

# PROSECUTION REPLENISH

(An Endeavour for learning and excellence)

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**The four important looks in your life -  
Look back and get experience,  
Look forward and see hope,  
Look around and find reality,  
Look within and find confidence.**

PROSECUTION REPLENISH WISHES ALL PROSECUTORS  
A MERRY CHRISTMAS  
AND  
A VERY HAPPY AND PROSPEROUS NEW YEAR, 2013.

## LANDMARK JUDGMENT

### TAHSILDAR SINGH Vs. STATE OF U.P. AIR 1959 SC 1012

**S. 145 of Indian Evidence Act** – S.145 of I.E.A. is in two parts: the first part enables the opponent to cross-examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction; in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction and the second with cross-examination by way of contradiction only.

To contradict with the statement taken under Section 162 Cr.P.C. the attention of the witnesses can be drawn to that part of the statement made before the police officer which contradicts his statement in the witness box. If he admits his previous statement no further proof is necessary, if he does not admit, the practice generally followed is to admit it subject to proof by the Investigating Officer.

**S.162 of Criminal Procedure Code R/w S.145 of Indian Evidence Act** - The proviso to S.162 of Cr.P.C. only enables the accused to make use of such statement to contradict a witness in the manner provided by the second part of S.145 of I.E.A. It would be doing violence to the language of the proviso if the said statement is allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of S.145 of I.E.A. Under proviso of S.162 of Cr.P.C. a witness cannot be cross-examined at large about his statement before the Police Officer. The Second part of S.145 of I.E.A clearly indicates the simple procedure to be followed. To illustrate suppose **A** says in the witness-box that **B** stabbed **C**; before the Police he had stated that **D** stabbed **C**; the cross-examiner has only to put the witness the question 'Did you state before the Police that **D** stabbed **C**'. If the witness admits that he did make such statement before Police his statement to the effect " I stated before Police that **D** stabbed **C**" will go down on record and the cross-examiner has to do nothing about it. But if the witness does not admit to have made the

statement before the Police the portion of the statement shall be underlined and shall be proved by the Sub-Inspector when he comes in the witness-box. The contradiction, under the section should be between what a witness asserted in witness-box and what he stated before the Police Officer and not between what he said he had stated before Police Officer and what actually he made before him.

**Omissions** – Looking at the express words used in S.162, two sets of words stand out prominently which afford the key to the intention of the legislature. They are “statement in writing”, and “to contradict”. ‘Statement’ in its dictionary meaning is the act of stating or reciting. ‘Prima facie’ a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. (i) Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated . To illustrate: in the recorded statement before the police ‘A’ states that he saw ‘B’ stabbing ‘C’ to death, but in the witness-box he says that he saw B and D stabbing C to death; the court can imply the word " only " after B in the statement before the Police. (ii) a negative aspect of a positive recital in a statement; illustration: in the recorded statement before the police the witness says that a dark man stabbed B, but in the witness-box he says that a fair man stabbed B; the earlier statement must be deemed to contain the recital not only that the culprit was a dark complexioned man but also that he was not of fair complexion; and (iii) when the statement before the police and that before the Court cannot stand together; illustration: the witness says in the recorded statement before the police that A after stabbing B ran away by a northern lane, but in the Court he says that immediately after stabbing he ran away towards the southern lane; as he could not have run away immediately after the stabbing, i.e., at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false.

The aforesaid examples are not intended to be exhaustive but only illustrative.

The doctrine of recital by necessary implication, the concept of the negative or the positive aspect of the same recital and the principle of the inherent repugnancy may in one sense rest on omissions, by contradictions, the said omission must be deemed to be part of the statement in writing . Such omissions are not really omissions strictly so called and the statement must be deemed to contain them by implication. The statement, therefore, not only includes what is expressly stated therein but also what is necessarily implied there from.

Omissions unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness-box; and the view that they must be in regard to important features of the incident which are expected to be included in the statement made before the police is not tenable.

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**Sri P.Ravinder Reddy, Addl.PP Gr-I, AMSJ court, R.R.District**

## Decisions reported in SCC (Cri)

Omissions in FIR – Effect – Every omission cannot be considered a contradiction in law – discrepancies or omissions have to be material ones and then alone they may amount to contradiction. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect core of prosecution case should not be taken to be ground to reject prosecution evidence in entirety.

Delay in examination of witnesses U/s.161 Cr.P.C. – Effect – if explanation offered for delayed examination of a particular witness is plausible and acceptable accused cannot take any benefit thereof.

Identification for first time in court – failure to hold test identification parade does not by itself render evidence of identification in court inadmissible or unacceptable.

Defective or illegal investigation – discrepancies in investigation – every discrepancy in investigation does not weigh with court to an extent that it necessarily results in acquittal of accused. **Shyamal Ghosh Vs. State of West Bengal 2012 (3) Supreme Court Cases (Cri) 685**

Minor discrepancies to be ignored – Duty of court is to appreciate evidence with vision of prudence and acceptability of deposition regard being had to substratum of prosecution. Giving undue importance to discrepancies would amount to adopting hypertechnical approach.

Non examination of injuries on accused, not always fatal to prosecution case. **Thoti Manohar Vs. State of A.P. 2012 (3) Supreme Court Cases (Cri) 721**

Fair and speedy trial – object – to do justice not only to accused but also to society represented by prosecution by giving it a chance to prove its case – aim is to ensure not that no innocent person is punished but also that guilty persons do not escape.

Defective or illegal investigation – Intentional acts of default/omission and commission by Investigating Officer and Medical Officer of government hospital – Disciplinary proceedings to be initiated on directions of trial court in such cases, even after retirement of officials concerned. **Dayal Singh & ors Vs. State of Uttaranchal 2012 (3) Supreme Court Cases (Cri) 838**

The Limitation Act, 1963 does not apply to criminal proceedings unless there is express and specific provision to that effect. It is also a settled law that criminal offence is considered as a wrong against the State and society even though it is committed against an individual.

There is no bar in law on examining family members or any person as witness. If the statement of witnesses who are relatives or known to the parties is credible and trustworthy cannot be discarded by the court **Shyam Babu Vs. State of U.P. 2012 (3) Supreme Court Cases (Cri) 937**

If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth – Penal provisions might be invoked to redress malpractice. **State through P.S Lodhi Colony, New Delhi Vs. Sanjeev Nanda 2012 (3) SCC (Cri) 899**

## Decisions reported in Crl.L.J.

Absence of signature of accused on recovery memo does not vitiate recovery- Prohibition U/s.162 of Cr.P.C on signing statement made to police does not apply to disclosure statement.

Failure of accused to explain inculcating circumstances appearing against him Or giving of false answer in examination U/s.313 of Cr.P.C. provides missing link in chain of circumstances. **Dr.Sunil Cliffor Daniel Vs. State of Punjab 2012 Crl.L.J. 4657**

Complainant not offering himself to cross examination – Effect - Prosecution case based on complaint supported not only by complainant but also by many witnesses – In such circumstances prosecution case cannot be thrown over-board only because complainant could not be cross-examined.

Evidence of witnesses that they were able to see specific part played by different accused cannot be disbelieved only because they were watching incident from distance **Subash Krishnan Vs. State of Goa 2012 Crl.L.J 4369**

Doctrine of Res Ipsa Loquitur is applicable even to criminal cases - Once accident is proved court by taking assistance of attending circumstances apply doctrine of res ipsa loquitur to establish negligence **Ravi kapur Vs. State of Rajasthan 2012 Crl.L.J.4403**

Discrepancies or improvements, which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. **Kuria & anr Vs. State of Rajasthan 2012 Crl.L.J.4707**

5 days prior to her death, the deceased narrated torture meted to her on account of dowry demand – It very clearly satisfies the expression “soon before her death” **Mustafa Shahadal Shaikh Vs. State of Maharastra 2012 Crl.L.J.4763**

Freedom of speech – Live coverage of terrorist attack on electronic media – cannot be justified on plea of freedom of speech.

Right of accused to be represented by lawyer – and right against self-incrimination – failure to read out these rights to accused or failure to provide legal aid to accused before recording confession (Pre –Trial stage)- does not vitiate trial.

Transcripts of conversation between terrorists and collaborators abroad, sufficient to prove conspiracy – plea that transcripts relate to time when accused was in custody and hence cannot be used against accused is not tenable. **Mohd.Ajmal Mohd Kasab Abu Mujhid Vs. State of Maharastra 2012 Crl.L.J. 4770**

### Citations reported in ALT (Crl)

**Presumption of dowry death** – Husband or relative of husband would be presumed to have committed the offence of dowry death unless presumption is rebutted

Evidence has to be appreciated in its entirety. **Rajesh Bhatnagar & anr Vs. State of Uttarakhand 2012 (3) ALT (Crl) 302 (SC).**

FIR is a vital and valuable piece of evidence though may not be a substantive piece of evidence.

Discretion – Court not to exercise discretion in derogation of established principles of law.

Anticipatory bail or regular bail cannot be granted as a matter of rule – Anticipatory bail is extraordinary privilege and shall be granted only in exceptional cases – Judicial discretion has to be properly exercised for grant of anticipatory bail. **Jai Prakash Singh Vs. State of Bihar & anr 2012 (3) ALT (Crl) 320 (SC).**

Prevention of Corruption Act – demand of illegal gratification is sine qua non for constituting offence under the Act.

It is not necessary that evidence of reliable witness is necessary to be corroborated by another witness. **Mukut Bhari Vs. State of Rajasthan 2012 (3) ALT (Crl.) 327 (SC).**

**Bail** - Granting bail is discretionary order, discretion is to be exercised judicially and should not be arbitrary and capricious.

Accused not entitled to bail automatically simply because cognizance was not taken for want of sanction by competent authority.

Accused not entitled to bail automatically simply because the investigating agency has not filed any sanction orders.

Any order without any reasons can be said to be a perverse order **State Vs. B.P.Acharya 2012 (3) ALT (Crl) 201 (A.P)**

Finger prints of Accused – Permission of Magistrate not necessary for obtaining the finger prints of the accused **Narne Gopikrishna & ors Vs. State of A.P. rep. by Public Prosecutor, High Court, Hyderabad 2012 (3) ALT (Crl.) 210 (A.P)**

When there is total denial of relationship by the party in matrimonial matters, the only alternative is to prove the said relationship through scientific examination. **Madharapu Prashu Ram Vs. Shaik Jhanibee and ors 2012 (3) ALT (Crl.) 227 (A.P.)**

### Citations reported in ALD Crl.

The benefit of doubt nurtured must not be fanciful or lingering suspicion or imaginary trivial or merely possible doubt, but a fair doubt based on reason and common sense. The paramount importance of the court is to ensure that miscarriage of justice is avoided.

Exaggeration in evidence of witness does not make it completely unreliable. **2012(2) ALD (Cri) 819 (SC) Ramesh Harijan Vs State of U.P.**

Sec 41A Cr.P.C.- Notice of Appearance before police-Arrest of the accused on his appearance is legal.

Different charge sheets for distinct offences can be filed. **2012(2) ALD (Cri) 762 (SC) Jagati Publications Limited Vs CBI.**

Non mention of role of co-accused by informant not fatal. FIR is only a report submitted to inform police about commission of crime. No requirement that it should contain a detailed and vivid description of entire incident. **Mahesh & anr Vs. State of Madhya Pradesh 2012 (2) ALD (Cri) 738 (SC)**

Initiation of criminal proceedings during pendency of civil suit filed in respect of same subject matter is no bar. **Rakesh Gupta & anr Vs. State of A.P & anr 2012 (2) ALD (Cri) 689 (AP)**

Purpose of examination of accused U/s 313 of Cr.P.C. is to put by support to accused material evidence appearing in case against him as well as to provide him an opportunity to explain his version of the case. It is permissible that an accused may remain silent, in such case the court may be justified in drawing an adverse inference against accused **Nagesh Vs. State of Karnataka 2012 (2) ALD (Cri) 828 (SC)**

Where an alternative remedy is available, it would not be just and proper to interfere with case U/s.482 Cr.P.C. **Krishna Reddy & ors Vs. State of A.P. 2012 (2) ALD (Cri) 698 (AP)**

Non recognition of weapon of offence by eyewitnesses to occurrence – Of no consequence, when cumulative reading of entire evidence makes prosecution story believable.

Oral/ocular evidence cannot be ruled out merely on ground of some inconsistencies or contradictions. More so when medical evidence is in consonance with principal part of oral/ocular evidence thereby supporting prosecution story **Kathi Bharat Vajsur & Anr Vs. State of Gujarat 2012 (2) ALD (Cri) 748 (SC)**

Delay per se cannot be fatal to validity of holding identification parade, in all cases, without exception.

Publication of photos of accused in newspaper before parade would not impair veracity of parade, when such publication was made months prior to identification parade and as such would have lost their effect on minds of witnesses who were called upon to identify accused from amongst a number of persons who had joined identification parade.

Mere failure of investigating officer to state in his chief examination about taking of finger prints of accused, no ground for rejection of finger print evidence.

Denial of established facts by accused can be used as incriminating evidence against him. Incorrect or false answers if given during examination of accused U/s 313 Cr.P.C. , Court can draw an adverse inference against accused.

Extra Judicial Confession \_ Injured accused – History given by, to doctor and recorded by her in usual course of her business – Not extra judicial confession but would form a valid admissible piece of evidence for consideration of court **Munna Kumar Upadhyaya Vs. State of A.P. 2012 (2) ALD (Cri) 838 (SC)**

### The A.P.Chit funds Act, 1971

Sec 56 is the penalties provision

All offences are triable by JFCM courts.

Sec	Offence	Punishment
3. Registration of bye-laws	Non-registration of Bye-laws	shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.
4. Prohibition of invitation for subscription to chit of which bye-laws have not been registered	No person shall issue or publish any notice, circular, prospectus or other document containing the terms and conditions of any chit or inviting the public to subscribe for tickets in any chit which has been registered.	
7. Commencement of chit business	Non obtaining a certificate of commencement from the Registrar.	
6.Filing of chit agreement:-	Every chit agreement with its duplicate shall be filed with the Registrar.	shall be punishable with fine which may extend to one hundred rupees.
11.Copy of minutes to be filed with the Registrar: -	Every foreman shall, within the fifteenth day of the month succeeding the month in which one or more installments of the same chit or one or more installments of any other chit are drawn, file with Registrar a copy of the foreman certified Minutes .	
20. Removal of defaulting subscribers	A written notice of such removal shall be given by the foreman to the defaulting subscriber within fourteen days of such removal. (2) A true copy of the entry referred to in sub-section (1) shall be filed by the foreman with the Registrar within fourteen days from the date of such removal.	
21. Substitution of subscribers	(2) A true copy of every such substitution shall be filed by the foreman with the Registrar within fourteen days from the date of substitution.	
29. Entry of transferee's name in the books	Every transfer made under Section 26 or Section 27 shall be entered by the foreman in the books of the chit forthwith and true copy of such entry shall be filed by the foreman with the Registrar within fourteen days from the date of such entry.	
32. Copy of assent or consent to be filed	shall be filed by the foreman or by the surviving partner, as the case may be,	

with the Registrar	with the Registrar within fourteen days from the date of such assent or consent.	
8. Copies of bye-laws and chit agreement to be given to subscribers	<p>(1) The foreman shall, as soon as may be after he has obtained the certificate of commencement referred to in Section 7, but not later than the date of the first drawing of the chit, furnish to every subscriber a copy of the bye-laws of the chit, and of the chit agreement certified by him to be a true copy.</p> <p>(2) The foreman shall, within the fifteenth day of the month succeeding the month in which the first installment of the chit is drawn, file with the Registrar a certificate to the effect ; that he has complied with the provisions of sub-section (1).</p>	
12. Security to be given by the foreman	<p>(1) For the proper conduct of the chit, every foreman shall,</p> <p>(a) execute an indenture of mortgage and trust in favour of the Registrar as trustee charging by way of security property sufficient to the satisfaction of the Registrar for the realisation of the chit amount; or</p> <p>(b) (i) deposit in any approved bank an amount not less than half of the chit amount ; or</p> <p>(ii) invest in Government securities of the face value or market value, whichever is less, of not less than half the chit amount, and transfer the amount so deposited or the Government securities in favour of the Registrar to be held in by him trust as security ;</p> <p>Provided that, where movable property is charged by way of security, only such kind of movable property as may be prescribed shall be so charged and such movable property shall be deposited in such manner and with such person or officer as may be prescribed.</p> <p>(2) Where a foreman conducts more than one chit, he shall furnish security in accordance with the provision of sub-section (1) in respect of each such chit.</p>	

	<p>(6) Notwithstanding anything to the contrary contained in any other law, the security furnished under this section shall not be alienated in any manner by the foreman during the currency of the chit and any such alienation by way of transfer, charge, mortgage, or other encumbrance shall be null and void.</p>	
<p>14. Duties of the foreman</p>	<p>(1) The foreman shall, on the prized subscriber furnishing sufficient security for the due payment of future subscriptions be bound to pay him the prize amount ;          Provided that the prized subscriber shall be entitled to demand immediate payment of the prize amount after deducting all future subscriptions without any security whatsoever and in such case the foreman shall, before the date of the next succeeding installment, deposit in an approved bank mentioned in the chit agreement; the amount of future subscriptions deducted as aforesaid and he shall not withdraw the amount so deposited except for payment of future subscriptions.</p> <p>(2) If owing to the default of the prized subscriber the prize amount due in respect of any drawing remains unpaid before the date of the next succeeding drawing the foreman shall deposit the same forthwith in an approved bank mentioned in the chit agreement and intimate in writing the fact of such deposit to the prized subscriber.</p> <p>(3) Every payment of the prize amount, the deposit of the amount of the future subscriptions under sub-section (1) and the deposit of the prize amount under sub-section (2) shall be intimated to the subscribers at the next succeeding drawing and particulars of such payment or deposit entered in the minutes of the proceedings of that drawing.</p> <p>(4) The foreman shall not appropriate for himself any amount in excess of what he is entitled to under clause (b) of section</p>	

	<p>13 ;          Provided that where the foreman is himself a prized subscriber, he shall be entitled to appropriate for himself the prize amount;          Provided further that the foreman may appropriate for himself the interest accruing on the amount deposited under the provision to sub-section {1}.</p>	
15. Registers and books of account	The foreman shall keep such registers and books of account, and in such form, as may be prescribed.	
16. Balance sheet	<p>(1) Every foreman shall prepare and file with the Registrar in such manner and within such time as may be prescribed a balance sheet relating to the period of account audited either by qualified auditors under the Companies Act, 1956, or by a chit auditor appointed under sub-section (2) of section 51.</p> <p>(2) The balance sheet referred to in sub-section (1) shall,</p> <p>(a) contain a summary of the assets and liabilities of the chit, and</p> <p>(b) give such particulars as will disclose the nature of the assets and liabilities and how the value of the assets has been arrived at.</p>	
18. Withdrawal of a foreman	No foreman or where there are more than one person as foreman in a chit none of them, shall withdraw from the chit until termination of the chit unless such withdrawal is assented to by all the non-prized subscribers and unpaid prized subscribers and a copy of such as sent has been filed as required by Section 32. Such withdrawal shall not, how ever, affect the security given under Section 12.	
20. Removal of defaulting subscribers	A non-prized subscriber who defaults in paying his subscription in accordance with the terms of the chit agreement shall be liable to have his name removed from the list of subscribers. Every such removal shall, with the date thereof, be entered in the relevant book maintained by the foreman. A written notice of such removal shall be given by the foreman to	

	<p>the defaulting subscriber within fourteen days of such removal.</p> <p>(2) A true copy of the entry referred to in sub-section (1) shall be filed by the foreman with the Registrar within fourteen days from the date of such removal.</p> <p>(3) Any defaulting subscriber aggrieved by the removal of his name from the list of subscribers may within seven days of the communication to him of the notice of removal, appeal to the Registrar.</p> <p>(4) The Registrar may, after giving the parties an opportunity of making a representation pass such order on the appeal as he thinks fit and the decision of the Registrar shall be final.</p>
<p>21. Substitution of subscribers</p>	<p>(1) The foreman may substitute in the list of subscribers any person in the place of a defaulting subscriber whose name has been removed from such list under sub-section (1) of Section 20:</p> <p>Provided that no such substitution shall be made until the expiry of the period allowed for appeal under sub-section (3) of Section 20, or where any such appeal has been preferred until the same has been disposed of.</p> <p>(2) Every substitution referred to in sub-section (1) shall, with the date thereof, be entered in the relevant book maintained by the foreman. A true copy of every such entry shall be filed by the foreman with the Registrar within fourteen days from the date of substitution.</p> <p>(3) All arrears of subscriptions realised from the substituted subscribers, less any amount advanced by the foreman, shall before the date of the next succeeding installment, be deposited by the foreman in an approved bank mentioned in the chit agreement. The foreman shall not withdraw the amount so deposited except for payment to the defaulting subscriber.</p> <p>Explanation :- For the purpose of</p>

	sub-section (3), "arrears" of subscriptions shall mean all the previous installments realised from the substituted subscriber.
23. Prized subscriber to give security	Before receiving the prize amount without deducting all future subscriptions, every prized subscriber shall furnish and the foreman shall take sufficient security for the due payment of future subscriptions and if the foreman is the prized subscriber, he shall give security for the due payment of future subscriptions to the satisfaction of the Registrar.
25. Foreman to demand future subscriptions by written note	(4) All consolidated payments of future subscriptions realized by a foreman shall be deposited by him in an approved bank before the date of the next succeeding installment. The amount so deposited may be withdrawn only for payment of future subscriptions. When any property is acquired in lieu of the consolidated payment it shall remain as security for the due payment of future subscriptions.
29. Entry of transferee's name in the books	Every transfer made under Section 26 or Section 27 shall be entered by the foreman in the books of the chit forthwith and true copy of such entry shall be filed by the foreman with the Registrar within fourteen days from the date of such entry.
35. Foreman to allow subscriber to examine chit records	Every foreman shall, on payment of such fee not exceeding five rupees as may be specified in the chit agreement allow non-prized and unpaid prized subscribers all reasonable facilities on all days of drawing of chit or on such days and within such hours as may be provided for in the chit agreement for the inspection of security bonds and documents, receipts and other records taken from the prized subscribers or furnished by the foreman himself in his capacity as a subscriber and all chit records including books of accounts and pass books, the balance sheets and profit and loss accounts and such other records

	as may show the actual financial position of the chit schemes.
36. Preservation of chit records by foreman	All the records pertaining to a chit shall be preserved in tact by the foreman and kept for a period of six years from the date of the termination of the chit.
37. Inspection of chit books and records	<p>(1) The Registrar, or any officer authorised by the Director of Chits in this behalf may inspect the chit books and ail records after giving ordinarily seven days notice in writing to the foreman.</p> <p>Every foreman, shall be bound to produce the chit books and records before the Registrar or the officer authorised under sub-section (1) at the time and place mentioned in the notice and shall furnish such information to him as he may require;</p> <p>Provided that such inspection may be made at the premises of the foreman if he pays in advance such fees as may be prescribed for the inspection:</p> <p>Provided further that if the foreman is a banking company as defined in the Banking Regulation Act, 1949, such inspection be made only at the premises of the company and only on a working day and the foreman shall pay such fees as may be prescribed for the inspection.</p>
51. Appointment of director of chits, Inspecting officer, Registrars and chit Auditors	<p>(4) If the Registrar is of the opinion that the accounts of any chit are not properly maintained and that such account should be audited; it shall be lawful for him to have such accounts audited by a Chit Auditor. It shall be the duty of the foreman of the chit concerned to produce before the Chit Auditor , all accounts , with books and other records relating the chit, to furnish him such information as may be required and to afford him all such assistance and facilities as may be necessary or reasonable and may be required in regard to the audit of the accounts of the chit .</p>
	who fails to comply with the requirements of the chit agreement

	regarding the date, time and place at which the chit is to be drawn	
	Whoever in any document required by, or for purposes of, any of the provisions of this Act, wilfully makes a statement false, in any material particulars knowing it to be false,	shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

### NEWS

- The Hon'ble High Court of Judicature of A.P. has issued proceedings bearing ROC. No. 1631/SO-2/2012 dated 09/10/2012, instructing all Judicial Officers to comply with the directions mentioned at Para 484 in the judgment delivered in Ajmal Kasab Case.
- Prosecution Replenish wishes the following prosecutors a happy and healthy retirement
  - Sri Reva Reddy, J.D. , DOP Office, Hyderabad.
- The A.P.Public Prosecutors(Cadre) Association is bringing out a diary for the year 2013.
- The following prosecutors of 2011 batch are appointed as ADJ(Entry) Level
  - Smt Renuka
  - Sri Tirumal Rao

Prosecution Replenish Congratulates them and wishes them of success to reach new peaks in their career.

- The following prosecutors qualified in the JCJ main examination.
  - Sri A.Ram Reddy
  - Smt Sowjanya
  - Sri Krishna Reddy
  - Sri Daniel Kumar
  - Sri Chapala Srinivas
  - Sri Bhagwan Reddy

As per the information received till 5/12/2012. Patrons may please inform the other prosecutors who have qualified in the said examination.

Prosecution Replenish wishes all the prosecutors attending the interview of JCJ, ALL THE BEST and May God Bless them ALL.

### EXPERT'S SPEAK

(This column is for getting the queries clarified through the rich expertise of our seniors)

**What is the difference between 'Quashing of Offence' and 'Compounding of Offence' ?**

Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and interchangeable. The two powers are distinct and different although ultimate consequence may be same viz. acquittal of the accused or dismissal of indictment. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power, to secure the ends of justice or to prevent abuse of the process of any court. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. But the criminal cases having overwhelming and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings, if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression. *Gian Singh v. State of Punjab* , 2012 (9) SCALE 257 (SC) [R.M. Lodha, Anil R. Dave and Sudhansu Jyoti Mukhopadhaya, JJ.]

### **ON A LIGHTER VEIN**

A small town prosecuting attorney called his first witness to the stand in a trial, a grandmotherly, elderly woman. He approached her and asked, "Mrs. Jones, do you know me?"

She responded, "Why, yes, I do know you Mr. Williams. I've known you since you were a young boy. And frankly, you've been a big disappointment to me. You lie, you cheat on your wife, you manipulate people and talk about them behind their backs. You think you're a rising big shot when you haven't the brains to realize you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do he pointed across the room and asked, "Mrs. Williams, do you know the defense attorney?"

She again replied, "Why, yes I do. I've known Mr. Bradley since he was a youngster, too. I used to baby-sit him for his parents. And he, too, has been a real disappointment to me. He's lazy, bigoted, he has a drinking problem. The man can't build a normal relationship with anyone and his law practice is one of the shoddiest in the entire state. Yes, I know him."

At this point, the Judge rapped the courtroom to silence and called both counselors to the bench. In a very quiet voice, he said with menace, "If either of you asks her if she knows me, you'll be jailed for contempt!"

## SHARPEN YOUR TOOLS

Last edition's answer:

Q: Can the passport be impounded of an accused in a criminal case?

A: As per the passport's act and the Suresh Nanda case, neither the police nor the court has any power to impound the passport of an accused. It is the concerned passport authority alone, who can impound the passport under sec 10 of the Passport's act. However, to bring it to the notice of the passport authority about the pendency of the case against the accused, an application can be moved for direction to the passport authority to act as per Sec 10(3)(e) & 10(3)(h) of the passport's act, as the case may be. Alternately the police can also brief the passport authority about the case and to act under Sec 10(3)(e) & 10(3)(h) of the passport's act, as the case may be.

The Hon'ble High Court of A.P. has also issued circular vide R.O.C. no. 5550/OPCELL-E/2012 dated 14-08-2012, directing all courts to direct the NRI accused to deposit their passport into the court, as a condition precedent to their bail order and to intimate the immigration authorities to facilitate issuance of Red Corner Notice.

This month's question:

**Can an I.O. investigating a case u/Sec 498-A IPC, seize any property pertaining to the offence?**

**(The best answers would be acknowledged here)**

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