WRONGFUL PROSECUTION IN SOCIO-ECONOMIC CRIMES: RECENT TRENDS

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ABSTRACT

Wrongful Prosecution results in loss of liberty for the wrongfully accused person. It also leads to stigma and ostracization which does not wane away even after the accused person secures his acquittal. When one thinks of wrongful prosecution, the first picture which comes to mind is that of a person who has been wrongfully accused of crime like theft, robbery or even murder. However, wrongful prosecutions are not limited to traditional crimes, but are visible in socio-economic crimes as well. Socio-economic offences, unlike traditional crimes, affect the "health and material welfare of the community as a whole" and when one is wrongfully accused of the same, the cost to individual and society becomes very high. Therefore, it is important to look into cases of wrongful prosecution relating to socio-economic offences. This paper will seek to analyse cases of wrongful prosecution under socio-economic offences and try to discern the trend or the pattern visible. On the basis of analysis and findings, certain suggestions will also be made.

Keywords: wrongful prosecution, socio-economic crimes, discharge, forum shopping.

I. Introduction

Wrongful Prosecution has always been associated with traditional crimes like theft, murder and robbery. However socio-economic offences are not untouched from it. The recent clamour against wrongful prosecution under the Prevention of Money Laundering Act, 2002 is testimony to the same.[1] Misuse of the provisions of the Prevention of Corruption Act, 1988 have also been witnessed in the past.[2] It hints that socio-economic crimes have not been untouched from the issue of 'wrongful prosecution'. Further, it also emphasises that wrongful prosecution is not limited to traditional crimes, but is also visible under the regime of socio-economic offences. A similar argument is also advanced by Paul Craig Roberts in his article[3] "Causes of Wrongful Conviction" wherein he states that the older view that justice depends upon the 'size of pocket of an individual' has lost its credibility in the recent times of "asset freezes" and "prosecutors in search of high-profile cases". The author emphasises that, it has become easier to frame a white-collared businessman, than to frame a poor member of society. He further highlights that the reason behind this is that the crimes associated with the poor—theft, assault, murder—are very well defined. Frame-ups for such crimes require prosecutors to suborn perjury, suppress exculpatory evidence, and coerce false confession. On the other hand, to frame a white collar victim, a prosecutor needs only to interpret an arcane regulation differently or with a new slant.

When it comes to wrongful prosecution, it not only results in loss of liberty for an individual, but also results in stigma and ostracization making the reintegration of the accused person in society very difficult. Wrongful Prosecution also results into deep psychological effect on the accused person. Adrian T. Grounds in his article "Understanding the effect of Wrongful

[1] Justice Ujjwal Bhuyan recently commented that "If PMLA is misused, the nation will suffer". Source - Anmol Kaur Bawa, "If PMLA Is Misused, Nation Will Suffer; Negative Perceptions May Arise About ED : SC Judge Justice Ujjal Bhuyan" *Livelaw*, March 23, 2024, *available at*: https://www.livelaw.in/top-stories/if-pmla-is-misused-nation-will-suffer-negative-perceptions-may-arise-about-ed-sc-judge-justice-ujjal-bhuyan-253282 (last visited on June 29th, 2024). Abhinav Sekhri, "PMLA: From Prosecuting Drug Lords to Going after Critics and Farmers?" *Supreme Court Observer*, Jan 25th, 2024, *available at*: https://www.scobserver.in/journal/pmla-from-prosecuting-drug-lords-to-going-after-critics-and-farmers/ (last visited on June 25, 0224).

[2] ET CONTRIBUTORS, "View: Why new Prevention of Corruption Bill is a game-changing move" *The Economic Times*, Aug 2, 2018, *available at*: https://economictimes.indiatimes.com/news/economy/policy/view-why-new-prevention-of-corruption-bill-is-a-game-changing-move/articleshow/65234522.cms?from=mdr (last visited on June 29, 2024).

[3] Paul Craig Roberts, "The Causes of Wrongful Conviction", Vol. 7, No. 4 *The Independent Review* 568 (Spring 2003), *available at*: https://www.jstor.org/stable/24562560 Contribution from Independent Institute (last visited on June 5, 2024).

Imprisonment"[4] writes that the wrongfully accused persons were often changed in their personality, had features of post-traumatic stress disorder and had additional depressive disorders. They reported persisting difficulties of psychological and social adjustment, particularly in close relationships. They described estrangement, difficulty in restoring intimate and family relationships, and complex experiences of loss. Typically, the men had marked features of estrangement, loss of capacity for intimacy, mood settle, loss of a sense of purpose and direction, and a pervasive attitude of mistrust towards the world.

The author points out that in particular losses of life opportunities, effects of separation from families, and the dislocation of time and social context could be directly attributed to wrongful imprisonment. The author highlights some of the biographical and auto-biographical write-ups which represent a very grim picture of the effects of wrongful imprisonment in a person's life. Some of the conversations are:[5]

> "My wife would ask me: "Where are you going? When are you going to be home? It was like she was the warden."
>
> "Chronologically, I'm thirty-seven; psychologically and most of the time I'm older than that. But sometimes, like when I go out, I'm only twenty-five years old-I didn't lose those twelve years; they took those years."
>
> "Sometimes I feel like I'm in prison for hours at a time. I know I'm not, but I can't stop feeling like I'm in prison. I'm not sure I still want to live, but I'm not suicidal."
>
> "The little girl said, "That's the man who was on the TV, Mommy." She rushed over and grabbed her child and said, "Don't go near him." I just left my stuff and walked out. It never, ever ends. It never ends. It will never be ended."

This paper will try to analyse several cases of wrongful prosecution under socio-economic offences and try to discern the trend visible. The author will look into the arguments advanced

[4] Adrian T. Grounds, "Understanding the effect of Wrongful Imprisonment" Vol. 32 *Crime and Justice* 2 (2005, The University of Chicago Press) *available at*: https://www.jstor.org/stable/3488358 (last visited on June 20, 2024).
[5] *Id* at 12.

and on what basis these people were able to secure their acquittals.

However, before embarking on the journey to analyse cases of wrongful prosecution in socio-economic crimes and finding the recent trends/patterns visible, it becomes very important to mention the scope of the terms 'wrongful prosecution' and 'socio economic crimes' for the purpose of analysis.

II. SCOPE OF 'WRONGFUL PROSECUTION' AND 'SOCIO-ECONOMIC CRIME'

When it comes to wrongful prosecution, the moot question which arises is what is the scope of the term 'wrongful prosecution' and how is it different from its sister words like - wrongful conviction, wrongful incarceration, wrongful prosecution, malicious prosecution and negligent prosecution. Also, the issue of acquittal and discharge crops up. Will all cases of acquittal or discharge be termed as wrongful prosecution? No, all acquittals or discharge cannot be called a case of wrongful prosecution.[6] There are two types of acquittals. One is an honourable acquittal or acquittal on merit wherein the accused person is fully exonerated after appreciating the evidence.[7] Another type of acquittal is 'acquittal on technical grounds' or acquittal on 'benefit of doubt' wherein the accused person is acquitted due to irregularity in following the procedure of law or due to failure of the prosecution to discharge its burden. E.g. an accused person can be acquitted on the ground of lack of sanction under the Prevention of Corruption Act, 1988 or the accused person can be acquitted because the prosecution was not able to prove the guilt of the accused beyond reasonable doubt.

For the purpose of this term paper, the researcher has taken cases of honourable acquittals/discharge decided by the Supreme Court. Although the scope of wrongful prosecution is quite wide as it also includes cases of closure report, discharge or acquittal by the trial court, discharge or acquittal by the high court, etc. However, for the sake of convenience the scope of study has been limited to honourable acquittals/discharge by the Supreme Court. The list of cases has been taken from Manupatra.

Wrongful Conviction

Wrongful Conviction is the highest standard for miscarriage of justice and is invoked primarily

[6] *Union Territory, Chandigarh Administration* v. *Pradeep Kumar*, (2018) 1 SCC 797.
[7] *Commissioner of Police, New Delhi* v. *Mehar Singh*, (2013) 7 SCC 685.

in developed countries wherein the scope of police and prosecutorial misconduct is low. Under this standard, an individual is acquitted after having been convicted from the highest court of the land and all scope of appeal has been exhausted. The acquittal is due to some supervening evidence coming up after the final conviction. Wrongful Conviction as a threshold for miscarriage of justice is quite high and is predominantly present in developed countries such as US. Also, 'wrongful conviction' presumes that there is no scope of miscarriage of justice at the stage of investigation by the police. It fails to address the miscarriage of justice due to illegal and wrongful detention, torture in police custody, long incarceration, repeated denial of bail, among others. Further, it also fails to take into account the miscarriage of justice done by the previous courts in failing to recognize the innocence of the accused person.

Wrongful Incarceration

Wrongful Incarceration focuses more on the incarceration of an individual rather than the acquittal or conviction suffered by the accused person. Individual liberty is the primary focus of this standard of miscarriage of justice. It addresses the time spent in prison by the person for an offence for which they may ultimately not be convicted, prosecuted, or even charged.

This standard would invoke miscarriage of justice in all cases of acquittals where the person has spent some or substantial time in prison.

This standard helps to address the issue of delay in trials wherein a person, although acquitted at the initial stage, had to suffer incarceration due to the long-drawn trial. However, this standard suffers from both over-inclusivity and under-inclusivity. Firstly, because not all cases of acquittals are a result of wrongful prosecution; acquittals may very well be on account of other reasons such as factual or legal errors, or the inability of the prosecution to prove the case beyond reasonable doubt, or the accused being given the benefit of doubt. But, this standard would include each of the cases where the person was incarcerated for whatever amount of time and was later found to be not guilty.

Secondly, making only wrongful incarceration as the standard of miscarriage of justice will exclude such cases of wrongful prosecution (resulting in acquittal) where the accused was granted bail and/or did not spend any time in prison; but, they nonetheless suffered on account of such wrongful prosecution/charges - prolonged trial, social stigma, loss of employment, legal expenses and the mental and physical harassment etc. This standard of 'wrongful

incarceration' in this manner would be under-inclusive. E.g. In matrimonial disputes it is a trend to file false criminal cases against the husband family under sections 498A IPC read with section 3 and 4 of the Dowry Prohibition Act, 1961.[8]

Wrongful Prosecution

This is the broadest standard of miscarriage of justice. It includes not only wrongful conviction coming from court, but also includes investigatory lapses or misconducts of the police. In other words, it puts the scope of miscarriage of justice right from the inception of the interaction of an accused with the criminal justice system *i.e.* the police. It also includes cases of malicious and negligent investigation and prosecution. It targets cases where the police or prosecution maliciously, falsely or negligently investigated or prosecuted and the person later was found not guilty of the crime. This standard seems to be quite feasible for countries like India wherein most of the allegations relating to miscarriage of justice come against the police system. The famous case of ISRO scientist Nambi Narayanan can be an example of wrongful prosecution.[9]

Negligent Prosecution

Negligent Prosecution refers to the overzealousness of the police and prosecution in getting a person convicted of a crime. It has been seen that many times rewards are given to the police or prosecution for arresting the accused person or securing a conviction. In such cases, the police and prosecution show their over zeal and try to hush into the investigation or prosecution process. It also includes the prejudicial bias that the purpose of investigation and prosecution is to make the accused person criminally liable rather than finding the truth. E.g. Arrest of the innocent bus driver in the famous Ryan School murder case can be termed as negligent prosecution.[10]

[8] Tellmy Jolly, Certain Wives Levelling Vague Allegations To Haul Up In-Laws In Non-Bailable Offences: Kerala High Court Asks Courts To Be Careful *Livelaw*, May 31, 2024, *available at*: https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-wives-misuse-498a-ipc-husband-inlaws-cruelty-specific-allegations-259314?fromIpLogin=14844.626026275253 (last visited on June 29, 2024).

[9] Samanwaya Rautray, "Supreme Court says arrest of scientist in ISRO spy case 'unnecessary'" *The Economic Times* Sept. 15, 2018, *available at*:https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-says-arrest-of-scientist-in-isro-spy-case-unnecessary/articleshow/65805665.cms?from=mdr (last visited on June 29, 2024).

[10] FP Satff, "Ryan school murder case: Ashok was beaten, tortured and sedated to force his confession, claims wife" *Firstpost* June 8, 2018, *available at:*https://www.firstpost.com/india/pradyuman-murder-case-ryan-international-school-bus-conductor-ashok-kumar-was-beaten-hung-upside-down-given-electric-shocks-and-sedated-to-force-confession-claims-wife-4224097.html (last visited on June 30, 2024).

Malicious Prosecution

Malicious Prosecution refers to purposeful prosecution of a person despite knowing that the person is innocent. Such cases, traditionally covers cases wherein as a matter of practice a tribe or community has been criminalised and in case of any offence, the police round up people of such community. E.g. In *Adambhai Sulemanbhai Ajmeri* v. *State of Gujarat*[11] the Supreme Court raised grave concerns that ".. instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing."

After analysing these words, it comes to light that the most apt standard for analysing miscarriage of justice in India would be 'wrongful prosecution'. The researcher will analyse cases wherein the trial court had convicted the accused person which later turned into 'acquittal on merits' by higher constitutional courts. It would also include cases of discharge, quashing and other prosecutorial and investigatorial misconduct.

Socio-Economic crimes are crimes that violate regulations and laws governing economic and social activity. These crimes may have a considerable impact on society by reducing public trust in institutions, damaging market discipline, and causing economic instability.[12] For the purpose of ascertaining what offences are included in socio-economic crime, the researcher has made reference to the NCRB data that reveals the following data of economic crimes[13]:

S. No.	**Offence**	**No. of Cases in 2022**	**No. of Cases in 2021**	**No. of Cases in 2020**
1.	Criminal Misappropriation	158	177	339
2.	Criminal Breach of Trust	21,814	21,241	17,358

[11] 2014 (7) SCC 716.
[12] Namrata Chauhan, Socio-Economic Offences And White-Collar Crime *Legal Services India*, *available at*: https://www.legalserviceindia.com/legal/article-11062-socio-economic-offences-and-white-collar-crime.html (last visited on June 20, 2024).
[13] The table has been prepared after looking at the NCRB data of 2022.

	(Sec.406 to 409 IPC)			
3.	Fraud (Section 231-243, 255 and 489A to 489E).	29,492	30,051	24,953
4.	Cheating (Section 420).	1,21,417	1,04,614	90,241
5.	Forgery (Section , 465, 468, 471).	19,992	1,74,081	12,530
6.	The Dowry Prohibition Act	13,479	13,568	10,366
7.	Prevention of Corruption Act	1078	1032	982
8.	The Narcotic Drugs & Psychotropic Substances Act	1,15,236	78331	59806

Taking cue from the list of offences mentioned in NCRB data, the scope of socio economic crimes for this term paper would be offences relating to Cheating (Section 420 of IPC), Criminal Breach of Trust (Sec.406 to 409 of IPC), cases relating to the Prevention of Corruption Act, 1988, the Dowry Prohibition Act, 1961, the Narcotic Drugs & Psychotropic Substances Act, 1985 and the Prevention of Money Laundering Act, 2002.[14]

III. ANALYSIS OF CASES

For the purpose of analysis, the author has taken cases from the year 2022 till date. As previously mentioned, cases relating to Cheating (Section 420 of IPC), Criminal Breach of Trust (Sec.406 to 409 of IPC), Cases relating to the Prevention of Corruption Act, 1988, the Dowry Prohibition Act, 1961, the Narcotic Drugs and Psychotropic Substances Act, 1985 and

[14] Although Prevention of Money Laundering Act, 2002 does not find a mention in the NCRB data of 2022, but taking into account the clamour due to the *Vijay Madanlal Choudhary* judgement, it becomes imperative to include cases of PMLA.

the Prevention of Money Laundering Act, 2002 has been taken. Further, in terms of acquittal or conviction, only those cases have been analysed wherein a conviction by a lower court was overturned into acquittal by higher constitutional courts. Cases of discharge have also been included. The author has anaylsed 10 cases. The list has been taken from Manupatra using its search engine.

Kanchan Kumar v *State of Bihar*

The FIR in this case[15] was filed under section 13(1)(d)[16] and 13(2)[17] of the Prevention of Corruption Act, 1988 on the allegation of keeping disproportionate assets. The check period[18] for the purpose of FIR was 19.07.1974 to 29.08.1988. The Appellant applied for discharge under section 227 of Cr.P.C.[19] before the Special Judge (Vigilance), Patna alleging errors in calculation of disproportionate assets. However, the Special Judge dismissed the application by observing that there was sufficient evidence against the accused to frame charges, and the explanations advanced by the accused were matters to be looked into at trial. Aggrieved by the judgement of the Special Judge, the accused moved to the High Court. However, the High Court gave a similar decision to that of the Special Judge and observed that the submissions made by the accused-appellant attracted a roving enquiry which could be permissible only during the course of trial.

One of the questions before the Supreme Court which cropped up was relating to the scope of enquiry permissible under Section 227 Cr.P.C. The court observed that:

> The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case

[15] 2022 INSC 955.
[16] Section 13 - Criminal misconduct by a public servant.
(1) A public servant is said to commit the offence of criminal misconduct, -
...
(d) if he, —
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; ...
[17] 13(2).Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.
[18] Check period refers to the time period during which the offence was committed.
[19] Section 227. Discharge — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.

> and the total effect of the material on record, including examination of any infirmities appearing in the case.

The Court found it appropriate to confine its inquiry into the three heads of expenditure indicated in the charge sheet. After perusing the same, the court observed that there were glaring mistakes in calculation of the amount of disproportionate assets which would not amount to a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge.

The Court also highlighted the aspect of delay wherein the allegation of disproportionate assets was made for the year 1974 to 1988 and the FIR was filed after a period of 12 years. Subsequently, the charge-sheet was filed after a period of 7 years of registration of FIR. The application for discharge came to be dismissed on 28.03.2016, the same was confirmed by the High Court after a period of 7 months on 05.10.2016. The Supreme Court took a time of 6 years in deciding the SLP on 14.09.2022. Meanwhile the accused had superannuated in 2010 and was now 72 years old.

The judgement highlights the importance of discharge in cases of wrongful prosecution. It also tells the importance and scope of inquiry in cases of discharge application. Where the Trial Court and High Court refused to take into account the submission of the appellant by observing that these were subject matter of trial, the Supreme Court placed its reliance on the same document and allowed the discharge application after observing that it was a necessary inquiry for proper adjudication of cases. However, the point of dismay is the time frame within which the discharge application was decided. It took around 22 years for the accused to be discharged. The time frame is too much for a full conclusion of trial, leave alone a discharge application. In this regard, the Bharatiya Nyaya Sanhita, 2023 provides a timeline of 60 days for the accused to prefer a discharge application from the date of committal or date of supply of documents to him.[20]

Therefore, discharge is an effective check to weed out cases of wrongful prosecution. However, it is important to have a fixed scope of inquiry under case of discharge. Further, it is important that discharge applications should be decided in a timely manner. The issue was taken into

[20] Section 250 and 262 of Bharatiya Nagrik Suraksha Sanhita, 2023.

account in the *Asian Resurfacing* case[21], but the same has been overturned by a larger bench of the Supreme Court in a review petition.

Shiv Kumar Sharma v *State of Rajasthan*

In this case[22],the accused person, a public servant, had conspired with another to show excess expenditure of Rs. 22353 in two school construction projects thereby making a loss to the state exchequer. The Special Judge, Prevention of Corruption Act No. 1, Jaipur had convicted the appellant for the offences punishable under section 13(1)(d)(ii)[23] read with section 15[24] of the Prevention of Corruption Act, 1988 and section 477A[25] of IPC and sentenced him to rigorous imprisonment for one year and a fine of Rs. 5000 each for both the offences. The appellant filed an appeal before the High Court which confirmed the order of the Special Judge. When the matter reached the Supreme Court, there were two concurrent findings by lower court and high court and in such cases the scope of interference is very limited. The limited grounds on which interference can be made is when the findings were found to be perverse and impossible or were made by ignoring the material evidence or the appreciation of evidence was manifestly erroneous.

The Supreme Court re-appreciated the facts of the case and found that the evidence of the investigating officer showed that the payment of construction were made directly by the Panchayat Samiti to the Gram Sewek.

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[21] In the case of *Asian Resurfacing of Road Agency Private Limited* v. *Central Bureau of Investigation* (2024 INSC 150) it was held that the petition in which the High Court has granted a stay of the proceedings of the trial (including appeal from discharge applications), must be decided within a maximum period of six months. If it is not decided within six months, the interim stay will be vacated automatically, virtually making the pending case infructuous.

[22] 2022 INSC 765.

[23] **Section 13 - Criminal misconduct by a public servant.**
(1) A public servant is said to commit the offence of criminal misconduct, - ...
(d) if he, —
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;
Explanation. - For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

[24] Punishment for an attempt. —Whoever attempts to commit an offence referred to in clause (a)] of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years] and with fine.

[25] Section 477A. Falsification of accounts.

Further, the bill of the material was also sent to Gram Sewak by the Panchayat Samiti. Also, there was no record to show that the corrections made in the books were made by the appellant after complaint. In fact, the appellant himself had made a complaint to the District Magistrate about the irregularity in the construction work by Bhagwan Sahai, Gram Sewak.

The Court observed that these "vital aspects that the appellant did not have any role to play in either the sanctioning of the money or making of payment, have been totally ignored by both the Courts." The court also observed that, "the investigation did not reveal any criminal intent on the part of the accused-appellant." Therefore, the conviction under section 13(1)(d)(ii) read with section 15 of the PC Act was held to be "totally unsustainable".

With respect to conviction under Section 477A of IPC, the court observed that for a conviction under 477A, it was necessary to prove that the making of false entry or omission or alternation of such entries was made willfully with an intent to defraud. However, no such evidence was produced by the prosecution to impute any criminal intention on the part of the accused.

Further, it was also observed that with respect to measurement books prepared by the appellant with respect to work at Mankot were found to be correct by the inquiry officer. Also if any mistake was made in the total at the time of preparing the bill, the mistake could be corrected by the accounts branch.

And with respect to the measurement book prepared by the appellant with respect to work at Surajpur, it was observed that no person was appointed as a watchman or a supervisor and it was possible that the material lying at the site could be taken by anybody.

In view of the above, the conviction of the accused – appellant was set aside

The case was a classic, since a concurrent conviction was turned into an acquittal. One of the issues before the Supreme Court was that what is the scope of interference in cases of concurrent findings? However, the Court observed that concurrency was no answer to perversity. 'Intention' played a crucial role in the acquittal of the accused person. In both the offences, section 13 of Prevention of Corruption Act, 1988 and section 477A of IPC, the court found that there was no evidence of intention on the part of the accused person, therefore the conviction was found to be "totally unsustainable".

Pushpendra Kumar Sinha v. State of Jharkhand

The present case[26] was of discharge. The appellant was working as an executive engineer in Accelerated Power Development Reforms Program ("APDRP") Wing of Jharkhand State Electricity Board (in short "JSEB"). During his tenure as EE, he was alleged to have indulged in malpractice and financial irregularities which had helped a different company. After an internal inquiry FIR under sections 109, 409, 420, 467, 471, 477A and 120B of IPC and Section 13(1)(c) and 13(1)(d) read with 13(2) of Prevention of Corruption Act was lodged. The Appellant moved a discharge application under Section 239 of the Cr.P.C., which was dismissed by the Special Judge observing that sufficient material existed to make out a prima facie case against the Appellant for framing of charges. On revision, the High Court affirmed the order of the Special Judge after observing that there was a prima-facie case against the Appellant.

When the matter reached the Supreme Court, it re-appreciated the facts of the case and found that the appellant was not a part of the decision making process and the decision to grant extension to RPCL was based on mutual consent. Further, the court also noted that the recommendation for prosecution was granted by the same person who had approved the implementation of the award which was in teeth with the principles of natural justice. In light of the above findings, the Court allowed the appeal and the accused was discharged.

This was a case wherein the company failed to implement the award of the tribunal, therefore resorted to filing cases against its own employees alleging malpractice and financial irregularity in handling the work contract granted to RPCL. This may also be termed as a 'civil dispute converted into a criminal case'. The Supreme Court was also surprised that instead of roping in any senior member who was involved in the decision making process, how could the appellant be roped in, when he was not material in the decision making process and was merely following orders. If there were any reasonable doubts, a disciplinary inquiry should have been initiated against the appellant to find the truth. Therefore, an attempt was made to give criminal colour to a civil dispute. The probable reason behind the same could be to buy time for implementing the arbitral award. The police and prosecution also failed to appraise that when

[26] 2022 INSC 860.

it comes to corporations, only decision makers are to be held liable. It may be an attempt to protect some big fish of the corporation that the liability was imposed on small time employees.

T.P. Gopalakrishnan v. *State of Kerala*

The primary issue in the present case[27] was with respect to the application of the doctrine of double jeopardy, particularly Section 300 of the Cr.P.C.[28] in case relating to offences under sections 13(1)(c)[29] read with Section 13(2)[30] of the Prevention of Corruption Act, 1988 and Section 409 of the Indian Penal Code[31]. The allegation on the accused person was that while he was working as a public servant he abused his official position and committed criminal breach of trust and misappropriation by not remitting the amount received to the Sub-Treasury. An inquiry ensued against the accused in the year 1992, and the appellant was prosecuted for making false entries in the cash book and misappropriating money. Vide judgement dated 27.02.2001, the Trial Court acquitted the appellant from all the charges levelled against him in C.C. No.13/1999, however, the appellant was convicted of the charges in C.C. No.12 and 14 of 1999. Later, the appellant was dismissed from the service on 02.05.2001.

However, in the year 2001, again an FIR was again filed against him under sections 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 409 of the Indian Penal Code.

The appellant contended that offences in the present two cases could have been framed at the previous trial and the Appellant herein could have been tried for the same along with the trial of the earlier three cases. However, according to the prosecution it was in the re-audit, that these instances were unearthed and therefore the two cases were registered against the appellant

[27] 2022 INSC 1262.
[28] Section 300 of Cr. P.C states that a person cannot be put to trial for the same offence more than once when he has already been convicted or acquitted for the same by a competent court.
[29] 13. Criminal misconduct by a public servant. - [(1) A public servant is said to commit the offence of criminal misconduct,- … (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or
[30] 13(2).Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.
[31] Section 409 IPC - Criminal breach of trust by public servant, or by banker, merchant or agent - Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

herein.

The Trial Court vide judgement dated 27.04.2009, on considering the evidence of record convicted the accused for the offences under Sections 13(1)(c) read with Section 13(2) of the PC Act and Section 409 of the IPC, holding that the accused misappropriated an amount of Rs. 78,706/-, being two-thirds of the auction proceeds, without remitting it to the treasury during the period from 27.04.1992 to 25.08.1992 and from 01.03.1993 to 12.04.1994.

In appeal to the High Court, the matter was dismissed and the conviction was upheld. However, the High Court in the year 2016 reduced the sentence of rigorous imprisonment for two years, to rigorous imprisonment of one year. Therefore, it took around 7 years for the High Court the decide the appeal.

When the matter came before the Supreme Court, the primary issue involved was with respect to Section 300 *i.e.* double jeopardy. The accused contended that he was earlier charged for offences under Section 13(1)(c) read with Section 13(2) of the Act and Sections 409 and 477A of the IPC and was convicted in two cases and acquitted in one case. Therefore, the present proceedings were illegal as it would amount to double jeopardy.

Dealing with the issue of double jeopardy, the Supreme Court clarified the doctrine of double jeopardy in the following words:

> Double jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence.

The Court held that “the present proceeding would amount to double jeopardy as two cases arose out of the same set of facts and same transaction”. The previous and present charges were for the same period of misappropriation of money. The matter of offence in the previous and present cases were the same and said to be committed in the course of the same transaction and

while holding the same post of Agricultural Officer.

The Court also pointed out that "the Trial Court had erred in holding that the previous case was dissimilar to the present case."

In view of the above findings, the Supreme Court allowed the appeals and set aside the judgement of conviction passed by the Trial Court and High Court.

The Supreme Court correctly applied Section 300 of Code of Criminal Procedure to the present case thereby observing that the proceeding in the present case would be barred by double jeopardy. Further, with respect to proportionality of punishment, the minimum and maximum punishment under section 13 is not less than four years but which may extend to ten years and fine. Further, the maximum punishment under section 409 IPC is imprisonment for life, or with imprisonment of either description for a term which may extend to ten years. Keeping in mind the monetary value involved, the punishment of two years passed by the Trial Court and punishment of one year as reduced by the High Court can be considered appropriate. In view of this, the conviction of the accused was held to be a case of double jeopardy and therefore illegal in the eyes of law.

Nagabhushan v. *The State of Karnataka*

This matter[32] was a matrimonial dispute which resulted in the death of the wife. The death was due to fire from a kerosene lamp. There were previous demands of dowry from the side of the husband, and the relatives from the victim side alleged that it was due to the unfulfilled demands of dowry that the accused husband had burned the victim-wife. The peculiar thing about the case was that there were two sets of dying declarations from the side of the wife. In the first dying declaration the wife recorded with the police that accidently the lamp fell down and due to kerosene all over the floor, she caught fire. This dying declaration was first in point of time and immediately the next day after the incident. However, after 2 days the deceased again gave a statement before the police accusing the husband of immolating her.

When the matter reached before the trial court, after appreciating the evidence on record, the trial court refused to believe the dying declarations and having found contradictions in two

[32] AIR 2021 SC 1290.

dying declarations, it proceeded to acquit all the accused.

However, when the matter went on appeal, the High Court reversed the order of judgement and order of acquittal and convicted the accused for the offences punishable under sections 498A[33] and 302[34] read with 34 of the IPC.

The matter finally reached the Supreme Court and the first issue before it was the scope of section 378 of Cr.P.C.[35] which provides for appeal in cases of acquittal turning into conviction. In this regard, the court discussed the case of *Babu* v. *State of Kerala*[36], wherein it was observed that appellate courts must bear in mind that in cases of acquittal the accused has double presumption in his favour. First, the presumption of innocence is available to him. Secondly, the acquittal received by the accused further reinforces the presumption of innocence.

Secondly, the Supreme Court also approved the law relating to dying declaration as interpreted by the High Court that each dying declaration has to be taken on its merit. On one hand, the accused argued that the second dying declaration was given after the victim's parents had arrived and there was every possibility of tutoring the victim. On the other hand, it was the prosecution case that the victim got courage to tell the truth only after her parents were with her.

The courts also relied upon the decisions of *Nallam Veera Stayanandam* v. *Public Prosecutor*[37]*; Kashmira Devi* v. *State of Uttarakhand*[38]*; and Ashabai* v. *State of Maharashtra*[39] to discuss the issue of multiple dying declarations. In the aforesaid decisions, it was held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is also held that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

[33] Section 498A. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
[34] Section 302 - Murder - "Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine."
[35] S. 378 Appeal in case of acquittal.
[36] (2010) 9 SCC 189.
[37] (2004) 10 SCC 769.
[38] (2020) 11 SCC 343.
[39] (2013) 2 SCC 224.

However, in addition to the law on dying declaration, both the courts – Supreme Court and High Court – also took note of the fact that in the second dying declaration, the victim had explained the reason behind giving her first statement because the accused-husband had threatened to kill her children. Further, the courts also appreciated the medical evidence on record which went in synchronisation with the second dying declaration. The medical evidence suggested that there was no chance that the victim got burnt because of falling off the lamp as the burn injuries were only on the upper part of body and there were no burn injuries on the lower part. This further gave credence to the second dying declaration. In light of the above findings, the judgement of conviction by the High Court was confirmed by the Supreme Court.

The Supreme Court rightly appreciated the scope of Section 378 that the appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. Further, the Supreme Court rightly, did not find any error in the decision of the High Court of taking the second dying declaration as relevant and admissible. It is already a well-settled principle that when there are multiple dying declarations, each has to be analyses on their own merits. In final analysis, the judgement is appreciable for applying the correct provisions of law. The conviction seems merited.

Vijay Kumar Ghai v. *State of West Bengal*

The brief facts of the case[40] are that Priknit Apparels was a company engaged in the manufacture and trade of apparels through chain of retail stores. Respondent No. 2 an authorised representative of SMC Global Securities Ltd, Delhi desired to make an investment on its behalf with the appellants. It was mutually decided between the parties that Respondent No. 2 will invest an amount of Rs. 2.5 crore with the company in lieu of which they will be issued 2,50,000 equity shares of Priknit Apparel Pvt. Ltd. Subsequently, Respondent No. 2 filed their share application form along with the cheque of Rs. 2.5 crore. However, the Appellant failed to bring the I.P.O as per memorandum of understanding.

Aggrieved by the same, the respondent filed a complaint with the Economic Offences Wing which was later transferred to Darya Ganj police station, New Delhi. The Respondent No. 2

[40] 2022 INSC 326.

again filed a complaint under section 156(3) of Cr.P.C. before the Tis Hazari Court, New Delhi for registration of FIR against the Appellants and their company. Later, respondent No. 2 also filed another Complaint before Tis Hazari Court, New Delhi under Section 68 of the Companies Act read with Section 200 of Cr.P.C.

The Metropolitan Magistrate, Tis Hazari observed that the entire dispute raised by Respondent No. 2 was civil in nature and there was no criminality involved, thereby turning down the prayer of Respondent No. 2 for registration of an FIR. It is pertinent to mention here that the order of the MM, Tis Hazari Court, New Delhi attained finality as it was not put to further challenge.

Later on 28.03.2013, Respondent No. 2 filed a second complaint under Section 406, 409, 420, 468, 120B and 34 IPC on the basis of the same cause of action with the PS Bowbazar at Kolkata, West Bengal and the same was converted into an FIR under Section 406, 420, 120B IPC. A final closure report dated 04.03.2014 was filed by the concerned Police Station recommending closure of the case since the entire dispute was found to be civil in nature.

The Respondent No. 2 filed a protest petition with the Chief Metropolitan Magistrate (hereinafter referred to as "CMM"), Kolkata against closure report which was allowed and directed for further investigation. Summons were issued to the Appellants who extended their full cooperation to the police.

Later, CMM, Calcutta took cognizance of the offence under Section 406, 420, 120B IPC in connection with protest petition. Being aggrieved, Appellants herein filed a quashing petition under Section 482 Cr.P.C seeking quashing of the FIR by invoking Sections 401 and 482 Cr.P.C. However, the High Court dismissed the quashing as well as the revision petition filed by the Appellants and observed that in order to exercise the power under Section 482 Cr.P.C, the only requirement was to see whether continuance of the criminal proceedings would be a total abuse of the process of the court and the continuance of the criminal proceedings against the appellants is in no way an abuse of the process of the court.

When the matter reached the Supreme Court, it highlighted the menace of forum shopping and observed that the complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place occurrence in order to create a jurisdiction. Therefore, it was nothing but an act of forum shopping on behalf of the Respondent.

The Court subsequently proceeded to discuss the scope of inherent powers under section 482. After analysing a series of cases[41] , the Supreme Court observed that in the present case, there seems to be no dishonest or fraudulent intention on the part of the accused person which is essential for an offence of cheating. Further, it was also observed that it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 IPC, 1860. In view of the above findings, the appeal was allowed.

Several issues were involved in the present case. One of the issue raised was forum shopping. The Respondent filed two complaints, one in Delhi and later in Kolkata. Moreover, both the complaints had similar facts and circumstances. The Supreme Court held it to be an act of forum shopping. Further, since dishonest intention was one of the ingredients of section 420, the court observed that the ingredients of the offence of cheating were not fulfilled as the appellant had no dishonest intention. It is normally seen that in cases wherein 'civil dispute is turned criminal', there is lack of criminal intention on the part of the accused person. Further, in cases of 'civil dispute being turned criminal', the ingredients of the offence are also not fulfilled.

Prateek Bansal* v. *State of Rajasthan

The brief facts of the case[42] are that things turned sour between husband and wife. Wife was a DSP. She firstly filed a complaint dated 10.10.2015 at Police Station in Hisar under section 498A read with section 34 IPC. After 5 days, the wife submitted another complaint on

[41]In the *Bhajan Lal case* it was held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. In *R.P. Kapur* v. *State of Punjab*, the Supreme Court summarized the cases in which inherent powers can be used as being – a) legal bar against institution or continuation of case b) allegations in FIR do not constitute the offence alleged c) allegation constitute offence, but no legal evidence adduced or evidence adduced fails to prove the charge.
In, *Inder Mohan Goswami* v. *State of Uttaranchal* the Supreme Court observed that High Courts should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.
Further, several cases with respect to the issue of civil dispute being turned in criminal was also discussed. In *G. Sagar Suri* v. *State of UP* it was observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature. Similarly, in *Indian Oil Corpn.* v *NEPC India Ltd.* the Supreme Court had observed that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

[42] 2024 INSC 324.

15.10.2015 at Udaipur police station under section 498A, 406, 384, 420 and 120(B) of Indian Penal Code, 1860. The nature of allegations in both the complaints were the same.

In the first FIR filed at Hisar, husband along with his family members was roped in, however, the police report submitted made only the appellant/husband an accused under section 498A IPC. The trial in this case proceeded and the appellant was eventually acquitted in absence of the victim/wife and complainant (wife's father).

Meanwhile, appellant-husband also approached the High Court of Rajasthan seeking quashing of the FIR filed in Udaipur. The High Court dismissed the petition primarily on two grounds. Firstly, that the complaint at Udaipur was prior in point of time than the complaint in Hisar. The second ground was that the Rajasthan Police was not aware of the earlier proceedings/complaint before the Hisar Police and as such the Udaipur Police should be at liberty to investigate the said complaint made at Udaipur.

Being aggrieved, the appellant approached the Supreme Court by filing a Special Leave Petition against the order of the High Court of Rajasthan. The sole ground on which the quashing was sought was that this was a second FIR on the same set of allegations made by the complainant after two weeks of lodging the first FIR in Hisar. The Supreme Court analysed the facts of the case in totality and found egregious loopholes in the judgement of the High Court of Rajasthan. Both the reasons given by the High Court while dismissing the petition were factually incorrect. Firstly, the complaint at Hisar was the first point in time and made on 10.10.2015, while the complaint made at Udaipur was made on 15.10.2015. Secondly, the court also discerned that in the complaint made at Udaipur, it was stated that earlier a complaint at Hisar was already made. Therefore, it cannot be said that the investigating agency at Udaipur had no knowledge of the complaint at Hisar.

The Court also went into the issue of 'forum shopping' and observed that the proceedings at Udaipur were nothing, but an abuse of the process of law. Wife was a gazetted officer and was well aware of the provisions of law, in particular Cr.P.C. It was only because of her being a police officer that she was able to lodge an FIR at two different places, particularly at Udaipur.

Lastly, the court deprecated the use of state machinery to harass individuals for ulterior motives. The court in order to compensate the appellant imposed a cost of Rs 5,00,000 on the wife, out of which 50% was to be transmitted to the Supreme Court Legal Services Committee and the

remaining 50% to the husband.

This case is one of the rare cases wherein compensation was granted by the Supreme Court for misuse of state machinery. One of the peculiar factors which may have inclined the court to grant compensation was that the accused was acquitted in the previous case which was similar to the present case. Further, the respondent no. 2 was himself a police officer and had the wherewithal to misuse the machinery of the law. Lack of bonafide, on the part of respondent no. 2 was also visible in no withdrawal of the previous complaint, portraying that she wanted to just harass the appellant at two different places. The issues which develop from the present case are: i) When more than one FIR can be filed? ii) In what cases the courts are inclined to grant compensation?

Sachin Garg* v. *State of UP

The present case[43] was over a purchase order issued for the supply of dissolved acetylene gas (DA Gas). The bill raised by the supplier was of Rs. 9,36,693.18. However, the purchaser Exide Industries Limited ("EIL") contended the said amount and refused to pay on the ground that the market price of DA gas was far below and there was a foul play as the supplier was charging exorbitant price. The supplier-respondent filed a complaint case against the appellant-purchaser. The Magistrate issued summons for trial under section 406, 504 and 506 of the Indian Penal Code, 1860. The appellant approached the Allahabad High Court for quashing the said complaint. However, the High Court dismissed the petition after observing that the complaint involved adjudication of a disputed question of fact.

When the matter reached the Supreme Court, the appellant argued that it was a commercial dispute which was being given a criminal colour. The appellant also claimed that the basic ingredients of offence under section 405 and 406 were not fulfilled. The Supreme Court observed that the dispute between the parties centred around the rate at which the assigned work was to be done. Such commercial disputes over variation of rate cannot per se give rise to an offence under Section 405 of the 1860 Code without presence of any aggravating factor leading to the substantiation of its ingredients. In this light, the appeal was allowed and the complaint was quashed.

[43] 2024 INSC 72

Quashing of FIR/Complaint has been a go to measure in cases of wrongful prosecution. However, the problem arises as to the scope of the power of courts in quashing of FIR/Complaint. The High Court refused to quash the complaint as it would have involved appreciation of facts, which was a subject-matter of the trial court. However, the Supreme Court observed that it was a commercial dispute and the ingredients of the offence under section 405 and 406 IPC were not fulfilled.

Jagjit Singh v. *Central Bureau of Investigation*

In this case,[44] the appellant was accused of cheating the Punjab and Sindh Bank at Sangha, Punjab (bank) to the tune of Rs. 8,30,000. The appellant was working as sales manager in the M/s Oriental Motors, Bathinda, Punjab' who secured loan from the bank. It was alleged that he conspired to cheat the bank by securing vehicle loans on the basis of sham vehicle sales. The loan facilities that were sanctioned by the bank were not utilised by the company for the purposes for which they were sanctioned, and instead the funds were diverted for personal benefits. The case against the appellant is that he was instrumental in securing the said loans by misusing his position and signing off the loan documents. He had prepared the documents and issued bogus invoices showing sale of vehicles to the loanees by the Company, when in fact no vehicle was ever delivered. In this context, the CBI registered a case under sections 120B, 420, 467 and 468 of IPC r.w. Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1988 (for short, the "Act, 1988").

The Trial Court convicted the appellant and sentenced him to a rigorous imprisonment (R.I.) of total 6-years 2-months with a fine of Rs. 7,000. The High Court upon re-appreciation of the entire evidence on record dismissed the appeals and thereby affirmed the judgement of conviction and order on sentence as passed by the Trial Court. The Supreme Court concurred with the decision of the High Court and dismissed the appeal. However, on the question of sentence the Supreme Court reduced the punishment to sentence already undergone by the accused considering the several mitigating factors of the appellant that he came from a poor family and had several ailments to look after.

Although this was not a case of wrongful prosecution, the Supreme Court reduced the sentence of the accused person considering the several mitigating factors of the appellant. The Court

[44] 2024 INSC 185

observed that the accused came from a poor family and was the sole breadwinner when he was charged with the crime. Owing to the pendency of the criminal case, he was unable to find another job. In fact, due to the stigma caused by the criminal trial, his two kids since their marriage were living separately and there was no one to take care of his wife.

The case highlights the grim reality of the repercussions of criminal prosecution. It testifies that the machinery of law not only causes corporeal punishment like imprisonment, but also incorporeal punishment like loss of livelihood and ostracization.

Neeraj Dutta v. *State (Govt. of N.C.T. of Delhi)*

The Neeraj Dutta case involves the decision[45] and the reference[46] decided by the constitution bench of the Supreme Court. The brief facts of the case are that the complainant Ravijit Singh applied for installing electricity metre at his shop. Soon after installation of the electricity metre, it was stolen and the complainant had to again apply for installation of the electricity metre. In this regard, the complainant met Mrs. Neeraj Dutta, who was working as an inspector in the electricity department. The appellant - Mrs. Neeraj Dutta - met the complainant wherein allegedly she demanded a bribe of Rs. 15,000 which was accepted by the complainant at Rs. 10,000 after negotiation. Later, a complaint was filed by him and a trap was laid to catch the culprit red handed. Next day, the appellant-accused was caught red handed while accepting the bribe of Rs. 10,000. However, before the trial could start, the complainant passed away. However, on the basis of circumstantial evidences, the appellant was convicted for the offences punishable under Section 7 and clauses (i) and (ii) of section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. The High Court confirmed the order of conviction. When the matter reached before the Supreme Court, a division bench of the Supreme Court found that there was a conflict between the decisions of of **B. Jayaraj vs. State of Andhra Pradesh, (2014) 13 SCC S5; and P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and Another, (2015) 10 SCC 152**, with three-judge bench decision of Supreme Court in **M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691**, regarding the nature and quality of proof necessary to sustain a conviction for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence of the complainant is unavailable.

[45] 2023 INSC 245.
[46] 2022 INSC 1280.

Therefore, the matter was referred to a constitution bench. Consequently, a constitution bench was constituted consisting of Justice S. Abdul Nazeer, Justice B. R. Gavai, Justice A. S. Bopanna, Justice V. Ramasubramanian and Justice B. V. Nagarathna.

The fundamental issue involved was that in the absence of direct evidence, whether the demand of illegal gratification could be established by other evidence. In other words, whether proof of demand was sine qua non for an offence to be established under section 7[47] and section 13(1)(d)(i) and (ii)[48] of the Prevention of Corruption Act, 1988, or, how demand could be proved in absence of any direct evidence?

The court proceeded to rationalise the conflict in the decisions of *B. Jayaraj* v. *State of Andhra Pradesh* and *P. Satyanarayana Murthy* v. *District Inspector of Police, State of Andhra Pradesh and Another* with that of *M. Narsinga Rao* v. *State of A.P.*, (2001) 1 SCC 691.

Analysis

In all the above cases, the complainant was not available to let in evidence and hence there was absence of direct evidence. To answer the referred question, the Supreme Court delved into the law of evidence, particularly the meaning of direct and indirect evidence, scope of presumptions and the scope of circumstantial evidence. "Direct" or "original" evidence means that evidence which establishes the existence of a thing or fact either by actual production or by testimony or demonstrable declaration of someone who has himself perceived it. On the other hand, "indirect evidence" or "substantial evidence" gives rise to the logical inference that

[47] **Section 7 - Public servant taking gratification other than legal remuneration in respect of an official act.**— Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.

[48] **Section 13 - Criminal misconduct by a public servant.**
(1) A public servant is said to commit the offence of criminal misconduct, - ...
(d) if he, —
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;
Explanation. - For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

such a fact exists, either conclusively or presumptively. Further, evidence that does not establish the fact in issue directly but throws light on the circumstances in which the fact in issue did not occur is circumstantial evidence (also called inferential or presumptive evidence.

Subsequently, the court discussed the scope of 'presumptions' under the evidence law. "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case but "shall presume" leaves no option with the court, and it is bound to presume the fact as proved until evidence is given to disprove it.

The court went on to discuss Section 20 of the Act which deals with 'presumptions where public servant accepts gratification other than legal remuneration'. It uses the expression "shall be presumed" in sub-section (1) and sub-section (2) unless the contrary is proved. Therefore, the presumption has to be raised as it is a presumption of law and it is obligatory on the court to raise this presumption. Further, the section does not talk about the nature of evidence required to raise the presumption i.e. whether it should be a direct evidence or in-direct evidence? Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Therefore, the evidentiary requirement under section 7 and 13 could also be proved by indirect evidence or circumstantial evidence.

In view of the aforesaid discussion, the Supreme Court ruled that there was no conflict in the three judge Bench decisions of *B. Jayaraj* and *P. Satyanarayana Murthy* with the three judge Bench decision in *M. Narasinga Rao*, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant was unavailable owing to his death or any other reason. In view of the discussion, the court ruled that there was no conflict between the judgments in the aforesaid three cases.

The case when looked from the angle of wrongful prosecution portrays two pictures. Whereas on one hand, the affirmation of the court that there should be a demand of illegal gratification on the side of the public servant to establish a case under section 7 and 13, tilts in favor of the accused public servant. On the other hand, the interpretation that to prove a demand of illegal gratification, even circumstantial evidence would be admissible tilts in favour of the prosecution. Thus, the Supreme Court seems to have adopted a balancing approach. However, the interpretation made by the Supreme Court is not something new or something presented for the first time. In fact, the court has only given credence to previous prevailing interpretations.

It is seen that during the initial years, the court interpreted 'demand' to be an essential ingredient of section 7 and section 13 and that demand was to be proved through direct evidence. The interpretation of the Supreme Court was positivist in nature. It was testimony of the times wherein a public servant could be wrongfully prosecuted and there were many to put a false allegation on upright public servants. However, now in this time of technology there are various credible indirect methods wherein the guilt of the accused can be proved or disproved. The interpretation of the Supreme Court that even indirect/circumstantial evidence can be used to prove the guilt of the accused is a testimonial to the new technological ways to prove the guilt of an accused person. The court has travelled the journey according to the changes in time. The judgement is again a testimony to the fact that although the average of judges in the Supreme Court is above 60, but they are very much susceptible to the changes happening in the world.

Vijay Madalal Choudhary v. *Union of India*

The case of *Vijay Madalal Choudhary* v. *Union of India*[49] was related to constitutional validity of the Prevention of Money Laundering Act, 2002. Although there were several issues involved in the case, the researcher is discussing only 2 issues which are related to wrongful prosecution – i) Whether the accused has a right to have a copy of ECIR at the stage of investigation? ii) Whether the provisions of arrest under PMLA withstand constitutional scrutiny?.

Issue of ECIR

The Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') is a special piece of legislation. The jurisprudence with respect to special legislations has been that matters specifically provided in special legislation are governed by the special legislation, but matters on which the special legislation is silent are governed by the general legislation.

In *Vijay Madalal Choudhary* v. *Union of India*[50], the Supreme Court ruled that there was no provision for mandatory registration of Economic Case Investigation Report (hereinafter referred to as 'ECIR') under PMLA, which is different from the Code of Criminal Procedure (Cr.P.C.) The Cr.P.C. provides for mandatory registration of FIR in cases of cognizable offence

[49] 2022 SCC OnLine SC 929.
[50] *Ibid*.

under section 154.[51] Further, a copy of FIR is not only given to the informant[52] but also to the accused[53]. It is also pertinent to mention that in the new Bharatiya Nagrik Suraksha Sanhita, 2023 the right of being supplied with a copy of FIR, is not only given to the accused and informant, but also to the victim.[54] However, it is not mandatory for ED to register an ECIR (which is in the nature of FIR) before taking action under PMLA. The court in this regard acquiesced to the contention of ED that ECIR was an internal document which may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the person is guilty of money-laundering offence. If these details were revealed, before the inquiry/investigation, it may have deleterious impact on the final outcome of the inquiry/investigation.

The court further observed that the Constitution provided for safeguard under article 22(1)[55] which was that the accused after arrest should be informed about the grounds of the arrest, which was compiled under section 19(1) of PMLA[56]. Therefore, the basic constitutional requirements were also fulfilled.

Further, the court with respect to the accused's right of fair trial observed that the Special Court had the power to call upon the representative of ED to produce relevant records concerning the case of the accused before continuing the detention of the accused.

In essence, with respect to ECIR, the court held two things – a) It was not mandatory to register ECIR (unlike FIR) to proceed under PMLA. b) It was not mandatory to supply a copy of ECIR before the inquiry or investigation.

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[51] Section 154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[52] Section 154(2) A copy of the information as recorded under sub-section (1)shall be given forthwith, free of cost, to the informant.

[53] Section 207. Supply to the accused of copy of police report and other documents.

[54] Section 173(2) (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

[55] Article 22(1)No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

[56] Section 19. Power to arrest.-- (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

The interpretation of the court would increase cases of wrongful prosecution. Non-supply of ECIR may result in ineffective defence of the accused which would result in wrongful prosecution. Criminal law has been drafted in a manner wherein the rights of the accused are balanced with that of the State. The Cr.P.C. does not provide for supply of copy of FIR to the accused before investigation, however after judgments from several High Court[57] and judgement of the Supreme Court in *Youth Bar Association* v. *Union of India*[58], the accused can get a copy of the FIR to defend himself during investigation by the police. Looked at from this perspective, non-supply of the ECIR goes to the root of the accused's right of fair investigation, particularly in cases of provisional attachment of property wherein no show cause notice is provided. Although, provision of forfeiture of property is also mentioned under laws such as NDPS and UAPA, but what makes PMLA different from UAPA and NDPS is that under PMLA provision for provisional attachment of property is provided that too without any show cause notice to the accused person. If we compare the provisions of PMLA, with that of UAPA and NDPS, we see that UAPA and NDPS do not provide for provisional attachment of property, whereas PMLA also provides for provisional attachment of property under section 5. A comparison of UAPA and NDPS is produced below:

NDPS	**UAPA**
Section 68H - Notice of forfeiture of property.—(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, **it may serve a**	**Section 27.** Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds **is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism** and such person is given an **opportunity of making a representation in writing** within such reasonable time as may be specified in the notice against the grounds of forfeiture and is

[57] Shyam Lal v. State of U.P., 1998 CRILJ 2879; Court On Its Own Motion Through Mr. Ajay v. State, WP(Crl.) No. 468/2010.
[58] AIR 2016 SC 4136

notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to **show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited** to the Central Government under this Chapter.	also given a reasonable opportunity of being heard in the matter.

In both, UAPA and NDPS Act, forfeiture is final in nature and before action, a show-cause notice is served requiring the accused person to show cause his source of income and why his property should not be forfeited? However, the rigour in PMLA lies in the provisional attachment (Section 5). Show cause notice under PMLA is provided only at the stage of Adjudicating Authority which has to confirm/reject the order of Director/Deputy Director with respect to provisional attachment of property. In such cases, the PMLA acts as a black law – wherein no right of hearing is provided to the accused person before provisional attachment of his property. In such cases, if the accused would have been supplied with a copy of ECIR, even then he would not be able to do anything as there is no chance of hearing. However, the non-supplication of ECIR goes at the root of final attachment by Adjudicating Authority as the accused will be helpless in his/her defence. Further, the interpretation of the Supreme Court that article 22(1) is complied by simply telling the accused of the grounds of arrest and does not mean supply of the ECIR is harsh in nature.

The accused and the State are two fundamental parties to a criminal dispute. Both should have a level playing field. The origin of any offence is information provided by the victim. If such information is withheld from the accused, it makes the job of prosecution easier and tilts the balance of scale in favour of prosecution. Therefore, the interpretation given by the Supreme Court has the propensity to increase the cases of wrongful prosecution.

Issue of arrest in Vijay Madanlal Choudhary

Section 19 of the PMLA provides for the arrest of any person involved in any offence under the PMLA. It states that:

> **19. Power to arrest --** (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Section 19 provides that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person.

Therefore, there are two-fold safeguard under section 19 – a) Power is invested in high-ranking officials, b) recording reasons for the belief regarding the involvement of person in the offence of money-laundering.

The Supreme Court upheld the constitutional validity of section 19 by observing that such power of arrest was nothing new and was already there under the FEMA and Customs Act. Further, such investing of power of arrest to be exercised by high ranking officer on credible reason to believe was already upheld in the cases of *Premium Granites* vs. *State of T.N.*[59] *and M/s. Sukhwinder Pal Bipan Kumar* vs. *State of Punjab*[60]. In this view, the constitutional validity of section 19 of PMLA was upheld.

The effect of the interpretation of the Supreme Court is not clear whether it will increase or decrease the cases of wrongful prosecution. The Supreme Court pointed that power was given to higher officials and the same was to be exercised only when they have reason to believe that any offence under the Act was committed. However, the court should also have kept in mind that the accused persons under PMLA are not normal individuals, but people from the upper

[59] (1994) 2 SCC 691.
[60] (1982) 1 SCC 31.

sections of the society. Moreover, the scope of the schedule provided under the PMLA is very broad in nature. It contains common IPC offences like section 417, 420 and offences relating to copyright and trade mark infringement. In such cases, investigation in the hands of a superior officer is laudable, but the chances of its misuse cannot be ruled out. Therefore, the stakes are very high when it comes to PMLA and in such circumstances, its misuse cannot be ruled out. The same is visible in the recent clamors against the misuse of the PMLA provisions.[61] Therefore, the interpretation in the *Vijay Madanlal* judgment has a tendency to increase the cases of wrongful prosecution.

IV. TRACING THE TREND

The analysis of the above cases reflects that the major issues which are discussed in cases of wrongful prosecution in socio-economic crimes are - scope of section 227 and 239 of Cr.P.C. i.e. provisions relating to discharge, scope of article 136 of the Constitution - Special Leave Petition, scope of section 482 in quashing, civil dispute being given criminal colour, forum shopping, ingredients of offence not established, averments in FIR do not constitute any offence, compensation when granted and new interpretations given by the court. Each of these trends are discussed as follows:

Scope of section 227 and 239 of Cr.P.C.

Section 227 and 239 deal with the concept of discharge. Where section 227 deals with discharge in a trial conducted by a court of session, section 239 deals with discharge in a warrant trial (case instituted on police report). In a sessions trial the public prosecutor opens the case for prosecution and tends by what evidence he proposes to prove the guilt of the accused. Subsequently, if upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Similarly, under section 239 - if,

[61] Anmol Kaur Bawa, "If PMLA Is Misused, Nation Will Suffer; Negative Perceptions May Arise About ED : SC Judge Justice Ujjal Bhuyan" *Live law*, *available at*: https://www.livelaw.in/top-stories/if-pmla-is-misused-nation-will-suffer-negative-perceptions-may-arise-about-ed-sc-judge-justice-ujjal-bhuyan-253282 (last visited on June 13, 2024); The Wire Staff, 'Stop Misuse of PMLA to Target Scholars and Activists': Citizens and Rights Groups in Open Letter *The Wire*, 23 May 2023, *available at*: https://thewire.in/rights/stop-misuse-pmla-target-scholars-activists-open-letter (last visited on June 13, 2024); P Wilson, Overarching draconian PMLA statute must be fixed *The New Indian Express* May 18, 2024, https://www.newindianexpress.com/states/tamil-nadu/2024/May/18/overarching-draconian-pmla-statute-must-be-fixed (last visited on June 13, 2024).

upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

The issue which crops up in discharge is about the scope of evidence appreciation that can be done in cases of discharge. Under both, section 227 and 239, the judge or magistrate has to hear both the accused and prosecution. Both, the accused and the prosecution, tend to give evidence negating each other's claim. This becomes a matter of debate and discussion as to how much the judge/magistrate should appreciate evidence for the purpose of discharge. Although it has been held in a catena of cases that the magistrate/judge has to see whether there is a prima facie case against the accused or not? However, the principle does not help much as there is no guiding principle in law to help the magistrate/judge in deciding the issue.

The issue of scope of evidence appreciation in cases of 'discharge' cropped up in the case of : *Kanchan Kumar* v. *State of Bihar*[62] (discussed above) wherein the Supreme Court observed that: "The threshold of scrutiny required to adjudicate an application under section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case."

One of the landmark cases discussed on the point of scope of discharge is of *Union of India* v. *Prafulla Kumar Samal*[63], wherein 4 points were discussed with respect to the scope of section 227. Firstly, it was pointed out that a judge has the power to sift and weigh the evidence to determine whether there was a prima facie case against the accused or not? Secondly, if the materials placed disclose any suspicion against the accused which has not been properly explained, the court will be fully justified in farming charges and proceeding with trial. Thirdly, the test to determine prima facie case would depend upon case to case, and it would be difficult to lay down a rule of universal application. Fourthly, while exercising his/her discretion under section 227, the Judge cannot act as a post-office or mouthpiece of prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. However, the

[62] 2022 INSC 955.
[63] 1979 SCR(2)229.

court cautioned that this does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Similarly, in *Sajjan Kumar* v. *CBI*[64], the court observed that at the time of framing of charges, the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Further, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

The principles of discharge were discussed in the case of *Dipakbhai Jagdishchandra Patel* v. *State of Gujarat*[65] wherein the Supreme Court observed that while deciding the discharge application, the court has to not merely act as post office, but sift the material produced by the prosecution. The sifting has not to be meticulous as if the court dons the work of a trial court judge. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. The court must have a strong suspicion, which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

The new Bharatiya Nagarik Suraksha Sanhita, 2023 has fixed a time of 60 days from the date of committal under section 232 as a timeline for filing discharge application.[66]

Suggestion - Illustration can be attached to section 227 of Cr.P.C.

Illustration to Section 227 of Cr.P.C. -

227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

[64] 2010 (9) SCC 368
[65] AIR 2019 SC 3363
[66] Discharge - 250 (1) The accused may prefer an application for discharge within a period of sixty days from the date of committal under section 232.

There is a difference between "appreciating evidence" and appreciating "the record of the case and the documents submitted therewith". The former is subject of trial, but the latter is subject of discharge application. Anything of which veracity can be doubted, should be a matter of trial. However, documents submitted as 'record of the case' are submitted by the police which are supposed to be impartial. Therefore, the accused has the limited scope of highlighting the chink in the armour of the prosecution that there is no prima facie case against him/her.

In the above light following illustration can be attached to section 227 -

- A1, a magistrate or judge may use the chargesheet to conclude that there exists not sufficient ground for proceeding against the accused.

- A1, a magistrate or judge may after perusing the documents submitted to him/her may conclude that even after taking the facts of the case as true, it does not disclose commission of any offense.

- A1, an accused, can give submissions before the Judge as to make a case for his/her discharge, but he/she cannot give evidence which needs appreciation at the stage of discharge as the same is subject matter of trial.

Scope of article 136 of the Constitution

The scope of article 136 has cropped up in several matters. In the case of *Mahesh Dattatray Thirthkar* v. *State of Maharashtra*[67] the Supreme Court laid down certain principles when it can exercise powers under article 136 of the Constitution of India and interfere with the findings of fact. The various grounds on which the Supreme Court could make interference are: a) When the High Court has acted perversely or otherwise improperly. b) When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it was highly unsafe and improper to act upon it. c) When the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court was manifestly perverse and unsupportable from the evidence on record. d) When the appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality. e) Where findings of subordinate courts are shown

[67] 2009 (11) SCC 141.

to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship. f) When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions. g) When the judgement was not a proper judgement of reversal.

Similarly in *H.P. Admn.* v. *Om Prakash*[68] the Supreme Court observed that the court had equal power to interfere with the findings of fact whether it be conviction or acquittal. However, in cases of acquittal it would not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court acted perversely or otherwise improperly.

In *Arunachalam* v. *P.S.R. Sadhanantham*[69] the Supreme Court went on to discuss the nature and scope of power under article 136. The Supreme Court observed that the power under article 136 was plenary in the sense that there are no words in article 136 itself qualifying that power. But, the very nature of the power had led the court to set limits to itself within which to exercise such power. It was now a well established practice to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the court.

The nature of power under article 136 was also discussed in the case of the State *of U.P.* v. *Babul Nath*[70] wherein the Supreme Court observed that normally under article 136 the court does not reappraise the evidence or go into the question of credibility of the witnesses. The assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record

Similar observation was also made in the case of *Pattakkal Kunhikoya* v. *Thoopiyakkal Koya*[71], wherein the court observed that it is not the practice of the Supreme Court to re-appreciate the evidence for the purpose of examining whether the finding of fact arrived at by the High Court

[68] (1972) 1 SCC 249.
[69] (1979) 2 SCC 297.
[70] 1994 SCC (6) 29.
[71] (2000) 2 SCC 185.

and the subordinate court is correct or not. Exceptions can be taken only in the event of serious miscarriage of justice or manifest illegality but not otherwise.

One instance when the court could interfere under article 136 was given in the case of *Mithilesh Kumari* v. *Prem Behari Khare*[72] wherein the court observed that where findings of subordinate courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship, the Supreme Court could not decline to interfere merely on the ground that findings in question are findings of fact.

Another instance was provided in the case of *Ashoksinh Jayendrasinh* v. *State of Gujarat*[73] that when the High Court has failed to appreciate the oral evidence in the correct perspective, the Supreme Court would certainly be entitled to re-appreciate the evidence. Similar observation was also made in the case of *Ashoksinh Jayendrasinh* v. *State of Gujarat* that when the High Court has failed to appreciate the oral evidence in correct perspective, the Supreme Court would certainly be entitled to re-appreciate the evidence. In the said case also, the Supreme Court, upon finding that the conviction was recorded after ignoring the vital evidence, had set aside the order of conviction and acquitted the accused.

Suggestion - Explanation can be added to order XXI and order XXII of the Supreme Court Rules, 2013.

The grounds on which the Special Leave Petition can be filed includes:

A. When the High Court has acted perversely or otherwise improperly.

B. When the evidence adduced by the parties in support of their respective cases fell short of reliability and acceptability and as such it was highly unsafe and improper to act upon it.

C. When the appreciation of evidence and finding is vitiated by any error of law or procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court was manifestly

[72] AIR 1989 SC 1247.
[73] 2019 (6) SCC 535.

perverse and unsupportable from the evidence on record.

D. When the appreciation of evidence and finding results in serious miscarriage of justice or manifest illegality.

E. Where findings of subordinate courts are shown to be perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.

F. When the High Court has redetermined a fact in issue in a civil appeal, and erred in drawing inferences based on presumptions.

G. When the judgement was not a proper judgement of reversal.

Scope of section 482 Cr.P.C.

In cases of wrongful prosecution, one of the go to measures is quashing of the FIR under section 482. However, there has been several debate and discussion as to the nature and scope of power under section 482 Cr.P.C. In the case of *State of Haryana* v. *Bhajan Lal* [74] it was held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. In *R.P. Kapur* v. *State of Punjab*[75], the Supreme Court summarised the cases in which inherent powers can be used as being – a) legal bar against institution or continuation of case b) allegations in FIR do not constitute the offence alleged c) allegation constitute offence, but no legal evidence adduced or evidence adduced fails to prove the charge.

In, *Inder Mohan Goswami* v. *State of Uttaranchal*[76] the Supreme Court observed that High Courts should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.

[74] AIR 1992 604.
[75] AIR 1960 SC 866.
[76] AIR 2008 SC 251.

Suggestion - Illustration be added to section 482 of Code of Criminal Procedure.

It has been observed that many cases of monetary transactions are quashed by the Supreme Court after observing that there was no dishonest intention on the part of the accused. In this light, the following illustration can be added:

Illustration

A1 and B1 enter into a contract wherein A will pay Rs. 10,000 to B1 and B1 will sell 10 K.G. Basmati rice to A1. Due to unforeseen circumstances, B1 fails to pay A1. A1 cannot file a criminal case against B1 as there was no dishonest intention on his part.

Multiple Dying Declaration

In *Nagabhushan* v. *State of Karnataka*[77], the issue of multiple dying declarations cropped up. The rule in cases of multiple dying declarations is that, each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. Further, the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.[78]

Suggestion - Explanation and Illustration be added to section 32 of Indian Evidence Act, 1872

Explanation

In case of multiple dying declarations, each dying declaration has to be examined individually and the more credible and having high corroborative value have to be believed.

Illustration

A1 dies leaving behind two dying declarations - D1 and D2. In D1, she blamed no one for the injuries as the injuries were accidental in nature. However, in D2 she blamed her husband for

[77] AIR 2021 SC 1290.
[78] *Nallam Veera Stayanandam* v. *Public Prosecutor* (2004) 10 SCC 769; *Kashmira Devi* v. *State of Uttarakhand* (2020) 11 SCC 343; and *Ashabai* v. *State of Maharashtra* (2013) 2 SCC 224.

immolating her. Both, D1 and D2 have to be examined individually and the one more credible and having high corroborative value have to be believed.

Civil dispute being given criminal colour (Section 420 IPC)

In several cases it has been observed that a criminal colour is given to a dispute. Many times such criminal colour is given as a bargaining tactic for the civil dispute. In *G. Sagar Suri* v. *State of UP*[79] the Supreme Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

Similarly, in *Indian Oil Corpn.* v *NEPC India Ltd.*[80] the Supreme Court had observed that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

In *K. Jagadish* v. *Udaya Kumar G.S.*[81] it was reiterated that the two remedies *i.e.* civil and criminal are not mutually exclusive but can co-exist since they essentially differ in their context and consequence.

It is also seen that in cases of fraud (cheating) the dishonest intention should be shown at the beginning of the transaction. This is often missed by the police officers.

Suggestion - Explanation and Illustration can be added to section 420 IPC.

Explanation 1

Monetary disputes which are essentially civil in nature do not fall under the ambit of definition of cheating.

Explanation 2

To constitute an offence under section 420 dishonest intention should be shown at the beginning of the transaction i.e., at the time when the offence is alleged to have been committed.

[79] 2000 (1) SCR 417.
[80] AIR 2006 SC 2780.
[81] 2020 SCC Online SC 318.

Illustration

A1 gives Rs. 10,000 to B1 in return of 10 kg of rice. B1 fails to deliver 10 k.g. rice to A1. A1 cannot lodge an FIR under section 420 IPC.

Forum shopping

Forum shopping refers to the practice of deliberately choosing a specific court for a legal case in the hope of getting a favourable outcome. One of the most important cases dealing with the issue of forum shopping is that of *Union of India* v. *Cipla*[82] wherein the court discussed several types of forum shopping. One type of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief. Another type of forum shopping is when circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. Another form of forum shopping is filing of successive bail applications before different judges until a favourable order is obtained. Another category of forum shopping is approaching different Courts for the same relief by making a minor change in the prayer clause of the petition.

Another form of forum shopping was where a litigant makes allegations of a perceived conflict of interest against a judge requiring the judge to recuse from the proceedings so that the matter could be transferred to another judge.

In *Arathi Bandi* v. *Bandi Jagadrakshaka Rao*[83] the Supreme Court noted that jurisdiction in a Court is not attracted by the operation or creation of fortuitous circumstances. In this case, circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping. Another case of creating circumstances for the purposes of forum shopping was

[82] AIR 2016 SC 5025.
[83] 2013 (15) SCC 790.

World Tanker Carrier.

In *Vijay Kumar Ghai* v *State of West Bengal*[84], the Supreme Court with respect to forum shopping observed that the principle that the court is required to adopt is - a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not.

In this regard, it is pertinent to mention that the new Bharatiya Nagarik Suraksha Sanhita, 2023 has made the concept of Zero FIR mandatory[85] and the police cannot refuse to register FIR on the ground of lack of jurisdiction. The provision is not very clear as there is no mention of transfer of FIR to a police station having jurisdiction. It may increase cases of wrongful prosecution as any person sitting in any corner of India may lodge an FIR against any person in any police station. This provision could have been avoided or provided only in serious crimes, as already now under the BNSS, FIR can be filed via electronic communication and considering the penetration of the internet the physical boundaries of distance are now only in mind.

Suggestion - Explanation and Illustration can be added to section 154 of Code of Criminal Procedure.

Explanation - Subsequent FIR on the same facts and circumstances cannot be filed at another location.

Illustration

H1, husband had a fight with W1, wife in Delhi. W1 files FIR in Delhi. Subsequently W1 again files an FIR on the same facts and circumstances in Gurgaon, her maternal home. W1 should not be allowed to file a second FIR on the same facts and circumstances.

[84] 2022 INSC 326.
[85] Section 173 of BNSS read as: Information in cognizable cases - (1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station.

Compensation when granted

There are several reasons why a person who has suffered from miscarriage of justice should be compensated. The wrongfully accused incur legal expenses for defence, lose earning opportunities and their reputations while in prison and suffer psychological harm. It is just to compensate these victims, that - society is responsible for rectifying its errors by helping these victims regain normal lives when they are released from prison.[86]

The only case in which compensation was granted was the case of *Prateek Banal* v. *State of Rajasthan*. It appears that compensation is rarely given in cases of wrongful prosecution. Although in case of Prateek Bansal compensation was given, no special reasons were accorded as to why compensation was given. The only distinguishing fact which reflects in the case of *Prateek Bansal* is that the other party was a Deputy Superintendent of Police. She had the wherewithal of misusing the machinery of law which she did. Also, the police were at fault as the court observed that the police in Udaipur had the knowledge of another previous FIR in Hisar with respect to the same allegations. Therefore, it can be said that 'misuse' of the police machinery is one of the reasons where court grant compensation. It is argued that compensation should be given in all cases of wrongful prosecution.[87] However, before that meaning of wrongful prosecution has to be ascertained, if it also involves investigatorial misconducts, it will cost heavy on the state exchequer.

Suggestion - Explanation and Illustration can be added to section 250 Cr.P.C.

Explanation - Misuse of machinery of law by a public servant is a ground for grant of compensation.

Illustration - A1, a police officer, files an FIR against her husband, H1, in Delhi. Subsequently, misusing her power as police officer, she also gets lodged an FIR against her husband in Gurugram. H1 is entitled to compensation.

New interpretation given by the court

New interpretations have been given in the case of *Neeraj Dutta* and *Vijay Madanlal*

[86] Vincy Fon and Hans-Bernd Schäfer, "State Liability for Wrongful Conviction: Incentive Effects on Crime Levels" Vol. 163, No. 2 *Journal of Institutional and Theoretical Economics* 270 (June 2007).
[87] Megha Bahl and Sharmila Purkayastha, "Wrongful Incarceration" *Economic and Political Weekly*, Oct. 24, 2015, *available at*: https://www.jstor.org/stable/44002755 (last visited on June 20, 2024).

Choudhary. In *Neeraj Dutta*, the court has reinforced two stands. Firstly, in cases of offence under section 7 and 13 of PCA, the ingredient of 'demand of illegal gratification on the side of a public servant' has to be proved under section 7 and section 13. Secondly, to prove a demand of illegal gratification, even circumstantial evidence is admissible. While the first interpretation would be a check on cases of wrongful prosecution as the prosecution would have an extra burden to prove its case, the second interpretation would increase cases of wrongful prosecution as it lowers down the threshold of evidence by also including circumstantial evidence within its fold.

Similarly, in *Vijay Madanlal Choudhary* case the ruling that it is not necessary for the investigating agency to give a copy of ECIR to the accused will increase cases of wrongful prosecution as it will lead to ineffective defence of the accused at the stage of investigation. Further, the failure to have a check on the scope of 'scheduled offences' in PMLA will also lead to cases of wrongful prosecution.

It seems that the issue highlighted by Paul Craig Roberts in his article[88] "Causes of Wrongful Conviction" that the older view that justice depends upon the 'size of pocket of an individual' has lost its credibility in the recent times of "asset freezes" and "prosecutors in search of high-profile cases" have some credibility. The author was also correct wherein he says that it has become easier to frame a white-collared businessman than a poor member of society as crimes associated with the poor—theft, assault, murder—are very well defined. On the other hand, to frame a white collar victim, a prosecutor needs only to interpret an arcane regulation differently or with a new slant.

NEW CRIMINAL LAWS AND WRONGFUL PROSECUTION

The offences which are majorly discussed in the above cases have punishment of less than 7 years i.e. section 406, 420 and 477A of IPC and section 7 and 13 of the Prevention of Corruption Act, 1988. In this regard, the Bharatiya Nagrik Suraksha Sanhita (hereinafter referred to as "BNSS") under section 173(3) provides discretion to the police officer to conduct a preliminary enquiry after permission from an officer not below Deputy Superintendent of

[88] Paul Craig Roberts, "The Causes of Wrongful Conviction", *The Independent Review*, Vol. 7, No. 4567-574, (Spring 2003),*available at*: https://www.jstor.org/stable/24562560 Contribution from Independent Institute (last visited on June 5, 2024).

Police.[89] Such a provision will help to curb cases of wrongful prosecution. In such cases the police may before registration and FIR will have a discretion to conduct a preliminary inquiry to weed out cases of wrongful prosecution.

On a similar note, the BNSS under section 250 and 252 provides a timeline for filing discharge application. It provides that the accused person may file discharge application within a period of 60 days from date of commitment of case or date of supply of copies of documents. This will help in expediting the process of deciding discharge application. Moreover, section 272[90] of the BNSS grants discretion to the magistrate to discharge the accused in cases where the complainant remains absent event after giving thirty days' time to be present. Pertinently, this is for cases instituted on complaint.

However, when it comes to forum shopping, the provisions of BNSS may increase the cases of forum shopping as now any person can file an FIR in any part of the country, irrespective of the place of commission of offence.[91] Previously registration of Zero FIR was discretionary, but now it has been made mandatory by virtue of section 173 BNSS.

Lastly, the addition of section 193(1) that every investigation shall be completed without unnecessary delay will help in faster resolution of cases relating to wrongful prosecution.[92]

V. CONCLUSION

The machinery of law is like a sword. When it moves, it not only brings corporeal punishment like loss of liberty, but also incorporeal punishment like loss of reputation and ostracization. It

[89] (3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,— (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or (ii) proceed with investigation when there exists a prima facie case.

[90] 272. Absence of complainant.—When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may after giving thirty days' time to the complainant to be present, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

[91] 173. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station,

[92] 193. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

also ends up letting the real perpetrator free to commit more crimes and make new victims.[93] The first step in the stage of law taking its course is that of lodging of the FIR. When taking reference of lodging of FIR as a threshold for wrongful prosecution, several trends are visible. These are - scope of section 227 and 239 of Cr.P.C. - provisions relating to discharge, scope of article 136 of the Constitution - Special Leave Petition, scope of section 482 in quashing, civil dispute being given criminal colour, forum shopping, ingredients of offence not established, averments in FIR do not constitute any offence, compensation when granted and new interpretations given by the court.

When it comes to discharge the issue was discussed in the case of *Kanchan Kumar* v. *State of Bihar* wherein the main contention was with respect to the fact that what documents can be consulted by a magistrate or judge while dealing with a discharge application. In *Shiv Kumar Sharma* v *State of Rajasthan*, the issue was in what circumstances two concurrent findings can be interfered with by the Supreme Court. In *Pushpendra Kumar Sinha* v. *State of Jharkhand* and issue of discharge as well as issue of civil despite being given criminal colour was discussed. Civil dispute being given criminal colour was also discussed in the case of *Sachin Garg* v. *State of UP*. In *T.P. Gopalakrishnan* v. *State of Kerala*, issue of double jeopardy was discussed. In *Nagabhushan* v. *State of Karnataka*, issue of multiple dying declaration and relevance of medical evidence was discussed. In the case of *Prateek Bansal* v. *State of Rajasthan*, the issue of Forum shopping and compensation was discussed. In the case of *Neeraj Dutta* the Supreme Court has moved from 'direct evidence' to 'indirect evidence' as the standard of proof for culpability under section 7 and 13 of the Prevention of Corruption Act, 1989. The interpretation seems to be in line with the modern changes brought in the realm of evidence appreciation. Previously, eye-witnesses testimony dominated a criminal trial, which often led to cases of wrongful prosecution[94], but with the advent of modern evidence appreciation like DNA, finger print, retina scan, etc the realm of evidence appreciation has diversified. Moreover, socio-economic crimes are difficult to prove because there is no evident "smoking gun".[95]

In *Vijay Madanlal Choudhary*, new interpretations have been given which will have an impact

[93]Jeanne Bishop & Mark Osler, "Prosecutors and Victims: Why Wrongful Convictions Matter" Vol. 105, No. 4 *The Journal of Criminal Law and Criminology* 1031 (1973).
[94] James M. Doyl, "Learning from Error in American Criminal Justice" Vol. 100, No. 1 *The Journal of Criminal Law & Criminology*, 100 (2010).
[95] Nuno Garoupa and Matteo Rizzolli, "Wrongful Convictions Do Lower Deterrence", Vol. 168, No. 2 *Journal of Institutional and Theoretical Economics* 225 (June 2012), *available at*: https://www.matteorizzolli.name/research/

on wrongful prosecution of persons. On one hand, the decision that it is not mandatory to give a copy of ECIR to the accused person can lead to ineffective defence of the accused person, the broad scope of the schedule provided under PMLA coupled with the power of arrest can also lead to wrongful prosecution of individuals.

The new criminal laws have some welcoming provisions which will help in reducing the cases of wrongful persecution or reduce the plight of the wrongfully accused person. E.g. section 173(3) will help to weed out frivolous cases and section 250 and 262 will help in speedy disposal of discharge application. However, provisions such as 173 which provide for registration of FIR without any regard to the place of commission of offence may increase the case of forum shopping.

All these trends highlight that there are various ways in which wrongful prosecution is caused or various ways in which wrongful prosecution are overturned by the courts. All these are effective tools against wrongful prosecution which can be used by the wrongfully accused person or court to judge an innocent person in a fair manner. It can also be used to train police officers as they are the first point of interaction in the criminal justice system.

Lastly, the suggestions suggested have the potential to make the laws more clear and unambiguous. It will help to weed out cases of wrongful prosecution.

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