



ODISHA POLICE
CRIME BRANCH
CRIMINAL INVESTIGATION DEPARTMENT

No. 3592 / Odisha CID- Law

Date 10.2.2016

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 July-2015 to September-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 judgments in professional work, wherever required.

(B.K.Sharma)

Special Director General of Police,
CID-Crime,Odisha.

Memo No 3593 /CID-Law

dated. 10.2.2016.

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

(B.K.Sharma)

Special Director General of Police,
CID-Crime,Odisha.

Digest of Recent Court Judgements

(For the month of July-September, 2015)

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(2015) 62 OCR (SC)-109

Criminal Appeal No.1247 of 2012, Decided on 28th July, 2015

T.S. THAKUR, R.K.Agrawal AND R.BANUMATHI, JJ.

V.K. Mishra & Anr..... Appellant

Vrs.

State of Uttarakand & Anr..... Respondent

Code of Criminal Procedure, 1908 – Section 161 – Statement before police – Delay in recording – Properly explained – Further, defence not questioning the I.O. on this point.

Para 24. It has been further contended on behalf of the appellants that there was delay in recording the statement of PW-2 by the investigating officer and therefore his evidence should be viewed with suspicion, especially when he did not disclose about the alleged dowry demand before he left for Dehradun or till his statement was recorded by the police. In this context as pointed out earlier. PW-2 went to Mumbai for treatment of his wife and on 14.08.1997 he was informed about death of Archana and on the next day he returned to Delhi by air and from Delhi he reached Dehradun by taxi. In his evidence PW-2 stated that the police being busy in the programme of Ms. Mayawati, the then Chief Minister of Uttar Pradesh on 17.08.1997, the police did not examine and record his statement and it was only on 18.08.1997, the police did not examine and record his statement and it was only on 18.08.1997 his statement was recorded by the investigating officer. Considering the evidence of PW-2, it cannot be said that the prosecution was deliberately taking time with a view to concoct a false case and decide about the shape to be given to the case. It is pertinent to point out that on the delayed examination of PW-2, no question was put to the investigating officer (PW-14) by the defence. Had such question been put to PW-14, he would have certainly explained the reason for not examining PW-2 from 15.08.1997 to 17.08.1997. Having not done so, the appellants are not right in contending that there was delay in recording the statement of PW-2.

However the delay should be properly explained by the I.O. in his case diary.

(2015) 62 OCR - 219

BLAPL No.2600 of 2015, Decided on 14th August, 2015

S.K. SAHOO, J.

An application under Section 439 of the Code of Criminal Procedure.

Rama Chandra Hansdah Petitioner

Vrs.

Republic of India (C.B.I.)..... Opp. Party.

Code of Criminal Procedure, 1973 – Section 439 – Prayer for bail in Economic offences – Economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously – Economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community – Bail application rejected.

Para 10. The law relating to bail in a case of economic offences in is more or less settled in view of the decisions of the Hon'ble Supreme Court in case of Y.S. Jagarmohan Reddy v. CBI reported in (2013) 55 Orissa Criminal Reports (SC) 825, State of Gujurat v. Mohan Lal Jitamalji Porwal reported in AIR 1987 SC 1321 and Nimmagadda Prasad v. CBI reported in (2013) 7 Supreme Court Cases 466.

Economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously. Economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community. In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and State. The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail applications.

No doubt at the state of granting bail, detailed examination of evidence and elaborate discussions on merits of the case need not be taken but the order must reflect the reasons for arriving at a prima facie conclusion as to why bail was being granted particularly when the accused-petitioner is charged with economic offences. Discretion should be used in a proper and judicious manner and the Court must take note of the nature of accusation, the nature of supporting evidence, the severity of punishment in case of conviction, reasonable apprehension and tampering with the evidence, criminal antecedents etc. Bail should not be denied merely because the sentiments of the community are against the accused.

(2015) 62 OCR (SC) – 402
Crl. A. No. 1117 of 2008, Decided on 18th August, 2015
H.L. DATTU, CJI., ARUN MISHRA AND AMITAVA RAY, JJ.

Arutlal Shankaraiah Appellant.
Vrs.
State of Andhra Pradesh ... Respondent.

Narcotic Drugs and Psychotropic Substances Act, 1985 – Section 8(c) read with 20(b) – Seizure of five kilograms of ganja from a house – Appellant was in sole possession of the said house – Mere fact that appellant was not in ownership of said house where the ganja was seized does not exculpate appellant.

Facts: Prosecution case was that Asst. Excise Superintendent (PW-3) acting on reliable information received by him that contraband had been stored in a house searched that house – Search revealed five kilograms of ganja which was immediately seized – Evidence on record revealed that the appellant was in exclusive possession of the said house where the ganja was recovered – Trial Court convicted appellant for offence under Section 8 read with 20(b) of the Act and sentenced him to rigorous imprisonment for three years – On appeal, High Court while sustaining conviction of appellant, reduced the sentence imposed to rigorous imprisonment of one year while maintaining fine of Rs.5,000/- - Whether conviction of appellant as recorded by Courts below was sustainable – Held, Yes – Whether the mere fact that appellant was not in ownership of the said house where the ganja was seized can exculpate the appellant – Held, No – Whether the sentence imposed by the High Court was appropriate – Held, Yes.

(2015) 62 OCR (SC) – 459
BLAPL No.1947 of 2015, Decided on 22nd September, 2015
S.K. SAHOO, J.

Application under section 439 of the Code of Criminal Procedure, 1973.

Anil Kumar Dash Petitioner.
Vrs.
State of Orissa ... Opp. Party.

Code of Criminal Procedure, 1973 – Section 439 – NDPS Act, Section 20 (b) – Seizure of 20 kg. of Ganja – If 20 kg. of Ganja is “commercial quantity”.

Where the contravention relates to sub-clause (b) of Section 20 of the NDPS Act and the quantity of ganja involved is 20 kg., it can be said to be lesser than commercial quantity but greater than small quantity which is punishable under Section 20(b)(ii)(B) of NDPS Act and not under Section 20(b)(ii)(C) of NDPS Act.

Para 5. Section 20 of the N.D.P.S. Act prescribes punishment for contravention in relation to cannabis plant and cannabis. The relevant provision of Section 20 is quoted herein below:

“20. Punishment for contravention in relation to cannabis plant and cannabis:-

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder:

x x x

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-

x x x

(ii) where such contravention relates to Sub-clause (b):-

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both,

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees;

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

In view of the definition under Sub-clause (b) of Clause (iii) Section 2 of NDPS Act, “cannabis (hemp)” means ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated.

“Commercial quantity” has been defined in clause (viia) of Section 2 of the NDPS Act which reads as follows:

“2.(viia) “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette,”

similarly “small quantity” has been defined under clause (xxiiiia) Section 2 of N.D.P.S. Act which reads as follows:

“2.(xxiiiia) “small quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette,”

The Amending Act of 2001 (The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act 9 of 2001) introduced the concept of “small quantity” and “commercial quantity” for the purpose of imposing punishment. The punishment thereunder is graded according to whether the contravention involved “small quantity, “commercial quantity” or, a quantity in between the two. By reason of Section 41 (1) of the Amending Act of 2001, the amended provisions apply to pending cases. Simultaneously, with the Act of 2001 coming into force, by a notification S.O. 1055 (E) dated 19.10.2001 issued in exercise of the powers conferred by clauses (viia) and (xxiiiia) of Section 2 of the NDPS Act, the Centre Government specified what would amount to “small quantity” and “commercial quantity” respectively, of different substances. The quantity mentioned in columns 5 and 6 of the table, in relation to the narcotic drug or psychotropic substance mentioned in the corresponding entry in the columns 2 to 4 of the said table are the small quantity and commercial quantity respectively for the purposes of the said clauses of that section.

TABLE

[See sub-clause (viia) and (xxiiiia) of Section 2 of the Act]

Sl. No.	Name of Narcotic Drug and psychotropic Substance (International non-proprietary name (INN))	Other non-proprietary name	Chemical name	Small Quantity (in gm.)	Commercial Quantity
1	2	3	4	5	6
55	Ganja			1000	20 kg.

Even though in column No.6 of the table under the heading of commercial quantity, 20 kg. has been mentioned but in view of clause (viia) of Section 2 of the NDPS Act, 20 kg. of ganja will not come within the definition of “commercial quantity”. Commercial quantity in respect of ganja is to be greater than the quantity specified in the aforesaid notification which would mean any quantity more than/bigger than/larger than 20 kg.

Where the contravention relates to sub-clause (b) of Section 20 of the NDPS Act and the quantity of ganja involved is 20 kg., it can be said to be lesser than commercial quantity but greater than small quantity which is punishable under Section 20(b)(ii)(B) of NDPS Act and not under Section 20(b)(ii)(C) of NDPS Act.

(2015) 62 OCR (SC) – 539

BLAPL No.1086 of 2015, Decided on 14th September, 2015

S.K. SAHOO, J.

Application under section 439 of the Code of Criminal Procedure, 1973.

Iswar Attaka & Others..... Petitioner.

Vrs.

State of Orissa Opp. Party.

Inquest report – Non-mention of the name of the accused persons in inquest reports - Effect of.

Held, neither the Investigating Officer is obliged to ascertain the names of the accused persons at the stage of preparation of inquest report nor is it the requirement of law to mention the names of the accused persons in the inquest report. Absence of the names of the accused in the inquest report does not lead to the inference that such names were not disclosed till it was completed.

Para 10. The further contention raised by the learned counsels for the petitioners that there is no mention of the names of any of the accused persons in the inquest report and therefore the complicity of the petitioners is doubtful, is not all acceptable.

Neither the Investigating Officer is obliged to ascertain the names of the accused persons at the stage of preparation of inquest report nor is it the requirement of law to mention the names of the accused persons in the inquest report. Absence of the names of the accused in the inquest report does not lead to the inference that such names were not disclosed till it was completed.

(2015) 62 OCR (SC) – 635
Criminal Appeal No.2128 of 2011, Decided on 22nd September, 2015
J.S.KHEHAR AND R.BANUMATHI, JJ.

International Advanced Research
Central For Powder metallurgy
and New Materials (ARCI) & Ors Appellant.
Vrs.
Nimra Cerglass Technics (P) Ltd. & Anr. Respondent.

Code of Criminal Procedure, 1973 – Section 482 – Case under –
Sections 419, 470 IPC – Offence of cheating – Mere breach of contract
cannot give rise to criminal prosecution for cheating unless fraudulent for
dishonest intention is shown at the beginning of the transaction.

Facts: Technology Transfer Agreement for manufacturing process of
extruded ceramic honeycombs – Respondent filed complaint alleging that in
pursuance of the agreement, respondent spent around Rs. 1.3 crores for
purchasing and installing the comprehensive machinery but after three years,
respondent was informed that the targeted specification of the end-product could
not be achieved by appellants – Respondent alleged that scientists working in
appellant-Research Centre had not perfected the honeycomb technology
sufficient for commencing commercial production and by their false
representations induced respondent to spend huge amount and thus appellants
have committed an offence of cheating – Magistrate took cognizance of the case
for offences under Sections 419 & 420 IPC read with 34 IPC – Appellants filed
petition under Section 482, Cr.P.C. for quashing the prosecution but it was
dismissed – Technology transfer agreement 1999 was only experimental in
nature – In the agreement, there was no commitment on the part of appellant to
provide extruded ceramic honeycombs as per expected specifications – Whether
it could be held that the appellant acted with dishonest intention to cheat
respondent – Held, No – Whether criminal liability could be fastened on
appellants officials – Held, No.

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(i)	1992 Supp. (1) SCC 335 : State of Haryana V. Bhajan Lal	... 12
(ii)	(1995) 2 SCC 449 : State V. Thirukkural Perumal	... 12
(iii)	(2006) 7 SCC 188 : C.B.I. V. Ravi Shankar Srivastave 12
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(vii)	(2008) 5 SCC 765 : P.Swaroopa Rani V. M.Hari Narayana 22
(viii)	(2011) 1 SCC 74 : Indium India Telecom Ltd. V. Motorola Incorp. 22
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(i)	(2002) 1 SCC 241 : S.W. Palanitkar V. State of Bihar 14
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