



RESILIENCE LAW TIMES

JANUARY edition 2025

LEGAL AFFAIRS

1. Complaint within Meaning of CrPC is Once Filed before Judicial Magistrate & Not Executive Magistrate

Issue -

Recently, the Supreme Court in the matter of B. N. John v. State of U.P. & Anr has held that a complaint filed before an Executive Magistrate cannot be regarded as a complaint filed in accordance with the Code of Criminal Procedure, 1973 (CrPC).

Background of the case -

- B.N. John (appellant) was the owner and manager of a hostel operated by an NGO called Sampoorna Development India, which provided accommodation and education facilities for underprivileged children.
- According to the appellant, one K.V. Abraham, due to personal disputes, had filed six false cases against him. Four of these cases resulted in his acquittal, while discharge applications were pending in two cases.
- On 3rd June 2015, officials conducted a raid at appellant's hostel, allegedly at Abraham's instigation, claiming the hostel was not following provisions of the Juvenile Justice Act, 2015.
- The officials attempted to transfer the children from the hostel to other locations, claiming the hostel was operating without proper authorization from competent authorities.
- A First Information Report (FIR) was filed against the appellant and his wife under Section 353 of the Indian Penal Code, 1860 (IPC).
- The appellant was arrested on 8th June 2015 but was granted bail the same day.
- After investigation, a chargesheet was filed before the Chief Judicial Magistrate (CJM), Varanasi, charging the appellant under Sections 353 and Section 186 of the IPC.
- The CJM took cognizance and issued summons to the appellant.
- The appellant filed an application to recall the summons order, which remained pending before the CJM.
- Subsequently, the appellant approached the Allahabad High Court seeking to quash the chargesheet, cognizance order, and all proceedings in the case.

- The Allahabad High Court rejected appellant's plea leading to his appeal before the Supreme Court.

Court's observations -

- The Supreme Court observed that: On Section 186 IPC of charge:
- Observed that cognizance of offenses under Section 186 IPC requires a written complaint by the concerned public servant to a Judicial Magistrate.
- It was found that no such complaint was filed before a Judicial Magistrate.
- Noted that the complaint to the City Magistrate (Executive Magistrate) did not satisfy the legal requirement.
- On Section 353 IPC of charge:
- Observed that the FIR didn't contain any allegation of assault or criminal force, which are essential elements of Section 353 IPC.

2. Delhi Municipal Corporation's Powers to Issue Tariff-Based Bids for Waste-To-Energy Project

Municipal Corporation of Delhi v. Gagan Narang & Ors. Etc.

The Supreme Court upheld the Municipal Corporation of Delhi's (MCD) authority to issue tariff-based bids for Waste-to-Energy (WTE) projects under the Electricity Act 2003. This decision overturned an earlier Appellate Tribunal for Electricity (APTEL) order, public interest in managing Delhi's waste efficiently through the Narela Bawana WTE project.

3. Bar on subsequent petition –

Muskan Enterprises & Anr. v. The State of Punjab & Anr

The Supreme Court clarified that the principle of res judicata does not strictly apply to criminal proceedings, allowing a subsequent Section 482 CrPC petition if prompted by a change in law.

It held that withdrawing an earlier petition without liberty to refile does not bar filing a new petition under changed legal circumstances. This ruling came in an appeal against a Punjab & Haryana High Court decision dismissing a subsequent petition in a cheque bounce case.

4. IBC, a Complete Code

Mohammed Enterprises (Tanzania) Ltd v. Farooq Ali Khan & Ors.

A bench of Justice PS Narsimha and Justice Manoj Mishra held that the IBC is a complete code in itself having sufficient checks and balances.

The Court observed that the jurisdiction and power of the Adjudicating Authority under Section 60(5)(c) of Insolvency and Bankruptcy Code, 2016 (IBC) **has already been reiterated by the Supreme Court.**

5. High Court Judgment Cannot Be Declared Illegal Under Article 32 of Constitution: Supreme Court

Case- Vimal Babu Dhumadiya vs. The State of Maharashtra

Date of Order- January 20, 2025

Bench- Justice Vikram Nath, Justice Sanjay Karol and Justice Sandeep Mehta

The Supreme Court of India recently ruled that a High Court judgment cannot be declared illegal under Article 32 of the Constitution. Here are the key facts regarding the case:

Key Legal Findings

Article 32: The Supreme Court clarified that Article 32 does not allow for declaring a High Court judgment illegal. Instead, it serves as a constitutional remedy for enforcing fundamental rights.

Alternative Remedies: If petitioners feel aggrieved by a High Court judgment due to not being heard, they have two options:

1. File a petition/application for recall of the judgment before the High Court.
2. Challenge the judgment through a Special Leave Petition (SLP) under Article 136 of the Constitution before the Supreme Court.

Case Details

- The petitioners had previously filed a writ petition against a Bombay High Court ruling that ordered the demolition of five apartment complexes due to lack of valid permits from the Mumbai Metropolitan Region Development Authority.
- The Supreme Court noted that a Special Leave Petition filed against this ruling was dismissed because the petitioners wished to explore other legal remedies.
- An application for modification of the High Court's order was also dismissed, as it did not present sufficient grounds for altering the original order.

Conclusion

The Supreme Court emphasized the importance of following established legal procedures for challenging High Court judgments and dismissed the writ petition while allowing petitioners to pursue other legal remedies available under law.

6. Bodily Injuries Not Necessary To Prove Sexual Assault, Victims Respond To Trauma In Different Ways: Supreme Court

Case- Dalip Kumar vs. State of Uttarakhand

Date of Order- January 19, 2025

Bench- Justice Hrishikesh Roy and Justice S.V.N. Bhatti

The Supreme Court of India recently reiterated that bodily injuries are not necessary to prove sexual assault, addressing common misconceptions surrounding the topic.

Here are the key facts from the case:

Case Overview

Context: The Court was deciding an appeal against a conviction under Sections 363 (kidnapping) and 366-A (inducing a minor girl to go with intent of illicit intercourse) of the Indian Penal Code [Sections 137 (Kidnapping) and 96 (inducing a minor girl to go with intent of illicit intercourse of BNS, 2023)].

Key Findings

Victim's Testimony: The victim indicated that she voluntarily went with the appellant, and her younger sister, who witnessed this, was not presented as a witness.

Medical Evidence: A doctor testified that there were no signs of injury on the victim, leading the Court to emphasize that bodily injuries are not a prerequisite for proving sexual assault.

Court Observations

Trauma Responses: The Court noted that victims react to trauma in varied ways due to factors such as fear, shock, and social stigma. It stated:

“It is neither realistic nor just to expect a uniform reaction.”

Supreme Court Handbook Reference: The Court referenced its own Handbook on Gender Stereotypes (2023), which highlighted the diversity in human responses to traumatic events.

Conclusion

- The Court found that Section 366-A was not applicable since the victim was not forcibly taken away. It concluded that sustaining the appellant's conviction would not be justified based on the evidence presented.
- As a result, the appeal was allowed, and the previous judgment was set aside, discharging the appellant from his bail bond.

7. Order II Rule 2 CPC Doesn't Bar Second Suit For Relief Which Was Barred At The Time Of First Suit: Supreme Court

Case- Cuddalore Powergen Corporation Ltd. Vs. M/S Chemplast Cuddalore Vinyls Limited and Anr.

Date of Order- January 18, 2025

Bench- Justice JB Pardiwala and Justice R. Mahadevan

The Supreme Court recently addressed the applicability of Order II Rule 2 of the Code of Civil Procedure (CPC) in a case involving a subsequent suit for specific performance of an agreement to sell. Here are the key facts:

Case Background

- Parties Involved: Respondent No. 1 (plaintiff) entered into an agreement to sell property with Respondent No. 2 (defendant). Respondent No. 2 later sold the same property to the Appellant.

Initial Suit

- Respondent No. 1 filed a first suit seeking a permanent injunction against alienation of the property due to a government ban on executing sale deeds in the village, which prevented him from seeking specific performance or recovery of possession.

Subsequent Suit

- After the government ban was lifted, Respondent No. 1 filed a second suit seeking specific performance of the agreement and recovery of possession.
- The trial court dismissed this subsequent suit under Order II Rule 2 CPC, stating that Respondent No. 1 should have included all claims in the first suit.

Supreme Court's Findings

- The Supreme Court observed that when a plaintiff cannot seek certain reliefs due to circumstances at the time of filing the first suit, such as a government ban, they are not barred from filing a subsequent suit once those circumstances change.
- The Court emphasized that the occurrence of a subsequent event (lifting of the ban) creates a fresh cause of action, allowing for additional claims that could not have been made earlier.

Legal Principles

- The Court referenced previous cases, noting that Order II Rule 2 does not prevent a plaintiff from filing a second suit based on a different cause of action.
- It stated that courts should interpret Order II Rule 2 flexibly, avoiding rigid technicalities that might deny justice.

Conclusion

- The Supreme Court upheld the Madras High Court's decision to allow the subsequent suit, ruling that it was justified given the changed circumstances.

8. Section 54 TPA | Possession of Property Under Agreement To sell Doesn't Grant Ownership, Registration Required: Supreme Court

- **Case-** Indian Overseas Bank vs. M.A.S Subramanian & Ors.
- **Date of Order-** January 17, 2025
- **Bench-** Justice Abhay S Oka and Justice Ujjal Bhuyan

The Supreme Court of India has recently reaffirmed the principle that mere possession of property under an agreement to sell does not confer ownership unless a sale deed is duly registered in accordance with the Indian Registration Act, 1908. This ruling emphasizes the legal requirements for transferring ownership of immovable property.

The court referenced Section 54 of the Transfer of Property Act, 1882, which states that an agreement for sale does not transfer title or create any interest in the property. The only valid method for selling immovable property worth more than Rs. 100 is through a registered sale deed¹³.

Case Background: The dispute arose from an agreement to sell executed by the late Shri M.A. Shanmugam (the property's owner) in favor of a company, which involved a transfer of shares. The company had possession of the property as part performance of this contract. However, after Shanmugam's death, his legal heirs executed a sale deed in favor of another party, not the company¹.

NCLAT's Decision: The National Company Law Appellate Tribunal (NCLAT) initially ruled that the sale deed executed by Shanmugam's heirs was not binding on the company due to its possession based on part performance of the contract¹.

Supreme Court's Ruling: The Supreme Court set aside the NCLAT's decision, stating that since Shanmugam did not execute a registered sale deed in favor of the company, he remained the legal owner. The court noted that without a registered sale deed, ownership could not be transferred, and thus, NCLAT erred in its judgment¹³.

Conclusion: The Supreme Court clarified that possession alone does not equate to ownership and reiterated that the registration of a sale deed is essential to effectuate a transfer of ownership for immovable properties valued over Rs. 100.

9. Section 34 IPC | Common Intention and Pre-Meeting Of Minds Can Take Place At the Spur of Moment: Supreme Court

- **Case-** The State of Karnataka vs. Battegowda & Ors.
- **Date of Order-** January 17, 2025
- **Bench-** Justice Sudhanshu Dhulia and Justice Prashant Kumar Mishra

The Supreme Court recently addressed the applicability of Section 34 of the Indian Penal Code, 1860 [Section 3(5) of BNS, 2023] in a case involving a property dispute that escalated into violence. Here are the key facts of the case:

Incident Overview

Background: The altercation arose from a property dispute between the complainant and the accused persons.

Assault: During an attempt to resolve the matter, accused no. 1 engaged with the complainant, while accused no. 3 (the son of accused no. 1) stabbed the complainant with a knife. Accused no. 2 (another son) was found to be carrying a chopper.

Legal Proceedings

Trial Court: The trial court convicted all accused persons for causing grievous hurt with dangerous weapons.

High Court Ruling: The High Court acquitted accused no. 1 due to insufficient evidence regarding his involvement in restraining the complainant. Accused no. 2's conviction was reduced to voluntarily causing hurt, as he only inflicted minor injuries.

Supreme Court's Judgment

Appeal by State: The State appealed against the High Court's decision.

Common Intention: The Supreme Court emphasized that common intention can arise spontaneously during an incident, without prior planning or agreement among co-accused.

Assessment of Involvement: The court noted that both accused no. 2 and accused no. 3 acted together during the assault, with both armed with deadly weapons.

Conclusion: The Supreme Court ruled that the High Court erred in its assessment and held that Section 34 IPC was applicable, leading to the conviction of accused no. 2 for grievous hurt, aligning his sentence with that of accused no. 3.

10. Woman Living Separately without Divorce Can Terminate Pregnancy without Husband's Consent: Punjab & Haryana High Court

The Punjab and Haryana High Court ruled that a woman living separately from her husband, without a formal divorce, can terminate her pregnancy without needing her husband's consent under the Medical Termination of Pregnancy Act. Justice Kuldeep Tiwari emphasized a purposive interpretation of "change of marital status," which allowed the petitioner to qualify for the termination. The court took into account her allegations of cruelty, maltreatment, and the potential risks to her mental and physical health, permitting the termination of her pregnancy at over 18 weeks.

Daughter Living With Father At Time of Separation Does not Deprive Mother Of Right To Custody As Natural Guardian: Allahabad High Court

The Allahabad High Court recently stated that the mere fact that a mother was separated from her daughter at the time of the couple's separation, and that the daughter had stayed with her father for a period, is not sufficient grounds to deny custody of the minor daughter to the mother, who is recognized as her natural guardian.

Facts of the Case-

The marriage between Amit Dhama (the appellant-husband) and Smt. Pooja (the respondent-wife) took place on May 23, 2010. They have two children from their union: a son born on April 2, 2013, and a daughter born on September 29, 2020. Following marital discord, the couple separated and began living apart. The husband has initiated divorce proceedings under Section 13 of the Hindu Marriage Act, 1955, which are still ongoing. Their son is currently attending a boarding school in Faridabad, with the father covering all educational expenses. The minor daughter, who is 4 years and 3 months old, is in the father's custody. In response, the wife filed a petition for custody of their daughter under Sections 7 and 12 of the Guardians and Wards Act, 1890.

On August 31, 2024, the Family Court issued an ex parte order granting custody of the minor daughter to the mother. The husband subsequently filed a First Appeal with the Allahabad High Court to contest this Family Court decision, arguing against the order that awarded custody to the mother. The court also established fortnightly visitation rights for both parents. The wife holds a graduate degree and currently lives with her parents.

Allahabad High Court's Observation-

The court made several attempts to facilitate an amicable resolution between the parties but was unsuccessful. As part of the proceedings, the court directly engaged with the children.

11. Section 113B Evidence Act | Dowry Death Can't Be Presumed Without Clear Evidence Of Incessant Harassment: Supreme Court

Case Title - Ram Pyarey vs. The State of Uttar Pradesh

Date of Judgment: 9th January, 2025

Coram: Hon'ble Mr. Justice J.B. Pardiwala and Hon'ble Mr. Justice R. Mahadevan

The Supreme Court, while acquitting an accused of cruelty and abetment of suicide, remarked that for the application of Section 113B (Presumption as to dowry death) of the Indian Evidence Act, (118 of BSA) there must be clear evidence of continuous harassment. The Court emphasized that without such evidence, this provision cannot be automatically invoked.

For context, the concerned portion of Section 113 B reads as:

“113B. Presumption as to dowry death.— When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

Essentially, the present appellant was the brother-in-law of the deceased. It was the prosecution's case that there was harassment at the end of the husband, in-laws and the appellant. Resultantly, the deceased doused herself with kerosene and set herself on fire.

As a result, the Trial Court convicted the appellant under Sections 306 (Abetment of suicide) and 498-A (Husband or relative of husband subjecting a woman to cruelty) of the Indian Penal Code, [108 (Abetment of Suicide) 85 (Husband or relative of husband subjecting a woman to cruelty) of BSA] as well as under the Dowry Prohibition Act. This decision was upheld by the High Court, leading to the present appeal.

The Bench, consisting of Justices J.B. Pardiwala and R. Mahadevan, observed that there was "practically no evidence" against the appellant to support the charge of abetting the suicide. The Court also made a distinction between Section 113A (presumption regarding abetment of suicide by a married woman) and Section 113B of the Evidence Act.

“It is important to note that under Section 113B, the Court may presume, whereas under Section 113A, the statute mandates that the Court shall presume. This is a significant distinction between the two provisions concerning the presumption of abetment of suicide. When the lower Courts seek to apply Section 113B of the Evidence Act, the prerequisite is the presence of cogent evidence demonstrating continuous harassment. In the absence of such evidence regarding harassment or any form of abetment, such as aiding or instigating, the Court cannot automatically invoke Section 113B and presume that the accused abetted the suicide.”

Based on these observations, the Court set aside the impugned orders and allowed the present appeal.

12. Supreme Court Issues Notice On Plea To Include Rajasthani Language As Medium Of Instruction In Rajasthan Schools

Case Title - **Padam Mehta and another vs. The State of Rajasthan and Others**

Date of Order: 10th January, 2025

Coram: Hon'ble Mr. Justice Vikram Nath and Hon'ble Mr. Justice Sandeep Mehta

The Supreme Court issued a notice in response to a petition requesting the inclusion of Rajasthani as a language for teaching children in schools. The petitioners also sought directions to incorporate Rajasthani into the syllabus for the Rajasthan Eligibility Examination for Teachers (REET).

A bench consisting of Justice Vikram Nath and Justice Sandeep Mehta directed that notices be sent to the State of Rajasthan, the Principal Secretary of the Education Department, and the REET Coordinator, with a return date set within four weeks.

The Special Leave Petition was filed challenging the judgment of the Rajasthan High Court, which dismissed the petitioners' request. The High Court ruled that it could not issue a writ of mandamus to include Rajasthani as a language of instruction, as the matter pertained to educational policy.

While Hindi is the official language of the State under the Rajasthan Official Language Act of 1956, the petitioners highlighted that Rajasthani is spoken by approximately 4.36 crore people, according to the 2011 census.

In 2021, the State Board of Education issued a notification specifying that the medium of instruction in schools would be Hindi, English, Sanskrit, Urdu, Punjabi, or Gujarati. The petitioners are aggrieved by the exclusion of Rajasthani. They refer to Article 350A of the Constitution, which mandates that the State provide adequate facilities for instruction in the mother tongue at the primary education level for children belonging to linguistic minorities. The

petitioners argue that Rajasthani-speaking individuals qualify as a "linguistic minority" under Article 350A.

Additionally, they cite Section 29(2)(f) of the Right of Children to Free and Compulsory Education Act, 2009, which states that "the medium of instruction shall, as far as practicable, be in the child's mother tongue." They also reference the National Education Policy, which advocates for the use of the mother tongue or local language as the medium of instruction for children at least until Grade V, or preferably until Grade VIII, wherever possible.

The petitioners note that in May 2024, the High Court had directed the State to explore the possibility of including Rajasthani in the upcoming REET Examination. However, despite this direction, Rajasthani was not included in the notification issued for the REET in November 2024.

The petitioners further emphasized that the issue also pertains to the preservation of cultural rights. They highlighted that the Rajasthani language has a rich literary and cultural heritage that requires protection.

The petitioners argue that children who speak Rajasthani as their mother tongue are being discriminated against, as languages spoken by fewer people are included in the REET Examination, while Rajasthani, a predominant language, is excluded. They claim the High Court erred by not directing the State to fulfill its obligations under Article 350A of the Constitution, particularly when there was clear discrimination against Rajasthani speakers. The petitioners further contend that the right to education in the mother tongue is a part of the freedom of speech and expression under Article 19(1)(a), and that the State is obligated to provide education in the child's mother tongue, especially for children under 14, as mandated by Article 21-A.

13. Chargesheet Cannot Be Based On Bald Assertions Of Connivance: Supreme Court

Case title - Dinesh Kumar Mathur vs. State of M.P. & Anr

The Supreme Court recently ruled that charges in a chargesheet cannot be based on mere allegations of connivance; there must be substantial evidence to support them. A bench comprising Justices C.T. Ravikumar and Sanjay Karol also stated that if prima facie intent is lacking for one offence in a given transaction, it should be considered absent for the other offences as well. These remarks were made in a judgment delivered in an appeal against the Madhya Pradesh High Court's order dated April 28, 2017, which had declined to quash a First Information Report (FIR) under Section 482 of the Code of Criminal Procedure (Section 528 of BNSS).

The charges in the chargesheet include offences under Sections 419, 420, 467, 468, 471, and 120B read with Section 34 of the Indian Penal Code, 1860, [Sections 319, 318, 338, 336, 340 and 62 read with section 3(5) of BNS] against five individuals for forging the Power of Attorney and registering property in their name. One of the accused, Dinesh Kumar, an official of the Housing Board, filed a petition in the High Court to quash the FIR. He argued that his role in executing the sale deed was part of his official duties, and he was protected under Section 83 of the Madhya Pradesh Girha Nirman Mandal Adhiniyam, 1972, which is similar to Section 197 of the CrPC (Section 218 of BNSS).

Supreme Court's Observation-

The Supreme Court referred to several judgments interpreting Section 197, including Manohar Nath Kaul v. State of Jammu & Kashmir (1983), Shambhoo Nath Misra v. State of U.P. (1997), and A. Sreenivasa Reddy v. Rakesh Sharma (2023). These rulings state that a public servant can only be prosecuted if the offence is directly connected to their official duties and requires sanction for prosecution. However, if the act is part of their official duties, they are protected under Section 197 of the CrPC. The Court noted that the appellant's actions would be covered by Section 83 of the Madhya Pradesh Girha Nirman Mandal Adhiniyam, 1972.

14. “An application by the prosecution must be made in good faith and in the interest of public policy and justice not to thwart or stifle the process of law.”

Dilip Singh v. State of U.P. and Another

A bench of Justice Arun Kumar Singh Deshwal held that the Court should not permit withdrawal of prosecution if the prosecutor does not mention his opinion. The Allahabad High Court held this in the case of Dilip Singh v. State of U.P. and Another (2025).

Background of the case –

In the present facts First Information Report (FIR) was lodged by opposite party no. 2 against Dilip Singh under Sections 384, 506 Indian Penal Code, 1860 (IPC). After investigation, police filed charge sheet under Sections 384, 352, 504, 506 IPC. During the trial's pendency, the State filed an application under Section 321 Criminal Procedure Code, 1973 (CrPC) to withdraw prosecution, based on Government Order dated 6th May 2013. The Public Prosecutor did not mention any reason or public interest for withdrawal from the application.

The accused (Dilip Singh) is a history sheeter with 32 cases against him. The trial is at an advanced stage with Section 313 CrPC statement already recorded. Both the trial court (Additional Chief Judicial Magistrate) and revisional court rejected the withdrawal application.

The present application under Section 482 CrPC seeks to quash: Order passed by the Additional Chief Judicial Magistrate. Order passed in criminal Revision.

The Court held that it has been observed by the Supreme Court in earlier decisions that an application by the prosecution for withdrawal must be made in good faith and in interest of justice and not thwart or stifle the process of law. Further, it was observed that the legal position is that prosecution cannot be withdrawn merely because the government has issued a government order.

The public prosecutor should also apply his mind by mentioning in his application filed under Section 321 CrPC that he is satisfied that the application has been made under good faith and in the interest of public policy and justice.

Therefore, on the application by public prosecutor to withdraw the criminal case on the basis of government order without mentioning any reason or his opinion, court should not permit to withdraw the prosecution as the same is not permissible in the eyes of law.

Thus, the Court in the present case did not find any illegality in the impugned order and dismissed the application.

Under Section 360 of BNSS following points are laid down:

A Public Prosecutor or Assistant Public Prosecutor can withdraw from prosecuting a case, but they need the Court's permission to do so.

HIGH COURT OF GUJARAT, AT SOLA, AHMEDABAD.

Website : <https://gujarathighcourt.nic.in> AND <https://hc-ojas.gujarat.gov.in>

ADVERTISEMENT FOR RECRUITMENT OF CIVIL JUDGES

RC/0719/2024-25

Starting date for submission of Online Application	01/02/2025 (12.00 noon)
Closing date for submission of Online Application	01/03/2025 (23:59 Hrs.)

Tentative Schedule

- Preliminary Examination (Elimination Test) - Test of Gujarati Language <i>[For those candidates, who have not passed Secondary (SSC) or Higher Secondary (HSC) examination with subject of Gujarati] [See Note-1 below Item No. 2 (i)]</i>	23/03/2025 (Sunday)
Main Written Examination	15/06/2025 (Sunday)
Viva-voce Test (Oral Interview)	August/September-2025