

RESILIENCE

LAW TIMES

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LATEST LEGAL NEWS

[Possession Of Drugs] Supreme Court Seeks Assam's Response In Third Year Law Student's Plea Seeking Bail

The Supreme Court of India on Wednesday asked the State of Assam to file a counter affidavit in a plea filed by a third-year law student seeking bail, in a case registered under the Narcotic Drugs and Psychotropic Substances Act, 1985.

A Bench of Justices Ajay Rastogi and Bela Trivedi will hear the case after 10 weeks. The SLP was filed challenging an order of the Guahati High Court dated November 15, last year, denying him anticipatory bail.

According to the prosecution, on September 22, 2022, a police team searched the petitioner's house and recovered 9.80 gm of suspected heroine in four plastic containers, one tobacco container with 21.89 gm of suspected heroine and 24 capsules of Span-Trancan Plus.

During the hearing today, the counsel for the State vehemently opposed the SLP. Since the petitioner is law student, he shouldn't have resorted to such activities, the counsel argued. "Someone who is a law student should have known better".

When the Bench asked him the petitioner's age, the advocate replied that he would be 25 years, at max.

"He would be 25 at best. He's a final year law student [three-year LLB course]. We have been to his house on five different occasions, he has been abs

Further, he argued that there's a huge war going on in Assam against drugs. "There's a war on the drugs in Assam. In high and low quantities, many people possess these substances. The root is through Myanmar - through Manipur and Nagaland". In February, while issuing notice in the case, the Court stayed the High Court's order dismissing the petitioner's pre-arrest bail.

Breaking: Allopathy Doctors And Ayurved Doctors Do Not Perform Equal Work And Are Not Entitled To Equal Pay: Supreme Court

The Supreme Court, on Wednesday, held that Allopathy doctors and doctors of indigenous medicine cannot be said to be performing equal work so as to be entitled to equal pay. The Apex Court noted that the emergency duty that Allopathy doctors are capable of performing and the trauma care that they are capable of providing cannot be performed by Ayurved doctors. It further noted that it is not possible for Ayurved doctor. It further noted that it is not possible for Ayurved doctors to assist surgeons performing complicated surgeries, while MBBS doctors can do the same. In this regard, the Court clarified, "We shall not be understood to mean as though one system of medicine is superior to the other. It is not our mandate nor within our competence to assess the relative merits of these two systems of medical sciences."

It added - "Therefore, we have no doubt that every alternative system of medicine may have

its pride of place in history. But today, the practitioners of indigenous systems of medicine do not perform complicated surgical operations. A study of Ayurved does not authorise them to perform these surgeries.” The Court noted that presence of Ayurved doctors is not required in a post-mortem or autopsy; during out-patient days (OPD) in general hospitals in cities/towns, MBBS doctors are made to attend to hundreds of patients, which is not the case with Ayurved doctors.

A Bench comprising Justice V. Ramasubramanian and Justice Pankaj Mithal set aside the Gujarat High Court order holding that practitioners possessing a degree of Bachelor of Ayurved in Medicine and Surgery are to be treated at par with doctors holding MBBS degrees and are entitled to the benefits of the recommendation of the Tikku Pay Commission. Factual Background On the basis of a Memorandum of Settlement signed by the Ministry of Health and Family Welfare and the Joint Action Council of Service Doctors Organisation, a high power committee was constituted in 1990 with RK Tikku as the Chairperson. The purpose for the same was to improve the prospects of doctors in Government service. The committee submitted its report on 31.10.1990. The recommendation was limited to the service doctors holding MBBS degrees; postgraduate medical degrees; super-speciality degrees; and those on the teaching and non-teaching sides. On 19.11.1990, the Ministry constituted another committee with RK Tikku as the Chairperson for career improvement and cadre restructuring of the practitioners of Indian Systems of Medicine and Homeopathy. The committee submitted its report on 26.02.1991 and the scope was limited to practitioners holding degrees in Ayurved, Siddha, Homeopathy. By Office Memo dated 14.11.1991, the Union Government accepted the report dated 31.10.1990 with respect to allopathic doctors. The State of Gujarat also accepted the same and issued a resolution on 17.10.1994. In 1998, the Local Fund Audit, Ahmedabad sought clarifications from the State Government, whether the same benefits are available to non-MBBS medical practitioners holding degrees such as G.A.F.M/LMP. In 1999, the State Health and Family Welfare Department responded in the affirmative. It clarified that the recommendations of the Tikku Committee were also extended to doctors working under the Employees State Insurance Scheme. The respondents who were originally appointed on adhoc basis, under the ‘Community Health Volunteer Medical Officers Scheme’ of the Union Government and who were later absorbed by the State of Gujarat in May, 1991, filed writ petitions before the Gujarat High Court seeking extension of the benefit of higher scales of pay on the basis of the recommendations of Tikku Pay Commission. The Singh Judge of the High Court allowed the writ petitions. The State Government filed an appeal before the Division Bench. While the appeal was pending, the Gujarat Government withdrew its 1999 resolution. The Division Bench upheld the order of the Single Judge -

both MBBS and non-MBBS doctors form part of the same cadre and hence no discrimination is permissible within the cadre on the basis of educational qualifications;

non-MBBS doctors were also discharging the same duties and functions discharged by MBBS doctors and were even manning primary health centres independently and that therefore they were entitled to equal pay.

While granting leave in the Special Leave Petition on 08.09.2014, the Supreme Court had asked the State Government to comply with the order of the High Court upto 50% within two months, leaving the consideration of the other 50% upon the final adjudication of the SLP. In 2016 contempt petitions were filed alleging wilful disobedience of the interim order.

Issues before the Supreme Court (i) Whether different scales of pay can be fixed for officers appointed to the same cadre, on the basis of educational qualifications possessed by them?

(ii) Whether Allopathy doctors and doctors of indigenous medicine can be said to be performing “equal work” so as to be entitled to “equal pay”?

Analysis by the Supreme Court The Court noted that the first issue is no longer res integra. Referring to the relevant decisions of the Apex Court in this regard, the Court observed that classification based on educational qualification is not violative of Articles 14 and 16 of the Constitution of India With respect to the second issue, it held that allopathy doctors and doctors of indigenous medicine cannot be said to be performing “equal work” so as to be entitled to “equal pay”? Analysis by the Supreme Court The Court noted that the first issue is no longer res integra. Referring to the relevant decisions of the Apex Court in this regard, the Court observed that classification based on educational qualification is no violative of Articles 14 and 16 of the Constitution of India. With respect to the second issue, it held that allopathy doctors and doctors of indigenous medicine cannot be said to be performing “equal work” so as to be entitled to “equal pay”.

'What Happens When A Child Of Heterosexual Couple Sees Domestic Violence?': CJI DY Chandrachud On Concerns Over Adoption By Queer Couples

While hearing the marriage equality petitions on Thursday, Chief Justice of India DY Chandrachud, responded to a commonly raised concern over the suitability of same-sex couples to adopt and raise children. “What happens when a child of a heterosexual couple sees

domestic violence? Will that child grow up in a normal atmosphere, after seeing their father being an alcoholic, coming home and thrashing the mother every night, and asking for money for alcohol? So much for heterosexuals.... This is why, as I said, there are no absolutes”, CJI said while adding, “I say this at the risk of being trolled”.

"This has become the name of the game which the judges have to confront. Answers to what say in the court are in the trolls, not in the court",CJI added referring to certain extreme social media reactions to some of the observations made by him during the hearing.

A constitution bench comprising the chief justice, as well as Justices Sanjay Kishan Kaul, S Ravindra Bhat, Hima Kohli, and PS Narasimha, was hearing a batch of pleas for the legal recognition of same-sex marriage.

The CJI made the comments regarding same-sex couples raising children after looking at the evidence presented by senior advocate KV Viswanathan, appearing for transgender rights activist Zainab Patel, with respect to same-sex couples adopting children. Apart from urging the court to not look at marriage through the narrow lens of procreation, the senior counsel also pointed out that last year, in its hundred and eighteenth annual report, a Rajya Sabha parliamentary standing committee had recommended the formulation of a comprehensive law relating

Supreme Court Dismisses As Withdrawn Plea To Ban Political Parties With Religious Names & Symbols; Gives Liberty To Move HC

The Supreme Court of India on Monday allowed the withdrawal of a petition seeking the ban of political parties which use names and symbols with religious connotations. "The appearing counsel seeks permission to withdraw the present petition with the liberty to approach the high court. Writ petition stands dismissed as withdrawn, with the above liberty. We have not expressed anything on merits in favour of any party."

A bench of Justices MR Shah and Ahsanadduin Amanullah was hearing a writ petition filed by Syed Waseem Rizvi, the former chairman of Uttar Pradesh Shia Central Board of Waqfs. After recently renouncing Islam and converting to Hinduism, Rizvi has taken a new name, i.e., Jitendra Narayan Singh Tyagi. The plea sought not only a ban of political parties which use names and symbols with

religious connotations, but also the strict enforcement of certain provisions of the Representation of People's Act, 1951 which prohibits luring of voters and promoting feelings of enmity or hatred between different classes of citizens on the ground of religion.

oday, before the counsel for the petitioner was allowed to withdraw the petition, senior advocate and former attorney-general KK Venugopal, appearing for All India Majlis-E-Ittehadul Muslimeen (AIMIM), informed that a copy of a similar petition filed before the Delhi High Court has been placed before the apex court bench. On that very ground, Venugopal argued, the petition must be dismissed.

To this, Justice Shah responded, "The petitioner is saying that he will withdraw the petition." In September last year, a top court bench issued notice in this matter and asked the Election Commission of India to file its response. The commission, in its counter-affidavit, told the Supreme Court that there was no express statutory provision under the Representation of Peoples Act, 1951 which barred the registration of political parties with names having religious connotations.

During a previous hearing, Senior Advocate Gaurav Bhatia, appearing for the petitioner, had submitted that two parties which are recognised state parties have the word 'Muslim' in their name. He pointed out that some political parties had a crescent moon and stars on their official flags. He said that the petition listed several other parties which have religious names. The petitioner had impleaded Indian Union Muslim League (IUML) and All India Majlis-E-Ittehadul Muslimeen (AIMIM).

However, on another day, senior advocate Dushyant Dave, appearing for the IUML, argued that the petitioner was selectively impleading certain parties. He told the bench, "The petitioner is being selective here. Why is the petitioner targeting only the IUML when the Supreme Court wanted the names of 'parties' that he wanted to implead? What about Shiv Sena, Shiromani Akali Dal?" On yet another day, the Indian Union Muslim League told the bench that the ruling Bharatiya Janata Party should also be added as a respondent in the case, as its symbol lotus was a 'religious symbol. Venugopal, appearing for AIMIM, pointed out that a petition seeking the same reliefs is pending before the High Court. He also alleged that the petitioner was adopting a 'selective approach',. While hearing the matter in January, the Supreme Court had asked the petitioner to be not "selective"

and reminded him that he must be "fair to everyone" and "secular" and should not give room for an allegation that only a particular community was targeted. Case Title: Syed Waseem Rizvi vs. Election Commission of India and Anr. – W. P. (C) No. 908/2021

Parties Cannot Directly Approach Supreme Court Under Article 32 Seeking Divorce On Ground Of Irretrievable Breakdown Of Marriage : SC

While holding that irretrievable breakdown of marriage can be a ground to grant divorce by invoking powers under Article 142 of the Constitution, the Supreme Court clarified that a party cannot file a writ petition under Article 32 of the Constitution of India and seek relief of dissolution of marriage on the ground of irretrievable breakdown of marriage directly from it.

The Constitution Bench approved the view taken in the judgment *Poonam v. Sumit Tanwar* (2010) 4 SCC 460 that the parties should not be permitted to file a writ petition under Article 32 of the Constitution of India, or for that matter under Article 226 of the Constitution of India before the High Court, and seek divorce on the ground of irretrievable breakdown of marriage.

"The reason is that the remedy of a person aggrieved by the decision of the competent judicial forum is to approach the superior tribunal/forum for redressal of his/her grievance. The parties should not be permitted to circumvent the procedure by resorting to the writ jurisdiction under Article 32 or 226 of the Constitution of India, as the case may be. Secondly, and more importantly, relief under Article 32 of the Constitution of India can be sought to enforce the rights conferred by Part III of the Constitution of India, and on the proof of infringement thereof. Judicial orders passed by the court in, or in relation to, the proceedings pending before it, are not amenable to correction under Article 32 of the Constitution of India. Therefore, a party cannot file a writ petition under Article 32 of the Constitution of India and seek relief of dissolution of marriage directly from this Court."

The Constitution Bench of Justices Sanjay Kishan Kaul, Sanjiv Khanna, Abhay S. Oka, Vikram Nath and J K Maheshwari made the above observation while answering a reference to it on the scope and ambit of power and jurisdiction under Article 142(1) of the Constitution of India and also regarding the grant of decree of divorce by mutual consent dispensing with the period and the procedure prescribed under Section 13-B of the Hindu Marriage Act.

It held as follows: This Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'

This Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in *Amardeep Singh* (supra) and *Amit Kumar* (supra). This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings. This Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and

continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.

Case details Shilpa Sailesh vs Varun Sreenivasan | 2023 LiveLaw (SC) 374 | Transfer Petition (C) 1118 OF 2014 | 1 May 2023 | Justices Sanjay Kishan Kaul, Sanjiv Khanna, Abhay S. Oka, Vikram Nath and J K Maheshwari

Constitution of India, 1950 ; Article 142 - This Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

Constitution of India, 1950 ; Article 142 - Dissolution of the marriage on the ground of its irretrievable breakdown - This Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.

Constitution of India, 1950 ; Article 142 - Mutual Consent Divorce - This Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746 and Amit Kumar vs Suman Beniwal (2021) SCC Online SC 1270. This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.

Constitution of India, 1950 ; Article 32, 226 - The parties should not be permitted to file a writ petition under Article 32 of the Constitution of India, or for that matter under Article 226 of the Constitution of India before the High Court, and seek divorce on the ground of irretrievable breakdown of marriage - Approved view taken in Poonam v. Sumit Tanwar (2010) 4 SCC 460

Constitution of India, 1950 ; Article 142 - Grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited; the nature of allegations made by the parties against each other

and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

CURRENT AFFAIRS

Forest (Conservation) Amendment Bill, 2023

Recently, Environment Minister Bhupender Yadav introduced the Forest (Conservation) Amendment Bill, 2023, in the Lok Sabha. This amendment bill seeks to clarify India's forest conservation law and exempt certain categories of land from its ambit to fast-track security-related projects of national importance. Understanding the Forest (Conservation) Act, 1980 The Forest (Conservation) Act, 1980 is a ..

5th International Conference on Disaster Resilient Infrastructure

The Coalition for Disaster Resilient Infrastructure (CDRI) organizes an annual conference that brings together decision-makers, thought leaders, academia, and institutions from across the world to work on solutions for infrastructure resilience. The latest conference, the 5th International Conference on Disaster Resilient Infrastructure (ICDRI) 2023, was held on 4th and 5th of April 2023 in New ..

Smart Cities Mission Extended

The Union Housing and Urban Affairs Ministry has extended the deadline of its Smart Cities Mission to June 2024, giving all 100 smart cities more time to complete their projects and document and disseminate the learnings from the mission. This move is expected to enable the best practices and innovations created under the mission to ..

StarBerrySense Payload

The Indian Space Research Organization (ISRO) launched a low-cost star sensor called StarBerrySense on board its Polar Satellite Launch Vehicle (PSLV) C-55 rocket on April 22, 2023. Developed by the Indian Institute of Astrophysics (IIA), StarBerrySense's primary objective is to image the field of view, identify stars, and calculate the spacecraft's pointing direction. ContentsHow StarBerrySense ..

Bureau of Civil Aviation Security (BCAS)

The Bureau of Civil Aviation Security (BCAS) is the national regulatory body for civil aviation security in India. It recently commemorated its raising day. A Brief History of BCAS The BCAS was established as a Cell in the Directorate General of Civil Aviation (DGCA) in January 1978 following the hijacking of an Indian Airlines flight ..

World Intellectual Property Day – Update (April, 2023)

World Intellectual Property Day is observed annually on April 26th with the primary objective of promoting awareness of intellectual property and its safeguarding. Origins and Establishment of World Intellectual Property Day The concept for World Intellectual Property Day was first proposed during the 33rd Assembly Session of the World Intellectual Property Organization (WIPO) Member States ..

World Development Report 2023: Migrants, Refugees, and Societies

The world population has reached eight billion and is expected to grow for decades, but many countries are facing a sharp drop in working-age adults. The competition for workers and talent will intensify globally, and many countries will be reliant on migration to realise their long-term growth potential. A recent report from the World Bank, ..

LATEST JUDGEMENTS

Qamar Ghani Usmani Vs. State of Gujarat 2023 Latest Caselaw 299 SC

Qamar Ghani Usmani Vs. State of Gujarat

[Criminal Appeal Nos. 1045-1046/2023]

[SLP (Crl) Nos. 011196-011197/ 2022]

M.R. Shah, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.09.2022 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos. 1215/2022 and 1216/2022, by which, the Division Bench of the High Court has dismissed the said appeals and has refused to release the appellant - accused on statutory bail (default bail) under Section 167(2) of the Cr.PC, the original accused has preferred the present appeals.

3. The facts leading to the present appeals in a nutshell are as under:

3.1 That the accused came to be arrested on 29.01.2022. The 90 days period as provided under Section 167 of the Cr.PC, therefore, was to expire on 29.04.2022. However, on 22.04.2022, the Investigating Officer prayed for extension of time to complete the investigation which came to be granted by the learned Trial Court by granting extension of 30 days period. The accused came to be informed about the extension on 23.04.2022 itself.

On 22.05.2022, the Investigating Officer again prayed for further extension which came to be allowed by the learned Trial Court on 22.05.2022. At this stage, it is required to be noted that on 22.05.2022, the second extension was granted in the presence of the accused.

In the meantime, the accused submitted the default bail application on 10.05.2022 on the ground that at the time when the first extension was granted on 22.04.2022, the same was not in the presence of the accused and the accused was not kept present and therefore, first extension was bad in law and therefore, the accused acquired right to get the default bail on 10.05.2022. The learned Trial Court rejected the said application(s). The Division Bench of the High Court by the impugned judgment and order has dismissed the appeals. Hence, the present appeals at the instance of the original accused.

4. Shri Mehmood Pracha, learned counsel has appeared on behalf of the appellant and Shri Tushar Mehta, learned Solicitor General has appeared on behalf of the respondent - State of Gujarat.

4.1 Shri Pracha, learned counsel appearing on behalf of the accused has vehemently submitted that as such the judgment and order which has been relied upon by the Division Bench of the High Court has been subsequently set aside by this Court in the case of Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat 2022 SCC OnLine SC 1290.

4.2 It is further submitted by Shri Pracha, learned counsel appearing on behalf of the accused that it is admitted by the prosecution that the appellant was not produced before the learned Trial Court at the time of consideration of application for first extension of period of

investigation. It is submitted that in the case of Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors. (1994) 4 SCC 602 and in the case of Sanjay Dutt Vs. State through CBI, Bombay (II) (1994) 5 SCC 410, notice to the accused at the time of consideration of application for extension of period of investigation has been held to be mandatory.

It is submitted that in the case of Sanjay Dutt (supra), this Court has further interpreted to mean that a written notice is not mandatory but the presence of the accused suffices. It is submitted that therefore, even as per the law laid down by this Court in the case of Sanjay Dutt (supra) at the time of consideration of application for extension of period of investigation, the presence of the accused is must.

It is submitted that therefore, in the present case when the first extension was granted on 22.04.2022 admittedly the accused was not produced before the learned Trial Court, the first extension before itself is illegal and not an extension in the eye of law and therefore, thereafter when the accused filed the application(s) under Section 167(2) of the Cr.PC for default bail/statutory bail, the accused had acquired a indefeasible right for release on statutory bail as by the time 90 days period was over and the first extension is to be ignored.

4.3 It is further submitted by learned counsel appearing on behalf of the accused that as observed and held by this Court in the case of Sayed Mohd. Ahmed Kazmi Vs. State (2012) 12 SCC 1 extension of period of investigation from retrospective effect, after the initial order has been set aside, is not permissible.

4.4 It is further submitted by learned counsel appearing on behalf of the accused that recently in the case of Jigar (supra) this Court after taking into consideration the decisions of this Court in the cases of Hitendra Vishnu Thakur (supra) and Sanjay Dutt (supra), has specifically reiterated the proposition that failure to produce the accused at the time of extension of period of investigation renders such extension bad in law and entitles the accused to statutory bail.

4.5 Making the above submissions and heavily relying upon the decisions of this Court in the cases of Hitendra Vishnu Thakur (supra); Sayed Mohd. Ahmed Kazmi (supra); Sanjay Dutt (supra) and Jigar (supra), it is prayed to allow the present appeals and direct the respondent to release the appellant - accused on statutory bail.

5. While opposing the present appeals, Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State has vehemently submitted that as such the decision of this Court in the case of Hitendra Vishnu Thakur (supra) has been subsequently watered down by this Court in the case of Sanjay Dutt (supra). It is submitted that the view taken by this Court in the case of Hitendra Vishnu Thakur (supra) that at the time of extension of time for investigation, a notice to the accused is required to be given by the Designated Court before it grants any extension is no longer a good law in view of the subsequent decision of this Court in the case of Sanjay Dutt (supra).

It is submitted that in the case of Sanjay Dutt (supra) this Court has explained the decision in the case of Hitendra Vishnu Thakur (supra) and has observed and held that the only requirement is the production of the accused before the Court in accordance with Section 167(1) of the Cr.PC and that the accused is not entitled to written notice giving reasons for the extension.

5.1 Now so far as the reliance placed upon the decision of this Court in the case of Jigar (supra) is concerned, it is vehemently submitted that as such the said decision requires reconsideration by the Larger Bench as in the said decision this Court has not taken into consideration Section 465 of the Cr.PC. It is submitted that this Court has failed to consider the law laid down by this Court in the case of Rambeer Shokeen Vs. State (2018) 4 SCC 405, in which it was categorically held that the accused persons are entitled to the right of

the default bail only after rejection of the application for extension of time period for investigation or when the chargesheet is not filed within the prescribed time.

5.2 It is further submitted that even otherwise as observed and held by this Court in the case of Narender G. Goel Vs. State of Maharashtra (2009) 6 SCC 65 the accused has no right to be heard at the stage of investigation and more particularly, at the stage of extension of period for investigation. It is submitted that as observed and held by this Court, the accused is not entitled to have the reasonings for extension of period of investigation because accused has no right to be heard at the stage of investigation.

5.3 It is further submitted by Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State that even otherwise, in the facts and circumstances of the case, the appellant is not entitled to any relief(s) as prayed, more particularly, the statutory bail. It is submitted that the first extension was granted by the learned Trial Court on 22.04.2022. The accused was informed about extension of time for investigation immediately on the very next day i.e., 23.04.2022. It is submitted that nothing was done by the accused even on 29.04.2022 (when the 90 days period was over).

It is submitted that though the accused was informed about the extension of time for investigation on 23.04.2022, till 10.05.2022 he did not challenge the extension of time for investigation for a further period of 30 days granted on 22.04.2022. It is submitted that even thereafter when the second extension was sought and granted on 22.05.2022 on which date the accused was present and in whose presence the extension was granted, no grievance was made by the accused on the legality and validity of earlier order dated 22.04.2022 granting the extension for a further period of 30 days.

It is submitted that therefore, once the accused failed to challenge the first order of extension dated 22.04.2022 on whatever grounds available and allowed the period of extension and thereafter at the time when the second extension was granted the accused was present and he did not make any grievance with respect to the first extension granted on 22.04.2022, thereafter, it is not open for the accused to make any grievance on the grant of first extension granted on 22.04.2022.

5.4 It is submitted that therefore, at the time when the accused preferred application(s) for statutory/default bail on 10.05.2022, there was already an extension of time for investigation by the learned Trial Court vide order dated 22.04.2022, which was not challenged by the accused and therefore, the application(s) for default/statutory bail during the period of extension would not be maintainable at all as the said application(s) were made during the period of extension for investigation.

It is submitted by Shri Mehta, learned Solicitor General that even in the application(s) for default/statutory bail preferred on 10.05.2022, the accused did not even disclose that the learned Trial Court had granted the extension for investigation vide order dated 22.04.2022 which as such was communicated to the accused on 23.04.2022. It is submitted that therefore, in view of the above facts, none of the decisions of this Court relied upon on behalf of the accused shall be applicable to the facts of the case on hand.

It is submitted that so far as the reliance placed upon the decision of this Court in the case of Sayed Mohd. Ahmed Kazmi (supra) is concerned, it is submitted by learned Solicitor General that on facts the said decision shall not be applicable to the facts of the case on hand. It is submitted that in the case before this Court, in fact the extension was challenged before the Sessions Court and the extension was held to be bad in law.

5.5 Making the above submissions, it is prayed to dismiss the present appeals.

6. We have heard Shri Mehmood Pracha, learned counsel appearing on behalf of the accused - appellant and Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State of Gujarat.

6.1 The short question which is posed for the consideration of this Court is whether in the facts and circumstances of the case, the appellant shall be entitled to the statutory/default bail under Section 167(2) of the Cr.PC on the ground that at the time when the extension of time for completing the investigation was prayed by the investigating agency and granted by the Trial Court the accused was not kept present?

6.2 Learned counsel appearing on behalf of the appellant - accused has heavily relied upon the decisions of this Court in the cases of Hitendra Vishnu Thakur (supra); Sanjay Dutt (supra); Sayed Mohd. Ahmed Kazmi (supra) and on the recent decision of this Court in the case of Jigar (supra).

6.2.1 In the case of Hitendra Vishnu Thakur (supra), this Court observed and held that when a report is submitted by the Public Prosecutor to the Designated Court for grant of extension, its notice should be issued to the accused before granting such an extension so that the accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him.

6.2.2 However, thereafter, the decision of this Court in the case of Hitendra Vishnu Thakur (supra) fell for consideration before this Court in the case of Sanjay Dutt (supra) and the view taken by this Court in the case of Hitendra Vishnu Thakur (supra) as above, has not been accepted by the Constitution Bench of this Court and it is observed and held in the case of Sanjay Dutt (supra) that a notice to the accused is not required to be given by the Designated Court before it grants any extension for completing the investigation.

Meaning thereby, the accused is to be kept present before the Court when it grants any extension for completing the investigation. The view taken by this Court in the case of Hitendra Vishnu Thakur (supra) that a notice is to be given to the accused so that he can oppose the extension has not been accepted by the Constitution Bench of this Court in the case of Sanjay Dutt (supra).

As such under the Scheme of Cr.PC and on the report submitted by the Investigating Agency, prayer for extension of time for completing investigation is subject to the satisfaction of the concerned Court whether to grant further extension or not. The Court is to be satisfied on the grounds on which the extension is sought.

6.2.3 Now so far as the reliance placed upon the decision of this Court in the case of Sayed Mohd. Ahmed Kazmi (supra) by learned counsel appearing on behalf of the appellant is concerned, at the outset, it is required to be noted that the said decision shall not be applicable to the facts of the case on hand. In the case before this Court, in fact, the extension granted by the learned Chief Metropolitan Magistrate was challenged on the ground that the learned Chief Metropolitan Magistrate had no competence to extend the judicial custody of the accused.

The learned Additional Sessions Judge accepted the same. However, thereafter, a fresh extension was sought which was beyond the period prescribed under Section 167 of the Cr.PC and therefore, this Court observed and held that extension for period of investigation from retrospective effect shall not be permissible.

6.3 Similarly, even the decision of this Court in the case of Rambeer Shokeen (supra) relied upon by learned Solicitor General shall also not be applicable to the facts of the case on hand. In the case of Rambeer Shokeen (supra) pending application by the Investigating Agency for extension of time for completing the investigation, the accused made an

application for statutory/default bail and to that this Court observed and held that the application filed by the Investigating Agency for extension of time for completing the investigation which was prayed in time kept pending ought to be decided first by the Court.

6.4 Thus, sum and substance of law laid down by this Court in the cases of Sanjay Dutt (supra) and Jigar (supra) are that while considering the application by the Investigating Agency for extension of time for completing the investigation beyond the period prescribed under Section 167(2) of the Cr.PC the accused is to be given notice and/or is to be kept present before the Court, so that, the accused had knowledge that the extension is sought and granted.

6.5 However, in the facts and circumstances of the case, we are of the view that the appellant is not entitled to the relief of statutory/default bail. In the present case the facts are glaring which are as under:

The accused was arrested on 29.01.2022. The 90 days provided under Section 167 Cr.PC thus would expire on 29.04.2022. Within the period of 90 days i.e., on 22.04.2022, the IO submitted the report and prayed for extension of time for completing the investigation which came to be allowed by the learned Trial Court by granting extension of 30 days period. It is true that for whatever reason, the accused was not kept present at the time when the learned Trial Court considered the report submitted by the IO for extension of time for completing the investigation.

However, the accused came to be informed about the extension on the very next day i.e., 23.04.2022. The accused did not challenge the extension on any ground which may be available to him and/or did not make any grievance that such an extension is illegal and/or contrary to law. On 10.05.2022, he made the present application for default bail/statutory bail on the ground that the chargesheet has not been filed within the period of 90 days.

At this stage, it is required to be noted that at the time when the present application for default/statutory bail was made on 10.05.2022, there was already an extension of time by the learned Trial Court which as such was in existence and the extension was up to 22.05.2022. At this stage, it is required to be noted that though informed on 23.04.2022 about the extension of time for completing the investigation, the accused did not disclose the same in the application for default bail/statutory bail submitted on 10.05.2022.

That thereafter, on 22.05.2022, IO again submitted the report for further extension of time for completing the investigation which came to be allowed/granted by the learned Trial Court which as such was in the presence of the accused and at that time, the accused remained present. Neither the first extension nor the second extension came to be challenged by the accused."

7. Therefore, in the aforesaid peculiar facts and circumstances of the case, when two extensions granted by the Court which are not challenged and at the time when the default bail application was made on 10.05.2022 there was already an extension and even thereafter, also there was a second extension which was in presence of the accused and thereafter, when the chargesheet has been filed within the period of extension, the accused is not entitled to be released on statutory/default bail as prayed.

Therefore, in the facts and circumstances of the case, we are in agreement with the ultimate conclusion reached by the High Court denying the statutory/default bail to the accused.

8. In view of the above and for the reasons stated above and, in the facts, and circumstances of the case narrated hereinabove, the appellant is not entitled to the benefit of statutory/default bail. Under the circumstances, the present appeals deserve to be dismissed and are accordingly dismissed.

However, it will be open for the accused to prayer for regular bail which may be considered in accordance with law and on its own merits. Present appeals stand dismissed accordingly.

.....J. [M.R. Shah]

.....J. [C.T. Ravikumar]

**K. Phanindra Reddy, I.A.S. and Ors. Vs. G. Subramanian
2023 Latest Caselaw 306 SC**

K. Phanindra Reddy, I.A.S. and Ors. Vs. G. Subramanian

[Special Leave Petition (Civil) No. 4163 of 2023]

[Special Leave Petition (C) _____of 2023 arising out of D.No. 10656 of 2023]

V. Ramasubramanian, J.

1. Delay condoned in Special leave Petition (Civil) @ D.No.10656 of 2023.

2. While the first special leave petition arises out of an order passed by the Division Bench of the Madras High Court in an intracourt appeal challenging an order passed by the learned Judge in a contempt petition, the other special leave petitions arise out of the order passed substantially in a writ petition and in a review petition.

3. We have heard Shri Mukul Rohatgi, learned senior counsel appearing for the petitioners in all the special leave petitions and Shri Mahesh Jethmalani, Shri Guru Krishna Kumar, Dr. Menaka Guruswamy, learned senior counsel appearing for the respondent.

4. The brief facts sufficient for the disposal of all these special leave petitions are as follows:-

(i) A batch of 49 writ petitions were filed by the office bearers of the Rashtriya Swayam Sevak Sangh (RSS), on the file of the High Court of Judicature at Madras seeking a direction to the State, the Director General of Police, the Superintendents of Police of various districts and the Inspectors of Police of certain police stations to permit the members of the Organisation to conduct a procession (Route March) through identified places. The contention of the writ petitioners was that they wanted to hold the procession on 02.10.2022, but that their applications for permission to hold the Route March were not considered by the appropriate authorities;

(ii) The batch of writ petitions were disposed of by a learned Judge of the Madras High Court, by an order dated 22.09.2022, with certain directions;

(iii) The State filed a batch of applications for review. At about the same time, one of the representations seeking permission to hold the march in Chennai was rejected by the local Inspector of Police, by an order dated 27.09.2022;

(iv) The order of rejection led to a legal notice dated 28.09.2022 followed by a Contempt Petition, against,

(i) The Secretary to Government, Home Department;

(ii) The Director General of Police;

(iii) The Superintendent of Police; and

(iv) The Inspector of Police;

(v) When the contempt petition came up for hearing on 30.09.2022, the date on which the organisers wanted to conduct the Route March was only 48 hours away. Therefore, the learned Judge before whom the contempt petition came up, passed an order on 30.09.2022 to the following effect:-

"5. Hence, the respondents justified the reasons for rejecting the request made by the petitioners. Therefore, it is not possible for the respondents to grant permission for the procession to be held on 02.10.2022. However, this Court suggested for any other date except Gandhi Jayanthi i.e. 02.10.2022 to conduct procession and to conduct public meeting.

6. The learned Senior Counsels appearing for the petitioners suggested four dates i.e. 09.10.2022, 16.10.2022, 06.11.2022 and 13.11.2022 and the learned Senior Counsel appearing for the first respondent submitted that except Gandhi Jayanthi on 02.10.2022, they will consider the same representations of the respective petitioners seeking permission to conduct procession and to conduct public meetings on any other date.

7. Considering the above submissions made on either side, this Court fix the date to conduct procession and to conduct public meetings on 06.11.2022. Till then, the petitioners are directed not to precipitate the issue. However, it is for the State to maintain law and order problem. It is made clear that the respondents shall permit the petitioners on their earlier representations to conduct procession and to conduct public meetings on 06.11.2022.

8. Registry is directed to list the matter along with all the connected contempt petitions numbered subsequently on 31.10.2022"

(vi) Pursuant to the aforesaid order dated 30.09.2022, the Director General of Police issued a memorandum dated 29.10.2022 instructing Commissioners/Superintendents of Police of the Districts to pass necessary orders on the representations of the organisers;

(vii) In the light of the memorandum issued by The Director General of Police on 29.10.2022, the learned Judge before whom the contempt petitions came up on 31.10.2022, passed an order to the following effect:-

"The learned Senior Counsel appearing for the petitioner produced the order passed by the second respondent viz., the Director General of Police, dated 29.10.2022, thereby directing all the Commissioner of Police/Superintendent of Police, to pass order on the applications made by the respective petitioners in accordance with the order passed by this Court dated 22.09.2022 in W.P.No.24540 of 2022 etc., batch. Accordingly all the applications submitted by the petitioners are under consideration of the respective Commissioner of Police/Superintendent of Police and they are about to pass orders within a day or two.

2. Post the matter on 02.11.2022 under the caption "for reporting compliance" at 2.15 p.m.

(viii) On 02.11.2022, the Staff Officer in the Office of the Director General of Police filed a status report claiming that in view of certain developments that took place after a cylinder blast in Coimbatore City on 23.10.2022, a fresh assessment of the local situation had to be made by the Commissioners/Superintendents of Police. In short, the status report indicated that, (i) it is not advisable to permit any processions/public meetings in 24 locations; (ii) that processions/public meetings can be permitted in 23 locations only in enclosed ground/premises; and (iii) procession can be permitted in three locations;

(ix) Incidentally, the contempt petitions as well as the applications for review were listed before the learned Judge on the very same date namely 02.11.2022. The learned Judge passed two independent orders, one in the batch of contempt petitions and another in the batch of review applications;

(x) The relevant portion of the order passed in the review applications reads as follows:-

"3. Today when the matters are taken up for hearing, the learned State Public Prosecutor appearing for the petitioners submitted that out of 50 places, in three places, the respective respondents were granted permission to conduct procession and public meeting on 06.11.2022. Insofar as 23 places are concerned, respective respondents are permitted to conduct procession/public meeting in an indoor place. Insofar as 24 places are concerned, respective authorities found that there will be a law and order issue and rejected the requests in view of the intelligence report received from the authorities concerned. He further submitted that the respective respondents also approached this Court by way of Contempt Petitions and same are pending before this Court.

4. In view of the various orders passed by the authorities concerned, nothing survive in these Review Applications. Accordingly, all the Review Applications are closed. Consequently, the connected miscellaneous petitions are also closed.

(xi) But in the batch of contempt petitions, the learned Judge passed an order adjourning the contempt petitions to 04.11.2022, for passing appropriate orders after perusing the Intelligence Report produced by the State in a sealed cover;

(xii) On 04.11.2022 the learned Judge passed final orders in the contempt petitions, virtually modifying the original order passed on 22.09.2022. The operative portion of the Order passed on 04.11.2022 passed in the batch of contempt petitions reads as follows:

"9. Therefore, this Court is inclined to grant permission to conduct procession and public meeting on 06.11.2022 on the following conditions:-

i. The procession and public meetings should be conducted in a compounded premises such as Ground or Stadium. It is made clear that while proceeding to conduct procession and public meeting, the participants shall go by walk or by their respective vehicles without causing any hindrance to the general public and traffic.

ii. During the program, nobody shall either sing songs or speak ill on any individuals, any caste, religion, etc.,

iii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.

iv. The program should be conducted without causing any hindrance to public or traffic.

v. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.

vi. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.

vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.

viii. Only box type speakers should be used and output of the speakers should not exceed 15 watts~ad within a radius of 30 meters only. Cone Speakers should not be used at any cost.

ix. In the procession, the processionists shall not by any manner offend the sentiments of any religious, linguistics, cultural and other groups.

x. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same.

xi. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law."

(xiii) Aggrieved by the order so passed by the learned Judge on 04.11.2022 in the batch of contempt petitions, a batch of intra-court appeals were filed by the organizers. These intra-court appeals were allowed by a Division Bench of the High Court by an order dated 10.02.2023. The operative portion of the order of the Division Bench reads as follows:-

"33. In the result, the order dated 04.11.2022 passed in the contempt petitions, which is under challenge in the present LPAs, is set aside, and the order dated 22.09.2022 passed in the writ petitions stand restored and would be enforceable. As the dates on which the appellants wanted to conduct the route-march, have passed, it is only appropriate that a direction be issued in this regard.

Accordingly, the appellants are directed to approach the State authorities with three different dates of their choice for the purpose of holding the route-march/peaceful procession and the State authorities are directed to grant permission to the appellants on one of the chosen dates out of the three. The organization shall ensure that strict discipline is followed at their end and that there is no provocation or incitement on their part. The State on the other hand has to take adequate safety measures and make traffic arrangements to ensure that the procession and the meeting shall go on peacefully."

(xiv) Challenging the order of the Division Bench passed in the intra-court appeals arising out of the order passed in the contempt petitions, the Secretary to Government, Home Department, the Director General of Police, the Commissioner of Police and the Inspector of Police first came up with a special leave petition in Special Leave Petition (C) No.4163 of 2023.

When this special leave petition came up for orders as to admission on 03.03.2023, it was submitted by Shri Mukul Rohatgi, learned senior counsel and Shri V. Krishnamurthy, learned AAG for the State of Tamil Nadu that the State would come up with some suggestions as to how best to resolve the issue. Therefore, Special Leave Petition (C) No.4163 of 2023 was adjourned to 17.03.2023.

(xv) Subsequently, the State filed the other special leave petitions challenging the earliest order of the learned Judge of the High Court dated 22.09.2022 passed in the batch of writ petitions as well as the order dated 02.11.2022 passed by the learned Judge in the batch of review applications.

(xvi) Thus we have on hand, three special leave petitions, the first one arising out of the last order, namely, that of the Division Bench of the High Court dated 10.02.2023 and the other two special leave petitions arising out of the earlier orders of the learned Single Judge dated 22.09.2022 and 02.11.2022.

5. Insofar as the first special leave petition is concerned, it arises out of the order of the Division Bench passed in a batch of intracourt appeals challenging the order passed by the learned Judge in a batch of contempt petitions. This Court need not even go into several aspects argued across the Bar, for the simple reason that the learned Judge travelled beyond the scope of a contempt petition and this is why the said order warranted interference by the Division Bench.

After having disposed of the batch of main writ petitions by a final order dated 22.09.2022 in a particular manner and after having dismissed the batch of review applications on 02.11.2022, the learned Judge could not have modified his original order dated 22.09.2022 in a batch of contempt petitions on 04.11.2022. Therefore, the Division Bench of the High Court was justified in interfering with the order of the learned Judge. On this short ground, Special Leave Petition (C) No.4163 of 2023 deserves to be dismissed.

6. Coming to the other special leave petitions, the same arise out of the original order passed by the learned Judge on 22.09.2022 in the batch of writ petitions and the order dated 02.11.2022 passed in the batch of review applications. A perusal of the order of the learned Judge shows that the learned Judge considered the scope of Sections 41 and 41A of the Chennai City Police Act, 1888 and Section 30 of the Police Act, 1861, to come to the conclusion that the reliefs sought in the writ petitions deserved to be granted subject to certain conditions. The operative portion of the order dated 22.09.2022 reads as follows:

"11. In view of the above order passed by the Hon'ble Supreme Court of India as well as various orders passed by this Court, it would be appropriate to direct the respondents to grant permission to conduct procession and to conduct public meeting on 02.10.2022 at various places subject to the following conditions on or before 28.09.2022:-

- i. During the program, nobody shall either sign songs or speak ill on any individuals, any caste, religion, etc.,
- ii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.
- iii. The program should be conducted without causing any hindrance to public or traffic.
- iv. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.
- v. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/ Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.
- vi. The procession shall proceed in any orderly manner along the sanctioned route keeping to the left and shall not halt on the way or cause impediment to the normal flow of traffic. The procession shall occupy only one-fourth of the road.
- vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.
- viii. The organizer(s) of procession/rally shall be responsible for ensuring that the route permitted to them by the Police Authorities is strictly followed.
- ix. Only box type speakers should be used and output of the speakers should not exceed 15 watts and within a radius of 30 meters only. Cone Speakers should not be used at any cost.

x. In the procession, the processionists shall not any manner offend the sentiments of any religious, linguistics, cultural and other groups.

xi. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same. xii. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law."

7. The learned Judge not only interpreted the relevant provisions of the law correctly but also imposed necessary conditions. This is why the learned Judge could not review his own order.

8. It is to be noted that the learned Judge in fact followed several similar orders passed by the other Judges of the same High Court including one of us (V. Ramasubramanian, J. as he then was at the Madras High Court) in the past.

9. As rightly contended by all the learned senior counsel on the side of the respondent, the main objection raised by the State before the High Court was that after the imposition of a ban order on another organization, law and order problems cropped up in certain places and that the same led to several cases being registered.

The details of those cases are actually furnished in the memorandum of grounds of special leave petition(s). We do not wish to extract in this order, the Chart provided by the State in Ground No.BB of Special Leave Petition (C) No.4163 of 2023, on account of its sensitivities. But the Chart provided by the State Government shows that the members of the respondent organization were the victims in many of those cases and that they were not the perpetrators.

Therefore, it is not possible for us to find fault with the order passed by the learned Judge either in the main writ petitions or in the review applications. Hence all the special leave petitions are liable to be dismissed.

10. The Special Leave Petitions are accordingly dismissed. No costs. Pending application(s), if any, shall stand disposed of.

.....J. (V. Ramasubramanian)

.....J. (Pankaj Mithal)

Surendra Singh Vs. State of Rajasthan and Anr.
2023 Latest Caselaw 308 SC

Surendra Singh Vs. State of Rajasthan and Anr.

[Criminal Appeal No._____ of 2023 @ SLP (Cri.) No. 4241 of 2019]

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.11.2018 passed by the High Court of Judicature for Rajasthan Bench at Jaipur passed in D.B. Criminal Appeal No.818 of 2013 by which the Division Bench of the High Court has partly allowed the said appeal preferred by the respondent accused - Vijendra Singh and has set aside the conviction for the offence punishable under Section 302/149 IPC but has

convicted for the offence punishable under Section 323 IPC, the original complainant/informant has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

2.1 An FIR was lodged by the police on 01.12.2010 for an incident which took place on 28.11.2010. In the FIR it was alleged that on 28.11.2010, while complainant's younger brother Narendra Singh was filling water from hand-pump at around 9.30 a.m. accused Bhupendra Singh, Vijendra Singh and Bhawani Singh, Sangeeta and Gulab Kanwar caused lathi blows to Narendra Singh. In the said incident Narendra Singh and Bhawani Singh became unconscious.

Both of them were taken to the hospital. Bhawani Singh died. The FIR was registered as FIR bearing no.445/2010. Though the five persons were named in the FIR the police filed charge-sheet only against two persons namely Bhupendra Singh and Vijendra Singh for the offence under Sections 341, 323, 325/34, 308/34 and 302 and alternatively, Section 302/34 IPC.

Both the aforesaid accused came to be tried for the aforesaid offence. To prove the charge against the accused the prosecution examined ten witnesses and brought on record seven documentary evidences. The statements of the accused under Section 313 Cr.P.C. were recorded.

2.2 During the trial, the accused Bhupendra Singh died. Thus, the proceedings against him stood abated. The prosecution submitted an application under Section 319 Cr.P.C. against the remaining three accused persons so left out by the prosecution. The said application was dismissed by the learned Trial Court.

However, on a challenge before the High Court and on remand, the learned Trial Court directed to try the remaining three accused as accused and passed a summoning order of additional accused. However, as the remaining three accused absconded for number of years pursuant to the order passed by the High Court, the trial against the respondent herein accused Vijendra Singh came to be separated. Charge came to be reframed and the accused Vijendra Singh came to be charged for the offence under Section 302/149 IPC also.

Thereafter on conclusion of the trial, the learned Trial Court convicted the accused Vijendra Singh for the offence punishable under Sections 147, 323, 302/149 IPC and sentenced him to undergo life imprisonment for the offence punishable under Sections 302 read with Section 149 IPC, one year R.I. for the offence under Section 323 IPC and two years R.I. for the offence under Section 147 IPC.

2.3 The respondent herein - accused preferred the present appeal before the High Court. By the impugned judgment and order the High Court has set aside the conviction of the accused Vijendra Singh for offence under Section 302 read with Section 149 IPC by observing that no case is made out for conviction with the aid of Section 149 IPC.

That thereafter the High Court has considered the individual act of the accused and thereafter after taking into consideration the fact that the fatal blow on the head was given by accused Bhupendra Singh (who died during the trial) and the weapon used by the accused was lathi, the High Court by the impugned judgment and order has convicted the accused for the offence under Section 323 IPC.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court convicting the accused for the offence under Section 302 read with Section 149 IPC, the original complainant/informant Surendra Singh has preferred the present appeal.

3. Shri Siddhartha Dave, learned Senior Advocate has appeared as Amicus Curiae on behalf of the appellant, Shri Vishal Meghwal, learned counsel has appeared on behalf of the respondent - State and Shri Abhishek Gupta, learned counsel has appeared on behalf of respondent no.2.

4. Shri Siddhartha Dave, learned Senior Counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the Division Bench of the High Court has materially erred in observing that no case was made out for conviction with the aid of Section 149 IPC.

4.1 It is vehemently submitted by Shri Dave, learned Senior Counsel that the High Court has materially erred in observing that after the registration of the FIR, even the police found the case only against the two accused and the cognizance of the offence against the other accused are taken subsequently on the remand of the case by the High Court after rejection of application under Section 319 Cr.P.C. and the learned trial Court took cognizance against the accused later on and therefore no case is made out for conviction with the aid of Section 149 IPC.

4.2 It is vehemently submitted by Shri Dave learned Senior Counsel appearing on behalf of the appellant that the High Court has not properly appreciated and/or considered the fact that as such in the FIR the allegations were specific against five accused persons.

However, at the relevant time the investigating officer filed the charge-sheet only against the two accused persons and the remaining three persons were arrayed as accused subsequently pursuant to the order passed by the learned Magistrate allowing the application under Section 319 Cr.P.C. It is submitted that therefore when all the five persons came to be tried may be separately there was an involvement of five persons who form the unlawful assembly and therefore Section 149 IPC would be attracted.

4.3 Heavy reliance is placed on the decision of this Court in the case of *Bharwad Mepa Dana & Anr. Vs. State of Bombay* 1960 (2) SCR 172 as well as *Mizaji and Anr. Vs. The State of U.P.* (1959) Supp. (1) SCR 940.

5. Learned counsel appearing on behalf of the State has supported the appellant.

6. Shri Abhishek Gupta, learned counsel appearing on behalf of accused no.2 relying upon the decision of this Court in the case of *Roy Fernandes vs. State of Goa and others*, (2012) 3 SCC 221, has vehemently submitted that as such on facts no case is made out to convict the accused with the aid of Section 149 IPC.

6.1 It is submitted that merely because the accused might have been present at the time of commission of the offence and in fact might have participated in commission of the offence but has not played a vital role unless it is proved that the other accused knew that in prosecution of the common object any one of them is likely to commit the murder of the deceased, Section 149 IPC shall not be attracted.

6.2 Now so far as the conviction of the accused for the offence under Section 323 IPC, it is vehemently submitted by learned counsel appearing on behalf of the accused that though the respondent no.2 has not preferred the appeal challenging the conviction under Section 323 IPC, still in an appeal preferred by the State against the acquittal, the accused can submit that he could not have been convicted for other offence. Reliance is placed upon the decision of this Court in the case of *State of Rajasthan vs. Ramanand* (2017) 5 SCC 695.

6.3 In support of his submission that even the respondent - accused could not have been convicted even for the offence under Section 323 IPC, learned counsel appearing on behalf of the respondent - accused has made the following submissions:

- (i) That there was a delay of 3 ½ days in lodging the FIR;
- (ii) That the injury on the neck has not been established and proved;
- (iii) That there are material contradictions on the injuries caused by the accused persons. He has taken us to the deposition of doctor examined as PW7 and the injury report.

7. Making above submissions it is prayed to acquit the accused even for the offence under Section 323 IPC.

8. We have heard learned counsel appearing on behalf of the respective parties at length.

9. At the outset, it is required to be noted that the learned trial Court convicted the respondent - accused for the offence under Section 302 IPC with the aid of Section 149 IPC. However, the High Court has observed and held that as the initial charge-sheet was filed only against two persons /accused and further three persons were subsequently arrayed as the accused and they are being tried separately, Section 149 IPC shall not be attracted. The High Court has also observed that even as per the FIR three accused came at the place of occurrence when they saw Narendra Singh was filling water and it was thus not assembly of five accused.

10. However, the High Court has not properly and considered the fact that in the report/FIR there were specific allegations against five accused persons and five accused persons were named in the FIR. However, the investigating officer charge- sheeted only two persons. The remaining three accused persons came to be added as accused by the learned trial Court while allowing the application under Section 319 Cr.P.C.

As they absconded and therefore their trial came to be ordered to be separated and it is reported that the trial against the remaining accused is still pending who are also facing the charges for the offence under Section 302/149 IPC. In that view of the matter when five persons were specifically named in the FIR and five persons are facing the trial may be separately, Section 149 IPC would be attracted. At this stage the decision of this Court in the case of Bharwad Mepa Dana (supra) on applicability of Section 149 IPC is required to be referred to.

Before this Court it was the case on behalf of the prosecution that thirteen named persons formed an unlawful assembly and the common object of which was to kill the three brothers. Twelve of them were tried by the Sessions Court who acquitted seven and the High Court acquitted one more. This brought the number to four. It was the case on behalf of the accused that as the High Court convicted only four persons falling below the required number of five, they could not have been convicted with the aid of Section 149 IPC.

The aforesaid contention was negated by this Court. This Court observed that merely because two other persons forming part of the unlawful assembly were not convicted as their identity was not established, the accused cannot be permitted to say that they are not forming part of the unlawful assembly and they cannot be convicted with the aid of Section 149 IPC. In the said decision it is specifically observed and held that the essential question in a case under Section 147 is whether there was an unlawful assembly as defined under 141, I. P. C., of five or more than five persons.

The identity of the persons comprising the assembly is a matter relating to the determination of the guilt of the individual accused, and even when it is possible to convict less than five persons only, Section 147 still applies, if upon the evidence in the case the Court is able to hold that the person or persons who have been found guilty were members of an assembly of five or more persons, known or unknown, identified or unidentified.

10.1 In view of the above facts and circumstances of the case the High Court has seriously erred in observing that no case is made out to invoke Section 149 IPC.

10.2 Now once the respondent - accused was found to be member of the unlawful assembly of more than five persons and he actually participated in commission of the offence may be the fatal blow might have been given by the another accused, in the present case Bhupendra Singh, still with the aid of Section 149 IPC, Respondent Accused can be convicted for the offence under Section 302 IPC with the aid of Section 149 IPC.

The case would certainly fall within first part of Section 149 IPC. As per first part of Section 149 IPC if an offence is committed by any member of unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of that offence, is a member of the same assembly, is guilty of that offence. In the case of Mizaji and Anr. (supra), this Court had occasion to consider Section 149 of the IPC and the distinction between two parts of Section 149 IPC. It is observed and held as under:

"This section has been the subject matter of interpretation in the various High Court of India, but every case has to be decided on its own facts.- The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them.

In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under s. 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'I know' does not mean a mere possibility, such as might or might not happen.

For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part 'of s.149 . Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all.

There is a great deal to be said for the opinion of Couch, C. J., in Sabid Ali's case (1) that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first.

The distinction between the two parts of s.149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of s. 149 as explained above or it was an offence such as the members of the assembly know to be likely to be committed in prosecution of the common object and falls within the second part."

10.3 Now so far as the reliance placed upon the decision of this Court in the case of Roy Fernandes (supra), relied upon on behalf of the respondent - accused is concerned, on facts the said decision shall not be applicable. In the said decision this Court had considered the second part of Section 149 IPC. This Court did not consider the first part of Section 149 IPC

and the distinction between the first part and the second part of Section 149 which has been considered by this Court in the case of Mizaji and Anr. (supra).

11. Now, so far as the submission on behalf of the accused that he ought not to have been convicted for the offence under Section 323 IPC is concerned, though the accused has not challenged the impugned judgment and order passed by the High Court challenging the offence under Section 323 IPC we have heard the learned counsel appearing on behalf of the accused on merits on his conviction under Section 323 IPC.

11.1 The submission on behalf of the accused that there was a delay of 3 ½ days has been elaborately dealt with and considered by the learned trial Court in detail. A proper explanation has been given by the complainant - Surendra Singh. Immediately after the occurrence the injured were taken to the hospital for treatment.

The condition of Bhawani Singh was serious. Complainant concentrated on his treatment. Another injured Narendra Singh was also remained busy for the treatment. Thus, when the delay has been sufficiently and properly explained, we see no reason to give benefit of doubt to the accused on the aforesaid ground that there was a delay of 3 ½ days in lodging the FIR.

11.2 Now so far as the submission on behalf of the accused on the injuries and the contradictions in the injuries, at the outset, it is required to be noted that the deposition of the eye-witness PW1 and PW4 and the deposition of the doctor - PW7 are relevant material/deposition against the accused. The deceased sustained following injuries:

1. 2x1/2 cm scratched injury in the middle of head with red color soft clotting and hematoma beneath the skin of the head
2. Blue colored swelling on right head measuring 2.SxL INTERNAL hematoma in frontal head lobe.
3. 2cm stitch wound on occipital region of head. Blood clotting a parietal region of right side of head.
4. 3x2 cm scratched injury in front parietal part.
5. 1x1/2 cm injury over nose.
6. 2x1/2 cm scratched I injury over right knee.
7. 5X0.5 cm scratched injury on the lower part of left leg.
8. 0.5X0.5 cm scratched injury on the middle part of left leg.
9. 6x1.5 cm blue colored wound on the back of neck. While further dissecting it was found that on left muscles there is hematoma and fourth and fifth cervical ribs were broken. There was swelling on it.
10. On front of stomach 2.5x1.5 cm Blue coloured wound on naval side.

All these wounds and injuries lead to death as per the opinion of the doctor. As per the medical opinion and the deposition of doctor the death occurred due to injury no.9 from the shock of wound at spinal bone of neck. Though the injury no.9 was caused by the accused Bhupendra Singh as observed and held hereinabove the respondent accused being a part of the unlawful assembly and who also participated in commission of the offence, he shall also

be liable to be convicted for the offence under Section 302 IPC with the aid of Section 149 IPC, even for the act of the accused Bhupendra Singh who gave the vital blow.

12. Under the circumstances the impugned judgment and order passed by the High Court acquitting the accused for the offence under Section 302 read with Section 149 IPC is unsustainable and the same deserves to be quashed and set aside. In view of the above and for the reason stated above the present appeal succeeds.

The impugned judgment and order passed by the High Court acquitting the respondent - accused for the offence under Section 302 under Section 149 IPC is hereby quashed and set aside. The judgment and order passed by the learned Trial Court convicting the respondent - accused for the offence under Sections 427, 323 and 302/149 IPC is hereby restored. The respondent no.2 - accused to undergo life imprisonment for the offence under Section 302/149 IPC.

The respondent no.2 now to surrender before the concerned authority/court to undergo the remaining sentence of life imprisonment within a period of three weeks from today, failing which, he shall be taken into custody forthwith.

Present appeal is accordingly allowed.

.....J. (M. R. Shah)

.....J. (C.T. Ravikumar)

LATEST NOTIFICATION

Conducting Body	Himachal Public Service Commission
Exam Name	Himachal Judicial Services Civil Judge Exam
Number of Vacancies	To be notified
Mode of Application	Online
Application start Date	21st April 2023
Application closing Date	12th May 2023
Age Limit	35 years
Qualification	Degree in Law
Selection Process	Prelims, Mains, and Interview
Mode of Exam	Offline
Official Website	https://hphighcourt.nic.in/
Prelims Date	To be notified
Mains Date	To be notified

MCQ'S

Q1: 'Wrongful gain' means

- (a) gain by lawful means of property which the person gaining is not entitled
- (b) gain by unlawful means of property which the person gaining is not entitled
- (c) gain by unlawful means of property which the person gaining is entitled
- (d) all the above.

Q2: The provision of personation at elections under section 171D of IPC

- (a) shall apply to a person who has been authorised to vote as proxy for an elector under any law in force
- (b) shall not apply to a person who has been authorised to vote as proxy for an elector under any law in force
- (c) does not lead to any restriction under any law in force
- (d) none of the above.

Q3: 'Fraudulently' has been defined as doing anything with intent to defraud

- (a) section 23
- (b) Section 25
- (c) section 24
- (d) section 26.

Q4: Which among these codes, is included in the schedule to the Prevention of Money Laundering Act, 2002.

- (a) Civil Procedure Code
- (b) Criminal Procedure Code
- (c) Indian Penal Code
- (d) none of these.

Q5: Section 34 of IPC

- (a) creates a substantive offence

(b) is a rule of evidence

(c) both (a) and (b)

(d) neither (a) nor (b).

Q6: 'Voluntarily' has been defined as an effect caused by means whereby a person intended to cause it or by means, at the time of employing those means, know or had reason to believe to be likely to cause it under

- (a) section 39
- (b) section 38
- (c) section 37
- (d) section 40.

Q7: U/S 46 of IPC, death denotes

- (a) death of a human being
- (b) death of an animal
- (c) death of a human being and of an animal both
- (d) death of either human being or an animal.

Q8: Animal denotes

- (a) any living creature including human being
- (b) any living creature other than a human being
- (c) any creature-live or dead
- (d) either (a) or (c).

Q9: U/S 60 of IPC, in certain cases of imprisonment, the sentence of imprisonment

- (a) has to be wholly rigorous
- (b) has to be wholly simple
- (c) can be partly rigorous and partly simple
- (d) either (a) or (b).

Q10: U/S 65 of IPC sentence of imprisonment for non-payment of fine shall be limited to

- (a) one-third of the maximum term of imprisonment fixed for the offence
- (b) one-fourth of the maximum term of imprisonment fixed for the offence
- (c) one-half of the maximum term of imprisonment fixed for the offence
- (d) equal to the maximum term of imprisonment fixed for the offence.

Q11: U/S 498A of IPC cruelty includes

- (a) harassment of the woman
- (b) physical cruelty only
- (c) mental cruelty only
- (d) cruelty by wife.

Q12: In case of an offence punishable with fine only, an offender who is sentenced to pay a fine exceeding Rs. 100, the imprisonment in default of payment of fine shall not exceed

- (a) one year
- (b) six months
- (c) four months
- (d) two months.

Q13: Imprisonment for non-payment of fine shall terminate

- (a) on payment of fine
- (b) on expiry of the term of imprisonment for non-payment
- (c) both (a) & (b)
- (d) neither (a) nor (b).

Q14: In case of imprisonment for non-payment of fine, if a part of the fine is paid, such sentence

- (a) shall be reduced proportionately
- (b) shall not be reduced in direct proportion to the fine paid

(c) shall be reduced but subject to the discretion of the court as to the quantum of reduction

(d) all of the above.

Q15: If an offender has been sentenced to imprisonment not exceeding six months, the solitary confinement

- (a) shall not exceed 15 days
- (b) shall not exceed one month
- (c) shall not exceed two months
- (d) shall not exceed forty-five days.

Q16: If an offender is sentenced to imprisonment for a term exceeding one year, the term of solitary confinement shall not exceed

- (a) one month
- (b) two months
- (c) three months
- (d) six months.

Q17: General exceptions are contained in

- (a) chapter III of IPC
- (b) chapter IV of IPC
- (c) chapter V of IPC
- (d) chapter VI of IPC.

Q18: The maximum 'ignorantia juris non excusat' means

- (a) ignorance of law is no excuse
- (b) ignorance of fact is no excuse
- (c) ignorance of law is an excuse
- (d) ignorance of fact is an excuse.

Q19: Accident as an exception has been dealt with in

- (a) section 77
- (b) section 78

(c)section 80

(d)section 82.

Q20: The principle as to the way in which a man should behave when he has to make a choice between two evils is illustrated in

(a)section 80 of IPC

(b)section 81 of IPC

(c)section 82 of IPC

(d)section 78 of IPC

Q21: 'Infancy' as an exception has been provided under

(a)section 80

(b)section 81

(c)section 82

(d)section 84.

Q22: Section 82 of IPC enunciates

(a)a presumption of fact

(b)a rebuttable presumption of law

(c)a conclusive or Irrebuttable presumption of law

(d)none of the above.

Q23: Section 83 of IPC lays down

(a)a presumption of fact

(b)an inconclusive or rebuttable presumption of law

(c)conclusive or Irrebuttable presumption of law

(d)Irrebuttable presumption of fact.

Q24: U/S 82 & section 83 of IPC an offence is punishable if it is done by a child

(a)of below seven years of age

(b)of above seven years of age but below twelve years if he has not attained sufficient maturity and understanding

(c)of above seven years of age but below twelve years having attained sufficient maturity and understanding

(d)all the above.

Q25: "In every statute, mens rea is to be implied unless the contrary is shown."

This view was expressed in

(a)Sherras v De Rutzen

(b)R. V Dudley & Stephen

(c)Harding v Price

(d)R. V Prince.

Q26: Section 84 of IPC provides for

(a)medical insanity

(b)legal insanity

(c)moral insanity

(d)unsoundness of mind of any kind.

Q27: A hangman who hangs the prisoners pursuant to the order of the court is exempt from criminal liability by virtue of

(a)section 77 of IPC

(b)section 78 of IPC

(c)section 79 of IPC

(d)section 76 of IPC.

Q28: Which of the following is correct

(a)the burden of proof that the accused was not insane at the time of commission of offence is on the prosecution

(b)the burden of providing that the accused was insane at the time of commission of offence is on the accused

(c)there is a rebuttable presumption of fact that accused was insane at the time of commission of the offence

(d)it is a matter of inference to be drawn by the court on the facts proved by the prosecution.

Q29: Intoxication as defence is contained in

- (a) section 85 of IPC
- (b) section 86 of IPC
- (c) section 87 of IPC
- (d) both (a) & (b).

Q30: For a defence of intoxication, to escape criminal liability, the intoxication

- (a) can be self-administered
- (b) administered against his will or knowledge
- (c) should not be self-administered
- (d) all the above.

Q31: The doctrine 'volenti non fit injuria' is contained in

- (a) section 87 of IPC
- (b) section 88 of IPC
- (c) section 89 of IPC
- (d) all the above.

Q32: The defence of 'consent' is restrictive in its applicability in cases involving

- (a) alienable rights
- (b) inalienable rights
- (c) both (a) & (b)
- (d) neither (a) nor (b).

Q33: Operating of consent to all offences, short of causing death intentionally, has been extended under

- (a) section 88 of IPC
- (b) section 90 of IPC
- (c) section 91 of IPC
- (d) section 87 of IPC.

Q34: The consent is not a valid consent U/S 90.

(a) if given under a fear of injury or misconception of fact

(b) if given by a person of unsound mind

(c) if given by a child below 12 years of age

(d) all the above.

Q35: The maxim 'de minimus non curat lex' means

(a) law would not take action on small & trifling matter

(b) law does not ignore any act which cause the slightest harm

(c) law would not take action in serious matters

(d) all the above.

Q36: The right of private defence is contained in

(a) section 94 of IPC

(b) section 95 of IPC

(c) section 96 of IPC

(d) section 98 of IPC.

Q37: The right to private defence is

(a) unrestricted

(b) subject to restriction contained in section 99 of IPC

(c) subject to restrictions contained in chapter IV of IPC

(d) subject to restrictions contained in any other provision of IPC.

Q38: The law on private defence in India

(a) is the same as in England

(b) is narrower than the one in England

(c) is wider than the one in England

(d) none of the above.

Q39: U/S 98 right to private defence also is available against a

- (a) person of unsound mind
- (b) person who does not have maturity of understanding
- (c) both (a) & (b)
- (d) neither (a) nor (b).

Q40: Every person has a right of private defence of his property or of any other person against certain offences affecting the property, has been provided

- (a) U/S 95 of IPC
- (b) U/S 96 of IPC
- (c) U/S 97 of IPC
- (d) U/S 98 of IPC.

Q41: In a case of free fight between two parties

- (a) right of private defence is available to both the parties
- (b) right of private defence is available to individuals against individual
- (c) no right of private defence is available to either party
- (d) right to private defence is available only to one party.

Q42: Right to private defence U/S 99

- (a) extend to causing more harm than is necessary for the purpose of defence
- (b) does not extend to causing more than harm is necessary for the purpose of defence
- (c) does not extend to causing the harm necessary for the purpose of defence
- (d) restricts the harm caused to be less than the one necessary for the purpose of defence.

Q43: Right of private defence of the body extends to causing death has been with under

- (a) section 100 of IPC
- (b) section 101 of IPC
- (c) section 102 of IPC
- (d) section 103 of IPC.

Q44: In case of assault causing reasonable apprehension of death or of grievous hurt, the right of private defence extends voluntarily

- (a) causing grievous hurt
- (b) causing death
- (c) causing any harm other than death
- (d) causing any harm other than death or grievous hurt.

Q45: In case of kidnapping & abduction the right of private defence extends voluntarily causing

- (a) any harm other than death
- (b) any harm other than death & grievous hurt
- (c) any harm including death
- (d) both (a) & (b).

Q46: Where a wrong doer commits house breaking by night, the right to private defence extends to voluntarily causing

- (a) any harm other than death
- (b) any harm including death
- (c) any harm other than death and grievous hurt
- (d) either (a) or (c).

Q47: U/S 102 of IPC the right to private defence of the body

- (a) commences as soon as a reasonable apprehension of danger to the body arises and continues as long as that apprehension continues
- (b) commences as soon as a reasonable apprehension of danger to the body arises

and continues even after that apprehension ceases

(c) commences only when the assault is actually done & continues during the period of assault

(d) commences only when the assault is actually done & continues after the assailant has left.

Q48: Section 106 of IPC extends the right of private defence, in case of apprehension of death, to causing

(a) any harm other than death to any innocent person

(b) any harm other than grievous hurt to any innocent person

(c) any harm including death to any innocent person

(d) none of the above.

Q49: Right of Private defence is not available

(a) against any act which in itself is not an offence

(b) against any act which is not legal wrong

(c) against any act which is a moral wrong

(d) all the above.

Q50: Abettor is a person

(a) who commits the offence

(b) who instigates the commission of offence

(c) against whom the offence is committed

(d) who is innocent.

Q51: For abetment

(a) it is necessary that the person abetted should be capable of committing an offence under the law

(b) it is necessary that the person abetted should have the same guilty intention.

(c) it is not necessary that the person abetted should be capable of committing an offence under the law or should have the same guilty intention

(d) both (a) & (b).

Q52: Abetment of an offence is:

(a) always an offence

(b) never an offence

(c) may be an offence depending on the circumstances but not always

(d) may not be an offence depending on the circumstances.

Q53: Abetment by instigation may be

(a) by words spoken

(b) by letters

(c) by conduct

(d) all the above.

Q54: X ordered his employee Y to beat Z. Y refuses. Now.

(a) X has committed abetment & Y has committed assault

(b) X has committed abetment & Y has committed no offence

(c) X & Y both have committed no offence

(d) X has committed no offence but Y has committed offence of subordination.

Q55: Conspiracy has been defined as an agreement between two or more persons to do an illegal act or an act which is not illegal means, under.

(a) section 120B of IPC

(b) section 120A of IPC

(c) section 120 of IPC

(d) section 121A of IPC.

Q56: Under criminal conspiracy

(a) mere agreement is made an offence even if no step is taken to carry out that agreement

(b) mere agreement is not made an offence unless a step is taken to carry out that

Agreement

(c) both (a) & (b) are correct

(d) neither (a) nor (b) is correct.

Q57: Sedition has been defined as bring hatred or contempt, or exciting or attempt to excite disaffection towards the Government established by law in India, by words, either spoken or written, or by signs or visible representation or otherwise, under

(a) section 120 of IPC

(b) section 120A of IPC

(c) section 121A of IPC

(d) section 124A of IPC.

Q58: For an unlawful assembly under section 141 of IPC, the minimum number of persons required is

(a) Five

(b) Seven

(c) ten

(d) twenty.

Q59: Which of the following is not specified to be the common object of an assembly to make it unlawful, under section 141 of IPC.

(a) over wing the Government or its officers

(b) resistance to legal process

(c) forcible possession or dispossession of property

(d) none of the above.

Q60: Rioting means use of force or violence by an unlawful assembly, or by a member thereof, in prosecution of the common object of such assembly, as per.

(a) section 144 of IPC

(b) section 145 of IPC

(c) section 146 of IPC

(d) section 148 of IPC.

Q61: Section 149 of IPC is

(a) declaratory provision

(b) creates a distinct offence

(c) a rule of evidence

(d) all the above.

Q62: Under section 149 of IPC if an offence is committed by a member of the unlawful assembly in furtherance of their common object

(a) every person who at that time was a member of that assembly shall be guilty of that offence

(b) only the person committing the offence shall be guilty of that offence and all shall be guilty of unlawful assembly only.

(c) only that person committing the offence shall be guilty and others shall not be guilty of any offence

(d) either (b) or (c).

Q63: 10 persons were charged for offence under section 302/149 IPC, out of which six persons were acquitted, the remaining four

(a) cannot be convicted for offence under section 302/149 of IPC

(b) cannot be convicted for offence under section 302 of IPC

(c) cannot be convicted for offence under section 149 of IPC

(d) all the above.

Q64: 'B' happened to be a member of unlawful assembly. A factional fight ensued during which 'B' was injured and retired to the side, later on a man was killed. Now

(a)'B' s guilty of murder being member of unlawful assembly

(b)'B' is not guilty of murder as he ceased to be a member of unlawful assembly at the time when the murder was committed

(c)B is not guilty of murder though he happened to be a member of unlawful assembly

(d)none of the above.

Q65: The word 'wrong' in a defence of insanity refers to

(a)a legal wrong

(b)a civil wrong

(c)a moral wrong

(d)moral as well as legal wrong.

Q66: Fight under section 159 of IPC signifies

(a)to opposite parties actively involved

(b)two parties one of which is passive

(c)two parties both of which are passive

(d)all the above.

Q67: Promoting hatred among classes is n offence

(a)under section 121A of IPC

(b)under section 124A of IPC

(c)under section 153A of IPC

(d)under section 153B of IPC.

Q68: Personating a public servant is an offence

(a)under section 169 of IPC

(b)under section 170 of IPC

(c)under section 171 of IPC

(d)under section 186 of IPC.

Q69: Causing disappearance of evidence of offence or giving false information to screen offender, is an offence

(a)U/S 200 of IPC

(b)U/S 201 of IPC

(c)U/S 212 of IPC

(d)U/S 204 of IPC.

Q70: Culpable homicide has been defined

(a)U/S 299 of IPC

(b)U/S 300 of IPC

(c)U/S 302 of IPC

(d)U/S 304 of IPC.

Q71: Culpable homicide is not murder, if it is committed under

(a)grave & sudden provocation

(b)self-intoxication

(c)irresistible impulse

(d)all the above.

Q72: Murder is defined as

(a)an act by which the death is caused, must have been done with the intention of causing such bodily injury as is likely to cause death

(b)an act by which the death is caused, is done with the knowledge that he is likely to cause death but his act

(c)an act by which the death is caused, with the intention of causing of such bodily injury as the offender knows which is likely to cause death of the person to whom the injury is caused

(d)all the above.

Q73:'A' knows that 'B' is suffering from a disease in his head and also knows that if a fist blow is given to 'B' on his head, it is likely to cause his death. Knowing it 'A' gives a fist blow to B on his head and caused death of 'B', 'A' is.

(a) guilty of culpable homicide not amounting to murder since he does not think that his act is likely to cause death.

(b) guilty of murder since he had knowledge that in all probability it is likely to cause death of 'B'.

(c) guilty of no offence since the blow is not sufficient to cause the death of a person of normal health.

(d) guilty of causing hurt only.

Q74: Causing of the death of child in the mother's womb is not homicide as provided under

(a) explanation I to section 299

(b) explanation II to section 299

(c) explanation III to section 299

(d) explanation V to section 300.

Q75: If the offender does not know that his act is so imminently dangerous that it must, in all probability causes death he will be guilty of

(a) murder

(b) attempt to murder

(c) culpable homicide not amounting to murder

(d) either (a) or (b).

Q76: Culpable homicide is causing death

(a) with the intention of causing death

(b) with the intention of causing such bodily injury as is likely to cause death

(c) with the knowledge that by such act death is likely to be caused

(d) all the above.

Q77: Hurt has been defined as bodily pain, disease or infirmity to any person under section

(a) section 319 of IPC

(b) section 320 of IPC

(c) section 323 of IPC

(d) section 325 of IPC.

Q78: During the scuffle between 'A' & 'B', A gave a blow on the face of 'B' and consequently two teeth of 'B' were broken. In these circumstances 'A' has committed an offence of causing

(a) simple hurt

(b) attempt to cause culpable homicide not amounting to murder

(c) grievous hurt

(d) no offence at all.

Q79: Two ladies of young age, A & B fight with each other. A was having a blade with which 'A' inflicts injury on the face of B leaving a scar on the cheek of B. A is guilty of offence of causing

(a) grievous hurt

(b) grievous hurt by rash or negligent act

(c) simple hurt

(d) simple hurt by rash or negligent act.

Q80: Wrongful confinement has been defined under

(a) section 342 of IPC

(b) section 341 of IPC

(c) section 340 of IPC

(d) section 339 of IPC.

Q81: Assault cannot be caused by

(a) mere words

(b) mere gestures

(c) mere preparation

(d) all the above.

Q82: Assault or criminal force used in attempting to commit theft of property is punishable

- (a) under section 378 of IPC
- (b) under section 379 of IPC
- (c) under section 384 of IPC
- (d) under section 356 of IPC.

Q83: In kidnapping, the consent of minor is

- (a) wholly immaterial
- (b) partly immaterial
- (c) wholly material
- (d) partly material.

Q84: Which of the following is correct as to theft under section 378 of IPC.

- (a) Dishonest intention to take property
- (b) the property must be moveable
- (c) the property must be in possession of the prosecutor
- (d) of the above.

Q85: 'A' puts 'Z' into fear of hurt & dishonestly induces 'Z' to sign a blank cheque & deliver it to 'A', Z signs the cheque and delivers it to A. 'A' is guilty of

- (a) theft
- (b) extortion
- (c) robbery
- (d) attempt to commit extortion.

Q86: Robbery becomes dacoity when committed conjointly by

- (a) two persons
- (b) more than two persons but less than five persons
- (c) five persons or more
- (d) at least ten persons.

Q87: In case of dishonest misappropriation the initial possession of the property

- (a) is dishonest
- (b) is fraudulent
- (c) is innocent
- (d) both (a) & (b).

Q88: Criminal breach of trust on an offence signifies

- (a) entrustment
- (b) demand
- (c) refusal
- (d) all the above.

Q89: The subject matter of theft

- (a) can be movable property
- (b) can be immovable property
- (c) both (a) & (b)
- (d) either (a) or (b).

Q90: Immovable property can be the subject matter of

- (a) theft
- (b) extortion
- (c) robbery
- (d) dacoity

Q91: The expression 'harm' is used in section 81 of the Indian Penal Code in the sense of

- (a) hurt
- (b) injury or damage
- (c) physical injury
- (d) moral wrong or evil.

Q92: The causing of death of child in the mother's womb is not homicide under

- (a) Indian law only
- (b) English law only

(c)both English and Indian law

(d)none of these.

Q93: The essential ingredients of a crime are

(a)motive, mens rea, and actusreus

(b)motive, intention and knowledge

(c)actusreus and mens rea

(d)knowledge, intention and action.

Q94: The limit of solitary confinement is dealt with in

(a)section 74 of IPC

(b)section 75 of IPC

(c)section 73 of IPC

(d)section 7 of IPC.

Q95: Dishonest intention must precede the act of taking in

(a)criminal misappropriation

(b)criminal breach of trust

(c)theft

(d)robbery.

Q96: Removal of ornaments from body of one after causing his death is

(a)robbery

(b)theft

(c)cheating

(d)an offence under section 404.

Q97: Persons not exempted from criminal prosecution under the Indian Penal Code are

(a)the President of India

(b)Governors of States

(c)foreigners

(d)none of these.

Q98: Dacoity is dealt under

(a)section 394

(b)section 395

(c)section 391

(d)section 393.

Q99: A woman ran to a well stating she would jump in it but she was caught before she could reach it. She is guilty of

(a)attempt to suicide

(b)attempt to injure her

(c)attempt to culpable homicide

(d)no offence.

Q100: Sex with a girl through fraudulent consent, amounts to

(a)simple physical assault

(b)molestation

(c)attempt to rape

(d)rape.

Q101: Oral threat or inducement allegedly given by lawyers to approver not to give any statement against accused

(a)amounts to commission of offence

(b)does not amount to commission of offence

(c)can attract discretion of the court to consider as offence

(d)none of the above.

Q102: Under the Indian Penal Code who among the following is liable for committing theft

(a)child below 7 years of age

(b)child below 8 years of age

(c)child between 7 and 10 years of age

(d)child between 7 and 12 years of age having maturity of understanding.

Q103: The imprisonment for the offence of molestation under IPC amounts to

- (a)imprisonment upto 2 years
- (b)imprisonment upto 1 year
- (c)imprisonment upto 6 months
- (d)imprisonment upto 3 months

Q104: Criminal Law (Amendment) Act, 2013 is effective from

- (a)3rd February, 2013
- (b)4th February, 2013
- (c)5th February, 2013
- (d)1st January, 2013.

Q105: Section 326B in IPC which was added by Criminal Law (Amendment) Act, 2013 refers to

- (a)Grievous hurt
- (b)Trafficking of a person
- (c)Attempting to throw acid
- (d)Sexual assault.

Q106: What is the punishment for grievous hurt by use of acid

- (a)Imprisonment not less than 7 years
- (b)Imprisonment not less than 10 years
- (c)Imprisonment not less than 5 years
- (d)Imprisonment not less than 2 years.

Q107: Word “illegal” is defined in which section of IPC?

- (a)Section 31
- (b)Section52A
- (c)Section 52
- (d)Section 43.

Q108: Attempt to commit an offence is punishable with’

- (a)Two third
- (b)Half
- (c)Full
- (d)One eighth.

Q109: X and Y plans to murder Z the next dy. They would be guilty for which of the following offence

- (a)Attempt to murder
- (b)Murder
- (c)attempt to Culpable Homicide
- (d)Criminal Conspiracy.

Q110: For invoking section 34, IPC there must be at least:

- (a)Five or more person
- (b)Two or more persons
- (c)Two persons
- (d)Five persons.

Q111: Which of the following theories of punishment provides that a crime is a disease and the object should be to cure disease

- (a)Deterrent theory
- (b)Reformatory theory
- (c)Retributive theory
- (d)None of the above.

Q112: In the light of the Criminal Law (Amendment) Act, 2013 which of the following statement(s) is/are incorrect?

- (a)The word “rape” in section 375 of Indian Penal Code, 1860 has been replaced with “sexual assault”.
- (b)Rape is now a gender neutral offence.
- (c)The Amendment has fixed the age for consensual sex as 16 years.
- (d)All the above.

Q113: Match the following and choose the correct answer from the codes below

Offence		Section
A. Stalking 376E	1.	Section
B. Voyeurism 354D	2.	Section
C. Gang Rape 370	3.	Section
D. Trafficking of person 354C	4.	Section
	5.	Section
376D		

Codes:

	A	B	C	D
(a)	1	4	5	3
(b)	2	4	5	3
(c)	4	2	1	3
(d)	2	4	1	3

Q114: Assault or use of criminal force to woman with intent to disrobe is punishable under which section of Indian Penal Code, 1860?

- (a) Section 376A
- (b) Section 354B
- (c) Section 354D
- (d) Section 376D.

Q115: Stalking for a second subsequent conviction attracts a punishment of

- (a) Imprisonment up to 3 years or fine or both
- (b) Imprisonment up to 5 years or fine or both
- (c) Imprisonment up to 3 years and fine
- (d) Imprisonment up to 5 years and fine.

Q116: The offence of Voyeurism upon first conviction is

- (a) Non-cognizable & Bailable
- (b) Cognizable & Bailable
- (c) Cognizable & Non-bailable
- (d) Non-cognizable & Non-bailable.

Q117: Any man who watches or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image is guilty of the offence of

- (a) Stalking
- (b) Voyeurism
- (c) Sexual Harassment
- (d) Assault or use of criminal force to woman with intent to disrobe.

Q118: Assault or criminal force to woman with intent to outrage her modesty under Section 354 of the Indian Penal Code, 1860 is which kind of offence?

- (a) Non-Cognizable & Bailable
- (b) Cognizable & Bailable
- (c) Cognizable & Non-bailable
- (d) Non-cognizable & Non-bailable.

Q119: The minimum punishment for the offence of Gang Rape as laid down in section 376D of the Indian Penal Code, 1860 is

- (a) Imprisonment of not less than 10 years
- (b) Imprisonment of not less than 14 years
- (c) Imprisonment of not less than 20 years
- (d) None of the above.

Q120: The section of the Indian Penal Code, 1860 dealing with trafficking of person is

- (a) Section 370A
- (b) Section 354A

(c)Section 376A

(d)None of the above.

Q121: The offence of word, gesture or act intended to insult the modesty of a woman under section 509 of the Indian Penal Code, 1860 is

(a)Cognizable & Bailable

(b)Non-Cognizable & Bailable

(c)Cognizable & Non-bailable

(d)Non-cognizable & Non-bailable.

Q122: The punishment for refusing to offer first-aid or medical treatment to victims of offence under Section 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code, 1860 applies in case of

(a)Public hospitals run by Central Government or State Government or any local body

(b)Private hospitals

(c)Public hospitals run by Central Government or State Government or any local body and Private hospitals

(d)None of the above.

Q123: The offence of voluntarily throwing or attempting to throw acid punishable under Section 326B of the Indian Penal Code is triable by

(a)Court of Session

(b)Magistrate of First Class

(c)Any Magistrate

(d)None of the above.

Q124: Which Section of the Indian Penal Code codifies, in the field of criminal law, the maxim: 'de minimis non curat lex':

(a)Section 85, IPC

(b)Section 88, IPC

(c)Section 95, IPC

(d)Section 96, IPC.

Q125: Whether a weapon is a deadly weapon is a question of:

(a)Law

(b)Fact

(c)Opinion to the expert witness

(d)Opinion to the judge.

Q126:'A' indulges in voluntary sexual intercourse with 'B', a married woman without the consent of her husband. He is guilty of adultery. The married woman 'B' is liable to be tried with 'A' as an

(a)Abettor

(b)adulteress

(c)Jointly as co-accused

(d)None of the above.

Q127: 'B' assaults 'A' using a sharp edged weapon, resulting in an injury which is 6 cm long and ½ cm. deep in the right forearm of 'A', 'B' is liable to be charged for an offence punishable under

(a)Section 323, IPC

(b)Section 324, IPC

(c)Section 325, IPC

(d)Section 326, IPC.

Q128: Which of the following statement is/are correct?

(a)Mens rea is not an essential ingredient of an offence punishable under section 107, IPC.

(b)Mens rea is not an essential ingredient of an offence punishable under section 304 A, IPC

(c)Mens rea is not an essential ingredient of an offence punishable under section 364A, IPC

(d)Both (a) & (b) above.

Q129: Nothing is an offence if it is done by a person who is a

- (a) Boy of 6 years having sufficient maturity to understand the nature and consequence of his conduct
- (b) Girl below 12 years having sufficient maturity to understand the nature and consequence of her conduct
- (c) A man aged 100 years
- (d) All of the above.

Q130: The distinction between 'similar intention' and common was clarified in the case of:

- (a) Mahboob Shah V Emperor
- (b) Barindra Kumar Ghosh V King Emperor
- (c) Shrinivas Mall V Emperor
- (d) Dudley V Stephen.

Q131: In which of the following cases the Supreme Court has pronounced 'Triple Test' formula for awarding death sentence?

- (a) Jagmohan Singh V State of U.P
- (b) Shatrughan Chauhan V Delhi Administration
- (c) Mohinder Singh V Delhi Administration
- (d) Shankar Kishanrao Khade V State of Maharashtra.

Q132: "A" by pledging as diamonds article which he knows are not diamond, intentionally deceives "Z" and thereby dishonestly induces "Z" to lend money. Here "A" is the guilty of the offence of?

- (a) Dishonest misappropriation of property
- (b) Criminal breach of trust
- (c) Cheating
- (d) Cheating by personation.

Q133: "A" puts jewels into a box belong to "B" with the intention that they may be

found in that box, with the result that "B" may committed the offence under:

- (a) Section 191 of IPC
- (b) Section 192 of IPC
- (c) Section 193 of IPC
- (d) Section 194 of IPC.

Q134: A private person:

- (a) cannot arrest an accused
- (b) can arrest any person who in his presence commits a non-bailable and cognizable offence in the absence of a police officer
- (c) can arrest a person if he sees him running away from the crime spot where an offence has been committed
- (d) can arrest any person suspected of committing an offence.

Q135: The defence of intoxication is not available.

- (a) where the person is incapable of knowing the nature of the act.
- (b) where the intoxication is voluntary
- (c) where the person is incapable of knowing that what he is doing is wrong
- (d) where the person is incapable of knowing that what he is doing is contrary to law.

Q136: 'A' had a step-child, whom he wanted to kill. For this purpose, he gave 'B', who was taking care of the child, a piece of cake, which had poison in it, and asked 'B' to feed the child the cake. 'B' however ate the cake himself and died as a result. Which of the following statements is accurate:

- (a) 'A' will be liable for the offence of murder
- (b) 'A' will not be liable for the offence of murder
- (c) 'A' will be liable for abetment to murder

(d)'A' will be liable for conspiracy to commit murder.

Q137: In which of the following cases the Supreme Court has declared Section 303 of the Indian Penal Code as unconstitutional?

- (a) Bachchan Singh V State of Punjab
- (b) Rajendra Kumar V State of U.P
- (c) Machchi Singh V State of Punjab
- (d) Mitthu Singh V State of Punjab.

Q138: Under Indian Penal Code, 1860 any assembly of five or more persons is not an unlawful assembly if their common object is:

- (a) To compel any person to do what he is legally bound to do
- (b) To commit any mischief
- (c) To commit criminal trespass
- (d) To obtain property forcefully.

Q139: According to Section 52 of the Indian Penal Code, 1860, nothing is said to be done

believed in good faith which is done or believed without-----

- (a) due care or diligence
- (b) due attention or bonafide
- (c) due care or attention
- (d) due diligence or bonafide.

Q140: 'B' and his girlfriend 'G', both adults engage in consensual sexual intercourse in the privacy of the bedroom of the latter and 'B' with her consent prepares a video clip on his mobile camera and later shows it in total privacy to his friend 'F'. It amounts to

- (a) Stalking
- (b) Molestation
- (c) Voyeurism
- (d) Sexual harassment.

ANSWER KEY

1(b)	30(b)	59(d)	88(d)	117(b)
2(b)	31(d)	60(c)	89(a)	118(c)
3(b)	32(b)	61(b)	90(b)	119(c)
4(c)	33(a)	62(a)	91(b)	120(d)
5(b)	34(d)	63(a)	92(c)	121(a)
6(a)	35(a)	64(b)	93(c)	122(c)
7(a)	36(c)	65(d)	94(a)	123(a)
8(b)	37(b)	66(a)	95(c)	124(c)
9(c)	38(c)	67(c)	96(d)	125(b)
10(b)	39(c)	68(b)	97(c)	126(d)
11(a)	40(c)	69(b)	98(c)	127(b)
12(b)	41(c)	70(a)	99(d)	128(b)
13(c)	42(b)	71(a)	100(d)	129(a)
14(a)	43(a)	72(c)	101(b)	130(a)
15(b)	44(b)	73(b)	102(d)	131(d)
16(c)	45(c)	74(c)	103(a)	132(c)
17(b)	46(b)	75(c)	104(a)	133(b)
18(a)	47(a)	76(d)	105(c)	134(b)
19(c)	48(c)	77(a)	106(b)	135(b)
20(b)	49(c)	78(c)	107(d)	136(a)
21(c)	50(b)	79(a)	108(b)	137(d)
22(c)	51(c)	80(c)	109(d)	138(a)
23(b)	52(a)	81(a)	110(c)	139(c)
24(c)	53(d)	82(d)	111(b)	140(c)
25(a)	54(b)	83(a)	112(d)	
26(b)	55(b)	84(d)	113(b)	
27(b)	56(a)	85(b)	114(b)	
28(b)	57(d)	86(c)	115(d)	
29(d)	58(a)	87(c)	116(b)	