



KERALA

Judicial Services Exam

CIVIL JUDGE

High Court of Kerala

Judgement

Volume - 2



KERALA JUDICIAL SERVICES

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The Code of Criminal Procedure, 1973

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1.	Swapan kumar chatterjee versus central bureau of investigation	Power January 4, 2019 Under Section 311 Of The CrPC, 1973 Should Be Invoked By The Court Only To Meet The Ends Of Justice	January 4, 2019
2.	State of madhya pradesh versus kalyan singh and ors	Section 482 Cr.P.C. Offence under Section 307 IPC Cannot be Quashed under section 482 Cr.P.C. On The Basis of Settlement Between the Parties.	January 4, 2019
3.	Yogendra @ Jogendra Singh Versus State of Madhya Pradesh	(Section 354(3) of Cr. P.C. Section 302 IPC] Intention resulted into an attack more severe than planned which then resulted into Death would not fall in rarest cases. Of the rarest cases.	January, 17,2019
4.	Sau Saraswati Bai Versus Lalita Bai and ORS.	Once Final Report is Submitted under Section 173 of the Cr.PC Normally Accused By Final Report Shall Be relegated To	January 22,2019

		Approach Magistrate for Discharge	
5.	Brig Sukhjeet Singh (Rets) MVC v. State of UP & Ors.	(Section 391 of Cr.P.C.) Circumstances in which Appellate Court take can additional evidences depends upon the facts and circumstances of each case but cannot be received as disguise for a retrial	Feb 06, 2019
6.	Mahesh Dube Versus Shivbodh and Ors.	Limitation of 30 Days Would Not Apply if Trial Court Already Ordered Restoration of Possession In The Judgement	February 12,2019
7.	Sau. Kamal shivaji pokarnekar. Versus state of maharashtra and others	[482 Cr. P.C] Criminal Complaints Cannot Be Quashed Merely Because Allegations Appear To Be Of A Civil Nature.	February 12, 2019
8.	Prof r k vijayasarthy and anr. Versus sudha seedharam	While Exercising The Inherent Powers Under Section 482 of the High court should examine Whether	February 15,2019

		The Complaint Is A Civil Dispute Cloaked With Criminal Nature	
9.	State Of MP Versus Dhruv Gurjar and another Tinku Sharma and others	Section 482 Cr.P.C. While Exercising powers under Section 482 CrPC, the High Court ought to be more vigilant and should Considered relevant facts And circumstances under which the accused got the settlement entered.	February 19, 2019
10.	Sunil Kumar Gupta and others Versus State of Uttar Pradesh and others	An Order Under Section 319 Of CrPC The Should Not Be Only Passed The Because First Informant Or One Of The Witnesses Seeks Implicate To Other Persons	February 27, 2019
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13.	Periyasami Versus S. Nallasamy	Mere Disclosure Of Name By Some Witnesses during Trial Court Not Enough To Add persons As Additional Accused Under Section 319 of Code of Criminal Procedure	March 14, 2019
14.	State of Himanchal Pradesh and ANR. Versus Vijay Kumar @ Pappu and ANR.	(s. 357-A CrPC) Adequate Compensation To The Victim Under The Victim Compensation Scheme Should Be Determined By "Considering The Nature Of Injury, The Age Of Victim And The Sufferings Caused To The Victim Or His Family By The Act	March 15, 2019

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16.	Nisha Saifi versus Mohd Shahid	Section 125 CrPC: Maintenance Right Accrues To A Wife Against Her Husband Since The Inception of Her Getting Married	April 03, 2019
17.	Shome Nikhil Danani Versus Tanya Banon Danani	Domestic Violence Act and the proceeding of Section 125 of the Cr PC are Independent	April 4, 2019
18.	Ramswaroop Soni Versus The state of Madhya Pradesh & ANR.	(Section 173(2) of Cr.P.C.] magistrate cannot direct police to File charge Sheet receipt Closure Report. One of	April 08, 2019
19.	Shir. N.k. janu, Deputy director Social forestry Division, agra and others versus lakshmi chandra	Practice of Summoning of officers to Court is Not proper	April 10, 2019
20.	Urvashi Aggarwal And ANR. Versus kushagr ansal and ORS.	[s. 16 SRA: Article 54 Limitation Act] Torpid silence of the plaintiffs in not resorting too a	April 10, 2019

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22.	Accused 'X' Versus State of Maharashtra	Pre- Sentence Hearing on A Separate Date Not Mandatory Section 235 (2) of CrPC-	April 12, 2019
23.	MD. Allauddin Khan Versus The State of Bihar And ORS.	[Section 482 CrPC High Court Has No Jurisdiction To Appreciate Evidence, While A Under Hearing A Petition Section 482 CrPC.	April 15, 2019
24.	Bikash ranjan rout versus state through the secretary (home), government of nct of delhi, new delhi	Magistrate Cannot Suo- moto Direct Further Investigation After Discharge the Accused Section 156 (3) CrPC-	April 16, 2019
25.	Manju Devi Versus State of Rajasthan and ANr.	Section 311 CrPC: Long Duration Of A Case Cannot The Displace Basic Requirement Of The Ensuring	April 16, 2019

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26.	Kumar Ghimirey v. The State of Sikkim	(Sections 386, 377, 397 & 401 of Cr P.C.) Enhancement of sentence in appeal is permitted only by giving the prior notice to The Convict.	April 22, 2019
27.	N. Ramamurthy Versus State by Central Bureau of Investigation A.C.B Bengaluru	(s. 389 CrPC) Legal principles governing suspension of conviction cannot be applied to suspend the sentence	April 26, 2019
28.	S.K Miglani Versus State of NCT Of Delhi	(Section 197 CrPC; Section 45 of IEA) A manager of a nationalized bank is not a public servant as to attract the prior sanction under section 197 of the Cr. P.C	April 30, 20109
29.	Rajesh & ORS. Versus State of Haryana	Section 319 of CrPC Persons named in FIR, but not charge-sheeted can be summoned under section 319 CrPC even if stage of Protest Petition is over	May 1, 2019
30.	M/S Gati Limited Versus T. Nagarajan	Successive Bail Application Should Be Placed Before	May 06, 2019

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31.	Atul Shukla Versus The State of Madhya Pradesh & ANR.	Atul Shukla Versus The State of Madhya Pradesh ANR.	May 06, 2019
32.	Sasikala Pushpa And Others versus The State of Tamil Nadu	(Section: 340 & 482 CrPC; Section: 193 IPC) Mere Incorrect Statement in Vakalatnama Not Amount to Forgery	May 07, 2019
33.	Vikas Bhutani Versus State and ANR.	Maintenance Awarded To A Wife Is not A Bounty (Section 125 CrPC)	May 17, 2019
34.	Manju Sharma Versus VIPIN	Assessment of Interim Maintenance U/S 125 of Requires Prima Facie Evaluation	July 01, 2019
35.	Prakash Jain And ORS. Versus The State of Karnataka	Question: What are the requirements of Notice for 'suomoto' enhancement of sentence?	July 3, 2019
36.	Christopher Raj Versus K Vijay Kumar	High Court reverse Acquittal Without Affording opportunity Of hearing to accused or by	July 05, 2019

		Appointing an Amicus Curiae.	
37.	Harendra Singh Harendra Bahadur Versus The State of U.P.	Plea For Anticipatory bail Not Maintainance Before HC without Approaching Sessions Court, Unless There are 'Special Reasons'	July 08, 2019
38.	Vishnu kumar tiwari versus state of Uttar prah through Secretary home, civil secretariat Lucknow and Another	How Magistrate Deal With Protest Complaints	July 09, 2019
39.	Naval Kishore Mishra Versus State of UP & Others	Victim need not obtain leave for" filing appeal against acquittal, it should be dealt as a Regular Appeal	July 10, 2019

The Power under Section 311 of the CrPC, 1973 Should Be Invoked By the Court Only To Meet the Ends of Justice

Swapan kumar chatterjee
Versus
Central bureau of investigation
(Supreme Court)

Judgment: Hon'ble J. A.K. Sikri, Hon'ble J. S. Abdul Nazeer

Pronounced by: Hon'ble S. Abdul Nazeer, J

Date: 04 January 2019

Facts

C.B.I. filed charge sheet against the appellant and three other under section 477 (A), 471, 468 420, 120B of the IPC read with Section 5(1)(c)(d) of prevention of corruption Act. The case was put of trial and 29 prosecution witnesses were examined. The prosecution filed an application under Section 110 of the CrPC for examination of handwriting expert (Mr. H.S. Tuteja), which was allowed but he failed to appear. Prosecution again sought time and it was granted but he again failed to appear.

Decision of Supreme Court

The Supreme Court observed that this practice had been going on unopposed for a period thirteen years, starting from the year 2004, However, the case was registered in the year 1983 and 2 Prosecution witnesses have already been examined but despite the fact that multiple applications have been filed to summon that handwriting expert and all have been allowed but prosecution ha failed to procure the attendance of handwriting expert. The court also observed that Prosecution evidence was closed long back and reason for non-examining of expert witness is not satisfactory.

Therefore, summoning the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under section 311 of the CrPC.

The First part of Section 31 1of the CrPC, is permissive and gives discretionary authority to criminal courts and enables it at any stage of the inquiry, trial or other proceedings of the code to. act in three ways-

1. Summon any person as a witness; or
2. To examine any person in attendance, though not summoned as witness; or
3. To recall and re-examine any person already examined.

The Second Part, which is mandatory, imposing an obligation on the court-

1. To summon and examine, or
2. To recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case.

Therefore, the power conferred under Section 31 1of the CrPC, should be invoked only to meet the ends of justice and same is to be exercised only for strong and valid reasons. Under Section 31 1of the CrPC, the court has wide power to even recall witnesses for re-examination or further examination, which is imperative in the interest of Justice.

The Court held that the power should be exercised with great caution and circumspection and not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

[Section 482 of Cr.P.C.]

Offence under Section 307 IPC Cannot Be Quashed under section 482 Cr.P.C. On The Basis Of Settlement between the Parties.

State of madhya pradesh

Versus

Kalyan singh and ors.

Division Bench of Hon'ble Supreme Court

Hon'ble D.Y. Chandrachud & M.R. Shah JJ.

Pronounced by: Justice M.R. Shah

Dated: January 4th, 2019.

Law point

- * Non compoundable offences cannot be quashed under section 482 Cr.P.C. solely on the basis of settlement between the parties,
- * State, being an interested party, can refuse to compound an offence even when the complainant has made a settlement with the accused to compound it.

Brief facts

The Respondent No.5 (original Complainant) filed a complaint against Respondent Nos. I to 4 (the original accused) for the offences under Sections 307, 294 read with Section 34 of the PC. The original accused filed a bail application which was rejected by the Ld. Sessions Court and thereafter, the original accused approached the High Court by filing the miscellaneous criminal case under Section 482 Cr.P.C. and requested to quash the criminal proceeding on the ground that the accused and the original complainant have settled the dispute amicably.

The original complainant submitted affidavit on this behalf and submitted that he have no objection for dropping the criminal proceedings.

The High Court in exercise of power under section 482 Cr.P.C. quashed the criminal proceedings against the original accused under Sections 307, 294

read with 34 IPC, solely on the ground of settlement and that the original complainant does not want to prosecute against the accused. But the same was opposed by the prosecution.

Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court, the State of Madhya Pradesh preferred the present appeal before the Hon'ble Supreme Court.

Point of determination

Whether the High Court rightly quashed the criminal proceeding under sections 307, 294 read with 34 IPC by using inherent power given under section 482 Cr. P.C.?

Observations of Hon'ble supreme court

The Hon'ble Supreme Court observed that:

- * One of the accused person was reported to be a hardcore criminal having criminal antecedents.
- * The offences under sections 307, 294 read with section 34 IPC are now compoundable and are of serious nature.
- * The Hon'ble Supreme Court referred *Gulab Das and Ors. v. State of Madhya Pradesh* (2011) 12 SCALE 625, In which, the Hon'ble Supreme Court observed and held that, despite any settlement between the complainant on the one hand and the accused on the other, the criminal proceedings for the offence under section 307 of IPC cannot be quashed as offence under section 307 is a now compoundable offence

Decision of hon'ble supreme court

The Hon'ble Supreme Court after observing the facts and circumstance of the case and looking into the seriousness of the allegations held that:

1. The High Court has committed a grave error in quashing the criminal proceeding for the offence under Sections 307, 294 read with Section 34 of IPC, solely on the ground that the original complainant and the accused have settled the dispute and the same cannot be sustained thus, same deserves to be quashed and set aside.
 2. Consequently, the said criminal proceedings were ordered to be proceeded further in accordance with law and on its own merits.
-

[Section 354(3) of Cr.P.C. Section 302 IPC]

Intention resulted into an attack more severe than planned which then resulted into death would not fall in rare of the rarest cases.

Yogendra @ Jogendra Singh
Versus
State of Madhya Pradesh

3 Judges Bench

Hon'ble S.A. Bobde, R. Subhash Reddy and L. Nageswara Rao JJ.

Dated: January, 17, 2019

Law point

1. Concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3).
2. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.
3. If there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence.

Brief facts

In this case the deceased Ruby was married to one Mr. Sanjay Gupta and had two issues from the wedlock. The Appellant coveted her and the husband suspected an affair between his wife - the deceased and the Appellant and harassed her accusing her of the same. The deceased thereafter came to live with her maternal uncle. The Appellant pressurized the deceased's father (PW 8) for summoning her to Porsa (a place) and threatened him with dire consequences if his demand was not fulfilled.

On the ominous night of summer, the deceased and her family members went to their respective rooms and retired for the night. The doors were kept open since it was summer. There was light in the rooms and the courtyard from some bulbs. The Appellant snuck into the room of the deceased and warned

her "though she doesn't want to live with him he is not going to let her live with anybody else". The father of the deceased, Dataram (PW 8) woke up on hearing this and saw the Appellant running away after throwing acid on his daughter. The deceased started screaming, whereupon other family members tried to save her, the Appellant then, threw acid on the other members of the family, burning and injuring all of them. In the attack, the deceased sustained burn injuries to the extent of 90% all over her body while others also sustained burn injuries. In the incident the grandmother of the deceased Smt. Chandrakala (PW 3) and one Raju nephew (PW 7) of the deceased and Janu (PW 4) brother of the deceased were also injured. Dying declaration of the deceased was recorded which pointed out the accused as culprit Also dying declarations made by the injured were consistent with the dying declaration of the deceased. Though the injured survived the injuries.

The Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. In that case the appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxmi Narayan alias Laxman Singh in the intervening night of 27.07. 1994 and 28.07. 1994. And this incident occurred on 21.07.2013.

Decision of the trial court

The Sessions Court awarded the Appellant death sentence under Section 302 of the IPC and also, convicted him for disfiguring and injuring these people by throwing acid under Section 326(A) of IPC.

Decision of hon'ble high court

By an order of High Court of Madhya Pradesh, Gwalior Bench, dated 12.12.2014 confirming the death sentence awarded to the appellant by the Sessions Court, Ambah, District Morena (M.P.) vide its judgment in Sessions Trial No.388/2013 dated 24.07.2014. The Appellant has been convicted under sections 302, 326(A) and 460 of IPC and awarded capital punishment of death sentence, life sentence on three counts and fine of Rs.25,000/-each, and ten years' R.I. and fine of Rs.5000/- with default stipulations, respectively. This death sentence has been confirmed by the High Court on a reference under