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1 CrPC Amendment Allowing Electronic Service Of Summons Notified In Kerala

Kerala Government has notified the Code of Criminal Procedure (Kerala Second Amendment) Act, 2023 providing for summons to be served electronically, in addition to the other modes.

The Bill amends Sections 62 and 91 of the Code of Criminal Procedure (Cr.P.C.), which stipulates the procedure for serving summons, and summons to produce document or other thing, respectively.

The Bill was sought to be introduced consequent to the directions of the Apex Court.

During the COVID-19 Pandemic, the Supreme Court had allowed the service of notices, summons and pleadings etc via e-mail, FAX, tele messenger services such as Whatsapp, Telegram, Signal etc., taking note of the difficulties for physical service of summons due to lockdown and the pandemic.

The State Police Chief had also informed about serious health hazards in following the conventional mode of service of summons. Additionally, it was also noted that electronic methods used to effect summons were more convenient and effective in locating persons who were deliberately trying to avoid the service.

“The service of summons is also a very important function of the Police, but the same cannot be discharged by the Police to the extent desired all over the State. Hence, the service of summons could be made possible through e-mail, in order to avoid delay that can be occasioned under the present circumstance,” the Objects Clause of the Bill reads.

2 S.125 CrPC | Woman Who Married Man Under Misrepresentation That He Was Divorced Is Entitled To Maintenance As His 'Wife': Bombay High Court

A woman who married a man under the misrepresentation that he was divorced would be treated as his 'wife' under Section 125 CrPC, and she is entitled to maintenance, the Bombay High Court has recently held.

Justice Rajesh Patil ruled "that respondent cannot be allowed to deny the maintenance claim to the Petitioner, taking advantage of his own wrong. I am of the opinion as held in Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit reported in (1999) at least for the purpose of Section 125 of CrPC, Petitioner would be treated as the 'wife' of the respondent."

According to the judgement, if the claimant woman can establish that she and the respondent have lived together as husband and wife, the court can presume them to be legally married spouses. Especially since the standard of proof to claim maintenance is more relaxed than what would be required in trials under IPC.

Facts

The petitioner claimed she married the defendant in 1989 after the defendant told her he divorced his first wife as she wasn't cohabiting with him and wasn't able to conceive a male child. In 1991, she delivered a male child. Soon after, the first wife, through mediators, requested that they all live together. Once they began living under the same roof, both women conceived and delivered male babies. The Petitioner said she was subsequently removed from the house, and in 2010, the Petitioner stopped paying any money to her.

The second wife approached the court in 2012 under Section 125 of the CrPC seeking maintenance. The court allowed her application and granted Rs. 2,500 per month. However, the Sessions court set aside the order. The woman approached the High Court against the Sessions Court's order.

The husband claimed he never married the petitioner and had always been married only to his first wife. He further claimed he neither resided nor was he concerned with the woman's children.

Before the magistrate, the Petitioner examined herself, her two sons and two other persons involved in arranging her marriage with the man. The husband examined himself, and his first wife and a relative as witnesses.

Advocate Narayan Rokade for the Petitioner said his client was covered

under the definition of 'wife' under Section 125 of the CrPC. Moreover, there was no reason the court couldn't grant maintenance in summary proceedings.

Advocate Priyanka Daga, for the respondent, submitted that the petition should be dismissed as the woman changed her stand during the trial.

Court's Verdict

In its order, the court relied on the judgement of Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit & ruled in the wife's favour.

"The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC.... Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the said procedure was complete as per the Hindu rites in the proceedings under Section 125 CrPC," the judgement states.

The court said that the husband's argument that the Petitioner's son was born before their alleged marriage date is irrelevant as she claimed maintenance for herself. The woman was also willing for the children to undergo a DNA test to prove the respondent was their father, the court noted.

Finally, the court observed that despite the woman's claims that her husband's earnings were over Rs. 50k- Rs.60k, she was granted only Rs. 2,500 maintenance. Accordingly, the court allowed her petition and allowed her to file a fresh plea to enhance the maintenance

3 Cruelty | Intention Not Necessary If Act Complained Of Bad Enough And Per Se Unlawful: Himachal Pradesh High Court Upholds Divorce Decree

The Himachal Pradesh High Court has ruled that levelling baseless accusations of infidelity against a spouse can be grounds for divorce, even if unintentional.

A bench comprising Justices Vivek Singh Thakur and Sandeep Sharma has clarified that cruelty can exist even without deliberate or willful intent and the absence of intention shouldn't negate relief for the aggrieved spouse if the act reasonably constitutes cruelty.

Upholding a decree of divorce granted in favour of the respondent-husband by a Family Court on the ground of cruelty the court observed,

"There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse needs not be enquired into or considered. In such like cases, the cruelty will be established if the conduct itself is proved or admitted".

Background

The case centred on the marital discord between the parties, whose union was formalised on May 10, 2005. The respondent husband sought divorce under Section 13(1)(i-a) of the Hindu Marriage Act, alleging cruelty. The Family Court, in its ruling on August 14, 2019, granted the divorce, prompting the appellant-wife to approach the High Court.

The appellant-wife argued that the divorce petition did not align with the Hindu Marriage & Divorce (Himachal Pradesh) Rules 1982. She contended that the court erroneously granted the decree based on vague cruelty allegations. Additionally, she accused her husband of having illicit relations with another woman, asserting that the Family Court failed to properly assess the evidence.

Respondent-husband on he other hand asserted that the appellant-wife's accusations of adultery caused him significant harassment, mental stress, and humiliation.

Observations Of The Court

The Court noted there was overwhelming evidence demonstrating that the appellant-wife had visited the office of the respondent-husband and levelled allegations of adultery in the presence of other officials, as a result of which,

respondent-husband not only suffered humiliation but also mental trauma. It also noted that the appellant-wife had failed to substantiate her allegations.

Emphasizing that cruelty as contemplated under Section 13(1)(i-a) of the Hindu Marriage Act, can be mental or physical and must go beyond the ordinary wear and tear of married life, the court found that the appellant-wife's serious and scandalous allegations of adultery amounted to a grave assault on the character, honor, reputation, and status of the respondent-husband, constituting mental cruelty.

"Leveling disgusting accusations of indecent familiarity with a person outside wedlock and allegations of extra marital relationship constitute grave assault on the character, honour, reputation, status of the spouse. Definitely such aspersions amount to worst form of insult and cruelty, which itself is sufficient to substantiate cruelty in law, warranting the claim of the respondent-husband being allowed", the bench recorded.

In light of these considerations, the bench found no scope of interference with the impugned divorce decree and accordingly dismissed the appeal.

4 Abetment Of Suicide Charge Can't Be Converted To Murder Charge Based On 'Stray Observations' Of Medical Officer: Bombay High Court

The Bombay High Court recently quashed a Sessions Court order directing addition of murder charge against three accused in a 2014 dowry death case in Pune observing that accused couldn't be convicted based on stray observations of the medical officer.

"Imagination cannot be taken to such an extent to prosecute the Accused for [such a] serious offence. All throughout it's the case of the prosecution that the victim has committed suicide. On stray observations of the medical officer the Accused cannot be convicted for an offence under Section 302 of IPC."

Justice Prakash D. Naik allowed a criminal revision application filed by the accused – Gurudas Raut, Anita Raut and Archana Raut – who were charged for abetment of suicide of a married woman, Sonal. Her father had lodged a dowry harassment complaint in November 2014 after she was found dead in a well.

Initially, police had filed chargesheet under IPC Sections 306 (abetment of suicide), 498A (cruelty) and others. The Sessions Court framed charges of abetment to suicide and cruelty in December 2015.

During trial in 2017, the prosecution examined a medical officer who deposed that it takes 8-12 hours for a body to float if the person dies by drowning. Based on this, the complainant sought addition of murder charge under Section 302 IPC.

The Sessions Court allowed addition of 302 charge in August 2022, holding that the medical opinion and other material constituted sufficient ground.

Setting aside this order, Justice Naik observed, "All through it's the prosecution's case that the victim committed suicide. On stray observations of the medical officer, the accused cannot be convicted for murder."

The judge noted that the cause of death referred to in the postmortem report clearly mentions that there is evidence of head injury and it is a case of asphyxia due to drowning. The report rules out the case of murder.

Advocates for the accused, Abhishek Avachat and Siddhant Deshpande, argued that the Sessions Court order was swayed by the medical officer's version and there was no material to alter the charges post-framing.

According to the FIR lodged by Sonal's father, she was harassed for dowry and driven to suicide within a few years of marriage. However, none of the

witness statements indicated murder.

Justice Naik scrutinized the material and concluded there was nothing to show it was not suicide. By adding murder charge at this stage, prejudice would be caused to the accused, the High Court held.

The court quashed the Sessions Court's order, noting that charges can be altered as per CrPC S.216 but there must be sufficient basis. The judge also cited two other HC decisions on alteration of charges.

With this order, the dowry death trial will proceed based on the original charges framed in 2015, without the addition of murder charge.

5 Wife's Conduct Of Attempting Suicide, Trying To Put Blame On Husband And His Family Amounts To Cruelty: Delhi High Court Upholds Divorce

The Delhi High Court has observed that a wife's conduct of attempting suicide and then trying to put the blame on the husband and his family members is an act of "extreme cruelty."

A division bench of Justice Suresh Kumar Kait and Justice Neena Bansal Krishna upheld the decree of divorce granted by a family court, in a divorce petition moved by the husband, on the ground of cruelty by the wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

While dismissing wife's appeal against the family court order, the High Court observed that during the two years of their matrimonial life, the parties barely resided together for ten months and even during that time, there were various acts of the cruelty of being subjected to false complaints and civil as well as criminal litigation committed by the wife towards the husband.

The parties got married in march 2007 and a daughter was born from their wedlock in November 2007. The husband alleged that barely after four months of the marriage, the wife deserted the matrimonial home and filed a false criminal complaint alleging not only that a huge dowry was given but also that exorbitant demands were being made by his parents.

The bench said that the husband, for about two years, was subjected to civil and criminal litigation by the wife's conduct who had filed not only civil, but also criminal cases against him on unsubstantiated allegations arising from misinformation.

"What more can be traumatic than being driven to seek protection from arrest on the unsubstantiated allegations. It reflects that from the beginning of their matrimonial life, there was no trust and faith, rather he was even suspected of committing theft of a car which had been gifted to them at the time of marriage," the court said.

Furthermore, the bench noted that the wife consumed a mosquito repellent liquid in an attempt to commit suicide and even wrote a suicide note stating that her husband and in-laws were good people who had given her love and affection but she was unable to reciprocate the same sentiments, thereby completely exonerated them from her attempt to commit suicide.

"The appellant, however, in her testimony tried to wriggle out of her own admissions and suicide note by claiming that she was compelled to write the suicide note. She, however, admitted in her cross-examination that at the

time of her attempting suicide in the noon, her husband was not even present as he was at his place of work," the court noted.

It said: "Such conduct of the appellant in attempting suicide and then trying to put the blame on the husband and his family members is an act of extreme cruelty as the family remanded under constant threat of being implicated in false cases."

The court observed that no doubt the wife appellant has a legal right to take recourse for the wrong that the in-laws may have been committed but making unsubstantiated allegations of having been subjected to dowry demands or acts of cruelty by them and getting criminal trials initiated against the husband are clearly acts of cruelty.

"We therefore, conclude that the learned Addl. Principal Judge, Family Court has rightly held that the respondent was subjected to cruelty by the appellant and granted divorce under Section 13 (1)(ia) of the HMA," the court said.

6 Writ Of Habeas Corpus At Husband's Behest Seeking Wife's Return Not Available As A Matter Of Course: Allahabad High Court

In an important assertion, the Allahabad High Court has said that given the other remedies available for the purpose, under criminal and civil law, the exigence of a writ of habeas corpus at the behest of a husband to regain his wife would be rare and may not be available as a matter of course.

A bench of Justice Yogendra Kumar Srivastava emphasized that such a writ may not be readily available and should only be exercised in exceptional circumstances when a compelling case is presented.

"In a situation where the husband seeks to assert that the wife, without reasonable cause, is refusing to return to her matrimonial home, it would be open for him to seek the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955," the Court added.

With this, the Court dismissed a habeas corpus plea filed by a man seeking the custody of his wife, alleging that she is presently under the illegal detention of her maternal uncle.

It was the case of the husband that his wife left his house and despite efforts being made by him, she is not willing to come back to her matrimonial home.

On the other hand, the counsel for the state submitted that it was apparent that the wife had left her matrimonial home on her own and there is no material to suggest that she is under illegal detention.

Against this backdrop, noting that the writ of habeas corpus is a prerogative writ and the same may be granted only on reasonable ground or probable cause being shown.

"The writ of habeas corpus has been held as a festinum remedium and accordingly the power would be exercisable in a clear case. The remedy of writ of habeas corpus at the instance of a person seeking to obtain possession of someone whom he claims to be his wife would therefore not be available as a matter of course," the Court noted.

The Court further observed that the power to direct search for persons wrongfully confined is provided under Section 97 of the Code of Criminal Procedure, 1973 whereas Section 98 provides the procedure to compel restoration of abducted females.

Regarding a husband's prayer to seek a wife's custody the Court said that when a wife, without reasonable cause, refuses to return to her matrimonial home, the husband can seek the remedy of restitution of conjugal rights

under Section 9 of the Hindu Marriage Act, 1955.
In view of this, noting that the wife had left her matrimonial home, of her own volition, and there is no material to establish the factum of illegal detention, the Court rejected the petition seeking a writ of habeas corpus at the behest of the husband.

7 ‘No Mens Rea’: Kerala HC Grants Pre-Arrest Bail To Headmistress Booked Under SC/ST Act For Cutting Tribal Student’s Hair During Assembly

The Kerala High Court has granted anticipatory bail to the headmistress of a school who was booked for offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Juvenile Justice (Care and Protection of Children) Act for cutting the hair of the victim student, who belonged to the Scheduled Tribe community, during the school assembly which was allegedly derogatory and affected his dignity.

Justice K Babu observed that there was no mens rea established against the appellant-headmistress and that she was only trying to enforce disciplinary control over the victim and at most “exceeded in the corporal punishment”. Further, it stated that the alleged acts would not attract offences under the SC/ST (PoA) Act.

“On an analysis of the facts placed before this Court, I am of the view that the mens rea of the appellant in the commission of the alleged acts is doubtful. At the most, it could be seen that the appellant being a school teacher having disciplinary control over the victim exceeded in the corporal punishment on the victim. Therefore, I am of the view that there is no prima facie material to attract the offences under the SC/ST (PoA) Act.”

The appellant, a headmistress of a school has approached the Court against an order of the Sessions Court by which her anticipatory bail application was dismissed.

A crime was registered against the appellant under Sections 341 (punishment for wrongful restraint) of IPC, Sections 3 (punishment for offences of atrocities) of the SC/ST (PoA) Act and Section 75 (punishment for cruelty to child) of JJ Act.

The Sessions Court had found that there was no prime facie case to establish an offence under the SC/ST (PoA) Act, however, it dismissed the anticipatory bail application on finding an offence proved under the JJ Act.

The counsel for the appellant denied all the allegations and submitted that she had not done any act intentionally which was derogatory to the dignity of the victim. It was also argued that being a headmistress, she was only trying to enforce discipline in the school for the betterment and welfare of the victim. It was submitted that a false complaint was filed based on extraneous reasons.

On the other hand, the counsel for the victim submitted that the act of the

appellant was against human dignity and attracted offences under the SC/ST (PoA) Act. It was also argued that the victim and her family suffered mental frustration after the incident.

The statement of the victim read thus: 'Teacher knew that I belong to Malavettuva Community. Teacher forcefully cut my hair while I was attending morning school assembly with intent to insult me.' On perusing the statement, the Court found that the FIR was lodged after a delay of ten days and that there was evidence showing that the appellant was concerned about the welfare of the children. It also took note of the fact that the Sessions Court had found that there was no mens rea.

The Court also expressed doubt as to whether there was any intention to act with cruelty against the child for attracting an offence under Section 75 of the JJ Act.

Additionally, the Court stated that the appellant was not absconding and that there was no case that she was tampering with the evidence or investigation.

On the above findings, the Court held that the appellant was entitled to anticipatory bail.

8 Husband's Impotency Sufficient Reason For Wife To Reside Separately; She Is Entitled To Maintenance U/S 125 CrPC: Chhattisgarh HC

The Chhattisgarh High Court has observed that the impotency of the husband would be sufficient reason for the wife to reside separately and in such a scenario, she would be entitled to maintenance under Section 125 CrPC.

Observing thus, a bench of Justice Parth Prateem Sahu dismissed a criminal revision petition filed by a husband challenging an order of the Family Court, Jashpur, directing him to pay his wife, an amount of Rs. 14K as maintenance.

In the instant case, the respondent-wife had filed a plea seeking maintenance from her husband (petitioner-revisionist) under Section 125 of CrPC on the grounds that she was deprived of her conjugal rights as after their marriage, her husband had not established physical relations with her.

On the other hand, it was the contention of the husband-revisionist that he had categorically informed his wife, about his physical incompetency, before the marriage and hence, if she was now residing separately, she was not eligible for maintenance. It was further argued that impotency is not a ground mentioned under Section 125 of CrPC to be sufficient cause for a wife to reside separately.

However, the Family Court, taking note of the fact that the husband had admitted to his "incompetency", concluded that there were sufficient reasons for the respondent-wife to reside separately and hence, she was very well eligible for maintenance.

Against the backdrop of the facts and circumstances of the case, the Court noted that the conjugal rights of the parties to the marriage are the foundation of marriage and deprivation of the same by either of them will be cruelty to the other partner.

The Court added that there is a provision under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and if any party is deprived of his/her partner's conjugal rights, it may be one of the grounds to seek divorce.

"If the married person is not having a conjugal relationship with his/her partner which makes him/her entitled to take divorce meaning thereby to separate from his or her partner. For the reasons as discussed above that the impotency of applicant-husband as admitted by him would be sufficient reason for the respondent-wife to reside separately," the Court further

further noted.

In this regard, the Court also relied upon Apex Court's ruling in the case of Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan & Anr 1981 wherein it was thus:

"...where it is proved to the satisfaction of the court that a husband is impotent and is unable to discharge his marital obligations, this would amount to both legal and mental cruelty which would undoubtedly be a just ground as contemplated by the aforesaid proviso for the wife's refusal to live with her husband and the wife would be entitled to maintenance from her husband according to his means."

In view of this, the Court did not find any infirmity or illegality in the order passed by the Family Court and hence, the criminal revision plea was dismissed.

9 Mere Cheating Will Not Attract S.420 IPC Offence; Accused Must Dishonestly Induce Cheated Person To Deliver Property : Supreme Court

The Supreme Court on Monday (January 22) held that while prosecuting a person for the offence of cheating punishable under Section 420 of the Indian Penal Code, it is to be seen whether the deceitful act of cheating was coupled with an inducement leading to the parting of any property by the complainant.

Reversing the concurring findings of the High Court and the Trial Court, the Bench of Justices Surya Kant and KV Viswanathan, observed that to constitute an offence of cheating, merely committing a deceitful act is not sufficient unless the deceitful act dishonestly induced a person to deliver any property or any part of a valuable security, thereby resulting in loss or damage to the person.

"It must also be understood that a statement of fact is deemed 'deceitful' when it is false and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement."

The Court has quashed the criminal case filed by the husband against her wife and relatives (appellants) on the ground that the wife's act of using her husband's singature to seek the passport of her minor child for travel abroad doesn't amount to committing an offence of cheating and forgery.

The Court noted that there is a lack of dishonest intention on the part of the wife; further, no loss or damage has been suffered by the husband as the wife sought the passport only on the instructions of her husband.

"... in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property" (Para 11)

Factual Background

In this matter the appellant no.1 and the respondent no.2 are wife and husband, respectively. The husband in working in London, and both decided

to live in London. However, the husband thereafter abandoned her in London, and the wife started living in her relative's house. Subsequently, the wife gave birth to a child in India and sought a passport for her minor child on the instructions of the husband. Later, the husband lodged a complaint against the appellants i.e., wife and her relatives alleging that they had forged his signature to obtain a passport of a minor child.

The FIR was registere under Sections 420(Cheating and dishonestly inducing delivery of property), 468 (forgery for the purpose of cheating) and 471 (Using as genuine a forged document) read with Section 34 of IPC.

The appellants filed an application seeking discharge before the trial court but was turned down. In the meanwhile, the trial court directed further investigation on the application of the husband, which resultantly allowed the police to submit the supplementary charge-sheet, thereby adding charges under Section 12(b) of the Passports Act, 1967 against the wife and her relatives.

Against the trial court's order of rejecting the discharge application, the appellants preferred a criminal revision before the High Court, resulting into dismissal of the same.

It is against the impugned order of the High Court, the wife and her relative preferred a criminal appeal before the Supreme Court.

Issue

The moot question arises before the court whether the act of the wife forging the signatures of her husband to seek a passport for her minor child constitute the offence of cheating and forgery under IPC?

Observation

Before answering to the abovementioned issue, the court discussed the contours of the offence of 'cheating'. The court noted that in order to attract the provision of Sec. 420 IPC, the prosecution has to not only prove the act of cheating but it needs to be also proved that the act of cheating resulted into an inducement to deliver the property resulting in to a loss or destruction of property to the person who have been induced to deliver such property.

"It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement."

The court noted that the act of the wife to forge the sign of his husband to

seek the passport for his minor child to travel abroad doesn't amount to cheating punishable under Section 420 IPC, due to the absence of a deceitful act that resulted in a loss or damage of property to a husband.

"Since the gain by the minor child is not at the cost of any loss, damage or injury to Respondent No. 2 (husband), both the fundamental elements of 'deceit' and 'damage or injury', requisite for constituting the offence of cheating are conspicuously absent in this factual scenario."

Further, the court noted that the act of the appellants also doesn't amount to forgery. According to court, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.

The court noted that no dishonest intention was made out against the appellants with the following observations:

"The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants."

Additionally, the court observed that in the absence of dishonest intention on the part of the appellants, the act of forging the documents doesn't arise.

"The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand."

The court has also discharged the appellants for committing an offence under Section 12(b) of the Passports Act, 1967 that penalizes a person for the act of willfully furnishing the wrong information to obtain a passport or travel document under this Act or without lawful authority, altering the entries made in a passport or travel document.

"As discernible from the language of the provision, what must be established is that the accused knowingly furnished false information or suppressed material information with the intent of obtaining a passport or travel document. In the present case, it is crucial to consider that the State FSL report explicitly stated that the alleged forgery of Respondent No. 2's signatures on the passport application was inconclusive."

In light of the aforesaid observations, the court set-aside the impugned judgment/order passed by the High Court in a criminal revision and thereby the quashed the pending criminal case against the Appellants with a cost of Rs. 1,00,000/- on the husband.

10 Caste Or Religion Of Parties Should Not Be Mentioned In Any Filings Before Courts : Supreme Court

In a significant development, the Supreme Court has passed a general order directing that the caste or religion of parties shall not be mentioned in the memo of parties of a petition/proceeding filed before the Courts.

To ensure the immediate compliance of these directions, the Court also directed a copy of this order to be placed before the concerned Registrar. The same shall be circulated to the Registrar Generals of all the High Courts.

The Bench of Justices Hima Kohli and Ahsanuddin Amanullah were hearing a transfer petition in a family dispute between husband and wife. The caste of the parties was mentioned in the parties' memo. Expressing its dissatisfaction, the Court marked that such practice of mentioning the litigant's caste be 'shunned' and 'ceased.'

"We see no reason for mentioning the caste/religion of any litigant either before this Court or the courts below. Such a practice is to be shunned and must be ceased forthwith."

When asked about the same, the petitioner's (wife) counsel submitted that registry will object if memo of parties as filed before the courts below is altered. Further, since the caste was mentioned before the court below, there was no option but to mention their caste in the Transfer Petition.

Accordingly, the Court also made it clear that the above-mentioned direction is irrespective of whether the caste or religion of the parties has been furnished before the courts below.

"It is therefore deemed appropriate to pass a general order directing that henceforth the caste or religion of parties shall not be mentioned in the memo of parties of a petition/proceeding filed before this Court, irrespective of whether any such details have been furnished before the courts below. A direction is also issued to all the High Courts to ensure that the caste/religion of a litigant does not appear in the memo of parties in any petition/suit/proceeding filed before the High Court or the Subordinate Courts under their respective jurisdictions."

In this context, it may be recalled that last year in October, a Bench led by Justice Abhay SA. Oka had deprecated the practice followed by certain Trial Courts and the High Court of mentioning the caste or religion of a party in the cause title of the judgment.

11 Prolonged Separation From Spouse Without Cause Itself Cruelty U/S 13(1)(ia) Hindu Marriage Act: Allahabad High Court

The Allahabad High Court has upheld the divorce granted by the Court below to a couple living separately for almost 13 years.

In the divorce petition filed by the husband, the Court below had decided the issue of dissertation against him. However, divorce was granted on grounds of mental cruelty inflicted by the wife on the husband.

The bench comprising of Justice Vivek Kumar Birla and Justice Donadi Ramesh held that cruelty need not only be physical in nature. In case of mental cruelty, it may be impossible for the spouse to continue in the martial relationship.

Since the wife had admitted that they had not lived together continuously, the Court held

"We, therefore, find that apart from issue no. 2 of cruelty the Court below appreciated that it is a case of irretrievable breakdown even if the desertion is not proved as per definition of Section 13 (1)(ia) and (ib). Admittedly at least 13 years have passed since both are living separately, which by itself amounts to cruelty under Section 13 (1)(ia) of the Act."

Factual Background

As per factual matrix of the case, marriage between the parties was solemnized as per Hindu rites in 2002 and the wife lived at her paternal home after marriage for some time. She went to live with her husband for a brief period, thereafter, went back to her paternal home and then joined service in a different city from her husband. Though initially the wife moved with her husband to Mumbai, she eventually moved away.

In the divorce petition, the husband asserted that he was subjected to mental and physical cruelty. He asserted that he was deserted by his wife and there was irretrievable breakdown of marriage. However, in the written statement, the wife had alleged beating and torture and demand of dowry. She had further alleged adultery.

During the divorce proceedings, conciliation was tried, however, since the wife had not appeared on the subsequent date, it was deemed that she was not interested in conciliation and the Court below proceeded with recording evidence. The Court below held the marriage had irretrievably breakdown

even if the desertion is not proved as per definition of Section 13 (1)(ia) (cruelty) and (ib) (dissertation).
The Court also held that since the wife was unable to prove the allegations of extra marital affair against the husband. The Court also noted that the allegations regarding physical torture made by the wife were false since no FIR was lodged and her eye problem had been persisting since before the marriage. Accordingly, the Court below held that mental cruelty was caused to the husband.

High Court Verdict
The Court observed that living separately for more than 13 years itself amounts to cruelty under Section 13(1)(ia).
The Court relied on Rakesh Raman vs. Smt. Kavita wherein relying on a judgment of its three judge bench in Samar Ghosh vs. Jaya Ghosh, the Supreme Court observed that mental cruelty includes
“Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”
Further, reliance was placed on Rajib Kumar Roy vs. Sushmita Saha wherein the Supreme Court held that
“Whatever may be the justification for the two living separately, with so much of time gone by, any marital love or affection, which may have been between the parties, seems to have dried up. This is a classic case of irretrievable breakdown of marriage”.
Relying on the decision of the Supreme Court in Samar Ghosh, the Court held that since undue harassment and mental cruelty had been established before the Court below, the divorce was rightly granted.

12 No Case Of Rape By False promise Of Marriage When Marriage Was Solemnised Ultimately: Supreme Court

The Supreme Court (on January 03), while quashing a criminal case against the accused-appellant for raping a 25-year-old woman on the pretext of marriage, held that there was a consensual relationship that culminated into marriage. Thus, the Court did not find any basis for the allegation that the physical relationship was due to the false promise of marriage as, ultimately, the marriage was solemnised.

"Therefore, on the face of it, the allegation that the physical relationship was maintained due to false promise given by the appellant to marry, is without basis as their relationship led to the solemnization of marriage.," observed Justices Abhay S. Oka and Pankaj Mithal.

Additionally, the Division bench also opined that in this case the allegations are such that 'no prudent person' can ever conclude that there exists a sufficient ground for proceeding against the appellant.

"Therefore, this is a case where the allegations made in the FIR were such that on the basis of the statements, no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the appellant."

The entire case rests on a complaint filed by the father (third respondent) of a victim. He alleged that the appellant was running IIT coaching classes in Delhi. His daughter and appellant met and developed love for each other. The appellant assured the victim to marry her. Thereafter, the appellant prepared a certificate of marriage from Arya Samaj Mandir. He alleged that by playing fraud, the appellant maintained a physical relationship with the victim. Consequently, the appellant left the victim at his father's residence. This led to the filing of a complaint against the appellant. Since the High Court declined to quash the FIR, the appellant has preferred this present appeal.

Before the Supreme Court, the appellant's counsel brought to the Court's attention a notice issued by a victim's advocate. In the notice, the victim admitted that a marriage was solemnized between her and the appellant. Per contra, the respondent supported the impugned judgment.

At the outset, the Court observed that as per the notice, the victim has been described as the wife of the appellant. Apart from this, the notice also acknowledged that the marriage between the appellant and the victim was

esolemnized. Pertinently, it was also alleged in the notice that the victim was turned away from the matrimonial home by the appellant on the ground that his father wanted a sum of Rs.50 lakhs. Thus, by the said notice, the victim called upon the appellant to arrange "Vidai."

The court also perused the victim's statement made before the police officer. Therein, she stated that the appellant took her to Arya Samaj Mandir and solemnized the marriage.

In view of these facts and circumstances, the Court held that the relationship between the appellant and the victim was a consensual relationship that culminated in the marriage. Thus, the Court allowed the appellant's appeal and quashed the FIR.

13 Appellate Court Should Give Benefit Of Doubt To Accused If A View Different From Trial Court's View Is Possible : Supreme Court

The Supreme Court has observed that an appellate court should give the benefit of doubt to the accused persons if the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken.

Reversing the concurrent findings of guilt entered by the trial court and the High Court against three persons in a 2007 murder case, a bench comprising Justices Abhay S Oka and Pankaj Mithal said :

"We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons."

The Court was hearing the appeals filed by four persons who were convicted to life imprisonment under Section 302 r/w 34 IPC with a fine of Rs.5000/- each by the Fast Track Court, Jabalpur. The High Court affirmed the convition and sentence. During the course of the pendency of the appeal, one of the appellants passed away.

Background

The case of the prosecution was that on 08.06.2007 at around 08:45 PM, the victim named Pappu alias Rajendra Yadav was beaten and assaulted by all four accused with knife and other weapons such as sickle and kesia, resulting in the death of the victim, when he along with his friends Virendra Verma and Amit Jha was coming out of the Machchu Hotel. The information of the said incident was supplied to the brother and mother of the deceased victim by a person named Virendra Kumar, who was arrayed as PW 1. It was the prosecution story that when the mother and brother of the deceased victim reached the incident place, the deceased has given the 'dying declaration' accusing the present accused persons for beating and assaulting with a knife, thereafter, a FIR was registered with the police, and the deceased was taken to the hospital for treatment where he was declared dead.

Observation of the Court

The Supreme Court has observed the following observations: -

- **Dying Declaration cannot be accepted unless corroborated by cogent evidence:**

It was observed by the court in para 7, that the prosecution is based upon the dying declaration of the deceased. After, having a detailed analysis of the prosecution story that the deceased was being beaten and assaulted by the accused persons near Machchu Hotel, and the dying declaration is in the shape of an answer to the question asked by the mother of the deceased as to what had happened? The Court in para 16 observed that:

"The brother and the mother of the deceased had rushed to the spot only after receiving information of the incident from PW-1 who after seeing the accused persons assaulting the deceased had gone to their house to inform of the incident. All this, obviously, could have consumed 15-25 minutes which means that by the time they reached the place of occurrence, the deceased could not have survived so as to make any declaration. There is no specific material piece of evidence to establish that the deceased was alive or in a position to speak when his brother & mother reached the spot. In these circumstances, the dying declaration cannot be ex facie accepted to be correct unless it stands corroborated by any other cogent evidence. There is no material to corroborate the said dying declaration."

- **Relative Prosecution Witness can't be Relied upon Blindly:**

The Court in para 9 noted that in addition to a dying declaration, a reliance on the testimony of the PW 13 named Rahul Yadav, is being placed by the prosecution to establish that appellants-accused were seen beating the deceased by the PW 13 on 08.06.2007 near Machchu Hotel between 08.30 pm to 09.00 pm, while he was returning from his friend's house. However, the court was not inclined with the version of PW 13, where in para 10 the court noted that "it has come in evidence that Rahul Yadav (PW-13) is a relative of the deceased Pappu Yadav and as such he is not a free and independent witness. He is likely to be an interested witness." Thus, the court viewed that the testimony of PW 13 has to be considered with great circumspection and cannot be relied upon blindly without taking into account available corroborative evidence on record, if any.

Conclusion

After finding that the testimony supplied by PW 13 is unworthy of credit and the dying declaration of the deceased is not corroborated by other cogent evidence by the prosecution, the court ultimately gave the benefit of doubt to the appellant-accused and set aside the conviction and sentence of the appellants by granting them benefit of doubt, by setting them free and discharging their bail bond. Accordingly, the appeal was allowed.

14 Supreme Court Quashes Rape Case As FIR Was Lodged 34 Years After The Alleged Incident

The Supreme Court recently quashed criminal proceedings against a man accused of raping a minor, noting that the FIR was registered after a gap of 34 years, and that too, only on a bald statement that the prosecutrix was a minor at the time of the offence.

"We find that lodging a case after 34 years and that too on the basis of a bald statement that the prosecutrix was a minor at the time of commission of offence, could itself be a ground to quash the proceedings. No explanation whatsoever is given in the FIR as to why the prosecutrix was keeping silent for a long period of 34 years", the Bench of Justices BR Gavai and Sandeep Mehta said.

In arriving at the decision, the Bench further considered that the son born out of the relationship between the prosecutrix and the appellant had been treated by the latter as his son and all facilities, including cash money, had been provided to him. It showed that the relationship was consensual, the court said.

The case had arisen out of a complaint given by the prosecutrix in 2016, alleging that when she was 15 years of age, she was raped by the appellant and a son was born out of the relationship in 1983.

After completion of investigation, a final report was filed, wherein the Investigating Officer mentioned that the appellant was found to be the biological father of the prosecutrix's son. It was also mentioned that the appellant had provided cash money and other facilities to his son, however, due to greed for his property, the prosecutrix and her son had lodged the FIR after 34 years.

The concerned Magistrate rejected the final report and directed that cognizance be taken on the basis of the police report. Aggrieved, the appellant moved the High Court under Section 482 CrPC, but was denied relief. Thereafter, he approached the Supreme Court, contending that the FIR was lodged to blackmail him and was an abuse of the process of law.

After going through the record, the Supreme Court Bench noted that in the statement given by the prosecutrix's son, it was admitted that the appellant was providing him cash money and other facilities.

It was held that the Magistrate was not bound to accept the Investigating Officer's final report, however, reasons for rejecting the same ought to have

been given.

"...if the learned Magistrate disagrees with the finding of the I.O., the least that is expected of him is to give reasons as to why he disagrees with such a report and as to why he finds it necessary to take cognizance despite the negative report submitted by the I.O.".

Referring to State of Haryana and Others v. Bhajan Lal and Others, the Bench further observed that although power to quash criminal proceedings should be exercised sparingly, the present case fell under categories 5 (inherently improbable allegations) and 7 (presence of malafides) culled out in the judgment. It opined that the finding of the Investigating Officer that the FIR was lodged only out of greed for the appellant's property could not be said to be erroneous.

Arriving at a conclusion that continuation of the proceedings would lead to nothing else, but abuse of process of law, the orders of the High Court and the Magistrate were quashed.

15 Children From Void Marriage Can't Be Denied Share In Their Parent's Property : Supreme Court

The Supreme Court on Friday (January 19) held that the children born out of a void and voidable marriage shall be considered as legitimate children and be treated as an extended family of the common ancestor for the purpose of deciding a valid share in the property of the common ancestor.

Reversing the findings of the High Court, the Bench of Justices MM Sundresh and SVN Bhatti noted that once the common ancestor has admittedly considered the children born of void and voidable marriage as his legitimate children, then such children would be entitled to the same share as the successors in the property of the common ancestor as that of children born out of a valid marriage.

Briefly put, one Muthusamy Gounder (dead) is a common predecessor in interest. He had three marriages out of which two marriages were declared void. Out of these three marriages, Gounder has five children i.e., four sons and one daughter. The legitimate son (Respondent no.3) born out of a valid marriage filed the suit for partition before the trial court. Moreover, the children born out of a void marriage were also impleaded as defendants before the trial court. The trial court decreed the suit for partition in favour of the legitimate child.

Challenging the order/judgment of the trial court, the children from void marriage preferred an appeal before the High Court. However, the appeal was dismissed by the High Court.

It is against the impugned order/judgment of the High Court that the present Civil Appeal was preferred before the Supreme Court.

Issue

Whether children born out of void marriages would be entitled to share in the property of a common ancestors as his successors?

Observation

The judgment authored by Justice Bhatti noted that the admission of the common ancestor to treat the children born out of a void marriage as his legitimate children would be also considered as an evidence against his legitimate child, who is claiming through the common ancestor.

"The Privy Council in Gopal Das and another v. Sri Thakurji and others, held

that a statement made by a person is not only evidence against the person but is also evidence against those who claim through him."

In light of the admission made by the common ancestor, the court took perusal of certain documentary evidences to draw an inference that the common ancestor treated the children born out of void marriage as his legitimate children.

The court noted that the children born out of void marriages would be treated as successors in the interest of Muthusamy Gounder, and accordingly the shares need to be worked out. To this effect, the following observation of the court is meaningful:

"Once the status of the parties, other than Respondent No. 3, is established as the extended family of the propositus, irrespective of whether the marriages of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder are void or voidable, denying the children of Muthusamy Gounder a share in the property of notional partitioned in favour of Muthusamy Gounder, is unsustainable in law and fact."

It is worthwhile to mention that the Supreme Court in Revanasiddappa and another v. Mallikarjun and others, noted that the children born out of void or voidable marriage would possess rights in their parent's property but ancestral property. While relying on the aforesaid judgment, the court in the present case upheld the entitlement of the children born out of void and voidable marriage in the common ancestor property and passed the decree of partition accordingly.

"By applying the above principle on the entitlement of share to the children of void or voidable marriages, the judgements under appeal are liable to be set aside and are accordingly set aside. We allow the appeal by passing a preliminary decree of partition for the plaint schedule properties, firstly between Respondent No. 3 and Muthusamy Gounder. Secondly, in the notionally partitioned share of Muthusamy Gounder, his children, i.e., Appellant Nos. 1 and 3, Respondent No. 1 and Respondent No. 3 are allotted equal shares."

Accordingly, the appeals were allowed.

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AIR 55

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AIR 71*

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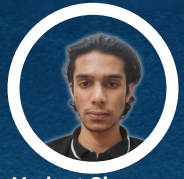
AIR 96

Himanshu Golhani
AIR 130

Manya Gurnani
AIR 173



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