

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Criminal Procedure
Semester-IV (Batch: 2017-22)

End Semester Examination: April-May 2019

Date: 3rd May, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Cite correct sections & suitable authorities in every answer. Wherever not provided, read Cr.P.C as Criminal Procedure Code 1973, IPC as Indian Penal Code 1860, SC as Supreme Court, HC as High Court.
- Do not use Highlighters. Put Q mark or A mark to denote answer of question/s.
- Confine your answers to the relevant provisions of Cr.P.C. only.

Part-A

Attempt any two questions:

Marks

Q.1 The facts given below are from an SLP to Supreme Court of India:

(12)

This criminal appeal by special leave is directed against the impugned judgment and order dated 04.03.2014 passed in Criminal Appeal No.547 of 2013 by the High Court of M.P. at Gwalior whereby the High Court has upheld the decision of the Sessions Court, Bhind, M.P. (the trial court) in Sessions Case No. 293/2010 by acquitting all the accused i.e. respondent nos: 2 to 6 herein.

The appellant in the present case is the father of a deceased girl, Ranjana. The appellant herein made a written complaint dated 19.07.2010 regarding the death of his daughter, to the Addl. Superintendent of Police, Bhind, M.P. The FIR was registered on 27.07.2010. The charges levelled against accused persons are of the offences punishable under Sections 498A and 304B of Indian Penal Code, 1860 (for short "IPC") and Section 4 of the Dowry Prohibition Act, 1961 and alternatively for the offence punishable under Section 302 of IPC.

The trial court after the examination of evidence on record passed the judgment and order dated 13.06.2013 acquitting all the accused of the charges levelled against them. Being aggrieved of the decision of the trial court, the appellant approached the High Court against the order of acquittal of respondent nos. 2 to 6. The High Court vide its judgment and order dated 04.03.2014 has upheld the trial court's decision of acquittal of all the accused persons.

The appellant presented his appeal under section 372 of Cr.P.C., while claiming all the rights to file the appeal and get this matter decided against the acquittal. The High Court come to a conclusion that the acquittal is correct, but no leave was granted to the appellant under section 378 of the Cr.P.C. The counsel of the accused defended the judgment on the ground that since no case is made against the accused, no appeal be permitted. The

appellant requested the SC that there is gross violation of the principles of the law, given in Cr.P.C. in this judgment.

Discuss various aspects of the issues citing the suitable authorities, whether there exists a correlation between section 372 & 378 Cr.P.C.? Also advise SC to come to an amicable solution of the same.

Q.2 The present facts are from a criminal appeal pending at the Supreme Court:

The appeal is filed against the judgment and order passed by the High Court of Kerala in July 2001 in allowing the revision application filed by PW1 de facto complainant. In the present case, the Principal Assistant Session's Judge, Thiruvananthapuram by his judgment and order, convicted accused nos. 1 to 11 and sentenced them for the offences under sections 143, 147, 148 and 307 read with section 149 IPC. The Session's Judge, Thiruvananthapuram, after appreciating the evidence allowed the criminal appeal and acquitted the accused for the offences for which they were charged. In revision application filed by PW1- de facto complainant, the High Court set aside the order of Session's Judge.

The facts of the case were that, a serious offence inspired by rivalry in the matter of election was being organized by the leading group of the state. Several people get injured and they informed about the offence to police. The trial took place and the Session Judge acquitted all those guilty. The High Court also re-appreciated the evidence and arrived at the conclusion that there was no reason not to rely upon the injured witnesses PW1, PW2 and PW4 and that when there was an attack by a large group of people armed with lethal weapons and when they belonged to an organised group, the people of the locality might be terrorised and unwilling to testify even if they had actually seen the occurrence. The High Court observed that the victims in the case no doubt belong to the rival party, but that did not render their evidence, interested or partisan and thereafter set aside the acquittal order passed in appeal by the sessions judge and remitted it for fresh hearing and disposal by observing that court would decide the matter unhampered by any of the observations contained in the order.

The counsel appearing on behalf of the appellants submitted that the order passed by the High Court is, on the face of it, illegal and erroneous, as the High Court has exceeded its revisional jurisdiction conferred under Section 401 of the Code of Criminal Procedure.

Based on the facts above, the SC is in a situation to deliberate upon the provisions of revision by HC and the legality of the judgement passed. Advise to SC in this matter about the probable solution, cite suitable authorities in support of your answer, whether revision lies or not? Whether HC's power under section 401 Cr.P.C. is limited to any extent?

Q.3 The facts mentioned below are from an appeal pending in the Supreme Court:

Tulsi Singh, the appellant, was arraigned before the Special Court Ferozepur for the murder of his wife Chhinder Kaur. The trial ended in an order of conviction and sentence recorded against the appellant under Section 302 I.P.C., and aggrieved thereby, he has filed the instant appeal. In this case, there was no eye witness to the murder, the prosecution rested its case upon the confession made by the appellant before a Judicial Magistrate and the evidence of the doctor who held post-mortem examination upon the deceased and opined that her death was homicidal. The appellant did not dispute the fact that his wife met with an homicidal death. He, however, contended that he was not responsible for the murder, nor did he make any voluntary confession in respect thereof as alleged by the prosecution. The Special Court, however, found the confession made by the appellant to be voluntary and true, and relying solely thereupon, convicted the appellant.

The facts suggest that after his arrest, the appellant was produced before the Magistrate and sent to police Custody for a week on the prayer of the Investigation Officer. He was thereafter produced before the Magistrate after a week, when he volunteered to make a confession. The Magistrate remanded him to judicial custody with a direction that he be produced on the following date. It appears that immediately after he was produced on that day the learned Magistrate recorded his confession.

The contention of the counsel for appellant that provisions of Cr.P.C are very clear in this matter and it requires careful inspection from the angle of the trial court. The trial court has made an error in this matter, while the learned judge mentioned that there is no mistake on his part. The Apex Court needs your advice in this matter. Suggest the Court, what is the proper way to deal in this matter, citing suitable authorities of law and appropriate sections of Cr.P.C. While writing the suggestions, identify the issues and advise the Court as to what is the pertinent solution to this issue.

Part-B

Attempt any two questions:

- Q.4 The present facts are from a criminal case arising out of an order passed by the High Court of Kerala at Ernakulam, whereby Criminal M.C was filed under Section 482 of the Cr.P.C., with a prayer for quashing criminal proceedings in FIR XXX alleging commission of offences punishable under Sections 354 and 394 of the IPC, has been dismissed. The facts of the case were that Respondent-Radhika filed an oral complaint in the Police Station at Nemom in the State of Kerala, stating that she had accompanied her husband to see a site which the latter had acquired at Punjakari. (13)

Upon arrival at the site, her husband and brother Rajesh went inside the plot while she waited for them near the car parked closeby. Three youngsters at this stage appeared on a motorbike, one of whom snatched the purse and mobile phone from her hands while the other hit her on the cheek and hand. She raised an alarm that brought her husband and brother rushing to the car by which time the offenders escaped towards Karumam on a motorcycle. The complainant gave the registration number of the motorbike to the police and sought action against the appellants who were named by her in the statement made before the Additional Police Sub- Inspector attached to the Nemom Police Station. FIR No.XXX was, on the basis of that statement, registered in the police station and investigation started. A charge sheet was, in due course, filed against the appellants before the Judicial Magistrate First Class, Neyyattinkara.

During the pendency of the criminal proceedings aforementioned, the parties appear to have amicably settled the matter among themselves. The prayer was made under section 482 Cr.P.C. primarily on the fact that appellant No.1 Shiji @ Pappu who also owns a parcel of land adjacent to the property purchased by the respondent- Radhika, had some dispute in regard to the road leading to the two properties. An altercation had in that connection taken place between the appellants on the one hand and the husband and brother of the respondent on the other, culminating in the registration of the FIR mentioned above. The petition further stated that all disputes civil and criminal between the parties had been settled amicably and that the respondent had no grievance against the appellants in relation to the access to the plots in question and that the respondent had no objection to the criminal proceedings against the appellants being quashed by the High Court in exercise of its power under Section 482Cr.P.C. The petition further stated that the disputes between the parties being personal in nature the same could be taken as settled and the proceedings put to an end.

The High Court has upon consideration declined the prayer made by the appellants holding that the offences committed by the appellants were not of a personal nature so as to justify quashing of the proceedings in exercise of its extra-ordinary jurisdiction under Section 482 Cr.P.C.

The question is whether the High Court could and ought to have exercised its power under Section 482 Cr.P.C. for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at. Discuss various suitable authorities of law in this matter & suggest the SC to take appropriate decision.

Note: Section 394 IPC, is voluntarily causing hurt in committing robbery.

Section 354 IPC, is Assault or criminal force to woman with intent to outrage her modesty.

- Q.5 The facts of the case has been taken from an appeal pending before the SC, where appeals have been preferred against the impugned judgment and order dated 11.4.2012 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Petition No. xx of 2011 by way of which the High Court has quashed the charge sheet of 2011 in respect of the offence under Section 468 IPC. However, it has not quashed the charge sheet in respect of offences punishable under Sections 471, 120-B and 201 IPC. Hence, these cross appeals by both parties i.e. the accused and the State of Andhra Pradesh are filed in the SC. (13)

The facts of the case are that a letter dated 22.4.2011 was received by the Secretary, Ministry of Home Affairs, Union of India, purported to have been written by one Shri M.A. Khan (Member of Parliament) enclosing a representation of All India Banjara Seva Samithi (hereinafter referred to as the 'Samithi') asking for an impartial enquiry against Shri V. Dinesh Reddy, the then DG (Vigilance and Enforcement) Department – respondent no.2 alleging that he had amassed disproportionate assets in the name of his wife and her power of attorney holders. A large number of documents were annexed in support of the allegations in the complaint. The Joint Secretary, Ministry of Home Affairs forwarded the said complaint to the Chief Secretary, Govt. of A.P. on 5.5.2011 for enquiry into the matter. The said letter was received by the Chief Secretary, Govt. of A.P. on 23.5.2011.

On the same day, a letter purporting to have been sent by Shri M.A. Khan, M.P., was received by Govt. of A.P. through Shri V. Dinesh Reddy – respondent no.2, wherein it had been alleged that the letter sent by the Central Government to the Chief Secretary, A.P. had not been authored by Shri M.A. Khan, (Member of Parliament). Respondent no.2 asked for a detailed enquiry to be conducted to ascertain who had forged the said letter and signature of Shri M.A. Khan, M.P., on the complaint.

On 24.8.2011, Shri Dinesh Reddy - respondent no.2 himself directed the registration of the First Information Report (in short 'FIR') and that an investigation be conducted by CID. As a consequence, the FIR was registered on 25.8.2011 and one Dy. S.P. was appointed as the Investigating Officer. After completing the investigation, a charge sheet dated 14.11.2011 was filed naming appellant showing that offences punishable under Sections 468, 471, 120-B and 201 IPC had been committed. Aggrieved appellant approached the High Court under Section 482 Cr.P.C. for quashing the said charge sheet. However, the High Court vide impugned judgment and order quashed the charge sheet only in part.

The question that arises is whether such an order attained finality and in case the evidence is adduced before the court concerned, whether the trial court can still hold that the applicant is required to be tried for the offence under Section 468 I.P.C. and further

whether the trial would be competent on the said charge in exercise of its power under Section 216 Cr.P.C.?

SC is examining the facts and needs your advice. Cite suitable authorities of law to suggest the court how to tackle this matter.

Note: Section 468 IPC is, Forgery for purpose of cheating.

Section 471, IPC is, Using as genuine a forged [document or electronic record]

Section 120B, IPC is Punishment of criminal conspiracy.

Section 201, IPC is Causing disappearance of evidence of offence, or giving false information to screen offender.

- Q.6 The present facts are from a writ petition pending to the HC. The facts of the case cover the admissibility of evidence collected against few suspicious people by police. It is apparent that there is a trial going on before the Special Judge, CBI, Patiala House Courts, New Delhi. In that case, the petitioner is an accused. The prosecution is seeking to use as evidence the material collected pursuant to the seven telephone interception orders mentioned above. According to the petitioner, the interception orders were passed purportedly under Section 5(2) of the said Telegraph Act, which provision itself is unconstitutional and, as a consequence thereof, the interception orders are void. It is further the case of the petitioner that the seven telephone interception orders are, in any event, in violation of Section 5(2) of the said Telegraph Act and, therefore, the same should be declared as null and void. (13)

Section 5 of the said Telegraph Act reads as under:-

"5. Power for Government to take possession of licensed telegraphs and to order interception of messages. -
- (1) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government, or any other officer specially authorized in this behalf by the Central Government or a State Government, may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act.

(2) On such occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought by transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."

The petitioner contends that in this case the HC should act extraordinarily to call for the records of the case to itself and should be conducting the trial. While the prosecution lawyer is of the opinion that this matter has been rightly put by the sessions court and there is no need to invoke any jurisdiction of the HC in any matter what so ever. He also submitted that, first of all, Article 228 of the Constitution would have no application in the present case and, therefore, the prayer for withdrawing of the case pending before the learned Special Judge to this Court ought to be rejected outright. In this context, he



submitted that Article 228 of the Constitution could only be invoked where the High Court was satisfied that there exists a suitable reason to do so. While the matter in this section of the Telegraph Act has been already settled by the judgment of SC in case of *Hukam Chand Shyam Lal v. Union of India*: (1976) 2 SCC 128, where the SC has decided that in the public interest police has powers to collect evidences after due permission from the authorities.

Now the HC is seeking your advice so as to deal with this issue. Identify the issue and advise HC that how by applying the provisions of Cr.P.C. this issue can be solved. Cite the suitable authorities of law in support of your answer.
