

IMPORTANT DECISIONS

SC **Accused lodged in jail** - Dialogue in between accused lodged in jail and Advocate appointed by Supreme Court Legal Services Committee - All Legal Services Authorities/Committees in every State to extend the facility of video conferencing between Counsel and accused. (S.C.) 142

SC **Acid attack** - Acid is undoubtedly a corrosive substance within meaning of S.326 IPC. (S.C.) 806

SC **Additional evidence at appellate stage** - There are no fetters on the power u/s 391 Cr.P.C. of the Appellate Court. (S.C.) 182

Alteration of charge - Waiver of right to further examine any witness - Does not impair or affect the right of defence to seek further cross examination of any witness. (Allahabad) 525

SC **Anticipatory bail** - High Court Registry cannot exercise power to answer maintainability of petition. (S.C.) 776

SC **Anticipatory bail** - Second application - To be heard by same judge who had disposed of first bail application in case he is available. (S.C.) 797

Appeal against acquittal - Accused can assail correctness or otherwise of any finding of trial Court with a view to support his acquittal. (T&A) 279

Application u/s 340 Cr.P.C - Filed in civil Court shall be registered as an interlocutory application - An appeal challenging orders of such Court is maintainable only in Court in which appeals against decrees or orders of such Court may be filed under provisions of Civil Courts Act - Order of Civil Appellate Court cannot be challenged u/s 482 Cr.P.C. (Kerala) 599

Arms - Expression 'possession' - Refers to possession backed with requisite mental element that is conscious possession. (Delhi) 584

Bail - Gravity alone not decisive ground to deny bail - Rather competing factors are required to be balanced by Court while exercising its discretion. (H.P.) 501

Cheating - Pendency of civil suit - Apprehending not getting a favourable order in civil court, complaint filed by giving criminal twist - Proceedings quashed. (Madras) 626

SC **Complaint nothing but an attempt to wreck vengeance** - Criminal complaint quashed being an abuse of the process of Court. (S.C.) 843

Contraband - One 'K' sent to bring independent witnesses - 'K' not examined - It remains inexplicable why he could not bring independent witness - Accused acquitted as prosecution story is suspicious. (H.P.) 119

SC **Contraband** - Unless there is actual production of case property in Court, prosecution case would not be established. (S.C.) 054

Contraband - Default bail - Challan not presented within stipulated time - Extension of time to file challan - Accused cannot be denied default bail merely on the ground that report of chemical examiner/FSL is awaited and some other accused are to be arrested - Bail granted. (P&H) 231

Contraband - Non joining of independent witness - Very foundation of prosecution story and recovery memo itself do not inspire confidence - Non-joining of independent witness thus, fatal to prosecution case. (Allahabad) 825

Contraband - Police on patrolling and excise raid - Daily Diary report with respect to that not on record - Accused acquitted as prosecution story is suspicious. (H.P.) 119

Contraband - Specific question regarding conscious possession not put to accused in his statement u/s 313 Cr.P.C. - Prosecution failed to prove that accused were having conscious possession of contraband - Accused acquitted. (P&H) 565

Criminal offence by company - Company alone can be prosecuted without its directors or a person in charge of affairs of company. (Karnataka) 743

Criminal Proceedings - Mentioning of caste/status separately in criminal proceedings - Amounts to colonial legacy and requires to be stopped forthwith. (P&H) 485

Cross-examination - Irrelevant question or question not intended to contradict or qualify statements in examination-in-chief or which do not impeach credit of a witness, cannot be allowed in cross-examination. (P&H) 705

Default bail - Judicial remand extended, in absence of accused, beyond expiry of 60 days - As judicial remand was granted in absence of accused as such accused was not informed of his right to default bail - Bail granted. (Rajasthan) 693

SC **Difference between S.149 IPC and S.34 IPC** - S.34 IPC does not by itself create any offence whereas S.149 IPC does. (S.C.) 001

Disclosing identity of victim - Offence u/s 228-A IPC - Victim herself having no objection in quashing proceedings - Proceedings quashed. (Kerala) 571

Dishonour of cheque - Source of loan - No adverse inference can be drawn in this regard only because of absence of Income Tax Return. (M.P.) 169

Dishonour of cheque - Accused is entitled to lead evidence on affidavit. (Gujarat) 675

Dishonour of cheque - Amendment of complaint to make correction in the cause title of complaint - Allowed. (Rajasthan) 547

Dishonour of cheque - Cheque issued as earnest money under agreement to sell - Agreement stood frustrated - It cannot be said that there was subsisting liability - Complaint quashed. (P&H) 145

Dishonour of cheque - Cheque issued of remaining amount of loan - Provision of S.138 of NI Act is applicable even in a case where cheque is issued for discharge of liability or debt in whole or in part. (P&H) 736

SC **Dishonour of cheque** - Cheque issued under and in pursuance of agreement to sell - Payment made in pursuance of such an agreement is a payment made in pursuance of a duly enforceable debt or liability for the purpose of S.138 of N.I. Act. (S.C.) 369

Dishonour of cheque - Compensation - Granted with interest calculated at 9% from the date of issuance of cheque till date of judgment - Said compensation to further carry interest @ 9% per annum from the date of judgment of trial Court till actual payment is made. (M.P.) 169

Dishonour of cheque - Compliant not filed by payee or holder in due course

- Demand not made by payee or holder in due course - Basic ingredients of S.138 of the Act not satisfied - Accused discharged. (Delhi) 522

Dishonour of cheque - Compromise - High Court after being satisfied that cheque amount with assessed cost and interest has been paid, can close proceedings even in absence of complainant. (H.P.) 212

Dishonour of cheque - Condonation of delay - Plea that notice not sent in the envelope - Envelope not opened and produced in Court - Plea of not sending notice can be considered at the time of deciding delay condonation application - Order to open envelope calls for no interference. (Bombay) 728

Dishonour of cheque - Death of complainant during pendency of complaint - Legal representatives of complainant can be substituted as complainant. (P&H) 158

SC **Dishonour of cheque** - Delay - Despite repeated requests to postal department, no acknowledgement of notice was furnished - Second notice thus issued - Impugned order of quashing complaint set aside - Complaint restored. (S.C.) 851

Dishonour of cheque - Evidence on affidavit by accused - Not permissible. (P&H) 779

SC **Dishonour of cheque** - Law as to : (a) Presumption - Signature on cheque not denied by accused - There is presumption that cheque was drawn for consideration and complainant received the same in discharge of an existing debt - Onus shifts on accused to establish a probable defence to rebut the presumption; (b) Presumption when drawn there is presumption of existence of legally enforceable debt - Evidence as to receipts or accounts or want of evidence as regards source of funds are not of relevant consideration while examining whether accused is able to rebut the presumption or not; (c) Mere creation of doubt is not sufficient to rebut the presumption; (d) Presumption - Rebuttal - Accused to bring on record such facts which may lead Court to conclude either that consideration did not exist or that its non existence is so probable that a prudent man would act upon the plea that consideration did not exist; (e) Presumption - Drawn but not rebutted - Case of complainant cannot be doubted for want of evidence regarding source of funds for advancing loan; (f) Acknowledgment regarding existence of debt - Accused admitted his signatures but plea of signing blank paper - This suggestion is too remote and too uncertain to be accepted - No cogent reason to sign a blank stamp paper; (g) Acknowledgment regarding existence of debt - Said writing not bearing signatures of complainant - Writing not a bi partite agreement - Obviously, this writing, to be worth its evidentiary value, had to bear signatures of accused, which it does. (S.C.) 090

SC **Dishonour of cheque** - Law as to : (a) Signature on cheque admitted - There is presumption that cheque was issued in discharge of debt or liability; (b) Presumption is rebuttable; (c) Financial capacity to advance loan - There was no satisfactory explanation to question put in cross examination as to financial capacity of complainant - It is a probable defence which shifts burden on complainant to prove his financial capacity and other facts; (d) Complainant failed to prove his financial capacity of lending money - Accused acquitted. (S.C.) 433

Dishonour of cheque - Notice - Served by accused through counsel - Plea that notice served without his instructions - No complaint lodged against counsel in Bar Council - It clearly indicates that registered notice was sent on the instructions of accused. (M.P.) 169

Dishonour of cheque - Pre mature complaint - Filed before expiry of 15 days from the date of service of notice - Complaint is not maintainable. (Allahabad) 772

Dishonour of cheque - Sole Proprietorship firm - Petitioner made an accused

through firm and not in her individual capacity - As petitioner is sole proprietor and she had issued cheque is liable to be proceeded u/s 138 of NI Act.

(Rajasthan) 814

Dishonour of cheque - There is no embargo for holder of cheque to fill up its body in case blank cheque is handed over. (P&H) 083

Dishonour of cheque - Voice sample - Recording of mobile phone very basis to succeed in the complaint - Application to take voice sample for analysis by CFSL allowed. (P&H) 688

SC **Domestic Violence** - Wife entitled to claim residence in shared household only if she establishes domestic violence. (S.C.) 756

Domestic Violence - Limitation - Non-providing of maintenance is a continuous cause of action - Even if for three years wife did not claim maintenance for herself or for child, same would not debar her from seeking maintenance. (Delhi) 793

Domestic Violence - Marriage between parties not solemnized as per law - Prima facie no evidence to establish that they were living together since long - Order granting interim maintenance set aside. (M.P.) 626

Dowry death - Entire allegations against husband - Conviction of appellants ('Devar' and mother-in-law) set aside. (Allahabad) 672

Dowry death - Cruelty - Allegations that deceased was not liked by family of accused and that they do not take care of her and she was not given money to purchase things she liked and accused did not talk to her some times - Does not satisfy requirements of Ss.498-A, 304-B IPC. (Delhi) 731

SC **Dying declaration** - A painkiller was injected - Statement recorded thereafter - Once a sedative was injected, possibility of her being in state of delusion cannot be completely ruled out. (S.C.) 289

SC **Dying declaration** - Fit state of mind to make statement - Endorsement made by doctor after recording statement - Normally it should be the other way round. (S.C.) 289

Enquiry u/s 202(1) Cr.P.C. - Magistrate can issue process without holding enquiry u/s 202(1) in a case which is based on documentary evidence and in a case where accused is related to complainant. (Allahabad) 056

SC **Examination of witness** - Age of case - Not by itself decisive of matter when prayer is made for examination of material witness. (S.C.) 549

SC **Eye witness** - Conviction of eye witness in other case - Credibility of eye witness in the case is not affected. (S.C.) 026

Fair investigation - Investigation done by Subordinate officer to complainant may not be relied upon, as fair investigation may not be expected from him. (Allahabad) 702

SC FIR can be quashed even when charge sheet is filed. (S.C.) 831

SC FIR can be quashed even when discharge application is pending with trial Court. (S.C.) 831

SC **FIR** - Merely because FIR contains inquest number, it cannot be said that FIR was registered subsequent to inquest. (S.C.) 109

Further investigation - Can only be at the instance of investigating agency but not at the option of complainant or accused. (T&A) 283

Harassment for demand of dowry - Allegation against sister of husband as well as her husband - No particulars about date, month or detail of said demand mentioned - Sister (Nanad) and her husband (Nandoi) discharged - Order upheld. (Delhi) 368

Jab on shoulder of student by teacher - No mark of violence or injury on the body of minor child - Chastisement was done in good faith for the benefit of the child - Proceedings quashed. (Kerala) 332

SC **Maintenance to wife and minor daughter** - Husband getting monthly salary of Rs.30/35,000 - Maintenance of Rs.8000/- to wife and Rs.2,000/- to minor daughter granted. (S.C.) 150

Maintenance u/s 125 Cr.P.C. - Ex parte order set aside subject to payment of Rs.10,000/- as costs and payment of Rs.1,000/- p.m. from the date of order as interim maintenance pending decision of proceedings - Order upheld. (Allahabad) 230

Maintenance u/s 125 Cr.P.C. - Law as to : (a) Husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child and parents by availing loans and paying EMIs thereon, which would lead to a reduction of his carry home salary; (b) Deductions from gross pay would only be those which are statutorily allowed; (c) Failure to place on record ITR and computation sheet to establish exact income and liabilities - Contention that he has responsibility of looking after his old aged parents and sister is not sustainable; (d) Plea that wife is working - Wife working before marriage has no relevancy when nothing substantial is available to show that she is currently employed. (P&H) 473

Maintenance u/s 125 Cr.P.C. - Petition can be filed at the place where husband is residing or where wife is residing. (Delhi) 496

Maintenance - Both parties gave up their rights to claim maintenance against each other in a consent decree - Same does not bar maintainability of an application u/s 125 Cr.P.C. (Bombay) 085

Maintenance - No bar to Court to grant maintenance u/s 125 Cr.P.C. even when financial assistance/maintenance was granted by Matrimonial Court dealing in matrimonial proceedings. (Bombay) 143

Offence u/s 295-A IPC - Merely expressing of unpopular view - Not punishable under criminal law, unless it is proved that accused has done it in malafide manner. (P&H) 529

SC **Offence u/s 498-A IPC** - Court at place where wife takes shelter after leaving or driven away from matrimonial home, also has jurisdiction. (S.C.) 578

Permission to go abroad - Under the garb of pendency of FIR, movements of petitioner who is a businessman, should not be curtailed/restricted when investigation is pending since long. (P&H) 330

SC **Quashing of complaint** - Court is only required to see the allegations made in the complaint. (S.C.) 770

SC **Quashing of final report** - Final report that a prima facie case is made out - High Court quashed the final report without observing anything on merits of Final Report - High Court clearly erred. (S.C.) 478

SC **Rape** - Consent - False promise to marry - Intention from beginning not to marry - Marriage of accused was fixed long back and despite the same accused gave promise/false promise and alluded prosecutrix to give her consent for physical relationship - Same cannot be said to be consent - Conviction upheld. (S.C.) 505

SC **Rape** - Consent - False promise to marry - Merely because accused is now married and/or even that prosecutrix has subsequently married - Not a ground not to convict accused. (S.C.) 505

Rape - DNA test - Most reliable test to prove fact of sexual intercourse and it can be basis of conviction of accused. (Bombay) 161

Right of private defence - It need not be specifically raised - Plea of private defence has to be gathered from surrounding and extenuating circumstances. (Bombay) 236

Second petition u/s 482 Cr.P.C. based on subsequent developments - Second petition is maintainable. (Allahabad) 518

Seizure of property - Police has no power to seal immovable property u/s 102 Cr.P.C. (Chhattisgarh) 451

Statement of witness - Fact stated in Court not stated in statement u/s 161 Cr.P.C. - Such statement shall be taken as contradiction and if it has a great bearing on case, then it should be treated as a major contradiction. (Orissa) 643

SC **Suicide or victim set on fire** - Mangalsutra, a nathi (nose ring) some glass bangles and peinjan (an ornament worn on foot) were found below the pillow in the room - Defence version that deceased took off all these ornaments and then went to the kitchen and committed suicide cannot be totally ruled out. (S.C.) 289

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