

Judiciary Digest

Current & Conceptual Weekly

26th August - 1st September, 2024

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Important Judgement of Last Week

Supreme Court Modifies Sentence in Fatal Stabbing Case

Case at Hand:

The case arose from an incident on November 7, 2000, in Godhra, Gujarat, where a matrimonial dispute led to a fatal stabbing. Hussainbhai Asgarali Lokhandwala, then 18 years old, stabbed Idrishbhai Fidaali Mithiborewala and his son Husseni @ Gopi during an altercation at the residence of Hussainbhai's father, Asgarali Onali Lokhandwala. The dispute stemmed from tensions between Hussainbhai's sister Oneja and her husband Abbasbhai, son of the deceased Idrishbhai. The trial court convicted Hussainbhai under Section 304 Part I IPC, which was later altered to Section 304 Part II IPC by the High Court.

Heat of Moment:

The Supreme Court agreed with the High Court's view that the incident occurred in the heat of the moment. The court noted that Hussainbhai was a young man of 18 years, studying in Class 12, and was likely emotionally upset due to his sister's alleged ill-treatment by her in-laws. The court observed:

"It is natural for a young man to be emotionally upset to see his sister allegedly ill-treated by her in-laws and when the deceased and Abbasbhai came to their residence leading to the ruckus, it is not difficult to visualize the state of mind of Hussainbhai as well of his father Asgarali."

No Premeditation:

The court also considered that the incident was not premeditated, as evidenced by its occurrence inside Asgarali's residence and the fact that there was only one stab wound each on the deceased.

Court's Directions:

The Supreme Court maintained the conviction of Hussainbhai Asgarali Lokhandwala under Section 304 Part II IPC but modified his sentence to the period already undergone by him.

Case Details:

Case Title: Hussainbhai Asgarali Lokhandwala versus State of Gujarat

Coram: Justice Abhay S Oka and Justice Ujjal Bhuyan

Supreme Court Overturns High Court's Acquittal in POCSO Case, Emphasizes Victim Support

On August 20, 2024, a bench comprising Justice Abhay S. Oka and Justice Ujjal Bhuyan of the Supreme Court of India delivered a landmark judgement in a *suo motu* writ petition and a criminal appeal related to a POCSO case.

Case at Hand:

The case involved a 14-year-old victim who was sexually assaulted by a 25-year-old accused. The Special Judge convicted the accused under Section 6 of the POCSO Act and Sections 363, 366, and 376(2)(n) and (3) of the IPC. However, the Calcutta High Court acquitted the accused, citing a "non-exploitative consensual sexual relationship" and the victim's current living situation with the accused.

Observations by the Court:

The Supreme Court strongly criticised the High Court's judgement, stating that it contained "utterly irrelevant" and "shocking" observations. The Court emphasized that consent is irrelevant in POCSO cases and that the High Court's concept of "non-exploitative sexual acts" in such cases is unfounded.

The Court noted: "We fail to understand how a sexual act, which is a heinous offence, can be termed as non-exploitative. When a girl who is fourteen years old is subjected to such a horrific act, how can it be termed as 'non-exploitative'?"

Failure of State:

The judgement highlighted the failure of the state machinery to implement crucial provisions of the POCSO Act and the Juvenile Justice Act, particularly Section 19(6) of the POCSO Act, which mandates reporting of POCSO cases to Child Welfare Committees (CWC).

Strict Implementation:

The Court observed: "If sub-section (6) of Section 19 is implemented in relation to the victims of the offences under the POCSO Act and thereafter, the CWC strictly implements the provisions of the JJ Act which we have referred to above, no victim will face the situation which the victim in this case had to face."

Court's Directions/Decisions:

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1. The Court set aside the High Court's acquittal and restored the conviction under Section 6 of the POCSO Act and Section 376(2)(n) and (3) of the IPC.
2. The Court directed the West Bengal government to constitute a committee of experts to interact with the victim and help her make an informed choice about her future.
3. The Court ordered the circulation of the judgment to Law Secretaries of all states and Union Territories to ensure proper implementation of POCSO Act and JJ Act provisions.
4. The Court directed the Ministry of Women and Child Development to compile and submit a report on compliance by states within three months.

Case Details:

Case Title: In Re: Right to Privacy of Adolescents

Important News of Last Week

Supreme Court Issues Comprehensive Directions on Bail Implementation

In a significant order dated August 6, 2024, the Supreme Court of India issued a series of detailed directions to various states, union territories, high courts, and central agencies regarding the implementation of bail guidelines and reforms. The order comes in response to ongoing non-compliance with previous directives aimed at addressing issues related to undertrial prisoners and bail procedures.

Background and Context:

The case stems from earlier Supreme Court judgments, particularly *Satender Kumar Antil vs. CBI & Anr.* (2022), which laid down important guidelines on bail, arrest procedures, and the rights of undertrial prisoners. The court had previously issued orders in 2022 and 2023, seeking compliance reports from various stakeholders. However, the court noted with disappointment that many parties had still not fully complied with these directions.

Key Concerns Addressed:

The order addresses several critical issues, including non-compliance with arrest procedures under Sections 41 and 41A of the Criminal Procedure Code (CrPC), the need for special courts and additional judicial officers, training of prosecutors, implementation of standard operating procedures (SOPs) for poor prisoners, and the application of bail principles to anticipatory bail applications.

Directions to States and Union Territories:

The Supreme Court issued specific directions to individual states and union territories. Common themes included ensuring compliance with arrest procedures, taking action against erring police officers, implementing SOPs for poor prisoners, providing data on prosecutor training programs, and constituting empowered committees and oversight committees to help poor prisoners.

High Court Directives:

High courts were directed to ensure compliance with various paragraphs of the Satender Kumar Antil judgement. This included monitoring lower courts' adherence to bail guidelines, providing data on pending bail applications, and ensuring the application of bail principles to anticipatory bail cases. Some high courts were also asked to clarify instances of non-compliance and take action against erring judicial officers.

Central Agencies and Union Government

CBI Directives:

The Central Bureau of Investigation (CBI) was directed to provide clarifications on specific cases of non-compliance and detail actions taken against erring officers. The Union of India was asked to inform the court about the progress on framing a comprehensive bail law, assess the need for additional CBI special courts, and provide details on the implementation of SOPs for undertrial prisoners and allocation of funds for poor prisoners.

Institutional Monitoring Mechanism:

Recognizing the need for ongoing oversight, the court directed the establishment of an institutional monitoring mechanism. This includes requiring magistrates and sessions judges to report non-compliance to their respective Principal District Judges, who must then forward this information to the High Court Registrar General and district police heads. The court also mandated the creation of committees in each High Court for ensuring implementation of Supreme Court decisions.

Special Provisions for Poor Prisoners:

The court showed particular concern for poor prisoners unable to meet bail conditions. It directed the implementation of SOPs to help such prisoners and asked NALSA (National Legal Services Authority) to suggest a policy for addressing this issue. The court also sought information from various states on the functioning of empowered committees and oversight committees established for this purpose.

Phased Hearing Approach:

Given the large number of parties involved, the Supreme Court decided to take up the matter in a phased manner. It scheduled the first hearing for October 15, 2024, listing specific high courts and states to be heard on that date, with remaining parties to be heard on subsequent days.

Conclusion:

This comprehensive order reflects the Supreme Court's determination to ensure full implementation of bail reforms across India. By issuing detailed, state-specific directions and establishing monitoring mechanisms, the court aims to address systemic issues in the criminal justice system, particularly those affecting undertrial prisoners and bail procedures. The success of these measures will depend on the diligent compliance of all stakeholders and continued oversight by the judiciary.

Case Details: Satender Kumar Antil v. Central Bureau of Investigation & Anr

OLD VS NEW

Provisions for Murder in IPC and BNS

1. **Section 101** of BNS defines **murder**, corresponding to **Section 300** of the old Indian Penal Code (IPC).
2. **Section 103** of BNS provides **punishment** for murder. This replaces **Section 302** of the IPC.
3. The punishment for murder under Section 103 of BNS is **death, or imprisonment for life, and a fine**.

Provisions for Culpable Homicide (not amounting to death) in IPC and BNS

1. **Section 100** defines culpable homicide as causing death by doing an act with the intention of causing death, or with the intention of causing bodily injury likely to cause death, or with the knowledge that the act is likely to cause death. This corresponds to **Section 299** of the IPC.
2. **Section 105** provides punishment for culpable homicide not amounting to murder. This corresponds to Section 304 of the IPC. Punishment under Section 105 is as follows:
 - If the act is done with intention to cause death or bodily injury likely to cause death: Imprisonment for life, or imprisonment for 5-10 years and fine.
 - If the act is done with knowledge that it's likely to cause death, but without intention: Imprisonment up to 10 years and fine.

CLEAR CONCEPT

Foreign Judgments under CPC

Foreign judgments under the Code of Civil Procedure (CPC) in India are governed by Sections 13 and 14. Here are the key points regarding foreign judgments under the CPC:

Definition and Scope:

A foreign judgement is defined in **Section 2(6)** of the CPC as a judgement issued by a court outside India. A foreign court refers to a court situated outside India that is not established or continued by the central government.

Conclusiveness of Foreign Judgments:

Section 13 of the CPC outlines when a foreign judgement shall be conclusive. A foreign judgement is considered conclusive on any matter directly adjudicated between the same parties, except in the following cases:

1. When not pronounced by a court of competent jurisdiction
2. When not given on the merits of the case
3. When based on an incorrect view of international law or refusal to recognize applicable Indian law
4. When proceedings are opposed to natural justice
5. When obtained by fraud
6. When it sustains a claim founded on breach of any law in force in India

Enforcement of Foreign Judgments:

Foreign judgments can be enforced in India in two ways:

1. By filing an Execution Petition under **Section 44A** of the CPC (for judgments from reciprocating territories)
2. By filing a fresh suit on the foreign judgement/decree

Presumption of Lawfulness:

Section 14 of the CPC creates a presumption that a foreign judgment was pronounced by a court of competent jurisdiction upon production of a certified copy, unless the contrary appears on the record.

Key Principles

- A foreign judgement must be on the merits of the case to be conclusive.
- The court must have applied its mind and considered evidence to adjudicate on the merits.
- A foreign judgement cannot be challenged on grounds of mistake of law or fact.
- The judgement should be final and not fall within exceptions under Section 13.

In summary, the CPC provides a framework for recognizing and enforcing foreign judgments in India, subject to certain safeguards to ensure principles of justice are upheld. The provisions aim to balance respect for foreign judicial decisions with protection of Indian legal principles.

PRELIMS QUESTIONS

1. 'Duchess of Kingstone's Case' is a leading case on the subject:

- a. Foreign judgement
- b. Ex parte decree
- c. Res judicata
- d. Inherent powers of the courts

Answer:C. Res judicata.

Explanation: 'Duchess of Kingstone's Case' is a leading case related to the doctrine of res judicata in law. Res judicata is a legal principle that prevents the same matter from being litigated again between the same parties if it has already been finally decided by a competent court.

2. Explanation VII to section 11 in the Code of Civil Procedure, 1908 was inserted by:

- a. Code of Civil Procedure (Amendment) Act, 1976
- b. Code of Civil Procedure (Amendment) Act, 1999
- c. Code of Civil Procedure (Amendment) Act, 2002
- d. None of the above

Answer:A Code of Civil Procedure (Amendment) Act, 1976.

Explanation: Explanation VII to section 11 in the Code of Civil Procedure, 1908 was inserted by the Code of Civil Procedure (Amendment) Act, 1976. This explanation deals with the principle of res judicata.

3. Whether the pendency of a suit in a foreign court will preclude courts in India from trying a suit founded on the same cause of action?

- a. Yes
- b. No
- c. Only the High Court can try
- d. Only the Supreme Court can try.

Answer:B No.

Explanation: The pendency of a suit in a foreign court does not preclude courts in India from trying a suit founded on the same cause of action as provided by Section 10 Explanation of the CPC.

4. Which of the following sections of the Code of Civil Procedure stipulate the provision for 'the place of institution of suit where local limits of jurisdiction of Courts are uncertain'?

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- a. Section 18
- b. Section 21
- c. Section 24
- d. Section 27

Answer: A Section 18.

Explanation: Section 18 of the Code of Civil Procedure deals with the provision for the place of institution of a suit where local limits of jurisdiction of courts are uncertain.

5. Which of the following statements is not correct/

- 1. A decree may be partly preliminary and partly final
- 2. Every decree is appealable unless otherwise expressly provided
- 3. Every order is not appealable unless specified in the Code.
- 4. A decree is an adjudication of a court of law while an order under the Code of Civil Procedure is not an adjudication of a court of law.

Answer: D. A decree is an adjudication of a court of law while an order under the Code of Civil Procedure is not an adjudication of a court of law.

Explanation: This statement is incorrect because both a decree and an order under the Code of Civil Procedure are adjudications by a court of law. The main difference is that a decree typically resolves the rights of the parties with respect to all or any of the matters in controversy in a suit, usually in a conclusive manner, while an order may resolve some of the proceedings within a suit and does not necessarily involve a final determination of the rights of the parties concerning the main matter in controversy.

6. An agreement by which a person agrees to waive the benefit on any exemption under Section 60 of the Code of Civil Procedure is:

- a. Valid
- b. Void
- c. Voidable
- d. Valid if reasonable

Answer: B. Void.

Explanation: Under the Code of Civil

Procedure, 1908, any agreement in which a person waives the exemptions provided under Section 60 is void. Section 60 outlines the specific properties and earnings that are exempt from attachment or execution, ensuring that individuals retain basic necessities for living even in the face of debt recovery. Thus, agreements to waive these rights are not legally enforceable.

7. In Ghan Shaym Das Gupta V. Anant Kumar Sinha. AIR 1991 SC 2251, the Supreme Court explains:

- a. Res Judicata
- b. Res subjudice
- c. Execution of decree
- d. Review

Answer: C. Execution of decree.

Explanation: In the case of Ghan Shaym Das Gupta v. Anant Kumar Sinha, the Supreme Court explains matters related to the execution of a decree.

8. Which is not an instance of 'material irregularity' under Order 21, Rule 90 of the Code of Civil Procedure?

- a. Misdescription of the property in the proclamation
- b. Sale after an order of stay of execution
- c. Omission to hold sale at stated time and place
- d. Omission to send a copy of the decree to the executing court

Answer: C. Omission to hold sale at the stated time and place.

Explanation: Under Order 21, Rule 90 of the Code of Civil Procedure, "material irregularity" includes various irregularities related to the execution of sales of property. Omission to hold a sale at the stated time and place is one such irregularity.

9. By the Amendment Act of 1976 in the Code of Civil Procedure, a specific provision has been made for the:

- a. Set off
- b. Cross-claims
- c. Cross-decree

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d. Counterclaim

Answer:D. Counterclaim.

Explanation: By the Amendment Act of 1976 in the Code of Civil Procedure, a specific provision has been made for counterclaims. A counterclaim is a claim made by a defendant in response to the plaintiff's claim.(Order 8 Rule 6A, CPC)

10. Who is entitled to exemption from personal appearance in the court?

a. Bishop of the Church

b. Speaker of the State Legislature Assembly

c. Chairman of the State Legislative Council

d. Judges of the High Court

Answer:D. Judges of the High Court.

Explanation: Judges of the High Court are entitled to exemption from personal appearance in court due to their official duties and responsibilities under Section 133, CPC.

MAINS QUESTIONS

Q. Explain the concept of precept under CPC?

Ans. A precept under the Code of Civil Procedure (CPC) is a directive or order issued by a court that has passed a decree to another competent court, instructing it to attach property belonging to the judgement debtor. Here are the key points about precepts under CPC:

Meaning and Purpose: A precept is essentially a written order from one court to another to take certain actions related to executing a decree. The main purpose is to enable attachment of property that lies outside the jurisdiction of the court that passed the decree.

Issuance of Precepts:

- Precepts are issued under **Section 46** of the CPC.
- The decree-holder must apply to the court that passed the decree for issuance of a precept.
- The court issuing the precept must be satisfied that the decree is valid and enforceable.

Procedure:

1. The decree-holder applies to the original court for a precept.
2. If approved, the original court issues a precept to another competent court.
3. The receiving court attaches the specified property as per the precept.

Key Features:

- Precepts allow interim attachment of property for up to **2 months**, which can be extended.
- The receiving court cannot question the validity of the precept and must execute it.
- It's a precautionary measure to prevent alienation of property before formal execution.

Limitations:

- Precepts do not transfer the decree to the receiving court.
- The attachment under a precept is temporary, lasting up to 2 months unless extended.

Important Case Law: M.L. Kapoor & Sons v. Union of India (1969)

Held: The Supreme Court of India made important ruling regarding the powers of courts executing precepts:

1. The powers of the court to which a precept is issued are not limited to the powers of the court that passed the decree.
2. The executing court has the same powers in executing the decree as if it had been passed by itself.
3. This means the executing court can take all necessary steps to enforce the decree, including:
 - Issuing a warrant of arrest
 - Attaching property
 - Appointing a receiver
 - Selling property
 - Making payments to parties

Conclusion: In essence, precepts enable courts to take preliminary steps towards executing decrees across jurisdictions, protecting decree-holders' interests until formal execution proceedings can be initiated.

