

# Judiciary Digest

Current & Conceptual Weekly

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Alteration of Charges.....	1
Jurisdiction for Extending Time Limit of Arbitral Awards.....	2
Limited Scope of Inquiry under Section 9.....	3
Then and Now: Registering FIR.....	4
Past Exam Highlights.....	5
Clear Concept: Further Investigation.....	8

For Previous Current Affair visit: [Here](#)

## Alteration of Charges

The Indian judicial system is anchored on principles of fairness and justice, ensuring that every individual receives a fair trial. The recent Supreme Court judgement in the case of Madhusudan & Ors. v. The State of Madhya Pradesh highlights these principles, particularly regarding the alteration of charges during a trial.

### Judicial Mandate on Alteration of Charges

In the landmark decision, the Supreme Court, comprising Justices Hrishikesh Roy and Satish Chandra Sharma, emphasised that any alteration or addition to charges must be accompanied by an opportunity for the parties to recall or re-examine witnesses in light of the new charges.

This procedural requirement is enshrined under Section 217 of the Criminal Procedure Code (Cr.P.C.), which mandates that both the prosecution and defence be given an opportunity to address the altered charges. Furthermore, the Court stressed that reasons for such alterations must be explicitly recorded in the judgement.

### Case Background and Infirmities

The case originated from a trial where the accused were initially charged under Section 302 read with Section 149 (Common Object) of the Indian Penal Code (IPC). Subsequently, the charges were altered to Section 302 read with Section 34 (Common Intention) of the IPC.

However, the trial court failed to read out and explain these altered charges to the accused, a procedural lapse that significantly impacted the fairness of the trial. Additionally, the reasons for the alteration were not documented in the judgement, further complicating the matter.

### Importance of Clear Communication and Evidence

A critical aspect highlighted by the Supreme Court was the necessity for the prosecution to establish the existence of 'common intention' when charges are altered from 'common object' to

'common intention.' Drawing from the precedent set in *Rohtas v. State of Haryana*, the Court clarified that common object and common intention are distinct legal concepts and cannot be used interchangeably without relevant evidence. In the present case, the prosecution failed to demonstrate common intention among the accused, a fundamental requirement for invoking Section 34 of the IPC.

### **Verdict**

The Supreme Court meticulously analysed the evidence, or lack thereof, concerning the accused's common intention. The absence of a thorough discussion on common intention by the trial court was a significant oversight. The Court reiterated that mere common intention, without concrete action in furtherance of such intention, does not satisfy the legal requirements of Section 34 IPC. Consequently, the lack of evidence to establish a common intention among the accused led the Supreme Court to extend the benefit of the doubt to them.

### **Jurisdiction for Extending Time Limit of Arbitral Awards**

The Supreme Court of India has recently clarified the jurisdictional powers concerning the extension of time limits for passing arbitral awards under Section 29A of the Arbitration & Conciliation Act, 1996. In the case of *Chief Engineer (NH) PWD (Roads) v. M/S BSC & C and C JV*, the Court held that High Courts without original civil jurisdiction cannot extend the time limit for arbitral awards. This decision sheds light on the interpretation and application of Section 29A, particularly after the 2015 amendment to the Act.

### **Background of Section 29A**

Section 29A was introduced in the Arbitration and Conciliation Act, 1996, through the 2015 Amendment. It prescribes a maximum period of 18 months for the arbitral tribunal to pass an award. This period includes 12 months for the proceedings, which can be extended by a further six months with the consent of the parties. If the award is not passed within this timeframe, Sub-section (4) of Section 29A allows the "court" to extend the period. The term "court" here is defined under Section 2(1)(e) of the Act, which includes the principal civil court of original jurisdiction in a district and High Courts with ordinary original civil jurisdiction.

### **Case Details**

The case arose from a decision by the Meghalaya High Court, which declined an application to extend the time limit for passing an arbitral award. The High Court's refusal was based on its lack of original civil jurisdiction. The appellant sought to challenge this decision in the Supreme Court.

### **Supreme Court's Ruling**

The Supreme Court, comprising Justices Abhay S. Oka and Ujjal Bhuyan, upheld the decision of the Meghalaya High Court. The bench clarified that only the principal civil court of original jurisdiction or a High Court with original civil jurisdiction has the authority to extend the time limit for passing an arbitral award. In this context, the principal civil court refers to the district courts typically entrusted with such powers unless specifically granted to the High Court.

"The power under sub-Section (4) of Section 29A of the Arbitration Act vests in the Court as defined in Section 2(1)(e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a High Court provided the High Court has ordinary original civil

jurisdiction... In this case, the High Court does not have the ordinary original civil jurisdiction... Hence, there is no merit in the Special Leave Petition. The same is, accordingly, dismissed.”, the court stated.

### **Limited Scope of Inquiry under Section 9, A&C Act**

In *Vijay Maheshwari v. Splendor Buildwell Private Limited and Anr*, the Delhi High Court, under Justice Neena Bansal Krishna, elucidated the limited scope of inquiry under Section 9 of the Arbitration and Conciliation Act, 1996. The ruling emphasised that the interim relief granted under this section does not extend to the final determination of issues of fact or law, which fall within the jurisdiction of the arbitral tribunal.

### **Background of the Case**

The dispute arose between Vijay Maheshwari ("Petitioner") and Splendor Buildwell Private Limited ("Respondent No. 1") and Ishayu Builders and Developers Private Limited ("Respondent No. 2"). Respondent No. 2 owned land in Sector-58, Gurgaon, and was licensed to develop an IT/Cyber Park. Respondent No. 1 constructed IT office spaces, including units purchased by the Petitioner, who entered into Tripartite Agreements and an email-based Memorandum of Understanding (MoU) for assured rental returns. However, disputes regarding payments and execution of conveyance deeds led the Petitioner to seek interim relief under Section 9 of the Arbitration Act.

### **Court's Observations**

The Delhi High Court clarified that at the Section 9 stage, the court's inquiry is restricted to granting interim relief without delving into the final determination of factual or legal issues. Citing the case of *KSL & Industries Ltd. v National Textiles Corporation Ltd.*, the court noted that such determinations are reserved for the arbitral tribunal. The interpretation of contractual terms and the scope of agreements, like the MoU in this case, fall squarely within the arbitration domain.

### **Factual Context and Considerations**

The Petitioner invested in office spaces and was promised assured returns, as per an unsigned MoU. Payments were made by the Respondents, but disputes arose regarding the fulfilment of the investment returns and execution of conveyance deeds. The Petitioner sought interim relief to prevent the Respondents from encumbering or selling the disputed units. The High Court assessed the communications and transactions between the parties, finding that the Petitioner primarily sought monetary returns rather than property transactions.

The court noted that substantial amounts were credited to the Petitioner's account, which she acknowledged but did not conclusively associate with the assured returns under the MoU. The High Court observed that the Petitioner's consistent pursuit of monetary refunds indicated her primary interest was financial rather than transactional in the property. Given the Respondents' sale of the disputed units and agreements to sell the third, the court concluded that the Petitioner had no prima facie right or interest in the units.

### **Legal Principles**

Applying principles similar to those in Order XXXIX Rules 1 and 2 of the Civil Procedure Code, the court considered the balance of convenience and potential irreparable loss. It determined that the Petitioner, having received the principal amount of her investment, did not demonstrate irreparable

injury. Additionally, the initiation of arbitration by the Petitioner indicated that her grievances were already being addressed through appropriate legal channels.

### **Then and Now: Registering FIR**

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, represents a significant overhaul of the criminal procedure in India, seeking to replace the Code of Criminal Procedure, 1973. Among its numerous provisions, the introduction of Zero-FIR, E-FIR, and the requirement of a preliminary enquiry before the registration of an FIR in certain cases stand out as notable changes.

Under the old law, Section 154 of the CrPC provided for the registration of FIRs. It stated: “Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”

The BNSS, under Section 173, includes similar provisions but explicitly incorporates the concept of Zero-FIR: “Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station,— (i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it; (ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it...”

### **Judicial and Government Endorsement**

The concept of Zero-FIR is not new. The Ministry of Home Affairs, in a 2015 advisory, suggested its use for crimes against women. The judiciary has also supported this practice in various rulings, including **State of AP v. Punati Ramulu and Satvinder Kaur v. Government of NCT, Delhi**, where the courts emphasised that lack of territorial jurisdiction should not prevent the recording of information about a cognizable offence.

### **Provision for E-FIR**

Section 173 of the BNSS also provides for the electronic registration of FIRs. The individual reporting the crime must sign the electronic FIR within three days for it to be officially recorded. This provision facilitates the prompt registration of sensitive cases, particularly benefiting women and other vulnerable groups.

### **Preliminary Enquiry**

Section 173(3) of BNSS introduces the requirement of a preliminary enquiry for offences punishable with three to seven years of imprisonment. This enquiry must be conducted with the prior permission of an officer not below the rank of Deputy Superintendent of Police and completed within fourteen days. If a prima facie case exists, the officer may proceed with the investigation immediately.

**Past Exam Highlights**

**Prelims**

1. No right of private defence of property is available against the offence of:

- a. Criminal breach of trust
- b. Theft
- c. Robbery
- d. Criminal Trespass

**Ans: a**

**Explanation:** Under Section 97 of the Indian Penal Code, the right of private defence of property is available against theft, robbery, mischief, or criminal trespass. However, it is not available against criminal breach of trust as this offence involves a breach of confidence rather than an immediate threat to property.

2. Which section of the Civil Procedure 1908 is clearly in the nature of a power to issue a writ of certiorari?

- a. Section 171
- b. Section 105
- c. Section 115
- d. Section 122

**Ans: c**

**Explanation:** Section 115 of the Civil Procedure Code (CPC) provides the High Court with the power of revision. This power is akin to issuing a writ of certiorari, as it allows the High Court to call for records of cases decided by subordinate courts to ensure there has been no jurisdictional error.

3. Which section of the C.P. C. prohibits arrest or detention of women in the execution of a decree of money ?

- a. Section 55
- b. Section 56
- c. Section 59
- d. Section 60

**Ans: b**

**Explanation:** Section 56 of the Civil Procedure Code explicitly states that a woman cannot be arrested or detained in the execution of a decree for the payment of

money, providing special protection to women in financial decree cases.

4. Section 114 of the Code of Civil Procedure should be read with :

- a. Order 46, Rule 1
- b. Order 47, Rule 1
- c. Order 47, Rule 3
- d. Order 41

**Ans: b**

**Explanation:** Section 114 of the CPC deals with the review of judgments, and Order 47, Rule 1 lays down the detailed procedure for applying for such a review. Together, they provide the legal framework for seeking a review of a court's judgement or order.

5. The Indian Contract (Amendment) Act, 1997 has amended :

- a. Section 26 of the Indian Contract Act
- b. Section 27 of the Indian Contract Act
- c. Section 28 of the Indian Contract Act
- d. Section 75 of the Indian Contract Act

**Ans: c**

**Explanation:** The Indian Contract (Amendment) Act, 1997, amended Section 28 of the Indian Contract Act, 1872, which deals with agreements in restraint of legal proceedings. The amendment sought to address the enforceability of such agreements and ensure fairer contractual practices.

6. An agreement of wager is -

- a. voidable
- b. unlawful
- c. void
- d. void and unlawful

**Ans: c**

**Explanation:** According to Section 30 of the Indian Contract Act, agreements by way of wager are void. This means such agreements are not enforceable by law. They are neither illegal nor unlawful but simply void, meaning no legal action can be taken to enforce them.

7. When a search is required to be conducted outside India, a criminal court may be required under section 166-A of the Code of Criminal Procedure to issue a-

- a. Search Warrant
- b. Letter of requisition
- c. Letter of request
- d. Written order

**Ans: c**

**Explanation:** Section 166-A of the Code of Criminal Procedure, 1973, provides for the issuance of a letter of request by a criminal court in India to a court or an authority in a foreign country to conduct a search and seize evidence.

8. In which of the following cases, the Supreme Court held that a statement can be submitted even after expiry of 90 days from the date of Service of Summons?

- a. Kailash V. Nanhku
- b. Harish Chandra Bajpai V. Triloki Singh
- c. Salim Bhai V. State of Maharashtra
- d. Daryao V. State of U.P

**Ans: a**

**Explanation:** In Kailash v. Nanhku, the Supreme Court held that a written statement can be submitted even after the expiry of 90 days from the date of service of summons, provided the court permits it and there are valid reasons for the delay.

9. Dasti Summon for Service on the defendant can be given to the plaintiff under.

- a. Order 5 Rule 9 - A C.P.C
- b. Order 5 Rule 9, C.P.C.
- c. Order 4 Rule 7, C.P.C.
- d. Order 6 Rule 6, C.P.C.

**Ans: a**

**Explanation:** Order 5 Rule 9-A of the Civil Procedure Code allows the plaintiff to serve the summons personally on the defendant, known as "dasti service," which is a method to expedite the process of serving summons.

10. The case of Dudh Nath Pandey V. State of U, P is related to:

- a. Res gestae
- b. Plea of alibi
- c. Admission
- d. Accomplice

**Ans: b**

**Explanation:** In the case of Dudh Nath Pandey v. State of U.P., the Supreme Court addressed the plea of alibi. The court examined whether the accused was present at the scene of the crime and whether the evidence supporting the alibi was sufficient to acquit the accused.

### **Mains**

**Q. What do you understand by civil nature of a suit ? Explain**

**Ans:** The concept of a "suit of civil nature" is central to the jurisdiction of civil courts. Section 9 of the Code of Civil Procedure (CPC) provides that civil courts have jurisdiction to try all suits of a civil nature unless expressly or impliedly barred

#### **Section 9 of CPC**

Section 9 of the CPC states, "The Court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred." This provision highlights the broad jurisdiction of civil courts to

adjudicate disputes concerning civil rights. The section includes two explanations to clarify the scope of what constitutes a suit of civil nature.

Explanation I specifies that suits involving rights to property or office, even if connected with religious rites or ceremonies, are of a civil nature.

Explanation II extends this to offices without associated fees or specific locations.

### **Suit of Civil Nature**

While the term "civil" is not explicitly defined in the CPC, it generally refers to the private rights and remedies of citizens, distinct from criminal or political matters. The essence of a suit of civil nature lies in its subject matter, which must pertain to the determination and enforcement of civil rights. The focus is on the issues at stake rather than the status of the parties involved.

A suit is of civil nature if it primarily involves the adjudication of civil rights, such as property rights, contractual obligations, or personal status. For instance, disputes over the ownership of property, breaches of contract, and family law matters like divorce or maintenance are all considered suits of civil nature.

The Supreme Court of India, in **Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma**, elucidated the broad jurisdiction of civil courts under Section 9. The Court emphasised that the section's inclusive language mandates courts to entertain all suits of a civil nature unless specifically barred. This expansive interpretation ensures that civil courts can address a wide array of disputes affecting individuals' civil rights.

### **Examples of Suits of Civil Nature**

Various types of suits fall within the ambit of civil nature, including:

- Rights to property
- Rights of worship
- Religious processions
- Shares in religious offerings
- Damages for civil wrongs
- Specific performance of contracts
- Restitution of conjugal rights
- Dissolution of marriage
- Claims for rent or accounts
- Rights to hereditary offices

Conversely, suits involving purely caste questions, religious rites, or the recovery of voluntary payments do not qualify as suits of civil nature.

### **Express and Implied Bar to Jurisdiction**

Section 9 also recognizes that certain suits may be barred from the jurisdiction of civil courts either expressly by statute or impliedly by general principles of law. Expressly barred suits are those explicitly excluded by legislative enactments, such as those under the exclusive jurisdiction of specialised tribunals like Industrial Tribunals or Rent Tribunals.

Implied bars occur when the statute provides a specific remedy, thereby precluding alternative legal avenues. For instance, in **Jitendra Nath v. Empire India and Ceylon Tea Co.**, the Supreme Court held that if a statute provides a remedy, parties must follow that specific course. Similarly, the Land Acquisition Act's comprehensive framework, as seen in *Laxmi Chand v. Gram Panchayat, Kararia*, implicitly excludes civil court jurisdiction.

### **Presumption as to Jurisdiction**

It is a well-established principle that civil courts inherently possess the power to decide their jurisdiction. The presumption favours the jurisdiction of civil courts unless a clear exclusion is evident. Any statute ousting civil court jurisdiction must be strictly construed, as noted in **Dhulabhai v. State of M.P.**. The burden of proving the exclusion of jurisdiction rests with the party asserting it.

### **Clear Concept: Further Investigation**

Further investigation is governed primarily by Section 173(8) of the Code of Criminal Procedure, 1973 (CrPC). It allows the police to conduct additional investigations even after the submission of a final report. This provision ensures that justice is not hindered by incomplete or flawed investigations, enabling the discovery of new evidence and correction of earlier investigative lapses.

### **Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another (2019)**

In this landmark case, the Supreme Court affirmed that a Magistrate has the power to order further investigation under Section 173(8) CrPC even after taking cognizance of an offence. The Court emphasised that such power is essential to ensure a fair and just investigation and trial. The decision clarified that the Magistrate's authority extends beyond the initial filing of the charge sheet and can be exercised at any stage before the conclusion of the trial to uncover the truth.

### **Ram Lal Narang vs. State (Delhi Administration) (1979)**

The Supreme Court recognized the police's right to conduct further investigation after the final report has been submitted. The Court stressed that the police should inform the court and seek formal permission for further investigation.

### **Hasanbhai Valibhai Qureshi vs. State of Gujarat (2004)**

The Supreme Court reiterated that further investigation is permissible even after the court has taken cognizance of the offence. The Court highlighted that if defects in the investigation come to light during the trial, further investigation can cure these defects. This case emphasised the importance of effective trials and the pursuit of justice over procedural rigidity.

### **Procedure for Further Investigation**

- 1. Initiation by Police:** The police may initiate further investigation if new evidence or facts come to light post-submission of the final report. The investigating officer must submit a supplementary report detailing the additional findings.
- 2. Application to Magistrate:** The investigating officer must inform the Magistrate and seek permission to conduct further investigation. The Magistrate's role is to ensure that the investigation is conducted fairly and justly, balancing the rights of the accused and the interests of justice.

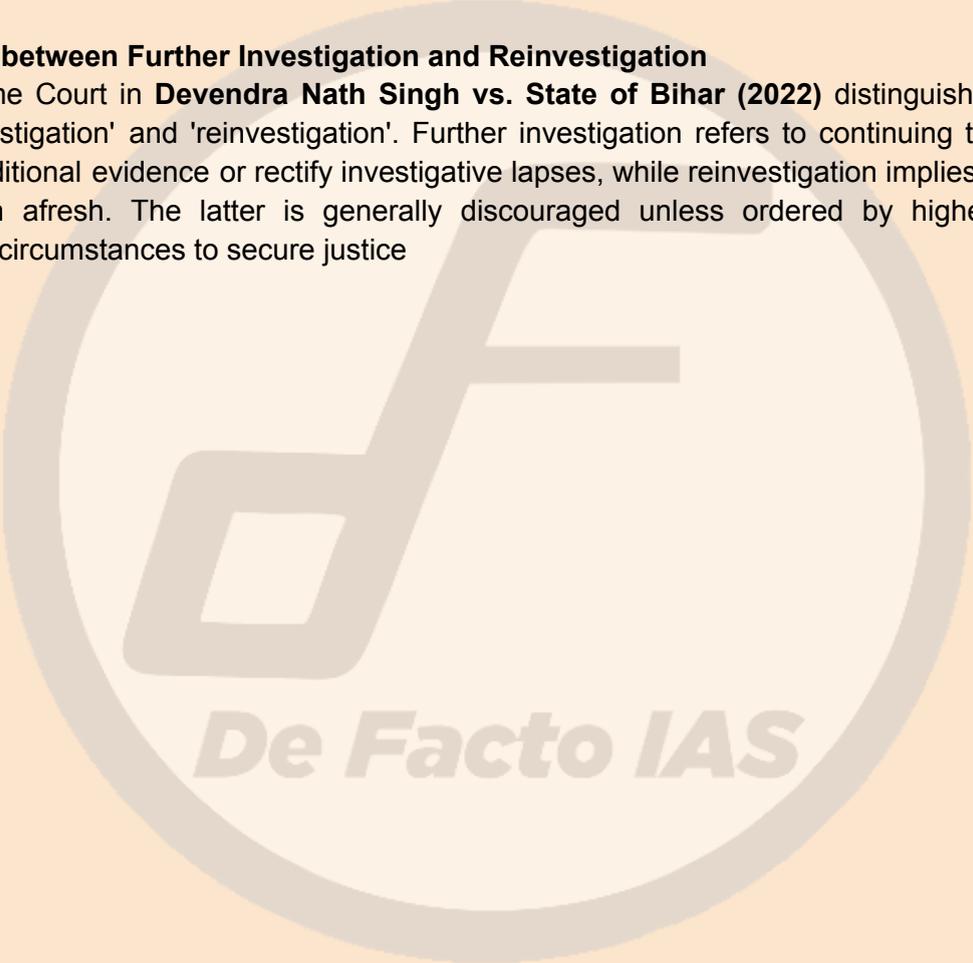
- 3. Court-Ordered Investigation:** The Magistrate can also suo moto order further investigation if it is deemed necessary for a fair trial. This power can be exercised at any stage of the proceedings before the conclusion of the trial.

### **Rights of the Accused**

The rights of the accused must be protected during further investigation. The accused should be informed about the additional evidence and given an opportunity to challenge it. The Supreme Court in **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj vs. State of Andhra Pradesh (1999)** held that while ordering further investigation, the court is not obligated to hear the accused. However, the fairness of the investigation and the trial process must be upheld

### **Distinction between Further Investigation and Reinvestigation**

The Supreme Court in **Devendra Nath Singh vs. State of Bihar (2022)** distinguished between 'further investigation' and 'reinvestigation'. Further investigation refers to continuing the probe to uncover additional evidence or rectify investigative lapses, while reinvestigation implies starting the investigation afresh. The latter is generally discouraged unless ordered by higher courts in exceptional circumstances to secure justice



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