K.R. MANGALAM UNIVESITY

INTERNSHIP PROGRAM REPORT

7th March 2022 to 15thTH April 2022

Interned Under: Hon'ble Mr. Justice AM Khanwilkar,

Judge,Supreme Court of India

22nd February 2023 to 22nd May 2023

Interned Under: Mr. Vinod Kataria (Advocate),

Former President of the Bar Association, District Courts, Gurugram, Haryana

Submitted By: -

Shiv Bhatnagar

Roll No.: 2005230001

SEM: VI

COURSE: LLB (Hons.)

VK
VINOD KATARIA
Advocate

22nd February 2023

Mr. Shiv Bhatnagar
K.R. Mangalam University
6th Sem, 3rd Year, LLB(Hons.)
Roll No. 2005230001

Dear Shiv Bhatnagar,

We are pleased to offer you the position for a Law Intern with Mr. Vinod Kataria. Please find the following confirmation of the specifics of your internship:

Position Title: Law Intern
Start Date: February 22, 2023
End Date: May 22, 2023

Sincerely,

Vinod Kataria
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SCHOOL OF LEGAL STUDIES

K.R. Mangalam University

ACKNOWLEDGEMENT

I would like to express my greatest gratitude to all those who directly or indirectly helped and supported me throughout the internship programmes.

Firstly, I am highly indebted to our teacher Ms. **Gargi Singh Ma'am** for her guidance and constant supervision as well as for providing necessary information regarding the project.

I would also like to extend my gratitude to our Dean, **Dr. Inderpreet Kaur Ma'am** for giving me a chance to work on this project.

Finally, I would like to thank **Hon'ble Mr. Justice AM Khanwilkar** (Retd.), **Mr. Vinod Kataria**, my grandfather **Hon'ble Mr. Justice VP Bhatnagar** (Retd.), my uncle **Hon'ble Mr. Justice Harkesh Manuja** (Judge, P&H HC), **Shri Chirag Bhanu Singh** (District & Sessions Judge, Himachal Pradesh), my wife **Mahima Bhatnagar**, rest of my Family, Friends & team members for their continued support and coordination in this project.

Internship Work

I have attached my Certificate of Internship under Hon'ble Mr. Justice AM Khanwilkar, at the end of the project.

My Certificate of Internship under Ld. Counsel Shri Vinod Kataria is still pending and will be given after the summer holidays.

However, I have attached my offer letter for the Internship under Shri Vinod Kataria.

Please Note: The work below is confidential in nature.

Court Hearings...

PMLA Matters

9th March 2022

By Shiv Bhatnagar, Law Intern

Concluding Arguments by Mr. Tushar Mehta (Solicitor General of India)

Section 45 & its Validity

SGI refers to a Judgment in regard to Section 45.

Justice Khanwilkar asks him which note? Note 4?

SGI replies in affirmative and says Note 4 last note My Lord which says arrest and bail with safeguards. He states that on page 20 he has already pointed out the legitimate state interest provide for stringent conditions. He then invites the attention of the Hon'ble Judges to ***AK Roy v. Union of India*** para 34 and page 21 (SGI's Compilation).

He further states *"That the liberty of the individual has to be subordinate within reasonable bounds to the good of the people."*

He recalls that he read the statement of objects and reason that this is considered so serious that it not only affects the economy of one nation or other nations but the sovereignty of the nation. Punishment is one of the indicators (the years, the quantum of punishment) is not the sole indicator to decide the severity of the offence, which is at page 21.

The SGI request the Hon'ble bench to see page 23 para 45, where he refers to the highlighted section of ***Mohamed Hanif Qureshi v. State of Bihar:***

"The Courts, it is accepted must presume that the legislator understands and correctly appreciates the needs of its own people, that its Laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds, it must be borne in mind that the legislature is free to recognize degrees of harm and may confined its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of Continuality the Court may take into consideration matters of common knowledge, matters of common report of history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

The SGI then emphasizes on the peculiar nature of the offence which he has already explained in length before.

The SGI then refers to **Talab Haji Hussain Judgement** at para 49. Where the interest of the prosecution as well as the accused are balanced. Prosecution interest is essentially public interest My Lord. The SGI reads an extract from the Judgement where he concludes that the **trial must be fair to the accused and must also be fair to the prosecution, the test of fairness in a criminal trial must be judged from this dual point of view.**

SGI then refers to para 51 and states that the gravity of the offences is one of the concepts. He submits that it is stride Law and that the gravity of the offence and the role played by the accused is not alien concept in matter concerning bail. He further submits that it is settled Law that economic offences constituting a class apart and need to be visited with a different approach in the matter of bail. The classification of economic offences in a different class itself is a clear jurisprudential recognition of the gravity of the offence being judicially recognized as an extremely relevant factor while considering matters regarding the bail. The categorization of any economic offence is an exercise which depicts the gravity of such offence. **Economic offence having deep rooted conspiracy and involving huge loss of public funds need to be viewed seriously and considered as grave offences, affecting economy of the country and posing serious threat to the financial health of the country.**

SGI requests that My Lords come to page 26 (bottom section). SGI states the classification of a separate procedure and separate bail provision and how it is **not arbitrary.**

SGI argues that Section 45 independent of **Nikesh Tarachand Shah case,** as it stands today in its modified form does not offend Article 14.

SGI states that there is a reasonable basis for classifying a particular category of offences for being treated differently for the purpose of grant of bail. The SGI then refers **Kedarnath Bajoria Judgement** and explains that it appears to be a landmark judgement and requests the Hon'ble Judges to see the highlighted part. He further states that the Hon'ble Judges were assisted with the underline policy of the Act, the National policy. How it is a national response to a global call to tackle this menace. He the reads the highlighted section of the Kedarnthath Bajoria judgement and explains how Section 4 of the said Act was found to be reasonable with regards to its purpose, preamble and the gravity of the offence. It was then stated by the SGI that the policy, historical background of the Act and its whole architecture or Section 45 or any other provision does not violate Article 14. Same thing is reiterated in Special Courts Bills (para 61).

The SGI requests to take a glance at para 62 of page 29, and refers to **Kartar Singh Judgment,** for the purpose of classification of TADA and non-TADA offences with regard to Article 14. Where the Hon'ble Supreme Court said that there is a reasonable basis for classification, there is a rationale and there is an object which is sought to be achieved.

SGI refers to **Charanjit Lal Sahu Judgement,** where the Hon'ble Supreme Court has laid down Seven propositions. The presumption would apply to all sections. He explains that the presumption is always in favor of the constitutionality of an enactment since it must be assumed that the legislature understands and correctly appreciates the needs of its own people and states that **the principal of equality does not mean that every Law must have a universal application for all persons who are not by nature who are not in the same**

position and varying needs of different classes often require separate treatment. The SGI reads an extract from the said judgement.

SGI refers to ***National Investigation Agency vs Zahoor Ahmad Shah Watali,*** authored by Hon'ble Justice A.M. Khanwilkar (Page 4936 of SGI's compilation no. 10) having similar twin conditions while realising a person on bail in UAPA. He further explains the summary of the case where the Hon'ble High court had released the accused on bail and the Hon'ble Supreme Court set aside the order of the Hon'ble High Court. The SGI reads out a part of the Judgement (page 4958, para 21 & 23). **The SGI emphasizes that in this case the offence was at a lower threshold than PMLA.**

The SGI reads Sub Section 5 Proviso. The SGI refers to Para 23 where the Court may determine whether the accused would be prima facie guilty or otherwise. He also stresses on the point that Special Acts have special provisions and procedures than the normal procedures due to the special sense of the offence that is why a separate act is enacted. Notably under special enactment such as TADA, MCOCA and NDPS Act the Court is required to record its opinion that there are reasonable grounds for believing the accused is not guilty of the offence, there is a degree of difference between satisfaction to be recorded by the court that there are reasonable ground for believing that the accused is not guilty of such offences and the satisfaction to be recorded for the purpose of 1967 Act, that there are reasonable grounds for believing that the accusation against such person is prima facie true. By its very nature the expression prima facie true would mean that the material evidence collected by the investigating agency in reference to the accusation against the accused concerned in the First Information Report must prevail until contradicted or disapproved by other evidence. Here Section 24 statutorily provides for presumption unless rebutted. **Ranjit Singh Judgement** (para 36-38).

SGI refers to para 24 at page 4962, he argues that the exercise to be undertaken by the Court at this stage giving reasons for grant or non-grant bail is markedly different from discussing merits or demerits of the evidence, **the elaborate dissection of evidence need not be done at his stage**. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence.

The SGI further explains para 26 & 27 of page 4963 (4th line and below) and reads out from the compilation regarding the pre chargesheet scenario (material in possession).

<u>Section 436A</u>

The SGI recalls a query asked by the Hon'ble judges regarding **Section 436A**.

The SGI starts with, how Money Laundering is different from other ACTs as it usually takes place in other countries (cross border). Secondly, there are many Tax Haven countries where it is easy to park illicit money and they give you shelter by way of giving citizenship

with which India does not have any extradition treaty. Thirdly, due to the international nature of the offence, the accused specially the main accused has his infrastructure where he parks his money or plans to escape. Fourthly, it is a premeditated offence, as it never takes place in the heat of the moment and requires long and careful planning. It is a continuing offence.

Justice Khanwilkar: Those conditions would be relevant for bail. This is of course bail but a statutory bail similar to 167. Default Bail as they say. So.....?

SGI replies: I will assist your Lordships; I have 2-3 submissions.

SGI states that Section 45 starts with "Notwithstanding anything contained in the Code of Criminal Procedure" so this ousts Section 436A.

SGI now refers to sub-section 2, and states that where ever the legislature wanted to incorporate the provisions or CrPC it has done so and elaborates on that.

Justice Khanwilkar: As per sub-section 2 is concerned it applies to limitation. For example, in 437 or 439 as the case may be. Now it is not debarring the possibility of taking recourse to remedy under 436A which has come by way of amendment and there is good reason for which that provision has been introduced. The experience is that the trials are not proceeding. The trials remain pending, investigation reports are not filed in time. All these are different logistical matters, which has been experienced and was very recently in public domain, there was 7 years of total punishment and the accused has already undergone 6 years during trial. Now if this is the state of affairs then there has to be some balancing.

SGI: I bow down my lords. I will address that concern of your Lordships.

Justice Khanwilkar: There is presumption about validity then there also must be presumption about upholding the rights of the accused.

SGI: I bow down to that my Lord and that is a concern of the State also.

SGI gives legal submission and explains that the legislature wants to exclude 436A.

Justice Maheshwari: 436A was introduced after enforcement of PMLA. 436A came in affect from 23rd June 2006. That was after the enforcement of PMLA.

SGI: My Lord but the PMLA could have been amended, if the legislature wanted to.

Justice Khanwilkar: That is right it has not been amended.

Justice Maheshwari: If it has not been amended then what is the implication of this?

SGI: The implication is Law and your Lordships are on practical difficulties and substantial...

Justice Khanwilkar: We want to be realistic. Pragmatic approach. Balancing both the prosecution as well as the accused.

SGI: My Lord that right your Lordships can read in Article 21, not as a right under 436A. That is going to be my next submission.

There can be several provisions in CrPC which may come by way of an amendment. The legislature is free to suitably amend PMLA applying those principals. The legislature has not chosen to apply for 436A as a statutory right under the CrPC. It merely says the limitation under 437.

Justice Khanwilkar: Is it possible to say that 436A is a special mechanism provided. And, therefore, that special mechanism which has come subsequent to PMLA 2002 Act, must prevail.

SGI: I am with your Lordships, so far as, that interest of the accused must be safeguarded.

Justice Maheshwari: Just one thought Mr. Mehta, you may respond to that also, Section 45 starting with non-obstinate well so far as bail aspects are concerned. 437,438 and 439 may be excluded but 436A is operating and covering a very different field. This is whether we would be taking that 45 excludes 436A also leaving aside it has come later. It says maximum period for which under trial prisoner can be detained.

SGI: My answer is this your Lordship, if my Lordships were to read any provision regarding bail with 436A or any other provisions, your Lordships would necessarily be ignoring the non-obstinate clause.

Justice Khanwilkar: Yes, we need to ignore it as it has come subsequently to the Act.

SGI: I have an option your Lordship which can be considered by my Lord.

Any provision of CrPC in ignorance of the non-obstante clause will be at several complications in several provisions especially those which are also starting with non-obstante clause. Instead, what is troubling your Lordships and can be taken care of is by reading that right under Article 21 not statutory right under 436A.

First is **SC Legal Aid Committee**, 1994 Volume 6 SCC 731. There was no statutory right. SGI refers to page 748, where the Court read the right of prolonged incarnation under Article 21 not as a statutory right. The judgement further said that they are not granting bail under the Special Court's power or interfering with the Act. If the accused misuses his bail the Special Court has the power to cancel it.

The SGI state the example of foreign nationals also being extradited to India under PMLA like Christen Mitchell. Now days crossing borders by different means has become easier to cross, merely someone depositing his passport won't stop him to be a fugitive. There could be many offenders in one offence, apart from the main offender, like someone who could have forged the document or concealed the money etc. Ultimately all will be guilty under Section 3 but their role or intent will be different and much lesser than the main accused.

Shaheen Bagh Association judgement, 1996 Volume 2 SCC H616 (Para 11,12,13 & 14). Section 45 must be read under Article 21. To strengthen his argument the SGI reads the said paragraphs.

Based upon the above cases and yardsticks the SGI requests the Hon'ble Judges to read section 436A and consider that it should not be made a statutory right.

Justice Khanwilkar: Mr. Solicitor General, Section 45 sub-section (1), the non-obstante clause has been amended during the same time as 436A. It was done simultaneously. So, when this amendment is carried out in S. 45, the legislature was conscious that the amendment was being made in 436A CrPC.

SGI: Yes, my Lord but in my respectful submission, this will be in my favour, as it did not specifically introduce 436A in Section 45.

Justice Khanwilkar: The limitation which is referred to in sub-Section (2) of Section 45, that is the limitation which will not apply to cases where 436A gets attracted.

Justice Maheshwari: This is one way of looking at it, Mr. Mehta, another thought for your response, you are responding assuming that we are reading 436A into 45 or somewhere tinkering with 45. Leave aside 45, never the less Section 65 is there in PMLA. All other provisions of CrPC do apply, this particular 436A, why would we not take it be an entirely different provision. Its area of operation is maximum detention period. As you have indicated we refer it to Article 21. Well, 436A has its foundation in Article 21. If we read the basic principles of Article 21 also, then 436 comes into operation. If it is not specifically excluded why it would not apply? That is how we are looking at this.

Justice Khanwilkar: If it is coming under Article 21, then it is a guarantee enshrined in Article 21. Then what is the difficulty in giving that benefit under 436A. It is the same benefit. The substance is same, the format may change.

SGI: I bow down my Lord, but I am sharing my worry, as your Lordships must have noticed I am not opposing the principle or the concerns behind your lordships query. I am only saying that any reading of CrPC provisions in 45 might create problems for us in other non-obstante sections.

Justice Khanwilkar: Mr. Solicitor, as pointed out by my learned Brother, Section 65, (Reading S.65), Have you made any similar provisions to 436A in this Act? if no then we can take clue from there and we can still reason it ourselves. Unless you have made similar provisions in this Act, which is similar to 436A. Then we may reason it out also.

SGI: In that case my Lord, please read 436A.

Justice Khanwilkar: Yes, we are conscious of 436A regime and the prosecutor will still get opportunity to point out at that stage that yes, 50% of the trial is over but for reason ABC he can oppose the bail.

SGI: My Lord, kindly allow me to flag my concern. (Reading the proviso). The proviso says to have continued detention if the Court is satisfied even after half way mark of the trial.

Justice Khanwilkar: Yes, that is right you have the opportunity to convince from case-to-case basis.

SGI: My Lord, kindly keep the larger public interest in mind, the Court will have to consider the potential of the accused to flee or absconding and the chances to tamper with evidence or witnesses will increase many folds. Suppose everyone is the employee of the accused.

Justice khanwilkar: That will depend on every case. If a person is involved in a scam of 1,800 crores, you may have a different parameter for such person. That you can convince the Court. Where as someone who is only named in PMLA because of being a facilitator and handled Rs. 10lakhs or 1 crore, for him there can be separate parameters. That will be case to case basis.

Justice Maheshwari: Mr. Mehta I would like to add something to what his Lordship has indicated, say for example antecedents of a person, that can always be taken up for consideration.

SGI: My Lord please keep the above argument in mind. Section 45 with all its rigours would apply at the time of initial bail. This benefit which your Lordships are considering is only when he undergoes trial for more than half of the term.

Justice Khanwilkar: Yes, you can point out to the Court in case the accused or co accused are deliberately causing delay in the trial. That can be a ground for rejection. It is just to apply not as a matter of right he gets it.

SGI: Your Lordships may consider that 436A may not apply but the principles underlying may apply.

Justice Khanwilkar: No, that we are going towards Article 21, 436A sceheme is an independent scheme under CrPC dealing with specific situation. Which has not been modified by the PMLA and therefore 436A will also apply as 167 applies, by virtue of Section 65 of PMLA. We can reason out that way.

SGI: Only thing my Lord kindly ensure this is not applied mechanically. The above are my submissions my Lord.

Justice Khanwilkar: Nobody from the other side has also argued this. But this concerns balancing of rights as well as the public interest.

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PMLA Matters

15th March 2022

Part-I

By Shiv Bhatnagar, Law Intern

Re-joinder by Mr. Kapil Sibal, Senior Advocate

Introduction

Mr. Kapi Sibal states that he will be responding on two main points.

1. Section 3, PMLA. (Part-I)
2. Issues relating to Code of Criminal Procedure. (Part-II)

Mr. Sibal begins his argument by defining the objective of Vienna Convention & the Palermo Convention. He states that the Vienna Convention deals with drugs (psychotropic substances) and the Palermo Convention deals with organized transnational crime.

He states that these two Convention have no application to the interpretation of Section 3, PMLA.

The Senior Advocate further states that the Hon'ble Supreme Court has held in several Judgements that if there is a Parliamentary legislation then the Hon'ble Supreme Court will only look into the Parliamentary legislation and not seek to interpret it in the context of any international convention. Apart from the facts of the interpretation itself, that projecting or claiming tainted money and untainted money is actually at the heart of the offence of money laundering.

Mr. Sibal makes two fundamental points,

1. At the heart of Criminal Jurisprudence is the fundamental Constitutional premise, that you can not start an investigation

without information that you record and without the accused knowing about the information that you record.
The reason behind the above reasoning is, that under the CrPC, in the absence of the accused knowing the information he will not be able to exercise his rights of anticipatory bail or regular bail in the context of any piece of information that is kept within the confines of the Enforcement Directorate, the prosecuting agency and the accused is not informed about the same. Therefore, any statute can not be interpreted in respect of information available with the agencies concerned which is not disclosed to the accused for the exercise of his Constitutional rights in the context of the CrPC.

2. What is the Code of Criminal Procedure?
The CrPC is to regulate investigation. It is a procedure through which you do not allow the Police officer to do what he likes. That is why there is Judicial oversight, provisions in CrPC like maintaining a Case Diary, paginate etc. They are necessary so that the Police Officer can not fudge the investigation because your day-to-day progress will be reflected in the Case Diary. Mr. Sibal explains in depth on how to regulate the conduct of the Police officer during an investigation so that it can be consistent with Article 21 of the Constitution. That is the fundamental premise of Criminal Jurisprudence.

Mr. Sibal states:

"If the State says that it is not bound by this Procedure at all, then there is no procedure. No procedure can't be procedure established by Law. Absence of procedure can't be procedure established by Law. In fact, I am going to demonstrate to your Lordships, that the ED officer has much greater powers than a police officer."

A Police officer's power is regulated by the CrPC, but in case of ED officers their power to investigate is note regulated by the Code, which gives them excessive powers. Regulated powers of the Code must be read into the powers of ED officer/Director for a fair and just investigation or else there will be an absence of procedure.

The only provision in respect of prosecution is arrest under Section 19, PMLA. The arrest can happen after the investigation or the investigation can continue after the arrest. In case the investigation is prior to the arrest, then what is the procedure to be followed?

In the above condition, the PMLA does not state any specific procedure, it only uses the word investigation. The only provisions in the PMLA, that are inconsistent with CrPC are the provisions related to search, seizure, (S.17 &18), confiscation (S.8), prosecution i.e., filling of a complaint under Section 44 and conviction. He states that there is no provision regarding the procedure of investigation under PMLA.

According to the Senior Advocate, the Government has argued that the ED does not need to follow the CrPC in the said aspect. Mr. Sibal poses three questions to the Government:

1. Where is the provision regarding investigation in the PMLA?
2. What is the procedure that the ED is following which is laid down in the PMLA?
3. Which Sections of the PMLA tells you which procedure is to be followed?

"The ED has been granted powers where they are not to include any statements when they file a complaint, in case the statement is in favor of the accused. These are powers much greater than that of a Police officer. Then the other argument of the Government is that they are not Police officers. I say they are much more than Police officers."

These are two areas that Mr. Sibal wishes to address in todays hearing. The third broad area that Mr. Sibal will address the Lordships is on Section 50.

Mr. Sibal states that one aspect of Section 50 has not been argued by the Respondent at all. Mr. Sibal recalls that he had indicated to the Hon'ble Judges while arguing earlier on Section 50, that there is a difference between proceeding and an investigation. The Senior Advocate explains that Section 50 sub-section 4 stipulates that it is deemed to be a judicial procedure and applies to only a proceeding. And, does not apply to investigation. This said point he raises has not been answered or dealt with by the State.

Section 63(2)(b) of the PMLA stipulates that a person is liable to fine in case he does not tell the truth in respect of a proceeding. This applies to proceedings under Section 5,8 and 13. An investigation can not be a Judicial procedure that is why the word 'investigation' is not mentioned in Section 50(4). Therefore, this question of saying that the statement of the person be recorded is unheard of. It is only reference to a proceeding that a statement has to be signed, that is also reflected in Section 63. In respect of an investigation the PMLA also does not require a signature of the person whose statement is recorded.

Justice Khanwilkar: Mr. Sibal, all this has been argued by you in detail. We have taken note of it. To the extent necessarily the other side has responded to it, that also we have taken note of. If there are gaps, we will have to answer it.

Mr. Sibal: I am only indicating those gaps my Lord.

Justice Khanwilkar: All this has been argued by you. Whatever you have indicated thus far. We have taken note of it.

Mr. Sibal: I have the written submissions of the other side they don't address this issue my Lords. That's all I was saying.

Justice Khanwilkar: We will take note of that, you can highlight that aspect which is not dealt with by the other side. But otherwise, do not repeat your arguments.

Mr. Sibal: Yes, my Lord. I will not make submissions which are a repetition of what I have already argued.

Section 3, PMLA

Mr. Sibal states that the SGI has contended that if projecting the proceeds of any process or activity connected with crime as untainted properties is a mandatory pre condition then the language of Section 3 becomes otiose.

Mr. Sibal responding to the above point states that if the submissions of the SGI is accepted then following consequences will ensue.

1. Without projection or claiming of tainted property as untainted property, possession of proceeds of crime by itself will result in

money laundering. And, the offence under Section 3 will be made out.

2. Concealment, possession, acquisition or use of proceeds of crime will itself result in money laundering. Mere use of proceeds of crime will come under money laundering.
3. The interpretation placed by the learned SGI would amount to rewriting the statute and is contrary to the legislative intent.
4. The legislative intent of the PMLA is to prevent the integration of the proceeds of crime into the financial system of India. The mere acts of concealment, possession, acquisition or use can never amount to money laundering.
5. Further the interpretation place by the learned SGI would amount to the definition of Section 3 being rendered manifested arbitrary, over broad and vague. Even a theft or robbery will result in proceeds of crime. Going by this the ED can add the charge of money laundering in every case of theft or robbery.
6. This would have a drastic and cascading effects on the rights of an individual since the provisions of PMLA relating to bail and investigations are far more draconian than under the CrPC. For instance, when a scheduled offence is bailable, a person can be released on bail as a matter of right under CrPC. However, for the same, merely the act of possession, concealment or retention without any further act or omission the rigors of Section 45, PMLA, will apply.

Mr Sibal sites an example of a person stealing a car in the case of 'Use' in Section 3. "*If he steals the car and simply uses it, it will not amount to money laundering. But if the same person, after stealing the car, sells the car, projecting it to be legitimately purchased by him, he will be committing money laundering*".

It has further been argued by the SGI that the interpretation of 'AND' as 'OR' is consistent with legislative intent. Mr. Sibal states that he has already explained above that how the interpretation is contrary to legislative intent. He further explains that it is a settled proposition that in the interpretation of statutes, all words in the section must be given their full and plain meaning.

To prove the above, Mr. Sibal sites a number of Judgements (like ***AMU v. Mishra***) and has highlighted the relevant areas for their Lordships.

Mr. Sibal further explains:

"One has to read the words of the statute, given their full meaning. One cannot simply render any part of the statute otiose by saying mere possession or acquisition amounts to money laundering. Then you might as well not have "And projecting or claiming it untainted property", need not have those words. My Lords the statute should have stopped at that."

Mr. Sibal referring to the Vienna & Palermo Conventions in respect to PMLA, says:

"We are dealing with psychotropic substances in case of Vienna and transnational organised crime including more than one state and a structured group of three or four people so far as Palermo is concerned. We are not dealing with any other offence in the schedule to the PMLA. Any offence included in the schedule will have to be tested on the basis of whether inclusion, application of section 3 is fair, just and reasonable because it must satisfy both the test under 14 and 21".

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Briefs Prepared...

Kalpanaben (Petitioner) V. RAMESHCHANDRA BUNKAR & OTHERS (RESPONDENT)

Criminal SLP arising against the final order passed by the Hon'ble High Court of Gujrat at Ahmedabad, dated 31.01.2019, quashing and setting aside the FIR filed by the Petitioner against the Respondent for offences punishable under Sections 498A, 323 and 114 of the IPC and under Sections 3 and 7 of the Dowry Prohibition Act, 1 061.

LIMITATION: The Petition is within time.

FACTS:

1. Petitioner married the son of Respondent (1) Mr. Vikas Rameshchandra Bunkar on 15.02.2015. The Petitioner alleged harassment meted out to her by her husband, in-laws and the relatives of the husband.
2. According to the Respondents, the Petitioner came back to her Parental home after marriage at Ahmedabad, after making quarrels with her husband. The Respondent and his son Vikas (husband of petitioner) and other relatives came to Ahmedabad to take the Petitioner back in April and May, 2015, but she refused to go back to her matrimonial house.
3. On 16.10.2015 the Petitioner filed a complaint under Sections 498A,323,294B,298,330,508,506(1) and 114 of the IPC and Section 3 and 7 of the D.V. Act before the Mahila Police Station, Mithakhali, Ahmedabad. The Petitioner subsequently filed a Criminal Misc. Application in the Family Court under Section 125 of the Code for Maintenance.
4. A settlement was arrived at between Vikas (Husband) and the Petitioner on 20.01.2016 and both of them started living together at Pune. Thereafter, all the above complaints were withdrawn by the Petitioner on 18.06.2016.
5. The Petitioner again filed an FIR against the in-laws and relatives of the husband before the Ramol Police Station being C.R. No. I05/20 17 for offences punishable under Sections 498A, 323 and 114 of the IPC and under Sections 3 and 7 of the Dowry Prohibition Act, 1 061.
6. On 21.06.2017 the Respondent filed a petition in the Hon'ble Gujrat High Court, that the FIR may be quashed and set aside. The Respondent submitted that the Petitioner has made contrary claims in both the complaints and that the period of alleged cruelty meted out by the Respondents does not corelate.

IMPUGNED JUDGEMENT:

On 31.01.2019, the Hon'ble High Court of Gujrat and set aside the FIR filed by the Petitioner. It held:

1. The complaints filed under the provisions of D.V. Act and another filed under Section 498A of the IPC would clarify that the complainant's (Petitioner) original complaint is not consistent in facts. The applicants (Respondent in this SLP) were not staying with her (Petitioner) husband. It is also difficult to comprehend that in the complaint under the D.V. Act, she has made allegations against 10 relatives of the husband whereas in the second complaint the allegations are made against 8 relatives.
2. Vague and general allegations are made against the applicants (Respondents) by her (Petitioner). As there are no specific allegations leveled against the relatives of the husband. The FIR is hereby quashed and set aside.

GROUNDS:

1. The Hon'ble High Court has made a great error in its Judgement and have overlooked numerous facts, for instance the Petitioner wanted to go back in April-May 2015 but the husband did not want her and the Respondent filed an application stating the same in the Police Station. Only when the Petitioner filed her first Complaint, was she able to go back to her matrimonial house.
2. The Hon'ble High Court failed to consider that the Petitioner's in laws are all part and parcel of the harassment meted out to the her.

INTERIM RELIEF:

1. In the interest of justice, the final Judgment and Order of the Hon'ble High Court of Gujarat dated 31.01.2019 be stayed.

Main PRAYER:

1. To set aside the order of the Hon'ble Gujrat High Court and to restore the FIR.

- By Shiv Bhatnagar (Law Intern).

AJAY JOSE & ORS (PETIONER) V. STATE OF TAMIL NADU & ORS (RESPONDENT)

Writ Petition (Civil) No. 86 of 2021 filed under Article 32 of the Constitution of India.

The Petitioner evoking Article 21, seeks directions from the Hon'ble Supreme Court of India to issue a writ directing the respondents (the State) to construct a new dam in place/alternative of Mullaperiyar dam which is 127 years old and can have a catastrophic effect on the lives and livelihood of about 4 million people in that region.

FACTS:

1. The Mullaperiyar Dam is over 125 years old gravity dam of 53.6 m in height and a reservoir capacity of 443 million m3. It impounds the Periyar River in Kerala State, downstream to Tamil Nadu.
2. It was constructed in 1895 by the British government. At the time of its construction, the intended lifespan of the dam was for 50 years.
3. In 1979, a team of engineers headed by the then Chairman, CWC had made a specific recommendation to construct a new dam as a permanent solution. In 2011, a minor earthquake caused three cracks on the top surface of Mullaperiyar Dam.
4. The safety issues relating to Mullaperiyar are heavily interlinked with the safety of the dams of the Idukki project downstream. Idukki's reservoir capacity is about 74400 million cubic feet of water with a weight of more than 2100 million tonnes. If the Mullaperiyar dam were to collapse, then the Idukki dam project (consisting of the Idukki dam, and two structurally weaker Cheruthoni and Kulamavu dams) is almost certain to give away.
5. Around 4 million people in the lower reaches of Periyar, Azhutha, Meenachilar, Pamba and Manimalayar rivers spreading over 5 districts will be affected. The consequence of the dam collapsing will be catastrophic and will result in huge loss of life and livelihood.
6. The Petitioners do not claim to be experts on this subject but are concerned that there are such contrarian views on this matter by experts. The dam now features in the list of ageing dams and this has been published by UNU-INWEH in its report titled "Ageing Water Storage Infrastructure: An Emerging Global Risk". Reports made by IIT Delhi and Roorkee also deem the structure to be unsafe and at risk.

GROUNDS:

1. 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. The right to life is fundamental to our very existence, without which we cannot live as human beings and includes all those aspects of life, which make a man's life meaningful, complete, and worth living.
2. Article 21 of the Constitution guarantees the right to live with human dignity and no citizen should live under a constant threat of a disaster to happen at any time in the near future. The State shall endeavor to ensure that every possible safeguard is in place to protect its citizens.

PRAYER:

1. Issue a writ (Mandamus) directing the Government of Tamil Nadu to construct a new dam.
2. Directing the Government of Tamil Nadu, the Govt. of Kerala and the Central Government to take necessary steps to strengthen the Mullaperiyar dam till an alternative dam is constructed.
3. Petitioner may be granted some time to produce more evidence on ageing dams and reports of several experts.
4. Directing the States of Tamil Nadu and Kerala and the Central Government to put in place adequate safety mechanisms in event of a disaster.

- By Shiv Bhatnagar (Law Intern)

Biraja Prasad Premananda Nayak and Another (Petitioner) v. State of Odisha and others (Respondent)

LIMITATION: The Petition is within time.

FACTS:

1. On 17.05.2020 the Petitioners was granted licenses for opening of IMFL Off shops in Bhadrak, valid up to 31. 03 .2021.

2. The grant of licenses for manufacture and sale of liquor in the State of Odisha was earlier governed by the Bihar and Orissa Excise Act, 1915. Thereafter, the Orissa Excise Act, 2008 (in short, "OEA") replaced it w.e.f. 01.04.2017. In addition to the Orissa Excise Rules (OER), 2017, which governs the procedure for grant of license and payment of fee in consideration.

3. On 07.01.2021 the State Government, in exercise of the powers conferred by Section 90 read with section 94 of the Odisha Excise Act, 2008, amended Rules 34, 48 and 150 of the Odisha Excise Rules, to permit 'lottery or e-lottery' for the purpose of settlement of Exclusive Privilege under the said Rules.

4. The Petitioner challenged in the Hon'ble High Court of Orissa that the amendment brought to Rules 34, 48 and 150 of the OER vide the Odisha Excise (Amendment) Rules, 2021 passed by the Excise Department of the State Government of Odisha. It was submitted that without any provision in the Parent Act i.e., the OEA, the State Government illegally inserted the words "lottery or e-lottery" to Rules 34, 48 and 150 of the OER. It was stated by the Petitioner that even if the Hon'ble High Court considered the same to be a policy decision of the State, it ought to have tested the same against the principles of due process of law and arbitrariness under Article 14 of the Constitution.

5. It was pointed out by the State Government that the Comptroller and Auditor General of India (CAG) in a report No.9 (Revenue Sector) in the year 2016 recommended as under:

"Government may consider evolving a mechanism to ensure settlement of foreign liquor 'Off shops and Country Spirit shops every year by calling for applications on a fixed consideration money and through draw of lottery instead of renewal of the existing licences to ensure transparency in issue of licenses."

6. It was further stated by the State Government that the grant of license for sale of IMFL would essentially be a matter of policy. The Court should not strike down a policy unless it is arbitrary, irrational or mala fide. The rationale behind the State Government deciding to move to the system of Lottery was to end monopolistic practices and reviving a healthy competition. It was noticed that shops would be run by the same persons for decades. Some of the Petitioners were license holders for the longest periods. They themselves were selected initially through auctions and continued on the basis of renewal annually by 10 to 15% increase of the license fees.

IMPUNGED JUDGEMENT:

On 29.09.2021 The Hon'ble High Court of Orissa at Cuttack, dismissed all connected writ petitions vide a common Judgment.

1. The Hon'ble High Court was of the view that the State Government is not conducting any 'lottery' as understood in the real sense of that term and particularly in the sense in which it is found in Entry-40 of List-I of the Schedule-VII. Therefore, it was not violative of Article 258(1).

2. The Hon'ble Court stated:

"There is empirical data available to the State Government, which has been set out in the replies filed, to show that the system of auction that had been earlier adopted had given rise to its own set of problems. Further, auction as a mode had been discontinued since 2005. The State Government had been renewing the licences earlier settled through lottery annually by fixing the percentage of

increase. The figures of collection of revenue have shown a steady increase since 2005-06. This appears to support the contention of the Government that the fixed licence fee is a better suited method."

3. The Hon'ble High Court stated that the policy of the State to switch over to lottery as a mode of determination of fees for parting with the EP of trade in lMFL through OFF Shops is not irrational and arbitrary.

GROUNDS:

1. The Hon'ble High Court failed to determine that the amendment sought to be made to the Orissa Excise Rules, 201 7 for introducing lottery or e-lottery does not have legislative sanction as there is no provision in the Orissa Excise Act, 2008 which is the Parent Act.
2. The Hon'ble High Court failed to observe that the amendment made to the Orissa Excise Rules is ultra vires the Parent Act.
3. The Hon'ble High Court failed to properly examine that there is excessive delegation of legislative power to the State Government in passing of the Orissa Excise (Amendment) Act, 2021.

INTERIM RELIEF:

Grant stay on the operation of the common impugned final judgment and order dated 29.09.2021 passed by the Hon'ble High Court of Orissa at Cuttack.

PRAYER:

Grant Special Leave to Appeal against the common impugned final judgment and order dated 29.09.2021 in W.P.(C) No.11367 of 2021 passed by the Hon'ble High Court of Orissa at Cuttack.

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By Shiv Bhatnagar (Law Intern)

Logix Supply Chain Solution Pvt Ltd. (Petitioner) v. Ibrahim Electricwala & Anrs. (Respondent)

DIARY NO. 29167-2021

SPECIAL LEAVE PETITION (CIVIL) NO. 4739 OF 2022

LIMITATION: The Petition is within time.

FACTS:

1. On 26.04.2016 the Respondent entered into a registered Leave and License Agreement (Rent Agreement) with the petitioner, to use and occupy the premises situated at Unit No. 15/6, 15/7, 15/8 and 12/8 collectively admeasuring 12,000 sq. ft built up area in building no. 12-15 situated at Indian Corporation Complex, Dapode Bhiwandi, Thane, 421302 Maharashtra.

2. The Respondents are owners of the Suit Property and the agreement was for a period of three years ending on 14.4.2019, with a licence fee (Rent Amount) of Rs. 84,000/- to be paid by the Petitioner every month in advance, with an increment of 5% after every year. The Petitioner took possession of the said property on 15.4.2016.

3. On 18.1.2018, the Respondent filed a Civil Suit for eviction and possession of the property in question on the ground that the Petitioner had allegedly defaulted on rent payments from June 2017, and many of the cheques issued by the Petitioner for payment (from August 2017 to October 2017) were dishonoured for insufficient funds.

4. Simultaneously, the Respondent filed Civil Suit no. 55, seeking to restrain the Petitioner from creating third party rights with respect to the suit premises and to deposit arrears of rent during the pendency of the suit.

5. Subsequently, vide order dated 6.4.2018, the Ld. Civil Judge rejected the aforesaid application for interim injunction and on

20.6.2019 the Ld. District Judge upheld the order passed by the Ld. Civil Judge and dismissed the appeal.

6. On 15.7.2019 the Respondent filed a civil revision petition before the Hon'ble High Court challenging the Trial Court order. Learned counsel for the Respondent submitted that, subsequent to the appointment of the Court Receiver, the Authorized Officer of the Petitioner had handed over possession of the Suit premises.

IMPUGNED JUDGEMENT:

1. Record indicates that the Assistant Superintendent has taken symbolic possession of the suit premises on 14th October, 2021.
2. By an Order dated 11th March, 2021, the Respondent (Petitioner in this Case) has been directed to deposit arrears of license fee of Rs.37,04,400/- before this Court within a period of six weeks from the date of passing of the said Order.
3. The Respondent (Petitioner) has not complied with the said directions. The Directors of the Respondent (Petitioners) company has committed breach of Order dated 11th March, 2021 thereby attracting the provisions of Contempt of Courts Act.
4. Learned Advocate for the Respondent (Petitioner in this Case) therefore, directed to submit the names of the concern Directors of the Respondent company, against whom the contempt proceedings can be initiated.

GROUNDS:

The Hon'ble High Court, at a preliminary stage of trial, has wrongly invoked its revisional jurisdiction and passed the impugned order which has finally decreed the suit for eviction and possession in favour of the Respondents.

The Hon'ble High Court, while passing the impugned orders, has granted a final relief to the respondents, during the pendency of the suit for eviction and possession. The Special Civil Suit No. 55/2018 is pending before the Ld. Civil Judge.

The Hon'ble High Court has wrongly sought to initiate contempt proceeding against the Petitioner and its Directors after having

recorded that the Petitioner has handed over possession of the suit premises in favour of the Respondents.

INTERIM RELIEF:

Pass an order, staying the operation of the interim impugned order dated 27.10.2021 passed by the Hon'ble High Court of Judicature at Bombay.

Pass an order staying the Civil Revision Application no. 541/2019 of the Hon'ble High Court of Judicature at Bombay during the pendency of the instant Special Leave Petition.

PRAYER:

Grant Special Leave to Appeal against the interim impugned order dated 27.10.2021 passed by the Hon'ble High Court of Judicature at Bombay in Civil Revision Application No. 541/2019.

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By Shiv Bhatnagar (Law Intern)

MP Raj Mani Patel (Petitioner) v. State of Madhya Pradesh and Others. (Respondents)

ITEM NO. 10, Diary No. 400-2022-wpc-no-1272022

The Petitioner evoking Article 14,15,16,19,21 & 243 of the Constitution, seeks directions from the Hon'ble Supreme Court of India to issue a writ directing the respondents (the State Election Commission) to hold Panchayat Elections taking in view 52% (approx.) OBC population and accordingly reserve seats in the said elections.

LIMITATION: The Petition is not filed within time.

FACTS:

1. According to the Petitioner, the State of Madhya Pradesh consists of 52% (approx.) OBC population. In Madhya Pradesh, the OBC community stands at 3,66,24,550 out of a total population of 7,26,26,809 according to the 2011 Census. The Petitioner states that the Elections for the Panchayats were held without taking in account the formidable OBC population and no seats were reserved accordingly.

2. On 4.12.2021 the Election Commission approved and announced three-tier phase Panchayat elections in Madhya Pradesh after consulting with the M.P. Government.

3. Subsequently, Manmohan Nagar approached the Hon'ble Supreme Court and the Hon'ble Court directed "*Madhya Pradesh State Election Commission to stay the election process in respect of OBCs seats only, in all the local bodies and to re-notify those seats for General Category*".

4. On 17.12.2021, Madhya Pradesh State Election Commission passed an order for the election process of the post of Panch, Sarpanch, Panchayet Sadasya and Jila Panchyet Padasaya for other backward classes.

5. The Madhya Pradesh State Election Commission passed an order on 18.12.2021 for staying the proceeding of election for the posts reserved for OBC.

6. On 22.12.2021, the Madhya Pradesh State Election Commission passed an order for staying of the tabulation and result of election proceedings.

GROUNDS:

The Writ Petition filed under Article 32 of the Constitution of India states that the process of the Panchayat elections and the orders passed by the State Election Commission are in direct violation of Articles 14,15,16,19,21 & 243 of the Constitution.

PRAYER:

1. A writ be issued in the nature of Mandamus, thereby directing the respondent no. 4 to cancel the order dated 17/ 12/2021, 18/ 12/2021 and 22/ 12/2021, without participation of people of all categories of Madhya Pradesh.

2. A writ be issued in the nature of Mandamus, thereby directing the respondent no .4 to provide maximum reservation to OBC (52 % voting share of the total population of M.P.).

(-Shiv Bhatnagar, Law Intern)

INDRA DEO SAH (Petitioner) v. State of Bihar (Respondent)

Diary No. 2995-2022

SPECIAL LEAVE PETITION (CRIMINAL)

LIMITATION: The Petition is within time.

FACTS:

1. The Petitioner states that on 10.062015, the father of the petitioner saw a JCB cutting soil in their land, which led to an altercation between the parties and the petitioner's family was brutally injured. They were rescued by the villagers and were later hospitalized. The petitioner lodged an FIR against the people who assaulted them on 11.06.2015.

2. According to the petitioner a counter FIR pertaining to the same incident was filed by the other side against the petitioner and his family in connivance with the Police after an unexplainable delay of 14-15 days.

3. On 11.01.2018 the father, mother, elder brother's wife and wife of the petitioner applied for anticipatory bail in the Hon'ble High Court of Bihar and the same was granted.

4. Thereafter, the Petitioner filed for anticipatory bail which was rejected given the severity of the crime alleged in the FIR. The Petitioner then applied for regular bail which was rejected by the Trial Court and the Hon'ble High Court. But the brother of the petitioner Mr. Brahmdeo Sah was granted bail by the Hon'ble High Court.

5. The Petitioner then approached the Hon'ble Supreme Court for bail and filed a SLP (SLP No. 11577/2019) which was dismissed by the Hon'ble Court and the Hon'ble Court gave directions to expedite the trial and conclude it within 6 months.

6. Thereafter, the Petitioner again filed an application for bail contending inordinate delay in the trial. The bail application was

subsequently rejected by the Trial Court and the Hon'ble High Court on 19.07.2021.

IMPUGNED JUDGEMENT:

The Hon'ble High Court of Judicature at Patna rejected the bail application of the petitioner and stated:

1. Earlier prayer for bail of the petitioner was rejected up to Apex Court. Petitioner has renewed his prayer for bail on the ground of delay in trial.
2. Report of the trial court has been received which reveals that the trial is being delayed on account of accused persons.
3. The petitioner is in jail (custody) since 29.04.2019, trial court is directed to expedite the trial.

GROUNDS:

1. The family of the petitioner who all are co-accused in the same case have been granted bail.
2. There is no prima facie case against the petitioner and the facts reveal that there was a land dispute which led to violent altercation and a counter FIR was registered against the petitioner.

INTERIM RELIEF:

Grant bail to the Petitioner in Criminal Case No. 44 of 2015, Thana-Andhramath, District- Madhubani, Bihar.

PRAYER:

Grant special leave to appeal against the final judgment and order of the Hon'ble High Court of Judicature at Patna dated 19.07.2021 passed in Criminal Miscellaneous No. 9809 of 2021.

(- Shiv Bhatnagar, Law Intern)

OSAMA AZIZ AND ANR. (Petitioners) v. KALANIDHI NAITHANI AND ORS. (Respondents)

WRIT PETITION (CRIMINIAL) NO. 56 OF 2022

The Writ Petition filed by the Petitioner under Article 32 of the Constitution of India is pertaining to a Question of Law, whether a Sitting Judge can be made party to a Criminal Contempt proceeding.

FACTS:

1. The Petitioner states that Mr. Airaz Ahmad Siddiqui lodged a false report under Section 147, 323, 336, 504 & 506, IPC to create his influence in the Trial Court and Wazirganj (Distt. Lucknow) area. Mr. Airaz Ahmad Siddiqui then colluded with the local Police and got a false Chargesheet submitted in the Court against Petitioner No.1.

2. The Petitioner aggrieved with the Chargesheet moved a petition in the Hon'ble High Court at Lucknow, under Section 482 CrPC on 27.05.2010 along with the criminal history of Mr. Airaz Ahmad Siddiqui. The Hon'ble High Court at Lucknow directed the Hon'ble Trial Court to dispose of the bail application of the Petitioner in light of *Lal Kamlendra Pratap Singh Vs. State of U.P.*, the Hon'ble High Court order stated:

   "The concerned Additional Chief Judicial Magistrate is directed to ensure proper security of the petitioner at the time of surrender and consideration of his bail prayer so as to avoid any untoward incident within the court -premises."

3. Despite the directions given by the Hon'ble High Court, when the Petitioner was present in the Court room for his bail hearing, Mr. Airaz Ahmad Siddiqui and his companions rushed into the Court room and brutally assaulted the Petitioner and his mother (Petitioner no. 2). When the Presiding officer of the Court tried to intervene, he was also assaulted by the said people. Thereafter, the Police force was called in and they took the Petitioner in custody and sent him to jail.

4. The Petitioner then filed a Criminal Contempt petition against the Senior Superintendent of Police, Lucknow (Respondent 1), District and Sessions Judge (Respondent 2) & Public Prosecutor (Respondent 3) for violating the directions given by the Hon'ble High Court.

5. Finally, the SLP (Criminal) was turned into a Criminal Appeal No.648 of 2018 upholding the Hon'ble High Court order.

6. After a lapse in time, the Contempt Petition (Diary No.3363 of 2019) was dismissed by the Apex Court on the grounds that a Sitting Judge cannot be made a party and for not providing the complete Name and Address of Respondent No.3.

GROUNDS:

1. A Three Judge bench cannot overrule a Seven Judge Constitution Bench decision. Citing the case of Justice C.S. Karnan where he was made a party to a Criminal Contempt proceedings despite of being a Sitting Judge of a High Court and where no written consent was taken by Top Law officers.
2. The provision in the Constitution of India, stipulates that if a dismissal of a Review Petition involves a QUESTION OF LAW, then it can be pursued under a Writ Jurisdiction.

PRAYER:

1. Issue a Writ (Certiorari) directing that a 'Written Consent' of Top Law Officers is not mandatory to pursue a Criminal Contempt.
2. Issue a Writ (Certiorari) directing that an Hon'ble Sitting Judge can be made a Party to a Criminal Contempt proceeding.
3. Issue a Writ (Certiorari) directing that a Service of SHOW CAUSE NOTICE is definite on any Public Servant on his designation and not specifically on the individual's address.

(-Shiv Bhatnagar, Law Intern)

HOSDURG RANGE KALLU CHETHU THOZHILALI VYAVASAYA SAHAKARANA SANG HAM v. The Commissioner of Income Tax

9.04.2022. - Shiv Bhatnagar, Law Intern

LIMITATION: The Petition is within time.

FACTS:

1. The Petitioner claims to be Labour Co-Operative Society registered under the Kerala Co-operative Societies Act in 2001. The Petitioner society is formed for the financial and social welfare of the toddy tappers/workers and for tapping and selling toddy within the Hosdurg Jurisdiction, with permission from the Excise Dept.

2. The Petitioner filed Income Tax Return as 'NIL' under Section 80P (2)(a)(vi) of the Income Tax Act for the Assessment Year 2011-12, claiming to be exempted from ITR under the said provision as the Petitioner society utilized the labour/ skill of its members who are toddy workers in a collective manner for tapping and selling toddy and thereby generated income.

3. The claim of the Petitioner was not allowed by the Income Tax Dept, Income Tax Tribunal & Income Tax Appellate Tribunal stating that the petition made under Section 80P of the Income Tax Act, cannot be allowed as the Petitioner is not a 'Labour Contract Society' and there is no collective disposal of the labour.

4. Furthermore, the Petitioner contended an alternative contention that they are engaged in the business of marketing of agricultural produce grown by its members and therefore entitled for exemption under Section 80P(2)(a) (iii) of the Act. But the Commissioner of Income Tax (Appeals) following the Judgment of the Madras High Court in the case of ***CIT Vs. Yaguppa Nadar*** held that if the member - tapper has not taken the land on lease on which the trees are grown nor has done any agricultural operation whereby the trees have been raised, toddy trapped from such trees and sold by the members to the society is not an agricultural produce.

5. Subsequently, the Petitioner approached the Kerala High Court and the HC passed an order on 23.11.2021 directing that the Petitioner can not claim deduction under Section 80P (2)(a)(vi) of the income Tax Act.

IMPUGNED JUDGEMENT:

1. The HC in regard to substantial questions (Deduction u/s 80P) 1 & 2 stated that the principals laid down in **Peravoor Range Kallu Chethu Vyayasaya Thozhilali Sahakarana Sangham case,** the questions are answered in favour of the Revenue Dept. and against the assessee (Petitioner).
2. Regarding the substantial question 3 the HC referred to a Division Bench of High Court of Telangana and Andhra Pradesh in ***Vavveru Co-operative Rural Bank Ltd v. Chief Commissioner of Income Tax*** which tabulated the Societies and the benefits to which each one of the categories of Societies is entitled to.
3. On the above point the HC order further said that *"We have taken note of the limited submissions made in this behalf and we are persuaded to accept the second limb of assessee's argument, namely that the matter needs to be re-examined by the Tribunal."*

GROUNDS:

The HC as well as the authorities erred in holing that the petitioner society is not eligible for deduction under section 80P (2)(a)(vi) of the Act. The society is involved in labour of its members in a collective manner.

PRAYER:

Grant Special Leave to Appeal against the Final Order (23.11.2021) passed by the Kerela HC in I.T.A. Nos. 57 /219.

INTERIM RELIEF:

1. An ex-parte ad-interim stay of the common impugned Judgment.
2. Grant ad-interim ex-parte stay of the operation of the order (26.09.2017) passed by the Income Tax Appellate Tribunal.

Viveck Goel and Anr. (Petitioner) v. Tata Capital Housing Finance Ltd. and Anr. (Respondent)

9.04.2022, -Shiv Bhatnagar, Law Intern

LIMITATION: The Petition is within time.

FACTS:

1. The Petitioner took a housing loan from the respondent on 31.01.2017. The house is situated I sector 60, Gurugram. The loan account was classified as NPA. As on 26.11.2019, an amount of Rs. 1,68,39,865/- was due and payable as per the Respondent.

2. On 27.11.2020, the Naib Tehsildar with the assistance of the Police took physical possession of the house.

3. Subsequently, the case was tried in the Ld. DRT bench of Allahabad, as the Delhi bench did not have a presiding officer. The Respondent then tried to auction the house on 20.01.2021 and was not successful.

4. In view of the prior sale/auction not being successful, the Respondent issued another subsequent sale notice under Rule 8 and 9 of the of the Security Interest (Enforcement) Rules, 2002 on 3.03.2021 and again on 30.9.2021.

5. The Petitioner further argued that the reserve price which was Rs. 1,61,59,128/- in the first notice dated 20.1.2021 was reduced to Rs. 1,45,43,300/- in the subsequent notices dated 3.3.2021 and dated 30.9.2021 thereby making it violative of Rule 9(2) of the Rules of 2002. The Petitioner further states that the proviso in Sub rule 5 of Rule 8 clearly provides for minimum 15 days' notice by all three modes, 'serve', 'affix' and 'publish. The word used is 'and' and not 'or'. In the present case, only 'publish' has been complied with as the sale/auction notice.

6. After much delay in DRT, the Petitioner then approached the Delhi HC seeking, to stay any cohesive action taken by the Respondent and filed a Writ Petition which was dismissed by the HC on 21.10.2021. On 9.11.2021, the Petitioner filed a Review Petition in the HC against its earlier order.

IMPUGNED JUDGEMENT:

On 17.11.2021 the HC dismissed the Review Petition, bearing no ground for review.

GROUNDS:

The impugned Orders are ex facie erroneous, contrary to law. The High Court has committed grave error by holding that the first proviso to Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 is substantially complied with in the present case.

It is settled law that Rules 8 and 9 of the Rules of 2002 are mandatory in nature.

Judgements referred to by the Petitioner:

Vasu P. Shetty v. Hotel Vandana Palace and Ors.,

J. Rajiv Subramaniyan and Anr. v. Pandhiyas and Ors.,

Mathew Varghese v. M. Amritha Kumar and Ors.,

S. Karthik and Ors. v. N. Subhash Chand Jain and Ors.,

MAIN PRAYER:

Grant special leave to appeal against the final Order and Judgement dated 17.11.2021 of the Delhi HC.

INTERIM RELIEF:

Pass an order staying the effect and operation of the final Order and Judgement dated 17.11.2021 passed by the Delhi HC.

Pass an interim order staying the effect and operation of the Sale/auction notice dated 30.09.2021 issued by the Respondent.

Research Work...

Discharge Under CrPC

13th March 2022

-Shiv Bhatnagar (Law Intern)

Criminal Procedure Code, 1973 is concerned with procedure of criminal law, in India. It permits the Court to acquit or discharge the person arrested, in relation to the alleged offence.

While **Acquittal** is a verdict by the Judge, that the accused is not guilty of the offence which is charged on him.

On the contrary, **Discharge** means the act of releasing a person from custody, due to insufficient grounds, to further proceed with the case.

Discharge:

1. Discharge means a legal order of release given by the Judge when the grounds on which the accused is arrested come out as false or unsubstantiated and there are no or not enough sufficient grounds for legal proceedings.
2. Discharge order is issued primarily because of non-availability of any prima-facie evidence.
3. An accused can be discharged before framing of charges.

There are four types of the trial procedures provided under CrPC:

1. Summary trials (Section 260-265).
2. Trial of Summons cases by Magistrates (Section 251-259).
3. Trial of Warrant cases by Magistrates (Section 238-250).
4. Trial before a Court of Sessions (Section 225-237).

In Sessions Court:

According to **Section 227** of the Criminal Procedure Code, on considering the record of the case and documents submitted in relation to the case, and after hearing both the parties, the Judge believes that there are not enough grounds for further proceedings against the accused, the accused shall be discharged.

So, the accused can be discharged when sufficient evidence is not present against him. The court has to state why the accused has been discharged from the case.

Trial of Warrant-Cases by Magistrates:

Under Section 245(1), the Magistrate has to consider whether the evidence produced by the prosecution, if remains unrebutted, is sufficient to make conviction of the accused possible. If there is no convincing material on record against the accused, then the Magistrate shall proceed to discharge the accused under Section 245(1) CrPC.

Section 245(2) CrPC empowers the Magistrate to discharge the accused at any precedent stage of the case which means even before such evidence is led. However, the Magistrate has to come to the conclusion that the charge is groundless in order to discharge an accused under Section 245(2) CrPC.

Summons-Case:

Relying on the case of *Amit Sibal v. Arvind Kejriwal* and also provided under Cr.P.C, the conclusion is that no provision in the Code allows a 'discharge' or 'dropping of proceedings' in a Summons Case.

258. *Power to stop proceedings in certain cases.—In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of*

acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

Elements of Discharge:

The court must take into account the charge sheet and documents presented, by the Police. The essential elements of Discharge are:

1. The Magistrate may examine the Accused if required.
2. Equal opportunity is given to both parties of being heard.
3. Charges imposed on the accused are baseless and false, in the view of the magistrate.

Cases when Session Judge is obligated to Discharge the accused

- Cases in which the evidence provided are not enough.
- Cases in which there is the absence of any legal ground against the person who has been charged with the offence.
- Cases in which permission has not been obtained.
- Cases in which prosecution is barred by limitation, i.e., the suit is taken to the Court, after the expiration of the stipulated term by which the proceedings should have been started in the court of law, will be limited.
- Cases in which the accused has been prevented from proceedings due to a foregoing judgement of the High Court.

Discharge After Framing of Charges:

In the case of *Tapati Bag v. Patipaban Ghosh* reported in 1993, it was held that if the Court considers that there are no sufficient grounds for proceeding against the accused, the accused has to be discharged, but if the Court is of the opinion after such consideration that there is ground for presuming that the accused has committed the offence which is exclusively triable by the Court of Session then the charge against the accused must be framed. Once the charges are framed, the accused is put to trial and thereafter either acquitted or convicted, but he cannot be discharged. Once charges are framed under Section 228 of the code, there is no back-gear for discharging the accused under Section 227 of the code. There is no provision or principal of Discharge post framing of charge in CrPC.

Discharge v. Acquittal:

In the case of *P. Viswanathan V. A.K Burman*, the Hon'ble Calcutta High Court held:

"Discharge of an accused under Section 227 of CrPC, is not tantamount to the acquittal of an accused. Under Section 227 of the code, the accused is released on the ground of non-availability of the materials collected by the office during the investigation, the Court does not absolve the accused from all the charges at that stage. The discharge may be due to inept inquiry and investigation. The discharged person can again be charged subsequently after proper investigation and collection of relevant materials. The basic intention of the legislature is to prevent one's subjection to the judicial process without any foundation."

Review of a Discharge Order:

In the case of *Vishanu Murya v. The State of Rajasthan* reported in 1990 CrLJ 1750 (Raj), it was held:

"A Discharge Order does not lead to acquittal as no trial has taken place. Where the Magistrate had discharged some of the accused after recording the evidence let in by the prosecution, but if the fresh materials are found against the discharged accused, he can consider the offence as it is not the review of the discharge order, earlier passed by the Magistrate."

Judgements:

P. Mohanraj v. Shah Brothers Ispat Private Limited (2021) 6 SCC 258:

Section 138, NI Act, 1881 stipulates that the bounced cheque has to be "*.... for the discharge, in whole or in part, of any debt or other liability....*". The explanation to S.138, NI Act, provides that such debt or other liability means a legally enforceable debt or other liability. It follows as a necessary corollary that where a bounced cheque was issued for the discharge of a time-barred debt, the case will not fall within the scope of Section 138, NI Act.

Therefore, in case the allegations made in the complaint itself disclose that the bounced cheque was issued for the discharge of a loan/debt more than a period of 3 years ago, no offence would be made out and, therefore, the accused has to be **Discharged** before issuing a summon

to him for appearance, as distinguished from making an order of acquittal.

The above position of Law follows from the plain language of S.138 read with its explanation given there under. This is fortified by the Law laid down in **P.Mohanraj Case** para 45.

Smt. Rumi Dhar v. State of West Bengal & Anr. (2009) 6 SCC 364:

The Hon'ble Supreme Court held that the learned Judge should go into the details of the accusations made against each of the accused persons while considering an application for discharge filed in terms of Section 239 of the Code, in order to determine to whether any case at all has been made out or not.

State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568:

A three-Judge Bench of Hon'ble Supreme Court held that Section 227 was enacted in the Code with the purpose of saving the accused from unnecessary harassment. It is assessed to forbid harassment of accused persons when the gathered evidential materials fall short of minimum legal requirements after investigation.

Satish Mehra v. Delhi Administration and Another (1996) 9 SCC 766:

The Hon'ble Supreme Court held that, Under Section 239 of the code of Criminal Procedure, the Magistrate shall grant the prosecution as well as the accused a chance of being heard besides taking cognizance of the police report and the documents sent therewith. The Code makes it mandatory for the Court to give a hearing to the accused to determine whether it is essential to proceed to the next stage. It is a matter of the application of the judicial mind. Nothing in the code restricts the scope of such an audience to oral arguments.

Manakshi Bala v. Sudhir Kumar, 1994 SCC (4) 142:

the Court held that the Magistrate shall proceed in accordance with Sections 239 of the Code, at the time of framing of the charges. Under the given sections, it is indispensable for the Magistrate to consider the police report and the documents sent with it under Section 173 of the Code and give an opportunity to the prosecution and the accused of being heard and examine the accused if he feels necessary. After much consideration, examination, and hearing the Magistrate concludes that the charges are groundless, he has to discharge the accused in terms of Section 239 of the Code of Criminal Procedure.

Union of India v. Prafulla Kumar Samal & Another, (1979) 3 SCC 4

The Hon'ble Supreme Court held:

"The words used in the context 'not sufficient ground for proceeding against the accused' show that the Judge cannot be assumed to be a post office to frame the charges at the instruction of the prosecution, and application of judicial mind to the facts of the case is necessary to determine whether a case has been made out by the prosecution for trial. In determining this fact, it is not mandatory to dive into the pros and cons of the matter by the court."

The Hon'ble Court observed that under Section 227, the Judge has to merely examine the evidence in order to determine whether or not the grounds are sufficient for proceeding against the accused. The nature of the evidence recorded by the police or the documents produced in which *prima facie* reveals that there is a suspicious situation against the accused so as to frame a charge against him before the court would be taken into account in order to find out the sufficiency of ground.

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MOTION TO QUASH IN THE UNITED STATES OF AMERICA

31.03.2022

-Shiv Bhatnagar, Law Intern

FEDERAL RULES OF CRIMINAL PROCEDURE (December 1, 2017)

Rule 17 Subpoena:

(C) (2) "Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive."

Rule 17(c) of the Federal Rules of Criminal Procedure authorizes the judge to quash a criminal subpoena if "*compliance would be unreasonable or oppressive.*"

Under Federal Rules of Criminal Procedure, 17(c), the moving party must demonstrate, among other things, that the request for information is made in *good faith* and not intended as a general "fishing expedition."

United States v. LaRouche Campaign, 841 F.2d 1176, 1179 (1st Cir. 1988).

Subpoenas in criminal cases may not be overbroad or frivolous and must represent a good faith effort to identify evidence. Fed. R. Crim. P. 17(c).

The burden to establish that a subpoena is oppressive or unreasonable is on the party who seeks to have it quashed (Federal Practice and Procedure, § 2459 at 46).

The party moving to quash cannot merely declare that complying with the subpoena would be burdensome without showing the reason why it would be burdensome and the extent of the burden and injury if the person is forced to comply (***United States v. Int'l Bus. Machs. Corp.***).

FEDERAL RULES OF CIVIL PROCEDURE (December 1, 2020)

Rule 45 Subpoena:

(3) Quashing or Modifying a Subpoena.

(A) When required. *On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:*

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When permitted. *To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:*

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. *In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:*

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

Warrant Cases & Motion to Quash:

Factors in determining whether a warrant will be quashed is the length of time between when the warrant was issued and when the quash was requested.

Some judges may require defendants to physically appear in court or post a bond. Sometimes, in order to quash a warrant, a judge will require a substantially viable reason.

There are many variables in how judges handle warrant cases as every State in the USA has its own laws and procedures.

Rules of Criminal Procedure for Motion to Quash in various States:

Arizona:

Rule 15.5(a) of the Arizona Rule of Criminal Procedure states that the court may order, upon a showing of good cause, that disclosure of the identity of any witness be deferred, denied, or otherwise regulated when it finds:

(1) That the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(2) That the risk cannot be eliminated by a less substantial restriction of discovery rights.

Ariz. R. Crim. P. 15.5(a).

Arkansas:

The rules for challenging a subpoena are the same regardless of the ground on which it is challenged, including the grounds that it is overbroad, unduly burdensome or frivolous. A motion to quash a subpoena *duces tecum* should be filed within ten (10) days after receiving the subpoena or at any time before the time stated for compliance if that time is fewer than ten days. Ark. R. Civ. P. 45(e).

A motion to quash a subpoena to compel testimony also should be filed in a timely manner. The same applies whether the matter is a civil case or a criminal case.

D.C. Circuit:

The Federal Rules of Criminal Procedure similarly authorize motions to quash, Fed. R. Crim. P. 17(c)(2), but on their face they allow for a recipient to "otherwise object" only where a subpoena "require[s] the production of personal or confidential information about a victim," Fed. R. Crim. P. 17(c)(3).

Iowa:

Rule 2.15(2) of the Iowa Rules of Criminal Procedure provides that a subpoena that is unreasonable or oppressive will be dismissed by the court upon motion for the same. Rule 2.14(6)(a)(3) allows the court to regulate discovery and issue protective orders to prohibit compelled disclosure of privileged information. The subpoenaed party may file a motion to quash based on any of the above-mentioned rules.

Minnesota:

In a criminal action, Rule 22.02 of the Minnesota Rules of Criminal Procedure provides that the district court on motion may quash or modify a subpoena for production of documentary evidence or objects, "if compliance would be unreasonable or oppressive."

Rule 26.03 allows the district court to issue "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

Louisiana Code of Criminal Procedure:

Article 531, Motion to Quash;

"All pleas or defences raised before trial, other than mental incapacity to proceed, or pleas of "not guilty" and of "not guilty and not guilty by reason of insanity," shall be urged by a Motion to Quash."

Article 535, Time to file Motion to Quash;

"A. A Motion to Quash may be filed of right at any time before commencement of the trial, when based on the ground that:

(1) The offense charged is not punishable under a valid statute;

(2) The indictment does not conform with the requirements of Chapters 1 and 2 of Title XIII;

(3) Trial for the offense charged would constitute double jeopardy;

(4) The time limitation for the institution of prosecution has expired;

(5) The court has no jurisdiction of the offense charged; or

(6) The information charges an offense for which prosecution can be instituted only by a grand jury indictment.

These grounds may be urged at a later stage of the proceedings in accordance with other provisions of this Code.

(7) The individual charged with a violation of the Uniform Controlled Dangerous Substances Law has a valid prescription for that substance.

B. A motion to quash on the ground that the time limitation for commencement of trial has expired may be filed at any time before commencement of trial.

C. A motion to quash on grounds other than those stated in Paragraphs A and B of this Article shall be filed in accordance with Article 521.

D. The grounds for a motion to quash under Paragraphs B and C are waived unless a motion to quash is filed in conformity with those provisions.

E. The court may, in order to avoid a continuance, defer a hearing on a Motion to Quash until the end of the trial."

Articles 531-535 adopt the procedure of A.L.I. Code of Criminal Procedure, § 209, 210, whereby the motion to quash is an all-embracive plea. Demurrers and all special preliminary pleas, such as former jeopardy, improper venue, and time limitations are eliminated; and the preliminary defences formerly available under such pleas are to be raised by the motion to quash. Article 532. This simplified method of raising preliminary objections to the charge has many advantages over the multi-labelled pleas in the 1928 Louisiana Code of Criminal Procedure.

Article 581, Expiration of limitations;

"Upon the expiration of the limitations established by this Chapter, the court shall, upon motion of the defendant, dismiss the indictment. This right of dismissal is waived unless the motion to quash is made prior to trial.

If the indictment is dismissed under this article, there shall be no further prosecution against the defendant for the same or a lesser offense based on the same facts."

Under the 1928 Code of Criminal Procedure a defendant could obtain a compulsory nolle prosequi after prescription had accrued under Article 8 of that Code, or could obtain a dismissal under Art. 9 of that Code. The compulsory nolle prosequi is unrealistic. If there has been a failure to prosecute within the time limits established, the defendant should be required to file a Motion to Quash. If the state agrees that the time limitation has run out and that there has been no interruption or suspension, it can enter a nolle prosequi under the usual rules for so doing. In such cases, however, further prosecution would be barred by the second paragraph of Article 576.

United States Landmark Judgements on Motion to Quash:

1. ***United States v. Nixon***, 418 U.S. 683;

Procedural Posture:
Cross-petitions were granted for immediate review of the denial of a Motion to Quash third-party subpoena duces tecum issued by the United States District Court for the District of Columbia, pursuant to Fed. R. Crim. P. 17(c), directing the President of the United States to produce certain tape recordings and documents relating to his conversations with aides and advisers.

Overview:

The President of the United States invoked executive privilege to avoid compliance with a third-party subpoena duces tecum that required the production of tape recordings and documents. A special prosecutor sought to obtain information concerning meetings between the President and certain individuals charged with obstruction of justice, conspiracy, and other offenses. The President's motion to quash the subpoena was denied, and cross-petitions for immediate review were granted. Holding that the President's general privilege of confidentiality did not extend to an absolute privilege of immunity from all judicial process, the U.S. Supreme Court affirmed the denial of the motion to quash. Issues relating to the production of documents in a pending criminal cases were justiciable and were properly heard on interlocutory appeal in a case involving the President. Because the special prosecutor had demonstrated a specific need for the evidence sought by way of subpoena and had complied with the requirements of Fed. R. Crim. P. 17(c), it was proper to compel production and to examine the material in camera. The legitimate needs of the judicial process outweighed executive privilege.

Outcome:

The court affirmed the denial of the Motion to Quash the subpoena because the President of the United States did not have an absolute, unqualified privilege of immunity from judicial process under all circumstances. Assertion of the general privilege of confidentiality could not prevail over a demonstrated, specific need for evidence in appending criminal cases.

2. ***United States v. Simmons***, 515 F. Supp. 3d 1359;

Background:

Pursuant to a Superseding Indictment filed on February 11, 2020, Defendant is charged with three counts: (1) Possession with Intent to Distribute Methamphetamine, (2) Possession of a Firearm by a Convicted Felon, and (3) Possession of a Firearm in Furtherance of a Drug Trafficking Crime. (Doc. 44.)

Through counsel, on March 12, 2020, Defendant filed a motion to suppress "any and all evidence obtained as a result of his illegal seizure and the illegal search of his car." The Court held a hearing on the motion on August 4, 2020. During the same time-frame the COVID-19 pandemic caused this district to enter a moratorium on jury trials that extended, as of August 2020, through September 13, 2020. Expecting to resume jury trials in October 2020, and notwithstanding the pending motion to suppress, the Court ordered the Parties in this case to confer and inform the Court by September 23, 2020 whether the case was ready to proceed to trial. On September 18, 2020, Defendant filed an *ex parte* motion for Subpoenas in which he stated that he was ready to proceed to trial in October 2020 and requested the Court to issue subpoenas to Special Agent Benjamin Collins, Special Agent in Charge Mark Pro, and Assistant Special Agent in Charge Jason Seacrist for certain GBI records that he argued were essential for his defence. The Court granted the motion for subpoenas. Thereafter, the Parties jointly moved to continue trial from October 2020, and the Court continued trial to the February 2021 trial term. Defendant's motion to suppress

has been denied. The moratorium on jury trials is currently set to expire on February 28, 2021.

In the meantime, GBI agents Seacrist and Pro (hereinafter the "GBI agents") filed the pending Motion to Quash Subpoenas. The Court held a hearing on the motion on October 21, 2020 and has also received Defendant's response brief and exhibits and both Parties' supplemental briefs. Thus, the motion is ripe for review.

Materials from an Ongoing Criminal Investigation

The heart of the GBI agents' argument is that because the Georgia Open Records Act, O.C.G.A. § 50-18-72 (a)(4), exempts records of a pending criminal investigation or prosecution from public disclosure, the Court should quash the subpoenas. (Doc. 71 at 7-8.) Defendant argues that he has complied with the four-part test articulated by the Supreme Court:

(1) that the documents are evidentiary and relevant;

(2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence;

(3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and

(4) that the application is made in good faith and is not intended as a general 'fishing expedition.

Most cases interpretating Quashing a Rule 17(c) subpoena do so in the context of federal grand jury subpoenas.

"*A federal grand jury has extremely broad investigatory powers and, . . . 'may compel the production of evidence or the testimony of witnesses as it considers appropriate.*" ***Coronado v. Bank Atlantic Bancorp, Inc.***, 222 F.3d 1315, 1320 (11th Cir. 2000).

Quoting ***United States v. Calandra***, 414 U.S. 338, 343, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974);

"However, a grand jury *may not itself violate a valid privilege, whether established by the Constitution, statutes, or the common law.*"

While "unreasonable" and "oppressive" are not defined under Rule 17, they have a common sense meaning, and courts finding a valid and specific privilege may quash subpoenas on that ground.

Reference to ***Jaffee v. Redmond***, 518 U.S. 1, 10, 15, 116 S. Ct. 1923, 135 L. Ed. 2d 337 (1996) "Confidential communications between a psychotherapist and her patient are protected from being compelled pursuant to the federal rules of evidence."

"*A court may quash or modify a subpoena for the production of documents, if producing the documents would be unreasonable or oppressive, or if the subpoena calls for privileged matter.*"; ***United States v. Caporale,*** [*1365] 806 F.2d 1487, 1504 (11th Cir. 1986).

Furthermore, there is a federal common law privilege for law enforcement investigatory materials.

Refer to ***Sheffield v. State Farm Fire & Cas. Co.***, No. CV514-038, 2014. Arguing that in a civil case about "*the federal common-law investigatory privilege, which protects against the disclosure of information contained in law enforcement's ongoing criminal investigations*".

Here, through counsel, the GBI agents articulated that a specific and compelling need to keep the subpoenaed materials confidential and that they are records of an ongoing criminal investigation and prosecution and that disclosure of these materials "*potentially threatens the integrity of the investigation and potentially exposes identity of witnesses and evidentiary leads before they have been thoroughly investigated and vetted.*"

Conclusion:

For the foregoing reasons, the GBI agent's Motion to Quash was GRANTED-IN-PART and DENIED-IN-PART.

The order read as follows:

"The GBI agents shall submit to the Court for in camera, ex parte review the materials subpoenaed (Docs. 67 & 67-2) and which are within the GBI agents' possession or control. These materials shall be submitted in electronic form to the Courtroom Deputy no later than Wednesday, February 17, 2021. The materials shall be numbered, meaning 'Bates-stamped.' The materials shall be indexed and accompanied by an ex

parte memorandum explaining the claim of privilege for each item and indicating whether the item can reasonably be redacted in a way that conceals privileged information but provides evidence to the defence for his trial in this case. The Court will thereafter determine which documents shall be produced and may require that Defendant modify his subpoena and perfect service accordingly."

Motion to Quash in Money Laundering Cases:

In ***United States v. Ziad***, 2020;

Background:

From 2014 to 2017, Mr. Felton, who is a partner at the Greensfelder Firm, represented various pharmacies owned and operated by Mr. Khader, Neil Patel, and Nikhil Patel including Medscript, My Script and Nowscript in connection with several audits of the pharmacies by three Pharmacy Benefits Managers — CVS Caremark, Express Scripts, and AccessHealth. Those audits related to, among other things, whether My Script was properly considered a retail pharmacy and whether one or more of the pharmacies was failing to collect co-pays from customers.

On December 6, 2017, the Government filed an Indictment charging Mr. Khader, Neil Patel, and Nikil Patel with conspiracy to make false statements relating to health care matters in violation of 18 U.S.C. § 371, conspiracy to commit money laundering in violation of 18 U.S.C. §1956(h), and six counts of money laundering in violation of 18 U.S.C. § 1957.

The Indictment charged that Mr. Khader and the Patels used shell companies to hold ownership of the pharmacies, and enrolled Nowscript with the PBMs. It charged that the PBMs;

"*Screened and paid pharmacies on behalf of both commercial and federal health care benefit programs, including TRICARE, Federal Employee Program, Federal Employees Health, Government Employees Health Association, and many others.*"

It further charged that the PBMs required Nowscript to complete provider certification or enrolment forms which asked for information about the operation and ownership of Nowscript, including the names

of the owners, whether Nowscript was a mail order or a retail pharmacy, whether Nowscript used a sales force, and whether Nowscript waived or offered reductions in co-pays. The Indictment charged that Mr. Khader, Neil Patel, and Nikhil Patel mispresented information in the provider certification or enrolment forms, in violation of federal law.

The Government filed a Superseding Indictment on August 4, 2020 which names only Mr. Khader as a defendant, and charges him with aiding and abetting false statements relating to health care matters in violation of 18 U.S.C. § 1347, three counts of aiding and abetting false statements relating to health care matters in violation of 18 U.S.C. § 1035, and three counts of aiding and abetting prohibited transactions in violation of 18 U.S.C. § 1957.

Conclusion:

The Court denied the Motion to Quash filed by Mr. Felton and the Greensfelder Firm to the extent that the motion relates to Mr. Khader's original Subpoena.

Thecourt GRANTSIN PART and DENIES IN PART the Motion to Quash filed by Mr. Felton and the Greensfelder Firm as it relates to Mr. Khader's Revised Subpoena. Absent an agreement by the parties on a different timeframe, within 30 days of the date of this Order, the Greensfelder Firm was Ordered by the Court to produce to Mr. Khader the following:

"1. Any and all emails to and from CVS Caremark, Accesshealth and Express Scripts and attorneys of Greensfelder, Hemker & Gale, P.C. regarding Script LLC d/b/a Nowscript, Khader David Pharmacy and Services, LLC d/b/a Valuscript; Proscript, LLC, My Script Pharmacy, and Smartscript Pharmacy, LLC, their members, directors, employees, or any other representative from December 2013 to January 2017;

*2. Any and all emails to and from any owner, officer, employee or contractor at Script, [*14] LLC d/b/a Nowscript, Khader David Pharmacy and Services, LLC d/b/a Valuscript, Proscript, LLC, My Script Pharmacy, and Smartscript Pharmacy, LLC regarding audits by CVS Caremark, Accesshealth, or Express Scripts relating to the subject matter of the Superseding Indictment, from December 2013 to January 2017.*

3. Any and all legal memoranda and letters of opinion written to any owner, officer, employee, or contractor at Script, LLC d/b/a Nowscript, Khader Davis Pharmacy and Services, LLC d/b/a Valuscript, Proscript, LLC, My Script Pharmacy, and Smartscript Pharmacy, LLC regarding audits by CVS Caremark, Accesshealth, or Express Scripts relating to the subject matter of the Superseding Indictment, from December 2013 to January 2017."

In ***Eastman Kodak Co. v. Camarata***, 238 F.R.D. 372;

Overview:

Plaintiffs had asserted broad civil RICO claims against defendants predicated, among other violations, upon alleged money laundering violations. The alleged money laundering consisted of repeated deposits into various financial institutions in order both to promote and carry on the unlawful activity. Since the complaint was filed, plaintiffs obtained additional records showing the use of personal accounts, including certain accounts maintained at the subpoenaed institutions, in purported furtherance of the scheme. Further, copies of various checks produced reflected transactions among the subpoenaed accounts.

Even after the funds were deposited in the business accounts of one of the defendants, the subsequent transactions with those funds (whether they be purported kickbacks to the insiders or transfers between accounts in an effort to conceal the proceeds or their location) could have constituted further money laundering violations.

However, the court agreed that the scope of the information sought was broad, and it limited the time frame to 1992 (the year the conspiracy commenced, according to the complaint) until the present.

Outcome:

Defendants' motion for a protective order **Quashing or modifying** subpoenas issued to four financial institutions was denied except that they were limited to the time period 1992 to the present.

(- Shiv Bhatnagar, Law Intern)

MOTION TO QUASH IN CANADA

04.04.2022

-Shiv Bhatnagar, Law Intern

In Canada, the Criminal Code is a Federal Act that covers major provisions defining offences and penalties thereof.

Canada Criminal Code is a substantive law like the Indian Penal Code.

On the other hand, Criminal Procedure is prerogative of the provinces of Canada and all the provinces have different approach towards procedural part and quashing as a matter of law falls within the ambit of Criminal Law Procedures, which is different across all provinces of Canada.

Federal Courts Act, R.S.C. 1985, C. F-7;

Section 52

"The Federal Court of Appeal may

(a) quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith;"

Criminal Code (Canada), R.S.C. 1985, c. C-46;

Section 799

"General order for security by recognizance.

799(1) A court that has authority to quash a conviction, order or other proceeding on certiorari may prescribe by general order that no motion to quash any such conviction, order or other proceeding removed to the court by certiorari shall be heard unless the defendant has entered into a recognizance with one or more sufficient sureties, before one or more justices of the territorial division in which the conviction or order was

made or before a judge or other officer, or has made a deposit to be prescribed with a condition that the defendant will prosecute the writ of certiorari at his own expense, without wilful delay, and, if ordered, will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the practice of the court where the conviction, order or proceeding is affirmed.

Provisions of Part XXV

(2) The provisions of Part XXV relating to forfeiture of an amount set out in a recognizance apply to a recognizance entered into under this section."

Section 780

"Effect of order dismissing application to quash.

780. Where a motion to quash a conviction, order or other proceeding is refused, the order of the court refusing the application is sufficient authority for the clerk of the court forthwith to return the conviction, order or proceeding to the court from which or the person from whom it was removed, and for proceedings to be taken with respect thereto for the enforcement thereof."

Ontario;

Provincial Offences Act, R.S.O. 1990, C.P. 33

Section 9.1

"Failure to appear at trial

9.1 (1) A defendant is deemed to not wish to dispute the charge where the defendant has been issued a notice of the time and place of trial and fails to appear at the time and place appointed for the trial.

Examination by justice

(2) If subsection (1) applies, section 54 does not apply, and a justice shall examine the certificate of offence and shall without a hearing enter

a conviction in the defendant's absence and impose the set fine for the offence if the certificate is complete and regular on its face.

Quashing proceeding

(3) The justice shall quash the proceeding if he or she is not able to enter a conviction."

Section 36

"Motion to Quash information or certificate

36.--(1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court.

Grounds for quashing

(2) The court shall not quash an information or certificate unless an amendment or particulars under section 33, 34 or 35 would fail to satisfy the ends of justice."

Courts of Justice Act, R.S.O. 1990, C. 43

Section 134

"Powers on appeal

134.--(1) Unless otherwise provided, a court to which an appeal is taken may,

(a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
(b) order a new trial;
(c) make any other order or decision that is considered just.

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal.

Power to Quash

(3) On motion, a court to which an appeal is taken may, in a proper case, quash the appeal."

In The Hon'ble Supreme Court of Canada;

ANDREW VALIANTES v. LESLIE GORDON BELL

Overview:

MOTION to quash for want of jurisdiction an appeal from the judgment of Bruneau J., of the Superior Court at Montreal maintaining respondent's motion to dismiss an election petition.

The appellant presented petition under the Dominion Controverted Elections Act and complained of the undue election or return of the respondent as member of the constituency of Montreal-St Antoine.

After the service of the petition the respondent presented to judge of the Superior Court in Montreal motion to dismiss the election petition as not being drawn in conformity with the Dominion Controverted Elections Act and more particularly because it did not contain any details of the com plaint relied upon by the petitioner as required by of 13 of Geo The respondents motion was granted and the election petition was dismissed with costs The appellant then appealed to the Supreme Court of Canada.

Judgement:

Appeal Quashed;

"We are all of the opinion that there is no jurisdiction to entertain this appeal. The motion to quash is granted with costs".

In the Superior Court of Justice – Ontario Divisional Court;

TING WANG v. JUSTICE OF THE PEACE
COSTA, November 26, 2019

Analysis:

Mr. Wang brought this Notice of Application in the Divisional Court as contemplated by s. 6(1) of the *Judicial Review Procedure Act.* While he did not describe it this way, he seeks to compel the Justice of the Peace to exercise a statutory power of decision, namely to lay an information against a Municipal Prosecutor who he believed violated s. 86 of the *Provincial Offences Act* (making false statements) in a court hearing. As contemplated by s. 7 of the *Judicial Review Procedure Act,* that is an order in the nature of mandamus.

An application for mandamus is usually made to the Divisional Court pursuant to s. 2 of the *Judicial Review Procedure Act.*

However, s. 142(4) of the *Provincial Offences Act* creates an exception and, where the matter as here, pursuant to the POA, the *Judicial Review Procedure Act* does not apply and, as a result, the Divisional Court does not have jurisdiction.

Mr. Wang was committed to pursuing this application in his attempt to correct what he believes was a wrongful refusal by the named Justice of the Peace to issue a summons pursuant to s. 24(1)(ii).

Mr. Wang was explained that this motion is a procedural matter and he may start a case in the Superior Court asking for the same order.

Judgement:

"In the Notice of Motion to Quash, the moving party asked for costs of the motion and of the Application After hearing submissions on November 26, I did not ask Mr. Jin, for his submissions on costs. The Respondent has not responded to the Application so there are no costs "of the Application." The Respondent brought the motion returnable October 23 that was adjourned because service of the factum was late and as a result, the Respondent is not entitled to costs of the adjourned hearing on October 23, 2019. The Respondent has been successful in the motion and is, in theory, entitled to costs. It was reasonable for a self-represented person to start under the Judicial Review Procedure

Act. On this procedural motion, I do not consider it to be just to require Mr. Wang to pay even modest costs."

The Notice of Application in DC19-254-JR is quashed.

The Registrar of the Divisional Court shall not set a hearing date for this Notice of Application.

The Respondent is not required to respond to the Notice of Application.

Landmark Judgements on Motion to Quash;

The Saint John Lumber Co. v. Roy

1916, 53 S.C.R. 310

"No appeal lies to the Supreme Court of Canada from a judgment of the Supreme Court of New Brunswick affirming the decision of a judge who refused to set aside his order for service of a writ out of the Jurisdiction." - Idington J. (dissenting).

As per Justice Davies and Justice Anglin: *"The judgment did not dispose of any substantive right ... in controversy in the action and therefore was not a final judgment as that term is defined in 3 & 4 Geo. V., Ch. 51."*

The appeal was quashed but respondent was only given the general costs of appeal to the date of the motion to quash as he had not conformed to the requirements of Supreme Court Rules 4 and 5.

APPEAL from a judgment of the Supreme Court of New Brunswick affirming the refusal of a judge to set aside his order for service of the writ out of the jurisdiction.

The respondent moved to quash on the ground that the appeal was not from a final judgment. He claimed, also, that if the appeal would lie it only related to a matter of procedure and should not be entertained.

M.L. Hayward on behalf of the respondent moved to quash referring to ***Martin v. Moore***; ***Reg. v. Toland***; ***Pritchard v. Norton***.

J.T.F. Winslow, for the appellants contra cited ***Bray v. Ford***.

SIR CHARLES FITZPATRICK C.J.:

"This is an appeal from a judgment of the Supreme Court of New Brunswick which affirmed an order of a Judge in Chambers who refused to set aside an earlier order made by himself granting leave to serve a writ of summons out of the jurisdiction.

It seems a point of practice and there is no final judgment. The case of Martin v. Moore, seems in point. In the latter case of Howland & Co. v. Dominion Bank, the question of jurisdiction of the Supreme Court does not appear to have been considered.

It seems to me the only question here is whether the amendment of the "Supreme Court Act" 1913 defining a final judgment would cover a case such as this. The amount involved is only $48.

With some hesitation I have come to the conclusion that no appeal lies."

Single Transaction Rule;

Criminal Code of Canada, R.S.C., 1985, c. C-46.

Section 581(1)

"Substance of offence

581 (1) Each count in an indictment shall in general apply to a single transaction and shall contain in substance a statement that the accused or defendant committed an offence therein specified."

R. v. Kenegarajah,

2018 ONCA 121

Introduction:

This is a Money Laundering Matter. In this specific Case, Motion to Quash was partly granted and partly denied on few counts.

Background:

In 2001, authorities were alerted to suspected bust out frauds discovered by the Manager of Security at American Express ("AMEX"). Mr. Neshan, an employee of AMEX, came under suspicion and inquiries into his activities revealed that he accessed 21 different credit card accounts. Although police investigated the frauds and conducted a search of a Toronto residence in connection with Mr. Neshan, he was never charged in relation to these activities.

In 2007, police in British Columbia investigated reports that Mr. Neshan and Mr. Kenegarajah were involved in financial impropriety at a Hindu temple. The police located the men and maintained surveillance on them. Mr. Kenegarajah was arrested for fraud. Ultimately, however, the Crown in British Columbia did not prosecute Mr. Kenegarajah.

The police conducted surveillance on these vehicles, which revealed a pattern of activity by Mr. Neshan and Mr. Kenegarajah. On weekday mornings the two men would leave from 30 Bissland Drive, Ajax, and travel throughout the Greater Toronto Area, conducting various bank transactions, visiting retail stores and post office boxes, and using credit cards in other people's names. Throughout the day they would stop off at 30 Bissland Drive and other residences. They were never observed attending a legitimate place of employment or business. The police believed that the activities were consistent with a pattern of bust out frauds.

Search warrants were executed at 30 Bissland Drive, Ajax and at 311-11753 Sheppard Avenue East, Scarborough. Among the material seized as a result of the search warrants were over 50 credit cards in the names of people other than the accused, data for several individuals and financial institutions, over $100,000 in cash, multiple mobile phones, electronics and other luxury goods. The records for the mobile phones were accessed and revealed over a thousand calls to six financial institutions.

Multiple charges were laid against the appellants. The Crown submitted that over a period of 10 years Mr. Neshan and Mr. Kenegarajah primarily carried out the bust-out frauds, assisted by the other appellants. The Crown's case consisted largely of evidence from the affected financial institutions, surveillance evidence, and evidence from the searches.

Conclusion:

At the end of their trial, counsel for Mr. Neshan and Mr. Kenegarajah brought a motion to have certain counts quashed on the basis that they violated the single transaction rule as set out in s. 581(1) of the *Criminal Code of Canada,* R.S.C., 1985, c. C-46.

The trial judge found, however, that each of the impugned counts alleged a single transaction and complied with s. 581(1).

The trial judge dismissed the conspiracy charges as against all defendants. Mr. Kenegarajah and Mr. Neshan were found guilty of the global charges of fraud, money laundering and participating in a criminal organization as well as most of the other substantive counts. Ms. Neeranjan and Ms. Kanagarajah were also found guilty of participating in a criminal organization and a few other substantive counts.

Her Majesty the Queen v. Raymond Shalala

Introduction:

In this Case the accused sought a Motion to Quash the Indictment in a charge of money laundering on the ground that it does not comply with the provisions of s. 581(1) and (3) of the Criminal Code (Canada). After hearing the arguments of both the sides, the Court denied the motion to quash.

Judgement:

"The main difference between the Indictment in the conspiracy to import matter and the one at hand as they relate to the requirements of s. 581 is that the within Indictment, by necessity, refers to the offence or offenses the proceeds of which were allegedly laundered and also contain more alternatives as referred to above.

The Indictment which is the subject matter of this motion provides the time, place and matter of the offence of money laundering. We are primarily concerned with the offence of money laundering and it is the time, place and matter of that offence and not the offence or offenses the proceeds of which were laundered that need be provided to satisfy the requirements of s. 581(3).

Concerning the requirements of s. 581(1), I would add that a single transaction may include a general scheme of operation constituting one continuing offence.

The defense, motion to quash the indictment therefore is denied."

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Intern Note:

In many Countries which have a stringent Money Laundering Act, either follow the Federal/Common Criminal Law Procedure or the provisions of their respective states which mostly, in Money Laundering Cases is superseded by the Federal Law Procedure, since Money Laundering is a Federal Crime.

(- Shiv Bhatnagar, Law Intern)

Motion To Quash in The United Kingdom

Shiv Bhatnagar, Law Intern

Criminal Procedure (Volume 27 (2021), paras 1–442; Volume 28 (2021), paras 443–938)

365. Motion to Quash Indictment;

A motion to quash an indictment because of a defect which cannot be amended may be made at any time before verdict, but the proper time to make the motion is before the plea is entered. When the indictment is for treason, the court will not entertain a motion to quash an indictment before the plea is entered, but the motion may be made at the close of the case for the prosecution;

Motion to Quash an Indictment in the Crown Court:

This procedure is available in the Crown Court. The application is usually made by the defence. The procedure can be used by the prosecution to abandon (in order to re-commence) proceedings when the indictment is defective and it is not possible to cure the defect by amendment.

This is not an acquittal. To revive the proceedings, fresh proceedings have to be started in the magistrates' court, or by obtaining a voluntary bill of indictment.

Criminal Procedure (Scotland) Act 1995 (1995 c 46);

Other appeals under section 107A: appeal against acquittal

(1) This section applies where—

(a) an appeal brought under section 107A is not an expedited appeal,

(b) the appeal is against an acquittal, and

(c) the High Court determines that the acquittal was wrong in law.

(2) The court must quash the acquittal.

(3) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.

(4) If—

(a) no motion is made under subsection (3), or

(b) the High Court does not grant a motion made under that subsection,

the High Court must in disposing of the appeal acquit the accused of the offence libelled in the indictment.

In ***R. v. Goldstein*** (1983);

HOUSE OF LORDS England and Wales
LORD DIPLOCK, LORD EDMUND-DAVIES, LORD KEITH OF KINKEL, LORD ROSKILL AND LORD BRIGHTMAN
18 DECEMBER 1982, 20 JANUARY 1983
20 January 1983. The following opinion was delivered.

Appeal:

Alexander Joseph Goldstein appealed with leave of the Court of Appeal granted on 2 April 1982 against the decision of the Court of Appeal, Criminal Division (Lord Lane CJ, Lloyd and Eastham JJ) ([1982] 3 All ER 53, [1982] 1 WLR 804) on 1 April 1982 dismissing the appellant's appeal against his conviction under s 170(2) of the Customs and Excise Management Act 1979 of being knowingly concerned in the fraudulent evasion of the prohibition on importation of certain radiotelephonic apparatus imposed by reg 3 of the Radio Telephonic Transmitters (Control of Manufacture and Importation) Order 1968, SI 1968/61, made under s 7(1) of the Wireless Telegraphy Act 1967, in the Crown Court at Ipswich on 2 December 1980 before his Honour Judge Binns and a jury. The facts are set out in the opinion of Lord Diplock.

Louis Blom-Cooper QC and Gordon Bennett for the appellant.

Peter Archer QC and John Devaux for the Crown.

Lord Diplcock stated:

"It is not possible to foresee all the circumstances in which such a question of law may arise in the course of legal proceedings and on this matter it would, in my view, be unwise for this House to assume the role of auspices. So far as criminal trials, whether summary or on ***indictment****, are concerned, it would in my view be appropriate for your Lordships to leave it to the Criminal Division of the Court of Appeal to lay down such guidelines for trial courts as its experience may suggest are desirable as to the most convenient procedure for dealing with s 3(1) questions if they should arise. I see no reason, however, for differing from the view expressed by the Court of Appeal in its judgment in the instant case that, where it is apparent from the outset (as it may not always be) that a s 3(1) question will arise, the most appropriate time to take it is by a* ***motion to quash*** *the* ***indictment*** *before arraignment."*

R v Connelly

COURT OF CRIMINAL APPEAL COURT. HOUSE OF LORDS.
Edmund Davies, Lawton and Lyell JJ.
LORD REID, LORD MORRIS OF BORTH-Y-GEST, LORD HODSON, LORD DEVLIN and LORD PEARCE.
1963 Sept. 24, 25, 26, 27, 30.1963 Dec. 10, 11, 12, 16, 17, 18, 19; 1964 Jan. 15, 16, 20; April 21.

Crime — Nemo debet bis vexari — Acquittal by Court of Criminal Appeal — Effect — Indictments for murder and robbery — Trial on murder charge alone — Two defences, including alibi — Conviction of non-capital murder — Appeal ragging issue on alibi only — Murder conviction quashed on ground of misdirection to jury on alibi issue — Whether tantamount to finding on issue of alibi — Trial on second indictment for robbery — Whether barred by plea of atrophies acquit — "Issue estoppel" — Whether available in English criminal law — Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1) (2).

Crime — Evidence — Previous proceedings — Acquittal on murder charge — Trial for robbery — Oral statements attributed to defendant admitted at first trial admissible at second — Whether fact of acquittal admissible in rebuttal — Acquittal by aerate of Criminal Appeal.

Crime — Practice — Indictment — Discretion — Judge of opinion that prosecution should not proceed — Whether discretion to prevent trial.

Crime — Court of Criminal Appeal — Acquittal by — Effect — Murder conviction quashed on ground of misdirection to jury on one issue — Whether tantamount to finding of fact on that issue —

Trial on further indictment for robbery raising same issue — Whether barred — Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.

Estoppel — Per rem judicatam — Criminal proceedings — "Issue estoppel" — Ingredients — Whether available as plea in bar.

The Judges stated:

Appeal on April 5, 1963, was allowed on the ground of misdirection on fact. Accordingly, the court, as required by section 4 (2) of the Criminal Appeal Act, 1907, ***quashed*** *the conviction and directed a judgment and verdict of acquittal to be entered. The court, after hearing argument, gave leave for the second* ***indictment*** *to be proceeded with.*

As to the court's discretion, see Rex v. Lynch.49 The judge has an inherent jurisdiction to prevent a case coming for trial if he thinks it unfair or oppressive for it to do so. In this respect the Crown is in no different situation from any other litigant. It does not matter whether the court's discretion is exercised by ***quashing*** *the* ***indictment*** *or otherwise. All common law rules emanating from the breasts of the judges are in origin discretionary.*

In misdemeanour, the position was just the opposite. The general rule was that any number could be joined, but that in exceptional cases the court could in its discretion ***quash*** *the* ***indictment****. In Rex v. Kingston112 Lord Ellenborough C.J., while declining to entertain the point on demurrer, said: "This would have been a good ground of application to the discretion of the court to* ***quash*** *the* ***indictment*** *for the inconvenience which may arise at the trial from joining different counts against different defenders; but where to the offences so charged in different counts there may be the same plea and the same judgment, there is no authority for saying that such joinder in one* ***indictment*** *is bad in point of law."*

Government of Untied States v. Julian Assange

REQUEST FOR EXTRADITION OF JULIAN ASSANGE

In a case which arose out of what was said to have been one of the largest compromises of classified information in the history of the US, a district judge in the magistrates' court ruled, among other things, that Julian Assange's mental condition was such that it would be oppressive to extradite him to the US, concerning certain material allegedly published by WikiLeaks. Accordingly, he was discharged pursuant to s 91(3) of the Extradition Act 2003.

R v. Inner London Quarter Sessions, ex p Metropolitan Police Comr.

Court: Divisional Court
Judgment Date: 24/10/1969

CRIMINAL LAW, EVIDENCE AND PROCEDURE - TRIAL OF INDICTMENTS - PROCEEDINGS BEFORE PLEA - MOTION TO QUASH INDICTMENT; DEMURRER - DEMURRER - OBSOLETE

On being arraigned on indictment V entered a plea of demurrer to the indictment on the ground that the evidence in the depositions was not sufficient to support the charge. The court, after considering the depositions, upheld the plea, notwithstanding that it was not in writing: Held the plea of general demurrer should not have been accepted since it was not in writing; furthermore, demurrer being an objection to the form or substance of the indictment, the plea should not have been decided by examination of the depositions. Per Lord Parker,

CJ: *I hope that now demurrer in criminal cases will be allowed to die naturally.*

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Certificates...

A.M. Khanwilkar
Judge, Supreme Court of India

6, Moti Lal Nehru Place,
(Opp. 7B, Moti Lal Nehru Marg)
New Delhi-110011
Tel. : 011-23012377

TO WHOMSOEVER IT MAY CONCERN

Mr. Shiv Bhatnagar, a Second-Year law student of K.R. Mangalam University, Gurugram, pursued online internship in my office from 7th March, 2022 to 15th April, 2022.

During his tenure of internship, he assisted in research works concerning matters heard online. He punctually attended virtual Court hearings and witnessed the proceedings enthusiastically and with great attention to detail. I was impressed by his intellectual capacity to grasp and analyse the intricacies of the issues debated before the Court in complex cases. He was eager to learn and to discuss about his doubts.

Mr. Bhatnagar has qualities such as discipline, dedication and sincerity. I found him to be diligent, polite, well-mannered and humble.

I wish him all the best in future endeavours.

(A.M. Khanwilkar)

New Delhi;
May 21, 2022.

CONCLUSION

As is illustrated by the above day-by-day account of my internship, I was handed a lot of work to do which I was able to handle responsibly. My internship experience was varied and included making research notes and doing research on important and tricky propositions of law. In addition, I was required to make numerous searches online to find a case or an order of a Court for the pursual of the lawyers at the office of my internship. What is more, I actively used various legal databases for my research.

Overall, I had a valuable internship experience which taught me numerous practical aspects of the law.

*****THANK YOU*****

Submitted By: -

Shiv Bhatnagar

Roll No.: 2005230001

SEM: VI

COURSE: LLB (Hons.)