression becomes part of reasoning to arrive at a conclusion necessary to decide the main controversy. So far as possible a judge should avoid derogatory and disparaging remarks. Nonetheless, irony, detectable only by the cognoscenti, is a useful in conveying a key point in the reasoning of a judge.

"*A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge."*

CONCLUSION:-

A judgment is an end-product of judicial exercise and effort and marks the terminal point of litigation as far as the particular court is concerned.

The *capacity, aptitude* and *approach* of a judicial officer is seen through the judgment. The length of the judgment never determines the true quality of the judgment but, it is reflected by its proper perception of legal principles, method of analysis, clarity and coherence of thought and use of faultless language. Their importance lies in the fact that it is on their performance that the quality of administration of justice largely depends. Many cases in these courts are of poor litigants. A good deal of responsibility, therefore, lies on the Presiding Judge or Magistrate to ensure that proper material is brought on record which is necessary for arriving at a just conclusion and that the case is handled promptly in such a manner that no litigant suffers on account of poverty or lack of proper legal advice and suggested to admire judicial ethics in writing judgment.

All the world over true peace depends not upon gun-power but upon pure justice.

SCOPE & SIGNIFICANCE OF EXAMINATION OF ACCUSED UNDER SECTION 313, Cr.P.C.

presented by
Smt. L.DEVI RATHNA KUMARI,
I Additional Junior Civil Judge,
Srikakulam.

Section 313 of the Cr.P.C. gives power to the court to examine the accused.

PURPOSE OF EXAMINING THE ACCUSED:

The purpose of empowering the court to examine the accused under section 313, Cr.P.C is to meet the requirement of the principle of natural justice *audi alteram partem (*that no one should be condemned unheard*)*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the court must take note of such explanation. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete. (**Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150)**

SCOPE & OBJECT OF SECTION 313, Cr.P.C.:

The scope and object of examination of the accused under section 313, Cr.P.C. is:-

1. **to establish a direct dialogue between the court and the accused** and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain them. **(Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507);**

2. **to test the veracity of the prosecution case**.

The examination of the accused is not a mere formality, the questions put to the accused and answers given by him, have great use.

The scope of section 313 of the Cr.P.C. is wide and is not a mere formality. The object of recording the statement of the accused under section 313, Cr.P.C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. **(Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507)**

METHODOLOGY FOR RECORDING THE STATEMENT:

In **Dharnidhar v. State of U.P. & Others; 2010 AIR SCW 5658**, the court held that the proper methodology to be adopted by the court for recording the statement of the accused under section 313, Cr.P.C., is to invite attention of the accused to the incriminating circumstances and evidence and invite his explanation. In other words, it provides an opportunity to an accused to tell to the court as to what is the truth and what is his defence.

In the case of **Dehal Singh v. State of Himachal Pradesh; AIR 2010 SC 3594**, the court held that the statement of the accused under section 313, Cr.P.C. is recorded without administering oath. Therefore, it cannot be treated as evidence within the meaning of section 3 of the Evidence Act, 1872.

It is pertinent to reproduce section 313, Cr.P.C. to make further discussion.

“ 313. Power to examine the accused. (1) In every inquiry or trial,

for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The court may take help of Prosecutor and defence Counsel in preparing relevant questions which are to be put to the accused and the court may permit filing of written statement by the accused as sufficient compliance of this section”.

The plain reading of section 313 would clearly show that **questioning under clause 1(a) is discretionary whereas the questioning under clause 1(b) is mandatory** as the object is to afford an opportunity to the accused to personally explain any circumstance, appearing in evidence against him. **(State of Kerala v. Rajappan Nayar; 1987 Cri.L.J. 1256)**

Section 313, Cr.P.C. (1) (b) casts a duty on court to give an opportunity to the accused to explain the incriminating material against him. **(State of Maharashtra v. Sukhdev Singh; AIR 1992 SC 2100) (Basavaraj R. Patil v. State of Collector; AIR 2000 SC 3214) (Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507).**

In every enquiry or trial:

The accused can be examined under section 313, Cr.P.C. in every enquiry or trial.

As per section 2(g) of the Cr.P.C.:-

“enquiry means any enquiry other than a trial conducted under this Code by a Magistrate or Court”

The trial of the accused commences after framing of charge.

“Accused”

For the purpose of section 313, Cr.P.C. accused means the accused then under-trial and under-examination by the court, and does not include an accused over whom the court is exercising jurisdiction in another trial. [**Karamalli Gulamalli; (1938) 40 Bom. LR 1092 (1939)]**

“Personally”

The word „personally‟ would show that the opportunity afforded to the accused to explain his stand on the incriminating circumstances is in addition to what his Counsel would have already done by way of cross-examination. Therefore, it would be premature to examine the accused to explain personally any circumstance when he has not exhausted the opportunity to cross examine the witnesses. [**B. Chainraj v. Asstt. Collector of Central Excise; (1989) (1) Crimes 229, 231 (MAD)]**

“At any stage”

The power to question the accused under section 313 (1)(a) of the Cr.P.C., is a discretionary power which the court may exercise at any time during the trial or enquiry even before framing a charge. **(Emperor v. Genu Gopal; (1929) 31 Bom LR 1134)**

“Explain any circumstance…….in the evidence against him”

Under section 313, Cr.P.C. (1)(b), it is mandatory for the trial Judge to put to the accused every such piece of evidence which appears incriminating against him and reply of the accused shall be sought thereto. **(State of Nagaland v. Lipok Ao; 2007 Cr.L.J. 3395 (DB) (Ajai Singh v. State of Maharashtra; AIR 2007 SC 2188)**

The accused may or may not avail the opportunity for giving his explanation. **(Subhash Chandra v. State of Rajasthan; (2002) 1 SCC 701)**

Attention of the accused must specifically be drawn to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Court is under legal obligation to put all incriminating circumstances before accused to solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused. Circumstances not put to the accused in his examination under section 313, cannot be used against him. **(State of U.P. v. Mohd. Iqram & Anr; AIR 2011 SC 2296)**

“Examination U/s. 313, Cr.P.C. more than once”

If examination of the accused under section 313 has taken place, the court can call the accused to answer incriminating circumstances again. There is no implied prohibition on calling upon the accused to again answer questions. However, power to call the accused to answer questions more than once, after conclusion of the prosecution evidence should not be used in a routine or mechanical manner. **(Rajan Dwivedi v. CBI; 2008 Cri.L.J.; 1440 (1447) DEL)**

“Shall after the witnesses for the prosecution have been examined” etc.

The provisions of section 313, Cr.P.C. are for the benefit of the accused. Section 313 (1)(b) is mandatory in nature and in order to provide an opportunity to the accused to obtain the full benefit of the section, it is the duty of the court to examine the accused after cross-examination and re-examination, if any of the prosecution witnesses is over. **(Nathu Kasthurchand; 1924 (27) BOM LR 105)**

If fresh prosecution witnesses are examined after the examination of the accused, it is obligatory to further examine the accused under section 313, Cr.P.C. **(Emperor v. Bhau Dharma; (1928) 30 Bom LR 385)**

“Proviso to section 313 (1)(b)”

„Summons Case‟

In a summons case where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under section 313, Cr.P.C.

„Warrant Case‟

Whether examination of the accused under section 313, Cr.PC can be dispensed with in a warrant case?

As far as warrant cases are concerned, it appears that no discretion is given to the court in section 313 (1)(b). But in the case of **Basavaraj R. Patil v. State of Collector; AIR 2000 SC 3214**, the Apex Court has held that as a general rule, it is necessary that in all cases the accused must answer the questions put to him under section 313(1)(b) by personally remaining present in the court. However, if remaining present involves undue hardship and large expense the court can dispense such examination even in warrant cases after adopting a measure to comply with the requirements of section 313, Cr.P.C. in a substantial manner.

For this the accused must be required to file before the court an application with an affidavit sworn-in by himself with the prayer that he may be allowed to answer the questions without his physical presence in the court on account of justifiable exigencies. The application and the affidavit of the accused must also contain the narration of undue hardship and large expense etc., the assurance that no prejudice would be caused to him by dispensing with his personal presence and an undertaking that he would not take any grievance on that score at any stage of the case. It is also observed that section 313, Cr.P.C. does not envisage the examination of the Counsel in place of the accused and reiterated the law laid down by the Apex Court by three Judges Bench in **Bibhuti Bhushan Das Gupta v. State of West Bengal; AIR 1969 SC 381** and later on followed in **Shivaji Sahebrao Bobade v. State of Maharashtra; (1973) 2 SCC 793**.

In **K. Anbazhagan v. Supdt. of Police; AIR 2004 SC 524**, SN Variava J. who gave a majority judgment with Justice Thomas in **Basavaraj R. Patil** case (supra) reiterated the general rule that the accused must answer the questions put to him under section 313 (1)(b), by personally remaining in the court. And only in exceptional circumstances of undue hardship and large expense etc., the

general rule of personal presence can be dispensed with. In this case the court held that the accused was holding the position of Chief Minister of Tamil Nadu and there was no exceptional exigencies or circumstance such as to undertake a tedious long journey or incur a whopping expenditure to appear in the court to answer the questions under section 313, Cr.P.C. Thus, none of the facts which have weighed with the consideration of the court in **Basavaraj R. Patil** case (supra), were available in the given case.

In **Inspector, Customs, Akhnorr, Jammu and Kashmir v. Yashpal; (2009) 4 SCC 769**, **Basavaraj R. Patil** case (supra) was followed in less serious warrant cases.

PUTTING SEPARATE AND SIMPLE QUESTIONS ABOUT EACH MATERIAL CIRCUMSTANCE:

It is not sufficient compliance to string together long series of facts and ask the accused what he has to say about them. He must be questioned simply and separately about each material circumstance which is intended to be used against him.

The questioning must be fair and framed in a form which an ignorant and illiterate person may be able to appreciate and understand. Even if the accused is not illiterate, his mind is apt to be perturbed when he is facing a trial of murder. Therefore, it is required that each material circumstance should be put simply and separately in a way that an illiterate person can appreciate and understand. **[Tara Singh v. State of Punjab; AIR 1951 SC 44]**

The practice of putting the entire evidence against the accused in a single question and giving an opportunity to explain the same is improper as the accused may not be in a position to give a rational and intelligent explanation. **(Naval Kishore v. State of Bihar; (2004) 7 SCC 502)**

This opportunity of examination under section 313 given to the accused, is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. **(Naval Kishore v. State of Bihar; (2004) 7 SCC 502)**

It is imperative that each and every question must be put to the accused separately and their answers must also be recorded separately. **(Nicolau Almeida v. State; 1988 (2) Crimes 774, 781 (Bom) (DB)] [Kalpnath Rai v. State; AIR 1998 SC 201) [Hyder Khan v. State of Karnataka; 2006 Cri.L.J. 3143 (3145)]**

Recording of statement of the accused persons simultaneously and putting same set of questions to all the accused may cause prejudice to the accused, hence, it was held not proper. **[State of Maharashtra v. Goraksha Ambaji Adsul; 2006 Cri.L.J. (NOC) 45]**

Recording of statements shall be in full and not in monolithic answers. **[Dada Saheb Patalu Misal v. State of Maharashtra; 1987 Cri.L.J. 1512 (BOM) (DB)]**

EXAMINATION OF ACCUSED IN CASES OF CIRCUMSTANTIAL EVIDENCE

In **Munish Mubar v. State of Haryana**; **AIR 2013 SC 912 - (Dr. B.S. Chauhan and FMI Kalifulla, JJ),** the court held that it is obligatory on the part of the accused while being examined under section 313, Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him and the court must take note of such explanation even in a case of circumstantial evidence so as to decide whether or not the chain of circumstances is complete. The same view was taken in the case of **Mushir Khan v. State of M.P.; AIR 2010 SC 762**. Please also see: **Transport Commissioner, Andhra Pradesh, Hyderabad and Another v. Sardar Ali and Another; AIR 1983 SC 1225**.

In **Munish Mubar** case (supra), the court observed that **"circumstantial evidence is a close companion of actual matrix, creating a fine network through which can be no escape for the accused, primarily, because such facts when taken as a whole, do not permit us to arrive any other inference but one, indicating the guilt of accused."**

In this case accused appellant and deceased both having illicit relation with co-accused, the car of appellant was found parked at Airport where the deceased was to arrive and the car was moved out of parking area after arrival of the flight, presence of the appellant at the place of occurrence proved by his telephonic records. Articles recovered on disclosure made by the appellant found to contain human blood, the appellant gave no explanation as to the parking of his car at the Airport or about the recoveries made at his instance. Circumstance clearly connect appellant with crime. And merely making the bald statement under section 313 by the accused that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established. The court held that the accused was expected to explain the reason for which he had gone to Airport and why the car had remained parked there for several hours.

In **Madhu @ Madhurantha and Another v. State of Karnataka; AIR 2014 SC 394 – (Dr. B.S. Chauhan and S.A. Bobde, JJ**.), the court held that in cases where the accused was last seen with the deceased victim (last seen – together theory) just before the incidence, it becomes the duty of accused to explain the circumstances under which the death of victim occurred and further it is obligation on the part of the accused while being examined under section 313,Cr.P.C. to furnish some explanation regarding the incriminating circumstances associated with him. And the court must take note of such explanation even in a case of circumstantial evidence to decide whether or not the chain of circumstances is complete. (As has also been held in **Mushir Khan @ Badshah Khan and Another v. State of Madhya Pradesh; AIR 2013 SC 762** and **Dr. Sunil C. Dennial; AIR 2013 SC (Cri) 193)**

INCONSISTENT PLEAS

In the case of **State of Madhya Pradesh v. Balu; AIR 2005 SC 222**, the court rejected the plea of non-consideration of the plea of accused recorded under

section 313, Cr.P.C. to the effect that there was animosity between the family of the victim and the accused because defence of consent was taken by the accused. Thus these are two inconsistent pleas which were not found acceptable.

In **Kanchan v. State of U.P.; 1982 CrLJ 1982 All Cr 304 1633,** the accused took inconsistent pleas of alibi and private defence which were not acceptable.

IMPORTANT CAUTIONS WHILE MAKING USE/APPLICATION OF THE STATEMENT UNDER SECTION 313, CR.P.C.:

1. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of other evidence against him led by the prosecution. But such statement of under section 313, Cr.P.C. should not be considered in isolation but in conjunction with the prosecution evidence. **[Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507]**

2. Conviction cannot be based merely on the statement of accused under section 313, Cr.P.C.:

Conviction of the accused cannot be based merely on the statement made under section 313, Cr.P.C. as it cannot be regarded as a substantive piece of evidence. **[Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507] [Manu Sao v. State of Bihar; (2011) 1 SCC (Cri) 370]**

In **Rafiq Ahmad @ Rafiq v. State of U.P.; AIR 2011 SC 3114,** the court observed:-

“It is true that the statement under section 313, Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence

3. Adverse Inference against the accused:

In the case of **Phula Singh v. State of Himachal Pradesh; AIR 2014 SC 1256 – (Dr. B.S. Chauhan and S.A. Bogde, JJ.),** the court held that accused has the right to maintain silence during examination or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. But in such an event adverse inference could be drawn against him.

As has been held in **Ram Naresh and Others v. State of Chhattisgarh; AIR 2012 SC 1357, Munish Mubar v. State of Haryana; AIR 2013 SC 912 and Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150**, the court held that the accused has a duty to furnish an explanation in his statements under section 313, Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under section 313, Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

The option lies that the accused to maintain silence coupled with simplicitor denial or, in the alternate to explain his version and reasons, for his alleged involvement in the commission of crime.

This is the statement which the accused makes without fear or right of the other party to cross examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. **[Sanatan Naskar & Another v. State of West Bengal; AIR 2010 SC 3507]**

False denial made by the accused of established facts can be used as incriminating evidence against him. **[Munna Kumar Upadhyay @ Munna Upadhyay v. State of Andhra Pradesh; AIR 2012 SC 2470]**

An adverse inference can be taken against the accused only and only if the incriminating materials stood fully established and the accused is not able to furnish any explanation for the same. **[Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150]**

4. **Statements in Bail Petition:**

The statement of the accused made on his behalf by his Counsel in the bail application cannot be read as his admission as it was not put to the accused in his statement under section 313, Cr.P.C. **[Randhir Singh v. State; 1980 Cri.L.J. 1397 (Del - DB)]**

5. The statement of co-accused under section 313, Cr.P.C. cannot be used against main accused for obvious reason that the accused has no opportunity to cross examine the co-accused. But the answers given by the accused may be put in evidence for or against him in any other inquiry or trial.

6. In **Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan; AIR 2013 SC 3150,** the court observed that no matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused and seek his explanation as regards the incriminating material surfaced against him.

The court also observed that the circumstances which are not put to the accused in his examination under section 313, Cr.P.C., cannot be used against him and have to be excluded from consideration.

7. Whether no answer/evasive or untrustworthy answer by the accused under section 313, Cr.P.C. justifies his conviction on this score?

In **Nagaraj v. State (Tamil Nadu); (2015) 4 SCC 739,** the Supreme Court observed that in the impugned judgement the High Court has found the answers of the accused under section 313, Cr.P.C. evasive and untrustworthy and held this to be another factor indicating his guilt.

Making the above observation, the Supreme Court clarified the legal position in this context, thus:-

“In **Parsuram Pandey v. State of Bihar; (2004) 13 SCC 18** the Supreme Court has held that section 313, Cr.P.C. is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to

benefit the accused and by way of its corollary, it benefits the court also in reaching the final conclusion and its intention is not to nail the accused but to comply with the most salutary and fundamental principle of natural justice i.e. *audi alteram partem* as explained in **Asraf Ali v. State of Assam; (2008) 16 SCC 328.**"

In **Sher Singh v. State of Haryana; AIR 2015 SC 980,** the Supreme Court has recently clarified that because of the language employed in section 304-B, IPC which deals with dowry death, the burden of proving innocence shifts to the accused which is in stark contrast and dissonance to a person‟s right not to incriminate himself. It is only in the back-drop of section 304-B that an accused must furnish credible evidence which is indicative of his innocence either under section 313, Cr.P.C. or by examining himself in witness-box or through defence witnesses, as he may be best advised. Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the court to record a finding of guilt on this score. The burden is cast on the prosecution to prove its case beyond reasonable doubt and once this burden is met , the statements under section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. In the instant case, it has been held that the High Court was not correct in drawing an adverse inference against accused because of what he has stated or what he has failed to state in his examination under section 313, Code of Criminal Procedure.

OMISSION TO QUESTION THE ACCUSED ON ANY INCRIMINATING CIRCUMSTANCE OR EVIDENCE, OR EFFECT OF NON-COMPLIANCE OF SECTION 313, Cr.P.C.:

In **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra; (1973) 2 SCC 793: (AIR 1973 SC 2622),** the Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and the Court has held that the appellate court can question the counsel for the accused as regards the circumstance omitted to be put to the accused and held as under:-

"…It is trite law, nevertheless fundamental, that the prisoner‟s attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court

any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, Cr.P.C., the omission has not been shown to have caused prejudice to the accused…"

The same view was reiterated by the Court in **State (Delhi Administration) v. Dharampal; AIR 2001 SC 2924** wherein the Court has held as under:-

"Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him. In **Gyan Chand and Others v. State of Haryana; AIR 2013 SC 3395, Dr. B.S. Chauhan and S.A. Bobde, JJ**, Plea to non-compliance of the provisions of section 313, Cr.P.C. was taken for the first time before the Supreme Court. But there was no material showing as to what prejudice has been caused to the accused persons, if facts of conscious possession was not put to them. Thus the court held that the trial was not vitiated for non-compliance of the provisions of section 313, Cr.P.C.

Mere defective/improper examination under section 313, Cr.P.C. is no ground for setting aside the conviction of the accused, unless it has resulted in prejudice to the accused. Unless the examination under section 313, Cr.P.C. is done in a perverse way, there cannot be any prejudice to the accused. **(SC Bahri v. State of Bihar; AIR 1994 SC 2420)** (**Shobhit Chamar v. State of Bihar; AIR 1998 SC 1693**).

Where the examination of the accused under section 313, Cr.P.C. recorded by the trial court was an empty formality, all the incriminating materials when not put to him, the acquittal of the accused husband for offence under section 302 and 304B, IPC was upheld. **(B. Venkat Swamy v. Vijaya Nehru; 2008 AIR SCW 5908 (5913, 5914) (Latu Mahto v. State of Bihar; (2008) 3 SCC (Cri) 500; (2008) 8 SCC 395)** (Conviction under section 302/149, 34 – not sustained)

In **Nar Singh v. State of Haryana; AIR 2015 SC 310,** the Supreme Court laid down:-

"…Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. In so far as non-compliance of mandatory provisions of S. 313, it is an error essentially

committed by the Trial Court, the same has to be corrected or rectified in the appeal."

In the above case the Court observed that:-

"The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of S. 313 has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under S. 313 it cannot be inferred that any prejudice had been caused to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice…"

"…Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under S. 313 and may direct remanding the case again for re-trial of the case from that stage of recording of statement under S. 313 and the same cannot be said to be amounting to filling up lacuna in the prosecution case."

In **Nar Singh"s** case (supra), the Supreme Court held that:-

"…Accused in the instant case is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under S. 313 cannot enure to the benefit of the accused. Therefore the matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused under S. 313…"

EXAMINATION OF COUNSEL:

A pleader authorised to appear on behalf of the accused does a lot of work for the accused and makes statements on his behalf like in bail petitions and other applications. The Supreme Court has held that a proposition that a Pleader authorised to appear on behalf of the accused can do all acts which the accused himself can do, is too wide. When the prosecution evidence is closed, the accused must be questioned for the incriminating evidence against him and his pleader cannot be examined in his place. **[Bibhuti Bhusan Das Gupta v. State of W.B.; AIR 1969 SC 381: 1969 CrLJ 654 : Basavraj R. Patil v. State of Karnataka; AIR 2000 SC 3214 : 2000 CrLJ 4604 : 2000(4) Crimes 79 : (2000) 8 SCC 740; Usha K. Srinivas; AIR 1993 SC 2090 : 1993 CrLJ 2669 (SC); Keya Mukherjee v. Magma Leasing Ltd.; 2008 CLJ 2597 (2602) : AIR 2008 SC 1807 : (2008) 8 SCC 447; Dakshinamoorthy v. Union Territory of Pondicherry; (2002) MLJ (Cri) 402 L 2002 CrLJ 2359 (2365) (Mad.)]** The accused cannot answer the questions with legal advice and consultancy, as it will not amount to

examination of the accused personally. Denial of legal consultancy and advice to the accused at the time of examination under S. 313, Cr.P.C. would not amount to violation of fundamental right contemplated under Arts. 21 and 22(1) of the Constitution. **[Dakshinamoorthy v. Union Territory of Pondicherry; (2002) MLJ (Cri) 402 L 2002 CrLJ 2359 (2365) (Mad.)]**

„AGE OF THE ACCUSED"

Estimation of the age given in the statement under section 313, Cr.P.C. should be accepted as correct. **[Raisul v. State of U.P.; AIR 1977 SC 1822] [Shravan Dasrath v. Datrange v. State of Maharashtra; 1998 Cri.L.J. 1196 (Bom) (DB)]**

Endorsement regarding age of the accused when he mentions his age at the time of his examination under section 313, Cr.P.C.

C.L. No. 5/2006 Admin „G" Dated: 15th February, 2006

While taking orientation and inviting attention to court"s Circular Letter Nos. 69 dated 13.8.1968, 117/VIIc-34 dated 5.8.1974, 89 /Admin. „A" dated 3.5.1977, 71/VIIc-34 /Adm. „G" dated 7.11.1981 and 33/ Admin, „G" /VII-f-45 dated 13.5.1986. I am desired to say that the Hon"ble Court (coram Hon"ble Mr. Justice Imtiyaz Murtaza and Hon"ble Mr. Justice Amar Saran) in Cri. Jail appeal No.58 of 2001- Kaloo Vs. State of U.P. 2006(54) ACC 343 has been pleased to "direct all the Sessions Judges and Magistrates in the State of U.P. to make a positive endorsement as to their own estimate of the age of the accused when the accused mention their ages at the time of their examination under section 313 Cr. P.C. This endorsement must be made in each and every case even if the Court concerned is in agreement with the age as mentioned by the accused. This direction has become necessary because we are finding that the requirement in Rule 50 of the General Rules (Criminal) that the court must note down its own estimate of age in case it is not in agreement with the age mentioned by the accused, are more often than not being overlooked by trial courts. Only if the Court is required to record a positive finding about the age of the accused in each trial after looking to the age mentioned by the accused in his statement, other material on record, the court"s subjective impression of the age, and in the event that the court deems it appropriate by getting the medical examination of the accused conducted or by seeking further documentary or other evidence of age, that we can ensure that the mandate of Rule 50 of the General Rules (Criminal) and directions of the Apex Court are observed in letter and spirit. Only by this exercise will a proper estimate of the age be available on record which is very necessary for deciding on questions of the appropriateness of the procedure adopted for the trial of the case, i.e. whether the trial of the accused should have been conducted according to the procedure prescribed under the Juvenile Justice Act or otherwise, what should be the appropriate sentence, if the accused is of very young age or he is very old, and certain cases whether death or life sentence would be the appropriate sentence considering the age of the Accused".