



ODISHA POLICE
CRIME BRANCH
CRIMINAL INVESTIGATION DEPARTMENT

No. /CID-Law Date .10.2015

To

All district SsP including SsRP Rourkela/Cuttack/
DCsP Cuttack/Bhubaneswar

Sub: Digest on Court Judgments

Enclosed, please find herewith a copy of "Digest of Recent Court Judgments". This digest contains some important Court judgments during June 2015 to August-2015. For improvement of investigation process, these judgments are selected.

It is therefore, requested to circulate the digest among all the field functionaries under your control with a direction to update their knowledge and use the judgements in professional work, wherever required.

Sd/-

(B.K.Sharma)

Additional Director General of Police,
CID-Crime, Odisha

Memo No 29720 /CID-Law

Date 15.10.2015

Copy forwarded to Commissioner of Police, Bhubaneswar-Cuttack/All Range IsGP/DIsGP/ DIGP, EOW-STF, Bhubaneswar/SP EOW/SP, STF, Bhubaneswar for information please.

(B.K.Sharma)

Additional Director General of Police,
CID-Crime, Odisha

Digest of Recent Court Judgements

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DIPAK MISRA AND A.K.SIKRI, JJ.

Satish Kumar Jayanti Lal Dabgar Appellant

Vrs.

State of Gujarat Respondent

Penal Code, 1860 – Sections 363, 366, 375 : Clause sixthly and 376 – Protection of Children from Sexual Offences Act, 2012 – Rape of a minor girl – Sentence – Consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance – Merely because the appellant – accused has now married (not prosecutrix) hardly becomes a mitigating circumstance – Appellant cannot plead that the prosecutrix is also married and having a child and, therefore, appellant should be leniently treated.

Facts: Victim and accused were from the same community and they both had gone out of station together – There was physical relationship between them at different places and at different times and marriage was also performed on 9.3.2003 which was duly registered – Trial Court convicted appellant for offences under Sections 363, 366 and 376, IPC on the ground that the prosecutrix was less than 16 years of age on the date of the incident – On appeal, High Court affirmed the conviction, as accorded by the Trial Court but modified the sentence by reducing it to rigorous imprisonment for a period of 4 ½ years instead of 7 years for the offence punishable under Section 376, IPC – Appeal filed for further reduction of sentence – Appellant pleaded that he should be accorded sympathetic treatment as it was love affair between appellant and prosecutrix and every act between them was consensual – Prosecutrix was now married and was happily settled in her matrimonial home – Whether consent of prosecutrix below 16 years of age can be treated as mitigating circumstance – Held, No – Whether appellant is entitled to any further leniency in sentence – Held, No.

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Criminal Appeal No.2153 of 2011, Decided on 10th March, 2015

DIPAK MISRA AND N.V.RAMANA, JJ.

Vijay Pal Appellant

Vrs.

State (GNCT) of Delhi..... Respondent

**Evidence Act, 1872 – Section 32(1) – Dying declaration –Burn injury –
A person suffering 99% burn injury can be in a fit state of mind to give
statement.**

It is contended by the leaned counsel for the appellant when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval Vrs State of Gujarat (1992) 4 SCC 69 wherein it has been held person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the Trial Court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

Criminal Appeal No.600 of 2007, Decided on 16th March, 2015

T.S THAKUR, ADARSH KUMAR GOEL AND R.BANUMATHI, JJ.

Ramdev Food Products private Limited..... Appellant

Vrs.

State of Gujarat..... Respondent

Code of Criminal Procedure, 1973 – Section 156(3) & 202 – Parametres for exercise of power under Sections 156(3) and 202 Cr.P.C. – Nature of cases dealt with under Section 202, Cr.P.C. are cases where material available is not clear to proceed further – In course of investigation directed under Section 202 (1) the police cannot exercise the power of arrest.

Facts: Complaint filed by appellant against fourteen accused alleging that it was running business of food products and had permitted A-1 who was one of the partners, to use the trade-mark 'Ramdev' for seven years under agreement but A-1 allegedly executed forged partnership documents with the help of other accused and thereby committed the alleged offences – Appellant-complainant sought direction for investigation under Section 156(3), Cr.P.C. – However, Magistrate instead of directing investigation as prayed, thought it fit to conduct further enquiry under Section 202, Cr.P.C. and sought report of police within thirty days – On challenge, High Court declined to interfere with the order of the Judicial Magistrate – High Court had observed that there was civil litigation which had gone upto this Court and thus the case was of civil nature and the fact whether the documents in question were forged or not could be ascertained in civil proceedings – Whether the Magistrate ought to have proceeded under Section 156(3) was justified in proceeding under Section 202(1), Cr.P.C. – Held, direction under Section 156(3), Cr.P.C. was not warranted – Whether in course of investigation directed under Section 202(1), police can exercise power of arrest – Held, No.

Criminal Appeal No.722 of 20015, Decided on 27th April, 2015

ANIL R.DAVE AND JURIAN JOSEPH, JJ.

D.T. Virupakshappa..... Appellant

Vrs.

C.Subash..... Respondent

Code of Criminal Procedure, 1973 – Section 197 – Sanction for prosecution – Allegation of ‘police excess’ in connection with investigation of a criminal case – Said offensive act being reasonably connected with performance of official duty of appellant-accused – Magistrate could not have taken cognizance of the case without the previous sanction of the State Government.

Held, in the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of Cr.P.C., in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

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