

CASE SUMMARIES

Nusrat Yasmin v/s State of Jharkhand [Cr. MP 2428/2019 JHC]

Once the stage of recording statement/examination of enquiry witness in terms of section 202 of CrPC is over, the court either has to take cognizance or may not take cognizance on the merits of the case, after invoking Section 203 of CrPC, but it cannot dismiss the complaint for default, as Section 203 doesn't provide for it. It only provides for dismissal if there is no ground to proceed, which the court can determine only after applying its mind upon examination of the complaint and the statements of the complainant and the witnesses.

Prabhakar Mandal v/s State of Jharkhand [BA 8268/2018 JHC]

The Hon'ble Jharkhand High Court has directed that the Officer-in-Charge of the respective police station under whose jurisdiction the crime has been committed and the FIR is registered, will be responsible for producing the witnesses in the Court. Trial Court will send notices to the Officer-in-charge of the concerned police station, through APPs or otherwise for production of witness. On receipt of such notice the Officer-in-Charge himself or his nominated representative will produce the witnesses in the Court on the date so fixed. Failure to produce the witness will have to be explained by the Officer-in-Charge of the police station. The trial court will be free to recommend action against the Officer-in-Charge if witnesses are not produced within time.

David Kujur & Anr. v/s State of Jharkhand [Cr. Appeal(DB) 918/2005 JHC]

Whenever the trial courts require original case record, in connection with split up trial of other accused, details of the accused facing trial are to be indicated in the letter of request.

Satwik Yadav v/s State of Jharkhand [BA 7768/2018 JHC]

Revisional/Appellate Court shouldn't call for original records of from the trial court where the case is pending if the situation doesn't warrant it, and where photocopies are sufficient and legible. They should rather call for photocopies so that the proceedings before the magistrate won't be stalled. In case of illegible photocopies, after matching the same with the original, they shall be immediately sent back to the magistrate.

Reyaz Ansari v/s State of Jharkhand [BA 3319/2018 JHC]

While dismissing a bail application in a pending Sessions trial, the judicial officers are directed to mention the following details in the order rejecting prayer of bail:

- Details about the stage of trial
- Details about the status of trial viz.:
 - Date of framing the charge.
 - Total number of charge-sheet witnesses
 - Number of witnesses that are yet to be examined as on the date of dismissal of bail application.

Birendra Rana v/s State of Jharkhand [BA 2811/2016 JHC]

Application for anticipatory bail is not maintainable when he was granted bail from lower court, which was neither cancelled, nor were the bail bonds forfeited. This is in relation of cases where a non-bailable case offence was charge-sheeted subsequently or cognizance was taken upon a non-bailable offence though charge-sheet only mentions a bailable offence. The direction given was for the petitioner to surrender before the lower court and seek regular bail.

PUCL v/s Union of India [WP(Cr.) 199/2013 SC]

Recommended circulation of copies of Shreya Singhal v/s Union of India [2015] which declared Section 66A of the IT Act to be unconstitutional which provided provisions for the arrest of those who posted allegedly offensive content on the internet upholding freedom of expression.

Asian Resurfacing of Road Agency v/s CBI [Cr. Appeal 1375-1376/2013 SC]

- Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the Hon'ble High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.
- The power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability.
- Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial.
- Once stay is granted, proceedings should not be adjourned and concluded within two- three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court.
- Only in case of patent illegality or want of jurisdiction the Hon'ble High Court may exercise its jurisdiction, as where challenge to an order framing charge is entertained, the matter remains pending for long time which defeats the interest of justice.

Arvind Paswan v/s UOI through CBI [Cr. Appeal (SJ) 733/2019 JHC]

In this case, where statements of DW 3 to 8 was the same word to word in both examination in chief and cross examination, Court observed that adoption of the method of cut copy and paste instead of actually examining the witness is the most reprehensible practice which has to be stopped or else the criminal trial will be reduced to just an excuse for a trail leading to disastrous consequences.

Seva Bharti Matruchhaya Case [Cr. Revision 97/2018 Chattisgarh HC]

Prescribed the following guidelines for the competent courts and the specialized adoption agencies while dealing with the case of adoption under the Juvenile Justice Act, 2015:

1. An application of adoption must be disposed of within 2 months, as provided under Section 61(2) of Juvenile Act, 2015, Rule 46 of the Model Rule, 2016 and 12(6) of the Adoption Regulation, 2017.
2. If not disposed of within time, the court must record the specific reason.
3. Proceeding must be conducted on camera.
4. The case must not be treated as adversarial litigation.
5. Court must strictly adhere to rule 45(2) of the Model Rules 2016 regarding applicability of the procedure laid down in Juvenile Act, 2015 and Adoption Regulation, 2017.
6. The adoptive parents must not be asked to make any investment in the name of child.
7. The specialized agency shall not make anyone opposite party or respondent.
8. Alongwith the application, the name and details of the PAPs shall be kept in a covered and sealed envelope.
9. As provided in regulation 19(1) of the Adoption Regulation, 2017 in case of inter-country adoption, it is mandatory that the authorized foreign adoption agency or the central authority or Indian diplomatic mission or government department concerned shall progress the report of the adoptive child from the date of arrival of the adopted child in the receiving country on quarterly basis in second year.
10. Apart from above, a detailed educational report of the adopted child shall also be obtained on a six month basis till the adopted child attains majority and such report shall be monitored properly.

Amresh Kumar Dhiraj vs. State of Jharkhand [2020] Hon'ble Jharkhand High Court

- The summoning order should not be made casually in a mechanical manner. Rather, there should be recording of reason based upon minimum record available on record. It was further observed that for issue of process under section 204 Cr.P.C, the magistrate has to see whether there are materials and allegations against the person to proceed. Pertaining to section 190 Cr.P.C it was observed that the magistrate has to only see whether any offence is made out or not.

Rajnish vs. Neha and others [2020] Hon'ble Supreme Court

- It was held that maintenance in all cases will be awarded from the date of filing the application for maintenance.
- For enforcement / execution of orders of maintenance, it was directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance

may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order XXI.

- On the issue of overlapping jurisdiction
- (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;
- (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;
- (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.
- The court said that for payment of Interim Maintenance, the Affidavit of Disclosure of Assets and Liabilities, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate's Court, as the case may be, throughout the country. The model affidavit has been annexed in the judgment itself as Enclosures I, II and III.

All India Judges association v/s UOI [WP Civil 1022/1989 SC]

The Hon'ble High court on the Judicial and administrative side will ensure implementation of the recommendation of the Shetty commission within reasonable period of one year.

Notification dated 07th Feb, 2019 by the Ministry of Home affairs, Government of India

Those using state emblem of India on their seals must ensure that the seals are timely replaced before they are worn out so that impression of the seal on the paper is clear and precise.

Birbal Munda v/s State of Jharkhand [A.B.A 5042/2019 JHC]

The Hon'ble High Court and the Sessions Court has the jurisdiction under section 438 Cr.P.C pertaining to the matter related to the Juvenile Justice (Care, and Protection of Children) Act, 2015.

Others

- Quarterly newsletters published by the Hon'ble Supreme Court of India are available on their website.
- Judicial officers of the state are not to include the MCA/BA/ABA/ADR/Absconder and cases u/s. 299, CrPC under contested or uncontested cases.
- Whenever the Hon'ble Supreme Court asks for original record of a case, the scanned/digitized/ photocopy of the original is to be sent unless otherwise specified.
- Original record is not to be weeded out till the pendency of the case in the Hon'ble Apex Court, till the registry communicates that disposal can be done.

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