

Judiciary Digest

Current & Conceptual Weekly

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1. Supreme Court Limits Scope of Default Bail in Pending Investigations

Topics Covered:
Default Bail Provisions
Impact on Ongoing Investigations

In a significant judgement, the Supreme Court ruled that an accused cannot avail the statutory right to default bail once a charge-sheet has been filed against them, even if the investigation against other co-accused is ongoing. This decision, made in the case of **Central Bureau of Investigation vs. Kapil Wadhawan & Anr.**, clarifies the boundaries of the default bail provision under Section 167(2) of the Criminal Procedure Code (Cr.P.C.).

Key Observations and Implications

The Court observed that the right to default bail is invalidated once a charge-sheet is filed, irrespective of its completeness or the status of investigations against other co-accused. It was noted that the court takes cognizance of the offence, not the offender, and the completeness of a report is determined by the inclusion of necessary documents and witness statements as mandated by Section 175(5).

The Bench, comprising Justices Bela Trivedi and Pankaj Mithal, overturned the concurrent decisions of the High Court and the Trial Court, which had granted default bail to Kapil and Dheeraj Wadhawan in a case involving the misappropriation of funds from a Union Bank of India-led consortium.

Arguments and Legal Reasoning

The Additional Solicitor General, SV Raju, representing the CBI, argued that the right to claim default bail ceases with the filing of a charge-sheet. Senior Advocates Mukul Rohatgi and Amit Desai, representing the accused, contended for the right to default bail based on an allegedly incomplete charge-sheet. The Court, however, held that the right to default bail is not applicable once a charge-sheet is filed, regardless of its detailed contents or the status of further investigations.

Previous Judgments and Current Context

In **Ritu Chhabria v. Union of India (2023)**, it was stated that an investigating officer cannot file an incomplete charge-sheet to defeat the right to default bail. However, a larger bench led by the Chief Justice of India later clarified that Trial Courts should not grant default bail based solely on this precedent.

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2. Stance on Supplementary Charge-Sheets Lacking New Evidence

Topics Covered:

**Supplementary Charge-Sheets
Cognizance**

In a notable judgement, the Supreme Court addressed the legal validity of supplementary charge-sheets submitted without any new evidence. The case of **Mariam Fasihuddin & Anr. versus State by Aduodi Police Station & Anr.** brought this issue to light. The apex court's decision highlights crucial aspects of criminal procedure, particularly concerning the submission of supplementary charge-sheets during ongoing investigations.

Key Points of the Judgment

- **Legal Basis for Supplementary Charge-Sheets:** The court emphasised that a supplementary charge-sheet, as per Section 173(8) of the Cr.P.C., should include new oral or documentary evidence. The mere reevaluation of existing evidence is insufficient.
- **Case Background:** The appellants, facing charges including forgery and evidence tampering, sought discharge from the trial court. The court, however, allowed further investigation upon the complainant's request, leading to a supplementary charge-sheet against the appellants.
- **High Court's Stance:** The High Court dismissed the appellants' plea challenging the trial court's decision not to discharge them, leading to the Supreme Court appeal.

Legal Observations and Conclusions

- **Absence of New Evidence:** The Supreme Court found no new evidence in the supplementary charge-sheet, which relied on a previously obtained lab report. This was viewed as a failure to meet the criteria of Section 173(8) Cr.P.C.
- **Judicial Cognizance and Investigative Rigour:** The court noted that without new evidence, a Judicial Magistrate is not obliged to take cognizance of a supplementary charge-sheet, as it lacks investigative rigour.

- **Mechanical Investigation and Reliability of Evidence:** The Supreme Court criticised the investigative approach, deeming it mechanical and not in compliance with the mandated further investigation. The reliance on a private lab report without corroborative evidence was considered unsafe and unreliable.
- **Implications for the Trial Magistrate's Decision:** The court questioned the basis on which the trial magistrate formed a prima facie opinion in the absence of supporting evidence.

3. Conviction Based on Suspicious Sole Recovery

Topics Covered:
Circumstantial Evidence
Section 313 of Cr.P.C
Evidentiary Standards

In a pivotal ruling, the Supreme Court addressed the issue of convicting an accused based solely on the recovery of a blood-stained weapon. The case in focus, **Raja Nayak vs. State of Chhattisgarh**, presented a scenario where the prosecution's evidence was primarily the recovery of a dagger allegedly used in a murder. The apex court's decision offers significant insights into the principles of criminal jurisprudence, especially regarding circumstantial evidence.

Key Highlights of the Judgment

- **Conviction Based on Suspicion:** The court held that mere suspicion, regardless of its strength, is insufficient for conviction. An accused cannot be convicted solely on suspicion without corroborative evidence establishing guilt beyond a reasonable doubt.
- **Case Background:** The prosecution accused the appellant of murder in 2009, alleging that he used a dagger to kill the victim. The prosecution's evidence included the recovery of a dagger with human blood and a blanket reportedly used to wrap the body. However, the blood type on the dagger was not conclusively matched to the deceased.
- **Trial and High Court's Findings:** The trial court convicted the appellant, a decision upheld by the High Court. The High Court's conviction was partly based on the appellant's failure to provide satisfactory explanations under Section 313 of the Cr.P.C. regarding the recoveries and the *Forensic Science Laboratory (FSL) report*.

Supreme Court's Observations and Ruling

- **Inadequacy of the FSL Report:** The Court noted that while the FSL report confirmed the presence of human blood on the dagger, it did not establish that the blood was from the deceased.
- **The Location of the Recovery:** The dagger's recovery from an open area accessible to the public further weakened its evidentiary value.
- **Insufficiency of Circumstantial Evidence:** The Court underscored that conviction based solely on the recovery of a blood-stained weapon is not tenable unless it is directly connected to the accused's involvement in the crime.
- **Role of Section 313 Cr.P.C.:** The Court clarified that the non-explanation or false explanation by an accused under Section 313 cannot be used as an additional link in the chain of circumstances unless the prosecution has already established guilt beyond reasonable doubt.

4. Then and Now: Organised Crimes

India's legal system has reached a pivotal moment with the introduction of organised crime under Section 111 of the Bharat Nirman Scheme (BNS). This groundbreaking development signifies a major shift in the country's approach to combating organised crime, a menace that has long plagued society but lacked a cohesive, national legal framework for its prosecution.

Defining Organised Crime

The new law under Section 111 provides a comprehensive definition of organised crime. It encompasses a wide array of unlawful activities, including kidnapping, robbery, extortion, cyber-crimes, human trafficking, and more. This broad definition marks a significant step in addressing the multifaceted nature of organised crime, ensuring that various manifestations of such criminal activities fall within the ambit of the law.

Stringent Punishments

A notable aspect of the new legislation is the severity of the punishments prescribed. In cases where organised crime results in death, the law does not shy away from imposing the death penalty or life imprisonment, accompanied by hefty fines. This stern approach underlines the seriousness with which the Indian legal system now views organised crime, aiming to serve as a strong deterrent against such heinous activities.

Membership in Organized Crime Syndicates

The law further tightens its grip on organised crime by penalising membership in organised crime syndicates. Individuals identified as members of such syndicates face severe consequences, including long-term imprisonment and substantial fines. This move targets the very structure of organised criminal groups, aiming to dismantle these networks from within.

Addressing Petty Organized Crime

In an innovative move, Section 112 of the BNS introduces the concept of 'Petty Organized Crime'. This category addresses lesser, yet impactful, crimes such as theft, unauthorised selling of tickets, and similar criminal acts. The inclusion of petty organised crime fills a crucial gap in the legal system, acknowledging and addressing crimes that affect the day-to-day security and well-being of citizens.

5. Past Exam Highlights

Mains Question:

Q.: What are the essential constituents of negligence under torts? (DJS 2008)

The essential constituents of negligence under tort law are primarily grounded in the duty of care, breach of that duty, and consequent damage. These elements are detailed as follows:

Duty of Care to the Plaintiff: This refers to a specific legal obligation, distinct from moral, religious, or social duties. The plaintiff must prove that the defendant owed them a legal duty to act (or refrain from acting) in a certain way. This duty is not universally defined but is determined based on the specific circumstances of each case. As exemplified in the landmark case of *Donoghue v. Stevenson*, Lord Atkin indicated that the law does not offer a general rule defining such duty but rather assesses the duty based on the actual relationships and circumstances presented in litigation.

Breach of Duty: Once a duty of care is established, the plaintiff must demonstrate that the defendant breached this duty. This breach can be an act or omission that falls short of the standard expected under the circumstances. The courts assess this by considering what a 'reasonable man' would have done in similar circumstances. The standard is one of foreseeability and reasonableness, as Lord Macmillan noted, "the categories of negligence are never closed," meaning that the legal system continually adapts to recognize new duties of care as society evolves.

Damage as a Consequence of the Breach: The plaintiff must have suffered some form of damage as a direct result of the defendant's breach of duty. This damage could be physical, emotional, or financial. The crucial aspect is causation; the harm suffered must be a foreseeable consequence of the defendant's breach.

The concept of negligence under tort law is encapsulated in Lord Atkin's famous "neighbour principle" from *Donoghue v. Stevenson*, where he stated, "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour." Here, a 'neighbour' is anyone directly affected by one's actions.

Furthermore, the foreseeability of injury is a key factor in determining the existence of a duty. If an injury to the plaintiff was foreseeable at the time of the defendant's act or omission, a duty arises to prevent that injury. This was demonstrated in cases like *Glasgow Corporation v. Muir*, where the subjective element in applying the standard of care was highlighted.

Lastly, in instances where an injury is not foreseeable, as in *Cates v. Mongini Bros.*, no liability for negligence is established, as the harm could not have been predicted or prevented by a reasonable person.

In sum, negligence in tort law hinges on the interconnected concepts of a legally recognized duty of care, breach of that duty, and a foreseeable and direct link between the breach and the plaintiff's damage.

Prelims Questions

1. No court shall take cognizance of a continuing offence after.

- (a) six months.
- (b) one year.
- (c) three years.
- (d) none of the above

Ans: d

Explanation: Limitation period for taking cognizance of a continuing offence is not strictly defined within the provided options of six months, one year, or three years.

2. Every person aware of the commission of an offence punishable under which of the following Sections is bound to give information thereof to the nearest Magistrate or police officer?

- (a) 498A Indian Penal Code
- (b) 302 Indian Penal Code
- (c) 324 Indian Penal Code
- (d) 448 Indian Penal Code

Ans: b

Explanation: Section 302 pertains to the punishment for murder, which is one of the most serious offences under the IPC. The law

mandates that every person who is aware of the commission of such a grave offence is bound to report it to the nearest magistrate or police officer. This obligation is rooted in the principle that serious crimes like murder have a profound impact on society and public order, necessitating prompt and mandatory reporting to ensure that the perpetrators are brought to justice and to prevent further harm.

3. A valid proclamation under Section 82 of the Code of Criminal Procedure, 1973 requires:

- (a) public reading of the proclamation in a conspicuous place of town or village where the accused ordinarily resides.
- (b) copy of the proclamation should be affixed at some conspicuous place of the house in which the victim resides.
- (c) if passed by the Sessions Judge, a copy of the proclamation should be affixed to some conspicuous part of the High Court of the State.
- (d) copy of the proclamation is affixed on conspicuous part of all police stations in the town/village where the crime was committed.

Ans: a

Explanation: Section 82 of the Code of Criminal Procedure, 1973, indeed requires the public reading of the proclamation in a conspicuous place of the town or village where the accused ordinarily resides. This procedure is part of the process to ensure that the accused is made aware of the legal actions being initiated against them, allowing them the opportunity to present themselves before the court.

4. The Commissioner appointed for recording evidence in a civil suit cannot do which one of the following acts under

Order XVIII Rule 4 of the Code of Civil Procedure, 1908?

- (a) Record re-examination of a witness.
- (b) Decide objections raised during recording of evidence.
- (c) Record remarks regarding the demeanour of the witness while under examination.
- (d) Record the evidence either in writing or mechanically

Ans: b

Explanation: Under Order XVIII Rule 4 of the Code of Civil Procedure, 1908, the Commissioner appointed for recording evidence in a civil suit cannot decide objections raised during the recording of evidence. The role of the Commissioner in such contexts is primarily to record the evidence as presented, including the examination-in-chief, cross-examination, and re-examination of witnesses. Although the Commissioner can note objections for the court's consideration, they do not have the authority to decide on these objections.

5. Which one of the following propositions with regard to an interpleader suit is incorrect?

- (a) Defendants claim adversely to one another.
- (b) Plaintiff Claims no interest in the subject matter in dispute other than for charges or costs.
- (c) Real dispute must be between the plaintiff and only one of the defendants.
- (d) Plaintiff Must be ready to deliver the property to the rightful claimant.

Ans:(c)

Explanation: An interpleader suit is designed for situations where the plaintiff holds property on behalf of others or is under obligation regarding property or money and

faces claims from two or more parties. The essence of an interpleader suit is that the plaintiff does not claim any interest in the subject matter other than for charges or costs and admits that they do not know which party has the rightful claim but is willing to deliver the property or money to the rightful claimant. The real dispute is between the defendants who claim adversely to one another.

6. Usury laws are :

- (a) Statutes that prohibit wagering.
- (b) Statutes that prohibit finance charges above a certain level of debt.
- (c) Statutes that prohibit illegal use of land.
- (d) Statutes that prohibit illegal use of public money.

Ans: (c)

Explanation: Usury laws are statutes that prohibit finance charges above a certain level of debt. These laws are designed to prevent lenders from charging excessively high interest rates on loans, protecting borrowers from predatory lending practices

7. The maxim "Injuria non excusat injuriam" means:

- (a) one wrong does not justify another.
- (b) one has to pay for the injury caused.
- (c) There is no excuse for causing injury.
- (d) an eye for an eye.

Ans: a

Explanation: "Injuria non excusat injuriam" means "one wrong does not justify another." This legal principle emphasises that a wrongful act cannot be justified by pointing to another wrongful act. It underscores the idea that legal and moral responsibility for one's actions cannot be evaded by blaming the wrongful actions of others.

8. Factum Probandum means:

- (a) a conclusive fact.
- (b) the fact that is probable.
- (c) the fact that has to be believed.
- (d) the principal fact to be proved.

Ans: d

Explanation: "Factum probandum" means "the principal fact to be proved." This term refers to the main fact or the core issue that a party in a legal case seeks to establish or prove through evidence. It is distinct from "factum probans," which are the facts or evidence used to establish or prove the "factum probandum."

9. Which Article of the Constitution of India states that the Constitution of India would not be enforceable by any court?

- (a) Article 33
- (b) Article 37
- (c) Article 44
- (d) Article 51

Ans: b

Explanation: Article 37 of the Constitution of India states that the provisions contained in Part IV of the Constitution, which deals with the Directive Principles of State Policy, shall not be enforceable by any court. However, these principles are fundamental in the governance of the country, and it is the duty of the State to apply these principles in making laws.


10. What is the prescribed limitation for filing a suit, by a mortgagee, for foreclosure, reckoned from the date when the money secured by the mortgage becomes due?

- (a) 3 years
- (b) 12 years
- (c) 20 years
- (d) 30 years

Ans: d

Explanation: Article 63 of the Limitation Act specifies a limitation period of 30 years for a suit by a mortgagee for foreclosure. This

period is reckoned from the time the money secured by the mortgage becomes due.



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6. Clear Concepts: Group of Companies Doctrine in Arbitration

Arbitration, as a form of alternative dispute resolution, has gained significant traction in resolving commercial disputes, especially those involving multiple entities within a corporate group. The 'Group of Companies Doctrine' has emerged as a pivotal concept in this domain, allowing arbitration agreements to bind entities that are part of a corporate group but not signatories to the arbitration agreement.

Understanding the Group of Companies Doctrine

The Group of Companies Doctrine evolved to address the complexities of modern corporate structures where multiple entities operate in concert but may not all be signatories to a single arbitration agreement. The doctrine posits that non-signatory affiliates of a group of companies can be considered parties to an arbitration agreement under certain circumstances, primarily when these affiliates are actively involved in the negotiation, performance, or termination of the contract.

International Perspective

Internationally, this doctrine has been recognized and applied in various jurisdictions. A landmark case often cited is the 1982 decision in *Dow Chemical v. Isover Saint Gobain* by the Paris Court of Appeal. The court held that the non-signatory affiliates of Dow Chemical were bound by the arbitration agreement due to their close involvement in the execution and performance of the contract.

Application in India

In India, the doctrine has been subject to evolving interpretations. The Indian judiciary, while initially reluctant, has gradually embraced the doctrine, aligning with international practices.

Key Cases in India

- **Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. & Ors. (2012):** This landmark judgement by the Supreme Court of India marked a significant shift towards the acceptance of the Group of Companies Doctrine. The court held that even non-signatory parties could be subjected to arbitration provided they were integral to the transaction and the execution of the contract.
- **MTNL v. Canara Bank (2020):** This more recent case reaffirmed the principles laid down in Chloro Controls. The Supreme Court held that a composite reference to arbitration of signatory and non-signatory parties is permissible if they are part of the same transaction.

