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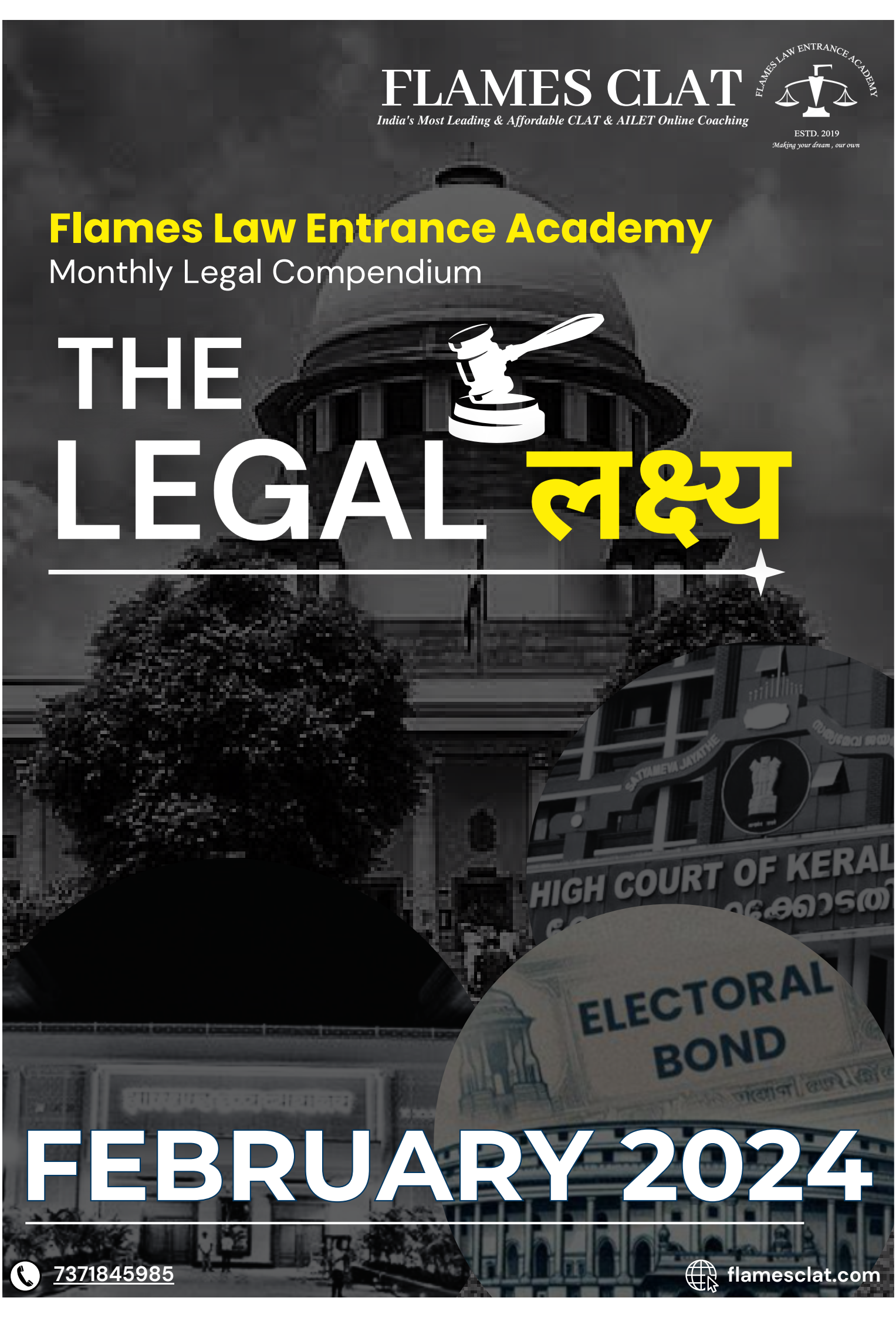
THE LEGAL लक्ष्य



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1 Mere Demand For Ransom After Kidnapping Won't Amount To S.364A IPC Offence If There's No Death Threat : Supreme Court

Recently, the Supreme Court acquitted an accused charged under Section 364A of the Indian Penal Code i.e., kidnapping for ransom, after finding that the prosecution failed to establish that there was an instant threat of death to the kidnapped from the accused.

"Therefore, the ingredients of Section 364A of IPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364A about the threats given by the accused to cause death or hurt to such person. In a given case, if the threats given to the parents or the close relatives of the kidnapped person by the accused are established, then a case can be made out that there was a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution.", observes the bench comprising Justices Abhay S. Oka and Ujjal Bhuyan.

Two ingredients need to be established by the prosecution to prove the commission of an offense under Section 364A IPC (Kidnapping for Ransom).

The first ingredient of Section 364A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. The second ingredient is that if the said act is coupled with a threat to cause death or hurt to such a person.

The case of the prosecution was that a child (victim) was kidnapped by the appellant-accused, and he asked Rs. 5 Lakhs ransom on a phone call from the parents of the child against their child's release. The prosecution stated that a reasonable apprehension in the mind of the child's parents had been created that the accused, who had kidnapped their son, may put their son to death or cause hurt to him. Therefore, the ingredients of Section 364A IPC have been fulfilled and the accused shall be convicted for the said offence i.e., kidnapping for ransom.

After perusing the prosecution witnesses' testimonies, especially the victim child and the parents of the victim, the Supreme Court found that the prosecution was not able to connect the alleged demand of the ransom and the threat to death to convict the accused under S. 364A IPC.

"Even taking the evidence of PW-1 and PW-3 as correct, all that is proved is that they received a phone call from someone for demanding ransom and the

person threatened to kill their son in case ransom is not paid. However, the prosecution is not able to connect the alleged demand and the threat with both the accused. Therefore, the ingredients of Section 364A of IPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364A about the threats given by the accused to cause death or hurt to such person.", the Judgment authored by Oka J. records.

The Court noted that the conviction under Section 364A is not made out as the prosecution failed to establish the demand and threat by the accused to the parents or the close relatives of the kidnapped person.

"In a given case, if the threats given to the parents or the close relatives of the kidnapped person by the accused are established, then a case can be made out that there was a reasonable apprehension that the person kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution."

Consequently, the Supreme Court set aside the conviction under Section 364A but sustained the conviction for the lesser offence of kidnapping defined by Section 361 of IPC, which is punishable under Section 363 of IPC.

"As the appellants are in custody and as they have undergone maximum sentence for the offence punishable under Section 363 of IPC, we direct that they shall be forthwith set at liberty", the court records.

2 Wife's Suicide Within 7 Years Of Marriage Won't Raise Presumption Of Husband's Abetment If There's No Evidence Of Cruelty: Supreme Court

Setting aside a husband's conviction for abetment of his wife's suicide, the Supreme Court recently held that by raising presumption under Section 113A of Evidence Act, a person cannot be held guilty for the offence under Section 306 of IPC when cogent evidence of harassment or cruelty is absent.

To quote the observation, "mere fact that the deceased committed suicide within a period of seven years of her marriage, the presumption under Section 113A of the Evidence Act would not automatically apply." Therefore, before a presumption under Section 113A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.

"In the case of accusation for abetment of suicide, the court should look for cogent and convincing proof of the act of incitement to the commission of suicide and such an offending action should be proximate to the time of occurrence", said the Bench of Justices JB Pardiwala and Manoj Misra in the order.

Background

Facts in brief are as follows: the appellant got married to one Rani on May 10, 1992. A year later, she consumed poison and died by suicide. On the allegations of harassing Rani for money, the appellant was charged under Section 306 IPC for abetment of suicide. He was convicted by the Trial Court in 1998.

Though an appeal was filed before the Punjab and Haryana High Court assailing the Trial Court's judgment, the same came to be dismissed in 2008. Against the High Court's judgment, the appellant approached the Supreme Court.

The appellant's counsel argued that there was no evidence to even remotely suggest that the appellant harassed the deceased. The State's counsel, on the other hand, emphasized that there was no error of law involved and that Rani died within 7 years of marriage.

Court observations

After going through the testimonies of deceased's brother and father, the Court observed that what drove her to end her life was not clear. It held that mere demand of money from the deceased or her parents, without anything

more, did not constitute “cruelty or harassment”.

“It appears from the evidence of both these witnesses that on account of such demand, the deceased used to remain tense...the plain reading of the oral evidence of both these witnesses does not disclose any form of incessant cruelty or harassment on the part of the husband which would in ordinary circumstances drag the wife to commit suicide as if she was left with no other alternative.”

Recapitulating the legal position on abetment of suicide, the Court cited many judicial precedents including Kashibai& Others v. The State of Karnataka (2023), where it was held that to bring a case within the purview of ‘abetment’ under Section 107 IPC, there has to be evidence wrt “instigation, conspiracy or intentional aid on the part of the accused” and for proving a charge under Section 306, there has to be evidence wrt “a positive act on the part of the accused to instigate or aid to drive a person to commit suicide”.

It was noted that in the present case, there was no clinching evidence of incessant harassment, on account of which the deceased was left with no other option but to put end to her life. If there was, it could have been said that the appellant intended the consequences of the act (ie deceased’s suicide).

Speaking on gathering of “intention”, the Court said, “A person intends a consequence when he (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused’s mind (a “subjective” test).”

It was emphasized in unequivocal terms that for conviction under Section 306 IPC, there has to be visible and conspicuous mens rea and mere harassment is not sufficient.

“Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

Dismissing the State’s reliance on Section 113A of the Evidence Act, under which a presumption as to abetment of suicide by a married woman (within 7 years of marriage) may be raised, the Court clarified that before this presumption is raised, the prosecution must show evidence of cruelty or incessant harassment. It was added that the presumption is discretionary in nature, unlike the one under Section 113B(presumption regarding dowry death) of the Evidence Act, which is mandatory.

“The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative

of her husband had subjected her to cruelty, the presumption under Section 113A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

Noting that it took 30 years for the appellant's ordeal to end, the Court lamented the faltering of the Courts below by saying that "it did not take more than 10 minutes" for it to "reach to an inevitable conclusion" that the appellant's conviction was not sustainable in law. It further remarked, "criminal justice system of ours can itself be a punishment."

In closing, it sounded a word of caution that not only evidence under Section 113A is to be carefully assessed, but also all additional circumstances are to be considered as an additional safeguard. "Otherwise it may give an impression that the conviction is not legal but rather moral".

Decision

Coming to a conclusion that the prosecution could not establish the guilt of the accused beyond reasonable doubt, the Court allowed the appeal. It set aside the judgments of the Courts below and acquitted the appellant of the charge framed against him. As the appellant already stood enlarged on bail vide order of 2009, his bail bonds were discharged.

3 Sale Agreement With Minor Void, Not Enforceable In Law: Supreme Court

The Supreme Court reiterated that the contract entered by the minor is not enforceable under law.

"There is no dispute on the contention raised by the defendants in the suit that the appellant was a minor at the time of the said agreement dated 03.09.2007. Therefore, such contract with a minor, was rightly found to be a void contract by the High Court.", the Bench Comprising Justices Hrishikesh Roy and Prashant Kumar Mishra said while affirming the decision of the High Court which held the sale agreement entered by the minor to be void.

The sale deed was executed between the appellant (minor) and the respondents (sellers). Under the said agreement, the minor had agreed to purchase some immovable property. The sellers were given an advance for the purchase of the property.

The minor through her mother sought direction from the trial court to the sellers to perform their part of the contractual obligation.

The sellers, however, applied for Order 12 Rule 6 of the Code of Civil Procedure (Judgment on admission) based on the admission of the appellant's mother that the appellant was a minor at the time of the sale agreement dated 03.09.2007 and therefore, no claim for specific performance can lie based on such void sale agreement.

The Trial Court, however, refused to entertain the application of the respondent's seller and asked the respondents to raise their contentions during the trial.

Against the trial court decision, the respondent seller preferred a revision before the High Court. The High Court allowed the revision application holding that that a contract to which a minor is a party is void ab initio, thus the agreement to sale entered by the minor was held to be void.

Ultimately, the minor approached the Supreme Court against the High Court's order to contend that a contract in favour of a minor is enforceable and is not void.

Negating such contention, the Supreme Court held that the parties must be competent to contract, and the contract is not enforceable under the law if it is executed by a minor at the time of entering into a contract.

"As per the Contract Act, 1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of

majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interest of the minor unless she is represented by her natural guardian or guardian appointed by the court.", observed the Supreme Court in Mathai Mathai vs. Joseph Mary Alias Marykutty Joseph (2015) 5 SCC 622.

"In view of the decision in Mathai Mathai (supra), the judgments in Raghava Chariar (supra) and Thakur Das (supra) are no longer good law, and the II Additional Subordinate Judge's (28.04.2017) reliance on the aforesaid decisions to hold that the contract in favour of the minor is enforceable is misconceived.", the Supreme Court said.

The Supreme Court found no infirmity with the view taken by the High Court. The appeal preferred by the minor is accordingly dismissed.

4 Right To Property Under Article 300A Available To A Person Who Isn't A Citizen Of India : Supreme Court

The Supreme Court has observed that the right to property as enshrined under Article 300A of the Constitution extends to persons who are not citizens of India.

"The expression person in Article 300-A covers not only a legal or juristic person but also a person who is not a citizen of India. The expression property is also of a wide scope and includes not only tangible or intangible property but also all rights, title and interest in a property", a bench comprising Justices BV Nagarathna and Ujjal Bhuyan observed.

The bench made this observation while deciding that an 'enemy property' under the Enempy Property Act, 1968 is not exempted from municipal laws as it is not vested with the Union Government.

The Supreme Court stated that the Parliament had legislated the Enemy Property Act, 1968 in order to have uniformity vis-à-vis all enemy properties throughout the length and breadth of the country in that the same are protected, managed, and dealt with uniformly in accordance with the provisions of the Act.

Taking note of the objects and purpose of the Act, the Supreme Court noted that Article 300-A of the Constitutional being a constitutional right to hold property not only extends to Legal or juristic person but also to persons who are not a citizen of India.

The Supreme Court expressed concerned that if the ownership of the property gets transferred from the enemy to the Custodian who takes possession of the property and administers it or manages it and thereby the ownership would then be that of the Union, in that event, it would be a deprivation of the property of the true owner who may be an enemy or an enemy subject or enemy firm but such deprivation of property cannot be without payment of compensation.

"Having regard to the salutary principles of Article 300-A of the Act, we cannot construe the taking possession of the enemy property for the purpose of administration of the same by the Custodian, as an instance of transfer of ownership from the true owner to the Custodian and thereby to the Union."

5 One Bench Of High Court Cannot Cancel Bail Granted By Another Bench : Supreme Court

Recently, the Supreme Court observed that the exercise of jurisdiction by the Single Judge of the High Court in cancelling the bail granted to the accused by another Single Judge of the same High Court and that too, by examining the merits of the allegations tantamounts, to judicial impropriety/indiscipline.

The Supreme Court expressed displeasure with the conduct of the Single Judge of the Madhya Pradesh High Court who cancelled the bail as already granted to the accused by another Single Judge of the same High Court.

The Supreme Court observed that the act of reviewing the orders granting bail to the accused by another Single Judge is uncalled for and amounts to gross impropriety.

"The learned Single Judge, while passing the impugned orders dated 12th December, 2023 has virtually reviewed the orders granting bail to the appellants dated 8th September, 2022 and 14th September, 2022 by another Single Judge of the same High Court. We feel that such exercise of jurisdiction tantamounted to gross impropriety.", the Supreme Court said.

The Supreme Court questioned how the application seeking cancellation of bail came to be listed before a Single Judge other than the learned Single Judge who had granted bail to the appellants, as "the application for cancellation of bail filed on merits as opposed to violation of the conditions of the bail order should have been placed before the same learned Single Judge who had granted bail to the accused.", the Supreme Court stated.

In the instant case, bail was granted to the accused by a Single Judge on 14.09.2022, however, an application seeking the cancellation of bail of the State was listed before another Single Judge which was consequently allowed and the bail granted to the accused stands cancelled.

While relying on the Supreme Court Judgment of Abdul Basit, the Single Judge of the High Court cancelled the bail granted to the accused by noting that the facts brought to the notice of this Court by the prosecution were such glaring that the Court found it a a suitable case for cancellation of bail.

However, while referring to Abdul Basit, the Supreme Court noted that "the considerations for grant of bail and cancellation thereof are entirely different. The bail could be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of the bail order; (c) that the bail was granted in ignorance of

statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud."

Section 362 Cr.P.C. Operates A Bar For High Court To Review Its Own Cases

Further, the Supreme Court observed that the High Court cannot review its own cases within the limited scope of Section 362 CrPC which operates as a bar for the High Court to review its own order.

"It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.", the Supreme Court said in Abdul Basit.

6 Convicted Prisoners Can Argue Their Own Case From Prison Through Use Of Video Conferencing Facilities: Madras High Court

The Madras High Court on Wednesday remarked that a convicted prisoner, who wished to argue his case on his own without engaging a counsel should be permitted to do so from the prison using the video conferencing facilities.

The bench of Chief Justice SV Gangapurwala and Justice Bharatha Chakravarthy was hearing a plea by businessman R Subramanian, promoter of Subhiksha retail chain. In November last year, Subramanian was sentenced to 20 years imprisonment for defrauding investors and diverting their investments through shell companies.

He had then approached the high court challenging his conviction. Apart from this, he also has various other matters pending before the High Court.

On Wednesday, his counsel informed the court that Subramanian wanted to argue some of his cases on his own without engaging a lawyer and sought permission for the same.

Though the court noted that a blanket relief could not be granted, it added that there was nothing against the same and a convict could be allowed to argue their case by providing necessary video conferencing facilities inside the premises. The court also added that the accused need not be required to come to court and could use the video conferencing facilities to argue the case from prison.

The court has asked the counsel to provide a list of cases that Subramanian wanted to argue on his own and said that necessary orders would be passed after the same.

7 ‘Not Untouchability’ : Kerala High Court Upholds Condition That Sabarimala Melshanthi(Chief Priest) Must Be Malayali Brahmin

The Kerala High Court today dismissed a batch of petitions challenging the Travancore Dewaswom Board notification inviting applications only from Malayali Bhramins for appointment as Melshanthi(chief priest) of Sabarimala-Malikappuram temples.

The Division Bench comprising Justice Anil K Narendran and Justice P. G. Ajithkumar rejected the petitioners’ argument that the conditions stipulated in the notification would not amount to “untouchability” and violated Article 17 of the Constitution.

Justice Anil Narendran read out the operative portion as follows :

“As held by the Constitution Bench of the Apex Court in Sri Venkataramana Devaru [AIR 1985 SC 255] the right protected by Article 25(2)(b) of the Constitution is the right to enter into a temple for the purpose of worship. It does not follow from this that, this right is not absolute and unlimited in character. No member of Hindu public could claim as part of the rights protected under Article 25(2)(b) that a temple must be kept open for worship at all hours of the day and night or that they could perform the services which the archakas alone could perform. Therefore, we find absolutely no merit in the contention of the learned counsel for the petitioners that the conditions stipulated in the notification issued by the Devaswom Commissioner that the applicant for appointment as Melshanthis at Sabarimala Devaswom and Malikappuram Devaswom shall be a Malayali Brahmin would amount to untouchability abolished under Article 17 of the Constitution.”

The Court did not pronounce on the”arguments raised by the petitioners on the interplay between fundamental rights and religious rights since proper pleadings were lacking in the petitions. Also, the Court noted that these issues are awaiting adjudication in the Sabarimala reference pending before the Supreme Court.

“In the absence of proper pleadings on Articles 25 and 26, we are of the view that there is no need to keep these writ petitions open for the larger bench of the Supreme Court to decide on the issue. However we make it clear that the contentions of both sides in this respect are kept open to be raised in an appropriate proceedings at an appropriate time,” the Court said.

It stated that the duties of the Travancore Devaswom Board and its members are purely administrative in character to ensure that regular traditional rites and ceremonies according to the practise prevalent in the religious institutions in accordance with recognized usages. It stated that Tantris are responsible for proper conduct of the poojas and religious ceremonies in accordance with shashtras.

In terms of eligibility criteria issued by the Devaswom Commissioner for eligibility of Melshanthis, it stated that there is total lack of grounds and cannot be entertained due to lack of pleadings. It stated unless statutory rules are framed by the Travancore Devaswom Board, the matter of appointment of Melsanthis would be governed by guidelines framed by the High Court and Apex Court.

BACKGROUND

The case of the petitioners were that they were eligible to be appointed as Priests as per the notification issued by the Travancore Devaswom Board except for the condition imposed by the Board that the applicant shall belong to Malayala Brahmin hailing from Kerala. The writ petition stated that the State could not fix a criteria for making appointments to the post of Melshanthi based on caste. The notification was thus challenged on the ground that it is violative of the fundamental rights guaranteed under Articles 14, 15 (1) and 16(2) of the Constitution of India.

PREVIOUS HEARINGS

Advocate B G Harindranath, appearing for the petitioners contended that a qualified person, who is a Hindu and an idol worshiper, well versed in the mantras for performing poojas should be appointed as the Melshanthi irrespective of caste.

Renowned academician and former Director of the National Judicial Academy, Advocate Professor (Dr) Mohan Gopal, who appeared for the petitioners submitted that the criteria that Malayala Brahmins were only eligible to be appointed as Melshantis showcases casteism and untouchability. It was stated that core constitutional values were at stake and that Article 17 of the Constitution not only prohibits but also criminalizes untouchability.

On the other hand, Advocate J Sai Deepak submitted that the petition was filed on a false premise that appointment of an individuals as Melsanthis were a secular activity. Referring to Article 26 of the Constitution of India, it was argued that Sabarimala temple is a tantric temple with diverse traditions and peculiar practices. It was thus stated that insisting on selection of Malayala Brahmins alone amongst other Brahmins to the position of Melsanthis is not a caste based reservation, but a religious requirement.

Advocate Damodaran Namboothiri had submitted that the petition was not maintainable and has to be dismissed since this is a sampradaya followed since times immemorial. He further argued that necessary parties like the Tantri, Pandalam Royal Family and Travancore Devaswom Board has to be heard.

Advocate P B Krishnan argued that this was not a public interest litigation but certain individual grievances alone. It was also contended that the notification was issued based on the Apex Court order that Travancore Devaswom Board could not deviate from the existing guidelines unless a statute was enacted. It was stated that the rules since the beginning mandated that Malayala Brahmins be appointed as Priests and it would require a legislative exercise to make any changes.

8 S.125(4) CrPC | Wife Residing Away From Husband Without Any Reasonable Cause Not Entitled To Maintenance: Jharkhand High Court

The Jharkhand High Court has stated that if a wife chooses to live separately from her husband without any valid reason, she is not eligible for maintenance under Section 125 (4) of the Code of Criminal Procedure, 1973.

Justice Subhash Chand emphasized, "In view of the overall evidence adduced on behalf of both the parties, it is found that the respondent-applicant has been residing aloof from the husband without any reasonable cause. Accordingly, this point of determination is decided in favour of the petitioner-husband and against the opposite party-wife. In consequence thereof, in view of Section 125 (4) of the Code of Criminal Procedure, 1973 she is not entitled to any amount of maintenance."

The above ruling came in a Criminal Revision preferred against the impugned judgment passed by the Principal Judge, Family Court, Ranchi in a Maintenance Case filed under Section 125 of the Code of Criminal Procedure, whereby the Court below had allowed the maintenance application and directed the petitioner to pay maintenance amount of Rs.15,000/- per month to the opposite party from the date of application i.e. 30.10.2017

The case in question revolves around a maintenance application filed by Sangeeta Toppo, the wife, under Section 125 of the Code of Criminal Procedure against her husband, Amit Kumar Kachhap. Sangeeta alleged that they were married in 2014 according to their customs as both belong to the Sarna community.

Upon marriage, the wife was taken to her husband's family home where demands for dowry, including a car, fridge, and LED TV, allegedly began immediately. She claimed that her husband and his family pressured her to fulfill these demands. Additionally, she stated that her husband neglected her over trivial matters, often abusing her under the influence of alcohol.

Furthermore, the wife accused the husband of having an extramarital affair with a woman, initially introduced as his sister's friend. Discovering the affair, the wife asserted that her husband's actions deprived her of love, care, protection, and maintenance, leaving her in distress.

The wife further stated that she is an unemployed tribal woman, and highlighted her husband's substantial income as an Indian Railway Loco Pilot earning Rs. 60,000 per month, his income from a marriage hall business in Baradih amounting to Rs. 1,00,000 per month, and rental earnings of

of Rs. 60,000 per month from 12 shops. Consequently, she sought maintenance of Rs. 50,000 per month.

The petitioner-husband argued that both he and the applicant-wife belong to the scheduled tribe, specifically the Oraon community, rendering the provisions of the Hindu Marriage Act, 1955 inapplicable. He asserted that their marriage is governed by the customs and usages of their community.

He stated that following their marriage, the applicant initially resided at their matrimonial house in Jamshedpur for a week. However, at the request of her maternal uncle and aunt, she returned to Ranchi to stay with them, acting as her guardians. Despite assurances that she would return within 15 days, she did not come back to the matrimonial home, despite repeated requests from the husband.

He further stated that the wife, a post-graduate, had conceived during her marriage but underwent an abortion without the husband's consent while staying with her maternal relatives. The husband contends that her departure from their marital home lacked reasonable cause, prompting him to wait for over two years before divorcing her in 2017, leaving her free to marry as she chooses.

In light of these circumstances, the petitioner-husband opposed the maintenance application, arguing that the applicant was not entitled to maintenance given her actions and choices, and therefore, prayed the dismissal of the maintenance application.

For the disposal of this Criminal Revision, following points of determination were framed by the Court

"(i) Whether the opposite party-wife has left the society of her husband without any reasonable cause, if so its effect?

(ii) Whether the quantum of maintenance is disproportionate in view of the income and assets of the petitioner-husband?"

The Court took note of the wife's testimony during cross-examination, where she revealed residing in the matrimonial home for only one month. Importantly, during this period, she did not report any instances of dowry-related abuse nor sought any intervention such as a panchayat.

The Court noted that her decision to distance herself from her husband stemmed from allegations of his extramarital affair and his filing of legal cases against her, including one for theft, where she secured anticipatory bail.

Additionally, the Court noted that there were no instances of pregnancy or abortion during their union, and she left her jewelry behind in the matrimonial home.

Based on these observations, the Court concluded that the wife's separation

from her husband lacked reasonable justification. Consequently, under Section 125(4) of the Code of Criminal Procedure, 1973, she was deemed ineligible for maintenance.

Regarding the second point, since the wife was deemed ineligible for maintenance, the Court deemed it unnecessary to assess the proportionality of the maintenance amount in relation to the husband's income and assets.

In view of the above, the Court allowed the Criminal Revision while setting aside the order passed by the Court.

9 If Consent Of Woman Was Based On False Promise Of Marriage From Inception, Offence Of Rape Is Made Out : Supreme Court

To sustain the offence of rape on the ground of false promise of marriage, it must be established that right from the inception, the consent of the woman was obtained based on the false promise, reiterated the Supreme Court.

"If it is established that from the inception, the consent by the victim is a result of a false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out," a bench comprising Justices Abhay S Oka and Pankaj Mithal observed quoting from the judgment in Anurag Soni v State of Chhattisgarh (2019) 13 SCC 1.

The Court was deciding an appeal filed by a man challenging the refusal of the Bombay High Court to quash the rape case alleged against him.

As per the prosecution case, the man and woman maintained a physical relationship with for four years (2013-2017) on the pretext that the man would marry the woman. In 2018, the woman saw the pictures of the engagement ceremony of the man with another woman, following which she lodged the FIR, alleging that her consent was based on a misconception caused by false promise of marriage. However, the man claimed that he had married the complainant-woman in 2017 and produced a copy of 'nikahnama'.

The Supreme Court after perusing the material placed on record observed that the woman was above the age of 18 years when she consented to enter into a physical relationship. The woman didn't object to the relationship for an entire period of four years.

"Therefore, in the facts of the case, it is impossible to accept that the second respondent allowed the physical relationship to be maintained with her from 2013 to 2017 on the basis of a false promise to marry."

The court after referring to 'Nikahnama' noted as follows:

"The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the appellant proposed her and in 2017, there was engagement is accepted by the second respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage."

Placing reliance on the observation above, the court observed that the case of

false promise to marry is not made out from the inception as sufficient proof in the form of Nikahnama has been submitted by the man to prove that he married the woman.

Thus, the court held that the continuation of the prosecution in the present case would be a gross abuse of the process of law, as therefore, no purpose would be served by continuing the prosecution against the man.

10 ‘Bail The Exception, Jail The Rule Under UAPA’ : Supreme Court Expounds Tests To Grant Bail In UAPA Cases

While denying bail to a man charged under the Unlawful Activities (Prevention) Act, 1967 (“UAPA”) for allegedly promoting Khalistani terror movement, the Supreme Court on Wednesday (February 7) held that mere delay in trial is no ground to grant bail in grave offences.

Notably, the Bench comprising Justices MM Sundresh and Aravind Kumar observed that under the UAPA, “jail is the rule and bail an exception”.

To quote the judgment, which is authored by Justice Aravind Kumar,

“The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase – ‘bail is the rule, jail is the exception’ – unless circumstances justify otherwise – does not find any place while dealing with bail applications under UAP Act. The ‘exercise’ of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)– ‘shall not be released’ in contrast with the form of the words as found in Section 437(1) CrPC – ‘may be released’ – suggests the intention of the Legislature to make bail, the exception and jail, the rule”.

The judgment further says,

“Bail must be rejected as a ‘rule’, if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied – that the Courts would proceed to decide the bail application in accordance with the ‘tripod test’ (flight risk, influencing witnesses, tampering with evidence).”

In arriving at the decision, the Court enunciated a two-prong test to be applied while dealing with bail applications under the Act. The same is discussed hereunder.

I: Whether the test for rejection of the bail is satisfied?

Dealing with the first prong, the court analyzed Section 43D(5), UAPA, which imposes restrictions on grant of bail to a person accused of offenses under Chapters IV and VI of the Act, over and above those stipulated under CrPC. It was observed that sub-section (5) bars a Special Court from releasing the accused on bail without affording Public Prosecutor a chance to be heard, however, the proviso thereto imposes a complete embargo on the grant of bail. To that extent, bail limitation imposed under UAPA is unique.

To recap, the proviso to Section 43D(5) lays down that if the Court, on perusal of the case diary or the final report, is of the opinion that there are reasonable grounds for believing that the accusation against a person, as regards commission of offence(s) under Chapter IV and/or VI of UAPA, is prima facie true, such accused person shall not be released on bail or on his own bond.
From the phraseology of the provision, the Court inferred that the intention of the Legislature, while enacting UAPA, was to make "jail" the rule and "bail" an exception. It was further opined that the exercise of general power to grant bail under UAPA is "severely restrictive" in scope, with the courts being required to arrive only at a "prima facie" satisfaction, "a low standard" (when compared to "strong suspicion" as in case of discharge), based on material on record.
Thus, as a "rule", bail applications under UAPA must be rejected, subject to provisions of Section 43D(5). However, if the test for rejection of bail is not satisfied, the Courts shall proceed to decide a bail application in accordance with the "triple test"/"tripod test".

II: Whether the accused satisfied the general triple test for grant of bail?
Under the second prong, the Court held it necessary to determine whether the accused is a flight risk, whether there is likelihood of his influencing witnesses, and whether there is possibility of evidence tampering. In this analysis, it said, various factors such as nature of offence, length of punishment (if convicted), age, character, and status of accused may be considered.
Further, in view of judicial precedents including NIA v. Zahoor Ali Watali, the following key points relevant to adjudication of a bail application under UAPA were illustrated:
(i) Meaning of "prima facie true": On the face of it, the material on record must show accused's complicity in commission of the offence. The material must be good and sufficient to establish a given fact (or chain of facts) constituting the offence, unless rebutted by other evidence.
(ii)Degree of Satisfaction at Post-Chargesheet Stage: When deciding a prayer for bail after filing of chargesheet, the Court must be satisfied by the accused that despite filing of the chargesheet, reasonable grounds for believing the allegations to be true do not exist. This is because filing of chargesheet can be seen to give rise to a presumptive opinion that factual ingredients of the offence alleged must have been found to exist.
(iii) At the stage of bail, Court shall give reasons for grant/denial of bail, without undertaking detailed scrutiny of the merits/demerits of evidence.
(iv)Court must record a finding on the basis of "broad probabilities" regarding involvement of the accused in the commission of the offence, not the standard of "proof beyond reasonable doubt".

(v)Section 43D(5), UAPA is applicable since registration of an FIR for offense(s) under Chapters IV and/or VI, till conclusion of trial.
(vi)There shall be no piecemeal analysis of evidence. Material collected by the investigating agency and presented alongwith the chargesheet, including the case diary, shall be reckoned as a whole.
(vii)In case of documentary evidence, Court must look at the contents and presume the same to be true.
(viii)Admissibility of documents relied upon by prosecution not open to question: The materials collected by the investigation agency in support of the accusations in the FIR must prevail until contradicted and disproved by other evidence. The question of discarding a document at the bail stage, on the ground of being inadmissible in evidence, is not permissible.

Undertaking an analysis in terms of the above, the Court rejected the appellant's appeal.

11 Mere Delay In Complying Court's Order Doesn't Amount To Contempt Unless It's Deliberate & Wilful: Supreme Court

Recently, the Supreme Court has observed that a mere delay in complying with the order of the court would not amount to committing contempt of court.

"We are of the view that mere delay in complying with the order, unless there is a deliberate or wilful act on the part of the alleged contemnors would not attract the provisions of Contempt of Courts Act." The bench of Justices B.R. Gavai, Sudhanshu Dhulia, and Sandeep Mehta observed.

The aforesaid observation of the court came while deciding a plea of an IAS officer, who was convicted by the High Court for willful and deliberate violation of the order of the court. The court has imposed a Rs. 500/- fine as a punishment.

It is worthwhile to mention that the order of which contempt was alleged was complied with but there was a delay in compliance of the same.

However, the High Court in the order observed that in the absence of any explanation for the delay, it would amount to a wilful and deliberate violation of the order of the Court.

Challenging the order of the High Court, the officer has preferred a Civil Appeal before the Supreme Court.

Terming the proceedings under the Contempt of Courts Act as quasi-judicial proceedings, the court held that unless there is a deliberate or willful act being committed by the contemnors while complying with the order of the court, the mere delay in complying with the same would not attract the provisions of the Contempt of Courts Act.

"The proceedings under the Contempt of Courts Act are quasi-judicial in nature and therefore as the Court comes to a conclusion that the act was neither deliberate or wilful, it could not have convicted the appellants for Contempt of Courts Act."

Accordingly, the court allowed the appeal of the officer and set aside the impugned order of the High Court.

12 Appointment Of Deputy Chief Ministers Not Unconstitutional : Supreme Court

The Supreme Court on Monday (February 12) dismissed a PIL challenging the appointment of Deputy Chief Ministers in various states as being violative of Article 14. The Court opined that the Deputy Chief Minister was firstly a minister within the state government and the position was merely a label and nothing more.

The bench comprising Chief Justice DY Chandrachud and Justices JB Pardiwala and Manoj Misra refused to entertain the petition considering it to be misconceived.

The petitioner, 'Public Political Party' had sought a mandamus from the Court to stop the "unconstitutional appointment" of Deputy Chief Ministers in various states.

The CJI expressed that even a Deputy Chief Minister, was a minister first and that the post of a 'Deputy Chief Minister' was "only a label". He further explained that the appointment of a deputy Chief Minister has no bearing in the constitutional sense, the label does not provide any extra perks such as a higher salary.

The advocate for the petitioner contended that the exercise of appointing a deputy chief minister was violative of Article 14. He stressed, " They are by doing so, setting a wrong example for the other authorities also ... what is the basis of appointing a deputy CM, it is only religion and being from a particular sect of the society, there is no other basis. This is against Articles 14 and 51A of the Constitution"

The Court, not seemingly inclined to entertain the matter, dismissed the same. The Court observed in the order : " The submission is that there is no such office stipulated in the Constitution. A Deputy Chief Minister is first and foremost a minister in the government of the states. The appellation of a Deputy CM does not breach the constitutional position."

13 Can Divorced Muslim Woman File For Maintenance Under Section 125 CrPC? Supreme Court To Consider

In a Muslim man's plea against direction to pay interim maintenance to his divorced wife, the Supreme Court is set to consider the question whether a Muslim woman is entitled to maintain a petition under Section 125 CrPC.

The Bench of Justices BV Nagarathna and Augustine George Masih recently heard a case emanating from a Family Court order which, in a Section 125 CrPC petition preferred by a Muslim woman, directed the petitioner (her husband) to pay interim maintenance @ Rs.20,000 per month. This order was challenged before the High Court of Telangana, on the basis that the parties got divorced as per personal laws in 2017 and there was a divorce certificate to that effect, but the same was not considered by the Family Court.

However, the High Court did not set aside the direction for interim maintenance. Keeping in view the several questions of facts and law involved, it reduced the quantum from Rs.20,000 to Rs.10,000 per month, to be paid from the date of petition. Fifty percent of the arrears were ordered to be paid by the petitioner by January 24, 2024 and the remaining by March 13, 2024. Further, the Family Court was asked to try disposing of the main case within 6 months.

Aggrieved, the petitioner approached the Supreme Court pleading that a divorced Muslim woman is not entitled to maintain a petition under Section 125 of CrPC and has to proceed under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 Act. He urges that the 1986 Act is more beneficial to Muslim women insofar as the relief is maintenance is concerned.

On facts, the petitioner claims that he had paid Rs.15,000 to his divorced wife as maintenance during the iddat period. He also challenges his divorced wife's action of approaching the Family Court under Section 125 CrPC on the ground that the two did not submit any affidavit preferring CrPC provisions over the 1986 Act, in accordance with Section 5 of the latter.

After hearing initial submissions, the Court has appointed Senior Advocate Gaurav Agarwal to assist and listed the matter for consideration on February 19, 2024.

Background

The history of the issue can be traced back to 1985, when the Supreme Court delivered the landmark ruling in Mohd Ahmed Khan v. Shah Bano Begum. A Constitution Bench of the Court, in a unanimous decision, had ruled at the time that Section 125 CrPC was a secular provision applicable to Muslim women also. However, the judgment was not well received by certain sections of the society and seen as an attack on religious, personal laws.

The furor resulted in attempts to nullify the judgment through enactment of the Muslim Women Act, 1986, which restricted Muslim women's right to maintenance to 90 days after divorce (iddat period).

The constitutional validity of this Act came to be challenged before the top Court in Danial Latifi & Anr v. Union Of India in 2001.The Court upheld the validity of the special law. However, it clarified that liability of a Muslim husband to maintain the divorced wife under the 1986 Act was not confined to iddat period.

A few years later, in Iqbal Bano v. State Of U.P. and Anr (2007), the Supreme Court held the view that no Muslim woman can maintain petition under Section 125 CrPC to be unsustainable. Two years thereafter, in Shabana Bano v. Imran Khan, another Bench of the Court held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of the CrPC after expiry of iddat period, as long as she does not remarry.

Subsequently, in Shamima Farooqui v. Shahid Khan (2015), the Supreme Court restored a Family Court order which held a divorced Muslim woman entitled to maintain a Section 125 CrPC petition for maintenance.

In 2019, Justice A Amanullah (as a Judge at the Patna High Court) set aside a Family Court order rejecting a Muslim woman's petition for maintenance. It was opined that the Muslim woman had the option to move for maintenance under the 1986 Act as well as CrPC. If she chose the Code, she could not be said to be debarred under law on account of being a divorced Muslim lady.

Recent judicial precedents

Allahabad High Court

In Shakila Khatun v. State of U.P. and Another (2023), a Single Judge observed that a divorced Muslim woman is entitled to claim maintenance under Section 125 CrPC even for the period after iddat and for her whole life unless she is disqualified for the reasons such as marriage with someone else.

In Razia v. State of U.P. (2022), a Single Judge observed that a divorced Muslim woman shall be entitled to claim maintenance from her husband under Section 125 CrPC even after expiry of the iddat period as long as she does not remarry.

In Arshiya Rizvi and Anr. V. State of U.P. and Anr. (2022), a Single Judge held that a Muslim woman is entitled to claim maintenance from her husband under Section 125 CrPC to succor her needs.

Kerala High Court

In Noushad Flourish v. Akhila Noushad & Anr. (2023), a Single Judge held that a Muslim wife who effected her divorce by pronouncement of 'Khula' cannot claim maintenance from her husband under Section 125 CrPC after effecting Khula.

In Mujeeb Rahiman v. Thasleena & Anr. (2022), a Single Judge ruled that a divorced Muslim woman can seek maintenance under Section 125 CrPC until she obtains relief under Section 3 of the 1986 Act. It was added that an order passed under Section 125 shall continue to remain in force until the amount payable under Section 3 of the Act is paid.

14 Allowing Unlimited Corporate Donations Through Electoral Bonds Violates Free & Fair Elections : Supreme Court Voids Companies Act Amendment

In a landmark verdict today, the Supreme Court struck down the controversial electoral bonds scheme as unconstitutional, holding that the anonymity conferred by electoral bonds violates the right to information enshrined in Article 19(1)(a) of the Constitution.

This decision comes after a constitution bench, comprising Chief Justice DY Chandrachud and Justices Sanjiv Khanna, BR Gavai, JB Pardiwala, and Manoj Misra, heard a series of petitions challenging the scheme. Chief Justice Chandrachud, delivering the lead judgment, underscored the fundamental importance of transparency in political funding. Justice Khanna penned a separate opinion, concurring with the chief justice's view but applying a slightly different rationale. The court's ruling addressed concerns about the electoral bonds' potential to facilitate quid pro quo arrangements, highlighting the need for open governance and access to information for voters.

In addition to striking down the electoral bonds scheme, the court also made crucial observations regarding Section 182 of the Companies Act and the issue of political contributions by companies.

Section 182 of the Companies Act, 2013 allows Indian companies to make financial contributions to political parties under specific conditions. These conditions necessitated that such contributions be authorised by the company's Board of Directors, not be made in cash, and be transparently disclosed in the company's Profit and Loss (P&L) account. However, through the 2017 Finance Act, certain key changes were introduced which includes the removal of the previous cap on the amount that companies can donate to political parties, set at 7.5 percent of the average profits of the preceding three fiscal years. Additionally, requirement for companies to disclose the names of the political parties to which contributions were made in their P&L accounts was also eliminated.

The court found the amendment to S"ctio' 182, permitting unlimited political contributions by companies, to be manifestly arbitrary for several reasons. First, it noted the disproportionate influence wielded by companies in the electoral process compared to individuals, emphasising the potential for transactions made with the intent of securing benefits in return. Treating individuals and companies at par made the scheme manifestly arbitrary, the court held.

Second, the court highlighted the failure of the amendment to distinguish between profit-making and loss-making companies, thereby overlooking the heightened risk of quid pro quo transactions by the latter.

Finally, the court emphasised the amendment's authorisation of unrestrained corporate influence in elections, which contravenes the principles of free and fair elections and political equality.

The challenge to the electoral bond scheme was brought to the court by Association for Democratic Reforms (ADR), the Communist Party of India (Marxist), Congress leader Jaya Thakur and others, arguing that the anonymity associated with electoral bonds undermines transparency in political funding and encroaches upon voters' right to information. They also contended that the scheme facilitates contributions through shell companies, raising concerns about accountability and integrity in electoral finance.

In defence of the scheme, the union government asserted its role in promoting the use of legitimate funds in political financing, ensuring transactions occur through regulated banking channels. Additionally, the government cited the need for donor anonymity to shield contributors from potential retribution by political entities.

After a three-day-long hearing, the constitution bench reserved its verdict in the matter last November. The court also notably ordered the Election Commission of India to furnish details of political party contributions via electoral bonds up to September 30.

15 Electoral Bonds | Supreme Court Rejects Union's Argument That Citizens Have No Right To Know About Political Funding

Today (February 15), the Supreme Court delivered a historic judgment, holding that anonymous electoral bonds violate the right to information under Article 19(1)(a) of the Constitution. While holding this, the Constitution Bench also upheld the voter's Right to Information about funding to a political party.

The Court reasoned that such information is essential for a voter's freedom to vote effectively.

The bench of Chief Justice DY Chandrachud and Justices Sanjiv Khanna, BR Gavai, JB Pardiwala, and Manoj Misra delivered this verdict in a batch of cases challenging the controversial electoral bonds scheme.

The challenge to this highly debatable scheme was brought to the court by the Association for Democratic Reforms (ADR), the Communist Party of India (Marxist), Congress leader Jaya Thakur, and others. The petitioners essentially argued that the anonymity associated with electoral bonds undermines transparency in political funding and encroaches upon voters' right to information.

Imperatively, one of the defence taken by the Union before the Supreme Court was that the citizens do not have the right to information under Article 19(1)(a) of the Constitution regarding the funding of a political party.

In the note submitted by Attorney General for India, R Venkataramani, he asserted that the judgments upholding the citizens' right to know of the criminal antecedents of candidates cannot be extrapolated to mean that they have the right to information regarding the funding of parties.

"Citizens do not have a general right to know regarding the funding of political parties. Right to know is not a general right available to citizens.," the note stated.

"Citizens do not have a general right to know regarding the funding of political parties. Right to know is not a general right available to citizens," the Centre argued before the Supreme Court.

However, today, this view of the Centre has been firmly rejected by the Supreme Court in its judgment. Reliance was placed on landmark precedents like ADR v. Union of India, (2002) 5 SCC 294 and PUCL v. Union of India, (2003) 4 SCC 399. In these cases, the Apex Court observed that voters have a right to information that is essential for them to exercise their freedom to vote.

To support its findings in this regard, the Court also demonstrated a close association of money with politics. Taking a cue from this, the Court voiced its concerns over the electoral bonds' potential to facilitate quid pro quo arrangements. It explained that this Quid pro quo arrangement could also be in the form of introducing a policy change.
On this aforestated background, the Court opined that such information would help the voters determine if there is any link between policymaking and financial donations.

Electronic And Print Media Would Present The Information
Notably, the Court also mentioned that the voters need not task themselves with perusing the list of contributors. Electronic and print media would present the information on contributions received by political parties and the probable link between the contribution and the licenses that were given to the company in an accessible format., the Court said.
The Court added that response to such information by the Government will 'go a long way in informing the voter.'

Scheme Is Not Fool-Proof, Enables The Political Parties To Know The Particulars Of The Contributors
The union's submission that the political party that receives the contribution does not know the identity of the contributor did not find favor with the court. Without mincing its words, the Court stated that the scheme is not fool-proof and has sufficient gaps. This, in turn, enables the political parties to know the particulars of the contributions made to them.
"Electoral bonds provide economically resourced contributors who already have a seat at the table selective anonymity vis-à-vis the public and not the political party.," the Court firmly added.
"At a primary level, political contributions give a seat at the table to contributors, i.e., it enhances access to legislators. This access also translates to influence over policymaking. There is also a legitimate possibility that financial contributions to a political party would lead to quid pro quo arrangement because of the close nexus between money and politics. The electoral bond scheme and the impugned provisions to the extent that they infringe upon the right to information of the voter by anonymising contributions through electoral bonds are violative of Article 19(1)(a)," the judgment stated.

16 Terminating Women Officer On Ground Of Marriage Is Arbitrary : Supreme Court Asks Union To Pay Rs 60 Lakh Compensation To Ex-Military Nurse

In a case where a woman nursing officer was terminated from the Military Nursing Service on the grounds of marriage, the Supreme Court firmly termed the same to be a 'coarse case of gender discrimination and inequality'. The Division Bench of Justices Sanjiv Khanna and Dipankar Datta also reiterated that rules, on the basis of which such women officers were terminated because of their marriage, are unconstitutional.

"Acceptance of such patriarchal rule undermines human dignity, right to non-discrimination and fair treatment. Laws and regulations based on gender-based bias are constitutionally impermissible. Rules making marriage of women employees and their domestic involvement a ground for disentitlement would be unconstitutional.," the Court recorded in its order.

This is a case where the petitioner, was selected for Military Nursing Services and joined as a trainee at Army Hospital, Delhi. She was granted a commission to the rank of Lieutenant in the MNS. Consequently, she entered into wedlock with an Army officer, namely, Maj Vinod Raghwan.

However, she was released from the Army while serving in the rank of Lieutenant (Lt). The concerned order dispensed with her services without serving any show cause notice or opportunity of hearing or opportunity to defend her cause. Besides this, the order also showed that she was released on the grounds of marriage.

Imperatively, the MNS Branch was governed by Army Instruction No. 6 of 1977, titled "Terms and conditions of service for the grant of permanent commissions in the Military Nursing Service". As per this, termination of appointment may be done on the opinion of the Medical Board to be unfit for service or getting married or for misconduct. The same read as:

"11. Termination of appointment- Appointment in the MNS will be terminated under the following conditions:- (a) On being pronounced by a medical board to be unfit for further service in the Armed Forces. (b) On getting married. (c) For misconduct, breach of contract or if services are found unsatisfactory."

Initially, the matter went to the Armed Forces Tribunal, Lucknow, which had set aside the impugned order and also granted all consequential benefits and back wages. The Tribunal also granted restoration of her service. Against this backdrop, the Union approached the Top Court.

At the outset, the Court noted that these rules were only applicable to women

and held such to be 'manifestly arbitrary.' The Court also observed that Army Instruction No. 61 of 1977 has been withdrawn.

"This rule, it is accepted, was applicable to only women nursing officers. Such rule was exfacie manifestly arbitrary, as terminating employment because the woman has got married is a coarse case of gender discrimination and inequality.," the Court said.

Taking note of the fact that the respondent worked as a nurse in a private organization, the Court modified the Tribunal's order for reinstatement.

The Court directed the Union to pay the petitioner compensation of Rs.60,00,000/. While directing this, the Court also clarified that this shall be in full and final settlement of all the claims.

"Keeping in view the facts and circumstances of the present case, we direct the appellant(s) to pay compensation of Rs.60,00,000/- (rupees sixty lakh only) to the respondent – within a period of eight weeks from the date a copy of this order is served/made available to them. In case the payment is not made within a period of eight weeks, the appellant(s) will pay interest at the rate of 12 per cent per annum from the date of this order till the payment is made.," the Court stated in its order.

17 Mere Withdrawal From Marriage Won't Amount To Offence Of Cheating Under Section 417 IPC : Supreme Court

The Supreme Court held that mere non-performance of marriage by the accused at the booked marriage hall doesn't amount to committing an offence of cheating punishable under Section 417 IPC.

"We do not see how an offence even under Section 417 of IPC is made out against the present appellant. There can be multiple reasons for initiating a marriage proposal and then the proposal not reaching the desired end. There is no such evidence before the prosecution and therefore no offence under Section 417 is also made out.", the Supreme Court said.

Reversing the High Court's findings which refused to quash the charge under Section 417 IPC, the Bench Comprising Justices Sudhanshu Dhulia and P.B. Varale observed that to constitute an offence of cheating punishable under Section 417 IPC, it must be proved by the prosecution that the intention to deceive on the part of the accused should be right from the beginning.

"Time and again, this Court has reiterated that in order to make out an offence under cheating the intention to cheat or deceive should be right from the beginning. By no stretch of imagination, this is even reflected from the complaint made by the informant."

The gist of the dispute was that the complainant and the accused were about to marry and her father had also given Rs. 75,000/- in advance for the marriage hall, but this marriage never took place as she learnt from a newspaper report that the accused has in fact married someone else.

Aggrieved by such an act of the accused, the complainant lodged an FIR against the accused and his family members under Sections 406/420/417 read with Section 34 of IPC.

The accused preferred an application under Section 482 Cr.P.C. to quash the pending criminal case against him, however, the High Court while quashing proceedings under Section 406 and 420 IPC refused to quash the case under Section 417 IPC.

Ultimately, the accused approached the Supreme Court against the decision of the High Court.

The Supreme Court found that there was no intention of the accused to fraudulently or dishonestly deceive the complainant and her father from the beginning.

“There can be multiple reasons for initiating a marriage proposal and then the proposal not reaching the desired end.”, the Court said.
“in order to prove an offence of cheating in such cases prosecution must have reliable and trustworthy evidence”, the Court added.
However, after finding no such evidence is produced by the prosecution to prove the offence under Section 417, the court observed that the offence under Section 417 is not made out.
Consequently, the criminal proceedings under Section 417 IPC are hereby quashed.

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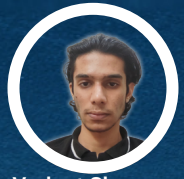

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