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NEWSLETTER

ANA/NL/OCTOBER/2018

SEC 377 AND 497 STRUCK DOWN BY THE APEX COURT

The Supreme Court of India in the month of September struck down two vital provisions of the Indian Penal Code, 1807. The first of those was the sec 377 which dealt with unnatural offences, sec 497 dealt with adultery.

Sec 377 provided penalty for unnatural sex or for indulging in sexual activities 'against the order of nature'. After the decision of the Supreme Court, the current legal position is that consensual sexual acts between adults is not a criminal offence anymore. However, bestiality continues to be an offence under the Indian Penal Code.

Sec 497 read as follows: "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery".

The provision therefore could be used only against males committing adultery by the husband of the woman on whom the act of adultery was committed. The Apex Court considered the fact that this provision nowhere speaks about the consent of the woman. It was noted that the underlying notion upon which this provision rests, i.e. woman is a property of her husband is extremely harmful. The provision, after much deliberation was struck down by a 5-judge bench of the Supreme Court.

POSSESSION OF COUNTERFEIT NOTES - NOT AN OFFENCE IN ITSELF

Petitioner: Sanskritit Jayantilal Salia	Court: The Bombay High Court
	Date of Judgement: 01 st October 2018
Respondent: State of Maharashtra & Ors.	Case No.: Criminal Writ Petition No.3027 of 2018

In this matter, a criminal complaint was lodged against the petitioner when she to exchange notes after demonetization and some notes (worth Rs. 4,000/-) were found to be counterfeit. The Hon'ble Bombay High Court however quashed the criminal proceedings against her and stated that the petitioner could not be tried for an offence u/s 498(b) of the Indian Penal Code, 1860 in the absence of any substantial evidence to suggest that the Petitioner had knowledge about the notes being counterfeit.

The Hon'ble High Court Bench comprising of Justice Ranjit More and Justice Bharati H Dangre, in this regard, remarked that when mens rea is conspicuously absent, the mere use of forged or counterfeit currency notes or bank notes cannot attract the provisions u/s 489 (B) of the Indian Penal Code, 1860. The Hon'ble High Court further remarked that the perusal of the said provision of law suggests that mens rea is an essential ingredient for any person to be guilty u/s 489 (B). The usage of the phrase, "knowing or having reason to believe the same to be forged or counterfeit" is the sine qua non for inviting penalty under the said provision.

AWARD DEBTOR CANNOT BE SUBJECTED TO A PENAL RATE OF INTEREST

Appellant: Vedanta Ltd.	Court: Supreme Court
	Date of Judgement: 11 th October 2018
Respondent: Shenzen Shandong Nuclear Power Constructions Co. Ltd.	Case No.: Civil Appeal No.10394 of 2018

In this matter, the Arbitrator awarded an interest rate of 9% on the amount payable till 120 days of the award (since the Award Debtor is entitled to challenge the award within a maximum period 120 days as provided u/s 34(3) of the Arbitration and Conciliation Act, 1996). Thereafter if the sum was not paid within 120 days, the rate of interest would rise up to 15%. In this regard, it was observed by the Supreme Court that is the award debtor is made liable to pay a higher rate of interest after 120 days, it would foreclose or seriously affect his statutory right to challenge the arbitral award.

In the said appeal, the Supreme Court held that though rate of interest, that may be awarded by an Arbitrator, must be compensatory since it is a form of reparation awarded to the award holder, nevertheless, such rate of interest must not be punitive, unconscionable and usurious in nature.

The Supreme Court in this regard went on to say that though Arbitrators have discretion as far as awarding of interest, the same discretion must be reasonably exercised. The Supreme Court laid down a few points for Arbitrators to consider while awarding interest. They are as mentioned hereunder:

- 'Loss of use' of the principal sum;
 - Types of sums to which the interest must apply;
 - Time-period for awarding interest;
 - Internationally prevailing rates of interest;
 - Judge whether simple or compound interest is to be applied;
 - Whether rate of interest is commercially prudent;
 - Rate of inflation; and
 - Proportionality of the count awarded as interest to the principal sum awarded;
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3 DIRECTORS OF AMRAPALI GRPOUP BEHIND BARS FOR DISOBEYING COURT ORDERS

Petitioner: Bikram Chatterji & Ors.	Court: The Supreme Court of India
	Date of Judgement: 09 th October 2018
Respondent: Union of India & Ors.	Case No.: Civil Writ Petition No.940 of 2017

The Supreme Court of India passed orders, instructing 3 Directors of the Amrapali group to be taken into Police Custody after the Company failed to hand over documents to forensic auditors. On the previous instance, the Apex Court had passed Orders for the Company to submit all documents relating to each the 46 group companies to submit all documents to forensic investigators. Having failed to comply with the orders of the Apex Court, the Court passed further orders asking 3 Directors to be taken into Police Custody until the documents are finally handed over.

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