**Judiciary Digest**

**Current & Conceptual Weekly**

**11th March - 17th March, 2024**

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# **1. A Landmark Verdict on Sexual Harassment Convictions**

In ***NIRMAL PREMKUMAR & ANR. v. STATE REP. BY INSPECTOR OF POLICE,*** the Supreme Court highlighted the complexities involved in adjudicating cases of sexual harassment, especially those alleged to have occurred in private settings. This observation came as the Court acquitted a teacher previously convicted of sexually harassing a 13-year-old student, marking a pivotal reversal of decisions by both the trial court and the Madras High Court.

The apex court's bench, comprising Justices Dipankar Datta, KV Viswanathan, and Sandeep Mehta, underscored the nuanced differences in cases of sexual harassment occurring in public spaces versus those within the confines of a room or house. They pointed out that if there's any doubt regarding the victim's testimony, the court may look for corroboration from other witnesses or circumstantial evidence to ascertain the truth.

This ruling arose from an appeal against the conviction of a school teacher under the Protection of Children From Sexual Offences Act ("POCSO Act"), charged with giving unsolicited attention to his student through gifts like chocolates and flowers, and allegedly displaying sexual intent. Despite the serious allegations and the initial conviction that led to a three-year rigorous imprisonment sentence, the Supreme Court found considerable inconsistencies in the prosecution's case, particularly in the victim's testimony and the lack of corroborative evidence.

The Supreme Court's decision emphasised the importance of reliable evidence in such sensitive cases. It referenced previous judgments stating that while the testimony of a sexual offence victim generally holds significant weight, contradictions or insufficiencies in their account could undermine the prosecution's case. The Court highlighted the prosecution's failure to provide a coherent and consistent narrative, leading to doubts about the accused's guilt.

The case also shed light on the repercussions of such allegations on the accused's reputation, especially for professionals like teachers, whose careers are built on years of service and trust. The Court stressed the need for caution in convicting individuals based on unreliable or incomplete evidence, underscoring the fundamental principle of giving the benefit of the doubt in the face of uncertainties.

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# **2. Anticipatory Bail**

In ***ASHOK KUMAR v. STATE OF UNION TERRITORY CHANDIGARH***, the Supreme Court recently pronounced a crucial judgement regarding the provision of anticipatory bail, clarifying the conditions under which it can be granted or denied. The ruling, delivered by Justices JB Pardiwala and Manoj Misra, articulated that the need for custodial interrogation alone does not justify the denial of anticipatory bail to an accused.

The Court emphasised the importance of custodial interrogation as an investigative tool but noted that its necessity cannot be the sole ground for opposing anticipatory bail. The State must substantiate its claim by demonstrating why such interrogation is indispensable for the investigation's progress. This implies a move away from a blanket approach, urging a more nuanced evaluation of the need for custody in each case.

This landmark decision came in the context of an appeal against the denial of anticipatory bail by both the Trial Court and the High Court. The appellant, accused under various sections of the Indian Penal Code, 1860, and the Prevention of Corruption Act, 1988, sought relief from the apex court after being denied bail on the grounds that his custody was necessary for further investigation.

In granting anticipatory bail, the Supreme Court highlighted the appellant's cooperation with the investigation process as a significant factor. The accused had not only joined the investigation willingly but had also complied with all procedural requirements, thus mitigating the immediate need for custodial interrogation.

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# **3. Strict Compliance with Section 173(2) in Charge Sheets**

In ***DABLU KUJUR . vTHE STATE OF JHARKHAND***, the Supreme Court on Tuesday, March 12, delivered a pivotal judgement aimed at ensuring the integrity of police investigations across India. Justices Bela M. Trivedi and Pankaj Mithal highlighted the importance of adhering to the procedural requisites specified in Section 173(2) of the Criminal Procedure Code (Cr.P.C.) when filing charge sheets or police reports. This directive came as the Court observed widespread lapses in the fulfilment of these mandatory requirements by investigating officers.

The apex court's observations were made while dealing with a bail application, where the Court, despite denying bail due to the trial being in its final stages, highlighted significant procedural shortcomings in the charge sheet filed against the accused. The justices noted that the current practice of submitting charge sheets without adequate details and particulars was not isolated to this case but was prevalent in other states like Bihar and Uttar Pradesh, prompting the Court to call for status reports from the respective Directors General of Police (DGPs).

In its judgement, the Court detailed the specific requirements of Section 173(2) Cr.P.C. that must be complied with, including the disclosure of names of parties, nature of the information, and details regarding the arrest, release, or custody of the accused. Furthermore, the Court emphasised the inclusion of a medical examination report in cases involving sexual offences and the necessity of forwarding all relevant documents and witness statements alongside the police report when the investigation leads to the conclusion that a chargeable offence has been committed.

The Supreme Court's directives also addressed scenarios of ongoing investigations against co-accused or the submission of incomplete documents. It clarified that such circumstances should not afford the accused a right to default bail, referencing a recent decision to reinforce this principle.

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# **4. Then and Now: Attempt to Commit Suicide**

The narrative surrounding the act of attempting suicide has undergone a significant transformation over the years, from a legal and societal perspective. Historically, attempting suicide was viewed through a prism of moral, religious, and legal condemnation, often resulting in punitive measures against the individuals involved. This view was supported by laws such as Section 309 of the Indian Penal Code (IPC), 1860, which criminalized the act of attempting suicide, subjecting individuals to possible imprisonment or fines. This legal stance was a reflection of societal norms and religious edicts that abhorred the act of taking one's life, considering it against the principles of morality and public order.

However, as understanding and attitudes towards mental health evolved, so too did the perception of suicide. It came to be recognized as the culmination of severe psychological distress and trauma, prompting a shift towards empathy and support rather than punishment. This change in perspective is highlighted by the recommendations of the Law Commission in its 42nd and 210th Reports, advocating for the decriminalization of suicide attempts and urging a more humane approach to those in distress. The constitutional courts of India, too, echoed this sentiment, recognizing the punitive provision of Section 309 IPC as "cruel and irrational."

The landmark judgement in P. Rathinam highlighted the need for compassion, stating that punishing an individual who has already suffered immense agony would be doubly cruel and unnecessary. The court acknowledged that suicide attempts do not harm society in a manner that justifies state interference with personal liberty.

The real shift now comes with Bhartiya Nyaya Sanhita (BNS), which does not prescribe punishment for attempt to commit suicide per se.

# **5. Past Exam Highlights**

**Q. Write a note on the right of redemption of mortgagor. Can he exercise this right before the expiry of the term of mortgage ? Refer to case law. [UP JS 2012]**

The right of redemption, often termed as the mortgagor's 'equity of redemption', is a statutory right vested in the borrower or mortgagor to reclaim their mortgaged property. It comes into existence once the debt secured by a mortgage is created. This right ensures that the mortgagor can redeem or regain the ownership of the property upon payment of the debt owed to the mortgagee (lender).

**Legal Framework**

The right of redemption is enshrined under the Transfer of Property Act, 1882, in India. The Act governs the essential conditions and legal principles associated with the redemption of mortgage properties.

**Section 60: Right of Mortgagor to Redeem**

The section provides that at any time after the principal money has become due, the mortgagor has a right, on payment or tender of the mortgage-money, to require the mortgagee to deliver the mortgage-deed, if any, to the mortgagor and, where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor.

**Exercise of Right Before Expiry of Term**

The right of redemption can be exercised by the mortgagor at any time after the mortgage money has become due and before the mortgage is foreclosed or the mortgaged property is sold off.

**Case Law**

In the landmark case of Panchanan Ghosh vs. Monmatha Nath AIR 1924 Cal 686, it was held that the right of redemption exists and can be exercised by the mortgagor any time before the judicial sale of the property is confirmed.

Another important case is ***Ganga Dhar vs. Shankar Lal AIR 1958 SC 770***, where the Supreme Court held that the right of redemption remains with the mortgagor until there is a foreclosure or sale of the property. The court observed that the right can be exercised at any time before the sale is confirmed and the title conveyed, and any provision that curtails this statutory right is void as per Section 60 of the Transfer of Property Act.

**Clogging the Equity of Redemption**

The law also prohibits any term in the mortgage deed that 'clogs' the equity of redemption. This means any clause in the mortgage agreement that restricts the mortgagor's right to redeem the property after payment of the mortgage debt is void. This principle ensures that the mortgagor can redeem the property without any unfair obstacles placed by the mortgagee.

**Conclusion**

The right of redemption is a fundamental principle of mortgage law, which allows a mortgagor to retrieve their property upon payment of the due debt. It is a critical safeguard that ensures that the mortgagor's property rights are not unfairly usurped under the guise of a mortgage transaction. The right can be exercised before the expiry of the term of the mortgage, and any attempt to impede this right is void and unenforceable. The case laws in India reinforce the sanctity of this right and prohibit any agreement or clause in the mortgage deed that hampers or nullifies the mortgagor’s statutory right to redeem the property.

***Prelims***

**1. Give the correct response: ‘Decree’ includes**

**(A) any adjudication from which an appeal lies as an appeal from an order.**

**(B) return of plaint.**

**(C) rejection of plaint.**

**(D) any order of dismissal for default.**

**Ans: (D)** Any order of dismissal for default.

**Explanation**: As per Section 2(2) of the Code of Civil Procedure, 1908, a decree does not include "any adjudication from which an appeal lies as an appeal from an order" or "an order of dismissal for default."

**2. Point out the correct. A Plaint may be returned by the Court for amendment under**

**(A) Order 6 Rule 16ofC.P.C.**

**(B) Order 6 Rule 17 of C.P.C.**

**(C) Order 7 Rule 11 of C.P.C.**

**(D) Order 7 Rule 10 of C.P.C.**

**Ans: (B)** Order 6 Rule 17 of C.P.C.

**Explanation**: Under Order 6 Rule 17 of the Code of Civil Procedure, 1908, the Court may allow a plaint to be amended at any stage of the proceedings.

**3. A ‘Caveat’ remains in force**

**(A) before the expiry of Ninety days from the date on which it was lodged.**

**(B) after the expiry ofNinety days from making order of the Court of law.**

**(C) after the expiry of Ninety days when it comes to the knowledge of the other Party.**

**(D) after the expiry ofNinety days from the date on which it was lodged.**

**Ans: (A)** Before the expiry of Ninety days from the date on which it was lodged.

**Explanation**: As per Section 148A of the Code of Civil Procedure, a caveat remains in force for 90 days from the date it was lodged.

**4. The Principle of Res Judicata is based on**

**(A) Substantive Law**

**(B) Law of Evidence**

**(C) Law of Principle**

**(D) Law of Procedure**

**Ans: (D)** Law of Procedure

**Explanation**: The principle of Res Judicata is primarily procedural in nature and is governed by Section 11 of the Code of Civil Procedure, 1908.

**5. ‘Preliminary decree’ may be passed in suits for**

**(A) Partition**

**(B) Pre-emption**

**(C) Dissolution of partnership**

**(D) All of the above**

**Ans: (D)** All of the above

**Explanation**: Preliminary decrees may be passed in suits for partition, pre-emption, or dissolution of partnership, among other matters.

**6. The offence of personation at an election is punishable for imprisonment for**

**(A) one year or with fine or both.**

**(B) two years or with fine or both.**

**(C) five years or with fine or both.**

**(D) three years or with fine or both.**

**Ans: (B)** Two years or with fine or both.

**Explanation**: As per Section 171F of the Indian Penal Code, personation at an election is punishable with imprisonment for up to two years, or with fine, or with both.

**7. Which among the following is a non-compoundable offence?**

**(A) Section 147,I.P.C.**

**(B) Section 298,I.P.C.**

**(C) Section 334,I.P.C.**

**(D) Section 491,I.P.C.**

**Ans: (A)** Section 147, I.P.C.

**Explanation**: Section 147 (Rioting) of the Indian Penal Code is a non-compoundable offence.

**8. The period of limitation for taking cognizable of the offence under section 323,1.P.C. is**

**(A) six months**

**(B) one year**

**(C) two years**

**(D) three years**

**Ans: (B)** One year

**Explanation**: The period of limitation for taking cognizance of the offence under Section 323, I.P.C., is one year, as per the Limitation Act.

**9. ‘A’ indulges voluntarily in sexual intercourse with a married woman ‘B’ without the consent of**

**her husband. ‘B’ is liable to be tried with ‘A’ as an**

**(A) Abettor**

**(B) Adulteress**

**(C) Jointly as co-accused**

**(D) None of the above**

**Ans: (D)** None of the above

**Explanation**: Under the amended laws in India, adultery is no longer a criminal offence. Hence, neither 'A' nor 'B' would be criminally liable.

**10. Which section of Cr.P.C. provides that a person once convicted or acquitted cannot be tried again for the same offence?**

**(A) Section 299**

**(B) Section 300**

**(C) Section 302**

**(D) Section 298**

**Ans: (B)** Section 300

**Explanation**: Section 300 of the Code of Criminal Procedure deals with the principle of "double jeopardy," stating that a person once convicted or acquitted cannot be tried again for the same offence.

# **6. Clear Concepts:**