2024:PHHC:085784

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31808-2024

Date of decision: 11.07.2024

[redacted] ....Petitioner

V/s

State of U.T. Chandigarh and another ....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ujwal Anand, Advocate for the petitioner.

Mr. Manish Bansal, P.P. U.T. Chandigarh
Mr. Shubham Mangla, Advocate with
Ms. Diksha Sharma, Advocate for the U.T. Chandigarh.

*****

SUMEET GOEL, J.

1. The present petition has been filed, under Section 482 of Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C') for quashing of FIR No. 71 dated 04.11.2023 registered at Police Station, Sector 17, Women Cell, Chandigarh under Section 406/498-A of IPC 1860; final report under Section 173 of Cr.P.C., 1973 presented therein as also all the proceedings emanating therefrom.

2. On 08.07.2024, the following order was passed:

> *"Notice of motion, at this stage, to respondent No.1-U.T. Chandigarh.*
>
> *At the asking of the Court, Mr. Manish Bansal, P.P. U.T., Chandigarh with Ms. Diksha Sharma, Advocate appears and accepts notice for respondent No.1-U.T., Chandigarh.*
>
> *Learned counsel for the rival parties are directed to make submissions qua maintainability of the instant petition which has been filed under Section 482 of Cr.P.C., 1973.*

Adjourned to 10.07.2024.

To be shown in the urgent list."

3. Learned Public Prosecutor, U.T. Chandigarh has raised a preliminary objection/submission that the instant petition, filed on 03.07.2024, under Section 482 of Cr.P.C. is not maintainable in view of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'BNSS') coming into force w.e.f. 01.07.2024 and the Cr.P.C. having been repealed w.e.f. the same date i.e. 01.07.2024. Learned Public Prosecutor has submitted that; in view of mandatory provisions contained in Section 531 and Section 4 of BNSS; the instant petition deserves to be dismissed as being non-maintainable.

4. Controverting the above-said preliminary submission/objection; learned counsel for the petitioner has submitted that the instant petition is maintainable as the same has been filed under Section 482 of Cr.P.C. since the impugned FIR was registered on 04.11.2023 i.e. much before the BNSS came into force. In another words, learned counsel for the petitioner has argued that any petition filed in respect of an FIR registered before 01.07.2024, is required to be filed under Cr.P.C. itself.

5. The prime legal issue that arises for consideration is as to whether the instant petition, filed on 03.07.2024, under Section 482 of Cr.P.C. is maintainable in view of the BNSS being brought into force w.e.f. 01.07.2024 and Cr.P.C. having been repealed w.e.f. 01.07.2024.

6. **Relevant Statute**

The Bharatiya Nagarik Suraksha Sanhita, 2023

The introduction to this Statute reads as under:

*"**INTRODUCTION***

The first Code of Criminal Procedure was enacted in 1898 in the British India. It was replaced by a new Act, namely, 'the Code of Criminal Procedure, 1973 (2 of 1974)', encompassing extensive changes.

The Code of Criminal Procedure, 1973 underwent several amendments during the course of the time. However, it was widely viewed that the existing Act required complete overhaul so as to make it more contemporary as well as in line with technological advancements

A Bill, the Bharatiya Nagarik Suraksha Sanhita, 2023, was introduced in the Lok Sabha on 11th August, 2023. It was referred to the Standing Committee on Home affairs.

A new Bill, incorporating several recommendations, was further introduced in the Lok Sabha on 12th December, 2023 and the old Bill was withdrawn. The new Bill was passed in the Lok Sabha on 20th December, 2023 and, in the Rajya Sabha on 21st December, 2023. It received the assent of the President on 25th December, 2023, and came on the statute book as THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (Act 46 of 2023).

The new Act, the Bharatiya Nagarik Suraksha Sanhita, 2023, inter alia, provides for the use of technology and forensic sciences in the investigation of crime as well as in furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time-lines have also been prescribed for time bound investigation, trial and pronouncement of judgments. The magisterial system has also been streamlined.

The statement of objects and reasons reads as well:

STATEMENT OF OBJECTS AND REASONS

The Code of Criminal Procedure, 1973 regulates the procedure for arrest, investigation, inquiry and trial of offences under the Indian Penal Code and under any other law governing criminal offences. The Code provides for a mechanism for conducting trials in a criminal case. It gives the procedure for registering a complaint, conducting a trial and passing an order, and filing an appeal against any order.

2. Fast and efficient justice system is an essential component of good governance. However, delay in delivery of justice due to complex legal procedures, large pendency of cases in the Courts, low conviction rates, insufficient use of technology in legal system, delays in investigation system, inadequate use of forensics are the biggest hurdles in speedy

delivery of justice, which impacts the poor man adversely. In order to address these issues a citizens centric criminal procedure is the need of the hour.

3. The experience of seven decades of Indian democracy calls for a comprehensive review of our criminal laws, including the Code of Criminal Procedure and adapt them in accordance with the contemporary needs and aspirations of the people.

4. The Government with the mantra, "Sabka Saath, Sabka Vikas, Sabka Vishwas and Sabka Prayas" is committed to ensure speedy justice to all citizens in conformity with these constitutional and democratic aspirations. The Government is committed to make a comprehensive review of the framework of criminal laws to provide accessible and speedy justice to all.

5. In view of the above, it is proposed to repeal the Code of Criminal Procedure, 1973 and enact a new law. It provides for the use of technology and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time-lines have been prescribed for time bound investigation, trial and pronouncement of judgements. Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where punishment is 7 years or more, the victims shall be given an opportunity of being heard before withdrawal of the case by the Government. Summary trial has been made mandatory for petty and less serious cases. The accused persons may be examined through electronic means, like video conferencing. The magisterial system has also been streamlined.

6. Accordingly, a Bill, namely, the Bharatiya Nagarik Suraksha Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in the Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

7. The Notes on Clauses explains the various provision of the Bill.

8. The Bill seeks to achieve the above objectives."

Section 1 of BNSS reads as under:

*"**1. Short title, extent and commencement.-**(1) This Act may be called the Bharatiya Nagarik Suraksha Sanhita, 2023.*

(2) xxx xxx xxx xxx xxx

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

The notification dated 23.02.2024 issued by Ministry of Home Affairs vide S.O.848(E) reads as under:

"***MINISTRY OF HOME AFFAIRS***

NOTIFICATION

New Delhi, the 23rd February, 2024

***S.O. 848(E).**- In exercise of the powers conferred by sub-section (3) of section 1 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby appoints the Ist day of July, 2024 as the date on which the provisions of the said Sanhita, except the provisions of the entry relating to section 106(2) of the Bharatiya Nyaya Sanhita, 2023, in the First Schedule, shall come into force.*

[F. No. 1/3/2023-Judicial Cell-1]

SHRI PRAKASH, Jt. Secy."

Section 4 of BNSS reads as under:

4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.-

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 531 of BNSS reads as under:

531. Repeal and savings.- *(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.*

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

The Bharatiya Nyaya Sanhita, 2023 (hereinafter to be referred as 'BNS').

The introduction to this Statute reads as under:

*"**Introduction***

The first Indian Law Commission was constituted in 1834. It was meant to examine overall legal system in India as well as the then existing Policing system. The Law Commission suggested several steps, including various new enactments. One of them was the Indian Penal Code, which was enacted in 1860 in the British India.

The Indian Penal Code was amended several times. However, it was felt that the existing Penal law required complete overhaul so as to make it more contemporary and practical. Accordingly, various stakeholders were consulted, keeping in mind the contemporary needs and aspirations of the people and with a view to create a legal structure which was citizen centric.

A Bill, the Bharatiya Nyaya Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Standing Committee on Home affairs

A new Bill, incorporating several recommendations, was further introduced in the Lok Sabha on 12th December, 2023 and the old Bill was withdrawn. The new Bill was passed in the Lok Sabha on 20th December, 2023 and, in the Rajya Sabha on 21 December, 2023. It received the assent of the President on 25th December, 2023, and came on the statute book as THE BHARATIYA NYAYA SANHITA, 2023 (Act 45 of 2023).

The new Act, the Bharatiya Nyaya Sanhita, 2023 seeks, inter alia, to streamline provisions relating to offences and penalties.

The statement of objects and reasons behind this statute reads as under:

STATEMENT OF OBJECTS AND REASONS

In the year 1834, the first Indian Law Commission was constituted under the Chairmanship of Lord Thomas Babington Macaulay to examine the jurisdiction, power and rules of the existing Courts as well as the police establishments and the laws in force in India.

2. The Commission suggested various enactments to the Government. One of the important recommendations made by the Commission was on, the Indian Penal Code, which was enacted in 1860 and the said Code is still continuing in the country with some amendments made thereto from time to time.

3. The Government considered it expedient and necessary to review the existing criminal laws with an aim to strengthen law and order and also focus on simplifying legal procedure so that ease of living is

ensured to the common man. The Government also considered to make existing laws relevant to the contemporary situation and provide speedy justice to common man. Accordingly, various stakeholders were consulted keeping in mind contemporary needs and aspirations of the people with a view to create a legal structure which is citizen centric and to secure life and liberty of the citizens.

4. It is proposed to enact a new law, by repealing the Indian Penal Code, to streamline provisions relating to offences and penalties. It is proposed to provide first time community service as one of the punishments for petty offences. The offences against women and children, murder and offences against the State have been given precedence. Some offences have been made gender neutral. In order to deal effectively with the problem of organised crimes and terrorist activities, new offences of terrorist acts and organised crime have been added in the Bill with deterrent punishments. A new offence on acts of armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has also been added. The fines and punishments for various offences have also been suitably enhanced.

5. Accordingly, a Bill, namely, the Bharatiya Nyaya Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Department- related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

6. The Notes on Clauses explains the various provisions of the Bill.

7. The Bill seeks to achieve the above objectives."

Section 1 of BNS reads as under:

1. *Short title, commencement and application-(1) This Act may be called the Bharatiya Nyaya Sanhita, 2023.*

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Sanhita.

(3) xxx xxx xxx xxx

(4)	*xxx*	*xxx*	*xxx*	*xxx*
(5)	*xxx*	*xxx*	*xxx*	*xxx*

The notification dated 23.02.2024 issued by Ministry of Home Affairs vide S.O.850 (E) reads as under:

> *"**MINISTRY OF HOME AFFAIRS***
>
> ***NOTIFICATION***
>
> *New Delhi, the 23rd February, 2024*
>
> ***S.O. 850(E).-** In exercise of the powers conferred by sub-section (2) of section 1 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Sanhita, except the provision of sub-section (2) of section 106, shall come into force.*
>
> *[F. No. 1/3/2023-Judicial Cell-1]*
>
> *SHRI PRAKASH, Jt. Secy."*

Section 358 of BNS reads as under:

> ***358. Repeal and savings.-(1)** The Indian Penal Code (45 of 1860) is hereby repealed.*
>
> *(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,-*
>
> *(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or*
>
> *(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed, or*
>
> *(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or*
>
> *(d) any investigation or remedy in respect of any such penalty, or punishment; or*
>
> *(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.*
>
> *(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.*

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal."

The Code of Criminal Procedure, 1973

Section 4 of Cr.P.C., 1973 reads as under:-

"***4. Trial of offences under the Indian Penal Code and other laws.—****(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 484 of Cr.P.C., 1973 reads as under:-

"***484. Repeal and savings.****—(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.*

(2) Notwithstanding such repeal,—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code

and which are in force immediately before the commencement of this Code, shall be deemed, respectively to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of Article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time."

The General Clauses Act, 1897

*"**6. Effect of repeal.**—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The Constitution of India

Article 20 of The Constitution of India reads as under:

"**20. Protection in respect of conviction for offences**

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

Relevant Case Law

7. The precedents, germane to the matter(s) in issue, are as follows:

I. A five Judges bench of Hon'ble Supreme Court in judgment titled as ***Rao Shiv Bahadur Singh and another vs. State of Vindhya Pradesh: 1953 AIR (SC) 394*** has held as under:

"9. In this context it is necessary to notice that what is prohibited under Article 20 is only conviction or sentence under an 'ex post facto' law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a Court different from that which had competence at the time cannot 'ipso facto' be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

II. A five Judges bench of Hon'ble Supreme Court in judgment titled as ***Union of India vs. Sukumar Pyne: 1966 AIR (SC) 1206*** has held as under:

> *"9. xxxxxxxxxxxxxxxxxxxxxxxx. As observed by this Court in 1953 SCR 1188 a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular procedure except in so far as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognized that "no person has a vested right in any course of procedure" (vide Maxwell 11th Edition, p. 216), and we see no reason why this ordinary rule should not prevail in the present case. There is no principle underlying Article* 20 *of the Constitution which makes a right to any course of procedure a vested right."*

III. A five Judges bench of Hon'ble Supreme Court in judgment titled as ***Memon Abdul Karim Haji Tayab, Central Cutlery Stores, Veraval vs. Deputy Custodian-General, New Delhi and others, 1964 AIR (SC) 1256*** has held as under:

> *"3. xxxxxxxxxxxxxxxxxxxxxxxx. It is well settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date."*

IV. A full bench of Patna High Court in a judgment titled as ***Ram Beyas Singh and others vs. The State of Bihar: 1977 CRLJ28*** has held as under:

> *"7. For the purposes of the present case, I shall assume that even an accused person has a vested right of appeal which accrues to him since the initiation of the criminal proceeding against him. But, even then, it is always open to the legislature to take away any such right by a subsequent enactment, if there is an express provision to that effect or when such an intention can be inferred by necessary intendment. In the case reported in AIR 1957 Supreme Court 540 itself it was pointed out by the Supreme Court that any such right of appeal can be taken away by the later enactment "if it so provides expressly or by necessary intendment". None*

of the decisions referred to above has laid down that on no account this right can be interfered with. From those very judgments it will appear that only after recording a finding that there was no provision taking away the right to continue the proceeding, either expressly or by necessary intendment, the provisions of section 6 of the General Clauses Act, 1897 were applied. Apart from that, the other aspect of the matter is that a person may have a vested right of appeal, but the said right is not co-extensive with the forum of the appeal. The subsequent enactment may provide an appeal even in respect of such pending actions, but the forum may be different.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx.

8. If Section 484 of the New Code had only one sub-section saying about the repeal of the Old Code, the pending proceedings, including an appeal from orders passed after conclusion of the trial, would have been governed by the provisions of the Old Code, in view of section 6 of the General Clauses Act. But there is a specific provision under sub-section (2) of Section 484 regarding pending trials, appeals, inquiries etc. It has a non obstante clause saying that, notwithstanding the repeal of the Old Code, any appeal, application, trial, inquiry or investigation pending on the day the New Code came into force shall be disposed of and continued in accordance with the provisions of the Old Code as if the New Code had not come into force. In view of clause (a) of sub-section (2), the provisions of the Old Code are to apply to pending proceedings at whatever stage they might be. There is nothing in that clause from which it can be inferred that the provisions of the Old Code are to apply even if appeals or revisions are filed after the disposal of those pending trials or appeals. As such, it can be safely said that the intention of Parliament was that only pending proceedings should be continued and disposed of in accordance with the Old Code, whereas appeals and revisions arising out of such proceedings or trials should be filed and disposed of in accordance with the new Code.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

V. A five Judges bench of Hon'ble Supreme Court in judgment titled as ***Garikapati Veeraya vs. N. Subbiah Choudhry and others: 1957 AIR (SC) 540*** has held as under:

"23. From the decisions cited above the following principle clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

VI. The Hon'ble Supreme Court in a judgment titled as ***P. Phillip vs. The Director of Enforcement, New Delhi and another: 1976 AIR 1185*** has held as under:

"7. It will be seen that the word "application" in the saving provision contained in clause (a) of sub-section (2) of Section 484 immediately follows the term "appeal". It therefore takes some colour from the collocation of words in which it occurs. It is synonymous with the term "petition" which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognised by law. Thus considered, there can be no doubt that the word "application" as used in clause (a) of Section 484 of the Code of 1973 will take in a revision application made under Section 435 of the old Code. Such a revision application does not cease to be an "application" within the purview of the aforesaid clause (a) merely

because in the event of the application being allowed, the Sessions Judge was required to make a reference to the High Court under Section 438. Whether such an application is granted or dismissed by the Sessions Judge, he finally disposes of the matter so far as his court is concerned. May be that a purely interlocutory application in a pending action, which by itself is not an independent mode of seeking redress recognised by law, is not covered by the word 'application' as used in the aforesaid clause (a).”

VII. A Full Bench of the Hon’ble Patna High Court in a judgment tiled as ***Laddu Lal Sahu and ors. Vs. Dharnidhar Sahu and anr.: 1984 CrLJ 1839*** has held as under:

“The passage of time has rendered somewhat academic the otherwise significant question formulated in the terms following by the referring Division Bench:

“Whether the word ‘application’ in clause (a) of sub-section (2) of Section 484 of the Cr.P.C. 1973 includes a petition of complaint?

xxx	*xxx*	*xxx*	*xxx*	*xxx*
xxx	*xxx*	*xxx*	*xxx*	*xxx*
xxx	*xxx*	*xxx*	*xxx*	*xxx*

18A. To finally conclude, the answer to the question referred to the Full Bench, as quoted at the outset, is rendered in the affirmative and is held that the word ‘application’ in clause (a) of sub-section (2) of Section 484 of the Cri.P.C. 1973 includes within its sweep a petition of complaint as well.”

VIII. ***Golden Rule of Interpretation/Literal Rule of Interpretation***

(i) A Five Judges Bench of Hon’ble Supreme Court in a judgment titled as ***Chief Justice of A.P. vs. L.V.A. Dikshitulu, 1979(2) SCC 34*** has held as under:-

“63. The primary principle of interpretation is that a constitutional or statutory provision should be construed according to the intent of they that made it”(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning

> *more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognized rules of construction, such as its legislative history, the basis scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation."*

(ii) In a judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Laxmi Narain Dhut, 2007(3) SCC 700,*** it has been held as under:

> *"29. "Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical."*

IX. ***Heydon's Rule of Interpretation/Mischief Rule of Interpretation***

(i) A Seven Judges Bench of Hon'ble Supreme Court in a judgment titled as ***Bengal Immunity Co. Ltd. Vs. State of Bihar and others, AIR 1995 SC 661,*** has held as under:-

> *"(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – 'Heydon's case, (1584) 3 Co Rep 7a (V) was decided that –*
>
> > *"…..for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:*
> >
> > *1st What was the common law before the making of the Act*
> >
> > *2nd What was the mischief and defect for which the common law did not provide,*
> >
> > *3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and*
> >
> > *4th The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress*

the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro private commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico' ".

In – Ín re, Mayfair Property Co.' (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported 'Heydon's case (V)', In – Éastman photographic Material Co. v. comptroller General of Patents, Designs and Trade marks', 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows :

"My Lord, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."

It appears to us that this rule is equally applicable to the construction of Art, 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

(ii) The Hon'ble Supreme Court in judgment titled as ***R.M.D. Chamarbaugwalla and another vs. Union of India and another, 1957 AIR (Supreme Court) 628***, held as under:

"6….. Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literally interpretation of the words used in disregard of all other materials. "The literally constructions then", says Maxwell on Interpretation of Statutes, 10tjh Edn., p.19, "has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy". The reference here is to Heydon's case. These are principles well settled, and were applied by this Court in ***Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603 at p.633.****To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the*

purposes thereof, the mischief which it intended to suppress and the other provisions of the statute……."

Analysis (re law)

8. The enforcement of the new legislated laws in July 2024 namely The Bharatiya Nagarik Suraksha Sanhita, 2023; The Bharatiya Nyaya Sanhita, 2023 and The Bharatiya Sakshya Adhiniyam, 2023 is a significant milestone in the administration of justice in India, a revivification of the dynamism that is foundational to laws and dispensation of justice. The new legislations draw upon the Indian Jurisprudence, which infuses a renewed confidence in the Justice system. The Indian laws have now been unburdened of the colonial and imperial remnants, which were causing a slow and sure attrition upon the confidence of the Indian Justice System and also impeding actualization of its full potential. Indubitably, generations of various stakeholders, especially those who are fully-versed with the prior laws and resulting habituation, will likely feel precarious, even anxious and, in some cases, even entirely ambivalent due to these vicissitudes. These are natural, expected and usual responses to changes which will have a cascading effect on everyone and everything. However, in keeping with the spirit of the times of renewal, the new legislated laws ought to be leveraged for all the potential positive changes and illuminating effects that these can bring forth. Instead of giving way to cognitive dissonance and tendency to fortify against changes; the spirit of the time is placing a demand on veritable engagement with these new legislations. When crimes are committed and brought to justice, these are not just crimes against an individual, but are transgressions against the entire Society, which is

represented through the State. The new Laws will go a long way to pave way for a robust prosecution, striking balance between the State (society at large), victim as well as the accused. It will give more teeth to deterrence, justice as also the process of justice.

8.1 BNSS, in terms of Section 1(3) thereof, has come into force w.e.f. 01.07.2024 vide notification dated 23.02.2024. The immediate consequence, that flows from this is, that not only BNSS becomes the applicable criminal procedural law but also that the earlier criminal procedural law namely Cr.P.C., 1973 immediately stands repealed. A bare perusal of Section 1(3) of BNSS read alongwith Section 531 of BNSS inevitably leads to this conclusion. In the considered opinion of this Court, this aspect of the matter is beyond any shadow of doubt. In other words, the earlier procedural statute namely Cr.P.C., 1973 is wiped off the statute book and resultantly pales into insignificance except to the extent it is preserved by the repealing and savings clause contained in Section 531 of BNSS. A critical analysis of Section 531 of BNSS shows that only the appeal/application/trial/inquiry/investigation *pending* up to 30.06.2024 shall not be affected by the repealing of Cr.P.C, 1973 & such proceedings would be adjudicated upon in terms of the provisions of Cr.P.C., 1973 itself. Any appeal/application/trial/inquiry/investigation instituted on or after 01.07.2024 has to be essentially adjudicated upon in terms of the provisions of BNSS. This aspect of the matter is fortified by bare perusal of Section 4 of BNSS which clearly stipulates that all offences under BNS shall be investigated into/ inquired into/tried and otherwise dealt with according to the provisions of BNSS. The provision as contained in Sub-Section (2) of

Section 4 of BNSS further clarifies that all offences under "*any other law*" shall also be investigated into/inquired into/tried and otherwise dealt with according to the "*same provisions*". The words "*same provisions*" essentially mean provisions of BNSS as referred to in sub-section 1 of Section 4 of BNSS. In other words, for offences committed under special penal statutes/laws, other than the BNS, the procedural law shall be BNSS w.e.f. 01.07.2024 subject to any specific enactment for the time being in force dealing with offences under special statutes. This, by no stretch of legal imagination, can be extended to mean that the words "any other law" would include "IPC" in its ambit.

8.2. The Criminal Procedural law was firstly codified by way of enactment of Code of Criminal Procedure, 1898. The same was amended, extensively, by enacting The Code of Criminal Procedure, 1973. Section 4 of BNSS is, in essence, similar to Section 4 of Cr.P.C., 1973. Further, Section 531 of BNSS is, in essence, similar to Section 484 of Cr.P.C., 1973. *Ergo,* it would be indubitably profitable to refer to the case-law relating to effect of procedural law changes brought forth by enactment of Cr.P.C., 1973 in place of Cr.P.C., 1898. A five Judges Bench of Hon'ble Supreme Court in the case of **Sukumar Pyne** (supra) has held that a person accused of the commission of an offence has no vested right in any particular course of procedure. Further, another five Judges Bench of the Hon'ble Supreme Court in case of **Memon Abdul Karim Haji Tayab** (supra) has clearly enunciated the well settled principle of law that amendments to a procedural law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even

though the actions may have begun earlier or the claim on which the action may be based is of an anterior date. Further, the provisions of Section 4 and Section 531 of BNSS; when construed in the light of dicta of the judgment of a full Bench of Hon'ble Patna High Court in case of **Ram Beyas Singh** (supra); leads to the inevitable conclusion that intention of legislature is that only pending proceedings should be continued and disposed of in accordance with Cr.P.C., 1973, whereas all the subsequent proceedings, to be initiated after the commencement of BNSS, ought to be governed and disposed of in accordance with the provisions of BNSS. Still further, a Five Judges Bench of Hon'ble Supreme Court in case of ***Garikapati Veeraya*** (supra) has even held that a right of appeal can also be taken away by a subsequent enactment, if it so provides expressly or by necessary intendment.

8.3. Article 20(1) of The Constitution of India stipulates that no person shall be convicted of any offence except for violation of the law in vogue at the time of alleged commission of the offence nor can such a person be imposed upon with a penalty greater than that which might have been inflicted under the law in force at time of commission of offence. It essentially follows from this sacrosanct provision that the prohibition under Article 20 pertains to only conviction/sentence under a law, which has been enacted later on, but not trial thereof. The Hon'ble Supreme Court in its five Judges Bench judgment in the case of ***Rao Shiv Bahadur Singh*** (supra) has clearly enunciated that a person accused of the commission of an offence has no right *nay* fundamental right to trial by a particular procedure or in a

particular fashion. In other words, Article 20(1) of The Constitution of India does not afford any protection to an accused *qua* the procedure.

8.4. There is no gainsaying that BNSS is essentially a criminal procedural law whereas BNS provides for substantive criminal law. It is trite law that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts, even where the alteration which the statute makes has been disadvantageous to one of the parties. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. This interpretation draws further credence from perusal of Section 358(2)(b) of BNS which expressly provides that repeal of IPC does not affect any right, privilege, obligation or liability which has been acquired, accrued or incurred under IPC & Section 358(2)(e) of BNS which expressly provides that any proceeding or remedy under IPC is not affected and the same shall be instituted, continued or enforced as if IPC had not been repealed. However, this provision does not have any bearing/effect upon Cr.P.C. in any manner except for the saving(s) provided for under Section 531(2) of BNSS.

8.5. This aspect of the matter is further fortified by applying the Golden Rule of Interpretation *nay* Literal Rule of Interpretation. A five Judges Bench of the Hon'ble Supreme Court in the case of ***LVA Dikshitulu*** (supra) has held that the cardinal principle of interpretation of statute is that provisions should be construed according to the intent, which is decipherable

from the language of the statute. Furthermore, the Hon'ble Supreme Court in the case of ***Laxmi Narain Dhut*** (supra) has enunciated that the Golden Rule of Interpretation requires giving the words of statute their grammatical and ordinary sense, to convey the legislative intent behind the statute.

8.6. The introduction to BNSS and, especially, the statement of Objects and Reasons stated by the legislature behind the BNSS *inter alia* states that "*In view of the above, it is proposed to repeal the Code of Criminal Procedure, 1973 and enact a new law. It provides for the use of technology and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time-lines have been prescribed for time bound investigation, trial and pronouncement of judgements. Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where punishment is 7 years or more, the victims shall be given an opportunity of being heard before withdrawal of the case by the Government. Summary trial has been made mandatory for petty and less serious cases. The accused persons may be examined through electronic means, like video conferencing. The magisterial system has also been streamlined."* Thus; the provisions of BNSS ought to be considered in light of Heydon's Rule of Interpretation (more commonly known as Mischief Rule of Interpretation); as elucidated upon by the Hon'ble Supreme Court in the cases of ***Bengal Immunity Co. Ltd.*** (supra) and ***RMD Chamarbaugwalla*** (supra) to take into account the mischief and defect(s) sought to be eradicated by enactment of BNSS which, in turn, can be well gauged from the statement of objects and reasons given for its enactment.

8.7. The statutory mandate contained in BNSS, insofar as Section 4 and Section 531 thereof are concerned, is explicit and unmistakably clear.

The need to refer and rely upon Section 6 of The General Clauses Act, 1897 would arise in a case where there is no contrary intendment in the repealing/saving provision contained in BNSS. The key expression to attract the applicability of Section 6 of The General Clauses Act, 1897 is "*unless a different attention appears*". It is, hence, to be seen whether there is anything in BNSS indicating the legislative intent so as to put the aforesaid Section 6 of The General Clauses Act, 1897 out of play. In the considered opinion of this Court, Section 531 of BNSS is unequivocal and unambiguous *nay* crystal clear. Accordingly, once the altered procedural law namely BNSS has been brought in vogue, it would apply to cases initiated under IPC as well from and after the date of its commencement i.e. 01.07.2024 as well as to future proceedings except the *pending* appeal, application etc. as specifically stated in Section 531(2)(a) of BNSS. This aspect is further bolstered by the non-obstante clause contained in Section 531(2) of BNSS by specifically averring therein the word *"notwithstanding*". Further, the legislature has protected the application of The General Clauses Act, 1897 in BNS [(by way of Section 358(4)] but has chosen not to accord similar protection in BNSS while enacting Section 531 thereof. The legislative intent is thus unambiguous and unequivocal.

8.8. The accused cannot be permitted to take refuge behind *Rule of Lenity* in view of the lucidness in the legislative intent contained in Section 531 of BNSS. This Rule, is a judicial doctrine, requiring that those ambiguities in a criminal statute relating to prohibition and penalties be resolved in favour of the accused if it is not contrary to legislative intent. The Rule of Lenity; also known as Rule of Strict Construction of a penal

statute; in other words, means wherein equivocal word or an ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to resolve, the benefit of doubt should be given to the accused. As ratiocinated hereinabove, there is no ambiguity in the legislative intent contained in Sections 4 and 531 of BNSS & hence there arises no scope for applying Rule of Lenity. Therefore, it can be safely inferred that the plea *qua* Rule of Lenity is *much ado about nothing* in the present matter which deals with the procedural law.

8.9. There is yet another facet of the matter which craves attention of this Court. Section 531(2)(a) of BNSS postulates that any appeal/application/trial/inquiry/investigation which is *pending* immediately before the date on which this Sanhita comes into force; the same shall be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Cr.P.C., 1973. However, there is no reference to "*revision*" in this provision. The Hon'ble Supreme Court; while dealing with the saving provision of Section 484 of Cr.P.C., 1973 (the corresponding provision of Section 531 of BNSS); in the case of ***P. Phillip*** (supra) has held that the word "*application*" as used in Section 484 of Cr.P.C., 1973 will include a "*revision"* as well. Further, relying upon the judgment in the case of ***P. Phillip*** (supra), a Full Bench of the Patna High Court in the case of ***Laddu Lal Sahu*** (supra) has held that the word "*application*" in Section 484 of Cr.P.C., 1973 includes within its sweep a "*petition of complaint"* as well. As ruminated hereinabove by this Court, the provisions of Section 4 of BNSS and Section 531 of BNSS & Section 4 of Cr.P.C., 1973 and Section 484 of Cr.P.C., 1973 are *akin* in nature. Hence; the ratio decidendi of these

judgments shall apply, in *toto,* to the provisions of BNSS as well. Judicial notice, can well be taken, of the fact that more often than not; "*application*" and "*petition*" are used interchangeably in plea(s) filed by rival parties. For instance, in our High Court, "*application"* for bail is invariably termed as "*petition"*. Hence, on the above-said analogy, Section 531 of BNSS would apply to "*petition"* as well. Therefore, it is inevitable conclusion that "*petition of complaint*" (ordinarily referred to as complaint before the Magistrate), "*revision"* and "*petition*" which are *pending* before the date on which BNSS came into force i.e. 01.07.2024 shall be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Cr.P.C., 1973. In other words, the provision of Section 531 of BNSS shall apply to "*revision", "petition"* as also "*petition of complaint*" (ordinarily referred to as complaint before the Magistrate) with the same vigour as it is statutorily mandated to apply to "*appeal/application/trial/inquiry or investigation*" in terms of Section 531 of BNSS.

9. As a sequel to the above-said rumination, the following principles emerge:

I. The Code of Criminal Procedure, 1973 stands repealed w.e.f. 01.07.2024. *Ergo;* no *new/fresh* appeal or application or revision or petition can be filed under Code of Criminal Procedure, 1973 on or after 01.07.2024.

II. The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation *pending* before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal

Procedure, 1973. In other words; any appeal/application/revision/petition filed on or after 01.07.2024, is required to be filed/instituted under the provisions of BNSS, 2023.

III. Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of Cr.P.C., 1973 is non-maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed upto 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed upto 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non-maintainable.

IV. Section 531 of BNSS shall apply to *"revision","petition"* as also "*petition of complaint"* (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply to "*appeal/application/trial/inquiry* or *investigation"* in terms of Section 531 of BNSS.

Analysis (re facts)

10. The petition in hand has been preferred on behalf of the accused under Section 482 of Cr.P.C. for quashing of FIR No.71 dated 04.11.2023 registered under Section 406/498-A of IPC 1860 at Police Station, Sector 17, Women Cell, Chandigarh; final report under Section 173 of Cr.P.C. and all proceedings emanating therefrom. The petition was initially filed on

03.07.2024 whereupon defect(s) were pointed out by the Registry of this Court and thereafter the petition was refiled on 04.07.2024. The petitioner is seeking for quashing of the FIR, report under Section 173 of Cr.P.C., 1973 as also all proceedings emanating therefrom in view of the provision of Section 482 of Cr.P.C., 1973. The Criminal Procedure Code of 1973 stands repealed w.e.f. 01.07.2024. Therefore, the inevitable conclusion is, that the petition in hand is non-maintainable & hence deserves rejection on this score.

Decision

11. The instant petition preferred by the petitioner under Section 482 of Cr.P.C., 1973 is dismissed as being not maintainable. It is, however, clarified that this Court has not adverted to the merits of the petition as the same is not maintainable. It goes without saying that the petitioner shall be at liberty to file an appropriate petition invoking the provisions of BNSS, as and if permissible in law.

(SUMEET GOEL)
JUDGE

July 11, 2024
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes