

Radhika Agarwal v. Union of India and

- ❖ **Bench:** Justices Sanjiv Khanna, MM Sundresh and Bela M Trivedi
- ❖ **Issue:** Batch of 281 petitions challenging penal provisions of various laws such as the Customs Act, Excise Act and GST Act as non-compatible with the Code of Criminal Procedure (CrPC).



Observation

- Both in the Excise Act and the Customs Act, the primary reason is to adjudicate and to collect duty.
- There are mechanisms now in place but the primary function of all these officers is not to investigate crime, unlike Police officers.
- Excise officers/Customs officers are not equated with Police officers.
- CrPC is a parent statute and thus it applies, unless specifically excluded.

- CrPC replaced only where a special statute displaces it or special statute expressly bars application of it.
- The Customs Act does not carry any provision which would displace the application of **Chapter XII of CrPC.**

Sharif Ahmed and Others v. State of Uttar Pradesh Vakil Ahmad & Ors. v. State of Uttar Pradesh through Secretary, Department of Home & Anr.

- ❖ **Bench:** Justices Sanjiv Khanna and SVN Bhatti
- ❖ **Issue:** Importance of the submission of a charge sheet and its content to take cognizance of an offence by a magistrate



Observation

- The Supreme Court observed that the charge sheet must contain clear and complete entries of all columns to enable the court to understand which crime has been committed by which accused and what is the material evidence available on the file.

- The bench expressed earnest disapproval of the practice of filing chargesheet without stating sufficient details of the facts constituting the offence or putting the relevant evidence on record.
- The court noted that “in some states, the charge sheets merely carry a reproduction of the details mentioned by the complainant in the First Information Report, and then proceed to state whether an offence is made out, or not made out, without any elucidation on the evidence and material relied upon.
- The investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file.
- Statements under [Section 161](#) of the CrPC and related documents have to be enclosed with the list of witnesses.
- The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons.

- The police report enables the Magistrate to decide a course of action from the options available to him.
- The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence.
- On the basis of this record the court can take effective cognisance of the offence and proceed to issue process in terms of [Section 190\(1\)\(b\)](#) and [Section 204](#) of the CrPC.
- In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him.

Cases Referred

- ❖ H.N. Rishbud and Inder Singh v. State of Delhi
 - Process of Investigation
 - Proceeding to the concerned spot.
 - Ascertainment of facts and circumstances.
 - Discovery and arrest.
 - Collection of evidence which includes examination of various persons, search of places and seizure of things.
 - Formation of an opinion on

whether an offence is made out, and filing the chargesheet accordingly.

Dablu Kujur v. State of Jharkhand

- Police officers submitting the police report/chargesheet to the magistrate as per the State Police Manual shall abide by the particulars of **Section 173 (2)**.
- The officers in charge of every police station across the country should strictly comply with the mandatory requirements of **Section 173 (2)** of Cr.P.C. failing which it shall be strictly viewed by the concerned courts i.e., where the chargesheet/police report is filed.

Ajay Ishwar Ghute & Ors. v. Meher K. Patel & Ors.

- ❖ **Bench:** Justices Sanjiv Khanna and SVN Bhatti
- ❖ **Issue:** Importance of the submission of a charge sheet and its content to take cognizance of an offence by a magistrate.



Minutes of Order : These are notes filed by advocates on both sides which mention the

points which are to be included in the judgment to be passed by the Court.

- ❖ **Facts:** In this case, the Bombay High Court permitted the construction of a compound wall under police protection, relying on "Minutes of Order" presented by advocates. The appellants opposed this decision, claiming that it overlooked objections from government officers and failed to involve affected parties. Despite these objections, the Division Bench upheld the order without providing reasons, leading to the appeal to the Supreme Court.

Observations

- The Supreme Court, in a recent judgment, commented about the peculiar practice of advocates filing "Minutes of Order" in the Bombay High Court.
- While this practice is to assist the judges, the Supreme Court cautioned that care should be taken to ensure that the rights of the third parties are not affected by passing orders based on the "Minutes of Order". The Court made following observations:
 - The practice of filing "Minutes of Order" prevails in the Bombay High Court. As a courtesy to the Court, the advocates appearing for the parties to the proceedings tender "Minutes of Order" containing what could be

recorded by the Court in its order. The object is to assist the Court.

- An order passed in terms of the “Minutes of Order” tendered on record by the advocates representing the parties to the proceedings is not a consent order. It is an order in invitum for all purposes.
- Before tendering the “Minutes of Order” to the Court, the advocates must consider whether an order, if passed by the Court in terms of the “Minutes of Order,” would be lawful. After “Minutes of Order” is tendered before the Court, it is the duty of the Court to decide whether an order passed in terms of the “Minutes of Order” would be lawful. The Court must apply its mind whether the parties who are likely to be affected by an order in terms of the “Minutes of Order” have been impleaded to the proceedings.
- If the Court is of the view that an order made in terms of the “Minutes of Order” tendered by the advocates will not be lawful, the Court should decline to pass an order in terms of the “Minutes of Order”.
- If the Court finds that all the parties likely to be affected by an

order in terms of the “Minutes of Order” are not parties to the proceedings, the Court will be well advised to defer passing of the order till all the necessary parties are impleaded to the proceedings.

- The Supreme Court found the High Court's order illegal, remanding the matter while allowing the construction under police protection subject to the final decision in the Writ Petition.

Dolly Rani v. Manish Kumar Chanchal

- ❖ **Bench:** Justices BV Nagarathna and Augustine George Masih
- ❖ **Issue:** Supreme Court made observations regarding the sacred nature of Hindu Marriage which should not be trivialized as a mere social event for "song and dance" and "wining and dining".



- ❖ **Facts:** The present matter pertains to a petition filed by a wife seeking the transfer of divorce proceedings. While the case was ongoing, the husband and wife agreed to jointly apply for a declaration that their

marriage was not valid. They claimed that they had not solemnized any marriage as they did not perform any customs, rites, or rituals. However, they were compelled by certain circumstances and pressures to obtain a certificate of solemnization from Vadik Jankalyan Samiti (Regd.). They used this certificate to register their marriage under the Uttar Pradesh Registration Rule, 2017, and received a "Certificate of Marriage" from the Registrar of Marriages.

Observations

- The Apex Court urged young individuals to deeply consider the sanctity of marriage before committing to it.
- Marriage should not be approached as an occasion for extravagance or as a means to demand dowry or gifts, but as a solemn occasion that establishes a lifelong union between a man and a woman, forming the foundation of a family, which is a fundamental unit of Indian society.
- A Hindu marriage is a samskara and a sacrament which has to be accorded its status as an institution of great value in Indian society. Therefore, we urge young men and women to think deeply about the institution of marriage even before they enter upon it and as to how sacred the said institution is, in

Indian society.

- A marriage is not an event for 'song and dance' and 'wining and dining' or an occasion to demand and exchange dowry and gifts by undue pressure leading to possible initiation of criminal proceedings thereafter.
- A marriage is not a commercial transaction. It is a solemn foundational event celebrated so as to establish a relationship between a man and a woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society.
- The Court also criticized the practice of couples attempting to gain marital status without conducting a valid marriage ceremony.
- Additionally, the court noted instances where couples registered their marriage under Section 8 of the Hindu Marriage Act for practical reasons, such as visa applications, without actually solemnizing the marriage.
 - The court cautioned against such practices, emphasizing that registration alone does not validate a marriage.
- The Court, upon noting that no marriage had actually been solemnized, ruled that there was

no valid marriage in this case.

Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office, Special Leave Petition to

- ❖ **Bench:** Justices Abhay S. Oka and Ujjal Bhuyan
- ❖ **Facts of the Case**
 - In a money laundering case, the accused had appeared before the court in compliance of the summons issued to him. However, the proceedings of the bond executed by the petitioner/accused under Section 88 of Cr.P.C. for securing its presence was treated as a bail proceeding requiring the mandate of Section 45 of PMLA to be fulfilled.
 - While apprehending an arrest after the issuance of summons, the accused approached the High Court for the grant of anticipatory bail. Denying the anticipatory bail to the accused, the High Court granted interim protection from arrest in January, 2024, subject to condition that he would regularly appear before the Trial Court on dates fixed in the complaint. This protection stands extended by the order of March 1 till the next hearing.
 - The High Court was of the view that the petitioner did not satisfy the second condition under Section

45 PMLA, as per which before granting bail, a Court must be satisfied that there are reasonable grounds for believing that the applicant is not guilty of such an offence and is not likely to commit any offence while on bail.

- Against the decision of the High Court, the petitioner/accused approached the Supreme Court.

❖ **Issue**

- Whether the execution of the bond by an accused for showing his presence before the court under **Section 88 of Cr.P.C.** would amount to applying for bail to make twin conditions of bail under **Section 45 of the Prevention of Money Laundering Act, 2002** applicable.



- ❖ **Questions of Law Framed by The Supreme Court of India**
 - If pursuant to the summons issued by the Special Court, the accused appears before the Special Court, whether he is required to apply for bail in

terms of *Section 437 CrPC?*

- If the answer to the said issue is in affirmative, whether such a bail plea will be governed by the twin conditions imposed by *Section 45 of the PMLA?*

Observations

- The Supreme Court reserved the Judgment on the issue whether an accused in a money laundering case is required to fulfill the twin conditions for bail under Section 45 of the Prevention of Money Laundering Act (PMLA) when he executes a bond for appearance before the Special Court in pursuance of a summons issued to him.

According to Section 45 of the PMLA, bail can be granted to an accused in a money laundering case only if twin conditions are satisfied - there should be prima facie satisfaction that the accused has not committed the offence and that he is not likely to commit any offence while on bail.

- The Court had earlier expressed a prima facie view that when the Special Court has taken cognizance of the ED complaint, then the powers of arrest under Section 19 of the PMLA cannot be exercised.

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