महाराष्ट्र पोलीस प्रबोधिनी, नाशिक

पोलीस अधिकाऱ्यांसाठी महत्त्वपूर्ण न्यायनिवाडे

Essential Judicial Rulings for Police Officers

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Essential Judicial Rulings for Police Officers

प्रथम आवृत्ती – जून २०१६

प्रकाशक :
संचालक,
महाराष्ट्र पोलीस अकॅडमी,
त्र्यंबक रोड,
नाशिक
फोन : ०२५३–२३५२१६१

मांडणी व मुद्रक :
चौधरी लॉ पब्लिशर्स
६३९, नारायण पेठ,
पुणे
फोन : ०२०–२४४९०२३४

मनोगत

महाराष्ट्र पोलीस दलातील कार्यरत असलेल्या **'पोलीस अधिकाऱ्यांसाठी महत्त्वपूर्ण न्यायनिवाडे'** हया संकलित केलेल्या संदर्भिय पुस्तकाचे प्रकाशन करतांना मला आनंद होत आहे.

आपल्या राज्यातील गुन्हे शाबितीचे प्रमाण वाढविण्यासाठी गुन्हे तपासी अंमलदार यांना गुन्हयाचा तपास करतांना जो पुरावा गोळा करावा लागतो अशा प्रत्येक पुराव्याला कायदयामध्ये काय महत्त्व आहे व तो संकलित करतांना कोणत्या पध्दतीने व कायदयाच्या कोणत्या संदर्भाने संकलित केला जावा यासाठी मा. सर्वोच्च न्यायालय व देशातील विविध उच्च न्यायालयांनी वेळोवेळी दिलेल्या न्यायनिवाडयात निर्देशित केले आहे. असे निर्देशित केलेले महत्त्वाचे न्यायनिवाडे तपासाच्या विविध विषयाच्या अनुषंगाने या पुस्तकामध्ये समाविष्ठ करण्यात आलेले आहे.

गुन्हे अन्वेषण प्रक्रियेमध्ये तपासी अंमलदाराची भुमिका अत्यंत महत्त्वाची आहे. त्यादृष्टीने महत्त्वाचे न्यायनिवाडे हा संदर्भ पुस्तक हाताळतांना तपासी अंमलदारांना त्यांच्या तपासामध्ये त्रुटी रहाणार नाहीत यासाठी सुक्ष्म बाबींवर सुध्दा कसे लक्ष दयावे याचे मार्गदर्शन होणार आहे. त्यामुळे गुन्हयाच्या तपासात घटनेशी संबंधीत कोणता पुरावा संकलित करणे आवश्यक आहे त्याअनुषंगाने पुराव्याची साखळी तयार करुन आरोपी विरुध्द भक्कम पुरावा संकलित केल्यानंतर न्यायालयात दोषारोपपत्र दाखल करणे कामी तपासी अंमलदारांना मार्गदर्शक व उपयुक्त ठरेल.

प्रस्तुत संदर्भ पुस्तक तयार करण्यासाठी तत्कालीन अभियोग संचालक **श्री. एस. एस. पुरी (पोलीस महासंचालक से.नि.)** यांचेकडून आम्हाला प्रेरणा मिळाली होती. त्याच प्रेरणेतुन अशा प्रकारचे संदर्भ पुस्तक प्रकाशीत करण्याचे प्रस्तावित होते. नुकतेच महाराष्ट्र पोलीस अकदमीमध्ये रुजू झालेले **श्री. छगन देवराज, अपर पोलीस अधिक्षक** यांच्या पहिल्या भेटीतच अशा प्रकारचे पुस्तक निर्मिती करण्याचे मी त्यांचेकडे सुतोवाच केले होते. त्यास श्री. देवराज यांनी लागलीच मला सकारात्मक प्रतिसाद दिला व या पुस्तकाच्या लेखनाला सुरवात केली. त्यांच्या मार्गदर्शनाने महाराष्ट्र पोलीस अकादमीतील ॲड. राजेश सचदेव, विधी निदेशक व श्री. देवराज यांच्या संपर्कात असलेले विधीतज्ञ श्री. चंद्रकांत पाटील, सहा. सरकारी अभियोक्ता, गिरगांव न्यायालय, मुंबई, श्री. मिलींद दातरंगे, सहा. सरकारी अभियोक्ता, पुणे न्यायालय, श्री. गोपिचंद खाडे, सहा. सरकारी अभियोक्ता, अलिबाग न्यायालय, श्री. अनिलकुमार वर्मा, सहा. सरकारी अभियोक्ता, पिंपळगांव बसवंत न्यायालय, जि. नाशिक, श्री. अवधुत

भावसार, सहा.सरकारी अभियोक्ता, मालेगांव न्यायालय, जि.नाशिक यांनी आनंदाने व स्वयंस्फुर्तीने आमच्या विनंतीला मान देवुन महाराष्ट्र पोलीस अकादमीत सलग वीस दिवस तळ ठोकून अहोरात्र मेहनत करुन सर्व महत्त्वाच्या न्यायनिवाडयांचा अभ्यास करुन आवश्यक ते निवाडे निवडून विषयाप्रमाणे त्याची मांडणी करुन अत्यंत महत्त्वाचे अश्या ह्या संदर्भ पुस्तकाची निमिर्ती झाली. अशा प्रकारे नमुद विधीतज्ञांनी आमच्या संकल्पनेला मुहूर्तरुप दिले आहे. सरकारी अभियोक्तांची सेवा उपलब्ध करुन देण्यासाठी मा. के. पी. जोशी, संचालक, अभियोग संचालनालय, म. रा., मुंबई यांचे सहकार्य लाभले आहे.

'**पोलीस अधिकाऱ्यांसाठी महत्त्वपूर्ण न्यायनिवाडे**' हे संदर्भ पुस्तक महाराष्ट्र पोलीस दलातील तपासी अंमलदारांसाठी गुन्हे तपासात एक मोलाचे मार्गदर्शक पुस्तक कायमस्वरूपी म्हणुन उपयुक्त राहिल अशी मी अपेक्षा व्यक्त करतो.

शुभेच्छांसह !!!

नवल बजाज
संचालक
महाराष्ट्र पोलीस अकादमी, नाशिक

नाशिक
दि. ०८ जून, २०१६

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2015 AIR SCW 2058

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प्रसार माध्यमांना तपासकामाची माहिती न पुरविणेबाबत.

Cr. P. C. S.156, Constitution of India, 1950, Article 226. Investigation - Secrecy - Disclosure to media by police officer.

Circulating the documents - Fair investigation - Transfer of investigation. Police investigation - Investigation of any crime has to be in secrecy and the investigating agency is not entitled to divulge any information gathered during the investigation to the public on the plea that there is a criticism of the agency either by the public or by the media (Para 19).

Smt. Vimal w/o. Ashok Thakre & Another vs. In-charge Police Station Officer, Kotwali Police Station, Mahal Nagpur & Others

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एफ.आय.आर. कोणासही दाखल करता येईल.

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an offences may either approach the Magistrate or the officer in charge of a police station (Para 6, 7)

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फिर्यादीस एफ.आय.आर. ची प्रत देणे बंधनकारक नाही.

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State, Represented by Inspector of Police, Chennai vs. N. S. Gnaneswaran

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दखलपात्र गुन्ह्यात एफ. आय. आर. घेणे बंधनकारक आहे, परंतु काही गुन्ह्यात एफ. आय. आर. दाखल करणेपुर्वी प्राथमिक तपास करता येतो.

Cr.P.C. S. 154 - (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(iv) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(v) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes (b) Commercial offences (c) Medical negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. (Para 111)

Lalita Kumari vs. State of U.P.

AIR 2014 S. C. 187

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दुरध्वनीवरुन दिलेली माहिती एफ.आय.आर. म्हणून दाखल करता येते.

Cr.P.C. S. 154 - First information report - Information given on phone in respect of a cognizable offence to a Police Officer in charge of the Police Station will be treated as first Information report provided the said information received through the phone is reduced in writing by the Police Officer in charge of the Police Station and signed by him (Para 9).

Mehtabbi w/o Khajamiya vs. State of Maharashtra

1982 (2) BOM.C.R. 32 : 1981 (1) LJSOFT 72

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एकाच घटनेच्या दोन एफ.आय.आर. दाखल न करणे बाबत.

Cr.P.C. S.154, S.156 (3), S.482 - Private complaint - Order of investigation-Two First Informtion Reports. Private complaint - Application u/s. 156(3) praying for registration of offence in respect of the same incident in respect of which an offence has already been registered - There cannot be two F.I.R. in respect of the same offence. (Para 3, 4)

Sohail Kalimoddin Siddiqui & Others vs. State of Maharashtra & Another

2013 (11) L.J. SOFT 165

21. SECOND F.I.R. WHEN PERMISSIBLE.

कोणत्या वेळी एकाच गुन्ह्यात दोन एफ.आय.आर. दाखल होऊ शकतात.

Cr.P.C. S.154 - First Information Report - Law does not prohibit registration and investigation of two F.I.R.s in respect of the same incident in case the versions are different - Filing another F.I.R. in respect of the same incident having a different version of events is permissible. (Para 6)

Shiv Shankar Singh vs. State of Bihar & Another

2012 ALL MR (Cri.) (S.C.) 354

22. PROCEDURE TO BE ADOPTED WHEN ACCUSED HIMSELF LODGED FALSE F.I.R.

आरोपीने खोटी एफ. आय. आर. दाखल केल्यास कारवाई करणेबाबत.

Cr.P.C. S.154 - False F.I.R. by accused - procedure to be adopted by police.

When it reveals after the collection of the material during investigation that F.I.R. is false one or otherwise, investigation officer has to file appropriate summary ('B' classification) before the Magistrate. Magistrate thereafter is duty bound to give notice to the Informant and after hearing, he has to decide about the summary filed by the I.O. - The I.O. can not himself decide that the F.I.R. lodged by the Informant is false. (Para 11)

Nilesh s/o. Sitaram Ghanekar vs. State of Maharashtra.

BOMBAY HIGH COURT

CRIMINAL APPLICATION NO.2780 OF 2015.

Decided on 16-06-2015.

23. F.I.R. - DELAY - IF NOT EXPLAINED IT'S EFFECTS.

उशीरा दाखल झालेल्या एफ.आय.आर. च्या परिणामाबाबत.

Cr.P.C. S.154 - Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of colored version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore,

it is essential that the delay in lodging the report should be satisfactorily explained. (Para 18)

State of Andhra Pradesh vs. M. Rao

2008 (15) SCC 582

24. DELAY IN FORWARDING COPY OF F.I.R. TO MAGISTRATE TO BE AVOIDED.

न्यायालयात एफ.आय.आर. पाठविण्यास विलंब टाळावा.

Cr.P.C. S.154 - A copy of the F.I.R. is required to be forwarded forthwith to the Magistrate empowered to take cognizance of such offence. Sending the copy of F.I.R. to magistrate as required u/s. 157 of Cr.P.C. is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. Immediate sending of the F.I.R. to the magistrate is the mandate of law. (Para 7)

Bijoy Singh vs. State of Bihar

2002 AIR S. C. 1949

25. POLICE OFFICER WHO LODGES F.I.R., CAN CONDUCT INVESTIGATION OF THE SAME.

खबर दाखल करणारा पोलिस अधिकारी हा त्याच गुन्ह्याचा तपास करु शकतो.

Cr.P.C. S.154 - Police who has recorded F.I.R. can investigate the offence- no illegality. The police officer prepared the F.I.R. on the basis of information received by him and registered the suspected crime does not, disqualify him from taking up the investigation of the cognizable offence. (Para 4, 12)

State rep. by Inspector of Police, Vigilance & Anti-Corruption, Tiruchirapalli, T.N. vs. V. Jayapaul

2004 AIR S. C. 2684

26. INFORMANT & INVESTIGATION OFFICER - SAME - NOT FATAL

खबर नोंदविणाऱ्या अधिकाऱ्याने त्याच गुन्ह्याचा तपास केल्यास त्याचे परिणामाबाबत.

Cr.P.C. S.154 - Merely because the Informant conducted

investigation that would not be sufficient to cast doubt on the prosecution version to hold that the same makes the prosecution version vulnerable (fatal). The matter has to be decided on case to case basis without any universal generalization. (Para 5)

Bhaskar Ramappa Madar and Ors. vs. State of Karnataka

AIR 2009 SC (Supp) 1826

27. F.I.R. - SIGN NOT TAKEN AND NO EXPLANATION BY I.O. - LIABLE TO BE REJECTED.

खबर देणाऱ्या व्यक्तीची एफ.आय.आर. वर स्वाक्षरी न घेतल्यास आणि त्याचे स्पष्टीकरण न दिल्यास एफ.आय.आर. रद्द होऊ शकते.

Cr.P.C. S.154 - Recording of - F.I.R. not carrying signature or thumb impression of informant -No explanation given for it by officer recording it - F.I.R. liable to be rejected. (Para 25, 26)

State of Maharashtra vs. Ahmed Gulam Nabi Shaikh and others

1997 CRI. L. J. 2377

28. F.I.R.: NON MENTIONING OF NAME OF ACCUSED - NOT FATAL

एफ. आय.आर. मध्ये आरोपीचे नांव नमुद नसल्यास बाधा नाही.

Cr.P.C. S. 154, I.P.C. S.300- Murder - Non-mentioning of name of accused in F.I.R. - Deceased carried to hospital after being shot on her back immediately by informant upon hearing scream of her husband about gunshot - Informant in such a situation not expected to have heard husband of deceased mentioning name of accused - Mere non-mentioning of name of accused in FIR not fatal to prosecution case. (Para 24, 27)

Mritunjoy Biswas vs. Pranab alias Kuti Biswas and another

2013 CRI. L. J. 4212

29. MEANING OF ARREST

अटकेची व्याख्या.

Cr.P.C. S. 41 - 'Arrest' - Word has not been defined in any enactment dealing with the offences, including, Cr.P.C. and I.P.C. - It is derived from French word 'arrater' meaning 'to stop or stay' - It signifies a restraint of a person - It is thus a restraint of a man's person, obliging him to be obedient of law - May be defined as 'the execution of the command of a Court of Law of a duly authorized officer'. (Para 22)

Union of India vs. Padam Narain Aggarwal Etc.

2009 AIR S. C. 254

30. WHEN ARREST IS SAID TO COMMENCE.

अटक केव्हा कार्यान्वित होते.

Cr.P.C. S. 41 - The word "arrest" is a term of art. It starts with the arrester taking a person into his custody be action or words restraining him from moving anywhere beyond the arresters control and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrates Judicial Act. (Para - 7)

Ashak Hussain Allah Detha @ Siddique & Another vs. Assistant Collector of Customs (P) Bombay & Another

1990 (1) Bom.C.R. 451

31. GUIDELINES FOR ARREST.

अटकेबाबतची मार्गदर्शक तत्त्वे

Cr.P.C., S. 46, S.151 - Constitution of India, 1950 -Article 21 - Unjustified arrest and hand-cuffing - Compensation - Right of personal liberty - No arrest can be made because it is lawful for the police officer to do so - Existence of the power to arrest is one thing and the justification for the exercise of it is quite another. A person is not liable to arrest merely on the suspicion of complicity in an offence - Except in heinous offences, an arrest must be avoided. (Para - 11)

Antonio Sebastiao Mervyn Degbertde Piedade Pacheco vs. State of Goa & Others

2008 ALL MR (CRI) 2432

32. PROCEDURE FOR ARREST IN OFFENCES PUNISHABLE UPTO SEVEN YEARS.

सात वर्षांपर्यंत शिक्षेची तरतूद असलेल्या गुन्ह्यांमध्ये अटकेच्या कार्यवाहीबाबत.

Cr.P.C. S.41, I.P.C. S. 498A - No arrest should be made only because the offence is non-bailable and cognizable and therefore lawful for the police officers to do so - Provisions of section 41 are to be scrupulously observed when punishment is up to seven years.

The police officer is satisfied that such arrest is necessary - (a) to prevent such person from committing any further offence, or (b) for proper investigation of the offence, or (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner, or (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer, or (e) unless such person is arrested, his presence in the Court whenever required cannot be insured. (Para 4, 5, 6, 17, 18, 19, 20)

Arnesh Kumar vs. State of Bihar

AIR 2014 S. C. 2756

33. RIGHTS AND DUTIES OF POLICE, REGARDING ARREST.

पोलिसांचे अटकेच्या संदर्भाने अधिकार व कर्तव्ये.

Cr.P.C. S.41, S.151 -Arrest - Right of arrested person - to have someone informed about his arrest - And right to consult with lawyer - Are inherent in Arts. 21 and 22 of Constitution - Directions issued by Supreme Court for effective enforcement of said fundamental rights - Duties of police - The police officer must be able to justify the arrest apart from his power to do so. No arrest can be made in a routine manner. (Paras 24 - 28)

Joginder Kumar vs. State of U.P. and others

AIR 1994 S. C. 1349(1)

34. ARREST OF WOMAN: WHEN PRESENCE OF LADY CONSTABLE IS NOT REQUIRED.

स्त्रीस अटक करतांना महिला पोलिस कर्मचारी हजर असणे केव्हा आवश्यक नाही.

Cr.P.C. S.41, S.151 - Arresting a female person - Arresting authority should make all efforts to keep a lady constable present - But in circumstances if lady constable is not available or delay in arrest would impede the course of investigation - Arresting Officer, for reasons to be recorded, can arrest female person for lawful reasons at any time of day or night in absence of lady constable. (Para 9)

State of Maharashtra vs. Christian Community Welfare Council of India and another.

AIR 2004 S. C. 7

35. ARREST OF WOMEN AFTER SUNSET WITHOUT PERMISSION OF MAGISTRATE IS ILLEGAL.

न्यायदंडाधिकाऱ्यांचे परवानगी शिवाय सुर्यास्तानंतर स्त्रीस अटक करणे हे बेकायदेशीर आहे.

Cr. P. C. S. 46(4), 60-A - Constitution of India, 1950 - Article 21 - Illegal detention - Arrest of woman after sunset - Violation of provisions of law - Compensation - Arrest of woman after sunset-There must exist exceptional circumstances and a lady Police Officer shall make a written report and obtain prior permission of the Judicial Magistrate. (Para 13 - 21)

Mrs. Bharati S. Khandhar vs. Maruti Govind Jadhav & Others

2013 ALL MR (CRI) 662

36. Cr.P.C. S.156 (3) - ORDER PASSED BY MAGISTRATE - PERMISSION FOR ARREST NOT REQUIRED.

फौ. प्र. सं. क. – १५६ (३) अन्वये दाखल गुन्ह्यांतर्गत आरोपीला अटक करतांना न्यायालयाच्या परवानगीची आवश्यकता नाही.

Cr.P.C. S. 156 (3), Cr.P.C. S. 200-Private complaint- F.I.R. registered pursuant to the orders issued by the Magistrate u/s. 156 (3) of Cr.P.C.-Neither obligatory nor mandatory for a Police Officer to obtain leave of the Court before arresting

an accused against whom F.I.R. is registered. (Para 24)

Laxminarayan Vishwanath Arya vs. State of Maharashtra & Others

2007 ALL MR (CRI) 2886

37. HANDCUFFING OF ACCUSED - GUIDELINES.

आरोपीला बेड्या घालणेबाबतची मार्गदर्शक तत्वे.

Cr. P.C. S. 46, 80, Constitution of India, Art.14, Art.19, Art.21 of prisoners - Peculiar and special characteristics of each individual prisoner be considered - No handcuffing except under special reasons - Directions in this regard issued by Supreme Court.

Special Reasons - As a rule it shall be the rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under trial - while lodged in a jail anywhere in the country or while ransporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own, shall have no authority without obtaining order from Magistrate, to direct theof any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back. The relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations. (Para 3, 9 - 10)

Citizen for Democracy through its President vs. State of Assam

AIR 1996 S. C. 2193

38. Cr.P.C. S. 151 ARREST- WHEN ILLEGAL.

फौ.प्र.सं.क.१५१ – अटक कधी बेकायदेशीर होईल.

Cr. P. C. S. 41-B, 107, 111, 151 Constitution of India, 1950 - Article 21, 22, 226 - Illegal detention - Compensation - Chapter proceedings - Illegal arrest - Violation of fundamental rights.

"For taking preventive action U/S.151 of the said Code, mere knowledge by the Police Officer of a design to commit cognizable offence is not sufficient. Preventive action can be taken only if it appears to such officer that the commission of offence cannot be otherwise prevented. Hence, the arrest u/s.151 was not at all warranted. The arrest u/s. 151 is illegal."(Para 11)

2013 ALL MR (CRI) 851

39. Cr.P.C. S. 151(3), 110(g) - FREQUENT ARREST IS IN CONTRAVENTION OF PROVISIONS OF Cr.P.C. - COMPENSATION TO DETENU

फौ.प्र.सं.क.१५१ (३), ११०(ग) – वारंवार अटक करणे बेकायदेशीर ठरेल – अटक केलेल्या इसमास संबंधीत पोलीस अधिकाऱ्याकडून नुकसान भरपाई मिळू शकते.

Cr.P.C. 151(3), 110(g) - Since the arrest of the Petitioner (Detenu) is found illegal, unwarranted and preceded by other 3 or 4 unjustified arrest, he is entitled for the compensation. Respondents (i.e. Arresting officer and the Executive Magistrate) to pay jointly and severally compensation to the detenu for illegal detention and mental agony. (Para 34)

Shavam Dattatray Beturkar vs. Special Executive Magistrate & Others

1999 ALL MR (Cri) 1983

40. POWER OF ARREST IN CHAPTER CASES.

चॅप्टर केसेसमध्ये अटक करण्याचे पोलीसांचे अधिकारांबाबत.

Cr.P.C. S.110 (e) (g), Constitution of India, 1950 - Article 21, 226 - Illegal detention - Chapter cases - Power to arrest - Compensation - Chapter case registered against the petitioners by invoking the provisions of Section 110 (e) (g) of

Cr.P.C. Arrest of petitioners in chapter proceedings was illegal as there is no provision to arrest a person on initiation of chapter proceedings.
Arrest in chapter cases can be made only after following due procedure laid down u/s. 113 and S.122 of Cr. P.C. (Para 5, 10, 12).

Rafiq s/o. Madar Gowli vs. State of Maharashtra

2014 (9) LJSOFT 18

41. POLICE CUSTODY REMAND WITHOUT PRODUCTION OF ACCUSED BEFORE THE MAGISTRATE.

आरोपीला न्यायालयात हजर न करता त्याच्या पोलीस कोठडीची मागणी करणेबाबत.

Cr.P.C. S.167 - Can be dispensed with only on special reasons - Accused could not be produced as there was no escort available during that period - Remand order, is valid - More so, when accused are involved in serious offences under I.P.C. - Detention, in prison under such remand order - Does not amount to illegal custody .(Para 17)

Sajjad and another vs. State of Karnataka and others.

2005 CRI. L. J. 3707

42. REMAND IN ABSENCE OF ACCUSED Þ.

आरोपीच्या गैरहजेरीत त्याचे कोठडीसंबंधी आदेशाबाबत.

Cr.P.C. S.344, Remand in absence of accused - Order of remand can be passed in absence of accused if his presence at the time could not be secured. (Para 7)
(Note - If the accused is taking medical treatment due to which he is not in a condition to be produce before the Magistrate for remand, Magistrate can entertain such remand in absence of accused - Criminal Manual Chapter 1 - Para 2)

Gauri Shankar Jha, vs. State of Bihar and others

1972 CRI. L. J. 505 (S. C.)

43. POLICE CUSTODY REMAND - PROPER GROUNDS SHOULD BE MENTIONED IN THE REMAND REPORT.

पोलीस कोठडी रिमांड मागणीसाठी संयुक्तिक कारणे रिमांड रिपोर्टमध्ये नमुद करावीत.

Cr.P.C. S. 167 - Police custody remand. Proper grounds should exists for granting PCR. Merely because provisions of some act were later applied there would be no automatic necessity of, or justification for, seeking PCR. (Para 10, 13)

(Note - A remand to police custody of an accused person should not be ordinarily be granted unless there is reason to believe that material and valuable information would thereby be obtained which can not be obtained except by his remand to police custody - Criminal Manual Chapter 1 - Para 5 (i)).

State of Maharashtra vs. Anil Pandit Aher & Others

2013 ALL MR (Cri.) 644

44. PROPER GROUNDS FOR OBTAINING POLICE CUSTODY REMAND HAS TO BE MENTIONED.

पोलिस कोठडी रिमांड मिळणेकामी संयुक्तिक कारणे नमुद करणेबाबत.

Cr.P.C. S. 167 - "For praying police custody remand, it is obligatory on the part of the investigating officer to satisfy the learned Magistrate as to why he requires the police custody remand of accused persons. Mere wish of the investigating officer is not sufficient for claiming the police custody remand. (Para 14).

Shivnath s/o. Vishwanath Lambe & Another vs. State of Maharashtra

2015 ALL M.R. (Cri.) 2555

45. REMAND: PRODUCTION OF ACCUSED ALONG WITH CASE DIARY IS MUST. .

रिमांडकामी आरोपीसह केस डायरी हजर करणे आवश्यक आहे.

Cr. P.C. S.167 (1) - Duty of Police to produce arrested person before Magistrate. - If the police do not transmit the court a copy of the entries in the diary relating to the case, the sastisfy the magistrate there are grounds, for believing that the accusation or information is well founded and that

remand is absolutely necessary for the purpose of investigation, the magistrate has no jurisdiction to direct detention of the arrested person. Magistrate can release accused. (Para 19, 25, 26)

R. K. Nabachandra Singh vs. Manipur Administration

1964 (2) CRI. L. J. 307 (MANIPUR HIGH COURT)

46. POLICE CUSTODY REMAND - CANNOT EXCEED PERIOD OF 15 DAYS FROM 1ST DAY OF REMAND.

रिमांडच्या पहिल्या दिवसापासून १५ दिवसांचे आंत पोलीस कोठडीचे मागणीबाबत.

Cr.P.C. S.167 (2) - Remand of accused to custody after arrest -Custody initially cannot exceed period of fifteen days - Same can be police or judicial custody. (P.C.R. may be granted only within first 15 days from the date of first production of the accused for remand. No P.C.R. can be granted after the completion of 15 days from the day the accused was first produced before the Magistrate). (Para 4)

C. B. I., Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni,

1992 CRI. L. J. 2768(1) S. C.

47. POLICE CUSTODY REMAND AFTER FIRST 15 DAYS WHETHER PERMISIBBLE?

पहिले १५ दिवस उलटल्यानंतरही पोलिस कोठडीची मागणी कोणत्या परिस्थितीत करता येते.

Cr.P.C. S.167(1), S.397(2) - Police Custody Remand (PCR) - Lapse of initial period of 15 days - Accused granted bail. If accused is not in jail for whole first 15 days then he can be remanded in P.C.R. even after lapsed of first 15 days. (Para 10, 11)

Alim A. Patel vs. State of Maharashtra

2011 (2) AIR BOM R 271

48. TRANSFER FROM PCR TO MCR AND MCR TO PCR WITHIN FIRST 15 DAYS FROM THE DATE OF FIRST PRODUCTION OF THE ACCUSED BEFORE THE MAGISTRATE - CAN BE DONE.

अटकेनंतर आरोपीस रिमांडकामी हजर केले दिवसापासून पहिले १५ दिवसांत पोलीस कोठडी अथवा न्यायालयीन कोठडीची उलटपक्षी मागणी करता येते.

Cr.P.C. S.167(2), Terrorist and Disruptive Activities (Prevention) Act (28 of 1987) , S.20 - Change of custody - Validity - Accused in judicial custody, if circumstances justify, can be remanded to police custody or vice versa within time limit (15 DAYS) as prescribed in S.167 (2) Cr.P.C. (Para 2, 4)

Kosanapu Ramreddy vs. State of A.P. and others

1994 CRI. L. J. 2121 (SC)

49. POLICE CUSTODY REMAND OF ABSCONDING ACCUSED EVEN AFTER FILING OF CHARGESHEET.

दोषारोपपत्र दाखल केल्यानंतर फरार आरोपीची पोलीस कोठडीची मागणी.

Cr.P.C. S.167 (2), Further investigation - Absconding accused - Police remand - Offences u/s. 148, 149, 326, 307, 302 of I.P.C. Police remand can be sought u/s. 167 of Cr.P.C. in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. (Para 12, 13)

Central Bureau of Investigation vs. Rathin Dandapat and others

2015 (9) LJSOFT (SC) 6

50. POLICE CAN INTERROGATE ACCUSED WHEN HE IS IN MAGISTRATE CUSTODY.

आरोपी न्यायालयीन कोठडीत असतांनादेखील त्याच्याकडे चौकशी करता येते.

Cr.P.C. S.167 - Criminal Procedure - Judicial custody - Interrogation by Police - Permissible - Magistrate can direct the place and manner - Mere interrogation by Police, during

such custody by permission of the Magistrate, cannot change the nature of custody. (Para 4)

Gian Singh vs. State (Delhi Administration]

1981 CRI. L. J. 100

51. COMPUTATION OF 60/90 DAYS - HOW TO BE CALCULATED.

दोषारोपपत्र मुदतीत दाखल करणेसंबंधीचा कालावधी निश्चित करणेबाबत.

Cr.P.C. S. (2 of 1974), S.167 (2)(a)(i), S.167(2)(a)(ii) - Offence u/s.306 of Penal Code - Prescribed punishment for said offence is imprisonment which may extend to term of 10 years - Meaning thereby term of imprisonment can be for clear period of 10 years or less - Case would be covered by provision of S.167(2)(a)(ii) for which prescribed period of investigation is 60 days. (Punishment may extend upto 10 years, is provided for offence u/s.306 of I.P.C. While computing period for filing of charge sheet, because the maximum punishment can extend upto 10 years, the permissible period for filing the charge sheet shall not exceed 60 days. However where the maximum punishment goes beyond a period of 10 years, charge sheet can be filed within 90 days.) (Para 15)

Nijamuddin Mohammad Bashir Khan vs. State of Maharashtra.

2006 CRI. L. J. 4266

52. Cr.P.C. S.167 - COMPUTATION OF 60/90 DAY

आरोपी न्यायालयात हजर केल्याच्या दिनांकापासून ६०/९० दिवस गणना करणेबाबत.

Cr.P.C. S.167 (2) Proviso (a), S.57, S.309 - Period of 90 days/60 days Envisaged by Proviso (a) - Begins to run from date of order of remand and not from earlier date when accused was arrested. (First day to compute 60/90 days is the first day of remand and not the day when the accused arrested)(Para 18, 32)

Chaganti Satyanarayana and others vs. State of A. P.

AIR 1986 S. C. 2130

53. MAXIMUM PUNISHMENT SHOULD BE TAKEN INTO CONSIDERATION WHILE COUNTING 60/90 DAYS.

६०/९० दिवसांची गणना करताना उच्चतम शिक्षा कालावधी ग्राह्य धरणेबाबत.

Cr. P.C. S.167(2) Proviso - Filing of challan - Period for - Offence under S.304B, I.P.C. - Permissible period for filing challan is 90 days. Where minimum and maximum sentences are prescribed both are imposable depending on the facts of the cases. It is for the Court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. (While counting 60/90 days maximum sentence has to be considered) (Para 14)

Bhupinder Singh and Others vs. Jarnail Singh and Another

AIR 2006 S. C. 2622

54. CHARGESHEET AND BAIL APPLICATION FILED ON SAME DAY - ACCUSED ENTITLED FOR BAIL.

दोषारोपपत्र व जामीन अर्ज ६०/९० ह्या शेवटच्या दिवशी सादर झाल्यास त्याचे परिणामाबाबत.

Cr.P.C. S.167 (2) - Bail - Grant of - Offence u/s. 302 of I.P.C. - Charge sheet not filed within 90 days - Charge sheet and bail application filed on same day - Grant of bail u/s. 167(2) of Cr.P.C. - Charge sheet and bail application filed on same day - Placed before the Judge at the same time - Whether bail can be granted? (Yes). (Para 2)

1999 (1) LJSOFT 294

55. ONCE CHARGESHEET IS FILED RIGHT OF BAIL EXTINGUISHED

एकदा दोषारोप पत्र दाखल झाल्यावर आरोपीचा जामीनकीचा हक्क संपतो.

Cr.P. C. S.167 (2) Proviso- N.D.P.S.- S.37- Bail - Grant of - S. 37 of Act does not exclude application of proviso to S. 167 (2) - Failure of prosecution to file charge-sheet within prescribed time under S. 167 (2) Proviso - Does not create indefeasible right on accused to exercise it at any time - Charge sheet filed and accused in custody on basis of order

of remand - Accused cannot be released on bail on ground that chargesheet was not submitted within statutory period. (Para 4)

Dr. Bipin Shantilal Panchal vs. State of Gujarat

AIR 1996 S. C. 2897

56. DUE TO HOLIDAY, TIME CAN NOT BE EXTENDED FOR 60/90 DAYS FOR FILING OF CHARGE SHEET.

दोषारोपपत्र दाखल करताना ६०/९० दिवस हा सुट्टीचा असला तरी तो वाढवून मिळत नाही. ६०/९० हा दिवस सुट्टीचा जरी असला तरी त्या दिवशी दोषारोपपत्र दाखल करणे आवश्यक आहे.

Cr.P.C. S 167 (2) - (i) Whether the application filed by the applicants u/s.167 (2) Cr.P.C. on 24-1-1999 which being a holiday could be treated to have been filed on 25-1-1999? (No)

(iii) If the last day happens to be holiday or non-working day of the Court whether the period of 90 days of limitation automatically extended? (No) (Para 10, 19).

Naresh @ Nana Baliram Sonwane and others vs. State of Maharashtra

1999 ALL MR (CRI) 1241

57. Cr.P.C. S.167-HOLIDAY NO EXCUSE FOR FILING CHARGESHEET.

न्यायालयाच्या सुट्टीच्या दिवशी जरी ६०/९० वा दिवस असल्यास त्याच दिवशी दोषारोपपत्र सादर करणे आवश्यक आहे.

Cr.P.C. 167 (2) - The investigation can take place even on holidays and detention of such accused person also continues on holidays. Therefore, the argument that 60th day or 90th day was a public holiday and therefore, the Prosecution could not file chargesheet on that date and had filed the same immediately on the next working day, has hardly got any relevance if the purpose of the said provision is looked into. (Para 9).

Jitendra s/o. Maroti Deotare & Another vs. State of Maharashtra

2008 ALL MR (CRI) 2458

58. ACTION / DEPARTMENTAL ENQUIRY AGAINST INVESTIGATION OFFICER, IF CHARGE SHEET IS NOT FILED WITHIN 60 / 90 DAYS AND ACCUSED RELEASED ON BAIL.

दोषारोपपत्र मुदतीत दाखल न झाल्याने आरोपीस जामीन मिळाल्यास तपासी अंमलदारांवर खातेनिहाय चौकशी करणेबाबत.

Cr.P.C. S.167 (2), S.437 (5), S. 439 (2) - Cancellation of bail - Grounds for - Guidelines / measures to prevent misuse of section 167 - If charge sheet is not filed within 60/90 days and accused is released on bail then departmental inquiry of investigation officer can be ordered for contempt of Court. (Para 10)

Bhulabai wd/o. Barkaji Matre vs. Shankar Barkaji Matre and others

1999 ALL MR (CRI) 1724

59. BAIL - FACTORS TO BE CONSIDERED.

जामीन देतांना न्यायालयाने विचारांत घ्यावयाचे मुद्दे.

Cr.P.C. S.439- Bail - Grant of - Factors to be considered - Court not to undertake meticulous examination of evidence while granting or refusing bail.

The gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. (Para 10)

Kanwar Singh Meena vs. State of Rajasthan and Another

AIR 2013 S. C. 296

60. Cr.P.C. Sec 437 - BAIL : CONSIDERATIONS.

जामीन देतांना गुन्ह्याचे स्वरुप व गंभीरता विचारात घेणेबाबत.

Cr.P.C. S.437 - Bail - Considerations - Placement of accused in society - By itself cannot be guiding factor for grant of bail - The nature of the offence is one of the basic consideration for grant of bail - More heinous is a crime, the

greater is the chance of rejection of the bail, though, however dependent on the factual matrix of the matter. (Para 3, 4)

Ram Govind Upadhyay vs. Sudarshan Singh and others.

AIR 2002 S. C. 1475

61. Cr.P.C. S. 437(5) - BAIL CANNOT BE CANCELLED ON MERE ADDITION OF NEW SECTION - ONLY FRESH BAIL/BOND REQUIRED.

गुन्हयात कलमवाढ झाली म्हणुन जामीन रद्द करता येत नाही फक्त नविन जामिन कदबा घेण्याची आवश्यकता आहे.

Cr.P.C. S.437, S. 439 - Bail - Cancellation - Cancellation of bail on ground of mere addition of new sections not permissible - Accused can only be directed to furnish fresh bail bonds and surety bonds to satisfaction of Magistrate in respect of newly added sections and on furnishing such fresh bonds, they shall continue on same bail. (Paras 15, 16).

Uttamkumar s/o. Chandrakant Wagh vs. State of Maharashtra

2012 All M R (Cri) 3468

62. DEATHS DUE TO POISONOUS LIQUOR - NO BAIL

विषारी दारुच्या सेवनाने मयत झालेल्या गुन्ह्यांमध्ये जामीन फेटाळणेबाबत.

Cr.P.C. S.439- Bail - Case relating incident of hooch tragedy resulting in death of and serious injuries to many persons - Appellant not only supplier of alcohol but main conspirator in manufacture of spurious alcohol by using methyl alcohol - Offences alleged against appellant are offences against society - Do not deserve leniency - Mere fact that appellant was 3 yrs. in custody as under trial - Not ground to grant bail. (Para 16, 17, 21, 23, 25, 27)

Ravindersingh alias Ravi Pavar vs. State of Gujarat

AIR 2013 S. C. 1915

63. CANCELLATION OF BAIL : CIRCUMSTANCES.

जामीन रद्द करणेसंबंधीची परिस्थिती.

Cr.P.C. S.439 - "It is, therefore, clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled (Para 9).

Mehboob Dawood Shaikh vs. State of Maharashtra

2004 (1) BOM.C.R. (CRI) (S.C.) 840

64. RE- ARREST OF ACCUSED - WHEN PERMISSION OF COURT, NOT REQUIRE.

आरोपीला पुन्हा अटक करतांना न्यायालयाची परवानगी घेण्याची केव्हा आवश्यकता नाही.

Cr.P.C S.439 (2) - Accused release on bail - Subsequently, investigation disclosed aggravated / serious offence - police can re-arrest the accused without the need for cancellation of bail. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime (Para 9).

Prahlad Singh Bhati vs. N. C. T., Delhi

AIR 2001 SC 1444, 2001 ALL MR (CRI) 739

65. ANTICIPATORY BAIL - ABSCONDER/PROCLAIMED OFFENDER IS NOT ENTITLE.

फरार/उद्घोषित आरोपीस अटकपूर्व जामीन न देणेबाबत.

Cr.P.C. S. 438, S. 82 - Normally, when the accused is 'absconding' and declared 'Proclaimed offender' there is no question of granting anticipatory bail to him. [Paras 6 & 9].

Lavesh vs. State (NCT of Delhi)

2012 All.M.R. (CRI) 3300

66. Cr.P.C. S.439 - BAIL -DUTIES OF SURETIES.

जामीन कदब्यातील जामीनदारांची कर्तव्ये.

Cr.P.C. S. 439 - Bail - Accused is not set at liberty - He is only released from custody of law and entrusted to custody of his sureties.

"The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned." (Para 22).

Ash Mohammad vs. Shiv Raj Singh @ Lalla Babu

2012 CRI. L. J. 4670

67. SUMMONS TO WITNESS WHO IS RESIDING OUTSIDE JURISDICTION OF POLICE STATION.

पोलिस ठाण्याच्या स्थळसीमेबाहेर राहणाऱ्या साक्षीदारांना समन्स बजाविणेबाबत.

Cr.P.C. S.160, S.91- Attendance of witness - Issuance of summons for - Validity - Summons requiring petitioner to appear before Investigating Officer along with any particular document who is residing outside jurisdiction of police station - Not illegal. (Para 6, 7)

Anirudha S. Bhagat vs. Ramnivas Meena and another

2005 CRI. L. J. 3346

68. EFFECT OF DELAY IN RECORDING STATEMENTS U/S. 161 OF Cr.P.C.

फौ.प्र.सं.क.–१६१ अन्वये साक्षीदारांचे जबाब उशीरा नोंदविण्याचे परीणाम.

Cr.P.C. S.161 - Duty of Investigaing Officer - Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to

decide about the shape to be given to the case and the eye witnesses to be introduced. (Para 15, 29)

Ganesh Bhavan Patel and another vs. State of Maharashtra

AIR 1979 S. C. 135

69. DELAY IN RECORDING STATEMENT Cr.P.C. u/s. 161 - SHOULD BE EXPLAIN

विलंबाने जबाब नोंदविल्यास विलंबाचे कारण स्पष्ट नमुद करावे.

Cr.P.C. S.161, I.P.C. S.302 - Murder - Appeal against conviction - I.E.A. S. 27, 122 - No explanation for delay in recording the statement of eye witness - Unjustified and unexplained long delay in recording statement of material eye witness during investigation of murder case will render the evidence of such witness unreliable. (Para 21 - 24)

Bhalchandra Namdeo Shinde vs. State of Maharashtra

2003 ALL MR (CRI) 1149

70. "STATEMENT" IN Cr.P.C. S.161 - INCLUDES ORAL, WRITTEN STATEMENT, SIGNS AND GESTURES.

फौ.प्र.सं.क.१६१ प्रमाणे जबाब म्हणजेच – मौखिक, लेखी, चिन्हे व हावभाव होय.

Cr.P.C. S.161- Word "statement" in S.161 includes both oral and written statement - It will also include signs and gestures. (Para 13). (If witness is expressing his statement by signs and gestures, it is require to note such signs and gestures in the statement)

Asan Tharayil Baby vs. State of Kerala

1981 CRI. L. J. 1165

71. STATEMENT OF HOSTILE WITNESS TO POLICE: CAN BE TAKEN IN TO CONSIDERATION

फितूर साक्षीदाराचे जबाब पोलीसांमार्फत सिद्ध करुन विचारात घेणेबाबत.

Cr. P.C. S.162 (1) Proviso - Evidence Act, S.3 - Statement to Police - Hostile witness - when witness was confronted with her statement in Court, she resiled from her earlier statement and was declared hostile - Her denial in Court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment -

Statement ot police can be taken into consideration in view of proviso to S. 162 (1), Cr.P.C.

"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court".

The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that ex- tra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of at- tributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."(Para 8)

Bhagwan Dass vs. State of Delhi

AIR 2011 S. C. 1863

72. A COPY OF THE STATEMENT UNDER Cr.P.C. S.164 SHOULD BE HANDED OVER TO THE INVESTIGATING OFFICER.

न्यायदंडाधिकाऱ्यांसमक्ष नोंदविलेल्या जबाबाची प्रत तपासी अंमलदारांना देणेबाबत.

Cr.P.C. S. 164 - A copy of the statement Cr.P.C. u/s. 164 should be handed over to the Investigating Officer immediately with specific direction that the contents of such

statement u/s. 164 Cr.P.C. should not be disclosed to any person till charge sheet / report u/s. 173 Cr. P.C. is filed. (Para9)

State of Karnataka by Nonavinakere Police vs. Shivanna @ Tarkari Shivanna

2014 (8) SCC 913

73. Cr.P.C. S.164 A : CONSENT OF VICTIM OF RAPE IS NECESSARY FOR HER MEDICAL EXAMINATION.

बलात्कार पीडीत स्त्रीची वैद्यकिय तपासणी करण्यापूर्वी तिची संमती घेणे आवश्यक.

Cr.P.C. S. 53, 53A, 164A, I.P.C. S.376, S.506 - Medical examination - Rape case - It is the duty of the police to refer the accused in such a case for medical examination - Section 53 of Cr.P.C. shows that consent of the accused is not required to be taken in such a case - As per Section 164-A of Cr.P.C. consent of the victim needs to be obtained - For DNA matching, for collecting blood the consent of the accused is not necessary. (Para 20 - 22).

Mohammed Alif Laila vs. State

2014 ALL MR (CRI) 1645

74. PANCH IS NOT NECESSARY FOR PANCHANAMA U/S 27 OF EVIDENCE ACT.

भा.पु.का.क.२७ प्रमाणे पंचनाम्यास पंचांची आवश्यकता नाही.

Cr. P.C. S.100 - Evidence Act S.27 - Recovery and seizure of article - Made in pursuance of statement by accused - Mere absence of independent witness - Not a ground to discard seizure evidence under S. 27 of Evidence Act. (Para 19, 21, 22)

State Govt. of NCT of Delhi vs. Sunil and another

2001 (1) CRI. L. J. 504 (S. C.)

75. FORMAL ARREST NOT NECESSARY FOR DISCLOUSERE STATEMENT U/S. 27 OF I.E.A.

भा.पु.का.क.–२७ अन्वये पंचनाम्यासाठी आरोपीच्या पोलिस कस्टडीची आवश्यकता नाही.

Cr.P.C. S. 157, S.215 - Evidence Act S.27 - Discovery evidence - Accused was in the custody of investigating agency -Fact whether he was formally arrested or not will not vitiate factum of leading to discovery - However, accused was arrested on date of seizure - Plea that recovery was doubtful as accused was not arrested when he led to discovery of articles seized hence, cannot be accepted. (Para 57)

Chandra Prakash vs. State Of Rajasthan

AIR 2014 S. C. (Supp.) 1

76. I.E.A. S.27 - PRESENCE OF ACCUSED IS NOT NECESSARY AT THE TIME OF RECOVERY

कलम २७ कडील पंचनाम्या कामी आरोपीची प्रत्यक्ष हजर असण्यची आवश्यता नाही.

Cr.P.C. S.157, I.E.A. S.27 - Evidence of recovery - Law even does not contemplate that the actual discovery needs to be made by the accused himself or that the accused should personally accompany the Police Officer and Panchas to the spot (Para 29)

Kamru @ Javed Haniflala Khan & others vs. State of Maharashtra

2016 (1) BOM.C.R.(CRI) 558

77. AS PER S.27 OF I.E.A., RECOVERY FROM OPEN PLACE - EFFECT

भा.पु.का.क.२७ प्रमाणे आरोपीच्या निवेदनानुसार खुल्या जागेवरुन केलेल्या जप्तीची उपयोगिता.

Cr.P.C. S. 157, Section 27 - Evidence of recovery - from open place.Recovery of blood stained axe at the instance of the accused from open place - Effect.

Recovery of bloodstained axe at the instance of the accused - Axe was found concealed under the garbage in the shrubs - Contended that place from where the axe was recovered was accessible to all - Rejecting the contention held that though

place was accessible to others, the axe was found concealed and was not at all visible to others - Merely because place was open and accessible to others the evidence tendered u/s. 27 of Evidence Act cannot be disbelieved on that ground. (Para 11, 12)

Nana s/o. Bhima Bhujang vs. State of Maharashtra

1999 CRI. L. J. 4632

78. MERELY ACCUSED SHOWN THE PLACES FROM WHERE HE COMMITTED THEFT IS OF NO USE.

आरोपीच्या निवेदनाप्रमाणे फक्त घटनास्थळ दाखविणे उपयुक्त नाही.

Cr.P.C. S. 157, I.E.A. S.27 - Alleged that accused no.1 had shown different places wherein he had committed theft including the place of the incident in the present crime - Said panchnama is not covered by the provisions of S.27 of Evidence Act and hence not admissible in evidence. (See para 8).

Kalim Alias Kallu Ansari vs. State Of Maharashtra

2014 (11) LJSOFT 53

79. PANCH WITNESS NOT NECESSARY WHEN DISCLOSURE STATEMENTS MADE BY ACCUSED-SEC.27 EVIDENCE ACT.

भा.पु.का.क.२७ प्रमाणे आरोपीचे निवेदनाचे वेळी पंचांच्या उपस्थितीची आवश्यकता नाही.

Cr.P.C. S. 157, I.E.A. S. 27 - It must have been during the interrogation of accused that he would have made the disclosures. It is not necessary that other witnesses should be present when the accused was interrogated by the Investigating Officer. On the contrary, Investigating Officers used to interrogate accused persons without the presence of others. (Para 25)

State of H.P. vs. Jeet Singh.

AIR 1999 S. C. 1293

80. CONFESSIONAL STATEMENT OF CO-ACCUSED IS NOT SUFFICIENT FOR CONVICTION OF OTHER ACCUSED.

सह आरोपीचा कबुलीजबाब त्याच गुन्ह्यातील इतर आरोपींस शिक्षा देण्याइतपत उपयुक्त नाही.

Cr.P.C. S.157, I.E.A. S.27 - No recovery of any article at the instance of the petitioner - Though cash has been produced by the father of petitioner but neither the statement of father has not been recorded nor is the cash identifiable - Only evidence as against the petitioner is the confessional statement of co-accused which is clearly inadmissible. (Para 6).

Vipul Rajendranath Tiwari vs. State of Maharashtra

2014 (10) LJSOFT 27

81. DISCOVERY BY MEMORANDUM : HOW MUCH STATEMENT - ADMISSIBLE IN EVIDENCE

आरोपीचे निवेदन नोंदवितांना त्यातील कोणता भाग पुराव्याकामी ग्राह्य असेल.

Cr.P.C. S. 157, I.E.A. S.27 - Discovery of fact - Statement distinctly relates to the discovery, only that much statement is admissible whether it amounts to a confession or not - Statement which is not distinctly related to the discovery but relates to commission of offence, is not admissible. For Example- Statement "he is ready to show the knife" is admissible in evidence - further statement "used by him for assaulting deceased" is inadmissible in evidence. (Para 8).

Madan Ramkishan Panchal and others vs. State of Maharashtra

2000 (1) MAH. L. J 383

82. I. O. SHOULD DEPOSE IN DETAIL REGARDING DISCOVERY u/s. 27 I.E.A.

भा.पु.का.क.२७ प्रमाणे निवेदन पंचनाम्यासंबंधी तपासी अंमलदार यांनी तपशिलवार साक्ष द्यावी.

Cr.P.C. S. 157, I.E.A. S.27 - Evidence of recovery - Necessary for the Investigating Officer to depose as to how the accused came to disclose about concealment of weapon

used in commission of crime and how weapons came to be discovered at the instance of accused.(Para 12)

Kishor Kamlakar Patil & Another vs. State of Maharashtra

2011 (1) Mah.L.J. (CRI) 610

83. STATEMENT INCLUDES CONFESSION OF ACCUSED - CONFESSIONAL PART IS NOT OF USE, BUT OTHER STATEMENT IS LIABLE TO BE ADMISSABLE.

आरोपीचे जबाबातील गुन्ह्याचे कबुलीचा भाग विधिग्राह्य नाही, मात्र जबाबातील इतर भाग पुराव्याकामी विधिग्राह्य आहे.

Cr.P.C. S. 154, I.E.A. S.27, 21 - F.I.R. given by accused amounts to confessional statement - No part of the confession statement can be proved or received in evidence except to the extent which is permitted by Section 27 of Evidence Act - However the fact of giving information to police is admissible against the accused as evidence of conduct u/s. 8 and to the extent it is non-confessional in nature would also be relevant u/s. 21 of Evidence Act. (Para 9)

Smt. Alka Gopinath Dhanawade vs. State of Maharashtra.

2013 (4) AIR BOM R 121: 2013 (9) LJSOFT 153

84. SEIZED PROPERTY SHOULD BE SEALED ON THE SPOT.

जप्त मुद्देमाल घटनास्थळीच सीलबंद करावा.

Cr.P.C. S. 157 - Evidence Act S.27- Recovery - Articles recovered not immediately sealed - Such recovery has no evidentiary value. Where the evidence of the Investigating Officer shows that after effecting the recovery of articles he did not affix lac seals on them, no evidentiary value can be attached to the said recovery.(Para 8).

Tulshiram Bhanudas Kambale and others vs. State of Maharashtra

2000 CRI. L. J. 1566

85. DOCUMENTS SEIZED UNDER INVESTIGATION: PANCHNAMA IS MUST.

तपासकामी कोणतेही कागदपत्रे जप्त करतांना पंचनामा आवश्यक आहे.

Cr. P.C. S.173- Duty of police officer - Where an important document which bears on the offence, alleged to have been committed by an accused, is produced before police officer some days later, the natural course for a police officer to follow was to take charge of the document under a Panchnama or memo. (Para 7).

Bhagwan Singh vs. The State of Rajasthan

AIR 1976 S. C. 985

86. EYE WITNESS TAKEN AS PANCH - PRACTISE DEPRICATED.

घटनेच्या प्रत्यक्षदर्शी साक्षीदारांना पंच म्हणून घेण्यात येऊ नये.

Cr.P.C. S. 157 - Evidence of recovery - Apex Court had raised an alarm and caution not approving the practice of investigating machinery for using eye witness also as a pancha - Action of the Investigating Officer in taking the alleged eye witness as a pancha for recovery of clothes and weapons from accused raises a reasonable doubt as to whether the case of the prosecution is trustworthy (Para 30).

Surjit Fulchand Khandke & Another vs. State of Maharashtra

2010 ALL MR (CRI) 3859

87. CRIME SITE PLAN: WHAT INVESTIGATING OFFICER SEEN AND NOTED ALONE IS ADMISSIBLE.

घटनास्थळाचे रेखाचित्र काढतांना तपासी अंमलदारांनी केवळ स्वत: पाहिलेली परिस्थितीच ग्राह्य आहे.

Cr. P.C. S.162 - Statements made to Police Officer during investigation - Murder case - Site plan prepared by Investigating Officer - Many things in site plan based upon statements made by witnesses - Those things are inadmissible in evidence - What Investigating Officer saw and noted alone is admissible. (Para 10).

State of Rajasthan vs. Bhawani and another

AIR 2003 S. C. 4230

88. INDEPENDENT WITNESS IF NOT AVAILABLE AT THE TIME OF SEIZURE - WILL NOT ADVERSELY AFFECT THE CASE.

जप्ती पंचनाम्याकामी स्वतंत्र पंच / साक्षीदार उपलब्ध करता न आल्यास बाधा येणार नाही.

Cr.P.C. S. 165 search by police officer- populated metropolitan commercial area- Recovery of pistol from accused in that area- search cannot be held to be invalid on ground of absence of examination of independent witness- city people are quite conscious of such consequences and they would normally be wary to signify to such witnessing - Moreso, when court in which trial could be conducted was at far off place in different State altogether. (Para 22)

Manish Dixit and others vs. State of Rajasthan.
Devender K. Sharma vs. State of Rajasthan.
State of Rajasthan vs. Sharad Dhakar alias Bantu and another.

AIR 2001 S. C. 93

89. PERSONAL SEARCH: FORMALITIES TO BE OBSERVED

अंगझडती पंचनामा करतांना घ्यावयाची काळजी व मार्गदर्शक तत्वे.

Cr.P.C. S. 51, 157 - Formalities to be observed - Police should give opportunity to take their personal search before searching accused. One of the formalities that has to be observed in searching a person is that the searching officer and others assisting him should give their personal search to the accused before searching the person of the accused. This rule is meant to avoid the possibility of implanting the object which was brought out by the. (Para 10)

Rabindranath Prusty vs. State of Orissa

1984 CRI. L. J. 1392 (ORISSA HIGH COURT)

90. EVIDENCE OBTAINED BY ILEGAL SEARCH CAN BE CONSIDER BY COURT

बेकायदेशीर अंगझडतीतून प्राप्त झालेला पुरावा न्यायालयाने ग्राह्य धरणेबाबत.

Cr.P.C. S. 156 - A close reading of the above passage

discloses that barring an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. In other words, what has been emphasized by the Constitution Bench is that the test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. (Para 23).

Bharati Tamang vs. Union of India and Others

2014 CRI. L. J. 156

91. AFTER THE RECOVERY, PROPERTY MUST BE SEALED IMMEDIATELY.

जप्ती पंचनाम्यानंतर लागलीच जप्त मुद्देमाल सीलबंद करणेबाबत.

Cr.P.C. S.157 - Evidence Act S.27 Recovery - Articles recovered not immediately sealed - Such recovery has no evidentiary value. Where the evidence of the Investigating Officer shows that after effecting the recovery of articles he did not affix lac seals on them, no evidentiary value can be attached to the said recovery. Also, in view of aforesaid infirmity the defense version that Investigating Officer had sprinkled human blood on the recovered articles, was probable. The question was not whether human blood was actually put on the recovered articles but whether it could have been. (Para 8)

Tulshiram Bhanudas Kambale and others vs. State of Maharashtra

2000 CRI. L. J. 1566

92. GUIDELINES FOR SENDING SEIZED ARTICLES TO CHEMICAL ANALYSER.

जप्त मुद्देमाल रासायनिक परिक्षणास पाठविण्याची मार्गदर्शक तत्वे.

Cr.P.C. S.157 - Seizure of blood stained clothes and knife - No proof that articles were sealed and that they were so sealed till being sent to chemical analyst - Evidence of recovery is liable to be rejected - Not only should the prosecution adduce evidence that after seizure the articles were sealed but should also lead link evidence to the effect

that till being sent to the Chemical Analyst they were kept throughout in a sealed condition. This is done to eliminate the suspicion that blood might not have been put on the articles subsequent to the recovery and prior to being sent to the Chemical Analyst. (Para 8)

Ashraf Hussain Shah Appellant vs. State of Maharashtra.

1996 CRI. L. J. 3147

93. Cr.P.C. S.169 APPLIES ONLY FOR FIRST 24 HOURS

फौ.प्र.सं.क.–१६९ चा वापर तपासादरम्यान पहिल्या २४ तासांतच करता येतो.

Cr.P.C. S.169 - After arrest of accused and before forwarding him under section 167 of Cr.P.C. for remand, police officer may release accused u/s.169 Cr.P.C. S.169 Cr.P.C. applies before forwarding of accused before court as per S.167 Cr.P.C. If during investigation and before filing report u/s. 173 crpc, it reveals to the I O that there is no evidence against the accused who is in jail/custody, to forward him under charge-sheet, then I O has to simply send a report to court praying for his release from custody in view of sec 167 R/W 59 of Cr.P.C. (Para 6 - 7)

Muman Kamal Sabedi Patel And Others vs. The State Of Gujarat

1971 (12) GLR 481

94. INTIMATION TO COURT REGARDING REPORT u/s. 169 Cr.P.C. NOT NECESSARY.

फौ.प्र.सं.क. – १६९ बाबत केलेली कारवाई न्यायालयास कळविणे बंधनकारक नाही.

Cr.P.C. S. 169 - No sufficient evident was found in the investigation and an Application u/s. 169 Cr.P.C. was submitted for release of accused - Report submitted u/s. 169 Cr.P.C. is not a report submitted u/s. 173 of Cr.P.C. - There was no necessity to submit report to the Court u/s. 169 of Cr.P.C. and even intimation to the Magistrate was not necessary - Magistrate did not have power to reject the

application submitted by the police u/s. 169 Cr.P.C. - Application of police to the Magistrate was misconceived. (Para 7 - 8)

Mohd. Rafique s/o. Abdul Rahman & Others vs. State of Maharashtra.

2012 ALL MR (CRI) 3872

95. CASE DIARY AS PER S.172 (1-B) OF Cr.P.C. - MANDATORY.

केसडायरी तयार करतांना फौ.प्र.सं.क.–१७२ (१–ब) मधील तरतुदींचे पालन करणे बंधनकारक आहे.

Cr.P.C. S.172(1-B) - Case diary maintained in loose leafs in spite of mandatory requirement specified in Section 172(1-B) of Cr.P.C. which has come into force w.e.f. 31.12.2009- Section-172(1-B) mandates that the diary shall be maintained in volume (bounded) and duly paginated (numbered). (Para 4, 5)

Mrs. Atluri Padma Venkateshwara Rao vs. P.I. Pawar & others

2011 (2) BOM.C.R. (CRI) 11

96. CASE DIARY CANNOT BE GIVEN UNDER R.T.I.

माहिती अधिकाराचे कायद्यांतर्गत केस डायरी देता येत नाही.

Cr.P.C. S.172 Of Copies of police statements provided to the complainant under provisions of Right to Information Act - Prohibition mandated by Section 172(3) of Cr.P.C. cannot be made nugatory by furnishing such copies to anyone. (Para 7).

Smt. Ranjanabai w/o. Kisansing Dumale vs. State of Maharashtra & Others

2008 ALL MR (CRI) 2337

97. UNDER RIGHT TO INFORMATION ACT COPY OF STATION DIARY CAN BE GIVEN.

माहिती अधिकार कायद्यांतर्गत स्टेशन डायरीची प्रत देता येईल.

Cr.P.C. S.172 - Case diary - Public record - Right of accused - Investigation - Section 172 Cr.P.C. makes provision for maintenance of case diary - Station diary is a

public record and even a certified copy of the same can be obtained - No prohibition under law that accused cannot call for the station diary or cannot see the same. (Para 3).

Sureshbabu Dulappa Talbhandare vs. State of Maharashtra

2011 ALL MR (CRI) 1515

98. CHARGESHEET CAN BE FILED IN ABSENCE OF ACCUSED

आरोपीच्या गैरहजेरीत दोषारोपपत्र दाखल करता येते.

Cr.P.C. S.190, S.204, S.41 - Taking cognizance upon police report - Magistrate is not empowered to return charge-sheet simply because police - has not produced accused alone with chare-sheet. (Para 6)

The State of Maharashtra vs. Fulchand Dagadoo and Others

1981 CRI. L. J. 503

99. CHARGESHEET CAN BE FILED WITHOUT PRODUCTON OF ACCUSED

आरोपी न्यायालयासमक्ष हजर न करता दोषारोपपत्र दाखल करता येते.

Cr.P.C. S.173 - There is no requirement u/s. 173 Cr.P.C. for the Investigating Officer to produce the accused along with the charge-sheet. (Para 26)

State of UP and Others vs. Anilkumar Sharma and Others

(2015) 6 SCC 716

100. INTIMATION TO ACCUSED IS NECESSARY BEFORE FILING CHARGESHEET.

दोषारोपपत्र न्यायालयात दाखल करण्यापूर्वी आरोपीला त्यासंबंधी कळविणे आवश्यक आहे.

Cr.P.C. 173 - Filing of charge-sheet - Accused was on bail - It is obligatory on the part of the Investigating Officers to give notice to the accused of the date and time when the charge sheet would be filed in the Court. After intimation to accused

chargesheet can be filed. (Para 3)

Ashok Kumar Bagla vs. Senior Inspector Malad Police Station & Others

IN THE HIGH COURT OF BOMBAY
CRIMINAL WRIT PETITION NO.2832 OF 2005,
Dt. 14-09-2006.

101. Cr.P.C. S.173 - INSERTING FORM NO. 12 C OF POLICE MANUAL IN CHARGE SHEET REGARDING ABSCONDING ACCUSED HAS NO LEGAL SANCTITY.

दोषारोपपत्रात पोलिस मॅन्युअलमधील नमुना फॉर्म –१२ सी यास कायदेशीर मान्यता नाही.

Cr.P.C. S.173 - Empowers the Officer in charge of Police Station to file a final report before to a Magistrate. It is apparent that Form No. 12C was amended for the purpose of internal Administration of the Police Officers so that whenever there is any change in the Investigating Officer, the new incumbent would be in a position to understand the stage of investigation and the steps which have been taken by the Investigating Officer or in cases where initial charge-sheet is filed under Section 173(2)(i), an application is filed for further investigation u/s. 173(8), so that new Officer would know what was in the mind of the earlier Investigating Officer. It appears that the persons were to be shown as suspects so that a further investigation in that direction can be carried out by the subsequent newly appointed Investigating Officer. These Forms, in my view, do not have statutory force.(Para 9)

Gyanchand Verma vs. Sudhakar B. Pujari & Others

2011 (6) MAH.L.J. 904

102. S.173 (8) Cr.P.C. - FORMAL PERMISSION OF THE COURT FOR FURTHER INVESTIGATION

फौ. प्र. सं. क. – १७३(८) अन्वये पोलिस तपासकामी न्यायालयाची औपचारिक परवानगी घेणेबाबत.

Cr.P.C. S. 173 (8) - Formal permission of the court where case is pending for trial is necessary for conducting investigation u/s. 173(8) Cr.P.C. - We think that in the

interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. (Para 21)

Ram Lal Narang vs. State (Delhi Admn.)

AIR 1979 S. C. 1791

103. COURT CANNOT DIRECT TO FILE CHARGESHEET.

दोषारोपपत्र दाखल करण्यासंबंधी न्यायालय आदेश करु शकत नाही.

Cr.P.C. S.173 - The High Court cannot direct the investigating agency to submit a report that is in accord with its views. That would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency. (Para 18)

M.C. Abraham vs. State of Maharashtra

2003 (2) SCC 649

104. DOCUMENTS GATHERED DURING INVESTIGATION CAN BE FILED IN THE COURT AT ANY STAGE.

तपासादरम्यान जप्त केलेली कागदपत्रे सुनावणी दरम्यान न्यायालयात दाखल करता येतील.

Cr.P.C. S.173 - Charge Sheet - whether prosecution can produce additional documents gathered during investigation after submitting charge sheet before the Court? (Yes) (Para 7).

Central Bureau of Investigation vs. R.S. Pai & Another

2002 ALL MR (CRI) (S.C.) 1396
2002 (S.C.) 2029

105. MAGISTRATE BARRED JURISDICTION OF DIRECTING RE-INVESTIGATION AND TO TRANSFER THE INVESTIGATION TO ANOTHER POLICE STATION.

न्यायदंडाधिकाऱ्यांस फेर तपास किंवा तपास वर्ग करण्यासंबंधीचे अधिकार नाहीत.

Cr.P.C. S.482, 156(3), 173(8) - Private complaint - "C" Summary report - Re-investigation - Transfer of investigation to other Police Station - Magistrate did not have the jurisdiction to direct re-investigation and to transfer the investigation to police officer other than those attached to a different police station- Magistrate has no jurisdiction to transfer the investigation as per S.156(3), 173(8) 190 Cr.P.C. to different police station. Magistrate can only direct investigation to such police station within the jurisdiction of his court, where incident took place (Para 8)

Hemant Dayalal Bhatt vs. State of Maharashtra and Another

2014 ALL MR (CRI) 3035

106. COURT CAN ISSUE ARREST WARRANT OF ACCUSED DURING INVESTIGATION.

तपासादरम्यान न्यायालयातून आरोपीचे पकड वॉरंट घेता येते.

Cr. P.C. S. 73 - Warrant of arrest - Invoking of provisions of Section 73 by the Court - Sec.73 is of general application and that in course of the investigation a Court can issue a warrant in exercise of power there under to apprehend, inter alia a person who is accused of a non-bailable offence and, is evading arrest- On such production, the Court may either release him on bail under Section 439 or authorize his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being in custody (either police or judicial) under Sec.167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with S. 167(3). (Para 23)

State through C.B.I. vs. Dawood Ibrahim Kaskar

1997 AIR (SC) 2494

107. ROUTINE BLOOD GROUPING SHOULD BE MADE IN CIVIL HOSPITAL, NEED NOT TO SEND IT TO FORENSIC LAB

नियमित रक्तगट चाचणी ही शासकिय रुग्णालयातून करुन घ्यावी, त्यासाठी न्याय वैद्यकिय प्रयोगशाळेत रक्ताचे नमुने पाठविणे गरजेचे नाही.

Cr.P.C. S. 157, I.E.A. S. 45 - Expert evidence - Investigating officer's routinely sending blood samples of persons who are alive to the FSL for doing routine blood grouping which could be done at theLocal Civil Hospital itself - Police Department should realize this problem and issue proper instructions to all the investigating officers to use their common sense and have the blood grouping done at local levels - FSL may also think of refusing to accept bloodSamples of live persons for the purpose of blood grouping. (Para 8).

Istique Ahemed M. Yusuf Shaikh & Others vs. State of Maharashtra & Another

2013 ALL MR (CRI) 671

108. BLOOD SAMPLE OF ACCUSED CAN BE TAKEN DURING INVESTIGATION

तपासादरम्यान आरोपीचे रक्ताचे नमुने घेणेबाबत

Cr.P.C. S.53 - Once it is held that section 53 of Cr. P.C. does confer a right upon the investigating machinery to get the arrested persons medically examined by the medical practitioner and the expression used in section 53 includes in its import the taking of sample of the blood for analysis, then obviously the said provision is not violative of the guarantee incorporated in Article 21 of the Constitution of India. It is common experience that the blood test of a person has become routine in our Country also and, therefore, there is nothing brutal or offensive or shocking in taking blood sample under the protective eye of law, by a medical practitioner. No consent of the accused is required (Para 30, 31)

Anil Anantrao Lokhande vs. State of Maharashtra

1980 Mah. L. J. 849

109. VOICE SAMPLE-POLICE CAN TAKE VOICE SAMPLE OF ACCUSED

पोलीस आरोपीच्या आवाजाचे नमुने घेऊ शकतात.

Cr.P.C. S. 157, I.E.A. S.8, S.45- Application for permission to record voice sample of accused - For purpose of identification of his voice to compare it with tape recorded telephonic conversation - Requiring accused to record his voice sample - Does not infringe Art. 20(3) Of Constitution as it does not amount "testimonial compulsion". (Para 11 - 12)

Central Bureau of Investigation, New Delhi v. Abdul Karim Ladsab Telgi

2005 CRI. L. J. 2868

110. VOICE SAMPLES: TELEPHONE CALLS : USE IN EVIDENCE

टेलीफोनवर केलेले संभाषण पुरावा म्हणून ग्राह्य धरता येते.

Cr.P.C. S. 157, I.E.A. S.9 - Voice identification Informant/witness identifying voice had previous acquaintance with caller/accused. I. O. of case in his evidence also stated that during investigation mobile of both accused conspirators was found - Printout details of these phone calls were produced before Court - Voice identification can be accepted. (Paras 33, 40).

Mohan Singh vs. State of Bihar

AIR 2011 S. C. 3534

111. FINGER PRINTS OF ACCUSED SHOULD BE TAKEN BEFORE MAGISTRATE

आरोपीचे हाताचे ठसे न्यायदंडाधिकाऱ्यांसमोर घेणेबाबत.

Cr.P.C. S. 157, I.E.A. S. 45 - Finger-print evidence - Even though the specimen finger-prints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger-prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently

desirable that they were taken before or under the order of a magistrate. (Para 7, 8)

Mohd. Aman vs. State of Rajasthan

AIR 1997 S. C. 2960

112. NARCO TEST VALIDITY

नार्को चाचणीची वैधता.

Cr.P.C. S.53 , S.54 - I.E.A. S.45 - No Lie-Detector Tests should be administered except on the basis of consent of the accused - (i) If the accused volunteers for a Lie-Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer - (iii) The consent should be recorded before a Judicial Magistrate - (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police - (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation - (vii) The actual recording of the Lie-Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer - (viii) A full medical and factual narration of the manner of the information received must be taken on record. (Para 223).

Smt. Selvi vs. State of Karnataka

2010 AIR SCW 301

113. IDENTIFICATION PARADE OF ACCUSED WHEN NECESSARY ?

आरोपीची ओळख परेड केव्हा आवश्यक आहे ?

Cr.P.C. S. 157, I.E.A. S. 9 - Identification of accused the observations made by the Apex Court make it evident that though as a rule of prudence, the prosecution is expected to hold identification parade earlier to the identification in the Court. since two eye-witnesses in the said case were assaulted and seriously injured in board day light, they could have easily seen the faces of the assailants and their appearance and identity would well remain imprinted in

their minds and the third witness who was said to have seen the fatal assault on her husband could also be easily considered to have got imprinted in her mind the faces of the accused and that, therefore, the omission to hold the test identification parade did not affect the credibility or truthfulness of their evidence. (Para 24)

Prashant s/o. Tikaram Tembhurnikar vs. State of Maharashtra

2008 (3) LJSOFT 158

114. NO IDENTIFICATION PARADE - AQUITTAL

ओळख परेड अभावी आरोपीची निदोष मुक्तता.

Cr.P.C. S. 157, I.E.A. S. 9 - It is well-settled that in cases where accused is not known to the witness, ordinarily, the identification of an accused for the first time in court should be corroborated by previous identification in the test identification parade. (Para 3)

Anil Kumar vs. State of Bihar

2008 All MR (Cri) 1409

115. IDENTIFICATION OF ACCUSED WHILE COMMITTING OFFENCE : MAY BE BY SPEECH, GESTURE, PHYSICAL APPEARANCE AND OTHER FACTORS IS ACCEPTABLE AS A EVIDENCE

गुन्हा करतांना, आरोपीला त्याचा आवाज, शरीरयष्टी, हावभाव व इतर गोष्टींवरुन ओळखल्यास ते पुराव्याच्या दृष्टीने ग्राह्य आहे.

Cr.P.C. S. 157, I.E.A. S.9 - Identification evidence - Witnesses stated to have identified accused because of torch light used by them and gas light - when accused persons are known to witnesses - Identification is possible from the manner of speech, manner of walking and gesticulating and special features of a person like the physical attributes. (Para 6 - 7).

State of U.P vs. Babu and others

AIR 2003 S. C. 3408

116. S.102 Cr.P.C. POLICE CAN'T SEIZE IMMOVABLE PROPERTY DURING INVESTIGATION

फौ.प्र.सं.क.– १०२ अन्वये तपासादरम्यान स्थावर मालमत्ता जप्त करता येत नाही.

Cr.P.C. S.102 - Immovable property - Powers of seizure - Power of Police officer - Expression "any Property" used in Section 102(1) of Cr.P.C. does not include immovable property - A Police officer cannot take control of any immoveable property which may be found under circumstances which create suspicion of the commission of any offence. (Para 84)

Sudhir Vasant Karnataki vs. State of Maharashtra & Others

2011 ALL MR (CRI) 96

117. S. 102 Cr.P.C. FREEZING OF ACCOUNT

फौ.प्र.सं.क. – १०२ अन्वये बँकेचे खाते गोठवता येते.

Cr.P.C. S.102 - It is, therefore, clear that like any other property a bank account is freezable. Freezing the account is an act in investigation. Like any other act, it commands and Behooves secrecy to preserve the evidence. It doesn't deprive any person of his Liberty or his property (Para 18).

Vinod kumar Ramachandran Valluvar Vs. State of Maharashtra

2011 ALL MR (CRI) 1025

118. S.451 Cr.P.C.- RETURN OF PROPERTY - DUTIES OF I.O.

फौ.प्र.सं.क.–४५१ अन्वये तपासी अंमलदार यांचे जप्त मुद्देमाल परत करणेकामीची कर्तव्ये.

Cr.P.C. S.451- Disposal of property pending trial - Powers of Court - If the proper Panchnama alongwith photograph's - before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be

recorded describing the nature of the property in detail. (Para 7, 21)

Sunderbhai Ambalal Desai vs. State of Gujarat.
C. M. Mudaliar vs. State of Gujarat.

AIR 2003 S. C. 638

119. PURPOSE OF INQUEST
इन्क्वेस्ट पंचनाम्याचा उद्देश.

Cr.P.C. S. 174 - The whole purpose, of preparing an inquest report under Section 174 of Cr.P.C. is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. (Para 7).

Brahm Swaroop and Anr vs. State of U. P.

AIR 2011 S. C. 280

120. INQUEST PANCHNAMA MUST BE ON THE SPOT
इन्क्वेस्ट पंचनामा घटनास्थळीच करावा.

Cr.P.C. S.174(1), S.174(3) - Duty of Police to hold inquest at spot - Section 174, Crpc. peremptorily requires that the officer holding an inquest on a dead body should do so at the spot. This mandate is conveyed by the word "there" occurring in Section 174 (1). Sub-section (3) of the Section further requires the Officer holding the inquest to forward the body with a view to its being examined, by the medical man appointed by the State Govt. in this behalf if the State of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless. The sub-section gives a discretion to the Police Officer not to send the body for post-mortem examination by the medical officer only in one case, namely, where there can be no doubt as to the cause of the death. This discretion however is to be exercised prudently and honestly.(Para 37)

Kodali Puranchandra Rao vs. The Public Prosecutor, A.P

AIR 1975 S. C. 1925

121. INQUEST PANCHNAMA : - PREPARED BY POLICE - NOT ADMISSIBLE AS EVIDENCE

पोलीस हा तज्ञ नाही – पोलीसांनी केलेला इन्क्वेस्ट – पुराव्याचे दृष्टीने ग्राह्य नाही.

Cr.P.C., S. 174 - Inquest Panchnama - In the post-mortem examination also, five injuries were found on the body of the deceased. Said injuries found in the postmortem examination when compared with the injuries recorded in the injury report, it would be established that all the injuries are similar in nature. So far as Inquest Report is concerned, the same is prepared by the police who are not experts like the doctors and, therefore, no such weightage could be given on the Inquest Report. It is also settled law that Inquest Report cannot be treated as a piece of admissible evidence.(Para 21)

State of U. P vs. Shobhanath and Others

AIR 2009 S. C. 2395

122. CHAPTER CASES PROCEDURE TO BE ADOPTED

चॅप्टर केसची तपास प्रक्रिया.

Cr.P.C. - S. 111 to 114 - Chapter proceedings Procedural requirements- The combined reading of Sections 111, 113 and 114 would lead to just one conclusion and it is that the order passed under Section 111 has to be recorded separately and copy thereof must be furnished to the person, if the order is not made in his presence and he has been called to the Court by issuing a summons or warrant, as the case may be. These are procedural requirements and must be followed in accordance with the mandate of the legislature (Para 8, 12).

Vijay Purshottam Salvi @ Tambat vs. State of Maharashtra & Others

2014 (2) BOM.C.R. (CRI) 820

123. ROUTINE ACTION OF FILING CHAPTER CASES SHOULD BE DISCONTINUED

चॅप्टर केसेस दाखल करण्याची सहज प्रवृत्ती टाळावी.

Cr.P.C. S. 439, 107, 111 - Chapter proceedings - Upon query made by this Court, the Investigating Officer as well the learned APP submitted that this is a routine course adopted by the investigating agency,to initiate chapter proceeding against the person /accused who are in jail. This practice is not only deprecated by this Court, but the Commissioner of Police shall take note of this fact that issuance of such notice is illegal and is not in accordance with the provisions of the Crpc. It is an apparent abuse of process of law. The Commissioner of Police, Mumbai shall take steps to discontinue the routine course at the earliest by issuing a circular to all the concerned police stations. (Para 15)

Sameer Amrut Umrania vs. State of Maharashtra & Another

2015 (6) LJSOFT 126

124. Cr.P.C. S.195 (1)(b)(ii) APPLIES IN WHICH CIRCUMSTANCES AND BAR THE INVESTIGATION

कोणत्या परिस्थिती शर्तीचे अवलोकन करावे.

Cr.P.C. S. 195(1)(b)(ii), 340 - false evidence - Forged documents - Respondent No's 2 to 5 allegedly committed forgery of documents before a High Court during the course of the joint trial of two probate petitions - Bar u/s. 195(1)(b)(ii) would be applicable when the document is custodian legist and not otherwise. (Para 9 - 10)

Dr. (Ms) Kumudini Mayur vs. State of Maharashtra & Others

HIGH COURT OF BOMBAY

CRIMINAL WRIT PETITION NO.1338 OF 2011

Dt. 9-8-2014

125. Cr.P.C. S.195-POWER OF POLICE TO INVESTIGATE - PROCEDURE TO BE ADOPTED

फौ.प्र.सं.क.१९५ अन्वये पोलीसांना तपासाचे अधिकार– योग्य तपास प्रक्रियेचा अवलंब करावा.

Cr. P.C. S.195, S.154 - Offence committed in relation to proceeding in Court - Power of police to investigate into F.I.R. as to said offence - Not controlled or Circumscribed by embargo under S. 195 against prosecution of public servant - However, Court cannot take cognizance after completion of investigation in view of embargo of S. 195. (Para 2)

State of Punjab vs. Raj Singh and another.

AIR 1998 S. C. 768

126. Cr.P.C. S.195 - NO BAR - FORGERY COMMITTED OUTSIDE THE COURT

पोलीसांत बनावट दस्तऐवजाची तक्रार दाखल न करता, प्रत्यक्ष न्यायालयातच दाखल केली असता फौ. प्र. सं. क. १९५ मधील नमुद शर्तीची बाधा येत नाही.

Cr.P.C. S.156(3), 195(1)(b)(ii) - Forgery - Complaint Before Magistrate without approaching police - Maintainability of complaint - bar u/s. 195 - Applicability of criminal complaint alleging the offence of forgery - not a case of committing forgery after the document was produced before the Court - bar u/s. 195 would not be applicable. (Para 12)

Jitendra Chandrakant Mehta vs. Shamrock Impex Pvt. Ltd.

2006 ALL MR (CRI) 1555

127. Cr.P.C. S.197 - SANCTION - WHEN NECESSARY

फौ. प्र. सं. क.– १९७ अन्वये मंजुरी घेणे केव्हा आवश्यक आहे.

Cr.P.C. S.197 - Sanction for prosecution - Act or omission for which accused was charged - Had reasonable connection with discharge of his duty - Would be 'official' to which S.197 would be applicable For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. (Para 15, 16)

Anjani Kumar vs. State of Bihar.

AIR 2008 S. C. 1992

128. SANCTION IS NOT REQUIRED FOR EVERY GOVT. SERVANT

प्रत्येक शासन सेवकास संबंधित गुन्हयाकामी मंजुरी घेणे आवश्यक नाही.

Cr.P.C. S. 197 - Abusing of official position by high officials of Rashtriya Chemical Fertilizers - Protection by way of sanction u/s. 197 of Cr.P.C. not applicable to officers of Government Companies or Public Undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution. (Para 15, 17 - 18)

Central Bureau of Investigation vs. Surendra Mohan Dhingra.

2009 ALL MR (CRI) 705

129. SANCTION ONLY WHEN ACT IS PART OF OFFICIAL DUTY

कार्यालयीन कर्तव्ये बजावितांना, केलेल्या गुन्ह्यांमध्ये मंजुरी आवश्यक आहे.

Cr. P.C. S.197- Sanction to prosecute - Act done in discharge of official duty- All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. The underlying object of 197 is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of S. 197 and have to be considered dehors the duties which a public servant is required to discharge or, perform. Hence, in respect of prosecution/for such excesses or misuse of authority, no protection can be demanded by the public servant concerned. (Para 14)

Choudhury Parveen Sultana vs. State of W. B.

AIR 2009 S. C. 1404

130. Cr.P.C. S.267 - TRANSFER WARRANT - REQUEST BY ONE COURT TO ANOTHER - PERMISSIBLE

फौ. प्र. सं. क. २६७ नुसार ट्रान्सफर वॉरंट – एक न्यायालय दुसऱ्या न्यायालयास विनंती करु शकते.

Cr.P.C. S. 267 - Execution of transfer Warrant - cannot be said that the transfer warrant could't have been addressed by one Magistrate to another Magistrate-If the Transfer warrant is to be taken only to the concerned Jailor even though the accused is Being produced before court under whose custody he is, the same would lead to time Consuming and cumbersome (Para 17).

State of Maharashtra vs. Swaraj Shrikant Thackrey @ Raj Thackrey

2009 ALL MR (CRI) 2263

131. Cr.P.C. S. 267 - PRODUCTION / TRANSFER WARRANT OF ACCUSED PROCEDURE TO BE ADOPTED BY POLICE AND COURT

फौ.प्र.सं.क. २६७ नुसार पोलीस व न्यायालयाद्वारे आरोपीचे प्रोडक्शन / ट्रान्सफर वॉरंट घेणेसंबंधी अनुसरावयाची प्रक्रिया.

Cr.P.C. S.267 - it is always better for the prosecution after obtaining an order under section 267 of the Cr.P.C. to approach the Court under whose orders a convict or an accused is confined or detained in prison for seeking permission of the concerned Court, on the basis that the custody of the accused is required for the purposes of proceedings pending before a Court of competent jurisdiction and describe the nature of the proceedings seeking remand of the accused, i.e., his police custody for the purposes of investigation and on such application being made, the concerned Court, under whose order the accused is confined or detained in the prison, can direct the jail authorities to produce the accused in terms of the order passed by the competent Court under section 267 of the Cr.P.C. with or without condition relating to the proceedings pending before it in which accused is required to be produced before it. (Para 21A)

State of Maharashtra vs. Yadav Natthuji Kohachade

1999 ALL MR (CRI) 1928

132. Cr.P.C. S.267 - ON ARRESTING ACCUSED BY PRODUCTION / TRANSFER WARRANT, THE ACCUSED MUST BE PRODUCED BEFORE THE COURT.

फौ. प्र. सं. क. २६७ नुसार ट्रान्सफर वॉरंटमधील आरोपी अटक केल्यास प्रथम न्यायालयासमक्ष हजर करणे आवश्यक.

Cr. P.C. S. 267, 41, 167(1), 269 - Warrant has to be issued for production of the person before the Court and not before any investigating agency _ after production before Magistrate, he has to consider whether custody be or not be granted to police, which naturally requires application of Mind by the magistrate. (Para 15, 18)

Susan Abraham vs. State of Maharashtra through the Secretary, Home Ministry

2010 ALL MR (CRI) 723

133. PROCEEDING STOPPED U/S. 258 CAN BE RE-OPEN

फौ.प्र.सं.क.–२५८ अन्वये सुनावणी थांबविलेल्या प्रकरणांमध्ये पुन्हा सुनावणी सुरु करता येते.

Cr.P.C. S. 258, 300 - Case stopped under Cr. P.C. S. 258 can be reopen under Cr.P.C. S.300 (5) (Para 1)

S. Sankaran vs. Inspector, Triplicane Range, Traffic Investigation Dept.

1995 Cr.LJ 2823

134. Cr.P.C. S. 306-308 : OBJECT OF TENDOR OF PARDON

फौ.प्र. संहिता कलम ३०६–३०८ आरोपीला माफीचा साक्षीदार करण्याचा उद्देश.

Cr.P.C. S. 306-308 - The very object of this provision is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that with the aid of the evidence of the person pardoned the offence could be brought home to the rest. The policy is to prevent the escape of offenders from punishment in grave cases for lack of evidence by grant of pardon to accomplices for obtaining true evidence. Section 306 Cr.P.C. that applies only to offences of a more serious character therein

specified, provides safeguard in the interests both of the State and the accused. Pardon is granted on condition that full disclosure of truth will be made and the person accepting the pardon gives evidence with the assurance that it will operate as a bar to his prosecution for the offence pardoned or for any other offence committed in connection there with. A pardon may be forfeited if the whole truth is not disclosed and the person to whom pardon was tendered may be tried for the offence. Section 306 Cr.P.C. is the only method of obtaining the evidence of co-accused (Para 234).

High Court of Karnataka vs. Izher Baig

KARNATAKA HIGH COURT

Case No. : Criminal RC No. 6 of 2008, Crl. A. Nos. 1205 of 2008 and 26 of 2009

Date of Decision : 17-Dec-2014

135. UPTO 03 YEARS / MAY EXTENDS TO 03 YEARS MEANS NON-BAILABLE

तीन वर्षे किंवा त्यापेक्षा अधिक शिक्षा असलेले गुन्हे अजामीनपात्र असतात.

Cr.P.C. Sch. 1st Part II - Classification of offences - MRTP Act, by itself, does not provide whether the Offence u/s. 43 and 52 is cognizable or bailable - By virtue of Section 4(2) of Cr.P.C. as the maximum punishment provided in terms of Section 52 being up to three Years, the second category of cases specified in Part II of Schedule I would be Attracted - Offence u/s. 52 of MRTP Act is a cognizable and non-bailable offence. (See Para 14).

Mahesh Shivram Puthran vs. Commissioner of Police, Thane & Others

2011 (113) BOM.L.R. 1158

136. Cr.P.C S.357 : COMPENSATION TO VICTIM : EXPLAINED

पिडीत व्यक्तीस नुकसान भरपाई मिळणेबाबतची तरतूद – स्पष्टीकरण.

Cr.P.C. S. 357 - This decision is a step forward in our criminal justice system. In this decision the Hon'ble Supreme Court has recommended to all courts to exercise the power of awarding compensation to victims of offence, conferred by S.357 of the Cr.P.C. liberally, so as to meet the ends of justice in a better way. (Para 10, 11)

Hari Kishan and State of Haryana vs. Sukhbir Singh and others

AIR 1988 S. C. 2127

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INDIAN PENAL CODE, 1860
भारतीय दंड विधान, १८६०

137. I.P.C. S.34 - DEFINITION - AND IT'S APPLICABILITY
भा.दं.वि. कलम – ३४ ची व्याख्या व उपयोगिता तसेच संयुक्त जबाबदारी म्हणजे काय ?

I.P.C. S.34 - Common intention - What constitutes - Scope and applicability of S. 34.Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. (Paras 9 - 10)

Girija Shankar vs. State of U.P.
2004 Cr. L.J. 1388(1) (S. C.)

138. I.P.C. S. 34 : VICARIOUS LIABILITY - EXPLAINED
भा.दं.वि. कलम – ३४ : पर्यायी जबाबदारी – स्पष्टीकरण.

I.P.S. S.34 - Common intention - S.34 does not create distinct offence - But lays down principle of constructive liability. The vicarious or constructive liability under S. 34, IPC can arise only when two conditions stand fulfilled, i.e. the mental element or the intention to commit the criminal act conjointly with another or others and the other is the actual participation in one form or the other in the commission of the crime. (Para 43 - 45)

Virendra Singh vs. State of M. P.
2011 AIR SCW 31

139. I.P.C. S.34, 149 - DIFFERENCE

भा. दं. वि. कलम – ३४ व १४९ मधील फरक.

I.P.C. S.149, S.34 - Unlawful assembly - Mere presence in an unlawful assembly cannot render a person liable unless he was actuated by common object and that object is one of those set out in Sec. 141 - 'Common object' is different from a 'common intention' as it does not require prior concert and common meetings of minds before attack. (Para 8)

Ram Dular Rai and others vs. State of Bihar

AIR 2004 S. C. 1043

140. I.P.C. S.149 :- UNLAWFUL ASSEMBLY & COMMON OBJECT - MEANING & EXPLAINED

भा.दं.वि. कलम – १४९ – बेकायदेशीर जमाव व समान उद्देशाची व्याख्या.

I.P.C. S.149 - Unlawful assembly - Offence committed by any member of and unlawful assembly consisting 5 or more members and such a offence must be committed in prosecution of the common object of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object - Common object may form on spur of moment - Prior concert in sense of meeting of members of unlawful assembly, not necessary. (Para 10 - 12)

Ramachandran and Others Etc v. State of Kerala

AIR 2011 S. C. 3581

141. I.P.C. S.84 :- INSANITY - WHEN TO BE GIVEN BENEFIT OF

भा.दं.वि. क. – ८४ नुसार मनोविकलतेचा फायदा आरोपी केव्हा घेऊ शकतो.

I.P.C. S.84- Plea of insanity - Benefit of - Available only if incapacity of person to understand nature of act exists at time of commission of offence. (Para 10, 15).

Mariappan vs. State of Tamil Nadu

2013 CRI. L. J. 2334 (S. C.)

142. I.P.C. S.279, 304A - ACCIDENT CASES - PRILIMINARY INQUIRY BEFORE F.I.R. - PERMISSIBLE

भा.दं.वि. क. – २७९, ३०४अ नुसार अपघाताचे खटल्यात एफ. आय. आर. दाखल करणेपूर्वी प्राथमिक चौकशी करता येते.

I.P.C. S.279, 304-A - Motor accident _ Police Officer registers a case of accident on receiving information and then proceeds to the scene of accident to draw a Panchnama of the scene of offence - what is generally reported is not that anyone has committed an offence but that an accident has taken place, hence, preliminary inquiry before registration of FIR is held proper. (Para 12.)

State of Goa vs. Devendra Kashinath Chopdekar

2010 Cr.L.J. 1011

143. I.P.C. SEC. 304A - MEDICAL NEGLIGENCE GUIDELINES

भा.दं.वि.क.–३०४अ – अन्वये वैद्यकिय हलगर्जीपणाच्या तपासासंबंधीची मार्गदर्शक तत्वे.

I.P.C. S.304A -Rashness and negligence - Prosecution of doctors (surgeons and physicians) - Guidelines to protect doctors from frivolous and unjust prosecutions. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test considering the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that, the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.
(Para 51 - 53)

Jacob Mathew vs. State of Punjab and another.

AIR 2005 S. C. 3180(1)

144. I.P.C. S.279, 304A - MEANING OF RASH AND NEGLIGENCE

भा.दं.वि.क.– २७९, ३०४अ – बेदरकार व हलगर्जीपणाची व्याख्या.

I.P.C. S.279, 304 A Words "negligence" and "rashness". 3) Rash and negligent driving - Words, "negligence" and Rashness" used in Section 304A of IPC - discussed. The words, "negligence" and "rashness" used in Section 304A of I.P.C. have to be understood in proper sense and in proper spirit. Negligence indicates total negligence on the part of the driver. It means that he was driving the vehicle in such a negligent way which would stamp his driving by only word "negligence". Rashness indicates that he drives the vehicle in such a way while driving he knows that by such driving he is likely to invite an accident but hopes that such accident may not occur. With these meanings indicated by these two words the act which has been alleged against the present petitioner will have to be judged." (Para 8).

Jayprakash Laxman Tambe vs. State of Maharashtra

2003 ALL MR (CRI) 2191

145. NEGLIGENT DRIVING : FAST SPEED IS NOT SOLE CRITERIA

हलगर्जीपणा सिद्ध करणेकामी फक्त गाडीचा अति वेग हा एकमात्र पुरावा असू शकत नाही.

I.P.C. S.279, 304 A Words - For rash / negligent driving fast speed is not only criteria to convict accused u/s..279 and 304 A of IPC. Prosecution has to prove actual manner of driving of the accused. Mere statement of witnesses that, the vehicle was in fast speed is not sufficient to hold that the vehicle was really in a high speed and therefore accused was necessarily rash and negligent in driving the same. (Para 10)

State of Maharashtra vs. Bramhadotta Ramdas Sharma

1979 Bom. C. R. 247

146. I.P.C. S. 304 B :- DOWRY DEATH

भा.दं.वि.क. ३०४ ब नुसार हुंडाबळी.

I.P.C. S. 304B - Dowry Prohibition Act, S.2- "Dowry" - Demand for dowry - Demand for property or valuable security, directly or indirectly, having a nexus with marriage - Such demand would constitute 'demand for dowry' - Cause or reasons for such demand being immaterial. (Para 17).

Bachni Devi and Another vs. State of Haryana through Secretary, Home Department

AIR 2011 S. C. 1098

147. MERCY KILLING : ILLEGAL

स्वेच्छा मरणास कायदेशीर परवानगी नाही.

I.P.C. S. 302,304, 306 - Mercy killing or Euthanasia - Categorized as 'active euthanasia' and 'passive euthanasia' - Distinction between two, stated - Further categorized as 'voluntary euthanasia' and non-voluntary euthanasia. As already stated above active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304, IPC. Physician assisted suicide is a crime under section 306, IPC (abetment to suicide). (Para 38, 41)

Aruna Ramchandra Shanbaug vs. Union of India & Others

AIR 2011 S. C. 1290

148. I.P.C. S. 324 - SIMPLE HURT BY DANGEROUS WEAPON - BAILABLE

भा.दं.वि. कलम – ३२४ जामीनपात्र आहे.

I.P.C. S. 324 - No notification giving effect to the amendment to the Fifth Column in the entry relating to "Section 324 of the I.P.C." has been issued till today - Offence punishable u/s. 324 of IPC continues to be a "bailable" offence (See para 8 to 12).

Chandra Kanjappa Kuchchikurwe vs. State of Maharashtra & Another

IN THE HIGH COURT OF BOMBAY
CRIMINAL ANTICIPATORY BAIL APPLICATION
NO.1207 OF 2012 dated : 14-12-2012.

149. HURT : MEANING AND EXPLAINATION

दुखापतीची व्याख्या

I.P.C. S. 320, 326 - While defining "grievous hurt", the term "injury as is likely to cause death" is absent but the legislature have used the expression "any hurt which endangers life" - These two terms are not synonymous but are distinct terms -Term "Injury as is likely to cause death" cannotes more severity in the nature of injury, however "any hurt which endangers life" is a broader term which is read as "it is dangerous to life" - Use of word "likely" brings the act of injury and occurrence of death closer than the term "hurt that endangers life" - An injury can be dangerous but it may not likely to cause death, however, all injuries which are likely to cause death are necessarily a hurt endangering life. (See para 9).

Hiralal Karbhari Sable vs. State of Maharashtra

2014 (6) Mah. L. J. 379

150. ATTEMPT TO MURDER - DETERMINATIVE FACTORS

हत्येचा प्रयत्न म्हणजे काय ?

I.P.C. S.307- Attempt to commit murder - Proof - It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under S. 307 IPC. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under S. 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt. (Para 10, 11, 17).

Hari Mohan Mandal Appellant vs. State of Jharkhand Respondent.

AIR 2004 S. C. 3687

151. I.P.C. S.299, 300 :- CULPABLE HOMICIDE AND MURDER :- EXPLAINED

सदोष मनुष्यवध व खून यामधील फरक.

I.P.C. S. 299, 300 - 'Murder' and 'Culpable homicide not amounting to murder' - "In the scheme of the IPC culpable homicide is genus and 'murder' its species. - Difference between clause (b) of section 299 and clause (3) of Sec. 300 is one of the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree - Distinguishing feature of the mens rea requisite under clause (2) of Section 300 is the knowledge possessed by the offender - 'Intention to cause death' is not an essential requirement of clause (2) of Section 300 - Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. (Para 7, 14 to 24).

Bhagwan Bahadure vs. State of Maharashtra

2007 (6) AIR BOM R (S.C.) 525

152. I.P.C. S. 354 : DELAY IN F.I.R. NOT FATAL

विलंबाने दाखल झालेली फिर्याद पुराव्याच्या दृष्टीने नाकारता येऊ शकत नाही.

I.P.C. S. 354 - Delay in lodging FIR - Incident took place at 1.00 a.m. and the complaint was lodged at 22.30 hours on the same day - Trial Court rightly observed that she would have certainly thought many times before she lodged the complaint - Complaints by women for offences against women are not mandatorily required to be filed within hours. (Para 7).

Ashok Somnath Ghodke vs. State of Maharashtra & Others

HIGH COURT OF BOMBAY

CRIMINAL REVISION APPLICATION NO.229 OF 2012, DTD. 10-6-2013

153. I.P.C. S.354 :- HOLDING A GIRL AGAINST HER WISHES MAY AMOUNT TO AN OFFENCE U/S 354 OF IPC, EVEN IF THE BOY AND GIRL ARE IN A RELATIONSHIP.

भा.दं.वि.क. ३५४ :– प्रेयसीचा तिचे इच्छे विरूध्द हात धरल्यास देखील विनयभंगाचा गुन्हा होऊ शकेल.

I.P.C. S.354 - Outraging of modesty - Complainant was coming back with her friends after the school was over - Accused came on the motor cycle and caught hold of her hand and asked her as to why she does not meet him - Even when a girl may be loving a boy that does not mean that the boy gets a permit to catch hold of her against her wish - Conservative girl may not like that and may feel offended and the accused must be held to have outraged her modesty. (Para 9).

Purushottam s/o. Sitaram Raut vs. State of Maharashtra

HIGH COURT OF BOMBAY (NAGPUR BENCH)

2007 ALL MR (CRI) 1808

154. OUTRAGING OF MODESTY OF A WOMAN - MODESTY - MEANING

विनयभंग म्हणजे काय ?

I.P.C. S. 342, 354, r/w 34 - What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. (Para 13)

Raju Pandurang Mahale vs. State of Maharashtra and Another

2004 (2) BOM.L.R. (S.C.) 898

155. I.P.C. S.376, 420 - WHEN DOES SEXUAL INTERCOURSE WITH THE PROMISE OF MARRIAGE BECOME RAPE ?

भा.दं.वि.क. ३७६,४२० – लग्नाचे वचन देऊन केलेला शरीर संबंध हा बलात्कार केव्हा ठरतो ?

I.P.C. S.376, 420 - Rape or consensual sex - Intercourse under promise to marry Constitutes Rape only if from initial stage accused had no Intention to Keep promise - There is a clear distinction between rape and consensual sex and in a case where there is promise of marriage, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance." - S. 90, IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the Court is assured of the fact that from the

very beginning, the accused had never really intended to marry her. - Rape or consensual sex - Sex under promise to marry. (Paras 18,21, 22-24)

Deepak Gulati vs. State of Haryana.

AIR 2013 S. C. 2071

156. GANG RAPE - NOT NECESSARY TO COMMITE RAPE BY ALL ACCUSED

सामुहिक बलात्काराच्या घटनेत सर्व आरोपींनी बलात्कार केलाच पाहिजे अशी आवश्यकता नाही.

I.P.C. S. 376(2)(g), 323/34, 354/34, 506/34 - Gang rape - Outraging modesty of woman - Common intention - Gang rape - not necessary that all the persons of the gang or group shall have necessarily committed rape on the victim - It is sufficient for the prosecution to prove the common intention - Common intention can be gathered from the evidence of witnesses and the circumstances. (Para 16).

Sunil s/o. Dashrath Gawde vs. State of Maharashtra

2014 ALL MR (CRI) 2

157. SEXUAL HARASSMENT OF WOMEN AT WORKING PLACE R/W. SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDREESAL) ACT. 2013

कामाच्या ठिकाणी लैंगिक छळवणुक करण्यास (प्रतिबंध, मनाई व निवारण) अधिनियम – २०१३ अन्वये तरतुदी.

Constitution of India, Art.14, Art.19, Art.21, Art.32 - Sexual harassment of working woman - Amounts to violation of rights of gender equality and right to life and liberty - Also as a logical consequence amounts to violation of right to practice any profession, occupation or trade - Victim is, therefore, entitled to remedy of Art. 32.

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized

or discriminated against while dealing with complaints of sexual harassment (Para 3).

Vishaka and others vs. State of Rajasthan and others

AIR 1997 S. C. 3011

158. I.P.C. S.498A - NO BAR OF TERRITORIAL JURISDICTION OF POLICE FOR INVESTIGATION AND REGISTRATION OF F.I.R.

भा.दं.वि.क.– ४९८ अ अन्वये एफ.आय.आर. नोंदवून घेण्याचे व तपासकामी स्थळ सीमेचे बंधन नाही.

I.P.C. S.498A, Cr.P.C.S.179, 184 offence is continuous offence and FIR can be lodged and investigation can be conducted by the police where wife lives at her parental house. (Para 9, 10, 12)

Jairam s/o. Markand kahane vs. State of Maharashtra

2006 ALL MR (CRI) 2466

159. TERRITORIAL JURISDICTION OF COURT - ONLY THAT COURT CAN ENTERTAIN THE COMPLAINT WHERE CAUSE OF ACTION OR PART OF IT OCCURRED.

ज्या न्यायालयीन स्थळ सीमेत गुन्हा घडला असेल त्याच न्यायालयात सदर गुन्हा सुनावणीचे अधिकार आहेत.

I.P.C. S.498-A, Cr.P.C., S. 177-183 -Cruelty-Cognizance-Territorial jurisdiction of Court-Only that Court can entertain the complaint where cause of action or part of it has accrued-Court at the place of parental home of complainant has no jurisdiction to entertain the complaint since no part of cause of action occrued within its territorial jurisdiction (Paras 11, 13 - 15).

Shekhar Shivdas Mahire & Others vs. Sou. Sarikabai Shekhar Mahire & Another

2010 AllMR (Cri) 1766

160. I.P.C. S.498A - LEGAL MARRIAGE NOT NECESSARY FOR AN OFFENCE U/S 498A

भा.दं.वि.क.–४९८ अ च्या गुन्ह्याकामी कायदेशीर लग्न होणे आवश्यक नाही.

I.P.C. S.498A r/w 34 - Absence of definition of "husband" to

specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as "husband" is no ground to exclude them from the Purview of S.304-B or 498A of I.P.C. (Para 12, 13, 15, 16)

Manoj Bhimrao Wankhede & Others vs. State of Maharashtra & Another

2010 (3) LJSOFT 77

161. I.P.C. S.498A, 306 DEMANDING DIVORCE FROM THE WIFE IS MENTAL CRUELTY

भा.दं.वि.क. – ४९८ अ नुसार घटस्फोटाची वारंवार मागणी करणे हे देखील एक प्रकारचे मानसिक छळ आहे.

I.P.C. S.498A, 306 - Demanding divorce from the wife is mental cruelty for the purpose of this provision. (Para 41)

Kacharu s/o. Bhausaheb Sonawane vs. State of Maharashtra

2011 AllMR (Cri) 2206

162. I.P.C. S. 498A - NEIGHBOUR WITNESSES NOT NECESSARY

शेजारी राहणाऱ्या व्यक्तींचे जबाब नोंदविणे प्रत्येक वेळेस आवश्यक नाही.

I.P.C. S.498A, I.E.A. S.113A - The evidence of physical and mental torture has come from the mother, elder brother and other close relative and such deposition by close relations need not be discarded simply on the score of absence of corroboration by independent (like neighbors)evidence. (Para 13)

State of West Bengal vs. Orilal Jaiswal

1994 AIR (SC) 1418

163. I.P.C. S.328 - NOT APPLICABLE TO - GUTKA CASE

भा.दं.वि.क. – ३२८ – गुटखा संबंधी केसेसमध्ये लागू होत नाही.

I.P.C. S. 328, Cr.P.C. S.438 - Offences u/s. 328 and 188 r/w Section 34 of I.P.C. and Section 59 of Food Safety and Standards Act - Seizure of gutka, mawa and other tobacco Products - No material denoting either presence of applicants at the place at which the raid was effected - Section 328 of I.P.C. implies the element of force or element of a deceit - by itself would not attract the provisions of S.328 of I.P.C. (Para 11-13)

Raju Laxman Pachhapure vs. State of Maharashtra

2015 (1) LJSOFT 4

164. I.P.C. S.328 GUTKA - POLICE HAVE NO POWER TO ARREST AND INVESTIGATION

भा.दं.वि.क.–३२८ नुसार गुटख्यासंबंधी केसेसमध्ये पोलिसांना अटक व तपासाचे अधिकार नाही.

I.P.C. S. 328 - By no stretch of imagination, manufacturing, possessing Gutka and Pan Masala would amount to administering poison. As said above, Gutka or Pan Masala are not subjected to food analysis. The commissioner opined that in its sale etc. is not in public interest.This opinion is based on various reports but not report of Food Analyst appointed under the provisions of the FSS Act. Therefore, it cannot be said that Gutka and Pan Masala are stupefying, intoxicating or unwholesome drug. Besides offering these items of Food would not amount to intention to cause hurt. The provisions of Section 328 of the I.P.C. to the present cases is therefore impermissible (Para 19).

Shankar Kanhaiyalal Lalwani vs. The State Of Maharashtra

Bombay High Court

CRIMINAL WRIT PETITION NO. 1027 OF 2015

Dated 4 March, 2016

165. DACOITY ETC : DEADLY WEAPON : EXPLAINED

दरोड्याच्या गुन्ह्यामधील घातक शस्त्रास्त्रे म्हणजे काय ?

I.P.C. S. 324, 394, 397, 34 - If any instrument, when used as a weapon of offence is likely to cause death, is used to cause hurt, Section 324 IPC would be applicable. It is settled position of law that lathi may be treated as a weapon, which is likely to cause death, if such lathi is used in such a manner that it is likely to cause death. (Para 29).

Gorakh Pandurang Mare & Another vs. State of Maharashtra

2010 ALL MR (CRI) 2912

166. I.P.C. S.397 IS NOT INDEPENDENT SECTION

भा.दं.वि.क. – ३९७ हे स्वतंत्र गुन्हा नसून शिक्षेचे कलम आहे.

I.P.C. S.396, 397, 511 - Robbery - Section 397 of I.P.C. does not create any substantive offence - it is Complementary to sections 392 and 395 I.P.C. and merely regulates the punishment in respect of offences. (Para 10-12)

Namdeo Kashiram Mukane vs. State of Maharashtra & Another

2015 (9) LJSOFT 5

167. I.P.C. S.411, 412, 72 - POSSESSION OF STOLEN PROPERTY- KNOWLEDGE OF STOLEN PROPERTY IS NECESSARY.

भा.दं.वि.क.– ४११,४१२,७२ अन्वये चोरीची मालमत्ता असल्याबाबतचे ज्ञान असणे आवश्यक आहे.

I.P.C. S.411, 412, 72 - Only when there is evidence to show that accused knew that a Dacoity had been committed and property he was receiving was from that Dacoity or that he was receiving the property from the person, who belong to a gang of dacoits and the property was stolen, then only accused can be convicted for offence punishable under S. 412 of I.P.C. (Para 13- 15).

Ashok Suryabhan Kale vs. State

2012 All MR (Cri) 2850

168. I.P.C. S.411, 413-PREVIOUS CONVICTION IS MUST

भा.दं.वि.क. – ४११, ४१३ अन्वये गुन्हा सिद्ध होणेकामी पूर्वीच्या अशाच प्रकारच्या गुन्ह्यामध्ये शिक्षा होणे आवश्यक आहे.

I.P.C. S.413, 411 - Habitually receiving stolen property - Applicant should not have been charge sheeted for the offence u/s. 413 of I.P.C. unless he is convicted for the offence u/s. 411 of I.P.C. - There is no conviction recorded against the applicant so far - Proceedings pending against the applicant cannot be sustained (Para 3-4).

Rajesh Gevarchand Luniya vs. State of Maharashtra

2015 (2) LJSOFT 20

169. I.P.C. S.442, 452 - HOUSE TRESSPASS - FORCIBLE POSSESSION OF PROPERTY - NO OFENCE

भा.दं.वि.क.–४४२, ४५२ अन्वये बेकायदेशीर जागेचा फक्त ताबा घेणे, गुन्हा होत नाही.

I.P.C. S. 452, 453, 442, 445 - Accused is the younger brother of complainant - Accused has allegedly taken Possession of flat forcibly by breaking open the locks - Taking possession simplicitor is not an offence u/s. 441 of IPC - Entry with the intention of taking unauthorized possession of property does not constitute the offence of criminal trespass (Para 10 to 16).

Ravikant Shantaram Sao vs. State of Maharashtra & Another

2015 (2) LJSOFT 28

170. I.P.C. S. 506 (2) IS NON-COGNIZABLE AND BAILABLE

भा.दं.वि.क.– ५०६ (२) हा अदखलपात्र व जामीनपात्र गुन्हा आहे.

I.P.C. S.506(II) - No provision of the Cr.P.C. could have been amended only by issuing a notification - Offence punishable u/s. 506 Part - II of I.P.C. when committed within the State of Goa is a non-cognizable offence. (Para 12-13).

Vishwajit P. Rane vs. State of Goa & Others

2010 ALL MR (CRI) 3237

171. LIFE IMPRISONMENT : MEANING & EXPLANATION
जन्मठेपेचा अर्थ व स्पष्टीकरण.

I.P.C. S.54, 55 - Sentence of imprisonment for life means sentence for entire life of prisoner. A sentence of imprisonment for life does not automatically expire at the end of 20 years of imprisonment including remission, as a sentence of imprisonment for life means a sentence for the entire life of the prisoner (Para 4 - 8).

Zahid Hussein and others vs. State of W.B. and another.

AIR 2001 S. C. 1312

INDIAN EVIDENCE ACT, 1872
भारतीय साक्षीपुरावा अधिनियम, १८७२

172. DYING DECLARATION : RELATIVE OF INJURED - NOT TO BE PRESENT WHILE RECORDING

पिडीत व्यक्तीचे मृत्यूपूर्व जबाब नातेवाईकांसमक्ष नोंदवू नये.

I.E.A. S.32(1) - Dying declaration - witness stated that he recorded the statement of victim within 20-25 minutes - mother and sister of victim were present at the time of recording of the dying declaration and i.o also interacted them about the incident said dying declaration cannot be believed and deserves to be discarded. (Para 37 - 38, 45).

Bapu s/o. Haribhau Waman vs. State of Maharashtra

2016 (1) Bom C.R. (Cri) 151

173. DYING DECLARATION : CONVICTION CAN BE BASED SOLELY UPON IT

केवळ मृत्यूपूर्व जबानीवर देखील शिक्षा होऊ शकते.

I.E.A. S.32- Penal Code, S.300- Dying declaration - Credibility - Dying declaration found to be true and voluntary - Conviction can be based on it, without requiring any further corroboration. (Para 10 - 13 & 17)

Bhajju alias Karan Singh vs. State of M. P

2012 CRI. L. J. 1926

174. I.E.A. S.65 B (4) - CERTIFICATE MUST - ELECTRONIC EVIDENCE

इलेक्ट्रॉनिक अभिलेख्याच्या ग्राह्यतेकामी भा.पु.अ. कलम – ६५ ब (४) अन्वये घ्यावयाचे प्रमाणपत्र आवश्यक आहे.

I.E.A. S.59, S.65A, S.65B, S.63, S.65 - Electronic records -Admissibility - Secondary evidence of electronic record - Inadmissible unless requirements of S. 65 B are satisfied. (Para 19, 22)

Anvar P. V. vs. P. K. Basheer and Others

AIR 2015 S. C. 180

175. CDR WITHOUT CERTIFICATE U/S. 65 B (4) I. E. ACT - NO VALUE

भा.पु.अ. कलम – ६५ ब (४) अन्वये घ्यावयाचे प्रमाणपत्र नसल्यास ... चा पुरावा म्हणून विफल ठरतो.

I.E.A. S.27, 65-B - Electronic record - Mobile recovered from accused No.3 - Information regarding Incoming and outgoing calls on mobile which was stolen and allegedly used by accused No.3 - Requisite certificate on Call Details Record as per law not filed - In the absence of such certificate the CDR is inadmissible in law and the same cannot be considered. (Para 35, 36)

Balasaheb Gurling Todkari & Others vs. State of Maharashtra

2015 ALL MR (CRI) 3464

176. EVIDENCE ACT - REFRESHING MEMORY BY INVESTIGATION OFFICER IN THE WITNESS BOX - PERMISSIBLE

साक्ष नोंदविताना तपासी अंमलदार हा न्यायालयातील कागदपत्रांचे अवलोकन करुन स्मृतीस उजाळा देऊ शकतो.

I.E.A. S.159 -Refreshing memory - Records by Investigating Officer are the contemporaneous entries made by him and hence for refreshing his memory it is always advisable that he looks into those records before answering any question. (Para 21, 22)

State of Karnataka vs. K. Yarappa Reddy.

AIR 2000 S. C. 185(1)

177. EVIDENCE OF I.O. SHOULD NOT BE TOTALY DISBELIEVED

तपासी अंमलदारांची साक्ष, पुरावा म्हणून पूर्णत: नाकारली जाऊ शकत नाही.

I.E.A. S.3 - It is held that the presumption that a person acts honestly equally applies to a police officer and the evidence of a police officer cannot be merely discredited on the ground of his being a police officer. (Para 15A)

Munir Ahmed Sheikh vs. State of Maharashtra & Another

1999 ALL MR (CRI) 571

178. SOLE TESTIMONY - EVIDENCE OF POLICE OFFICER - ADMISSIBLE

इतर उपलब्ध नसल्यास, केवळ पोलीस अधिकाऱ्याची साक्ष पुराव्याकामी उपयुक्त धरता येऊ शकते.

I.E.A. S.3 - Though it is desirable to examine independent witness, however, in the absence of any such witness, if the statements of police officers are reliable and when there is no animosity established against them by the accused, conviction based on their statement cannot be faulted with. (Para 9)

Sumit Tomar vs. State of Punjab

2012 All M.R.(Cri.) 4157

179. POLICE WITNESS : SHOULD BE BELIEVED

पोलीस साक्षीदाराची साक्ष ग्राह्य धरण्यात यावी.

I.E.A. S.3- Police witness - Need not be treated with distrust - If testimony is found reliable and trustworthy - Court can act upon it. (Para 10).

Pramod Kumar vs. State (GNCT) of Delhi

AIR 2013 S. C. 3344

180. INTERESTED WITNESS - MEANING

स्वारस्य / हितसंबंधीत साक्षीदाराची व्याख्या.

I.E.A. S.3 - Appreciation of evidence - Interested witness - Term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive - A witness who is a relative of the deceased or victim of a crime cannot be characterized as 'interested' (Para 28, 36)

Namdeo vs. State of Maharashtra

2007 ALL MR (CRI) (S.C.) 1132

181. CONSISTENCY IN EVIDENCE OF EYE WITNESSES : CANNOT BE SAID TO BE TUTORED

प्रत्यक्षदर्शी साक्षीदाराच्या साक्षीतील एकसमानता ही पढविलेली असू शकत नाही.

I.E.A. S.3- I.P.C. S.300, S.34- Evidence of eye-witnesses - Whether tutored - As many six eye-witnesses examined - Statement of eye-witnesses recorded immediately after arrival of investigating officer - Merely because testimony of all eye-witnesses is consistent - Is no ground to disbelieve prosecution case by raising suspicion that eye-witnesses may be tutored. (Para 20).

Ram Anup Singh and others vs. State of Bihar.

AIR 2002 S. C. 3006

182. SOLITARY EVIDENCE (SOLE) - CONVICTION UPHELD

एकमात्र साक्षीवर आरोपीस शिक्षा होऊ शकेल.

I.E.A. S.134 - Criminal trial - Solitary evidence - No particular number of witnesses is required to establish the case - Conviction can be based on the testimony of a single witness if he is wholly reliable - Corroboration may be necessary when he is only partially reliable -If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained. (Para 7).

Ramesh Krishna Madhusudan Nayar vs. State of Maharashtra

2008 (2) AIR BOM R (S.C.) 42

183. CIRCUMSTANTIAL EVIDENCE - CONDUCT OF ACCUSED - RELEVANCE

शिक्षा देतांना परिस्थितीजन्य पुरावा व आरोपीची वागणुक ग्राह्य धरली जाते.

I.E.A. S.3,7 - Where there is no direct evidence and only circumstantial evidence is available then conduct of accused also has to be seen by the court. The suggestion put forth on behalf of the accused that deceased might have died due to vagal inhibition as a result of menstrual trouble or diarrhoea

cannot be accepted. Had the death of deceased been natural because of some sudden disease and not homicidal, accused would not have acted in the manner he did for the stealthy disposal of the dead body at night by throwing it in the river at a far off place without informing her father or even his own son about the death. The entire conduct of accused is inexplicable on any rational ground and is consistent only with his guilt. (Para 34)

Mahabir Mandal vs. State of Bihar

AIR 1972 S. C. 1331

184. CIRCUMSTANTIAL EVIDENCE : CONVICTION CAN BE BASED.

परिस्थितीजन्य पुराव्यावर आरोपीस शिक्षा होऊ शकेल.

I.E.A. S.3 - Circumstantial evidence - Can be sole basis for conviction - Conditions to be satisfied, stated. There is no doubt that conviction can be based solely on circumstantial evidence but the conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are : 1)The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established; 2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; 3) The circumstances should be of a conclusive nature and tendency; 4) They should exclude every possible hypothesis except the one to be proved; and 5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(Para 9, 15, 17)

Bodh Raj alias Bodha and others vs. State of J&K

AIR 2002 S. C. 3164

185. GOLDEN RULE OF APPRECIATION OF EVIDENCE

पुराव्याच्या मुल्यमापनासंबंधीचे सोनेरी नियम.

I.E.A. S.3 -Evidence - Appreciation of - Discrepancies - Overmuch importance cannot be given to minor discrepancies. Over much importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. (Para 5 - 6)

Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat

AIR 1983 S. C. 753(1)

186. CHANCE WITNESS - WHO IS CHANCE WITNESS - EVIDENCE BELIEVABLE.

आकस्मिक साक्षीदारांची साक्ष ग्राह्य धरली जावू शकेल.

I.E.A. S.3, I.P.C. S.300 - Murder trial - 'Independent witnesses'- Evidence of - Cannot be viewed - with suspicion on ground that they are mere 'chance witnesses'. If murder is committed in a dwelling house, the inmatesof the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses' even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence. (Para 3)

Rana Partap and others vs. State of Haryana

AIR 1983 S. C. 680(1)

187. NON MENTIONING OF INJURIES IN PM :- NOT FATAL

शव विच्छेदन अहवालात दुखापतीचे वर्णन नसल्यास त्याचा गुन्ह्याचे निकालावर परिणाम होत नाही.

I.E.A. S.45, Cr. P.C. S.174- Post mortem report - Non mention of certain injuries - Effect - Murder case - Prosecution alleging that dead bodies were dragged by accused persons - Post mortem report not speaking of injuries on back of deceased - Injuries on back of deceased however mentioned in inquest panchanama - Held theory of dragging of bodies could not be discarded only on account of non-mention of injuries on back of bodies in the post-mortem reports. (Para 18).

Ganesh K. Gulve etc vs. State of Maharashtra

AIR 2002 S. C. 3068

188. EVIDENCE OF DOCTOR IS NOT ALWAYS TRUTHFUL

वैद्यकिय अधिकाऱ्यांचा पुरावा हा नेहमीच ग्राह्य धरावाच असे नाही.

I.E.A. S.3, S.45, S.114 - Evidence - Appreciation of - examined as witness - His evidence has to be appreciated like that of any other witness - No presumption that is always a witness of truth. (Para 2)

Mayur Panabhai Shah vs. State of Gujarat

AIR 1983 S. C. 66

189. CONVICTION CAN BE BASED ON EXTRA - JUDICIAL CONFESSION

आरोपीचा गैरन्यायालयीन कबुली जबाब शिक्षेकामी ग्राह्य धरला जाऊ शकेल.

I.E.A. S.24, I.P.C. S.300 - Making extra judicial confession immediately after incident to his step-sister and thereafter to Village Administrative Officer - Extra judicial confession if trustworthy can be believed. (Para 7 - 8)

Arumugham vs. State

AIR 2011 SCW 65

190. COURT HAS TO INFORM I.O. BEFORE CLOSURE OF CASE.

न्यायालयाने कोणतेही प्रकरण सुनावणीपूर्वी बंद करताना तपासी अंमलदारांना कळवावे.

I.E.A. S.3 - Cr. P.C. S.311, S.276 - Criminal trial - Closure of prosecution evidence -Without informing Investigating Officer - it is the duty of Court to issue summons to I.O. if he fails to remain present at the time of trial of the case - case is closed merely on ground that public prosecutor has not sought time to examine further witnesses - Not proper - Manner adopted to dispose off Prosecution case sordid and repulsive - Application filed by State under S. 311 for examining witnesses is tenable. (Para 9 - 11)

Shailendra Kumar vs. State of Bihar and others

2002 CRI. L. J. 568 S. C.

191. SENTENCING POLICY - QUANTUM

जास्तीत जास्त शिक्षा देण्यासंबंधीचे धोरण.

I.E.A. S. 3, Cr. P.C. 29 - Sentencing policy - Balance sheet of aggravating and mitigating circumstances has to be drawn up - Age alone cannot be a paramount consideration as a mitigating circumstance - Family background and lack of criminal antecedents of the accused also could not be said to be a mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons - Rarest of the rare" case exists when an accused would be a menace or, threat to and incompatible with harmony in the society - Where accused does not act on provocation or on the spur of the moment, but meticulously executes a deliberate, cold-blooded and pre-planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by our criminal jurisprudence would tilt heavily towards the death sentence. (Para 31 - 32)

Purushottam Dashrath Borate & Another vs. State of Maharashtra

2015 ALL MR (CRI) (S.C.) 2421

192. CCTV FOOTAGE - DUTY OF COURT

सी.सी.टी.व्ही. फुटेज संबंधी न्यायालयाची कर्तव्ये.

I.E.A. S.3 - By the time the case comes up for trial in one court, the electronic record would have had a natural death for want of proper storage facilities in the Court property room. To obviate these difficulties, we direct that, on a petition filed by the prosecution, the Judicial Magistrate, who receives the electronic record, may himself view it and take a backup, without disturbing the integrity of the source, in a CD or Pen drive or any other gadget, by drawing proceedings. The backup can be kept in safe custody by wrapping it in anti-static cover and should be sent to the Sessions Court at the time of committal. (Para 8)

K. Ramajayam @ Appu vs. The Inspector Of Police

Madras High Court

CRIMINAL APPEAL NO. 110 OF 2015,

DTD. 27 January, 2016

MOTOR VEHICLE ACT, 1988
मोटार वाहन अधिनियम, १९८८

193. M.V.ACT S.184 - NON COGNIZABLE

मो.वा.का.क.१८४ – अदखलपात्र आहे.

Motor Vehicles Act S.202, S.185, Cr. P.C. S.2(c) - Driving by drunken person - Offence of - Is non-cognizable - Limited power to arrest such person without warrant given to police officer in uniform did not make offence under S. 185 cognizable offence. It is clear that the power to arrest for an offence punishable u/s. 185 of the M.V. Act conferred on a police officer is not unqualified. It can be exercised only if two conditions are fulfilled viz: (i) the offence must have been committed in the presence of the police officer. (ii) when such police officer must be in uniform at that time. (Para 20)

Sandeep Indravadan Sagar vs. State of Maharashtra and Others

2013 CRI. L. J. 1147

ESSENTIAL COMMODITY ACT, 1955
अत्यावश्यक वस्तू अधिनियम, १९५५

194. OFFENCES UNDER E.C. ACT ARE BAILABLE OR NON-BAILABLE DEPENDS ON QUANTUM OF SENTENCE.

अत्यावश्यक वस्तू अधिनियमातील गुन्हे जामीनपात्र अथवा अजामीनपात्र असणे हे त्यातील शिक्षेच्या प्रमाणावर ठरते.

E. C. Act, Section 7(1) (a) (ii), 10A, Cr.P.C.- Section 2(a) - First Schedule, Part II - The offences were made non-bailable by amending S. 10A of the E.C Act - merely because the words' and non-bailable' which were inserted in the amending Act 18 of 1981 stand deleted, Whether all the offences under the Essential Commodities Act would be bailable? (No). It will not be correct to say that all the offences under the Essential Commodities Act, 1955, would be bailable. When the special Act is not making any provision in

this respect, then the provisions of the Cr.P.C., are required to be made applicable and so, the position which there during the period from 1974 to 1981 is restored and the offences would be bailable or non-bailable as per the quantum of punishment provided under the Act. (Para 4)

Pruthviraj Chandrakant Shinde vs. State of Maharashtra

2000 ALL MR (CRI) 1057

195. E.C. ACT - VIOLATION ORDER MUST BE PLACED ON RECORD AND MUST BE MENTIONED IN THE CHARGE SHEET

दोषारोपपत्रात ज्या नियंत्रण आदेशाचे उल्लंघन झाले आहे त्याचा उल्लेख असणे व ते आदेश दाखल करणे बंधनकारक आहे.

E.C. Act S. 3 r/w S. 7(1) (a) (ii) - Conviction under - Requirement of - Notified order - Conviction for committing offence in terms of Section 3 r/w Section 7(1) (a) (ii) - Primary requirement is that there must be violation of an order made u/s. 3 - Necessary for prosecution to place on record the "order" which was the foundation for taking action against the accused-appellant. (It is require to attach authentic copy of 'Control Order' alongwith charge sheet) (Para 4 - 5)

Prakash Babu Raghuvanshi vs. State of Madhya Pradesh

2005 (3) LJSOFT (S.C.) 99

196. E.C.ACT - VIOLATION OF CONTROL ORDER SHOULD BE MENTIONED IN THE F.I.R.

भंग झालेल्या नियंत्रण आदेशाचा उल्लेख एफ.आय.आर.मध्ये असणे बंधनकारक आहे.

E. C. Act S. 7 - The contravention of any order made u/s. 3 is essential - Neither the F.I.R. nor the charge sheet anywhere refers to any order made u/s. 3 of E.C. Act - Continuation of proceedings against the applicant would be an abuse of process of law in absence of order passed u/s. 3 of E.C. Act. (Para 7 - 8)

Chandansingh s/o. Sadhusingh Chandel vs. State of Maharashtra

2015 ALL MR (CRI) 1291

197. E.C ACT _ P.S.I. HAS NO LEGAL AUTHORITY TO SEIZE

पोलीस उपनिरिक्षक दर्जाच्या अधिकाऱ्याला या कायद्यांतर्गत जप्तीचे अधिकार नाहीत.

E. C. Act S. 3, 7 - Duties of Police officer - Complainant - P.S.I. received discreet information regarding - transport of rice - Special statute under E.C. Act excludes the Police Officer below the rank of Police Inspector from conducting raid or intercepting the vehicle - It was obligatory for said P.S.I. to have immediately contacted the Revenue Authorities or his superior police Officer - P.S.I. had no legal authority under the E.C. Act to take charge of the goods when he was confronted with the bills thereof. (Para 11)

Sunil Shreekrishna Modani vs. State of Maharashtra

2014 ALL MR (CRI) 169

MAHARASHTRA (BOMBAY) PROHIBITION ACT, 1949

महाराष्ट्र (मुंबई)दारुबंदी अधिनियम, १९४९

198. S.85 (1) (b)-PROHIBITION ACT - BLOOD TEST MUST

मु.दा.अ.क.८५(१)(ब)–गुन्ह्यात रक्ताची चाचणी होणे आवश्यक आहे.

Bombay Prohibition Act, S. 66(1)(b), 85(1), M.V.Act, S.117 -Influence of drink - Doctor's certificate showing alcoholic smell, unsteady gait, dilation of pupils and incoherent speech-No blood or urine test taken - Symptoms held not conclusive to prove influence of drink. (Para 2, 6)

Kishanbhai Jinubhai Gavit vs. State of Maharashtra.

1978 CRI. L. J. 829

199. PROHIBITION ACT- BLOOD SAMPLE SHOULD BE SENT WITHIN 7 DAYS.

रक्त चाचणीकामी रक्ताचे नमुने हे ०७ दिवसांचे आत पाठविणे बंधनकारक आहे.

Bombay Prohibition Act, - Section 66(1) (b), 85(1) - Bombay Prohibition (MedicalExamination and Blood Test) Rules, 1959 - Rule 4(2) - Consuming prohibited liquor - Blood sample.Blood samplehas to be sent by a special messenger and the phial must reach the testing officer within7 days - Sample may not be fit for analysis after 7 days - Blood Phial was handed overto the Chemical Analyzeron 9th day after it was taken.Accused was entitled for benefit of doubt. (Para 8)

Kodube s/o. Bhagji Jadhav vs. State of Maharashtra

1979 BOM.C.R. 256

200. S.85 (1) B- PROHIBITION ACT - ABUSES SHOULD BE IN DETAIL

आरोपीने गैर शिस्त वागणुकीसंबंधी केलेली शिवीगाळ इ.बाबत तपशिलवार नमुद करणे आवश्यक आहे.

Bombay Prohibition Act, S. 85(1) - Disorderly manner such as abuses etc. should be mentioned in detail in the F.I.R. - what abuses exactly the accused uttered has not been deposed by witnesses. In the absence of the details of the abuses it would not be possible for the court to hold that the abuses uttered by the accused transgressed the limits or bounce of decency. (Para 7)

Popatlal Motichand Shah vs. State of Maharashtra.

1977 Mah. L. J. 855

201. PROHIBITION ACT, S. 85(1) DISORDERLY BEHAVIOR IN DRUNKEN CONDITION AT PUBLIC PLACE.

मद्यप्राशन करुन सार्वजनिक ठिकाणी बेशिस्त वागणेसंबंधी.

Bombay Prohibition Act, S. 85(1) - Accused was working as police constable went to the Head Quarter in drunken condition at the time of roll call and threatened police officer conducting roll call to mark his presence - Conduct of the petitioner caused nuisance and annoyance to the police men

-Conduct of the petitioner amount to disorderly behavior - Order of conviction u/s. 85(1) not liable to be interfered with. (Para 8, 9).

Shaikh Vaidulla AjmattulHaq vs. State of Maharashtra

2006 ALL MR (CRI) 3158

202. PROHIBITION ACT, SECTION 66 (1) (B) - NON SAMPLING OF EACH BOTTLE IS FATAL TO CASE.

मुंबई दारुबंदी अधिनियमांतर्गत जप्त केलेल्या बाटल्यांपैकी प्रत्येक बाटलीतील नमुन्याचे रासायनिक परिक्षण करणे आवश्यक आहे.

Bombay Prohibition Act, S. 66 - The samples were taken from all the 13 bottles and were mixed and sent to the laboratory in one single bottle and therefore it is not clear whether all the bottles contained alcohol or any other substance. (It is require to take sample of liquor from every seized bottle to send for analysis) (Para 3)

Vishwanath vs. State of Maharashtra

2005 All.M.R (Cri) 2293,

MAHARASHTRA (BOMBAY) POLICE ACT, 1951

महाराष्ट्र (मुंबई) पोलीस अधिनियम, १९५१

203. BOMBAY POLICE ACT, S.124 - REQUIREMENT FOR SEARCH.

मुं.पो.अ.क. – १२४ प्रमाणे झडती घेण्यासाठीच्या आवश्यक तरतुदी.

Bombay Police Act S.124 - Possessing cinnamon - Stolen property - Reason to believe - Search of accused. Search of person - Police could only act u/s. 124 if "there is reason to believe" that the property is stolen property or property fraudulently obtained-Unless that was first established, the accused could't have been searched u/s. 124.(Para 3 - 5)

State of Maharashtra vs. Hussein Ahmed Aliji

1979 BOM.C.R. 90

204. BOMBAY POLICE ACT, SEC.124, Cr.P.C.S.41[1][D]- POLICE CAN NOT ARREST

पोलीस ॲक्ट कलम १२४ – फौ. प्र. सं. कलम ४१ (१)(ड) अन्वये पोलीस आरोपीस अटक करू शकत नाहीत.

Bombay Police Act S. 124 - does not specifically prescribe as to whether the offence is cognizable or non-cognizable and, therefore, in the absence of any such specific reference therein in order to determine as to whether an offence u/s. 124 of the Act is cognizable or non-cognizable one has to fall back upon the definition contained under the Code under section 2(c) and 2(l), read with Part II of the First Schedule to the Code. If one reads these provisions together there can be no manner of doubt that the offence under section 124 of the Act is non-cognizable and if it is so, then obviously in a case of non-cognizable offence a Police Officer has no authority to arrest a suspect without warrant (Para 8)

Avinash Madhukar Mukhedker vs. State of Maharashtra

1984 Mah. L. J. 88

205. MERE INITIATION OF PROSECUTION BY ITSELF DOES NOT GIVE A GROUND FOR INITIATING ACTION TO CANCEL OR TO REFUSE TO RENEW A LICENSE

पोलीस ॲक्ट कलम ३३ – अन्वये कारवाई केलेली असल्यास देखील परवाना रद्दबातल किंवा परवान्याचे नुतनीकरण नाकारता येत नाही.

Maharashtra Police Act, Section 33 - Keeping Places of Public Entertainment Licence Rules, 1953 - Rule 25, 32 - Entertainment licence - Cancellation of - Breach of terms - Nature of - Raid conducted at the Lodge run by petitioner - Mere initiation of prosecution by itself does not furnish a ground for initiating action to cancel or to refuse to renew a license (Para 8)

Nandlal Hiralalji Gupta vs. State of Maharashtra & Another

2015 (3) AIR BOM R (CRI) 548

206. BOMBAY POLICE ACT, S. 55 - EXTERNMENT - GANG OF CRIMINALS - ACTION MUST BE TAKEN AGAINST EACH MEMBER OF GANG

मुं.पो.अ.क. – ५५ अन्वये हद्दपार करतांना गुन्हेगारी टोळीतील प्रत्येक व्यक्तीवर कारवाई करणे आवश्यक आहे.

Bombay Police Act, S. 55 - Externment order - Action u/s. 55 can be taken and which is to be taken against all members and not only a few of them selectively - Action of externment taken only against the petitioner although 5 other persons were stated to be members of the gang allegedly formed by the petitioner is illegal and cannot be sustained in law. (Para 14).

Ahammad Mainuddin Shaikh vs. State of Maharashtra

2013 (4) BOM.C.R. (CRI) 559

207. S.55 - BOMBAY POLICE ACT - NO EXTERNMENT ON BASIS OF PENDING PROHIBITION CASES AGAINST ACCUSED

मुं.पो.अ.क.–५५ अन्वये प्रलंबित दारु प्रतिबंधक कायद्याच्या अनुषंगाने हद्दपार करता येत नाही.

Bombay Police Act, S. 55 - Externment order - cannot be passed on basis of pendency of cases under the Bombay Prohibition Act. (Para 3)

Smt. Surekha d/o. Paras Waghmare vs. State of Maharashtra

2013 ALL MR (CRI) 2706

208. SUMMARIES CAN BE GRANTED ONLY BY JUDICIAL MAGISTRATE.

फक्त न्यायदंडाधिकाऱ्यांनाच समरी मंजुर करण्याचे अधिकार आहेत.

Bombay Police Act, S. 96(1)(iii) - Grant of summaries is a judicial function left to the exclusive province of the Magistrate. A Police Officer, or for that matter a Commissioner of Police, or an officer duly appointed by him, has no role to play (Para 17)

Shravan Baburao Dinkar and another vs. N.B.Hirve and others

1997 All.M.R. (Cri.) 204

ARMS ACT 1959
शस्त्र अधिनियम – १९५९

209. ARMS ACT - FIRE ARM NOT SENT TO BALLASTIC EXPERT - IT'S EFFECT

अग्निशस्त्रे जर क्षेपणास्त्र तज्ञांकडे पाठविली नाहीत तर त्याचे परिणाम.

Arms Act, S. 25 - Ballastic Expert - Death on account of gunshot injury - In such a case opinion of Ballastic Expert will be most important - Where both fire arm and crime cartridges are recovered during investigation, failure to produce the expert opinion would be fatal to the Prosecution case - Where the fire arm and the cartridges recovered were not sent for the examination of Ballastic Expert, the conviction will not be sustainable. (Para 20)

Sukhavant Singh vs..State of Punjab

2010 Cr.L.J. 1435

210. ARMS ACT - PRECAUTION FOR SEIZURE OF WEAPAON.

शस्त्र जप्त करतांना घ्यावयाची काळजी.

Arms Act S.25 - T.A.D.A (Prevention) Act S.5 - Seizure of revolver from accused - No attempt by concerned police officer to join with him some independent witnesses from locality to witness recovery - Arms and ammunitions seized from accused not pocketed and sealed - No evidence to indicate as to with whom revolver was, after seizure till it was sent to Arms Expert for testing - Fatal to Prosecution (Para 7).

Sahib Singh, Appellant vs. State of Punjab, Respondents.

AIR 1997 S. C. 2417

211. ARMS ACT - NOTIFICATION U/S. 4 IS NECESSARY

शस्त्र अधिनियम क्र. ४ अंतर्गत गुन्हा प्रतिबंधक क्षेत्राचे/हद्दीचे परिपत्रक असणे आवश्यक आहे.

Arms Act, S. 3, 4, 25 - Possession of Weapons - Absence of notification - Recovery of two small knives from the custody of accused - Prosecution had failed to produce any evidence

that there was any notification issued by the central Government u/s. 4 of Arms Act banning the possession and carrying of any such weapons conviction u/s. 4 r/w section 25 of Arms Act liable to be set aside. (Para 7, 10)

Abdul C. Aslam Salim Shaikh vs. State of Maharashtra

2007 (2) Mah. L. J. (CRI)812

212. ARMS ACT - DUTIES OF LICENCING AUTHORITY
परवाना अधिकाऱ्याची कर्तव्ये.

Arms Act, S. 14(3) - Arms license - Grant of - Application for grant of an arms license - Rejection of - Licensing Authority is requires to record reasons in writing and furnish to the person concerned a brief statement of the same- Authority has repeatedly been content with passing one line orders which cannot at all be upheld. (Para 3 - 4).

Ajitpalsingh s/o. Nirmalsingh Khalsa vs. State of Maharashtra & Others

2013 ALL MR (CRI) 2392

213. ARMS ACT - S.39 - SANCTION IS MUST
शस्त्र अधिनियम क. ३९ – अन्वये मंजुरी घेणे आवश्यक आहे.

Arms Act - S.3/25 - s.39 - Sanction is must - to prosecute the accused - without sanction of District Magistrate, Court cannot take the cognizance of offence. (Para 4)

Kamalsingh Shiv vs. State Of Maharashtra

2005 ALL M R CRI 347

MAHARASHTRA REGIONAL TOWN PLANNING ACT, 1966
महाराष्ट्र प्रादेशिक नगर रचना अधिनियम, १९६६

214. M.R.T.P. ACT, S.53 CONTINUING OFFENCE.

महाराष्ट्र प्रादेशिक नगर रचना अधिनियम कलम – ५३ हा सतत घडत असलेला गुन्हा.

M.R.T.P.Act S.53 (7), 53(1) - Cr.P.C. S.468 - Prosecution for unauthorized construction - Even where offence would be complete, offender would be liable to be prosecuted as it could still be as continuing offence - Owner requires to remove unauthorized construction within stipulated period i.e. one month - Non-compliance with obligation to remove still exists - Offence in question should be held to be continuing one (Para 24 - 28).

Dinesh Kalyanji Gala vs. State of Maharashtra, Through the Senior P.I.

[2013] All MR (Cri) 1753

PREVENTION OF ATROCITIES ACT, 1989
अनुसूचित जाती व अनुसूचित जनजाती (अत्याचार प्रतिबंध) अधिनियम, १९८९

215. INSULT MUST BE IN PRESENCE OF PERSON

जातीवाचक शब्दांचा उच्चार हा एखाद्या व्यक्तीच्या समक्ष होणे आवश्यक आहे.

S.C. & S.T. (Prevention of Atrocities) Act, S.3 (1) (10) - Offences of atrocities - Expression "in any place within public view" Occurring in S. 3(1) (x) - Means that, the public must view the person being insulted - for which he must be

present - No offence on allegations under said section gets attracted if person is not present (Para 10).

Asmathunnisa vs. State of A. P. represented by the Public Prosecutor, High Court of A. P.,Hyderabad and another

AIR 2011 S. C. 1905

216. ATROCITY- MUST BE WITHIN PUBLIC VIEW

जातीवाचक शिवीगाळ ही सार्वजनिक ठिकाणी आवश्यक आहे.

SC. & ST (Prevention of Atrocities) Act, 3(1)(x) - Offences under Atrocities Act-Offence occurred in the courtyard of the complainant's house which is not apublic place -No member of the public was either present or heard the remarks - Family members or resident-servant cannot be treated as members of public - Merepresence of the family members, including resident servant not sufficient to constitutean offence u/s. 3(1) (x) - If no member of the public has either seen the incident or heard. (Para 5 - 9)

Mahesh Sakharam Patole & Others vs. State of Maharashtra

2009 ALL MR (CRI) 1601

217. ATROCITIES : ABUSE IN CHAMBER - NO OFFENCE.

एखाद्या बंद खोलीत केलेली जातीवाचक शिवीगाळ गुन्हा होत नाही.

SC. & ST (Prevention of Atrocities) Act, 3 - Alleged that respondent with his two colleagues went to the chamber of petitioner and petitioner abused him in the name of his caste-Allegations related to the acts by the accused in the close cabin of accused and in the absence of any stranger - Events could not be branded to have taken place in public view and gaze-Prosecution against the petitioner is quashed. (Para 11, 16, 18).

Dr. Sau. Suryakanta Ramesh Ajmera vs. State of Maharashtra & Others

2011 ALL MR (CRI) 1970

218. ATROCITY - ABUSE ON MOBILE - NO OFFENCE

मोबाईलवर केलेली जातीवाचक शिवीगाळ गुन्हा होत नाही.

SC. & ST (Prevention of Atrocities) Act, 3 - Abuses on mobile phone is no offence under the atrocity act because for attracting the said act presence of complainant before accused is must. (Para 7 - 8)

Dr. Gulab Ganpat Kapgate vs. State of Maharashtra

BOMBAY HIGH COURT (NAGPUR BENCH) CRIMINAL APPLICATION (ABA) NO. 524/2015. DATED. 17/12/2015.

219. AS PER ATROCITY ACT - PUBLIC VIEW - MEANS

या कायद्यांतर्गत सार्वजनिक ठिकाण म्हणजे काय ?

SC. & ST (Prevention of Atrocities) Act, 3 - Offence under the ATROCITIES Act - Petitioner No.1 gave abuses in the dispute regarding taking water from the public tap - incident can be said to be "public view" In as much as it has taken place in the presence of villagers who had gathered near the Public tap to fetch water. (Para 2, 8, 12)

Chakradhar s/o. Gopinath Jadhav & Others vs. State of Maharashtra & Another

2010 ALL MR (CRI) 136

220. ATROCITY ACT ABUSIVE WORDS BEHIND BACK OF COMPLAINANT WILL NOT ATTRACT ATROCITY

एखाद्या व्यक्तीच्या पाठीमागे किंवा नकळत जातीवाचक शिवीगाळ करणे हा गुन्हा होत नाही.

SC. & ST (Prevention of ATROCITIES) Act, S. 3(1) (x) - Caste abuse behind the back - Appeal against acquittal. Caste abuse - Complainant not personally present at place where abusive words were allegedly uttered behind back it could be anything but may not be the offence defined u/s. 3(1) (x) - Order of acquittal not liable to be interfered with. (Para 8 - 10)

Mohanbhai Delkar vs..Lalit Babu Patel & Others

2013 ALL MR (CRI) 4354

221. ATROCITY :- NON MENTIONING CASTE IN F.I.R. - NOT FATAL

एफ.आय.आर.मध्ये जातीचा उल्लेख नसल्यास गुन्ह्यावर परिणाम होत नाही.

SC & ST (Prevention of ATROCITIES) Act, S.3(1)(xi), S.23 - SC and ST (Prevention of ATROCITIES)Rules (1995) , R.7- Offence of ATROCITIES - Quashing of proceedings - Plea that in F.I.R. caste of accused was not mentioned and, therefore, proceedings should be quashed - Cannot be allowed- (Paras 14, 16)

Ashabai Machindra Adhagale vs. State of Maharashtra and Others

AIR 2009 S. C. 1973

222. MERE REFERENCE OF CASTE IS NO OFFENCE

फक्त जातीचा उल्लेख गुन्हा ठरत नाही.

S.C. & S.T.(Prevention of Atrocities) Act, S. 3(i)(x), 18- Grant of - Caste abuse - Complainant alleged that applicant made a reference to his caste by saying "Mhardya" and called him out of the house and thereafter abused him and assaulted his son by kicks and blows - Mere reference to the caste does not constitute any offence u/s. 3(i)(x) of Atrocities (Para 5 - 7)

Nitin Anna Patil (Nikam) vs. State of Maharashtra

2016 (1) LJSOFT 22

223. ATROCITIES: DUTY OF POLICE OFFICER TO PREVENT - IF HE HAS KNOWLEDGE

अत्याचार प्रतिबंध – पोलीस अधिकाऱ्यांची गुन्ह्यास प्रतिबंध करणेसाठी कर्तव्ये.

SC. & S.T. (Prevention of Atrocities) Act, 3 - Administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits.

Explaination of such practice - We would also like to mention the highly objectionable two tumbler system prevalent in

many parts of Tamilnadu. This system is that in many tea shops and restaurants there are separate tumblers for serving tea or other drinks to Scheduled Caste persons and non-Scheduled Caste persons. In our opinion, this is highly objectionable, and is an offence under the SC/ST Act, and hence those practicing it must be criminally proceeded against and given harsh punishment if found guilty. All administrative and police officers will be accountable and departmentally proceeded against if, despite having knowledge of any such practice in the area under their jurisdiction they do not launch criminal proceedings against the culprits. (Para 14).

(Note - "Such practices" broadly indicate all practices that differentiate the schedule caste persons from others in an objectionable manner.)

Arumugam Servai vs. State of T. N.

AIR 2011 S. C. 1859

224. ATROCITY - CASTE IS ACQUIRED BY BIRTH AND NOT BY MARRIAGE OR ADOPTION

जात ही जन्माने धारण करता येते, लग्नानंतर किंवा दत्तकाने धारण करता येत नाही.

SC. & S.T. (Prevention of Atrocities) Act, 3 - Offences under Atrocities Act - Lady belonging to the schedule caste/schedule tribe,Marrying a person belonging to forward caste - Membership of a caste is involuntary - Caste is acquired by birth and the caste does not undergo a change by marriage or Adoption (See para 11 - 14).

Rajendra Shrivastava vs. State of Maharashtra

2010 ALL MR (CRI) 754

225. ATROCITIES : OFFENCES UNDER SC & ST (PREVENTION OF ANTROCITIES) ACT WHEN NOT MADE OUT?

या कायद्यांतर्गत कोणत्या परिस्थितीत गुन्हा होत नाही ?

SC & ST (Prevention of ATROCITIES) Act, S. 3(1)(x), 3(1)(xi), 3(2)(v) - Khairlanji Massacre Case. In order to attract Section 3(1)(xi) of the Act, it is necessary that the accused not belonging to S.C.S.T. must use force to any

woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty. In the present case as stated above, the whole object was to take revenge against deceased because the accused believed that they were falsely implicated and as such it is difficult to accept the prosecution version that offence under Section 3(1)(xi) of the Act is made out against the accused." (Para 43C).

Central Bureau of Investigation vs. Sakru Mahagu Binjewar & Others

2010 ALL MR (CRI) 3128

226. ATROCITY ACT - NAVBOUDHA COMES UNDER SC/ST

या कायद्यांतर्गत नवबौद्ध हे समाविष्ट होतात.

SC & ST (Prevention of Atrocities) Act, 3 - Offence under ATROCITIES Act - In the F.I.R. the caste is given as Boudha - When a Person gives out or writes his caste as Navboudha, it must be assumed that he belongs to Scheduled Castes Prima facie case made out-FIR cannot be quashed (Para 4-7).

Parvat s/o. Sukhdeo Chatare vs. State of Maharashtra

2007 ALL MR (CRI) 1643

227. PREVENTION OF ATROCITIES ACT - INVESTIGATION BY COMPETENT AUTHORITY (Dy. S.P. / A.C.P. GRADE POLICE OFFICER)

या गुन्ह्यासंबंधीचा तपास हा सक्षम अधिकाऱ्याद्वारे (पोलीस उपाधिक्षक/सहा. पोलीस आयुक्त या दर्जाच्या अधिकाऱ्यांनीच) करणे आवश्यक आहे.

SC. & ST (Prevention of Atrocities) Act, 3 - Offences under ATROCITIES Act - Investigation carried out by Police Sub Inspector when under the Rules framed it was supposed to have been carried out by the officer not below the rank of Deputy Superintendent of Police - Conviction of appellant u/s. 3(1)(xi)of ATROCITIES Act would be unsustainable. (Para 4)

Mansingh Baburao Garud vs. State of Maharashtra

2011 ALL MR (CRI) 1610

228. PREVENTION OF ATROCITIES ACT - ANTICIPATORY BAIL WHEN CAN BE GRANTED.

या गुन्ह्यामध्ये अटकपूर्व जामीन केव्हा देता येतो ?

SC & ST (Prevention of ATROCITIES) Act, S. 3(1) (x), 18 - Cr. P.C. S. 438 - Anticipatory bail - Grant of. When prima facie case is not made out - Alleged incident had not occurred in the public place - Delay of 3 days in lodging complaint - One of the cause to explain the delay is the consultation with senior political leader of the area - Wife of the complainant is the Sarpanch and there is dispute about the administration in the working of gram panchayat - There is smell of political rivalry to the complaint - Even though there is bar u/s. 18 of Atrocities Act, exception is made out to consider the application for anticipatory bail - Fit case to exercise the discretion u/s. 438 of Cr.P.C. (Para 3)

Pravin S/o. Shrimant Bhutekar vs. State of Maharashtra & Another

2010 ALL MR (CRI) 1223

ENVIRONMENTAL PROTECTION ACT, 1986 / NOISE POLLUTION RULES, 2000

पर्यावरण संरक्षण अधिनियम, १९८६/ध्वनी प्रदुषण (नियम) २०००

229. GUIDELINES

मार्गदर्शक तत्वे

In re Noise Pollution - Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems

Forum Prevention of Envn. and Sound Pollution vs. Union of India and Another

Environmental Protection Act - It is hereby directed as under :

I. Firecrackers

3. The Department of Explosives may divide the firecrackers into two categories- (i) Sound emitting firecrackers, and (ii) Colour/light emitting firecrackers.

4. There shall be a complete ban on bursting sound emitting firecrackers between 10 pm and 6 am. It is not necessary to impose restrictions as to time on bursting of colour/light emitting firecrackers.

5. Every manufacturer shall on the box of each firecracker mention details of its chemical contents and that it satisfies the requirement as laid down by DOE.

6. Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the certain conditions:

II. Loudspeakers -

1. The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.

2. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10. 00 p.m. and 6.a.m.) except in public emergencies.

3. The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB (A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place.

III. Vehicular Noise -

No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential area except in exceptional circumstances.

IV. Generally -

1. The States shall make provision for seizure and confiscation of loudspeakers, amplifiers and such other equipments as are found to be creating noise beyond the permissible limits. (Para 135 - 168)

(Note :- For filing complaint under Environment Protection Act, Please see

(शासन निर्णय क्र. : ध्वनिप्र – २००९ / प्र.क्र. ९५/ तांक.–१ दिनांक २१/०४/२००९)

AIR 2005 S. C. 3136

MINES AND MINERALS (REGULATION & DEVELOPMENT) ACT, 1957

खाणी आणि खनिजे (नियमन व सुधारणा) अधिनियम, १९५७

230. S.379 I.P.C. - SAND THEFT POLICE HAS POWER TO INVESTIGATE.

वाळू चोरीच्या गुन्ह्यात पोलीसांना तपासाचे अधिकार आहेत.

Mines and Minerals (Regulation and Development) Act, S.21, S.22 - Theft of minerals including sand from river bed - Taking action by police - S. 22 is not absolute bar for such action.

Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Cr.P.C. and IPC, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378, Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various

provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. (Para 66, 72)

State of NCT of Delhi vs. Sanjay

AIR 2015 S. C. 75

THE MAHARASHTRA CONTROL OF ORGANIZED CRIME ACT, 1999

महाराष्ट्र संघटित गुन्हेगारी नियंत्रण अधिनियम – १९९९

231. NO SEPARATE F.I.R. NEEDS TO BE RECORDED

या कायद्यांतर्गत गुन्ह्याकामी वेगळी एफ. आय. आर. नोंदविण्याची आवश्यकता नाही.

MCOCA - S. 23(1)(a) - No separate FIR needs to be recorded by a Police Officer after the approval contemplated by section 23(1)(a) is granted by the approving authority - Contention that procedure in accordance with law has not been followed by merely adding the provisions of MCOC Act to the original FIR, cannot be accepted. (Para 10)

Moin Vairuddin Qureshi vs. State of Maharashtra

2009 ALL MR (CRI) 1274

232. MCOCA, - MORE THAN TWO CHARGESHEET - MEANS

या कायद्यांतर्गत दोन दोषारोपपत्र म्हणजे काय ?

MCOCA- S. 2(1) (d) - Activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate - Organized crime syndicate - Continuing unlawful activity - Stress is on the unlawful activities committed by the organized crime syndicate - Requirement of one or more charge-sheet is qua the unlawful activities of the organized

crime syndicate - Contention that the appellant cannot be tried for offences under the MCOC Act since against the appellant only one charge-sheet is filed cannot be accepted. (para 31 - 39)

Govind Sakharam Ubhe vs. State of Maharashtra

2009 ALL MR (CRI) 1903

233. MCOCA - PECUNIARY GAINS AND OTHER TERMS EXPLAINED

या कायद्यांतर्गत आर्थिक लाभ तसेच इतर बाबी – व्याख्या

MCOCA, S. 3, 4 - Cr.P.C. S. 300(1) - Constitution of India, 1950 - Article 20(3) organized crime - Proof of - Precedents - Charge sheets filed before MCOCA was enacted - Relevance of -Significance of "pecuniary gain" - Double jeopardy - Interpretation of statutes.

To sum up the evidence tendered discloses that : (i) Acts or omissions uncovered in

course of investigation and which were subject-matter of the trial were not shown to have been committed by use of violence, etc. with the objective of gaining pecuniary or other benefit. (ii) Acts for which various appellants had been separately chargesheeted on thirty one occasions in the past were mostly committed before MCOC Act came into force. (iii) As to cases after MCOC Act came into force - in one case chargesheet itself is not proved to have been filed; and four crimes did not pertain to gaining pecuniary or other benefit by use of violence etc., leaving only one crime of preparation to commit dacoity. Even if acquittal therein is ignored, it does not indicate plurality of unlawful activity and therefore, does not amount to organised crime. (iv) Since involvement of any of the accused in organised crime is not established, questions of any of them being member of organised crime syndicate, or their conspiring and providing harbour to one of the appellants, or their holding property derived from organised crime, or the possession of wealth disproportionate to their income amounting to an offence under Section 4 of the Act, do not arise. (v) In any case, most of properties are shown to have been purchased before MCOC Act was enacted." (Para 183)

Madan S/o. Ramkisan Gangwani vs. State of Maharashtra

2009 ALL MR (CRI) 1447

234. MCOCA - ORGANIZED CRIME SYNDICATE / UNLAWFUL CRIMINAL ACTIVITY - MEMBERS - DISCUSSED.

या कायद्यांतर्गत संघटित गुन्हा, बेकायदेशीर कृत्ये व टोळी यांची व्याख्या

MCOCA, .S. 12, 23(1)(a), 23(2), 2(1)(d) Cr.P.C. - Section 227, 228 - Organized crime syndicate - Sanction for prosecution - Grant of - Framing of charges - Discharge of accused - Expressions 'Continuing unlawful activity', 'Member' - Expression 'member' as termed in Section 2(1)(d) can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated u/s. 2(1)(d), 2(1)(e), 3 and other provisions of MCOC Act - Widest possible meaning has to be given to the expression 'member' as is appearing in Sections 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act. (Para 38, 39)

Sachin Bansilal Ghaiwal vs. State of Maharashtra

2015 ALL M R [CRI] 525

235. MCOCA - REMAND

या कायद्यांतर्गत रिमांड बाबतच्या तरतुदी.

MCOCA, S. 21(2), Cr.P.C. S.167 - Police can seek custody of the accused not only during the initial period of 30 days but even after the said period if the period of 30 days is not over either before filling of the charge sheet or before framing of a charge - No infirmity in the order passed by Special Court remanding applicants to police custody for three days. (Para 20 - 22)

Iqbal Hasan Shaikh Ibrahim Kaskar vs. State of Maharashtra

2003 ALL M R [CRI] 1817

236. MCOCA - REMAND CAN BE BEFORE MAGISTRATE

या कायद्यांतर्गत न्यायदंडाधिकारी न्यायालयासमक्ष रिमांड हजर करण्याची तरतूद आहे.

MCOCA, S. 21(2), Cr. P. C. S. 167 - In respect of an offence under the MCOC Act, a judicial Magistrate is empowered to allow detention of the person accused in police custody up to 30 days and in judicial custody (inclusive of the period of police custody) for a total period not exceeding 90 days. (Para 7)

Rajesh @ Raju Narayan Amin Poojari & Others vs. State of Maharashtra

2008 Cr.L.J.3810

PREVENTION OF CORRUPTION ACT,1988

भ्रष्टाचार प्रतिबंधक अधिनियम, १९८८

237. PREVENTION OF ANTI CORRUPTION ACT- TRAP FAILED THEN ALSO F.I.R SUSTAINABLE.

भ्र. प्र. अ. – १९८८ अन्वये सापळा अयशस्वी झाल्यानंतर देखील एफ.आय.आर. होऊ शकते.

Prevention of Corruption Act, S.7 - Illegal gratification - Failure of trap - Delay in lodging F.I.R. -Quashing of F.I.R. Applicant serving as Sub-Inspector seized a car carrying illicit liquor - Trap was unsuccessful and money was not accepted by accused at last movement - When a Government servant agrees to accept an illegal gratification that also becomes an offence - F.I.R. cannot be quashed. (Para 9, 13)

Bhaskar s/o. Hanbirrao Kokare vs. State of Maharashtra & Others

2007 ALL MR (CRI) 2277

238. PREVENTION OF ANTI CORRUPTION ACT- CONDUCT OF ACCUSSED IS SUFFICIENT FOR CONVICTION

भ्र. प्र. अ. – १९८८ अन्वये आरोपीचे संशयित हालचाली देखील शिक्षेस कारणीभूत ठरु शकतील.

Prevention of Corruption Act, S.5(1)(d), 5(2) - Accused working as Head Constable allegedly demanded bribe in a criminal case - Conduct of accused in running away towards his quarter on noticing of arrival of raiding party was unexplainable - However raiding party accosted the accused and tainted currency notes found on personal search of accused - Conduct of accused was relevant in view of Section 8 of Evidence Act which corroborated the case of prosecution (Para 7, 9)

Wamanrao s/o. Bakaramji Pawar (Since deceased), through his legal heirs & Others vs. State of Maharashtra

2012 ALL MR (CRI) 353

239. PREVENTION OF ANTI CORRUPTION ACT- ACCEPTANCE OF MONEY IS SUFFICIENT

भ्र. प्र. अ.– १९८८ अन्वये लाच घेणेकामी पैसे स्विकारणे इतका पुरावा देखील शिक्षेस पात्र आहे.

Prevention of Corruption Act, S. 4(3), 5(1)(d), 5(2) - Prosecution proved the recovery of tainted money from the possession of accused - Accused had no legal reason to make demand and then to accept the amount from the complainant - Amount needs to be treated as gratification and in view of section 4 of P.C. Act. (Para 32, 36, 44, 55)

State of Maharashtra vs. Ramchandra s/o. Wasudeo Dube

2012 ALL MR (CRI) 2855

240. ANTI CORRUPTION ACT: COGNIZANCE OF GENUINE DOCUMENTS, EVEN IF SUBMITTED WITH A FORGED / FABRICATED COMPLAINT MUST BE TAKEN.

एखादी तक्रार खोटी / बनावट असेल, परंतु त्या सोबतची कागदपत्रे खरी असल्यास या कायद्या अतंर्गत दखल घेणे क्रमप्राप्त आहे.

Prevention of Corruption Act S.13 - Acquiring disproportionate assets by public servant - Complaint - Complaint may be forged or fabricated - But copies of sale deeds annexed along with same though illegally collected by someone not found to be fabricated - Can be examined by Court of law - State Govt. directed CBI to enquire into allegations in complaint. (Paras 28, 32)

Umesh Kumar vs. State of A. P.

2013 AIR SCW 6062

241. ANTI CORRUPTION - PRESENCE OF SHADOW WITNESS NOT NECESSARY IN TRAP PARTY

भ्र. प्र. अ. – १९८८ अन्वये सापळा रचताना स्वतंत्र साक्षीदाराची आवश्यकता नाही.

Prevention of Corruption Act, S.7, S. 13- Trap case - Presence of shadow witness in trap party - Desirable but not must - Mere absence of such witness would not vitiate whole trap proceedings. (Para 14). (Explanation of 'Shadow Witness') (Para 9)

Mukut Bihari vs. State Of Rajasthan

AIR 201 SC 2270

242. FILING OF AFFIDAVIT BY WITNESS - DEPRECATED

तपासा दरम्यान तडजोडीकामी साक्षीदारांने दाखल केलेले शपथपत्र अनुचित आहे.

Prevention of Corruption Act, S.7, 13 - Cr. P. C. S.156 - Investigation - Practice of filing affidavits of witnesses at stage of investigation or during Court proceedings - Not to be encouraged - It would help influential persons to get FIR and prosecution quashed. (Para 9)

State of Rajasthan vs. Dr. Rajkumar Agarwal and Another

AIR 2013 S. C. 847

243. TRAP CAN NOT BE ORGANIZED IN THE COURT PREMISES WITHOUT PERMISSION OF THE JUDGE ON WORKING DAYS

न्यायालयीन आवारात कामकाजाच्या दिवशी न्यायाधीशांच्या परवानगीशिवाय सापळा लावता येत नाही.

Prevention of Corruption Act, S. 7, 13(2), 13(1)(d) - Trap laid in the Court premises on working days cannot be organized without permission of the Judge who is In-charge of the Administration of such Court or the Principal District Judge or High Court. (Para 61 - 62)

Shridhar Gangaram Chavan vs. The State Of Maharashtra

2016 ALL MR (CRI) 88

JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000

बाल न्याय (मुलांची काळजी व संरक्षण) अधिनियम, २०००

244. CLAIM OF JUVENILITY CAN BE RAISED AT ANY STAGE.

विधी संघर्षित बालक असलेबाबतचा दावा सुनावणी दरम्यान कोणत्याही क्षणी करता येतो.

J.J. (Care & Protection) Act, S. 7A, 15, 20, 64 - Criminal trial - claim of juvenility can be raised at any stage of the proceedings and even after disposal of the case - When such claim is raised, Court has to conduct the necessary inquiry to determine the age of the claimant to a certain whether the claimant was juvenile on the date of commission of the offence. (Para 7)

Saheb Sopan Kale vs. State Of Maharashtra

2008 ALL MR (CRI) 1690

NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCE ACT, 1985.

अंमली औषधी द्रव्य व मन:प्रभावित पदार्थ अधिनियम, १९८५

245. NDPS - GUIDELINES FOR RECOVERY PANCHNAMA

या कायद्यांतर्गत जप्ती पंचनाम्याबाबतचे मार्गदर्शन

NDPS Act, S. 8, 67, 15(c) - Recovery Panchnama not signed by accused is illegal - this generates a doubt in the mind of the court that, the document so produced and marked in the evidence may not be the original statement. (Para 8)

Radhey Shyam vs. Union Of India

2012 CJ(SC) 1166

246. NDPS ACT :- RIGHT OF ACCUSED - TO BE SEARCHED BEFORE GAZETTED OFFICER OR MAGISTRATE

आरोपीची अंग झडती ही राजपत्रित अधिकारी किंवा न्याय दंडाधिकारी यांचे समक्षच घेण्यात यावी.

NDPS Act, S.50- Search of person of suspect - Asking suspect to give his consent for search by police - Does not constitute compliance with mandatory provision of S. 50 - S. 50 make it imperative for police officer to inform suspect of his right to be searched before Gazetted officer or Magistrate - Failure to so inform vitiates conviction and sentence. (Para 11 - 12).

Suresh and Others vs. State of M. P.

2012 AIR SCW 6495

247. NDPS - GANJA MEANS

गांजाची परिभाषा

NDPS ACT, S. 42, 50, 57, 2(iii)(b) - Seizure of contraband - Definition of word "ganja" as used in Section 2(iii) (b) of NDPS Act imply the flowering tops - Seeds and leaves are excluded from the operation of the definition of word "ganja" only when the same are not accompanied by the flowering tops or the fruiting tops - When the leaves and seeds were accompanied by the fruiting tops then it will have to be said that the seized stock was of ganja.(Para 15)

Sk.Tassu s/o. Sk. Anwar & Another vs. State of Maharashtra

2008 ALL MR (CRI) 437

248. NDPS - HEAD CONSTABLE CAN TAKE THE SEARCH

या कायद्यांतर्गत पो. हे. कॉन्स्टेबल झडती घेऊ शकतात.

NDPS Act, S.42, 50 - Search and seizure - Notification dated 14-11-1985 issued by the Home Department of Government of Maharashtra shows that all Police officers above the rank of Head Constable are authorized to take search under N.D.P.S. Act - Head Constable was empowered to conduct the search of the appellant. (Para 6)

Sherkhan s/o. Salbatkha vs. State of Maharashtra

2007 ALL MR (CRI) 1980

249. NDPS- SEC.50 - CHANCE RECOVERY -NON COMPLIANCE OF REQUIREMENT - NO EFFECT

आकस्मीकरित्या केलेल्या जप्तीचे वेळी कलम ५० चे पूर्ततेची आवश्यकता नाही.

NDPS Act, S.50- Search and seizure - Accused was noticed by police by chance while patrolling in routine manner - Police found something suspicious about accused hence she was searched - Since there was no specific information that accused was in possession of narcotic drugs failure to comply with requirement of S. 50 would not be relevant. (Para 12)

Smt. Satyabhama Kishan Kardak v. State of Maharashtra

2013 CRI. L. J. 2968

EXPLOSIVE SUBSTANCE ACT, 1908
स्फोटक पदार्थ (द्रव्य) अधिनियम, १९०८

250. CONSENT MUST BE BY D.M., POWER CAN'T BE DELEGATED FURTHER

जिल्हा दंडाधिकाऱ्यांची पूर्व परवानगी आवश्यक ; सदरचे अधिकार हे इतरांना निर्गमित करता येत नाहीत.

Explosive Substance Act, S. 7 - State Government cannot further delegate it to Additional District Magistrate - Moreover, power which has been delegated to District Magistrate cannot be exercised by Additional District Magistrate simply because he is invested with all powers of District Magistrate. (Para 5 - 6)

State of M.P. vs. Bhupendra Singh

AIR 2000 S. C. 679

251. CHEMICAL ANALYST (C.A.) REPORT IS MUST

रासायनिक परिक्षण अहवाल आवश्यक आहे.

Explosive Substance Act, S. 5 - Country made pistol, cartridges and other explosives recovered - Appellants convicted u/s. 25, 25A, 26 and 35 of Arms Act, 1959 & Section 5 of Explosive Substances Act - Prosecution failed to prove its case beyond all reasonable doubts - as there was no report of any chemical examiner to show that powder recovered from the house of appellants was explosive - Accused acquitted. (Para 10)

Muni Singh and Others vs. State of Bihar

2006 Cr.L.J. 88

MENTAL HEALTH ACT, 1987
मानसिक आरोग्य अधिनियम, १९८७

252. DUTY OF POLICE

या कायद्यांतर्गत पोलीसांची कर्तव्ये

Mental Health Act, S. 24 - Powers and duties of police officers in respect of certain mentally ill persons.- Every officer in charge of a police station, - May take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill As to be incapable of taking care of himself. (Para 10)

Asha Shamandas Bajaj vs. Meera Borwankar, Special Inspector General of Police, Pune

2008 ALL MR (CRI) 3313

MAHARASHTRA MONEY LENDING (REGULATION) ACT, 2014
महाराष्ट्र सावकारी नियमन अधिनियम, २०१४

253. MAHARASHTRA MONEY LENDING (REGULATION) ACT - MERE SINGLE TRANSACTION - IS NOT SUFFICIENT

म. सा. का. अ. कलम – ३९, ३(२) – फक्त एकच व्यवहार पुरेसा नाही.

Maharashtra Money Lending (Regulation) Act, 2014 - Section 39, 3(2) - In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner - Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was involved in "business of money lending" without license. (Para 11 - 13)

Mandubai Vitthoba Pawar vs. State of Maharashtra & Others

2015 (12) LJSOFT 15

MAHARASHTRA PREVENTION OF DANGEROUS ACTIVITIES (MPDA) ACT, 1981

महाराष्ट्र झोपडपट्टी दादा, हातभट्टीवाले, औषधी द्रव्यविषयक गुन्हेगार व धोकादायक व्यक्ती यांच्या विघातक कृत्यांना आळा घालणेबाबतचे अधिनियम , १९८१

254. MPDA - EFFECT OF DELAY IN COMMUNICATION TO DETENU

प्रतिबंधकास, प्रतिबंधक कारवाईची माहिती विलंबाने दिल्यास त्याचा प्रतिबंधक कारवाईवर प्रतिकूल परिणाम होऊ शकतो .

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 - Section 3(1) - Merely on account of delay in communicating the approval order either to the petitioner or to the jail authorities would not vitiate the order of detention. (Para 4).

Sheikh Hasan s/o. Sheikh Husain Alias Nanika Hasan vs. State of Maharashtra

2012 ALL MR (CRI) 1106

255. COPIES OF IN CAMERA STATEMENTS - NON SUPPLY OF - NOT FATAL THE CASE

नियोजित प्रतिबंधकास गोपनीय साक्षीदाराचे जबाबाची प्रत न दिल्यास त्याचा प्रकरणावर कोणताही परिणाम होत नाही .

Mah. Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 - Section 3(1) - If the detenu claims that he was not supplied with copies of six in camera statement, that will not be prejudicial to him as the order of detention is separable on two or more grounds and non-supply of such statements would not be fatal (Para 11, 22)

Rushikesh Tanaji Bhoite vs. State of Maharashtra & Others

2011 ALL MR (CRI) 2081

256. LEGAL ASSISTANCE TO DETENU NOT HIS RIGHT - IT IS THE DISCRETION OF THE ADVISORY BOARD

कायदेशीर मदत ही प्रतिबंधकाचा मुळ अधिकार नसून, त्याबाबतचे अधिकार न्याय समितीकडे आहेत.

Mah. Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 - S. 3(2) - Detention order - Allowing assistance to be given by a legal practitioner to the detenu - Not the right of the detenu but it is the discretion of the Advisory Board - Petitioner did not make any request to the Advisory Board for permitting him to take assistance of legal practitioner - No substance in the argument that the grounds of detention resulted in misleading the detune about his right to make representation to Advisory Board and request the Advisory Board to allow him to take assistance of a legal practitioner. (Para 12 - 13)

Mandar Ajit Borkar vs. Commissioner of Police, Brihan Mumbai & Others

2012 ALL MR (CRI) 2166

NOTARIES ACT, 1952

नोटरी अधिनियम, १९५२

257. NOTARY CAN'T BE HELD GUILTY

गुन्ह्यासंबंधी नोटरीमार्फत साक्षांकित केलेल्या प्रतीच्या अनुषंगाने प्रत्येक वेळेस नोटरीस आरोपी करता येत नाही.

Notaries Act, S. 13 - While notarizing, he was not expected to know the genuineness of the party, as it is the Advocate to whom the Notary identifies who has identified the executant - Advocate who has identified the said person has not been prosecuted - Petitioner as a Notary has no other reason to travel beyond the scope of notarizing the document without there being any personal involvement - Section 13 of the Notaries Act takes care for the protection extended to such acts done during the course of performance as a notary. (Para 4 - 6)

Ayaz Ahamed Khan vs. State of Maharashtra & Another

2012 (3) BOM.C.R. (CRI) 611

IMMORAL TRAFFIC (PREVENTION) ACT, 1956
अनैतिक व्यापार (प्रतिबंध) अधिनियम, १९५६

258. OWNER / OCCUPIER CAN BE MADE ACCUSSED
या कायद्यांतर्गत घरमालक किंवा घराच्या कब्जेवहिवाटीतील व्यक्तीस आरोपी करता येऊ शकेल.

PITA S. 3, 4, 5, 7 - Hotel owner/occupiers who had let the hotel rooms available for the accused persons as occupiers either on account of ownership or user/occupier of such room, for use of prostitution would also fall in the definition of "running brothel" - Act of the accused running the brothel becomes punishable under proviso (1) to Section 5(1)(b) of PITA (Para 71 - 77)

Raghunath Ramnath Zolekar vs. State of Maharashtra
2013 ALL MR (CRI) 1023

PREVENTION OF CRUELTY TO ANIMALS ACT, 1960
प्राण्यांना क्रूरतेने वागविल्यास प्रतिबंध करण्याबाबतचे अधिनियम, १९६०

259. CUSTODY OF ANIMAL
प्राण्यांचा कब्जा देणेबाबत.

Prevention of Cruelty to Animals Act, 1996

Prevention of Cruelty To Animals Act, S. 5 - Seizure of animals - Custody of - Court should make interim arrangement so as to see that till disposal of the case, cattle's are kept in the hand of a person or authority, which would be able to take appropriate care and welfare and wellbeing of the said animals is protected. (Para 14)

Jivdaya Pashupakashi Saurakshan and Sanwardha Sanstha vs. State of Maharashtra .
2009 ALL MR (CRI) 3230

CONSTITUTION OF INDIA
भारताचे संविधान

260. ARTICLE 19(1) (A) : FREEDOM OF SPEECH - EXPLAINED

अभिव्यक्ती स्वातंत्र्याचा अर्थ

Constitution of India, Art. 19 (1) (a) - Freedom of speech - Mother of all other liberties - It is bulwark of democratic Government - This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion of social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press. (Paras 10, 23)

In re Ramlila Maidan Incident, vs. Home Secretary, Union of India & Others

2012 Cr.L.J.3516

MAHARASHTRA (BOMBAY) PREVENTION OF GAMBLING ACT, 1887
महाराष्ट्र (मुंबई) जुगार प्रतिबंधक अधिनियम, १८८७

261. GAMING - IN PRIVATE PLACE - NO OFFENCE

वैयक्तिक जागेत जुगार खेळणे गुन्हा होत नाही.

Prevention of Gambling Act, S. 12 - Open lawn in front of cottage, privately owned - not a public place. (Para 4, 7)

Kirit vs. State of Maharashtra

2012 ALL M R (Cri.) 3593

262. RUMMY - NOT GAMING

रम्मी हा जुगार नाही.

Prevention of Gambling Act, S. 12 - Game of rummy is not game, entirely of chance and it's mainly is a game of SKILL. (Para 12)

State of A. P. vs. K. Satyanarayana

AIR 1968 S. C. 825

PREVENTION OF CHILDREN FROM SEXUAL OFFENCE ACT, 2012

लैंगिक अपराधांपासून बालकांचे संरक्षण अधिनियम, २०१२

263. RECORDING OF STATEMENT OF VICTIM CHILD

बालकाचे जबाब नोंदविणेसंबंधीची मार्गदर्शक तत्वे.

POCSO Act, S.24 - statement of victim child - not recorded at her place of residence by a woman police officer - not fatal - Attempt to commit rape on the minor victim girl - Statement recorded by a male police constable who was in uniform - Section 24 of POCSO Act provides that the statement of the victim child shall be recorded usually at her place of residence, as far as practicable by a woman police officer not below the rank of sub-inspector; and the police officer, while recording the statement, shall not be in uniform - Said provisions are made for benefit of the victim and not for benefit of the accused - Provisions of Section 24 are not mandatory and breach of the provisions would not vitiate the trial -Though the procedure prescribed u/s. 24 of POCSO Act is not followed but it cannot be used to benefit the accused. (Para 12, 13)

Damodar Himatji Dongare vs. State Of Maharashtra

2015 ALL MR (CRI) 4825

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महाराष्ट्र पोलीस प्रबोधिनी, नाशिक