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Topic of the Month

"Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society."

C. Ravichandran Iyer v. Justice A. M. Bhattacharjee & Ors., (1995) 5 SCC 457

DELAY IN CRIMINAL JUSTICE ADMINISTRATION - A STUDY THROUGH CASE FILE

Delay in administering Criminal Justice makes the system weak and meek. It has the tendency of making the system less effective in achieving the purpose of criminal law - the prevention of crimes. The very respectability emanating from fear of punishment would be lost if the punishment is not certain and prompt. A punishment imposed after a long time of the commission of offence may not have the impact a punishment promptly imposed generates. It is because of the time factor. It remains a fact that time heals and makes people forget and forgive. A punishment after some time would therefore be irrelevant, ineffective and meaningless. It is of no consequence to the victim or to the perpetrator of the crime who must have adjusted himself during the time of delay. Nor would it be of consequence to the society which must have absorbed its impact in course of time.

It is because of these circumstances that every system strives to avoid delay in criminal justice administration. But very few are successful in this respect. Daunting delay has been hunting the administration of criminal justice not only in India but also elsewhere in the common law world. The reasons for this unhappy state of affairs are manifold and the studies in this area always remained fascinating though the results have been inconclusive.

Our system insists on giving maximum protection to the accused by way of an informed procedure, which unfortunately entails delay. We require him to be proved guilty beyond any reasonable doubt. We want him to be given enough opportunity to discharge this burden. We do not give much leeway to the police if it effects the rights of the accused adversely. Naturally the cooperation of the police would be wanting in avoiding delay. The provisions in our Criminal Procedure Code help at every stage to process the case smoothly but it quite happens that we get bogged down by docket explosion as a result of lack of speed in our procedure. This has invited criticism from every quarter and various studies / measures have been devised to obviate delay. Establishment of Fast Track Courts, Lok Adalats, plea-bargaining etc. etc. have been tried with a view to avoiding mounting arrears in the courts. Despite all these efforts, it is felt that we are yet to move ahead if any meaningful success is to be achieved.

This realization made the Indian Law Institute to go for a seminar on delay in Criminal Justice Administration and the Hon'ble former President of India suggested to it that an empirical study be conducted on the basis of case files. Representative files from the Supreme Court, High Courts and District Courts spread in different parts of the country have been studied and the causes of delay identified. Generally speaking, delay is caused not only by the court but also by other functionaries including the police. In carrying out investigation the police used to spend a lot of time and the district courts apparently have not been insisting upon them to promptly submit the report probably under the impression that it is the area of police prerogative. This impression is, however, not correct. The general scheme of investigation envisaged in the Criminal Procedure Code seems to make the magistrate the pivot of investigation.

In several cases framing of the charges after the police report was received , took a lot of time apparently because of the delay on the part of the trial judge. In fact there is no justification for this delay. During the trial umpteen numbers of adjournments are given by the courts some time to suit the convenience of the lawyers or the judges themselves. Witnesses have also not been cooperative with the courts in expediting trials. In some cases delay occurred due to the absconding of the accused after getting bail. There have been cases where the courts took time to write judgments after the trial was over.

Contrary to the popular impression that it is the frequent adjournments, which cause delay, it is felt that usually the police and witnesses cause delay at the district level. And if the district court exercises proper control much of the delay could be obviated.

In the State of Kerala a unique practice is insisted upon. Every district Judge is expected to furnish the particulars of the disposal of the case including the reasons for the delay, if any, are to be furnished . This may inhibit him to cause undue delay.

At the high court level it is seen that the practice followed is disparate. While Delhi and Orissa High Courts follow maintaining order sheet no other high court follow the system. In the absence of such a procedure it is difficult to locate the area wherein

delay occurred. The reasons for the delay can also be located in the order sheet if its maintenance is insisted upon.

One of the frequent reasons for the delay has been the non receipt of trial court records promptly in the high court and Supreme Court. In fact just because of the absence of such records the appeals came to be dismissed. In many a case the appeals came to be dismissed just because the state did not sustain its interest in prosecuting the appeals after filing them. Such cases were more in the Delhi High Court. In some cases, as discussed above, the delay was caused because of the non-appearnace of the accused released on bail despite the service of summons and warrants for his appearance.

It remains a fact that after a long period the courts do not deal with the offenders harshly. On the contrary, they tend to impose punishment already suffered or a light one signifying the delay tampers the temerity of criminal law.

Delay in high courts and the Supreme Court could, perhaps to an appreciable extent, be reduced by insisting upon the production of the lower court files simultaneously with the filing of appeals. This may be achieved by revising the procedure for filing of appeals in the High Court and the Supreme Court. If the records are not received within a specified time the district court/high court may be required to record the reasons thereof. Similarly the registry in the high courts and Supreme Court should record the reasons for adjournments and they should be brought to the notice of the judges hearing the appeal.

The district courts may also be required to record the details of the case including the reasons for delay, if any, in a prescribed form before the case is disposed of by writing the judgment. This may help them to be cautioned about the delay. The unpleasantness involved in explaining the delay, might act as a deterrent in delaying the disposal of the case. If the judge becomes cautious, it is felt that the functionaries including the lawyers might avoid causing delay. The form could have the following format: -

1. Name of the accused.
2. Number of case
3. Substance of the complaint (with FIR No.)
4. Number and date of investigation report
5. Period spent on investigation
6. Reasons for delay, investigation report is after 60 days of commission of offence
7. Offence prima facie found by police
8. Offence charged by the court after police report/examination of complaint
9. Commencement of evidence
10. Closure of evidence
11. Period spent on trial
12. Reasons for delay in trial if the period was beyond one month
13. Date of judgement
14. Reason for delay, if judgment was made after one month of closure of evidence
15. Explanation for the delay

District Judge

If the decision is appealed against, the court - whether the district court or the high court - may be required to transmit the record within a period of two weeks of the filing of the appeal. This may help the appellate court to take up the appeals on time.

It is high time for us to prescribe maximum time for disposal of each category of cases and if there is any chance for delay it should be possible for the court to anticipate and obviate them by strictly following a pattern of posting. If the court makes it a practice not to grant frequent adjournments at any cost, a message will go to all concerned that delay would not be tolerated.

The present practice of roll calls just to postpone the trials/hearing should be done away with. Instead if the court feels that one or two cases could be tried in a particular week they should alone be taken up and completed. Then only the next case be taken up.

In short, the remedy for the malady of delay lies in the courts rather than in any other agency. There should be more courts. They are to be prompt and vigilant in ensuring speedy justice by overcoming the delay and the impact of docket explosion. Then and then alone should we have an effective criminal justice administration system.

NEWS AND VIEWS

Close cases if both sides settle : SC

Anxious to reduce the huge burden of pending cases, the Supreme Court has devised a common sense approach whereby courts should ordinarily close cases, including those involving criminal offences, if the opposing sides have reached a compromise.

Courts generally close only cases involving criminal offence of a compoundable nature. Compounding a case means no punishment is given, though the case is not erased from the records.

The SC has now laid down that courts can allow closure of criminal proceedings even in non-compoundable offences if both sides are agreeable.

However, while passing the orders, SC, cognisant of the possibility of the intimidation by an influential party, made it a point to stress that such closures could be resorted to only in cases arising from personal feuds and which did not involve serious and heinous offences.

"We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings", a Bench comprising Justice Tarun Chatterjee and H.S. Bedi said.

"Keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly over burdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation", it said.

This ruling came on a petition filed by one Madan Mohan Abbot, who challenged a trial court's decision not to close the case on the basis of a compromise reached between him and the complainant. The trial court said that one of the offences alleged against Abbot related to criminal breach of trust involving an amount in excess of Rs 250 and was hence non-compoundable. The Punjab government opposed Abbot's petition for closure of the case.

The Apex Court, after perusing the evidence on record, said the dispute was purely personal in nature arising from the extensive business dealings between the parties and that there was no public policy involved in the allegations levelled against each other.

(TOI /31-03-2008)

Keep off policy decisions, bench asks courts - It's for government to decide what policies should be adopted

Courts must not interfere with policy decision. These must be left to the government which alone can decide what should be adopted after considering all aspects, the Supreme Court has held.

"In the matter of policy decisions or exercise of discretion by the government, so long as infringement of fundamental right is not shown, Courts will have no occasion to interfere. The court will not and should not substitute its own judgment for the judgment of the executive in such matter," said a Bench comprising Justices Arijit Pasayat, C.K. Thakker and L.S.Panta.

Writing the judgment, Justice Pasayat said: "In matters of policy decisions, the scope for interference is extremely limited." In assessing the propriety of a decision, the Court could not interfere even if a second view different from that of the government was possible.

In the instant case, the Uttar Pradesh government created a new district,Baghpat.Acting on a petition challenging the notification, the Allahbad High Court asked the State to reconsider its decision.

In its appeal against this judgment, the government said the High Court's approach was clearly erroneous. In matter s of policy decision such as creation of a district or State, the High Court should not have interfered, that too on wholly irrelevant grounds.

On behalf of the respondents, it was submitted that a district should not be created routinely and the High Court rightly took note of several factors.

Allowing the State's appeal, the Bench said: "The Cabinet decision was taken nearly eight years ago and [it] appears to be operative. That being so, there is no scope for directing reconsideration."

(Hindu/31.03.2008)

ACADEMY NEWS

As per approved training calender for the State Judicial Academy for the year 2008, one day Orientation Course on "Alternate Dispute Resolution with specific emphasis on Mediation and Conciliation" was held by the J&K State Judicial Academy on 8th of March, 2008 wherein 20 Judicial Officers of the cadre of Sub-Judges and Munsiffs of Jammu, Kathua and Udhampur districts participated besides Leave Reserve Judicial Officers of the High Court wing, Jammu.

Proceedings during the Orientation Course

Shri Sanjay Dhar, Secretary, High Court Legal Service Committee delivered the lecture on the topic of "Mediation", Shri Ch. Vidya Sagar Gupta, former District & Sessions Judge addressed the trainees on the topic of "Arbitration and Conciliation" and Shri Shiban Lal Pandita, President Divisional Consumer Forum, Jammu delivered the lecture on the topic of "Lok Adalat".

Participants in the Orientation Course

LEGAL JOTTINGS

(Case No: Criminal Appeal No. 438 of 2008)
Trimbak Appellants versus State of Maharashtra Respondents
Date of Decision(mm/dd/yy): 3/4/2008.
Judge(s): Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice P. Sathasivam.
Subject Index: Indian Penal Code, 18

Conviction under Section 302 and accused also found guilty of offence punishable under Section 324 IPC. Sentences of imprisonment for life and fine with default stipulation and sentence of 6 months and fine with default stipulation were imposed for the two offences. It was further ordered that if the fine amount is deposited then a sum of Rs.2,000/- was to be paid to the complainant as a compensation in terms of Section 357 of the Code of Criminal Procedure, 1973 primary stand of defence was that the occurrence took place in course of sudden quarrel and the evidence tendered does not inspire confidence. The stand of the State, on the other hand, was that Narmadabai (PW-1) whose evidence was vital for the prosecution case herself had suffered injuries it cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors the appropriate conviction would be under Section 304 (I) IPC, and custodial sentence of ten years would meet the ends of justice.

(Case No: Criminal Appeal No. 440 of 2008)
Jyoti Prakash Rai @ Jyoti Prakash Appellants versus State of Bihar Respondents
Date of Decision(mm/dd/yy): 3/4/2008.
Judge(s): Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice V.S. Sirpurkar.

Subject Index: Delinquent juvenile accused of commission of an offence under section 302 for killing his school mate; the incident took place on 12.05.2000. His age was estimated at about 17 years as on the said date by the learned Magistrate before whom he was produced; at that point of time, the Juvenile Justice Act, 1986 was in force. In terms of the provisions of the 1986 Act, "juvenile" meant a boy who had not attained the age of sixteen years the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force with effect from 1.04.2001. "Juvenile" has been defined in the 2000 Act to mean a person who has not completed eighteen years of age. Section 16 of the 2000 Act, as it stood then, provides for a non-obstante clause prohibiting imposition of sentence of death or life imprisonment or commitment to prison in default of payment of fine or in default of furnishing security, on a delinquent juvenile; both the medical reports dated 24.04.2001 and 29.06.2001 opined the age of the appellant between 18 and 19 years. In terms of first medical report, the age of the appellant came to be 18 years 5 months 8 days and in terms of the second medical report, it came to be between 18 and 19 years. The High Court opined that the appellant on 1.04.2001 was definitely above 18 years of age and not below 18 years of age appeal dismissed.

(Case No: Criminal Appeal No. 426 of 2008)
Renu Kumari Appellant versus Sanjay Kumar & others Respondents
Date of Decision(mm/dd/yy): 3/3/2008.
Judge(s): Hon'ble Dr. Justice Arjit Pasayat, C.K. Thakker and Hon'ble Mr. Justice Lokeshwar Singh Panta.

Subject Index: Criminal procedure code, 1973 section 482 exercise of power under challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court quashing the proceedings initiated against the respondents 1 to 7, in purported exercise of power under Section 482 of the Code of Criminal Procedure, 1973. A prayer was made before learned Sessions Judge, Patna to quash the proceedings in Criminal Revision No. 817 of

2001. Learned S.D.J.M., Patna in Pirbahore PHB Case No. 120 of 2000 had rejected the prayer of discharge made by the aforesaid respondents. The prayer was made in terms of Section 239 Cr.P.C appellant was married to respondent No. 3 Rajesh Kumar on 1.7.1998. Alleging that she was being harassed and tortured both mentally and physically for having not met the dowry demands, complaint was made alleging commission of offences punishable under Section 498 A of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act, 1961; it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person.

(Case No: Civil Appeal No. 1036 of 2002)
Kashmir Singh Appellant versus Harnam Singh & another Respondents
Date of Decision(mm/dd/yy): 3/3/2008.
Judge(s): Hon'ble Dr. Justice Arijit Pasayat, P. Sathasivam and Hon'ble Mr. Justice Aftab Alam.

Subject Index: C.P.C. section 100 Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court allowing the Second Appeal filed by respondent No.1. The Second Appeal was filed under Section 100 of the Code of Civil Procedure, 1908 though many points were urged in support of the appeal it was primarily submitted that no substantial question of law was formulated and Second appeal would not have been allowed without formulating any such question in view of Section 100 of the Code the memorandum of appeal shall precisely state substantial question or questions of law involved in the appeal as required under sub-section (3) of Section 100. Where the High Court is satisfied that in any case any substantial question of law is involved it shall formulate that question under sub-section (4) and the second appeal has to be heard on the question so formulated as stated in sub-section (5) of Section 100 The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof the Second Appeal can be only maintained after formulating substantial question of law, if any and not otherwise.

CASE COMMENTS

M/s Nopany Investments (P) Ltd.
v. Santokh Singh
AIR 2008 SC 673

In the Judgment, passed by the Supreme Court in the Civil Appeal arising out of the SLP with title M/S Nopany Investments (P) Ltd. Versus Santokh Singh, the Hon'ble Court laid down two important principles. The first one that in the absence of a Karta of a Joint Hindu Family (HUF), a junior member of joint Hindu Family, can act as Karta to manage the joint family property and could institute a suit on behalf of joint Hindu Family. The second principle laid down is that the institution of a suit for eviction (where the provisions of Rent Control Act have no application) under general law, is itself a Notice under Section 106 of Transfer of Property Act, to quit on the tenant.

The Apex Court was dealing with an Appeal against the judgment passed by Delhi High Court in a case for eviction filed by a Junior member of a Joint Hindu Family against the tenant regarding Joint Hindu Family Property.

While laying down the first Principle, the Apex Court discussed its own earlier Judgment passed in Tribhovan Dass's case reported as 1991 AIR SCW 1467, cited by the counsel for the APPELLANT, held as under: -

That from a careful reading of the observation of this court in Tribhovan Dass's case (Supra), it would be evident that a younger member of the Joint Hindu Family can deal with the joint Hindu family property as Manager in the following circumstances: -

i. If the senior member or the Karta is not available;
ii. Where the Karta relinquishes his right expressly or by necessary implication;
iii. In the absence of the manager, in exceptional and extraordinary circumstances such as distress or calamity affecting the whole family and for supporting the family;
iv. In the absence of the further: -
   a) Whose whereabouts were not known;
   OR
   b) Who was away in a remote place due to

compelling circumstances and his return within a reasonable time was unlikely or not anticipated.

Regarding the second Principle, the Hon'ble Court laid down as under: -

i. It is well settled that filing or an eviction suit under the general law, itself is a notice to quit on the tenant;
ii. Notice to quite was not necessary under Section 106 of the Transfer of Property Act in order to enable the land lord to get a decree for eviction against the tenant.

This view has also been expressed in the decision of this court in Dhanapal Chettiar v. Yesodai Ammal reported as AIR 1979 SC 1745.

The aforesaid important Principles laid down by the Hon'ble Apex Court, is a mile stone and will go a long way for the lower courts in deciding such cases.

Ch. Vidya Sagar
District & Sessions Judge (Retd.)

Moses Willson & Ors. v. Kasturiba & Ors.
AIR 2008 SC 379

Under Section 100 CPC, 2nd Appeal can be filed only on a substantial question of law. The Supreme Court has in the above mentioned case laid down as to what is meant by 'substantial question of law'. It has been held that to be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in-sofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See : Santosh Hazari v. Purushottam Tiwari (deceased) by LRs [(2001) 3 SCC 179]).

In view of this authoritative pronouncement of the Apex Court, every question of law cannot be said to be a substantial question of law and made ground for filing second appeal.

Sitaram Sao @ Mungeri v. State of Jharkhand
AIR 2008 SC 391

Accomplice evidence - Apex Court has held that evidence of an accomplice is admissible and can be made basis for conviction without corroboration and rule of corroboration is a matter of prudence.

In the case cited above the Apex Court has held that Section 133 of the Evidence Act expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice. In other words, this section renders admissible such uncorroborated testimony. But this Section has to be read along with Section 114, illustration(b).The later section empowers the Court to presume the existence of certain facts and the illustration elucidates what the Court may presume and make clear by means of examples as to what facts the Court shall have regard in considering whether or not maxims illustrated apply to given case. Illustration(b)in express terms says that accomplice is unworthy of credit unless he is corroborated in material particulars. The Statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) to Section 114 of the Evidence Act strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration must be clearly present in the mind of the Judge. (See Suresh Chandra Bahjri v. State of Bihar(AIR 1994 SC 2420) [1994 AIR SCW 3420]

Although Section 114 illustration (b) provides that the Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated, "may'" is not must and no decision of Court can make it must. The Court is not obliged to hold that he is unworthy of credit. It ultimately depends upon the Court's view as to the credibility of evidence tendered by an accomplice.

Gh. Mohi-ud-Din Dar
Director
J&K State Judicial Academy

Vinay Dewanna Nayak v. Ryot Seva Shahakari Bank Ltd.
AIR 2008 SC 716

A precursor to the enlargement of list of compoundable offences.

The Hon'ble Apex Court, in case referred supra, while taking recourse to Sec. 147 of Negotiable Instrument Act (26/1881) - Shortly the Act hereinafter - permitted compounding of a case filed against the Appellant. Vinay Kumar by the Respondent Shahkari Bank u/s 138 of the Act. The trial court had convicted and sentenced the appellant, which stood confirmed by the Karnataka High Court. Whereupon the matter came up before the Hon'ble Supreme Court which ordered its closure on compoundment and acquitted the accused.

It may be pointed out here that Sec. 147 of the Act came to be incorporated to the Act pursuant to Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55/2002). The section permitted the compounding of cases under the Act, notwithstanding anything contained in the Code of Criminal Procedure 1973 - Shortly Central Code hereinafter. It may be pertinent to mention here that the Act is a piece of Central Legislation made applicable to the State of Jammu & Kashmir. So any reference to the Central Code, in the given context, would be deemed to have been made to the Jammu & Kashmir. Criminal Procedure Code (Shortly State Code), as well.

There is no problem with the case at hand in as much as Sec 147 has taken care of it. However, what is likely to generate a debate and thus become germane to the discussion is the reference made by the Hon'ble Apex Court, in Para 15, to the cases titled, O.P. Dholakia u/s State of Haryana & others - 2000 (1) SCC 762 and Nambiram V. Pocker v. State of Kerala & others (2003) 9 SCC 214. In these cases permission to compound offence was granted when Sec. 147 of the Act was not on the Statute Book, to cover them. Nature of the offences and peculiar circumstances of the cases were taken into consideration to accord permission for compoundment, de hors a specific provisons of law therefor.

In Para 17 a reference has been made to the cases titled Electronic Trade and Tech. Dev. Corp. Ltd v. Indian Technologists and Engineers (1996) 2 SCC 739 to bring out the rationale behind Sec 138. According to the Hon'ble Apex Court the section was intended to promote efficacy of banking operations and prevent dishonesty. It was observed "in such matters, therefore, normally compounding of offences should not be denied" (Emphasis Supplied). It went further to note that Presumably the Parliament also realized the aspect and inserted Sec. 147 to the Act.

In 1988 the Hon'ble Supreme Court allowed offence punishable u/s 307 I.P.C. (a non-compoundable offence) to be compounded in "Peculiar circumstances of the case" (underlining done) - Reference in this regard can be had to Mahesh Chad V. State of Ragisthan - AIR 1988 SC 2111. One of the reasons given for compounding the offence was that the parties had already compromised a counter case. However the Hon'ble Court latter on in the cases, Ram Lal v. State of J&K - AIR 1999 SC 895 and Surendar Nath Mohantay and others v. State of Orrisa - AIR 1999 SC 2181 declared the decision of AIR 1988 per in curium and overruled it.

A closer look at the case viz Ram Lal's and Surendar Nath's, would be profitable. While both of them have disapproved compounding of non-compoundable cases declared in Sec 320 of the Central Code - Corresponding to Sec. 345 of the State Code, however, both have taken a favourable view of the compromise made out side the court and thus treated the accused most leniently so far as their sentencing was concerned. The common refrain on the recognition of "Outside Compromise" is so marked as to ignore the gravity of the offence for sentencing the convicts. I am afraid to say that in the context of awarding punishment here, offence u/s 326 IPC has been made to look like u/s 323 IPC.

If an "Outside Compromise" could have a maximum mitigating effect, why not then allow it inside whenever desirable.

When we read what has been lucidly stated in Para 15 & 17 of AIR 2008 SC 716 or that what could be read between the lines, and do so in juxta position with the positive emphasis laid on "Outside Compromise" in AIR 1999 SC 895 and AIR 1999 SC 2181, the spirit, if not the letter, of AIR 1988 SC 2111 gets well and truly revived. A case for enlargement of the list of compoundable offence is thus, made out. Let the matter be debated on all aspects.

It is no longer a moot point that the Criminal Justice Delivery System in the Country is not working effectively for variety of reasons. One of the modes suggested by well meaning persons to lower the Docket in Criminal Courts is to de-Criminalize some minor offences and encourage parties to settle the matter wherever possible. The courts may not be able to do much in this regard but the Legislature will have to rise to the occasion. Let AIR 2008 SC 716 prove a harbinger.

B.L. Saraf
Pr. Distt, & Sessions Judge (Retd.)

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