Court Diary

Plea of alibi

IT is necessary for an accused person to give an explanation to prove his innocence. Even if he gives a false explanation, it cannot be used by the prosecution to support the case against him. The entire case must be proved by the prosecution.

But a plea of alibi raised by an accused, is to be proved by him by cogent and satisfactory evidence so as to completely exclude the possibility of his presence at the place of occurrence at the relevant time.

Any belated and vague plea of alibi, of which there was no whisper during the cross-examination of any of the prosecution witnesses, and which has not been sought to be established by the accused by leading any evidence, is only an after thought and a plea of despair, according to a Bench of the Supreme Court. (JT 1994(1) SC 33).

Circumstantial evidence: In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn has not only to be fully established but also all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of guilt of the accused.

Those circumstances should not be capable of explaining any other hypothesis, except the hypothesis of guilt of the accused, and the chain of evidence must be so complete that it should leave no reasonable ground for the belief consistent with the innocence of the accused.

Legally established circumstances alone can form the basis of conviction. The more serious the crime, the greater should be the care taken to scrutinise the evidence, lest suspicion takes the place of proof.

First information report: The Bench held that vague and indefinite information given over the telephone, which made the investigating agency only to rush to the scene of occurrence, could not be treated as a first information report under Section 154 of the Criminal Procedure Code.

Hostile witnesses: Testimony of hostile witness need not be ignored totally and the court can scrutinise his testimony and accept that portion of the testimony which receives corroboration from other evidence on record. The testimony of a hostile witness is not liable to be rejected without even scrutinising it, although great caution is required to analyse the same before accepting any part of it as is otherwise found reliable and consistent with the prosecution case.

Property seizure

SECTION 102 of the Code of Criminal Procedure empowers a police officer to seize any property which is alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence.

Can a police officer, in exercising this power, direct a bank not to permit an accused person to operate his bank account or not to permit him to take away articles kept in a bank locker?

While Allahabad, Guwahati and Karnataka High Courts concur that a police officer has no power to direct a banks prohibiting operation of the accounts of an accused, Madras High Court differs with this. (1994 ISJ Banking 50)

They also seem to agree that a police officer has powers to seize any property coming within the purview of Section 102(1) of the Code and nothing prevents him from effecting seizure of any property related to an accused, if it is required, including a bank locker and the articles in it.

According to Guwahati High Court, the word seizure used in Section 102 means actual taking possession of a property in pursuance of a legal process. Therefore, prohibiting a bank in which the accused holds an account and a locker, not to pay to the accused any amount standing in his account and not to allow the accused to take away any property from the locker, is not seizure under Section 102. This is because the seizure as contemplated under Section 102, is an act of taking possession of the property, and so no such order can be passed by a police officer.

The Guwahati High Court, in a particular case, quashed the direction issued by a CBI officer to a bank not to allow an accused to operate his account and lockers. But the court allowed the police officer to take possession of the properties kept in the locker, in accordance with law within two weeks, in case he found any incriminating articles in it. The bank was directed not to allow the accused to take away any article from the lockers within the said period of two weeks

According to Karnataka High Court, which agreed with Guwahati High Court, seizure and prohibitory orders are not one and the same. While the former is covered by Section 102(1) of the Code, the latter is not.

A combined reading of Section 102(1) and (3) of the Code shows that a police officer has no power to direct banks to prohibit operation of accounts. Any action affecting the rights of citizens cannot be sustained, unless they are authorised by law.

Pension disbursal

PENSION and gratuity are no longer any bounty to be disbursed by the government to its employees on their retirement, but are "valuable rights and property" in their hands.

Therefore, any culpable delay in the settlement and disbursement of pension and gratuity must be visited with the penalty of payment of interest at the current market rates.

According to Justice P.A.Mohammed of Kerala High Court, the claim for penal interest in such cases is ancillary or incidental to the enforcement of the "valuable right and property" in the hands of retired government servants. It cannot therefore be said that such claim cannot be enforced in court proceedings.(OP 4495/89).

According to the judge, the liability to pay penal interest on the dues at the current market rates should commence at the expiry of two months from the date of retirement.

Though the court held that interest was payable at current market rates, in the instant case it awarded 18 per cent interest, as there was no counter affidavit on the part of the government controverting the petitioner's claim in this regard.

After paying interest, the government should take immediate steps for the recovery of the interest paid, from the officers who are responsible for causing the delay in the disbursement of the pension and gratuity.

The judge justified this on the ground that it was the duty of the person or authority concerned to aid the process of settling pension and gratuity admittedly payable to a retired government servant without causing any delay. The duty is so onerous when the person authorised to deal with pension claims is himself a Government servant.

– Scaria Meledam