SUPREME COURT

&

HIGHCOURT

Rulings
on
POLICE

POLICE AND THE JUDICIAL PROCESS

INTRODUCTORY NOTE

As a key agency of the Criminal Justice administration the Police is responsible for performing multi-faceted functions such' as' the prevention of crime, maintenance of law and order, conduct of investigation of crimes, production of undertrials before the Courts and post sentence survillence over the criminals: etc. In view of the functional' peculiarities the Police tends to become the frontal' formal agency to come in contact, with the raw realities a/crime including the accused and the victims. All this makes the Police not only an all pervasive criminal justice agency but also exposes it to frequent social censures both of formal as well as informal nature, and makes them the centre of lot of controversies regarding their professional roles.

In a Rule of Law society the Police, like the other criminal justice agencies, functions within the legal framework of the Constitutional and the Municipal Laws that comprise mainly of the Constitution of India, 1950, The Code of criminal Procedure, 1973, the Indian Evidence Act, 1872, the Protection of Human Rights Act, 1993 and the Police Act etc. Though the vide range of statutory laws constitute, the normative basis for the Police functions, but at the actual functional level, often' doubts and controversies arise, regarding the, ambit and interpretations of the statutory rules, thereby calling for frequent adjudications by the courts. In the tradition of the Theory of Precedent the judgments of the appellate, courts have a binding or persuasive value for the later decisions on the point. Particularly the "judgments of the Supreme Court of India which are accorded the highest

precedential value in terms of the Article 141 of the Constitution which reads : The Law declared by the Supreme Court shall be binding on all courts within' the Territory of India". Thus for all the courts as well as, other State agencies, the Supreme court, rulings, constitute the binding law, violation of which can 'entail contempt proceedings. Similalry, for the concerned State the judgements of the relevant High Court constitute the binding law.

All this accords to the large number of Supreme Court and High Court rulings relating to the various aspects of Police functioning immense significance not only for the legal professionals, but also for the rank and file of the Police Force. The present endeavour attempts a compilation of the significant Supreme Court and High Court rulings of the past decade. Effort has been made to present the rulings in a systematic and simplified manner by briefly analysing the facts, main argument and the ruling of the Court. For the benefit of the non-technical readers each individual case is classified subject-wise and preceeded by a issue-wise head-note. The general Case-index also provides an issue-wise analysis of the each case. The compilation is mainly based on the Supreme Court and the High Court decisions reported in the *Supreme Court Cases* (SCC) and the *Criminal Law Journal* (Cr. LJ.)

It is bur fond hope that the compilation will prove useful for the wide-spectrum of the Criminal Justice functionaries, who in turn would be able to strengthen the overall Rule of 'Law foundations, of our criminal justice administration.

POLICE AND JUDICIAL PROCESS

I. Police and Investigation:

II. Police and Evidentiary Issues:

III. Police and Human Rights/Fundamental Rights:

IV. Miscellaneous:

Case Index:. **Supreme Court**

I "

Sr." No. .....- -	Nameofthe Case	Citation	I. Legal Issue(s) Involved'	Page"
1-	Arvirider Singh Bagg"a vs Stte of UP	.. (1995) Supp (3) sec 716	Right to life and personal liberty.	,74"
2	Bhagwan Singh vs State of Punjab	(1992) 3 SCC 249	Interrogation.	14
3	Citizen for Democracy vs State of Assam	"1996 Cr.Ll. 3247	. Handcuffing	28
4	CRI. vs Anupam J. Kulkarni	(1992) 3 sce 141	. Remand	39
5	Directorate of Enforcement vs Deepak Mahajan	1999 Cr.Ll. 2269	Arrest and Custody Investigation	21
6	D$. Basu "vs State ofW.B.	(1997) 1 sce 426	Handcuffing.	)0"
7"	Dr. K.R. Lakshmanan vs State of Tamil Nadu	"1996 Cr.Ll.	Regulating Horse racing and gaming .	100
8"	Gulam Hussain	2000 Cr.Ll.	" Dying Declaration to	64

	vs State of Delhi"	3949	Police	
9	" lnder Singh vi; State of Punjab	(1995) 3 see 702	. Right" to life and personal liberty.	72
10	In re: M.P. Dwivedi	1996 Cr.LJ. 1.670	Handcuffing.	26 . .
11	" Jagdish Narain" vs State ofU.P.	(1996) 8 SCC 199	Evidentiary"vaue of site I. plan"'	70

I I

, j

I

Sr. No.	Name of the Case.	. Citation	LegaHssue(s) Involved	rage
12	Joginder Kumar 'vs State oiU.P.	.. (1994) 4 see 260 , 1994 Cr.LJ. 1981	Guidelines for arrest	,18,
13	Kartar'Singh vs State of Punjab	(1994) 3 see 569	Guidelis for recording it . i . con eSSlOn	S8
14 - '15	K. Veeraswami , YS Union of India	(1991) 3 SCC ,655	Charge-sheet	43
	Madhu Bala vs Suresh Kumar	1997 Cr.L.J. 375 7	Intervention by . ' Magistrte's for registrati?n ofF.I.R. ,and investig,tion,	52
16	Megha Singh vs State of Haryana	'(1996) 11 sec 709	Police as witness	68
17	M. Krishna	(1999) 3 see 247	F.I.R. d Registration of	6

	vs State of Kamataka		F .I.R. I	
18	Nirmal Kanti Roy vs State ofW.B.	(1998)4 SCC' 590	Magisuate's intervention . i in inve*igation !	54
19	Paras Yadav vs State of Bihar	.. 1999 Cr;LJ. 1122 -	' . . Dying declaration before I Police, Officer ; 'i	63
20	People's Union for Civil Liberties vs Union ofIndia	(1997) 3 sec 433	Right t life and I '. , . " personal liberty : i I I ., I i	75
21	Prof. Sumer Chand vs Union ofIndia	1993 Cr.Ll. 3531	Limitation in suit . / . P r ' comp amt against 0 Ice . I' . I person al . I	. 97

Sr. No.	Name 'of the Case	Citation	Legal Issue(s) Involved	Page
22	Ramsinh Bavaji Jadeja vs State of Gujrat	1994 Cr. L.J.	F .I.R. and Registration of F .LR.	85
23	Satvinder KaUT vs State (Delhi)	(1999) 8 SCC 728	Territorial jurisdiction and power of , . investigation	2
24	Sharnshul Kanwar vs State ofU.P.'	(1995) see 430	Evidentiary value orease diary	69
25	S.P. Vaithianathan vsK.Shanmuganatlr nn	1'i94 Cr.LJ. 2265	: Limitation in complaint "against police personal	99
. 26	State of Andhra Pradesh vs P.V. Pavitharan	' (1990) 2 SCC 340	Dlay in' filing charge- . sheet	. 42
27	. State of Haryana vs Bhajan Lal	(1992) Supp. (1) SCC 335	'Magistrate's intervention in investigation	49
28	State of Maharashtra vs Damu Gopiriath Shinde	. 2000 Cr.Ll. 2301	Confession and seizure	60
29	State of Orissa vs Sharat Chandra Sahu	(1996)6 sec . 435	Police's power' of investigation	1
30	State of Punjab vsBalbir Singh	1994 Cr.Ll. 3702	Search and seIzure	, 33
31	State of West	(1993) 3 sce	Charge-sheet	44

	Bengal, vs Falguni Dutta .	288.		
32	Supreme Couli Legal Aid Committee vs State of Bihar	(1991) 3 sce .482	Right to life and personal liberty	'71' .'
33	Tahir vs State (Delhi)	(1996; 3 see 338	Police as witness	65. .

Case **Index: High Court '**

Sr. No.	Name of the Case.	Cit'ltion .	Legal Issue(s) Involved	Page
1	A. Nallassivan . vs State of Tamil Nadu	1995 CLLl. 2754	Registration of F .I.R.	13
2	Ashak Hussain Allah Detha vs Assistant Collector of . Customs (P) Bombay	. . 1999 Cr.LJ.2201	Interrogation incustody'	16
... -'	Badshah Restaurant vs Commissioner of Police	1998 Cr.Ll. 4121 '.	Power to grant .licence tor places of public entertaInment	'93
4	Christian Community. - Welfare Council vs Government of Maharashtra	1995 Cr.Ll. 4223 .	Arrest and custody of female persons	24
5	Dater Gafar Suleman vs The State of Gujrat	1999 Cr.Ll, 3471	Externment	85
	Dr. Arvindya Gopal Mitra vs State of West Bengal	1993 Cr.Ll. 2096	PermIssIon to organise public meeting	91-
7	GehoheE- Miran shah vs The Secretary, Home	1993 Cr.Ll 406	Sanction of route for religious processIOn	90

	DepttjGovt. of A.P,			
8	G. Subas Reddy vs State of AP.	1997 CLL]. 1296	Direction fol' providing. police security	95
9	Hussainmiya alias Razakmiya Qadri I vs State of Gujarat	1999 CrLJ. 2401. . f Externment.		84

Sr. . No.	Name of the Case	Citation. "	Legal Issue(s) Involved.	Page,
10	lagish vs The State of M.P.	1992 Cr.LJ.' 981	F .I..R.	8,
11	Jayantibhai Lalubhai Patel vs The State of Gujarat	1992 Cr.Ll. 2377,	F .I.R.	10'
'12	Kuldeep Singh vs State	. 1994 Cr.Ll 2502	. FJ.R. and regitration of FJ.R.	11'
13	Kultej Singh vs Circle Inspector of Police	199'2 Cr.LJ.lf73	Arrest	23 ,.
14	Mahadeo vs The State , ..	1990 Cr.Ll. 858 "	Search and seizure	38
15.	Mohammed Shaft, vs The State of M.P.	1993 Cr.Ll. 505 ,	Power oiPolice ' ,Surveillance	86
16	Mati Sunar, Mati Lal vs Stae ofU.P.	1997 Cr.Ll. 72260	Power of Police, SurVeillance and Right to Life and Personal Liberty	87.. '
17	Munna Lal vs State of Himachal Pradesh,	1992 Cr.Ll 1558	'RegistrationofF.I.R.	<)
18	Mutharaju Satyaharayan vs Government of A.P.	1997'Cr.LJ.3741	ExectiYe intevention in Investigation	55
19	Prakash Sitaram Shelar vs The State of Maharastra	' 1994 Cr.LJ. 2502,	Extemment	79
20	Ramesh Kumar	1990 Cr.LJ. 255	,F.I.R..	7

	vs The State (Delhi Admn) .			
21	Ravikcmt PatH vs The State of Maharastra	1991 Cr.Ll. 2344	,Right against torture and indignites	78:
22	Sirajkhan vs The State of Maharastra,	1991 Cr.L.J..251 "	Extemment	80

Sr. No.	Name of the Case - .	Citation	Legal Issue(s) Involved	. Page
23	SitabenM. Thakore. vs CommISSIoner of Police, Alunedabad *	1997 Cr.Ll. 4511	Exten1ment	83
24	. Sharadchandra V inayak Dongre vs The State of Maharashtra	1991 Cr.Ll. 3329	. Charge-sheet	46 . .
25	Sharavan Baburao Dinkar vs N.B. Hirve; Additional Inspector of Police	1997 Cr.Ll. 617	Charge..sheet -	47
26	Smt. Vandana Vikas Waghmare vs	1998 Cr.L.J. 4295 ..	Right ofUfe	76..
27	Sunil Kumar vs Superintendent of Police, BaHia'	1997 Cr.LJ:3201	Power of Police Surveillance and Right to . . Life and Personal Liberty.	89
28	Sh. Rambhai alias Ramlo Khimchand vs The State of Gujarat	1991 CLLl. 3159	Externment .	81

I.1 : POWERS OF INVESTIGATION OF OFFENCES

State of Orissa vs Sharat Chandra Sahu.

Held

Sub-section (4) of Section 155 creates a legal fiction and provides that although a case may comprise of several offences of which same are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whale of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

This Court in Pravin Chandra Mody v. State of A.P. (AIR 1965 SC 1185) has held that while investigating a cognizable offence and presenting a charge-sheet far it, the police are net debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

*(1996) 6SCC 435

1.1 : TERRITORIAL JURISDICTION AND POWER OF INVESTIGATION.

Satvinder Kaur vs State (Govt. of NCT *of* Delhi)*

Facts

The appellant was married with respondent at Delhi on 09.12.1990. A daughter was born on 19.12.1991. The appellant was thrown out of matrimonial home in Patiala on 19.01.1992 and at that time she had only wearing apparel. Complaint was lodged by her at Kotwali P.S., Patiala on the same day making various allegations of torture and dowry demand against her husband and his family members. Thereafter she came to live with her parents at Delhi. Threats by her husband continued here also. A complaint was lodged against her husband in the Women's Cell, Delhi on 30.04.1992. After preliminary investigations, the impugned F.I.R. under sections 406 and 498 IPC was registered at P.S. Paschim Vihar, New Delhi, on 23.01.1993 for the alleged occurence at Patiala. Thereafter, the respondent filed petition under section 482 Cr. P.C. for quashing the F.I.R. in Delhi High Court. The High Court arrived. at the conclusion that the SHO P.S. Paschim Vihar was not having territorial jurisdiction to entertain and investigate, the F.I.R. lodged by the appellant because the alleged dowry items were entrusted to the respondent at Patiala that the alleged cause of action for the offence punishable under Section 498-A Indian Penal Code arose at Patiala.

Held

The findings given by the High Court are, on the face *of* it, illegal and erroneous because:

(1) The Se has statutory authority under Section 156CrPC to investigate any cognizable case for which an FIR is lodged.

(2) At the stage *of* investigation, there is no question *of* interference under Section 482 CrPC on the ground that the investigating officer has no territorial jurisdiction.

(3) After investigation is over, if the investigating officer arrives at the conclusion that the cause *at* action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 CrPC and to forward the. case to the Magistrate empowered to take cognizance' *of* the offence. (Para 8)

It is true that territorial jurisdiction also is prescribed under sub-section (1)of Section156 to the extent that the officer can investigate any cognizable case which

*(1999) 8 *see* 728

a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. However, sub-section (2) of Section 156 makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Section 168, 169 and 170. Section 170 specificity provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient evidence Of reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the .accused under custody to a Magistrate empowered to take cognizance of the offence upon 8' police report and to try the accused. or commit for trial. Further, if the investigation officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation the police officer can refuse to record the FIR and/or investigate it. (emphasis supplied)

A reading of Sections 177 and 178 CrPC would make it clear that Section 177 provides for "Ordinary" place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in. another and where it consisted of several acts done in different local areas, it could be enquired -into or tried by a court having jurisdiction over early of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime.

The legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so wou1d be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 Cr PC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same perse; it has no jurisdiction to examine the correctness or otherwise of the allegations.

Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in, view of Section 178(c) CrPC, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done, in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Pachim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked t'1e said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

Ramsinh Bavaji Jadeja vs State of Gujarat*

Facts

The injured body of victim was brought to hospital by his brother, eye-witness. The Head Constable on duty at hospital informs PSI on telephone about fight and dead body of having been brought to hospital. Having received the telephonic message, the Police Sub Inspector immediately reached the hospital and he first recorded the statement of brother of deceased. He sent the said statement to the city police station, for registering a case. Thereafter he held the inquest on the dead body of the deceased for post-mortem; prepared the injury report in respect of the injuries on the person of brother of deceased and sent him for medical examination and treatment. Then he went to the scene of occurrence and collected blood-stained crust of cement plaster and examined witnesses. Under the circumstances mentioned above the statement of brother of deceased, which was recorded by the. Investigating Officer, afteueaching the hospital should be treated as the First Informatiol1 Report and not the cryptic telephonic message of Head Constable.

Held

Every telephonic information about commission of a cognizable offence irrespective of nature and details of such information cannot be treated as FIR.

**1994 Cr.L.J. 3067*

I.2 : SECOND F.I.R.

M. Krishna vs State of Karnataka*

Facts

The appellant was a Class I officer in the Karnataka Administrative Service. At the instance of the police, an FIR lodged against him under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act in respect of check period of 1-8-1978 to 24-8-1989 alleging that he had assets disproportionate to his known sources of income. The Investigating Officer submitted a '8' Report before the Special Judge, who after issuing a public notice inviting objections, accepted the report. On 25-7-1995 another FIR was field at the instance of the police against the appellant in respect of the period 1-8-1978 to 25-7-1995 under the same provisions and making similar allegations. The appellant filed a petition under Section 482, CrPC before the Kamataka High Court seeking quashing of the second FIR on the ground that in view of the result of the earlier investigation the inclusion of the same check period in the second FIR was not proper. However, the High Court refused relief and observed that the second FIR contained a set of fresh allegations in respect of fresh alleged assets during a fresh check period. .

Held

There is no provision in the Criminal Procedure Code or the Prevention *of* Corruption Act to sustain the appellant's contention that the present FIR itself is bad in law. There is no provision in the CrPC which debars the filing of an FIR and investigation into the alleged offences merely because for an earlier period, namely, 1-8-1978 to 24-8-1-989, there was an FIR which was duly investigated into the culminated in a 'B' Form Report which was accepted by a competent court. At the same time, it has to be held that the conclusion of the High Court that the present proceeding relates to fresh alleged assets and a fresh check period is not wholly correct. Though the earlier period also could be a subject-matter of investigation for a variety of reasons like some assets not being taken into account or some materials brought during investigation not being taken into account, yet at the same time, the results of the earlier' investigation cannot be totally obliterated and ignored by the investigating agency. But that cannot be a ground for quashing of the FIR itself and for injuncting the investigating authority to investigate into the offence alleged.

The appellant is right in contending that the assets which were valued in the earlier investigation proceeding at a particular value cannot be valued higher in the present proceedings unless any positive ground is there for such revaluation.

*(1999) 3 see 247

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

Ramesh Kumar VS The State (Delhi Admn)*

Facts

Duty constable in the LNJPN Hospital gave information on telephone to P.S. Kotwali on the basis of which D.D. No. 37-B was recorded at 9.05 p.m. about bringing of Dinesh Kumar in the casualty of the hospital. The SHO alongwith one SI and copy of D.D. entry reached the hospital and recorded the statement of Ashok Kumar, who had brought Dinesh Kumar (deceased) to the hospital and rukka was sent to Police Station through SI at 9.45 p.m. and the duty officer at P.S. Kotwali then recorded the F.I.R. at 10.05 p.m.

Held

The duty officer is required to mention the brief facts including the name of the assailant, names of the witnesses and the weapon used in the daily diary entry about the registration of the case. In the instant case all these details are conspicuous by their absence from D.D. entry. There are no valid explanation as to why these details have not been mentioned. Also, the special report was sent without mentioning the name of the constable through whom it was despatched, and no efforts have at all been made to bring on record the testimony of this constable which could have led corroboration to the testimony of the duty officer and other police officials about the factum of the recording of the FIR at the time at which it is claimed to have been recorded.

In the aforesaid circumstances, the prosecution had, not been able to prove that the FIR was recorded at the time at which it was claimed to have been recorded.

**1990 Cr.L.J.* 255 *(Delhi)*

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

Jagdish and others vs The State of Madhya Pradesh*

Held

Where messages are transmitted between Police Officers inter se, the object and purpose in transmitting the message must be ascertained before any message is labelled as FIR. It is only If the object was to narrate the circumstances of a crime, with a view that the receiving Police Officer might proceed to investigate thereon, that the message would be FIR. But if the message sent was cryptic because the object was merely to seek instructions from higher Police Officers or because the object was to send direction for the police force to reach the place of occurrence immediately or to merely give information to superior Police Officers about the situation *of* law and order, the message would not be FIR.

*1992 *Cr.L.J.* 981 *(MP.)*

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

Munna Lal vs State of Himachal Pradesh & others.

Facts

The averments made in. the petition are that his eldest son Rakesh Kumar was married to Smt. Santosh daughter of Sh. Shyam Lal in the month of October 1990. The petitioner had gone to Uttar Pradesh on Feb. 4, 1991 where he got the information from his brother-in-law that Rakesh Kumar had died. He rushed back. It was then that he gathered that the body of Rakesh Kumar was recovered by the police of Kufri on Feb 5, 1991 at about 0910 hrs. He further learnt that Shyam Lal had come to Rakesh Kumar's house on Feb 4, 1991 and persuaded to take him to Jatol Dispensary where he was posted as a Sweeper. Rakesh Kumar's wife Santosh wanted to accompany them but Shyam Lal did not agree. She further requested her father that let Rakest, Kumar take his meals but got an answer that he will be served special diet on that day after which he will not become hungry. It is further averred in the petition that Shyam Lal was inimical towards the deceased from the very beginning when marriage took place in October 1990.

The petitioner has thereafter been knocking at one door or. the other for having his FIR registered. He approached the police arid thereafter the Deputy Commissioner Shim/a and then .the Director General of Police, Himachal Pradesh, but all in vain.

Held

The provisions of law about the registration of FIR are very clear. When the petitioner approached the police on Feb. 9, 1991 and brought the fact, which are given in this petition to their notice and prayed for the registration of FIR, the police has no opinion but to register it and thereafter start investigation. It is another thing that after making investigation as a result where of the police may come to a conclusion that no offence is made out in which eventuality it has to submit a report to the Court for cancellation of the FIR. Making an investigation and thereafter forming un opinion about the non-commission of an offence followed by refusal to register FIR is a procedure not known to law. It is in fact violative of the matter in which FIR is to be registered and thereafter inve3tigated. Cumulatively, we are, therefore, of the opinion that a direction should issue to the state for the registration of the FIR, forthwith and, in the facts and circumstances of this case, for entrusting the investigation of this case to a police officer not below the rank of Inspector Police.

*1992 *Cr.L.J.* 1558 *(H.P.)*

1.2 : F.I.R. - IT IS A PUBLIC DOCUEMNT

Jayantibhai Lalubhai Patel vs The State of Gujarat*

Facts

Petitioner has filed these application as his application for obtaining certified copy of complaint was not entertained by the Judicial Magistrate.

Held

Whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; thus **it becomes a public document**. Considering (1) the provisions of Art 21 of the Constitution of India, (2) first Information Report is a public document in view of 5.74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of 5.76 of the Indian Evidence Act and (4) FIR is a document to which S.162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law. The application is therefore allowed.

*1992 *Cr.L.J.* 2377 *(Gujrat)*

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

Kuldip Singh vs State*

Facts

In the instant case the petitioner was confined in Jail as an undertrial. The information laid by the petitioner before High Court made an accusation against the Jail Officials that they gave severe beating to him and thus they committed various cognizable offences. The petitioner did received injuries. The nature of those injuries and whether the same were inflicted in the manner alleged by the petitioner or were sustained as suggested by the Police is a matter which is still to be investigated under the Code of Criminal Procedure after registration of the case. It is not the case of the authorities that any investigation or even enquiry was conducted by the Police or any intimation was sent to the petitioner. A Judicial Officer appointed under the directions of High Court has found prima facie substance in the allegations of the petitioner. Thus in some appropriate proceedings it will have to be examined as to how undertrial petitioner received injuries while in jail custody. Therefore High Court directed that FIR be registered and the investigation be conducted expeditiously in accordance with law by the Crime Branch of Police.

Held

On information being laid before the Police about the commission of a cognizable offence the Police has no option but to register the case and then to proceed with investigation of the case under the provisions of Chapter XII of the Code. The Police can also decide not be investigate in terms contemplated by Section 157 (1) of the Code. The Police has no right to refuse registration of a case on information being laid before it about commission of cognizable offence and instead proceed with an enquiry and refuse registration as a result of the said enquiry. If it is left to be determined by the Police to decide in which cases of disclosure or commission of cognizable offence it would first hold preliminary enquiry and then decide to register or not to register the case; it would also lead to delay in registration of the crime and in the meantime the material evidence may not be available. The conduct, of enquiry itself may entail a long period. There may be then challenge to the said enquiry.

The conferment of absolute and uncanalised discretion to the Police to register a cognizable offence or not, would be violative of equality clause enshrined in our Constitution. The Code vests power in Judiciary to control the discretion of the Police.

*1994 *CrLJ.2502 (Delhi)*

The judiciary will remain unaware- in absence of recording of first information Report has a reasonable doubt about the commission of a cognizable offence, he has power not to proceed with the investigation but that is subject to check by judiciary. There is rapid increase -of custody deaths and deaths during- encounters with law enforcing agency. It is the duty of all organs including judiciary to protect human rights and, therefore, it is necessary to provide safeguards *for* early recording of the crime
and control of police by judiciary which would be negated if it is left to the Police to decide in which case to register the crime on disclosure of commission of cognizable offence and in which defer it pending enquiry.

1.2 : F.I.R. AND REGISTRATION OF F.I.R.

A. Nallassivan vs State of Tamil Nadu & others.

Facts

In this case 90 women and 28 chicldren of village were detaimed in the office of Forest Ranger overnigh.

Held

The Court held the detention illegal, offending fundamental rights and directed enquiry by the C.B.I. It also observed that even when the information is against the police officials, including the higher officials it is the duty of the officer in charge of the police station to register the case, in other words he should reduce information in writing read it over to informant, get their signatures to it and enter the substance thereof in the A Diary kept in the police station and also give the information so recorded free of cost to the informants. No Police Standing Order prevents him from doing so. Police Standing Order 145 only deals with investigation and not with registering the case.

In Nandhini Satpathy V. P.L. Dani AIR 1978SC 1025 (1978) Cri L.J. 968) also, the Supreme Court has pointed out, regarding the above and proviso to S. 160 of the Criminal P.C. thus:-

There is public policy, not complimentary to the police personnel, behind this legislative proscription which keeps juveniles and females from Police Company except at the former's safe residence."

The Court further added that if a police officer acted contrary to the proviso to S. 160 (1) of the Criminal P.C. such deviation must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law.

*1995 *Cr.L.J.* 2754 *(Madras)*

1.3 : I NTERROGA TION

Bhagwan Singh vs State *of* Ponjab*

Facts

Joginder Singh, ASI and the other three accused namely, two Head Constables and a Constable were working in the C.I.A. Staff, Amritsar. On August 6,1978 at about 4.00 p.m. they went to the Hotel of Virsa Singh, PW6 and brought Joginder Singh, deceased alongwith PWs 4, 5 and 6 to the C.LA Staff Room in Rambagh P.S. and interrogated. them about smuggled narcotic powder. In the CfJurse of interrogation, ASI and the two Head Constables caused Injuries to the deceased with their weapons till he became unconscious. PWs 4, 5 and 6 were kept outside under the guard of two. Constables when the deceased was being interrogated and heaten in the room. Thereafter, PWs 4, 5 and 6 were also taken inside the room and it is alleged that all the accused inflicted injuries on them also while interrogating them about the smuggled powder. PWs 4, 5 and 6 were then taken to C.I.A. main building and were detained there till August 9, 1978. Later, they were dropped near a by-pass road. They went to the Hospital and got themselves medically treated by PWI, Civil Surgeon, Amritsar. Further case of prosecution is that the unconscious deceased was taken in a car but he expired on the way and the dead body was thrown into a river and the same could not be recovered during investigation. PW 8 went to the village of deceased and informed his wife. She then met the S.S.P. and gave a report to him. As per Punjab Police, Rules, S.P. Amritsar City took up the investigation and recorded the statement of witnesses. He visited the scene of occurrence and found' the walls of interrogation room stained with blood. After completion of the investigation a charge-sheet was filed. The trial Court convicted accused persons under Section 365 I.P.C. only. The High Court, however, took a different view. Accepting the evidence of PWs 4 to 10 particularly that of injured witnesses PWs 4 to 6. The High Court also reached the conclusion that when once it is proved that the injured witnesses along with the deceased were kidnapped. Confined and beaten up and later if dead body was not to be traced the only inference that can be drawn is that the accused also caused the death of the deceased. Against this judgment these criminal appeals.

Held

It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credite material but such an arrest must bean accordance with law and the interrogation does not mean inflicting injuries. It should be in its true sense purposeful, nanely, to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police

*(1992) 3 S*CC* 249

would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher.

1.3 : INTERROGATION

1.4 : ARREST AND CUSTODY

Ashak Hussain Allah Detha, alias Siddique and another
vs
Assistant Collector of Customs (P) Bombay and another*

Facts

The accused No.1 Hamid Khan was. residing in Room No.301 and the applicants in Room No.210 of R.K. Hotel, Lamington Road, Bombay, Saidulla, who is in Pakistan, despatched a large consignment of narcotic drugs on 19th July, 1989. A lorry, driven by Shersingh, carried the contraband. Accused No.1 Hamid Khan met the Applicants in Room No.201 and inquired of them whether the consignment had arrived. Meanwhile, Shersingh met the applicants and told them that he had brought the consignment from Pakistan. The applicants took Shersingh to the room of the accused No.1. Accused No. 1 took Sher Singh in a car with him. These facts have been recorded in the statements of the applicants under S.108 of the Customs Act. According to these statements, the role of the applicants in the transaction ended with the introduction of Shersingh with the accused No.1 Hamid Khan.

The consignment was unloaded under the supervision of Hamid Khan- Accused No.1, into two fiat cars driven by the accused Nos. 2 and 3. The officers of the respondent No.1 intercepted the cars and seized the contraband.

The statement of accused No.1 Hamid-Khan is also recorded under S.108 of the Customs Act. He claims to have handed over the keys of the cars to Afzal, accused No. 5, and returned to his room. After an hour or so presumably after delivery 0r disposal of the contraband, Afzal handed over the keys back to him.

Held

The word "arrest" isa term of article. It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate’s Judicial .Act. In substance, "arrest" is the restraint on a men's personnel liberty by

*1999 *Cr.L.J. 2201 (Bombay)*

by the power or colour of lawful authority. In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty. It stands to reason therefore, that what label the investigating officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.

The Investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorised by law. The Investigating Officers may detain for an offence only. Any restrain on a person's liberty except for an offence is illegal. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.

In cases under the N.D.P.S. Act and Customs Act, the prosecution is, no doubt, entitled to rely upon the statements of the accused recorded during investigation. But what the Investigating Officers do, in such cases, is to procure statements, by assault, illegal detention and fear of continued detention. Then they present these documents as "statements". That is not what the law permits them to do. They can certainly rely upon the statements made by the accused voluntarily. But that is different from saying that the statements may be procured by any means and. the accused be convicted on such statements. This manipulation and abuse of the legislative sanction for the use of statements of the accused requires to be censured in the strongest terms.

1.4 : ARREST AND CUSTODY

111.1: RIGHT TO LIFE AND PERSONAL LIBERTY

Joginder Kumar vs State of U.P. and Others*

Facts

The petitioner, a young advocate of 28 years, was called by the SSP Ghaziabad, UP., Respondent 4, in his office for makil1g enquiries in some case. It was alleged that on 7.1.1994 at about 10 o'clock he personally along with his brothers appeared before the SSP. At about 12.55 p.m. the brother of the petitioner sent a telegram, to the Chief Minister of U.P. apprehending the petitioner" false implication in some criminal case and his death in fake encounter. In the evening, it came to be known that the petitioner was detained in the illegal custody of respondent 5 Next days the SHO instead of producing the petitioner before. Magistrate asked the relatives to approach the SSP. On 9.1.1994 in the evening, relatives of the petitioner came to know that the petitioner had been taken to some undisclosed destination. Under these circumstances the. writ petition under Article 32 was preferred for release of the petitioner. The Supreme Court on 11.1.1994 ordered notice to the State of U.P. as well as SSP, Ghaziabad. The SSP along with the petitioner appeared before the Court on 14.1.1.994 and stated that petitioner was not in detention at all and that his help Was taken for detecting some cases relating to abduction and the petitioner Was helpful in cooperating with the police. Therefore, there was no question of detaining him.

Held

The Supreme Court while directing the District Judge, Ghaziabad, to make a detailed enquiry and submit his report within four weeks observed as under:

The quality of a nation's civilization can' be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expending. At the same time, the crime *rate* is also increasing. The Court has been receiving complaints about violation of human rights because of indiscriminate arrests; A realistic approach sh9utd be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities, on the other, of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the raw abider.

*1994 *Cr.L.J.* 1981 / (1994) *4SCC 260*

Guidelines for Arrest : No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be a prudent for-a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental rights to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be remanded if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do.

The right of the arrested person to have someone informed, upon request and to consult privately with a lawyer was recognized by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England. These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, the following requirements are issued:

1. An arrested person-being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

2. The police officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been.
complied with. .

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested person found in the various police manuals. These requirements are not exhaustive. The Directors General of Police of all the States in: India shall issue necessary instructions requiring due observance of these requirements. In addition departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary the reasons for making the arrest. (emphasis supplied).

1.4 : ARREST AND CUSTODY

Directorate of Enforcement vs Deepak Mahajan & anr.*

Held

The code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances for given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrates empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or 'surrender. In every arrest, there is custody but not vice versa and that both the words ''custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation, which if under all circumstances accepted and adopted, would lead to a starling anomaly resulting in serious consequences.

A Magistrate can himself arrest or order any person to arrest any offender if that offender has committed an offence in his presence and within his local jurisdiction or on his appearance or surrender or is produced before him and take that person (offender) into his custody subject to the bail provisions. If a case is registered against an offender arrested by the Magistrate and a follow up investigation is initiated, or if an investigation has emanated quo the accusations levelled against the person appearing or surrendering or being brought before the Magistrate, the Magistrate can in exercise of the powers conferred on him by Section 167(2) keep the offender or person under judicial custody in case the Magistrate is not inclined *to* admit that offender or person to bail.

To invoke S. 167(1), it is not an indispensable pre-requisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records, of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered is arrest (notwithstanding the fact that

*1994 *Cr.L.J.* 2269

he is not a police officer in its stricto sensu) on as he reasonable belief that the arrestee "has been guilty of an offence punishable" under the provisions of the special Act is sufficient for the Magistrate to take that person into the custody on his being satisfied' of the three preliminary conditions, namely, (1) the arresting officer legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of S.167(1) of the Code.

It cannot be said that either the Officer of Enforcement or the Customs Officers is not empowered with the power of investigation though not with the power of filing a final report as in the case of a Police Officer.

The word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

The expression 'investigation' has been defined in S.2(h). It is an inclusive definition. It being an inclusive definition the ordinary connection of the expression 'investigation' cannot be overlooked. An "investigation" means search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it made by the police officer or a customs officer who intends to lodge a complaint. .

The word "investigation' though is not shown in anyone of the sections of the Customs Act, certain powers enjoyed by the police officer during the investigation are vested on the specified officer of customs. However, in the FERA the word 'investigation' is used in various provisions, namely, Section 34, 37, 38 and 40 reading any investigation or proceeding under this Act…." though Iimited in its scope.

1.4 : ARREST AND CUSTODY

Kultej Singh vs Circle Inspector of Police & others*,

Facts

The petitioner Kultej Singh through this petition under Article 226 of the Constitution, has sought for issue of a Writ in the nature of Habeas Corpus directing the respondent to produce his brother, Sri Hardeep Singh Respondents in their counter-affidavit averred that Sh. Hardeep Singh was arrested on 28.09.1990 and was produced before the J.F.M.C. Savanur on 29.09.1990 without any loss of time, however they did not dispute that Sh. Hardeep Singh was kept in Savanur Police Station from the morning of 27.0'9.1990' until he was !)roduced before, the Magistrate as Savanur on 29.0'9.1990 at 10'.30 a.m.

Held

From a reading of sub-section (1) of Section 46 of the Cr.P.C.it is clear that a police officer while making arrest even if he actually touches the body of the person to be arrested, he can be said to have arrested the person. If a person is confined or kept in the police station or his movements are restricted within the precincts of a police station, it would undoubtedly be a case of arrest. In the instant case, the FIR specifically states that Hardeep Singh was kept in the police station from the morning of 27.9.1990. Section 57 of the Cr.P.C. provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's court. Thus respondents 1 and 2 were required to produce Hardeep Singh within 24 hrs. from the time he was kept in the police station as Savanur.

*1992 *Cr.L.J.* 1173 *(Kamataka)*

1.4 : ARREST AND CUSTODY OF FEMALE PERSONS

Christian Community Welfare Council of India and another
vs
Government of Maharastra & another*

In a matter relating to custodial violence and arrest of female persons in State the court issued the following directions to the State Govt.:

(i) The State of Maharashtra is directed to constitute a Committee consisting of its Home Secretary, law Secretary and Director General of Police within 15 days from today for going into all the aspects of custodial violence by the police in the State and suggest comprehensive measures and guidelines to prevent and check custodial violence and death and also suggest for that purpose suitable amendments in the Police Manual of the State and also submit comprehensive scheme for police accountability of human rights abuse;

(ii) The said Committee is directed to submit its report to the State Government within three months of its constitution;

(iii) The State Government is directed to take effective, steps in implementing the measures and guidelines suggested by the Committee in preventing and checking the custodial violence immediately after submission of report by the said Committee;

(iv) The State Government is directed to issue immediately necessary instructions to all concerned police officials of the State that in every case after arrest and before detainee is taken to the Magistrate, he should be medically examined and the details of his medical report should be noted in the Station House Diary of Police Station and should be forwarded to the Magistrate at the time of production of detainee;

(v) The State Government should also issue instructions to all concerned police officials in the State that even after the police remand is ordered by the concerned Magistrate for any period, every third day, the detainee should be medically examined and such medical reports should be entered in the Station House Diary;

(vi) The State Government is further directed to provide a complaint box duly locked in every police-lock up and ,the keys of the complaint box should be kept by the Officer-in-

*1995 *Cr.L.J.* 4223 *(Bombay)*

Charge of the Police Station. The Officer in charge of the concerned Police Station should provide paper and pen to the detainee if so demanded for writing complaint and the Officer in charge of the concerned Police Station should open the complaint is found in the complaint box, the officer in charge of the Police Station should' produce such complaining detainee to the Magistrate immediately along with his complaint and the concerned Magistrate would pass appropriate orders in the light of the complaint made for medical examination, treatment, aid or assistance, as the case may warrant;

(vii) The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sun-set and before sun-rise;

(viii) The State Government should make proper provision for female detainee in separate lock-ups throughout the State of Maharashtra.

1.5 : HANDCUFFING AND SECURITY

In re: M.P. Dwivedi and others*

The Supreme Court on handcuffing of prisoners issued the following directions:

We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or undertrial - while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back.

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jailor break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available the Magistrate may grant permission to 'handcuff' the prisoner.

In all the cases where a person arrested by police is produced before the Magistrate and remanded to judicial or non-judicial custody - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained Nders from the Magistrate for the handcuffing of the person to be so arrested.

Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

**1996 Cr.L.J. 1670*

We direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. (emphasis supplied).

We are also constrained to say that though nearly 15 years have elapsed since this Court gave its decision in Preme Shankar Shukla (AIR 1980 SC 1535) (supra) no steps have been taken by the concerned authorities in the, State of Madhya Pradesh to amend the M.P. Police Regulations so as to bring them in accord with the law laid down by this Court in that case. Nor has any circular been issued laying down the guidelines in the matter of handcuffing of prisoners in the light of the decision of this Court in Prem Shanker Shukla (supra). The Chief secretary to the Government of Madhya Pradesh is therefore, directed to ensure that suitable steps are taken to amend the M.P. Police Regulations in the light of the law laid down by this Court in Premo Shankar Shukla; (AIR 1980 SC 1535) (supra) and proper guidelines are issued for the guidance of the police personnel in this regard. The Law Department and the Police Department of the Government of Madhya Pradesh shall take steps to ensure that the law laid down by this court in the matter of protection of human rights of citizens as against actions by the police is brought to the notice of all Superintendent of Police in the Districts soon after the decision is given, by issuing necessary circulars in that regard and the responsibility is placed on the Superintendent of Police to ensure compliance with the said circulars by the subordinate police personnel under his charge.

1.5 : HANDCUFFING AND SECURITY

Citizen for Democracy through Its, President
vs
State of Assam & Others*

Facts

In the instant case the detenus who were lodged inside the ward of hospital were handcuffed and on top of that, tied with a long rope to contain their movement. There was no material whatsoever in the two affidavits filed on behalf of the State Government to draw an inference that the detenus were likely to jump jai'! 01" break out of custody. The reasons given for keeping the detenus under fetters were that they are hardcore ULFA activists and earlier during the periof 1991-94 as many as 51 detenus escaped from custody which included 13 terrorists who escaped and/or were rescued from different hospitals and seven of them escaped from Guwahati Medical College Hospital.

Held

As a rule it shall be the rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial - while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own, shall have no authority without obtaining order from Magistrate, to direct the handcuffing of, any inmate of a jail in tile country or during transport from one jail to another or from jail to Court and track. The relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations.

The Supreme Court further directed as under:

When the police: or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jailor break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practicial way of

*1996 *Cr.L.J.* 3247

forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested, When a person is' arrested by the police without warrant, the police officer concerned may, if he is satisfied on the basis of the guidelines given above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further, use of fetters thereafter can only be under the orders of the Magistrate as already indicated.

I

The Supreme Court further directed that all ranks of police and the prison authorities shall meticulously obey the above mentioned directions. Any violation of any of the aforesaid directions by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act (1971) apart from other penal consequences under law. (emphasis supplied).

1.5 : HANDCUFFING AND SECURITY

O.K. Basu vs State of W.B.*

The Supreme Court on hand cuffing issued directions for all state agencies in these words:

It Is therefore, appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made! It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesti0g witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody *of* an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(5) An entry must be made in the diary at the place *of* detention regarding the arrest of the person which shall also disclose the name of the next

**(1997) 1 SCC 426*

friend of the person, who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(6) The arrestee should, where he so requests, to be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(7) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(8) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(9) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(10) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may he instituted in any, High Court of the country, having territorial jurisdiction over the matter.

The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and geed to be strictly followed. These would apply with equal force to the other governmental agencies also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CIB, Traffic police, Mounted Police and ITBP.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the

courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability.

1.6 : SEARCH AN9 SEIZURE

State of Punjab vs Balbir Singh*

Facts

Explaining the meaning and procedural aspects of search and seizure particularly difference between one under Cr.P.C. and another under N.D.P.S. Act the Supreme Court laid down the law as follows :

Held

Search and seizure are carried out by Police Officer In normal course of investigation Int9 offence or suspected offence as provided under Cr.P.C. but if there is chance of recovery of Narcotic Drug. or psychotropic substance, the empowered officer from such stage onwards should carry out investigation as per provisions of NDPS Act (S.50), SS. 4, 100, 165 of Cr. P.C. not applicable to such search.

If a police officer without any prior information has contemplated under the provisions of the NDPS Act makes a search or arrest a person in the normal course of investigation into an offence or suspected offence as provided under the provisions of Cr. P.C. and when such search is completed at that stage S.50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise. If during such search or arrest there is a chance of recovery of any narcotic drug! or psychotropic substance then the police officer, who is not empowered, should informed the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

The provisions of the Cr.PC are applicable where an offence under the Indian Penal Code or under any other law is being inquired into, tried and otherwise dealt with. From the words "otherwise dealt with" in SA, Cr.PC it does \not necessarily means something which is not included in the investigation, enquiry or trial and the words "other wise" points to the fact that expression "dealt with" is all comprehensive and that investigation, enquiry and trial are some of the aspects dealing with the offence. Consequently, the provisions of the Cr.PC shall be applicable in so far as they are not inconsistent with the

**1994 Cr.LJ. 3702*

NDPS Act to all warrants, searches, seizure or arrests made under the Act. But when a police office carrying on the investigation including search, seizure or arrests empowered under the provisions of the Cr.PC comes across a person being in possession of the narcotic drugs or psychotropic substances then two aspects will arise. If he happens to be one of those empowered officers under the NDPS Act also then he must follow thereafter the provisions of the NDPS Act and continue the investigations provided thereunder. If on the other hand he is not empowered then the obvious thing should do is that he must information the empowered 9fficer under the NDPS Act who should there after proceed from that stage in accordance with the provisions of the NDPS Act. But at this stage the question of restoring to S.50 and informing the accused person that if he so wants, he would be taken to a gazetted officer and taking! to gazetted officer thus would not arise because by then search would.

have been over. As laid down in S.50 the steps contemplated there under namely infdrming and taking him to the gazetted officer should be done before the search. When the search is already over in the usual course of investigation under the provisions of Cr.P.C. then the question of complying with S.50 would not arise.

The procedure fort search and seizure under Sections 41 (1) (2) and 42 (1), are mandatory in nature. Under Section 41 (1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offe0ces punishable under Chapter IV of the Act etc., when he has reason to believe that such offences have been committed or such substance's are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then search or arrest if carried out would be illegal likewise, only empowered officer. or duly authorise officer an enumerated in Ss.41 (2) & 42 (1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provision of the NDPS Act by anyone other than such officer, the would be illegal. Under Ss. 41 (2) only the empowered officer can give the authorisation to his subordinate. officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention that would affect the prosecution case and vitiate the conviction. Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset

and this provision does not mandate that he should record his reasons of belief. But under the proviso to S.42 (1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

The object of NDPS Act is to make stringent provisions for control and regulate an operation relating to those drugs and substances. At the same time, to avoid harm to the innocent person and to avoid abuse of the provisions by the officers, certain safeguards are provided which in the context have to be observed strictly. Therefore, these provisions make it obligatory that such of those officers mentioned therein, on receiving an information should reduce the same to writing and also record the reasons for the belief while carrying out arrests or search as provided un;der the proviso to S.42(1). To that extent they are mandatory. Consequently the failure to comply with these requirements affects the prosecution case and therefore vitiates the trial.

Empowered officer or an authorised officer under 8.41 (2) carrying out search would be doing so under Ss. 100 and 165, Cr.P.C. However if there is no strict compliance with provisions of Cr.PC, search would not be illegal. Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to S.42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case. If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation, into offences purely under the provisions of Cr.PC fails to strictly comply with provisions of S.s100 and 165, Cr. PC including the requirement to accord reasons, such failure would only amount to an irregularity. If an empowered officer or an authorised officer under 8.41 (2) of the Act carries out a search, he would be doing so under the provisions of Cr.PC namely Ss.100 and 165, Cr.PC and if there is no strict compliance with the provisions of Cr.PC then 'Juch search would not per se be illegal and would not vitiate the trial. The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

When the police, while acting under the provisions of Cr.PC as empowered therein and while exercising surveillance or investigating into other offences, had to carry out the

arrests or searches they would be acting under the pr0visions of Cr. PC. At this stage if there is any non-compliance of the provisions of Ss. 100 or 165, Cr. PC that by itself cannot be a ground to reject the prosecution case outright. The effect of such non-compliance will have a bearing on the appreciation of evidence of the official witness and other material depending upon the facts and circumstances of each case. In carrying out such searches if they come across any substance covered by the NDPS Act the question of complying with the provisions of the said Act including S50 at that stage would not arise. When the contraband seized during such arrests or searches attracts the provisions of NDPS Act then from the stage the remaining relevant provisions of NDPS Act would be attracted and the further steps have to be taken in accordance with the provisions of the said Act.

Neither S.41 (2) nor S.42 (1) mandates such empower officer to record the grounds of his [belief. It is only proviso to S.42(1) read with S.42(2) which makes it obligatory to record grounds for his belief. To that extent, the provisions are mandatory. A fortiori, the empowered officer though is expected to record reasons of belief as required under S.165, failure to do so cannot vitiate the trial particularly when S.41 or 42 does not mandate' to record reasons while making a search. Section 165 in the context has to be read along with Section 41 (2) and 42(1) where under he is !not required to record his reasons.

On prior information empowered officer acting under S.41 (2) or S.42 - Should comply with provisions of S.50 are mandatory. On prior information, the empowered officer or authorise officer while acting under S.41 (2) or 42 should comply with the provisions of S.50 before the search of the person is made and such person should be informed that if he so requires he shall be produced before a gazetted officer or Magistrate as provided thereunder. It is obligatory on' the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires failure to take him to the gazetted officer or tile Magistrate, would amount to non-compliance to S.50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact. It is an imperative requirement on the part of the officer intending to search to inform the person *to* be searched of his right that if he so chooses, he will be searched in _he presence of a gazetted 0fficer or a magistrate. Thus the provision of S.50 are mandatory.

Steps under Ss.52 and 57 to be taken after arrest or seizure are by themselves not mandatory. The provisions of Ss. 52 and 57 which deal with the steps to be taken by the officer after making arrest or seizure under Ss.41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case.

Sections 52 and 57 come into operation after the arrest and seizure under the Act. Somewhat similar provisions also are there in the Cr.PC. If there is any violation of these provisions, then the court has to examine the effect of the same. In that context while determining whether the provisions of the act to be followed after the arrest or search are directory or mandatory, it will have to be kept in mind that the provisions of a statute creating public duties are generally speaking directory. The provisions of these two sections certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these officers n II and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trail or the conviction if otherwise there is sufficient material. Therefore, it has to be shown that such non- compliance has caused prejudice and resulted in failure of justice. The officers however, cannot totally ignore these provisions and if there is no proper explanation for non -compliance or where the officer totally ignore the provisions then that will definitely have an adverse affect on the prosecution case and the courts have to appreciate the evidence and the merits of the case bearing these aspects in view. However a mere non-compliance or failure to strictly comply by itself will not vitiate the prosecution.

1.6 : SEARCH AND SEIZURE

Mahadeo vs The State*

Facts

Accused found all of a sudden with one countrymade pistol and two live catridges without any licence and public witnesses were not available at that time. Fard was prepared by the S.I.

Held

The search of accused was taken under S.51. It does not require that when search of arrested person is made, signature of the person searched shall be taken on the memo of recovery and its copy should be given to him, It I simply requires that when any article is seized from the 'arrested person a receipt showing the articles taken in possession by the police officers shall be given to such person, In the present case there is no endorsement on the recovery memo that any such receipt was given to the revisionist. Police Regn. 154 of U.P. Police Regulations lays down that if search of an arrested person under S.51 is made, it should be done in the presence of two witnesses unconnected with the police whenever such witnesses are available. In the present case it is undisputed that two public witnesses were not present at the time of the search and the seizure. However, there is an explanation that the accused was found all of a sudden and so the public witnesses could not be taken at the time of the search of the arrested person. :In view of this explanation it can be said that public witnesses were not available and as such Regn. 154 is not attracted. S.100 however, provides that the recovery memo should be signed by the witnesses present at the time of the search and a copy of the recovery memo should be delivered to the person/searched. S.100, Cr.PC does not apply to the present case because its provisions are applicable when search warrant is obtained by the Police Officer and in pursuance of the same search is taken. Moreover, irregularities if any did not vitiate search or trial.

**1990 Cr.L.J.* 858 *(Ailad- Lucknow Bench)*

1.7 : REMAND

C.B.I. vs Anupam J. Kulkarni*

In this case the Supreme Court has discussed the various aspects of period of remand and otrer associated events.

Held

Section 167 is supplementary to S.57. The investigation should be completed in the first instance within 24 hours; if not the arrested person should be brought by the police before a Magistrate as provided under Section 167. While doing so, the police should also transmit a copy of the entries in the diary relating to the case, which is meant to afford to the Magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. Even at this stage the Magistrate can release him on bail if an application is made and if he is satisfied that there are no grounds to remand him to custody but if he is satisfied that further remand is necessary then he should act as provided under Section 167.

The Judicial Magistrate can in the first instance authorise the detention of the accused in either police or judicial custody from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa.

If the arrested accused is produced before Executive Magistrate having judicial powers where Judicial Magistrate is not available the Executive Magistrate is empowered to authorise the detection in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, the Judicial Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial.

Likewise the remand under Section 309 CrPC can be only to judicial custody in terms mentioned therein. Section 309 comes into operation after taking cognizance and not

**(1992) 3SCC 141*

during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same.

After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. Police custody found necessary can be ordered only during the first period of fifteen days. If a further interrogation is necessary after the expiry of the period of first fifteen days there is no bar for interrogating the accused who is in judicial custody during the periods of 90 days or 60 days. The detention in police custody is generally disfavored by law. The whole scheme underlying S. 167 is intended to limit the period of police custody in order to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above.

If the investigation is not completed within the period of ninety days or sixty days as provided under the proviso to sub-section (2) of Section 167 then the accused has to be released on bail as provided under the proviso to Section 167(2).

The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and nor from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.

1.8 : CHARGE-SHEET - EFFECT OF DELAY

State of Andhra Pradesh vs P.V. Pavitharan*

Facts

A case under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act was retired against the respondent, an officer in IPS in March 1984. The respondent was placed under suspension pending inquiry but on the' basis of inquiry the' State Government passed an order in September 1984 for stopping further action arid for his reinstatement in service. However, by a subsequent order in July 1985, the government cancelled its earlier order and directed the respondent to show cause as to why the penalty of compulsory retirement should not be imposed on him. The respondent filed a writ petition before the High Court challenging the order. The writ petition was transferred to the Central Administrative Tribunal, which held that the impugned order was illegal and beyond the powers of the government. The government being illegal and beyond the powers of the government. The government being aggrieved filed an SLP before the Supreme Court, which on November 16, 1988 dismissed the same in view of the fact that the respondent had already retired from service on attaining age of superannuation. Meanwhile the Anti-Corruption Bureau after completing its investigation in the criminal case had submitted its report in April 1987 to its Director-General who in turn had sent the same to tl1e government on September 17, 1988. The respondent filed the criminal petition for quashing further proceedings pursuant to the registration of the first information report, inter aila, contending that there had been lull in the investigation for fairly long spell causing inordinate delay and that the prosecution had not filed its report contemplated under Section 173 Cr.PC till he filed the petition for quashing the proceedings in November 1987 though the case waft registered in March 1984. The High Court on July 29. 1988 quashed the FIR and the subsequent proceedings on the ground of inordinate delay in the investigation. However, the appellant-government accorded sanction for prosecution of the respondent only on September 16, 1988 i.e. after nearly 50 days of the quashing of the FIR. Dismissing the appeal of the State on the peculiar facts the Supreme Court

Held

In view of the facts and circumstances and the various events following the suspension of the respondent culminating in his being allowed to retire on attaining the age of superannuation, it is not a fit case for interference.

**(1990) 2SCC340*

However, no general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating 'agency in completing the investigation such delay is a ground to quash the FIR. It is not possible to formulate inflexible guidelines or rigid principles uniform application for ,speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also depend on various factors 'including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused, or Whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused; It is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in aild resort to the drastic remedy of quashing further proceedings in such investigation. While so there are offences of grave magnitude such as diabolical' crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes book.

1.8 : CHARGE-SHEET

K. VEERASWAMI vs UNION OF INDIA*

Held

The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Office: must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the, disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report, which he files in the court as charge-sheet.

The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr.PC. The statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is intimation to the magistrate that upon investigation into a cognizable offence the Investigating Office:- has been able to procure sufficient evidence for the court to inquire, into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). 'Nothing more need be stated in the report of the Investing Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

**(1991) 3 SCC655*

1.8 : CHARGE-SHEET

State of West Bengal vs Falguni Dutta and Another*

In this case the Supreme Court has discussed the effect of delay in filing charge-sheet where the matters are triable by Special Courts.

Held

In the case of offence punishable under Section 7(1) (a)(ii) of the Essential Commodities Act which is tried by a Special Court constituted under Section 12-A, the provision of sub-section (5) of Section 167 of the Code gets attracted if the investigation has not been completed within the period allowed by that sub-section. After the constitution of Special Courts all offences under the Act have to be tried by that court in a summary way by applying the provisions of Section 262 to 265 (both inclusive) of the Code. The proviso to clause (f) of Section 12M (1) of Essential commodities Act places a fetter on the power of the court in the matter of passing a sentence on conviction, namely, that notwithstanding the fact that Section 7(1)(a)(ii) prescribes a punishment extending up to seven years and fine, Special Court shall not pass a sentence of imprisonment for a term exceeding two years. It is this proviso which attracts the definition of a summons-case, the trial whereof must be undertaken in accordance with the procedure outlined in Chapter XX of the Code. The power conferred by sub-section (5) of Section 167 can be invoked by the Special Court by virtue of clause (c) of Section 12-AA(1) to exercise the same powers which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Code in relation to an accused person who has been forwarded to him under that provision. Therefore, the Special Court can stop further investigation into the offence if the Investigation is not concluded within a period of six months from the day of arrest of the accused person unless for special reasons and in the interest of justice the continuation of the investigation beyond that period is necessary. In the present case the officer making the investigation had not sought the permission of the Special Court to continue. with the investigation even after the expiry of six months. The object of this sub-section clearly is to ensure prompt investigation into an offence triable as summons-case to avoid hardship and harassment to the accused person.

Police Report: The police report under Section 173(2) has to be submitted as soon as the investigation is completed. If the investigation has been stopped on the expiry of six

**(1993) 3SCC 288*

months or the extended period. if any. by the Magistrate in exercise of power conferred by sub-section (5) of Section 167 of the Code, the investigation comes to an end and, therefore, on the completion of the investigation Section 173(2) enjoins upon the officer in charge of the police station to forward a report in the prescribed form. There is nothing in sub-section (5) of Section 167 to suggest that if the investigation has not been completed within the period allowed by that sub section, the officer in charge of the police station will be absolved from the responsibility of filing the police report under Section 173(2) of the Code on the stoppage of the investigation. Therefore, the Special Court was competent to entertain the police report restricted to six months investigation and take cognizance on the basis thereof. In this case the High Court erred in quashing the order of the Special Court taking cognizance of the offence on the police report, i.e. charge-sheet submitted under Section 173 (2) of the Code.

1.8 : CHARGE-SHEET - NO COGNIZANCE ON INCOMPLETE CHARGE-SHEET

Sharadchandra Vinayak Dongre and others

vs

The State of Maharashtra*'

Held

A plain reading of S.173, Cr. P.C. shows that every investigation must be completed without unnecessary delay and as soon as it is completed, the Officer-in Charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up to a "police report" within the meaning of. S.173 sub-sec. (2) until the investigation is completed. Any report, sent before the investigation is completed will not be a police report within the meaning of sub-sec. (2) of S.173 read with S.2(r) and there is no question of the Magistrate taking, cognizance of the offence, within the meaning of S.190 (1) (b) on the basis of an incomplete charge sheet. The incomplete charge-sheet cannot be treated, as a "police report" at all as contemplated under S.173(2) to entitle the Magistrate to take cognizance of the' offences. A police report as defined in S. 2(r) can only be filed" as soon as the investigation' is completed If it is not complete, no such report can be filed. When no report is forwarded as required by the Code the Magistrate cannot take cognizance. Thus, unless all these steps are crossed, sub-sec. (8) cannot be pressed in aid for collecting further evidence which really can be called in aid if further evidence is discovered after the filing of the charge-sheet or the, police report on the completion of the investigation. Unless' cognizance has been taken, sub-sec.(8), cannot be set in motion., The, Magistrate cannot take cognizance on the admittedly "incomplete charge-sheet" forwarded by the police. In case the Magistrate is allowed, to take cognizance on basis of incomplete charge sheet then' the provisions of S.167(2) or to say S.468 of the Cr. P.C., can always be circumvented' by the prosecution and the apparent legislative intents under those provisions would not only be not effectuated but undoubtedly" stultified.

"1991 Cr.LJ. 3329 (Bombay)

1.8 : CHARGE-SHEET

Sharavan Baburao Dinkar
vs
N.B.Hirve, Addionallnspector of Police and others.

Held

Section 96 merely deals with the obligation of an officer in charge at a police station to forward his report under S. 173 of the Code at Criminal Procedure to. the Commissioner or such other officer as the Commissioner may direct in that behalf. The said section nowhere provides that the Commissioner has the authority to issue summaries as has been done in the present case. Issuance at summaries is a function to be performed by Magistrates. The same has advisedly not been left far being performed by the Commissioner. This being a judicial function has to be performed by the Magistrate and Magistrate alone. Commissioner has no authority trample aver these judicial functions of the Magistrate.

The function of the police, being an executive limb, is distinct from the role assigned to the judiciary. One is not permitted to trample upon the province exclusively reserved for the other. Once a report under S.173(2) is submitted by the police to a Magistrate, a Magistrate has .the jurisdiction to take cognizance. A Magistrate is not entitled in the event of a police report, being a negative report, to direct the police to file a charge sheet: All that he is authorized to. do is to direct a further investigation in the case. Similarly once a report under S.173 is submitted, taking of cognizance is the exclusive province of the Magistrate. The police has no role to play in this behalf. As far as S.96 a Bombay Police Act is concerned, the same does not override any of the provisions contained in the code of Criminal Procedure including these found in Ss 173 and 190 of the Code. As far as grant of summaries is concerned, there is no provision to be found in regard to the same either under the Code of Criminal Procedure or under the Bombay Police Act. The only provision in that behalf is found in the Criminal Manual issued by the High Court in exercise of its powers canferred by Art. 227(2) of the Constitution of India.

**1997 Cr.L.J. 617 (Bombay)*

It is, thus, clear that grant of summaries is a judicial function left to the exclusive province of the Magistrate and a Police Officer, or for that matter a Commissioner of Police or an officer duly-appointed by him has no role to play (emphasis supplied).

.

The Bombay Police Manual classifies - the orders which may be requested by the Investigating Officer when he is of the- opinion' that no judicial proceeding need be initiated as Summaries "A" and "B" and "C". A request for "a" Summary IS to be made when the police officer investigating the case is of the view that the officer is true but undetected and where there is no clue whatever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up for trail. Request for "B" Summary is to be made when the complaint is malicious false and for "C" Summary when the complaint neither true nor false, that is, due to mistake of facts of being of a civil nature.

1.2 : REGISTRATION OF F.I.R.
1.9 : INTERVENTION BY THE MAGISTRATE

State of Haryana and OtIJers vs Bhajan Lal and Others.

Held

The power of police to investigate u/s 156, 157 and 159 is not restricted. However, incases of illegal and improper exercise of investigatory powers in violation of statutory provisions - Courts would interfere.

The investigation of an offence is the field exclusively reserved for the, police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bound_. A noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits. And improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance; has to consider the nature and extent of the breach and pass appropriate orders as' may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. No one can demand absolute immunity even if he is wrong and claim unquestionable right and. unlimited powers exercisable up to unfathomable cosmos; any recognition of such power will tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.

Magistrate can intervene only when police officer decides not to investigate.

After registration of a case under Section 154(1), the police have a statutory right under Section 156(1) to investigate any cognizable case without requiring sanction of a Magistrate. The core of Section 156, 157

**(1992) Supp. (1)SCC 335*

and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions, relating to investigation and that is only in a case wherein a police officer' decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can at once proceed or depute any Magistrate sub-ordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

Registration of F.I.R.

If any information disclosing a cognizable, offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. 'Reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. The police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon 'on the ground that he is not satisfied with the reasonableness or credibility of the information. 'In' Section 154(1) the legislature in its collective wisdom has care fully and cautiously used the expression "information'; without qualifying the same as in Section 41(1) (a) or (9) of the Code wherein the expressions. " reasonable complain" and "credible information" are used.

Commencement of Investigation

The commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there, is sufficient ground for entering on an Investigation even before he starts an investigation into the, facts and circumstances of the case, as contemplated under clause(b) of the provision to, Section (1) of the code.

The expression "reason to suspect" as occurring in Section 157(-1) is not qualified as in Section 41 (a) and (9) of the Code, wherein the expression, "reasonable suspicion" is used. As the words 'reason to suspect' are apparently clear, plain and unambiguous; considering the context and the objection of the procedural provision in question, only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting, there from and the words are used and also to be understood only' in, common parlance.

So read the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof: Therefore, the existence of the reason to suspect the commission of a cognizable offence has to be prima facie, disclosed by the allegations made in the first information laid before the police officer under-Section 154(1). The meaning of the expression II reason to suspect" has to be governed and dictated by the facts and, circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise.

1.9 : DIRECTION BY THE MAGISTRATEFORREGISTATION OF FIRAND INVESTIGATON:

Madhu Bala
vs
Suresh Kumar & Others.

Held

Whenever a Magistrate directs an investigation on a 'complaint' the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements, of the Police Rules. Therefore, the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) cannot be said to be legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a: case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to investigate into a cognizable 'case' and the Rules framed under the Police Act. 1861 it the Police is duty bound, to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in t3ny way stand in the way of Magistrate to direct the police to register a case at the police station and then investigate ,into the same. When an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be, to register a case at the police station treating the complaint as the First Information Report and investigate into the same.

When a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1) (a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under' Section 156(3) for investigation. Once such a direction is given under sub section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a 'police report' in accordance with Section 1'73(2) on which a Magistrate may' take cognizance under Section 190(1)(b) but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a 'police report' in view of the definition of 'complaint' referred to earlier and' since, the investigation of a ‘cognizable case’ by the police under

**1997 Cr.L.J. 3757*

Section 156(1) has to culminate in a 'police report' the 'complaint' -as soon as an order under Section 156(3) is passed thereon-transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First Information Report (FIR). As under, Section 156(1), the police can only inv'3stigate'a cognizable 'case' it has' to formally register a case on that report .

1.9 : INTERVENTION BY THE MAGISTRATE

Nirmal Kanti Roy vs State of W.B *

Facts

The appellant was involved as accused in an offence under Section 409, IPC. During investigation of the case he applied for and got, a pre-arrest bail order and surrendered himseh before the Magistrate on 18-3-1993. As the investigation was not completed within two years there from he moved the said Magistrate on 22-9-1995 for discharging him under Section 167(5), CrPC. The Magistrate dismissed the application' pointing out that the case' being triable only by a Special judge under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 the order sought by the appellant could be passed only' by the Special Judge. A Single judge, of the High Court while holding the Magistrate to be competent to pass an order under Section 167(5) in the instant case, granted further time to the 10, on an application filed by him, on being satisfied that the 10 could not complete the investigation. due to sickness. The question was whether time could, have been extended without the 10. moving for such extension before the expiry of, the statutory period.

Held

On the facts of the instant case the two years' period' mentioned in 'Section 167(5)(iii) must be reckoned from 18-3-1993 on which date the appellant surrendered himself in court.

The order stopped further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to Complete investigation within the period fixed in the sub-section as is evident from the succeeding words, in Section 167(5), Even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word' on it because Section 167(6) opens another avenue for moving the Session judge,' Therefore, the time schedule shown in. Section. 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate, should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether on the facts of that case, further investigation would be necessary to foster interest of criminal justice. The Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over'' the Magistrate should seriously ponder over the question whether it would be conducive,to the interest of justice to stop further investigation and discharge the accused.

**(1998) 4SCC 590*

1.9 : INTERVENTION BY THE EXECUTIVE

Mutharaju Satyanarayan
vs
Government of A.P. and others.

Facts

The brief facts of the case are that one Arigadi Prabhakara Rao was a wanted criminal against whom three non-boilable warrants were pending execution. On 26-4-1985 the petitioner and some others having found him at a Beedi shop chased and caught hold of him. When he resisted and tried to escape, the Head Constable and Home Guard over-powered him and during that scuffle he received some injuries. Thereafter, he was taken to police station and was confined in lock-up at 9 p.m., on 26-4-1985. On 27-4-1985 he was found dead in police station. The Government of Andhra Pradesh issued G.O.Ms No. 441. General Administration (General B.) dated 24-9-1985, appointing Sri.M. Sreeramulu, retired District Judge as single Member Commission of inquiry under the. Commission of Inquiry Act, 1952 to inquire into the death .of said Prabhakar Rao with reference to following terms:

(1) To find out the circumstances leading to the death of Sri Angadi Prabhakar Rao in police custody at Chirala town police station on 27-4-1985.

(2) To identify the person, if any, responsible for the death of Angadi Prabhakara Rao and.

(3) To point out lapses on the part of any authority or person or persons, if any, in connection with this incident.

The Commission of Inquiry has conducted inquiry and submitted its report to the Government. The report of the Commission of inquiry was placed before the State Legislative Assembly. It was sated that instructions have been issued to the Director General and Inspector-General of Police, Hyderabad to places the Circle Inspector of Potice, Sri.D. Sreedhara Reddy and the sub-Inspector of Police Sr. M. Satyanarayana Rao (the petitioner) under suspension, initiate departmental enquiry against them arid launch prosecution against them. The Commissioner of La rid Revenue, Hyderabad was also instructed to place Sri V. Subba Rayudu, Mandai Revenue Officer under suspension. The Government of Andhra Pradesh by its order dated
15-7-1986 directed the Special Inspector-General of Police, C.B.C.LD., to launch prosecution against erring officers: The Inspector of Police and the writ petitioner were placed under suspension and departmental enquiry was initiated:

**1997 Cr.L.J. 3741 (AP.)*

The Special Inspector-General of Police (Crimes), C.B.C.L.D entrusted the case for investigation to the Deputy Superintendent of Police, C.B.C.LD. vide his proceedings dated 21-8-1986. The Deputy Superintendent of Police suo motu registered a case in crime No'. 139 of 1986 under Section 342, 330, 302 and 218, LP.C.. against D.-Sreedhar Reddy, Inspector of Police, the writ petitioner and the Executive Magistrate.Chrala, V. Subbarayudu and took up investigation. During the course of investigation, it was found that Angadi Prabhakar Rao's death was natural expert medial evidence was not placed before the Commission of Inquiry, no offence under Section 302 or 304, LP.C. was established against any police officers, overwhelming evidence recorded revealed that neither the deceased nor is mother wa,s either beaten or tortured while they were in police custody on 26th and 27th April, 1985, Angadi Prabhakar Rao was beaten with sticks at the time of apprehension by the Head Comtable and Jakkaraiah and the Inspector of Police and 'the petitioner are guilty of manipulating the records for which they are punishable under Section 2,18, LP.C. Report for the investigating officer was sent to the Special Inspector-General of Police, who is turn sent io the Chief Secretary to Government seeking instructions for the disposal of the case. On 31-3-1988, this Court in W.P.M.P. Nos 1333/88 and 1334/88 in W.P. No. 1083/88directedthe Dy. Superintendent of Police to complete investigation within one month and submit the report of the case to the Magistrate and report compliance immediately thereafter. After perusing the letter of the Special Inspector-General of Police, the Chief Secretary on 15-4-1988 issued proceedings to the effect that the Government have decided that there is no need to deviate, from the earlier course of 'action decided and reported to the Legislative Assembly, and the Director General and the inspector-General of Police are requested to proceed with the prosecution of the' officers without any further delay. Thereafter, a charge-sheet under Sections 324,354,342, 330, 218 and 302 read with 34, I.P.C. was filed by the Deputy Superintendent of Police, C.I.D. Hyderabad, and it was taken cognizance' of by the II Additional Munsif Magistrate, Chirala in P.R.C. No. 18 of 1989. AlI the facts gathered during investigation and as reflected in the letter dated1-1-2-1997 were not mentioned in the charge-sheet. Only an eclipsed version was given basing on the report of the Commission of Inquiry, which 'cannot be treated as a report under Section 173(2) of Cr. P.C. Assailing the said action this writ petition is filed.

Held

The Government has no power and jurisdiction to interfere with the discretionary power of the investigating authority and direct it to file a report even if in the opinion of the investigating authority no case is made out against the accused.

No other authority except the officer in-charge of police station, can form an opinion as to whether on material collected a case is made out to place the accused before the Magistrate for trail. If the officer in charge of police station is of opinion and submits a

a final report to the effect that no case is made out to send up the accused for trial, no other authority has power to direct him to change his opinion, and file submit a charge-sheet to the Magistrate. However, the Magistrate is under no, obligation to accept the final report of the police, if he does not agree with the opinion formed by the police.

Thus, where the investigating officer's report revealed that no case has been made out, except the offence under Section 218, I.P.C., against the petitioner, the direction of the Chief Secretary to the State Government for filling of charge sheet for the offences, which are not' made out, prima facie, as per the report of the investigation officer, amounts to giving direction in contravention of the, provisions of the Code. At the most, by virtue of the power of superintendence the Chief Secretary or the State Government can direct the investigating officer to conduct further investigation as provided in Section 173(8) of Cr. P.G. But in the instant case, the report of the Commission of Inquiry was-tabled before the Legislature and it was reported before it that the Government will proceed with the prosecution. The-report of Commission of Inquiry is not a report by investigating officer. According to the provisions of the Criminal Procedure Code, the report of the investigating officer for superior officer is only the report of the investigating officer. Therefore, the direction of the- Chief Secretary is contrary to the provisions of Cr. P. C. The authority exercising the power of superintendence under Section 3 of the Police Act, at the most, can direct the investigating officer to 'conduct further investigation as per Section 173(8) of Cr.P.C. but it cannot straightway direct the investigating officer to file charge-sheet, when no case is made out according to the report of investigating officers.

II.1 : RECORDING OF CONFESSION

Kartar Singh vs State of Punjab.

In this case the Supreme Court has' discussed the procedure for recording of confession under Section 15 of the TADA Act. '

Held

In view of the legal position vesting authority on higher police officer to record the, confession hitherto enjoyed by the judicial officer in the normal procedure there should be no breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement and there should be no room for hyper, criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability.

As per Section 15(1), a confession can, either be reduced into writing or recorded or any mechanical device like cassettes, tapes or sound tracks from which sounds or images can be reproduced. Since the recording of evidence on mechanical device can be tampered, tailored, tinkered, edited and erased etc., there must be some severe safe guards which should be scrupulously observed while recording a confession under Section 15(1) so that the possibility of extorting any false confession can be prevented to some appreciable extent.

Sub-section (2) of Section 15 enjoins a statutory obligation on the part of the police officer recording the confession to explain to the, person, making it that he is not bound' to make a confession and to give a statutory warning that if he does so it may be used as evidence against him. Also Rule 15 of the TADA Rules imposes certain conditions on the police officer with regard to the mode C)f recording the confession and imposes certain requirements on the police officer recording, the confession. For these and foregoing reasons it must be held that Section 15 is not liable to be struck down since, that section does 'not offend either Article 14 or Article 21 'of the Constitution.

Guidelines: However, following guidelines are laid down so as to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of police not tainted with any vice but is in strict conformity with the well recognised and accepted aesthetic principles and fundamental fairness:

**(1994) 3SCC 569*

(1) The confession should be recorded in a free atmosphere in the same language in, which the person is examined and as narrated by him;

(2) The person from whom a confession has been recorded under Section 15(1) of the Act, should be produced before the, Chief, Metropolitan, Magistrate or the Chief Judicial, Magistrate to whom the confession is required to be sent under Rule15(5) along 'with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

(3) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement,' if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an' Assistant Civil Surgeon;

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.

This is necessary in view of the drastic provisions of this Act, more so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.

(5) This police officer if he is seeking the custody of any person for pre-indictment or pre trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay;, if any, in seeking the police custody;

(6) In case" the person" taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so" the said statement may be used against him as evidence, asserts his rights silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure.

11.1 : RECORDING OF CONFESSION"
11.2 : CONFESSION UNDER THE. INFLUENCE OF POLICE

State of Maharashtra vs Damu Gopinath Shinde*

Facts

A1 Damu Gopi Nath was arrested on 26.02.1995 and with his interrogation the police could make a break-through regarding the mysterious: disappearances and death of the children. Arrests of the remaining three accused were followed swiftly and, thereafter, investigation progressed to a considerable extent. Certain articles were recovered consequent upon the information elicited from the accused and such recovery threw further' light on the multiple infanticides. A confession was recorded by Ms. Anjali Apte, a Judicial Magistrate, First Glass on' 26.05.1995 and it became the sheet-anchor of the prosereoution matrix.

The Division Bench to sideline the confession gave the following reasons:

1. The fourth accused-Balu Joshi 'remained in police custody for a considerably long period and that circumstance is sufficient to view his confession with suspicion.

2. The Sub-Jail, Newasa (in which the accused was interred0 was located adjacent to the police station and hence the mere fact that he was locked up in the Sub-Jail is not enough to dispel the" fear in the mind of the confession regarding police survillence.

3. P.W. 19 (Mrs. Anjali Apte) was a Judicial Magistrate at Ahmednagar whereas, there was a Judicial Magistrate First Class at Newasa itself. As the accused was locked up in the Sub-Jail at Newasa, there 'is no explanation why a Magistrate belonging to a distant place was asked to record the confession, in preference to a Magistrate at a near place.

4. The Investigating Officer (P.W. 42) has not explained how he knew that Balu Joshi (A-4) was willing to make a' confession to him. Learned Judges draw an inference like the following:

"If the circumstance, that the Police Station is adjacent to Sub-Jail, NeWaS3, is taken into consideration, then an "inference can very well be drawn that nobody but police contacted Balu Joshi (A-4) and Police informed Mr." Suryawanshi (P.W. 44) that the accused was willing to make. Confessional statement.

"2000 Cr.L.J. 2301

Held

The geographical distance between the two buildings, sub jail at 'N' where accused was locked up and the police station - Could not be a consideration, to decide the possibility of police exerting control over a detenu. To keep a detenu in the police fear it is not necessary that the location of the police station should be proximal to the edifice in which the prisoner is detained in judicial custody. In many places judicial Courts are situated very rear to police station house, or the officers of higher police officers would be housed in the Some complex. It is not a contention to be countenanced that such nearness would vitiate the independence of judicial function in any manner. Further 'N' is a taluk located within the territorial limits of the district of 'A'. The Chief Judicial Magistrate. 'A' was approached for nominating a Magistrate within his jurisdiction for recording the 'confession. There could have been a variety of reasons for the Chief Judidal Magistrate for choosing a particular Magistrate to do the work. When not even a question was put to Magistrate recording confession to the Investigating Officer as to why the CJM, 'A' did not assign the work to a Magistrate at, 'N', it is not proper for the' High Court to have' used that as a ground for holding that voluntariness of the confession was vitiated; Similarly. it is a worthless exercise to ponder over how or from, which source the investigating officer would have come to know that the accused was desiring to, confess. Investigating Officer can have different sources to know that fact and he is not obliged to state, in Court, the sarne, particularly in *view* of the ban contained in S.162 of the Code of Criminal Procedure. Thus the voluntariness of the confession cannot be doubted. The basic idea embedded in S. 27' of _vidence Act is the doctrine of confirmation by subsequent events: The doctrine is founded on the principle that if any fact is discovered in a search made on the strength' of any. information obtained fr()m' a prisoner, such a discovery is a guarantee that the information supplied by the. prisoner is true. The information might be confessional arnon-inculpatory in nature" but if it ,
results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It- is now well-settled

that recovery of an object is not discovery of a fact as envisaged in the

Section. .

No doubt, the information permitted to be admitted in 'evidence is confined to that portion of the information 'which "distinctry relates to the fact thereby discovered." But the information to get admissibility need not be so truncated as to make it insensible or incom'prehensible. The extent of information admitted should be consistent which

. .

understandability. In the instant case the fact discovered by investigating officer that accused had carried the dead body of child to the spot on the motorcycle. No doubt, recovery of dead body of child from the canal was antecedent to the information which the investigating officer had obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery or any fact at all. But-when thev broken glass piece was recovered from that spot and that piece was found to be part of the tall lamp of the motorcycle of co-accused alleged to be used to carry deceased child, it can safely be held that he Investigating officer discovered the fact that accused had carried the dead body on that particular motor cycle up to the spot.

II.3 RECORDING OF DYING DECLARATION

Paras Yadav and others vs State of aihar*

FACTS

Accused Paras Yadav and two others assaulted Sambhu Yadav at about 8.00 p.m. and gave him Chhura (knife) blow in abdomen. On hulla (nioise) being raised some public porsons and Sub-Inspector of Police, Sh. Dinanath Singh reached the spot while he was on patrolling duty. He recorded the fardbeyan under Section 307 L.P.C. The victim was shifted to hospital where-he succumbed to the injuries at night of 8th February, 1983. The Sessions Court convicted the accused by relying on fardbeyan (Ext. 1), which was treated as dying declaration by the L.d Addl Sessions Judge. After, appreciating the entire evidence on record, the High Court has upheld the conviction of the appellants. Hence, this appeal by specialleave is preferred.

Held

In our view, there is no reason to disbelieve the oral dying declaration ad deposed by number of witnesses, and as recorded in fardbeyan of deceased Sambhu Yadav. The fardbeyan was recorded by the Police Sub-Inspector on the scene of occurrence itself, within few minutes of the occurrence of the incident Witnesses also rushed to the scene of offence after hearing hulla gulla. The medical evidence as deposed by PW-II also corroborates the prosecution version. Hence, the Courts below have rightly convicted Paras Yadav for the offence punishable under Section 302, I.P.C.

**1999 Cr.L.Jo 1122*

11.3 : RECORDING OF DYING DECLARATION

Gulam Hussain vs State of Delhi*

Facts

In the instant case the Dying Declaration Exhibit PW22/B was recorded by PW22 ASI Balwan Singh in the hospital on 14-10-1989 at about 6.30 a.m. after getting an opinion from the Doctor that the injured was fit for statement. The endorsement of the doctor is recorded as E xhibit PW22/A. . .

Legal Issue: Learned counsel appearing for the appellants submitted that as the statement was recorded by the investigating officer which was treated as FIR, the same could not be treated as dying declaration and was inadmissible in evidence.

Held

The submission has no substance because. at the time of re.cording the statement PW22 Balwan Singh did not possess the capacity of an investigating officer as the investigation had not commenced by then. Such a statement can be treated as a dying declaration which is admissible in evidence under Section 32(1) of tile Evidence Act. After critically scanning the statement of P\N22 ASI Balwan Singh and details of Exhibit PW22/B, we have no hesitation to hold that the aforesaid statement was voluntarily made by the deceased which was reduced to writing and have rightly been treated as dying declaration after the death of the maker.

*2000 Cr. L.J. 3949

11.4 : POLICE AS WITNESS

Tahir vs State-(Delhi)*

Facts

According to the prosecution case on 14.11.1990, a mob collected at Gurdwara Sis Ganj Sahib in Chandni Chowk, Delhi and moved in a procession towards the ldgah Park. A meeting was going on in ldgah Park where some provocative speeches were made by some of the speakers leading to communal riots. At about 4:30 p.m. the riot was at a pitch and stones and other missiles, were hurled on the members of the opposite side from Idgah Road - Nawab Road of Sadar Bazar by the rioters. The appellant was supporting the mob *of* rioters and was found holding a countrymade pistol in his hand and waving it in the air. The police party made some arrests. The appellant was apprehended by SI Dldar Singh SHO PW 4, who caught him along with the pistol. The appellant was then handed over to SI Sukhbir Singh PW 7 who arrested him in the riot case and later on formally arrested him ill a case under Section 27 of the Arms. Act for being in possession of a country made pistol without any authority also. A ruqa was sent by ASI Diwani Ram PW 6 to Sl lshwar Chand PW 1 who registered the FIR and copy of the FIR was sent to SI Sukhbir Singh PW 7, After the arrest of the appellant, the countrymade pistol was seized from his possession and sealed into a parcel which was kept with the Moharir Head Constable (Malkhana) PW 3. The paicel containing the countrymade pistol was later on sent to the Central Forensic science Laboratory for examination and the ballistic expert opined that the.12 bore countrymade pistol was firearm as defind in the Arms Act, 1959 and was found to be in a working order. The report from the Central Forensic Science Laboratory with the opinion of the expert was received on 27:12.1990. Since the place from where the appellant was arrested along with the unauthorised firearm fell in the area notified under TADA, the investigating agency after obtaining the statutory sanction registered a case against the appellant for the offence under Section 5, TADA. On completion of the investigation the appellant was sent up fortrial before the Designated Court and on conviction for an offence under Section 5 TADA, was sentenced to undergo RI for five years and to pay fine of Rs. 1000/- and in default of payment of fine to undergo further RI for two months.

With view to connect the appellant with the crime, the prosecution examined seven witnesses FS. PW 1 is the duty officer who recorded the formal FIR Ex. PW 1/A. Sealed parcel containing the countrymade pistol was taken from the Moharir Head Constable Malkhana PW 3 to the Central. Forensic Science Laboratory by PW 2. These three witnesses are of a formal nature.

**(1996) 3 SCC 338*

PW 4, Inspector Didar Singh was the SHe .of the area at the relevant time and was present at the spot along with the police force. From the evidence of Inspector Didar 'Singl' PW 4, it clearly emerges that the appellant was apprehended at the spot at about 4.30 p.m. on 14.11.1990 arid at that time he was found holding a countrymade pistol in his hand and waving it in the air. It also transpires from his evidence that because of provocative speeches made at Idgah Park communal rioting had ensued and brickbats stones and other missiles were being hurled at the opposite party from the rioting mob present at the Idgah Road. Constable Mahabir Singh PW 5 fully corroborated the statement of Inspector Didar Singh PW 4 in all material particulars. It was he who took the ruqa from PW 4 to the police station for registration of the formal FIR. The evidence of Didar Singh PW 4 is also corroborated by ASI Diwani Rani PW 6 and Inspector Sukhbir Singh PW 7. Nothing has been brought out in the evidence of any of these witnesses to show as to why they should falsely depose against the appellant. They have given a dear and cogent version of the occurrence and their evidence inspires confidence. Their testimony has remained unshaken in cross-examination.

The appellant in his statement recorded under Section 313 CrPC claimed innocence and submitted that he was apprehended from the tea shop outside his his near Filmistan when some riot was going on near and around the 'Idgah and he was later on taken to the police station and implicated in this case. The appellant has, however, led no evidence in defence. The reason for the alleged false implication has, however, not been spert out.

Held

Our critical analysis of the evidence of the aforesaid four police official has created an impression on our minds that they are trustworthy witnesses and their evidence suffers from no infirmity whatsoever. Nothing has been brought out in their lengthy cross-examination which may create any doubt about their veracity. We find their evidence to be reliable. Keeping in view the circumstances for the 'situation' when the appellant was apprehended along with the countrymade pistol, the failure of the prosecution to examine any independent witnesses of the locality does not detract from the reliability of the prosecution case.

No infirmity attaches to the testimony of police officials, merely because they belong to the police *force* and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials. if found reliable unless corroborated, by some independent evidence . (emphasis supplied) The rule of prudence, however, only requires a more careful scrutiny of their evidence, since they can be however, only requires a more careful scrutiny of their

*(1996) 3 *SCC* 338

evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police official, after careful scrutiny I inspires confidence and is found to be trustworthy and reliable it can form the basis of conviction arid the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecuti,on case.

11.4 : POLICE AS WITNESS

Megha Singh vs State of Haryana*

Facts

The, appellant was tried under Section 6(1) of the TAOA Act, 1985 and Section 25 of the Arms Act, 1959 on the basis of FIR dated 19.09.1985 lodged in the Police Station Baragudha. It is the prosecutioncase that on 29.09.1985 Head Constable Siri Chand, (PW3) and Constable. BhupSingh. (PW2) and other police personnel were present onthe Kacha (unmetelled) route connecting Village Faggu with Village Rohan. At about 12.00 noon the accused was spotted while coming from the side of Village Rohan. At the accused after seeing the police party tried to cross through the field the police party became suspicious and he was intercepted and the Head Constable Siri Chand, PW3 thereafter searched the person of the accused and on search a country made pistol Ext. P-1 was recovered from the right dub of his chadar and three live cartridges Exts. P-2 to P-4 were also recovered from the right side pocket of his shirt. The said pistol and the cartridges were possessed by the accused without any valid licence. .After recovery of the said pistol and the cartridges the same: were seized vide recovery memo Ext. PC and a *rukka.* Ext. PD with PD with regard to the recoverywas prepared and sent to the police station on the basis of which FIR Ext. PD-1 was recorded by Sub-Inspector of Police Charanjit Singh. The prosecution case was sought to be proved by the said Head Constable Sri Chand (PW 3) and Bhup Singh (PW 2). No independent witness was examined to support the prosecution case.

Held

PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was. not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice to say the least should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

**(1996) 11SCC 709*

11.5 : USE OF CASE DIARY IN TRIAL

Shamshul Kanwar vs State of U.P.*

Held

It is manifest from its bare reading without subjecting to detailed and critical analysis that the case diary is only a record of day-ta-day investigation of the investigating officer to ascertain the statement of circumstances ascertained through the investigation. Under sub-section (2) *of* Section 172, the Court is entitled at the trial or inquiry to use the diary not as evidence in the case but as aid to it in the inquiry or trial. Neither the accused nor his agent, by operation *of* sub-section (3), shall be entitled to call for the diary, nor shall he-be entitled to use it as evidence merely because the court referred to it. Only right given thereunder is that if the police officer who made the entries inthe diary uses it to refresh his memory or if the court uses it for the purpose *of* contradicting such witness, by operation of Section 161 of the Code and Section 145 of the Evidence Act, it shall be used for the purpose of contradicting such witness i.e., Investigation Officer or to explain it in re-examination by the prosecution with permission of the court. It is therefore clear that unless the investigating officer or the court uses it either to refresh the memory or contradicting the investigating officer as previous statement under Section 161 that too after-drawing his attention thereto as is enjoined under Section 145 of the Evidence Act, the entries cannot be used by the acqused as evidence.

**(1995) 4 SCC 430*

11.6 : EVIDENTIARYVALUEOFSITE PLAN

Jagdish Narain and Another vs State of U.P.*

Held

While preparing a site plan an Investigating Police officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge but, as he was not. obviously present when the incident took place, he has the derive knowledge as to when, where and how it happened from persons who had seen the. incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person for whom he heard is examined to give direct evidence within the mealling of Section 60 of the Evidence Act, 1872 the former's evidence would be admissible to corroborate the latter in accordance with section 157 Evidence Act. However such a statement made to a Police Officer, when he is investigating into ari offence in accordancewith Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162 (1) CrPC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies.

If in a given case the site plan is prepared by a draftsman and not by the Investigating officer - entries therein regarding the place from where shots were fired or other details derived from. other Witnesses would be admissible as corroborative evidence.

*(1996) 8 SCC 199

III.1 : RIGHT TO LIFE AND PERSONAL LIBERTY

Supreme Court Legal Aid Committee Through its hony. Secreatry
vs
State of Bihar & Others*

Facts

This is a PIL under Article 32 seeking inforcement of fundamental right under Article 21. In this petition the issue raised is negligence and failure to
give proper medical aid to an injured person taken in police custody resulting in his death. In his affidavit the Dy. S.P. indicating that timely medical care by the concerned police official would have saved the !ife of the victim.

Held

It is the obligation of the police particularly after taking a person in custody to ensure appropriate protection of the person taken into custody including medical care if such person needs it. The Court directed the state to pay a compensation of Rs. 20,000.00 within 3 months.

*(1991) 3 SCC 482

111.1: RIGHT TO LIFE AND PERSONAL LIBERTY.

Inder Singh vs State of Punjab and Others*

Facts

This writ petition is filed alleging the abduction and elimination of seven persons by police team led by Dy. S.P. by misusing official machinery to wreak private vengenance. Director C.B.I. submitted report after investigation as per the orders of the Supreme Court dated 15.09.94. The glaring inaction and indifferent attitude of senior officials as mentioned in the C. B.I. report is like this - SSP taking no action on the complaint for two months and DIG sitting on it for 8 months and only crime branch charge-sheeting the accused persons and matter was never brought to the knowledge of the DGP.

Held

The primary duty of those in uniform is to uphold law and order and protect the citizen. If members of a police force resort to illegal abduction and assassination if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination the case is not one of errant behaviors by a few members of that police force. It betrays sc lnCrespect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspicion. The Punjab Police as a whole merit the Supreme. Court's disapprobation the Crime Branch thereof a word of praise.

The Supreme Court has in recent times come across far too many instances where the police have acted not to uphold the law and protect the citizen but in aid of a private cause and to oppress the citizen. It is a trend that bodes ill for the country and it must be promptly checked. The DGP Punjab is expected to take a serious view of such cases. The Home Department of theCentral Govt. cannot also afford to appear to be a helpless spectator. .

When the police force of a State acts as the Punjab Police has in this case the State whose arm that force is must bear the consequences. It must do so in token of its failure to enforce law and order and protect its citizens and to compensate in some measure those who have

*(1995) 3 SCC 702

suffered by reason of such failure. The State of Punjab is directed to pay to the legal representatives of each of the said seven persons an amount of Rs.1.50 lakhs within 2 weeks. Later, when the guilty are identified the State should endeavour to recover the said amount which is the taxpayers money.

The prosecution of those who have been charge-sheeted in connection with the abduction and disappearance of the said seven persons should be expeditiously conducted under the supervision of the Crime Branch of the Punjab Police. The court trying the accused is cautioned that it should decide the case on the evidence that may be laid before it without being unduly influenced by what has been said in this Order.

Disciplinary inquiries must be started against the accused persons as also the SSP and DIG concerned. Others responsible for delaying the registration of the complaint and inquiry thereon must also be identified and proceeded against.

The State of Punjab shcilfl pay to the petitioner the costs of the writ petition quantified at Rs.25,OOO.

111.1 : RIGHT TO LIFE AND PERSONAL LIBERTY

Arvinder Singh Bagga vs State of Up and Others*

Facts

Where a girl was in Police Custody and a writ petition for Habeas Copus was filled in the Supreme Court.

Held

We have heard learned counsel on both sides. Att he time the petition was moved, the girfwas in policecustody. She has siricebeen released. But, we are afraid this cannot be the end of the matter. The writ petition shall continue as one for qualified habeas corpus for examining the legality *of* the detention for determining whether the petitioner is entitled to be compensated for the illegal detention as a public law remedy for violation of her fundamental rights under Article 21 of the Constitution quite apart from criminal or civil liability which may be pursued in the ordinary course.

*(1995) Supp (3) SCC 716

111.1 : RIGHT TO LIFE AND PERSONAL LIBERTY

People's Unionfor Civir Liberties
vs
Unior *of* Indian and Another*

Facts

The writ petition alleged that in the state of Manipur, two persons with some persons were just seized from a hut and taken away to along distance by the police and wereshct there.

Held

It is true that Manipur is a disturbed area that there appears to be a ,good amount to terrorist, activity affecting public order and may be even security of that State. It may also be that under these conditions certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the ponce officers or other paramilitary forces engaged in fighting them Police cannot wait till they are shot at. It is for the force on the spot to decide when to act how to act and where to act. It is not for the court to say how the terrorists should be fought. The Court cannot be blind to the fact that even after fifty years of our independence our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be dealt with by force is a matter of policy for the Government to determine. The courts may not be the appropriate forum to determine those questions. But the present case appears to be one here two persons along with some others were just seized from a hut taken to a long distance away in a truck and shot there. This type *of* activity cannot certainly
be countenanced by the courts even in the case *of* disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them the proper course forthem was to deal with them according to law. Administrative Liquidation was certainly not a course open to them.

In such cases award of compensation is a remedy available in public law based on strict liability for contravention of fundamental rights. Rupees one lac be given as compensation to the families of each of the deceased. The same shall be paid by Government of Manipur. The petitioners shall be entitled to the costs of writ petition assessed at Rs. 10,000.00.

*(1997) 3 *SCC* 433

111.1 : RIGHT,TO LIFE AND PERSONAL LIBERTY

Smt. Vandana Vikas Waghmare
vs
State of Maharashtra and other*

Facts

In this writ petition the killing of three dreaded person in encounter was alleged to be false. This allegation of take encounter was not supported by any evidence. Only reason given was this that no injuries were found on police party.

Held

Merely for the reason that police party sustained no injury, the genuineness of encounter cannot be doubted on this ground alone. The High Court further observed as under:

Very often within the precinct of the Metrepolis of Mumbai, the encounters between the underworld dons and the police take place and in which either of the parties is being killed. However, it can be taken a note that several gangs are functioning in different areas and parts of the Mumbai Metrepolis and continuing their underworld activities. However it was and whatsoever high or serious it may be,it is the responsibility of the police concerned to take such of the adequate and appropriate steps to book them under the law. It does not mean but police organisation have te resort to a third degree method of action and the law te be taken in their own hands to deal with them unlawfully. While saying so, Court is also conscious of the fact that a few charges may be levelled against so memembers of the police organisation in a given particular case, but it cannot be proper to generalise the same against all keeping in view of the fact that no profession demands a sacrifice of the life to uphold the rule of law and that if the police organisation has done such a meritorious sacrifice, it would be properly honoured. Of course, the duty, of the police organisation in the country has become much more onerous than the other organisationer the departments, highly accountable to the society for the reason that whole of the society by and large in the country would depend upon, the risky job done by the palace department. Keeping in view of the above and applying the same to the facts of the instant case the activities of the police in dealing with the three dreaded gangsters are within the

*(1998) Cr.L.J. 4295 (Bombay)

legal ambit and that they have not dons anything beyond, for Section 100 of the Indian Penal Code and Section 46 of the Code of Criminal Procedure and Section 189 of the Bombay Police Manual Vol. VIII provides proper guidance to the police party. In the instant case there is no reason to discard what has been stated by the three police officers on onoath and the police officers resisted the case of the petitioner particularly when the deceased were involved number of serious crimes. There is no basis for ordering the enquiry by any other agency and if so, it is bound to demoralise the police force and dissuade them from doing their lawful duty. Therefore, it would be against the public interest to order the judicial enquiry or other enquiries as asked for unless there is good reason to hold prima facie that the case of encounter made out, was false.

In the instant case there is evidence to show that the police party had selected three teams which must be conversant with the retaliation work with all accurate aim, adequately took and that above all the police personnel decided to lay the trap and secured the accused as fully trained personnel use the fire arms and it was thus, while they retaliate against the untrained persons, the injuries found on them could have been caused by the bullets fired by the trained persons, may reach the vulnerable parts of the body. If this being so, there is nothing strange for severe injuries found on the important parts of the human anatomy and the three dreaded personsand it is not possible for the policemen to sustain any injuries on their part.

111.2 : RIGHT AGAINST TORTURE AND INDIGNITIES

Ravikant Patil vs The State of Maharashtra & others

Facts

In the present case, the petitioner was arrested in connection with a murder case and while he was transferred from the police station to the Court for an order of remand, he was handcuffed and both his arms were tied by a rope and then was taken in procession through the streets and squares of a city by the Inspector of Police. This phenomenon was witnessed by a large number of people in the city. He was paraded for the purpose of investigation and for pointing out houses of other accused but actually no investigation was carried out. Even in the FIR his name was not included as one of the suspects. It was alleged that the petitioner had long criminal record but not a single case was pointed out in which he was convicted. There was no material to show that he would have escaped through police custody when he was surrounded by large posse of policemen. The reasons for handcuffing were not recorded contemporaneously.

Held

That the petitioner was subjected to wholly unwarranted humiliation and indignity which cannot be done to any citizen of lndia irrespective of whether he was accused of minor offence or major offence. The action on the part of the Inspector of Police was wholly unwarranted and unjustified and was done disregarding the Rules found in the Bombay Police Manual. He had acted outside the scope of authority vested in him under the Cr. PC. There might be criminal cases pending against the petitioner but that itself would not entitle a police officer to subject a person to the indignity and humiliation to which the petitioner was subjected to in this case. The duty to impose a restraint should not be utilised as an opportunity for exposing an under trial prisoner to public ridicule and humiliation

Life, liberty of a citizen guaranteed under Art. 21 includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliations and indignities at the hands of the authorities to whom the custody of a person may pass temporarily or otherwise under the law ofthe land

*1991 *Cr.L.J.* 2344 *(Bombay)*

IV.1 : EXTERNMENT

Prakash Sitaram Shelar,
vs
The State of Maharashtra & others*

Facts

The petitioner in each one of the these petitions was served with a notice under Section 59 of the Bombay Police Act, informing him that it was proposed to extern him from Thane and Bombay Districts for a period for years on the grounds mentioned in the said notice. In the first place, each one of the petitioners was informed thathe was indulging in criminal actions within the jurisdiction of the Wagle Estate Police Station by forming a gang of unsocial elements. He was also told that he was indulging in beating without any reason the poor leper patients in the area. Each petitioner was also told that he was, along with other, causing loss to the properties of the people. After narrating the said facts it was stated that people are unwilling the come forward to give evidence against him, being afriad of danger to their lives and properties. Thereafter, each one of them was told that a case was registered against him for the offences punishable under Chapter XVII of the Indian Penal Code. Having said this, however, the notice did not mention that in respect of the case registered against each of the petitioners, witnesses were not willing to depose against him.

Held

The notice, in our opinion, contains several defects. In the first place, the petitioner in each of the petitions was not informed the period during which he was indulging in anti-social activities. On an allegation that the petitioners have been indulging in anti-social activities without mentioning the period during which those activities took place no person can reasonably put up a defence. If the activities had happened 10 years ago, he could easily persuade the authorities to the effect that there has been a lull in those activities on his part and no order of externment is called for. We are also of the opinon that the allegations of beating people, causing loss to the people's properties are somewhat vague. Such order of externmemt is illegal and liable to be set aside.

*1991 *Cr.LJ.* 1251 *(Bombay)*

IV.1 : EXTERNMENT

Sirajkhan vs State of Maharastra**

Facts

The present Criminal Writ Petition is directed against the order of externment passed by the Sub Division o f Magistrate, Amravati, vide order dated 03.04.1998 whereby under Section 56(1)(2) of the Bombay Police Act, 1951, the aplicatn was extemed for a period of one year from the Amravati District.

The learned counsel for the petitioner contended that in the instant case respondent No.2 issued notice under Section 51 of the Bombay Police Act on 31.12.1996. It is further contended that the necessary enquiry was conducted by the respondent and thereafter respondent No.1 issued the impugned order dated 03.04.1998 by which the petitioner is externed. It is the contention of the learned counsel that the grounds mentioned in the above referred show cause notice are stale and old and, therefor either impugned order which is based on such grounds is not sustainable in law.

Held

The externee is entitled to know only the material particulars of the crime in question and not the details as alleged by the learned counsel for the petitioner. If the detaits are required to be supplie by the authorities to the externee before passing of the Externment order then the very purpose will be frustrated It must be borne in mind that taking recourse to the provisions of the Act is an exception and it is only in an emergant situation that such remedies are expected to be resorted to by the authorities inthe interest of the society. Hence, the above referred contention raised by the learned counsel for the petitioner cannot be accepted.

*1999 *Cr:L.J.* 2959 *(Bombay)*

IV.1 : EXTERNMENT

Sh. Rambhai alias Ramlo Khimchand
. .
vs
The State ()f Gujarat & anothers*

Facts

The petition approached the Bombay High Court for quashing the externment order dated 11.04.1989, externing the petitioner from.the limits of Junagadh, Rajkot and Amreli districts for a period two years. The sub Divisional Magistrate, Veaval issued notice on 05.12.1988 under Section 56(a)(b) of the Bombay Police, Act, 1951 alleging the following acts committed by the petitioner in Hudco Colony, Vivekanand Colony and on the way leading to Hudco Colony situated at the simof village Dari which are within the limits of Prabhaspatan Police Station.

1. You are forcibly collecting money from' the innocent persons by detaining them those who are living in the aforesaid area or persons passing through the way and if they do not pay money, you give, threat to kill them. '

2. You are consuming liquor and under the influence of liquor in public, you are picking up quarrels, and committing offences in relation to property and undue liberty with women.

3. If any person lodges a case against you, you pressuring him to enter into compromise by giving threat of killing the person concerned and create tense situation and as a result of which nobody is ready to give evidence against you in public.

Held

While passing an order of externment the nature of the offences would not be the sole criteria and the authority will have to go into the other pertinent question as to whether the offending activity of the individual concern has reached that degree of harm to the society that the interest of the society of even of that particular locality requires that this individual who has become public menace should be externed from the locality. Therefore, where the externing authority has taken into consideration the incident which has not been stated in the notice issued to the externee u/S.56 of the Bombay Police Act, the failure on the part of the externing authority to put on notice to the externee regarding this particular circumstance vitiates the order of externment and offends

*1991 *Cr.L.J.* 3159 *(Gujrat)* ,

the principle of fair play arid justice. No doubt, the show cause notice is able to give the area in which the externee was committing the offence and also the period during which such offences were committed. The notice 'also states the particulars of offences committed by the externee which is clear from the averment to the effect that is a dangerous and fierce person and that the witnesses are not coming forward to depose against him due to the fear to their life and property.. The instances which have been enumerated in the show cause notice no doubt make out a case for externment; nevertheless, the order of externment adds one more instance to the effect that "it is also stated in the complaint that the persons those who are having status and means have shifted from it so that they may not become victim of such torts by the externee. This particular instance has not been put on notice to the externee though it finds place in the externment order. Natural justice requires that the person affected should have notice of the relevant material on which the authority concerned bases its conclusion.

It cannot be said that unsubstantiated or non-existent ground has been taken into consideration, but aground which is germane for the purpose of externing. a pa,rticular person has been taken into consideration by the exteming authority without putting the extemee on notice as"regards that ground. If that be so, the Court cannot substitute objective judicial test for the subjective satisfaction of the executive authority and come to the conclusion that the executive authority; dehors the said ground which has not been put on notice to the externee was able to arrive at a decision for the purpose of externing the person concerned in that particular case. .

IV.1 : EXTERNMENT

Sitaben M. Thakore

vs

Commissioner of Police, Ahmedabad*

Facts

In the instant case, the show cause notice was issued on 25.02.1994 and externment order was passed on 13.07.1995 i.e. after a long delay of 1 year and 4 months. Even if this delay was on account of externee, it cannot' be denied that the authority holding the, enquiry failed to regulate the proceedings in true spirit of the provisions of Section. 59 of the Act.

Held

The long delay on the facts in present case alone is sufficient to vitiate the impugned order of externment.

The inquiry under Section 59 of the Act, being of urgent nature should be held as expeditiously as possible, and in particular, only a short notice of 3 to 7 days may be given for submitting the written statement, and immediately the date should be fixed for examination of witnesses, and once examination of witnesses begun, the same should be continued, unless the authority finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. It is not necessary to record each and everything whatever being stated, if in the opinion of the authority, the same is not relevant. No adjournments should be granted on the flimsy grounds of the lawyer or that the externee is busy' in attending the marriage or that the advocate is busy in other Court matters. These are not the grounds for adjournment. No definite period of inquiry can be provided. It depends upon the facts of each case. If there is a long delay in passing the order of externment after the issuance of show cause notice, the externment authority cannot reasonably come to conclusion that the movement or the acts of the externee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas. ,

*1997 *Cr.L.J.* 4511 *(Gujrat)*

IV.1 : EXTERNMENT

Hussainmiya alias Razakmiya Qadri vs State of Gujarat*

Facts

In the instant case there is apparent contradiction between the show cause notice and the externment order. In'the show cause notice, it was shown that the action is proposed to be taken under S 56-A of the Bombay Police Act; whereas the externment order shows that the power was exercised under S.56-B of the Bombay Police Act.

Held

1. These contradictions, if taken at their face value can be said to have given rise to a situation of non-application of mind by the externing authority not only to the material on record viz. to the show cause notice but also to the provisions of S.56-A and S.56-B' of the Bombay Police Act. Non-application of mind to the legal provisions and to the material on record will also render the, order of externment bad in law.

2. If the externmerit is proposed from the contiguous districts, it must be disclosed, in the show cause notice why such externment is proposed and thesa,me should be repeated in the eXternmentorder. Further, if, it is not disclosed in the show cause notice but is disclosed in the final order, the final order would be rendered invalid.

3. There is no prohibition against the externing authority to pass externment order against the externee, to extern him *'from* contiguous districts., But for that he has to give opportunity to theexternee to show cause *why* he should not be externed from the contiguous districts.

*1999 Cr.LJ: *2401 (Gujrat)* ,

IV. 1 : EXTERNMENT

Dater Gatar Suleman vs The State ot Gujarat & others

Facts

Brief facts are that show cause notice (Annexure A) was issued by the Exteming Authority to the petitioner' to show cause why, in view of five criminal cases one under Indian Penal Code and four under the Prohibition Act and other serious anti-social and criminal activities, order for extermment be not passed against him. The' petitioner appeared, submittecf reply t.o the show cause notice. After considering the evidence and submissions of the petitioner the Exterriing Authority vide order contained in Annexure B directed and ordered extemment of the petitioner from four districts, viz. Jamnagar, Rajkot, Kutch and Junagadh for a period of two years. The petitioner preferred an Appeal, which was dismissed by the Appellate Authority on 29.8.1998, vide Annexure C. It is therefore, this writ petition seeking quashing of the aforesaid order and the show cause notice.

Held

1. There is no prohibition or bar in any law preventing the Externing Authority from passing order of externment without considering lesser drastic remedy. The Externing Authority, if satisfied could have passed the order of externment.

2. Where on the one hand the mind of the Externing Authority was influenced by another case in as mush as he observed that thus within a period of three years two offences punishable under the provisions of the Indian Penal Code have been registered against the petitioner, the petitioner was also deprived of opportunity to meet against this belated allegation quoted in the Judgement of the Externing Authority. If the mind of the Externing Authority was influenced from extraneous factor about which the petitioner was not given an opportunity to meet, it will render: the entire order invalid as well as illegal.

*1999 *Cr.L.J.* 3471. *(Gujrat)* .

IV.2 : POWER OF POLICE SURVEILLANCE

Mohammed Shafi vs The State of M.P.*

Facts

Petitioner earlier alleged to be involved in trade of opium and contraband articles-Failure of Police to show that he was involved in such cases at the time of passing of order pIacing him under Surveillance-No evidence to show that passing of said order was necessary for saving Society from peril *of* insecurity, disturbance and breach *of* peace.

Held

The cause for surveillance shown by the State in the instant case was that the petitioner was actively engaged in the trade of opium and contraband articles. This list was a list showing the date of some offences, the report and the contraband seized. Nothing has been placed on record by the police to show that now the petitioner was involved in all the aforesaid cases. Further more there was no evidence to support the fact that they surveillance of the petitioner was necessary for saving the society from the peril *of* insecurity, disturbance and breach *of* peace. Therefore, the order of surveillance passed by the Superintendent of Police, against the petitioner would be illegal.

As regards the surveillance in the form of secret picketing cannot be said to be an infringement in the right of citizen to free movement or personal liberty. Such an infringement can be said to be caused only if by any direct or tangible mode such a right is infringed. It is not intended to protect the personal sensitiveness of-the citizen by invoking any of the provisions of the Constitution. However, the word 'picketing' has to understood properly by the authorities and it should not be used for offering resistance to the visitors of the persons who visit the persons under such secret picketing. Neither there should be any physical appearance causing any annoyance or invation of the privacy of a citizen or entering the house of the subject. Secret picketing has to be confined only to keep a watch and maintain a record of the visitors if it may be necessary. Merely convictions in criminal cases where nothing gravely imperils safety of society can be regarded as warranting surveillance under the Regulation. As regards the domiciliary visits and picketing they should be confined only to those cases where there is a clearest case *of* danger to security. Such picketing and domiciliary visits should not be taken up as a routine.

**1993Cr.L.J. 505 (MP.)*

IV.2 : POWER OF POLICE SURVEILLANCE

.. .

Moti Sunar alias Moti Lal vs State of U.P.& others.*

Facts

Allegation against petitioner of indulging himself in smuggling of opium. However Police report says that he has confined himself in his business of goldsmith and he does not take interest in any other activity. No evidence to show that he was even challenged or prosecuted for such offence. Suprintendent of Police ordered to open his History Sheet Against the order this writ petition.

Held

Para 228 of the UP Police regulation casts the duty on the Police Officer to construe the regulation strictly and open the history sheet only on the basis of certain materials. It also casts the duty on the Police Officer to reasonably believe, that the person against whom history sheet is opened, is a confirmed and professional criminal or habitual offender. Thus, where on the report of some police Constable or Inspector, the Superintendent of Police only has passed a cryptic order "History sheet B Class" and the order did not indicate the "reasonable belief' of the Superintendent of Police that the petitioner was a confirmed or professional criminal or habitual offender who indulged into the smuggling of Opium and it was the case of police, itself, that the petitioner has no criminal antecedent, but without looking into the report of the police and without caring to look into the contents of para 228 of the regulation, the Superintendent of Police has approved the report, the order passed by the Superintendent of Police opening the history sheet against the petitioner would suffer from non-application of mind. Even in the life of the criminal or habitual offender, time may come where he starts living a peaceful life. When according to police reports, at a later stage the petitioner has confined his activity to his profession of goldsmith and the report further indicated that except that profession he did not take interest in any other activity. Therefore, the police surveillance in the case of the petitioner has seriously encroached upon the privacy of the petitioner, and his fundamental right of the personal Iiberty guaranteed under Article 21 of the Constitution and the freedom of the movement guaranteed by Article 19(1) (d).

. *1997 *Cr.L.J; 2260 (Allahabad)*

Moreover there were no sufficient grounds for Superintendent of Police to entertain a reasonable belief that the surveillance was required in the case of the petitioner and there existed no evidence to support the fact that the surveillance of the petitioner was necessary. Hence, the order passed by theSuperintendent of Police, opening the history sheet against the petitioner at police station deserved to be quashed.

IV.2 : POWER OF POLICE SURVEILLANCE

Sunil Kumar

Vs

Superintendent of Police, Ballia and others *

Facts

The petitioner, a young man of 22 years, is political active and has been allegedly shown involved in sum criminal acts on the behest of political rivals. The petitioner through this petition under Article 226, prayed for a writ of certiorari quashing the report of respondent No. 2 given on 14.08.1994 and recommendation of respondent No.4 dated 16.08.1994 for opening of History sheet and also order or respondent No.1, permitting opening of the History Sheet against the petitioner. .

Held

If from the above report opening of history sheet - A is tested in the light of Regulation. 228 (1) it can be said that there is no allegation- that the petitioner is a dacoit or railway goods wagon thief or abettor in such crime. There is allegation in the report regarding burglary and cattle-theft against the petitioner but no case has been indicated in which the petitioner is involved for the commission of aforesaid offences. Lifting of vehicle like Ambassador Car does not justify opening of history sheet of Class-A. It may justify opening of history-sheet of class-B but that has not been done. Likewise involvement of the petitioner in a case under Section 307. IPC also does not justify opening of the history-sheet of Class-A. Recommendation of Additional Superintendent of Police shows that just after passage of one day on the report submitted by the Station Officer that he recommended for opening of history-sheet without ascertaining what is the material against the petitioner.

Even in the case where case result of-Investigation in.a case it is thought necessary to open History Sheet agcainsta-.person, a report should be given and after receiving such report and after further inquiry as he may think necessary the co'mpetent authority may forward the report to the Superintendent of police. In both the situations, some inquiry is necessary to ascertain whether the report submitted by. the Station Officerrequired opening of History Sheet or not. It is not enough to put a blanket-seal on the report of the Station Officer.

**1997 Cr.L.J. 3201 (Allahabad)*

IV.3 :SANCTION OF ROUTE FOR RELIGIOUS PROCESSION

Gehohe-E-Miran Shah
vs
The Secretary, Home Department,.Govt. of A.P. and others.

Facts

Here is a case where two religious associations namely, Gerohe-E-Miran Shah (the writ petitioner) and Gharohe-E-Hazarath alias Taqui (Respondent No. 2 who got implead_d later to the filing of the writ petition) of Machilipatnam *of* Krishna District are at Loggerheads on the issue oftaking out 10th day Moharraum procession. The di_pute relates to the route and in fact the petitioner was not permitted to takeout procession by earlier orders *of* the Sub-divisional-Police Officer, Bandar, dt. 01-09-1987. For the next year, the petitioner made an application-dated 01.08.1988 to perniit the said procession giving out the details as regards time date as a/so the route. In the route mentioned, the prominent place is Koneru centr of Bandar Town When there was nothing heard on the said application dated 01.08.1988 a reminder was filed by the petitioner on 16.08.1988 Wheneven that did not yield any results, the instant writ petition was filed seeking the issuance of writ of Mandamus to respondent 2 and 3 to take out the religious procession.

Held

When the fundamental rights are involved and there is allegation of discrimination between twosimtlarly situated persons or associations no ambargo can be placed on the powers of the High Court in exercise of Article 226 of the Constitution. Thus where discrimination was played by police authorities in parmittirig the respondent-association to take its religious procession through a prominent center in the town while restricting the petitioner-association from doing the same on.the ground that it would lead to law and order problem; the said action of the pollee authorities would be improper. Both the associations areentitled-to take their processions through that prominent center and it - is the duty *of* the police. Authoritips to tackle with the law and order problem

*1993 *Cr.L.J. 406 (AP.)*

IV.A : PERMISSION TO ORGANIZE PUBLIC MEETINGS

Dr. Arvindya Gopal Mitra ys State of West Bengal*

Facts

The police authorities refused the permission to a political party, for holding a public meeting on the ground of likelihood of riots and communal tension particularly after the incidence of demolition of structure at Ajodhya in Dec. 1992, and also on ground of existence of prohibitory orders under S.144 Cr.P.C.

Held

The refusal of permission was invalid so far as it totally prohibits holding of public meeting, The Commissioner of Police instead of totally prohibiting the holding. of meeting may impose necessary restrictions and take such preventive measures as he may consider fit and proper While allowing su.ch meeting ta be held. .

That apart, right to speech hbeing a fundamental right under Art. 19(2) of Canstitution, the right to enjoyment offundamental rights cannot be taken away on conje.ctural and. hypothetical basis. No instance has been cited resulting in actual raw and order prablem from the B.J.P.s meeting already held apart from thequatatians from the speeches. Though Caurt in writ jurisdiction should not sit in appeal over the decision of the Commissioner of Palice, hawever,in the instantcase sincetl:1ere is error apparent an the face of the recard and there is alse jurisdictiona1error in the decision of the Commissioner, there is scope .forinterference.

In the.case of Superintendent Central Prison, Fategarh v. Dr. Ram. Manohar Lohia reported in AIR1960. SC633; (1960. Cri.L.J.1002), it has been held in that case that limitation imposed in the interest of public order to be a reasonable restriction, should be one which has a proximate connection 0:- nexus with the public. order, but not One farfetche.d hypothetical or problemeticalortoo remote in.thechain of its relation with the public order.

It has also been held at paragraph 18 of page 641 (of Al R) : at p. 1010. of Cr.LL.J.) to the following effect which is set out below :- .

*1993 *CrLJ. 2096 (Calcutta)*

The foregoing discussion yields, the following resuits: (1) "Public Order" is synonymous with public safety and tranquility; it is the absence of disorder involvitg breaches *of* local significance in contradistinction to national unheavals, such as revolution, civil strife war affecting the security of the State; (2) there must be proximate and reasonable'nexus between the speech and the public order; (3) 8:3 as it now stand, does *not* establish in most of the 'cases comprehended, by it any such, nexus, (4) there is a conflict of decision on the question'ofse verability in the context of an offending, proviision the language 'whereof its wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that if cannot be split up if there is possibility of its being applied for purpase not sanctioned by the Constitutionand the other view is that such a provision is valid if it is se\ierable in 'its application to an object which is clearly demarcated from other objector objects failing outside the limits, of constitutionally permissible legislation;and (5) the provisions *of* the section *are* so inextricably, mixed up that it is not possible to apply, the doctrine *of* severability so as to enable us to affirm the validity ofci part and,reject the rest.

Prem Chand v. Union of India reported in AIG1981SC613:(1981 Cd. J.L.5). In the above case it was held thatany Police apprehension is not enough for passing order of extemment some ground or other is not adequate. There must be clearan present danger based upon credible material which makes the movements and acts of person in question alarming or dangerous or fraught with violence.

Reference may also be made to Gulam Abbas's case in AIR 1981SC2198:(1981 Cri. LJ. 1835). In this aforesaid, decision Supreme Court observed: object of8.144 is to preserve publicpeace and tranquility and as such attempt should be made'to, regulate the rights instead *of* prohibiting the right to hold procession totally.

IV.S. : LICENCING PLACES OF PUBLIC ENTERTAINMENT

Badshah Restaurant, Secunderabaci
Vs
Commissioner *of* Police, Hyderabad*

Facts

The petitioner herein is a restaurant and: represented by its proprietor in these proceedings. The proprietor *of* the petitioner claims very rich experience in running hotel business. The respondent issued on 15.11.1994 'No Objection' letter addressed lothe Chief Medical Officer, Municipal Corporation of Hyderabad, for establishment of 'Badhshah Restaurant. In the same manner the Municipal Corporation *of* Hyderabad has also issued. 'No Objection letter on 28.11.1994. Based upon thesaid.letterthe petitioner is stated to have made huge investment in renovating the. premises. by making some additions and alterations to the existing premises. The petitioner is stated to have made a installations, furniture and fixtures for running *of* a. standard Bar and Restaurant with Orchestra, Singing and Dancing. The respondent is stated to have granted amusement licence dated 10.06.1994 valid up to 31.12.1994. The petitioner there/after applied for renewal *of* amusemem licence on 29.12.1994 by paying the required fee. The respondent through proceedings dated 18.05.1995 refused renewarof amusementricenc.e without any valid: reasons, according to tbe petitioner. As such the petitioner filed W.P. No. .11564/95.agai.nst the respondent and the same were allowed by this Court. .

Held

I am ofthe considered opinion that no person has any right under the provisions *of* the Act and the Rules framed thereunder t*o* get amusement license as a mater of right. No such right is conferred upon any individual and similarly no such tatutory duty is imposed upon the Commissioner of Police to grant the amusement licence as and when asked for by an interestedperson It is true, the statutory power conferred upon the Commissioner of Police is required to be exercised fairly and reasonably. Every person who applies for grant *of* amus.ement licence, undoubtedly has5 a right for consideration of his application in accordance with law arid provisions of the Act and the Rules framed thereunder. He is required to take the relevantfact.ors into consideration and eschew the irrelevant facts. An important aspect that was not taken into consideration by this Court in the earlier decisions is that. there is no provision for renewal of amusement licence. Every time concerned. Individual has to apply of afresh for grant of the .Iicence

**1998 Cr.LJ. 4121 (AP.)*

and every time such requests afresh and in accodance with law. There is no provision for granting renewal, as in the case *of* various other enactments.

It is in the context that a person' has to file an application 'seeking amusement licence and there isno provision forrenewal ofthelicence, acquires significance. I am ofthe considered opinion that the applicant has no- right to insist that he should be given an opportunity to explain his case as to why the licence should be granted in his favour. The decision rejecting application and refusing to grant amusementlicence, therefore, cannot be said to be in contravention of the principles *of* natural justice. The principles of naturcd justice requiring an opportunity of being heard has no application. The principle that the decision is required to be fair and reasonable would undoubtedly apply even in case of rejection. Themfore, It is not possible to agree with the submission-made by the learned counsel for the petitioner that the impugned order is violative *of* the principles *of* natural Justice. The petitioner is not doing any business in organising Indian Classical dance. His business is running Restaurant. By the, impugned- order the business and trade of the petitioner is in noway ac:tversely effected. Therefore, the question *of* infringement of the fundamental right 'guaranteed under Article 19 (1) (g) *of* the Constitution *of* India does not arise.

Irresponsible pleadings in a given case itself may disentitle the party for the relief and the Court would be well withlnits limits to refuse relief to such persons, who do not show their respect to the judicial process. Viewed in such background I do not find and justification whatsoever on the part of the petitioner to characterize the Commissioner *of* Police as a dictator. The action of an authority in a given case would be unfair and unreasonable or even arbitrary. Butevery authority passing such arbitrary *order* cannotbe equated to that ora dictator.

IV.6 : DIRECTION FORPROVIDING POLIGE SECURITY

G. Subas Reddy vs State of A.P. andanother*

Facts

In this case the Andhra Pmdesh High Court, while examining the scope *of* judicial review in the deaiing *of* applications for providing police protection by the competent authority or state government issued directions for such exercise.

Held

There can be no pick and choo$e in providing security to any penson and the only thing that will guide making such provisions will be the perception of threat and the duty *of* the Govt. of the State to protectthe life and properties, *of* individuals. High Court's power under Article 226 shall evidently extends *to* judicial review *of* the order passed by the competent authority, including the State Government upon the application *for* providing police security of any such individiual or individuals and the Court; with all the self imposed restriction upon it power of judicial review, shall exal11inewhether the application has been rightly rejected and necessary suitable directions may issue.

Thus in an application for providing police security to individual the following directions are given by the High Cburt:-

(1) The State has duty to provide necessary security to the" constitutional functionaries and if there is any expense upon such security, the Govt. can do so out of the funds of the exchequer of the State;

(2) The Govt has a duty to protect the properties of the State including the union and the other State Govt. and any expenses for security of the properties of the State can legitimately be borne out *of* the State's exchequer;

(3) Depending upon the threat perception in respect *of* such statutory functionaries which are discharging duties on behalf of the State the Govt. may take policy decision and provides security to such personnel *to* such extent as decided' by the Govt.and expenses for the same can legitimately be borne by the. State exchequer.

**1997Cr.L.J.* 1296 (AP.)

(4) The State has a duty to maintain peace to ensure that the public order is not threatonedand ta protect the life and liberty of all persons living within the territory of the State as well as has a duty to enforce effectively such measures as law have permitted for preventing any unlawful activityafany persens and the State:

(5) Individual er individuals, who apprehend threat to peace and to his ertheir lives can appraach the competent authority at the first instance at the District level and make applicatien far deployment afspecial force for maintaining peace andf6r protection *ef* his ar their lives and liberty. On such _aplicatian befng. made, the competent autharity shall be duty beund to pramptly made suitable orders without any delay.

(6) Any persen or persons "who, hewever, have apprehension er threat to their life or his er her property from the Gevt. Its servants or agents, in exce\Jtianal cases, can approach the Court for suitable orders and the caurt of the first instance, will be, the Ceurt *of* the Magistrate, who may issue; necessary directians for bands to be executed .

(7) Applicant, incase his applications have been refused" can approach this Court seeking judi_ial review of the order *of* the CeLJrt with all censtraints self imposed and within the beunds *ef* - rules of judicial review may examine individual cases strictly in accerdance with law.

IV.7 : . LIMITATION IN COMPLAINT/SUIT AGAINST POLICE PERSONAL

Prof. Sumer Chand vs Union of India and others.

Facts

In this case the question before the Supreme Court was that whether the period of limitation for filing a suit for malicious prosecution against a member of the Delhi police is governed by the provisions of Sec. 140 of Delhi Police Act, 1978 or by Article 74 of the Limitation Act,1963. .

Held

Where a suit for malicious prosecution against two police officers alleging that one police officer who was in charge of police post had registered a false, vexatious and malicious report against a person and another officer who was Station House Officer had filed the challan in the Court against him and other accused on the basis of the said report was filed after expiry of three months from acts complained of, it was barred by limitation. The acts thus alleged were done under the colour of office of the said officers and would fall within the ambit of S.140(1) of Delhi Police Act because it was the duty of the said first officer being in charge of Police Post to record the report and so also it was the duty of another officer to file the challan in court. The acts complained of were, therefore done under the colour of office of the said officers and fell within the ambit of Section 140(1) of the Act. In such a case, the period of limitation for institution of the suit would be that prescribed in Section 140 and not the period prescribed in Art. 74 of the Limitation Act. The Limitation Act is an enactment which consolidates and amends the law for the limitation of suits and other proceedings connected therewith. It is a law which applies generally to all suits and proceedings. It is therefore, in the nature of a general enactment governing the law of limitation. The Delhi Police Act has been enacted for the purpose of amending and consolidating the law relating to regulation of police in the Union Territory of Delhi. The Act is a special enactment in respect of matters referred to therein, Section140 of the Act imposes certain restrictions and limitations in the matter of institution of suits and prosecutions against police officers in respect of acts done by a police officer under colour of duty or authority or in excess of such duty or authority. Since the Act is a special law which

*1993. *Cr.L.J.* 3531

prescribes a period of limitation different from the period prescribed in the Schedule to the Limitation Act for suits against persons governed by the Act in relation to matters covered by Section 140, by virtue of S.29(2) of the Limitation Act, the period of limitation prescribed by S.140 of the Act would be the period of limitation prescribed for such suits and not the period prescribed in the Schedule to the Limitation Act.

IV.7 : LIMITATIONIN COMPLAINT/SUIT AGAINST POLICE PERSONAL

S.P. Vaithianathan vs K. Shanmuganathan*

Facts

Complainant made complaint to higher Police Official regarding involvement of a particular Police Officer in illegal distiliation. The aggrieved Police Officer through summons called the complainant in his office and tortured him. No action was taken by senior official against this ill treatment of the complainant. He then filed Criminal Complaint under Section 341, 342, 323, 363, 364, 506 Part II and 307 of the IPC. The learned CJM issued process, to this an objection was raised that the prosecution was barred by limitation in view of the provision in Sec. 53 of the T.N. District Police Act, 1869. High Court upheld this contention and quashed the order by which process was issued.

The Supreme Court reversing the judgement of Madras High Court.

Held

It must be realised that in order to avail of the benefit of Sec. 53 of the Act, the respondent must show that he acted 'under' the Act or any other law. Merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondent on the appearance of the appellant. Unless a relationship is established between the provision of law 'under' which the respondent purports to act and the misdemeanour complained of the provision of Sec. 53 will not be attracted. .

*1994 *Cr.L.J.* 2265

IV.8 : REGULATING HORSE-RACING AND GAMING

Dr. K.R. Lakshmanan vs State of Tamil Nadu & another*

Facts

The Madras Race Club {the club) is an Association registered as a company withllimited liability under the Companies Act, 1956. The club was formed in the year 1896 by taking over the assets and liabilities of the erstwhile unincorporated club known as Madras Race Club. According to its Memorandum and Articles of Association, the principal object of the club is to carry on the business of a race club in the running, of horse races. The Club is one of the five "Turf Authorities of India", the other four being the Royal Calcutta Turf Club, the Royal Western India Turf Club Limited, the BangaloreTurf Club Limited and the Hyderabad Race Club. Race meetings are held in the club's own racecourse at Madras and at Uthagamandalam (Ooty) for which bets are made inside the race course premises. While horse races are continuing in the rest of the country, the Tamil Nadu Legislature, as back, as 1949, enacted law by which horse racing was brought within the definition of "gaming", the said law, however, was not enforced till 1975, when it was challenged by the club by way of a writ petition before the Madras High Court. The writ petition was dismissed, by the High Court.

Held

1. The horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters, Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post. Thus the horse-racing, is a game where the winning depends substantially and preponderantly on skill.

2. In a handicap race the competitors are given advantages or disadvantages of weight, distance, time etc. in an attempt to equalize their chances of winning, but that is not the classic concept of horse-racing, according to which the best horse should win. The very concept of handicap race goes to show that there is no element of chance in the regular horse-racing. It is a game of skill. Even in a handicap race-despite the assignment of imposts - the skill dominates. In any case an occasional handicap

*1996 *Cr.L.J.* 1635

race in a race-club cannot change the natural horse-racing from a game of skill to that of chance.

3. Gaming is the act or practice of gambling on a game of chance. It is staking on chance where chance is the controlling factor. 'Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance It would not include games of skill like horse-racing'. In any case, S. 49 of the Police Act and S: 11 of the Gaming Act specifically save the games of mere skill from the penal provisions of the two Acts. Therefore, wagering or betting on horse-racing - a game of skill - does not come within the definition of 'gaming' under the two Acts. Even if there is wagering or betting with the club it is on a game of mere skill and as such it would not be 'gaming', under the two Acts.

4. Horse racing is neither 'gaming' nor "gambling" as defined and envisaged under the two Acts read with the 1974 Act and the penal provisions of these Acts are: not applicable to the horse racing which is a game of skill. Decision of Madras H.C. Reversed.