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1 Educational Institutions Can't Claim Lien Over Student's Certificate, Withhold It On Account Of Pending Dues: Madras High Court

The Madras High Court recently reiterated that educational institutions cannot withhold the educational certificates of students with respect to pending dues. The court underlined that educational institutions cannot claim lien over the student's certificates.

"However, the settled position of law in this regard is that certificates of a student cannot be withheld for arrears of fees as the educational institution can claim no lien over the same," the court observed.

Justice Anita Sumanth directed the Principal of Cheran College of Pharmacy to return the original Transfer Certificate, mark sheet of X and XII to a former student. The court also gave liberty to the college to take appropriate measures to recover the monetary outstanding in the manner known to law.

The court was hearing a plea filed by one M Kesavan, a former student of Cheran College seeking directions to the college to return his original transfer certificate and mark sheets of X and XII standards to enable him to secure admission to the School of Agriculture and Animal Science.

Cheran College informed the court that Kesavan had pending dues that were to be paid to the college.

During the hearing, the School of Agriculture informed the court that Kesavan's admission itself had been cancelled as he had failed to produce the requisite certificates and did not have requisite attendance during the period in which he was allowed to attend the classes temporarily.

The court, noting that the college did not have a lien over the documents, allowed Kesavan's plea and directed the college to return his original documents as and when he appeared before the college.

Credit – Live Law

2 Wife Openly Humiliating Husband, Calling Him Impotent Amounts To Mental Cruelty: Delhi High Court

The Delhi High Court has said that being openly humiliated and called impotent by the wife in front of family members is an act of humiliation causing mental cruelty to the husband.

A division bench comprising Justice Suresh Kumar Kait and Justice Neena Bansal Krishna made the observation while granting divorce to a husband on the grounds of cruelty by the wife under Section 13 (1) (ia) of the Hindu Marriage Act,1955.

"…..we conclude that the to be openly humiliated and being called as impotent by his wife, in front of others and for the respondent (wife) to discuss their sexual life in the presence of family members, can only be termed as an act of humiliation causing mental cruelty to the appellant (husband)," the court said.

The husband filed an appeal against a family court order dismissing his divorce petition. The couple got married in 2011. He alleged that the wife had an irritable temper and foul tongue and would pick up fights on trivial matters.

It was his case that despite having undergone IFV procedure twice, the couple was unable to beget a child due to which matrimonial differences surfaced in their lives. He alleged that the wife constantly humiliated him by calling him impotent in front of his family members.

Allowing the appeal, the bench said that the public humiliation which the husband suffered by the knowing or unknowing acts of the wife in terming him impotent while it was a medical condition of sterility could not be overlooked.

Furthermore, the bench observed that the wife's admissions were not able to show that the husband had ever disregarded her or failed to discharge his matrimonial obligations.

"We, on the appreciation of the entire evidence as led by the parties, are compelled to conclude that the appellant had been subjected to cruelty. Accordingly, the impugned Judgment dated 28.07.2021 dismissing the Divorce Petition, is hereby set-aside and the divorce is granted to the appellant on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act,1955," the court said.

Credit – Live Law

3 Wife Must Be Living In Adultery 'At Or Around Time' Of Filing S. 125 CrPC Plea To Be Disentitled To Maintenance: MP High Court

TThe Madhya Pradesh High Court has recently observed that a wife can be debarred from getting maintenance on the ground of "adultery" only when she is actually "living in adultery" at or around the time of application for maintenance under Section 125 of CrPC.

A bench of Justice Prakash Chandra Gupta added that the acts of adultery by the wife have to be continuous and the liability to prove the same is upon the husband to debar wife from getting maintenance as per Section 125 (4) CrPC.

The Court observed thus while dismissing a plea moved by a husband challenging a family court's order directing him to pay Rs.10,000/- per month maintenance to his wife (respondent) on a plea moved by her under Section 125 CrPC.

In the family court, the wife asserted that her husband began pressuring her for dowry shortly after their marriage. She claimed that when she didn't meet his demands, he resorted to physical violence against her. She further alleged that a year before filing for maintenance, her husband forced her out of the matrimonial house, leaving her to reside in a rented room without any support from him.

Contrarily, the husband contended that he never sought dowry from his wife nor subjected her to any form of harassment or cruelty regarding it. He argued that his wife left him of her own accord without justification. Additionally, he claimed that she was the aggressor in their relationship, frequently assaulting him and verbally abusing both him and his family members. He further alleged that she was engaged in obscene talk with another man and committed adultery. He asserted that she was currently residing with him in Bhopal.

However, holding that the wife had sufficient cause to stay apart from her husband, the Family Court found her entitled to maintenance. Accordingly, her application was partly allowed. Challenging the same, the husband moved the HC.

Before the HC, the counsel of the husband claimed that the petitioner had adduced sufficient and reliable evidence that the respondent/wife was living in adultery and hence, the order of the family court was erroneous. On the other hand, supporting the family court's order, the Counsel for the wife sought dismissal of the husband's plea.

At the outset, the Court noted that as per Sectio 125 (4) CrPC, a wife is not

entitled to any maintenance allowance from her husband if she is living in adultery or if she has refused to live with her husband without any sufficient reason or if they are living separately by mutual consent

The Court, however, noted that the law mandates that to extract the provision under Section 125(4) of the CrPC, the husband has to establish with definite evidence that the wife has been living in adultery, and one or occasion acts of adultery committed in isolation would not amount to "living in adultery".

In view of this, when the Court examined the facts of the case, it found that though the petitioner/husband pleaded that the respondent/wife used to have an obscene talk with a man at night hours and she indulged in adultery with him, however, the husband did not state anything regarding this in his plea and he even could not dare to ask about the same in the cross-examination of the respondent/wife. Therefore, in the absence of evidence, the Court noted that it was not proven that the respondent/wife was living in adultery with another man

Regarding the photograph adduced by the husband (of his wife and her alleged partner), the Court noted he failed to explain that by which mobile phone, by whom and when the photographs were clicked.

The Court observed that even on being required by the trial Court to furnish a certificate u/S 65 B of the Evidence Act, the husband failed to do so and therefore, the Court stressed, on the basis of such photographs, it cannot be concluded that the respondent is living in adultery with another man.

Consequently, holding that the trial Court rightly allowed the application moved by the wife u/S 125 of CrPC, the Court upheld the said order and dismissed the husband's plea.

Credit – Live Law

4 Anticipatory Bail Application Can Be Considered Even After Cognizance Of Private Complaint Is Taken: Karnataka High Court

The Karnataka High Court has set aside an order of the trial court which rejected a petition for anticipatory bail filed by an accused charged under provisions of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act on the ground that cognizance had already been taken of the complaint.

A single judge bench of Justice Mohammad Nawaz allowed the plea challenging the order of the trial court dated February 9, and granted them anticipatory bail on the execution of a Bond in a sum of Rs.1,00,000 each, with two sureties.

The court said,"The Sessions Judge was not proper in rejecting the petition filed under Section 438 of Cr.P.C, observing that in the present case already cognizance has been taken, as such anticipatory bail of the accused cannot be considered."

The complainant K S Ravi Kumar had filed a private complaint alleging offences under Section 504, 506, 153(A), 109, 500, 501 and 120B r/w Section 34 of IPC and Section 3(i)(x) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused.

The Sessions Judge referred the matter to ACP, Kengeri Gate Sub-Division, Bengaluru, for investigation. Upon conducting the investigation, a 'B' report was submitted. The complainant filed a protest petition.

Thereafter, it was stated that the court proceeded to take cognizance of the offences alleged and issued summons to the accused. Further, it is contended that it also issued a non-bailable warrant against the accused. It accordingly rejected the anticipatory bail application.

The petitioners argued that the mere fact of taking cognizance or filing of charge sheet is not a bar against the grant of anticipatory bail.

It was contended that the police on a thorough investigation had filed a 'B' report concluding that the entire allegations were baseless and the sessions judge initially issued summons on the protest petition, however, in spite of non-payment of process fee to issue summons, the judge had proceeded to issue a non-bailable warrant against the accused.

It was contended that the entire allegations made against the appellants were false and frivolous and the complainant was in the habit of filing false complaints.

It was argued that the ingredients of the offences alleged against the appellants are not made out and there is no prima facie case attracting the

provisions of the SC/ST (PoA) Act.

The complainant argued that the appellants were aware of his caste and under Section 8© of the SC/ST (PoA) Act, if the accused had personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim.

On going through the details mentioned in the complaint, the bench noticed that the complaint claimed that he had started facing nuisance after 3-4 months of occupying the flat such as noise disturbances, dustbin contents being scattered around the front door, tampering with his motorcycle etc.

It was alleged that the residents of the Kailash apartments were criminally conspiring and instigating others to pick up unnecessary quarrels with him to show him in bad light and as a bad person.

Further, it was stated that in spite of an e-mail to the Kailash BDA Apartment Owners Welfare Association ('KBAOWA'), no action was taken. He alleged that the Brahmins had formed a group of their own to elect office bearers, etc.

It was submitted that when he had called upon the accused-president of KBAOWA and persuaded him to make rules or take action against the parking problem, the accused started abusing him.

It is argued that the accused spoke in an arrogant manner, shouted at him to get out of the KBAOWA office and insulted him in front of several others who were present at the office, knowing very well that he belonged to the Scheduled Caste community.

It was also alleged that accused No.2 had come to the complainant's home and tried to convince him to drop the matter and pressurised the complainant's wife to come to the police station while threatening the complainant with dire consequences.

On a careful perusal of the arguments in the complaint, protest petition and the allegations made against the appellants, the court stated that at this stage, it cannot be said that a prima case was made out against them which would disentitle their prayer for anticipatory bail.

It said, "There is no prima facie material against the appellants, except the bald allegations. Undisputedly, a 'B' Report was filed upon investigation. On the protest petition, initially summons were issued to the appellants. The order sheet would disclose that the process fee was not paid, but the learned Sessions Judge proceeded to issue NBW. Hence, the appellants have a reasonable apprehension of their arrest."

Accordingly, it allowed the petition.

Credit – Live Law

5 No Contributory Negligence By Car Driver Who Rammed Into Truck From Behind Due To Non-Functional Brake Lights: Bombay High Court

The Bombay High Court has held that if a truck's brake lights or taillights are not working and a car rams into it from behind, the driver of the car vehicle is not liable for any negligence contributing to the collision.

Justice Shivkumar Dige set aside an order of the Motor Accident Claims Tribunal which held the deceased 50% responsible for the accident. The court enhanced the compensation awarded to the deceased car driver, nearly doubling the amount to Rs. 29,40,000.

Facts of the Case

The claimant's case was that on 12th January 2006, around 8.30 p.m., the deceased Ravindra was proceeding towards Sanaswadi from Shikrapur by Nagar-Pune highway in his Maruti Car. On the way, a trailer truck proceeding towards Pune without any parking or brake lights stopped his trailer in the middle of the road. In the absence of brake lights, the car rammed into the trailer, and the driver died of multiple injuries.

The Tribunal held the card river responsible for contributory negligence at 50% and awarded the family Rs. 15 lakh.

The Insurance Company appealed against the judgement, claiming that the deceased car driver was solely responsible for the accident as he rammed into the truck from behind. The claimants sought enhanced compensation.

The claimants contended that the offending vehicle, a trailer truck, was 70 feet long and stopped in the middle of the road without any indicator in the night. Moreover, the Insurance Company didn't examine the RTO Officer to prove that the driver of the offending truck was not holding an effective and valid driving license.

Justice Dige observed that the trailer driver did not enter the witness box to prove the deceased's negligence. The court also criticized the insurance company for failing to examine officers from the RTO to substantiate their claim that the trailer driver did not possess a valid driving license.

Allowing the family's cross-objection, the High Court enhanced the compensation amount to Rs. 29.4 lakh, with interest at 7.5% per annum from the date of filing the claim petition. The insurance company was directed to deposit the enhanced amount within eight weeks, after deducting Rs. 45,000 towards excess non-pecuniary compensation awarded by the Tribunal.

Credit – Live Law

6 UP 'Anti-Conversion' Law Applicable To Live-In Relationships Too: Allahabad High Court

The Allahabad High Court recently observed that the UP Prohibition of Unlawful Conversion of Religion Act, 2021 applies not only to marriages but to relationships in the nature of marriage or live-in relationships.

A bench of Justice Renu Agarwal made this observation while dismissing a protection plea filed by an interfaith couple (petitioners) as it noted that the duo had not applied for registration of any conversion under the provisions of the 2021 Act.

The Act, which came into force on March 5, 2021, made it mandatory for interfaith couples to seek conversion according to its provisions, the court said as it observed that none of the petitioners had moved an application for conversion of religion in accordance with Section 8 and 9 of the Act.

The Court added that while the Courts have the power to interpret the provisions of law if there is ambiguity in the provisions of law, the 2021 law is explicit which mandates that conversion is required not only in cases of inter-caste marriages but in relationships in the nature of marriage too, hence, the Courts should refrain from embarking upon the interpretation of the law in any sense when the law is very explicit.

The observations were made as the court dismissed the protection plea filed by a Muslim woman (24) and his partner, a Hindu man (23) who claimed to have solemnised marriage in January this year as per Rituals of Arya Samaj.

They moved the court stating that they are living as wife and husband and their relationship is not relished and agreed by private respondent no.4, who is interfering in their marital life.

It was also submitted that the petitioners apprehend danger to the life and liberty from respondent No.4, therefore, the indulgence of the High Court was sought. On the other hand, the counsel for the state opposed their plea as it was argued that the petitioners had not applied for the conversion of religion.

Credit – Live Law

7 Calling Wife 'Bhoot', 'Pishach' Not Cruelty: Patna High Court Sets Aside Husband's Conviction U/S 498A IPC

The Patna High Court has observed that a husband calling his wife 'Bhoot' (ghost) or 'Pisach' (Vampire) itself does not constitute an act of cruelty.

A bench of Justice Bibek Chaudhuri added that in matrimonial relations, especially in failed matrimonial relations, there are incidents where both the husband and wife abuse each other by using filthy language, however, all such accusations do not come within the veil of "cruelty'.

The court made these observations while setting aside a husband's conviction under Section 498A IPC and Section 4 of the Dowry Prohibition Act 1961.

The Court allowed the revision plea moved by the husband challenging the order of the Additional Sessions Judge, Nalanda at Biharsharif upholding the order of his conviction passed by Chief Judicial Magistrate, Nalanda

The facts in brief

The Opposite Party No. 2 (father of the wife) filed a complaint case in 1994 before the court of Chief Judicial Magistrate, Nawada against her husband and their family members, alleging, inter alia, that after his daughter got married to the petitioner no. 2 (husband), she was subjected to physical and mental torture on account of dowry demand.

The said complaint was referred to the Police under Section 156(3) CrPC and accordingly, a case was lodged under Sections 498A, 323, 120B, 348 and 386 of the Indian Penal Code and Sections ¾ of the Dowry Prohibition Act,1961.

On completion of the investigation, the Police submitted a charge sheet against the Petitioners and 11 other persons named in the FIR. Both the Trial Court as well as the Court of Appeal, convicted and sentenced the Petitioners to rigorous imprisonment for one year for offence under Section 498A IPC and rigorous imprisonment for six months for the offence punishable under S. 4 of the Dowry Prohibition Act, 1961.

Challenging his conviction, the husband moved the HC wherein his counsel argued that there were no specific averments in the complaint as to who demanded dowry and when it was demanded and how the wife was tortured.

It was also contended that she was never medically treated for such torture allegedly perpetrated upon her by the Petitioner-husband.

On the other hand, the Counsel for the wife's father argued that the Petitioner-husband and their family members used to abuse her by calling her "Bhoot"

(ghost) and “Pisach” and that by saying so, they inflicted immense cruelty on the wife.

High Court’s observations

At the outset, the Court rejected the argument that just by calling his wife ‘Bhoot’ and ‘Pishach’, the husband inflicted cruelty on his wife. The Court also observed that though the wife stated in her evidence that she informed the matter regarding the torture to her father by a series of letters, however, not a single letter was produced by the de facto complainant during the trial of the case.

The Court also noted that no document was produced to show that the contesting Petitioners personally demanded a Maruti Car and on non-fulfilment of such demand, the wife (daughter of the de facto complainant) was subjected to cruelty. The Court also took into account the fact that no specific distinct allegations were made against the husband or his family members.

In view of this, the Court opined that the case under Section 498 A of the Indian Penal Code was the outcome of personal grudge and differences between both the parties.

Against this backdrop, the Court set aside the order of conviction and allowed the revision plea.

Credit – Live Law

8 Bank Account Can't Be Frozen Under UAPA Without Order Of Central Govt Under S.7(1) : Madras High Court

The Madras High Court recently set aside an order passed by the Assistant Commissioner of Police, Vepery Range and ordered de-freezing the bank account of Tamil Nadu Development Foundation Trust after finding that the trust's account was frozen under the Unlawful Activities Prevention Act without conducting proper inquiry.

The bench of Justice MS Ramesh and Justice Sunder Mohan observed that as per Section 7(1) of the UAPA while passing a prohibitory order, an inquiry had to be conducted. The court noted that in the present case, no such inquiry had been conducted. Thus, the court found the order violative of Articles 14 and 21 of the Constitution.

The account of the trust was frozen upon an order from the Assistant Commissioner of Police, claiming that the trust was an Islamic Centre of the Popular Front of India which had been declared a banned organisation under the UAPA.

The trust claimed that it was an independent Trust and had no nexus with the PFI or had used its funds for any unlawful activities or against the objectives of the Trust. It was submitted that the order calling for freezing was in violation of principles of natural justice as neither a prior opportunity was given nor the impugned order was served on the trust. The trust also questioned the Assistant Commissioner's authority to pass the prohibitory order.

The ASG, on the other hand, argued that when powers under Section 7 were Invoked against any person or Trust which aided an unlawful association, no inquiry had to be conducted or opportunity of hearing extended to such persons or trusts.

The court noted that as per Section 7(1) of the UAPA, the Central Government could pass a prohibitory order if it came to the subjective satisfaction that any person aids or assists an unlawful association with money or is in the custody of money, securities or credits which is used or intended to be used foe the purpose of unlawful association. However, the section mandated the central government to conduct an inquiry before passing prohibitory order.

The court noted that in the present case, the Central Government hade not expressed how they had arrived at the subjective satisfaction and not were in a position to substantiate the nexus between the Trust or PFI.

To the Trust's argument that the Assistant Commissioner did not have any

power, the court disagreed with the same and noted that as per the Act, the Central Government could delegate the powers exercised by it to the State Government. The court noted that after declaring UAPA as an unlawful association, the Gazette notifications, and the powers of the Central Government were given to the State Government. Through another notification, the State Government gave its powers to the commissioner of Police in the cities and District Collectors elsewhere.

The court thus noted that the Assistant Commissioner's order could not be termed as sub-delegation but only an implementation of the orders passed by the Commissioner of Police for taking necessary action as per law and for sending an action taken report.

However, since proper inquiry as contemplated under the Act was not followed, the court thought it fit to quash the order. The court, however, made it clear that the present order would not stand as an impediment to the appropriate authority to pass orders according to law.

Credit – Live Law

9 Relationship Which Was Consensual At Beginning Might Not Remain Same For All Time: Supreme Court Refuses To Quash Rape Case

A relationship may be consensual at the beginning, but the same state may not remain so for all time to come., held the Supreme Court while declining to quash an FIR registered against a rape accused.

"Whenever one of the partners show their unwillingness to continue with such relationship, the character of such relationship at it was when started will not continue to prevail.," the Bench of Justices Aniruddha Bose and Sanjay Kumar stated in their recent order.

In the present case, the accused/ present appellant was in a relationship with a complainant/ respondent that later turned sour. There were several allegations and cross-allegations against both parties. The present case revolves around the FIR filed by the respondent against the accused person. Several provisions of the Indian Penal Code, 1860, including that of rape and criminal intimidation, as well as provisions of the Information Technology Act, 2000, were invoked against the accused.

Initially, the appellant approached the Karnataka High Court to have the FIR quashed. Having been unsuccessful there, the appeal was filed before the Apex Court.

The appellant's Counsel argued that the respondent's acts were a counterblast to the former's complaint of blackmailing/extortion against the latter.

However, the Supreme Court observed that the allegations made in the FIR cannot be held to be inherently improbable. Pertinently, this is one of the grounds for quashing an FIR (State of Haryana & Ors. Vs. Bhajan Lal & Ors.).

Moving forward, the Court agreed with the view that a consensual relationship cannot give rise to an offence of rape, as held in the case of Shambhu Kharwar vs. State of Uttar Pradesh & Anr., 2022 INSC 827. However, in the same breath, the Court observed that the respondent's allegations do not demonstrate continued consent on her part.

Against this backdrop, the Court made the allegations mentioned above. Based on this, the Court opined that the relationship had not remained consensual to justify quashing the FIR. We also do not think that the complaint, in pursuance of which the FIR has been registered, lacks the ingredients of the offences alleged, the Court added.

Noting this, the Court refused to interfere with the impugned order. It also directed that appropriate steps be taken to mask the respondent's identity in

future pending proceedings in all the concerned Courts.

Credit – Live Law

10 ‘Not Murder, But Culpable Homicide Not Amounting To Murder’ : Supreme Court Reduces Sentence Of Husband Who Burnt Wife Alive In Sudden Quarrel

The Supreme Court recently converted the conviction of a husband, who killed his pregnant wife by setting fire on her after pouring kerosine oil, for the offence of murder under Section 300 of the Indian Penal Code to the offence of culpable homicide not amounting to murder punishable under Part-II of Section 304 IPC30.

The Bench Comprising Justices Sudhanshu Dhulia and PB Varale stated that when the act of the accused is not premeditated but is a result of a sudden fight and quarrel in the heat of passion, then such an act of the accused would amount to culpable homicide not amounting to murder punishable under Part-II of Section 304 of the IPC.

“From every available evidence, which was placed by the prosecution, it is a case where a sudden fight took place between the husband and wife. The deceased at that time was carrying a pregnancy of nine months and it was the act of pouring kerosene on the deceased that resulted in the fire and the subsequent burn injuries and the ultimate death of the deceased. In our considered opinion, this act at the hands of the appellant will be covered under the fourth exception given under Section 300 of the IPC, i.e., “Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.”, the Supreme Court observed.

Although the accused knew that the act can cause the death, the Court held that it was done without intention to cause the death of the deceased.

“The act of the appellant is not premeditated but is a result of sudden fight and quarrel in the heat of passion. Therefore, we convert the findings of Section 302 to that of 304 Part-II, as we are of the opinion that though the appellant had knowledge that such an act can result in the death of the deceased, but there was no intention to kill the deceased. Therefore, this is an offence which would come under Part-II not under Part-I of Section 304 of the IPC.”, the Supreme Court records.

The Supreme Court has referred to Its earlier Judgment of Kalu Ram v. State of Rajasthan, where also similar facts and issues arose, i.e., the accused who in an inebriated state was pressurizing his wife to part with some ornaments

so that he could buy some more liquor. On her refusal, he poured kerosene on her and set her on fire by lighting a matchstick. But then he also tried to pour water on her to save her.

In Kalu Ram, the Supreme Court altered the conviction from Section 302 IPC to Section 304 Part II IPC after finding that the accused didn't intend to inflict the injuries on the deceased wife sustained on account of his act.

While agreeing to the Appellant's/accused arguments that the offence committed by him would amount to culpable homicide not amounting to murder, the Supreme Court while converting the findings of Section 302 to that of Section 304 Part II of IPC modified the findings given by the trial court and High Court.

"To this extent, the findings given by the trial court and High Court will stand modified. We have also been informed that the appellant has already undergone incarceration for more than 10 years. Therefore, he shall be released forthwith from the jail, unless he is required in some other offence.", the court concluded.

Credit – Live Law

11 Anticipatory Bail Can't Be Denied On Mere Assertion Of State That Custodial Interrogation Of Accused Is Required: Supreme Court

Recently, the Supreme Court held that anticipatory bail can't be denied merely because the custody of the accused is required by the State for custodial interrogation.

"There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.", the Bench Comprising Justices JB Pardiwala and Manoj Misra observed.

The Supreme Court observed the Sta"e cannot oppose the bail plea citing the requirement of custodial interrogation unless the State proves that why the custodial interrogation of the accused is required for investigation.

Further, the court also clarified that just because the custodial interrogation isn't required it wouldn't preclude the court from denying the anticipatory bail to the accused.

"It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature.", the court said.

After the Trial Court and High Court denied the anticipatory to the accused/appellant, he preferred a plea before the Supreme Court seeking anticipatory bail in connection with the offences committed under Sections 419, 465, 468, and 471 read with Section 120-B of the Indian Penal Code, 1860 and Section 7-C of the Prevention of Corruption Act, 1988.

After noting that the accused has joined the investigation and his statements have been recorded, the Supreme Court decided to grant anticipatory bail to the accused.

Credit – Live Law

12 Judiciary Must Avoid Unnecessary Interference With Administrative Decisions Involving Specialized Expertise: Supreme Court

While allowing the appeal against a Punjab and Haryana High Court order, which set aside Chief Minister ML Khattar's (Accepting Authority's) remarks and overall grade regarding senior IAS Officer Ashok Khemka's Performance Appraisal Report (PAR), the Supreme Court yesterday reiterated the principle of judicial restraint in administrative decisions.

Calling it a foundational principle of the Constitution, the Bench of Justices Vikram Nath and Satish Chandra Sharma said, "the judiciary must exercise restraint and avoid unnecessary intervention qua administrative decision(s) of the executive involving specialised expertise in the absence of any mala-fide and / or prejudice."

For an understanding of the factual background and other issues, click here.

While analyzing the issue as to whether the High Court could have interfered with the Tribunal's order, the Bench underlined the importance of judicial restraint by firstly referring to Caretel Infotech Ltd. V. Hindustan Petroleum Corpn. Ltd, a decision where the top Court cautioned that constitutional courts ought not to substitute their view for that of the administrative authority. In the said case, it was also categorically said that mere disagreement with the decision-making process does not suffice.

Moving on, the Bench made reference to the decision in State of Jharkhand v. Linde India Ltd., where scope of jurisdiction of High Courts under Article 226 of the Constitution to interfere with a finding of fact recorded by an expert was dealt with.

After recapitulating the legal position, the Bench observed that the administrative oversight in the present case should have been left to the executive. To quote,

"the process of evaluation of an IAS officer, more so a senior IAS officer entails a depth of expertise, rigorous and robust understanding of the evaluation matrix coupled with nuanced understanding of the proficiency required to be at the forefront of the bureaucracy. This administrative oversight ought to have been left to the executive on account of it possessing the requisite expertise and mandate for the said task."

In support of its view, it reasoned that overall grading and assessment of an IAS officer requires an in-depth understanding of various facets of an administrative functionary such as personality traits, tangible and quantifiable

professional parameters. These may include, "the competency and ability to execute projects; adaptability; problem-solving and decision-making skills; planning and implementation capabilities; and the skill to formulate and evaluate strategy", the Court said.

It followed that the aforesaid indicative parameters are usually then analyzed by adopting a specialized evaluation matrix. Thereafter, they are synthesised by a competent authority to award an overall grade to the candidate at the end of the appraisal/evaluation.

In this backdrop, it was concluded that the High Court erred in contrasting and comparing the remarks and overall grades awarded to Khemka by three authorities (the Reporting Authority, the Reviewing Authority and the Accepting Authority). It entered a specialized domain without the requisite domain expertise and administrative experience to conduct an IAS Officer's evaluation, the Bench said.

It was added that the High Court ought not to have undertaken the exercise particularly since the Accepting Authority was yet to pronounce its decision qua Khemka's representation.

Credit – Live Law

13 Can Writ Under Article 32 Be Issued Against A Private Individual? Supreme Court To Examine

The Supreme Court is set to examine a crucial point for its adjudication: "whether a writ under Article 32 of the Constitution of India can be issued against a private individual and if so under what circumstances an appropriate writ can be issued.?"

The Division bench comprising Justices Surya Kant and K.V. Vishwanathan posed this question while hearing a writ petition against Andhra Pradesh Chief Minister Y.S. Jagan Mohan Reddy for accusing Justice N.V. Ramana, who was next in line to be the Chief Justice of India at the time, of impropriety.

To elaborate, On October 11, Y S Jagan Mohan Reddy, the Chief Minister of Andhra Pradesh, wrote a complaint to the Chief Justice of India, S A Bobde, alleging that some High Court judges are attempting to protect the interests of the major opposition party, Telugu Desom Party, in politically sensitive matters.

A striking feature of the complaint—details of which were revealed to the media in a presser by Ajaya Kellam, the CM's advisor, on Saturday evening—was that it had accused senior Supreme Court judge Justice N V Ramana, who is next in line to be the Chief Justice of India, of influencing the administration of justice in the High Court.

Charges of, among other things, attempting to "destabilise and topple the democratically elected Government of the State of Andhra Pradesh" was levelled against Justice Ramana, who went on to become the 48th Chief Justice of India.

Later, an in-house probe by the Supreme Court gave clean chit to Justice Ramana, discarding the allegations made by the Andhra CM.

The present petition filed on behalf of Sunil Kumar Singh, a practicing lawyer, through Advocate on Record Mukti Singh, placed their reliance on the Supreme Court's decision in E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar., 1970 AIR 2015. In Nambiar's case, the chief minister of Kerala, E M S Namboodiripad, made some statements in a press conference that judges are "guided and dominated by class hatred, class interests and class prejudices." This resulted in one of the notable judgments by the Supreme Court, holding E M S guilty of contempt.

Singh argued that the contents of the letter and its release to the media "caused injury to the public". "What is at stake is the confidence, which, the

court in a democratic society must inspire among the public. This practice should not be allowed," Singh asserted.

Further, it was averred that freedom of speech and expression guaranteed under Article 19(1)(a) of the constitution is subject to reasonable restrictions in relation to contempt of courts and defamation. "In the society of today, where the discussion in the media and on social media can go wild within days or within hours, it can affect the image of judiciary and hence the confidence of the general public in the judiciary," the plea read.

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14 Governor Can Consult Only High Court On District Judges' Appointment: Supreme Court Faults Haryana Govt For Seeking Union's Opinion

The Supreme Court underscored that the Governor of a State can only consult the High Court in the matter of appointments of District Judges in terms of Article 233 of the Constitution.

Holding so, the Court found fault with the Haryana Government for seeking a legal opinion from the Union Government regarding the recommendations made by the Punjab and Haryana High Court for appointments in the District Judiciary.

Referring to Article 233 and various precedents interpreting it, the Supreme Court held in its judgment delivered on February 13 (uploaded recently) that the "State Government was bound to consult only the High Court."

The High Court had slammed the State for seeking the Union's opinion, terming it a "serious assault on the independence of the functioning of the High Court."

Endorsing the High Court's judgment, the Supreme Court said, "We are in agreement with the High Court that the State Government travelled beyond the remit of the consultation with the High Court by referring the matter to the Union Government."

Opinion of High Court not a mere formality

"In matters of appointment of judicial officers, the opinion of the High Court is not a mere formality because the High Court is in the best position to know about the suitability of candidates to the post of District Judge," the Court observed referring to the judgment in Chandramouleshwar Prasad v. Patna High Court, (1969) 3 SCC 56.

"The Constitution therefore expects the Governor to engage in constructive constitutional dialogue with the High Court before appointing persons to the post of District Judges under Article 233," the Court added.

The Court made these significant observations while upholding the criteria set by the High Court that the candidates must secure at least 50% minimum marks in the viva-voce. The State Government took the stand that such a condition cannot be introduced without amending the service rules and sought the legal opinion of the Ministry of Law and Justice on accepting the High Court's recommendations. The High Court, on its judicial side, directed the State to appoint the selected candidates. Challenging the High Court's direction, the State as well as the unsuccessful candidates approached the Supreme Court.

The Supreme Court held that the High Court was entitled to introduce the minimum cut-off requirement when the rules were silent on that aspect and underlined the importance of interview in assessing the suitability of a candidate.

Scope of consultation under Article 233

While deciding the issue, the bench comprising Chief Justice of India DY Chandrachud, Justice JB Pardiwala and Manoj Misra discussed the need for consultation between the Governor and the High Court in terms of Article 233 while appointing District Judges.

Clause (1) of Article 233 stipulates that the appointment of persons to be District Judges in the State and their posting and promotion shall be made by the Governor in consultation with the High Court exercising jurisdiction in the State.

The judgment authored by the CJI observed that Article 233 has to be construed as being mindful of constitutional safeguards for judicial independence and the separation of powers between the executive and judiciary.

The object of consultation is that the High Court is expected to know better than the Governor the suitability of a person belonging either to the Judicial Service or to the Bar for appointment as a District Judge, the judgment stated quoting from the judgment in Chandra Mohan v. State of Uttar Pradesh (1967) 1 SCR 77.

"The rules made by the Governor in consultation with the High Court in case of recruitment at grass-root level and the recommendation of the High Court for appointments at the apex level of the District Judiciary under Article 233, remain the sole repository of power to effect such recruitments and appointments," the judgment quoted from he decision in State of Bihar v. Bal Mukund Sah, (2000) 4 SCC 640.

Governor cannot consult third parties

The Court also referred to the Constitution Bench judgment in Chandra Mohan v. State of Uttar Pradesh (1967) 1 SCR 77 which held that the mandate of Article 233 would be violated if the Governor consulted any authority other than the High Court.

"The Court held that in case (Chandra Mohan) the Governor consults an authority other than the High Court, it would amount to indirect infringement of the mandate of the Constitution," the Court observed.

State Government should not have consulted the Union

In the light of the discussion on Article 233, which underscored the importance of consultation with the High Court, the Supreme Court faulted the State Government for seeking the Union Government's opinion.

"We are in agreement with the High Court that the State Government travelled

beyond the remit of the consultation with the High Court by referring the matter to the Union Government. Any issue between the High Court and the State Government should have been ironed out in the course of the consultative process within the two entities. The State Government was bound to consult only the High Court in the manner elaborated by the abovementioned judgements. Any other exercise de hors such consultation would not be in accordance with the scheme of the Constitution," the judgment stated.

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15 ‘Mockery Of Voter’ : Supreme Court Questions ECI Using ‘Legislative Majority’ Test Under Symbols Order, Says It Can Encourage Defections

While hearing the case related to the rift in the Nationalist Congress Party (NCP), the Supreme Court on Tuesday (March 19) questioned the rationale of the Election Commission of India (ECI) giving official recognition to the Ajit Pawar faction solely based on the test of “legislative majority”.

The Court expressed a concern that this approach could encourage defections.

A bench comprising Justices Surya Kant and KV Viswanathan was hearing the Special Leave Petition filed by the Sharad Pawar group challenging the February 6 decision of the ECI.

During the hearing, the bench underscored that when the Election Symbols(Reservation and Allotment) Order was enacted in 1968, the 10th Schedule was not in place. Even that Sadiq Ali judgment (1972), which laid down the parameters for deciding the real party in cases of split, was delivered before the enactment of the 10th schedule. It was only after the 52nd Constitutional Amendment of 1985 that the ‘Anti-defection’ law or the 10th Schedule was inserted in the Constitution. Though the tenth schedule initially recognized both ‘split within a party’ and ‘merger with another party’ as valid grounds of defence, later, the defence of ‘split’ was omitted from the 10th schedule. Justice Viswanathan pondered whether by applying the ‘legislative majority’ test, the ECI validates a defection by way of a ‘split’ which no longer exists as a defence under the 10th Schedule. The bench concerned itself with whether doing so would mock the conscience of the voters of the country.

“In that scenario, when the Order (of Election Commission) is not based on organisational strength,based only on legislative strength, is it not recognizing a split, which is no longer approved under the tenth schedule....do not go by the legislative test then, go by the organisational test. And if you cannot, then what is the solution? It is a real worry because, otherwise you can engineer defections and then come and get the recognition of the party symbol. It is a mockery of the voter”, Justice Viswanathan said.

In this connection, it may be noted that recently, the bench led by Chief Justice of India DY Chandrachud also expressed concerns about the use of “legislative majority” as a test to determine which faction is a real party. On March 7, while hearing a petition filed by Shiv Sena (Uddhav Balasaheb Thackeray) against the Maharashtra Speaker’s refusal to disqualify the MLAs of Eknath Shinde group under the tenth schedule, CJI orally observed that the

Speaker's reliance on the test of legislative majority was contrary to the Supreme Court's judgment in Subhash Desai(2023).

It may be recalled that the Supreme Court In Subhash Desai (Shiv Sena dispute) held that the 'legislative majority' was not an appropriate test to determine the real party when two rival factions have emerged after a split.

Notably, during today's hearing, Senior Advocate Abhishek Manu Singhvi, appearing for Sharad Pawar, placed reliance on the Subhash Desai judgment to question the ECI's decision.

The ECI's decision was based on the criterion of 'legislative majority', with the Ajit Pawar faction possessing 51 out of 81 legislators. While other assessments such as the 'aim and objectives' and the 'organisational majority' tests did not yield definitive outcomes, the commission relied on the legislative majority test to determine the faction's legitimacy.

At the end of today's hearing, the Court passed an interim order directing that the Sharad Pawar group will be entitled to use the name 'Nationalist Congress Party – Sharad Chandra Pawar' and 'man blowing turrah (trumpet)' symbol for Lok Sabha and State Assembly elections. It was further ordered that the Ajit Pawar faction should make a public declaration that the use of the 'clock' symbol for the ensuing Lok Sabha and the Maharashtra Assembly Elections is sub-judice and subject to the outcome of the challenge made by the Sharad Pawar group to the decision of the Election Commission of India (ECI) recognizing Ajit Pawar faction as the real Nationalist Congress Party (NCP).

Credit – Live Law

16 Section 420 IPC| Person Cheated Must Have Been Dishonestly Induced To Deliver Property: Supreme Court

IThe Supreme Court (on March 20) held that to attract the offence of cheating, it must be shown that the person who cheated was dishonestly induced to deliver the property to any person. Further, a dishonest intention must be on the part of a person accused of such an offence. The three-judge Bench of Justices B.R Gavai, Rajesh Bindal, and Sandeep Mehta rendered the verdict stating:

"In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

I the deception of any person; II fraudulently or dishonestly inducing that person to deliver any property to any person; and III dishonest intention of the accused at the time of making the inducement."

In the present case, the complainant transferred a certain amount of money to the present appellant upon the insistence of another accused, no. 2, who was also the complainant's college friend. Apart from this, it was also alleged that accused no. 1 and 2 had duped the complainant for a heavy sum. The accused persons swindled all the amounts and cheated the complainant. The case was registered against accused no. 1 and 2 for the offence of cheating. In this, the appellant was also roped in.

Since the appellant's plea of quashing the FIR was declined by the High Court, the present appeal came to be filed.

At the outset, the Top Court expressed its concerns about converting purely civil disputes into criminal cases. Following this, the Court relied upon the landmark case of Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another to cull out the necessary ingredients for the offence of cheating. Based on this, the Court made the observations above.

Adverting to the facts of the case, the Court noted that the allegations with regard to inducement are only against accused Nos. 1 and 2. There was no role attributed to the present appellant. Furthermore, the complainant did not enter into any transaction directly with the appellant, as the amount was transferred only at the instance of accused no. 1.

"At the cost of repetition, it has to be noted that no role of inducement at all has been attributed to the present appellant...The version, if accepted at its face value, would reveal that, at the instance of accused No. 1, the complainant transferred the amount of Rs.20,00,000/- in the account of the appellant. On

receipt of the said amount, the appellant immediately executed the sale deed in favour of accused No.1, who thereafter executed the GPA in favour of the complainant."

Noting that dishonest inducement is a sine qua non in the offence of cheating, the Court observed the absence of the same in the present case. Accordingly, the Court said that even if the FIR is taken at face value, it does not disclose the ingredients of cheating.

"In that view of the matter, we find that the FIR or the charge sheet, even if taken at its face value, does not disclose the ingredients to attract the provision of Section 420 of IPC qua the appellant."

In order to address the respondent's contention that the appeal should be dismissed because the chargesheet has been filed, the Court referred to its decision in Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home, and Another. Therein, it was held:

"Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

Thus, considering that continuing the criminal proceedings against the present appellant would amount to an abuse of the process of law, the Court allowed the appeal and quashed the FIR as far as the present appellant is concerned.

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17 JJ Act | Juvenile Accused Can't Be Tried As Adult In Absence Of Preliminary Assessment & Report By JJB : Supreme Court

Recently, the Supreme Court held that the conviction of the accused child who was a 'child in conflict with law' cannot be sustained unless the preliminary assessment to ascertain the physical and mental capacity of the child to commit the crime and the need to try the child as an adult or a juvenile was adhered to as the mandatory requirements under the Juvenile Justice Act, 2015.

Reversing the findings of the High Court, the Bench Comprising Justices B.R. Gavai and Sandeep Mehta observed that the question of whether there is a need for trial of the accused child as an adult or a juvenile under Section 19 of JJ Act could only be decided based on the preliminary assessment conducted by the Juvenile Justice Board ("Board") under Section 15 of JJ Act which ascertains whether a child who has completed or is above the age of sixteen years has the mental and physical capacity to commit the heinous offence alleged to be committed by him.

"As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellant filed before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.", the Judgment authored by Justice Sandeep Mehta said.

In the instant case, a charge sheet was submitted against the accused by the police, who was a Juvenile at the time of the commission of an offence, before the trial court without following the mandatory requirements of Sections 15 and 19 of the JJ Act. The trial court convicted the accused and the same was upheld by the High Court.

Against the impugned judgment passed by the High Court, the accused/appellant preferred a plea before the Supreme Court.

Before the Supreme Court, counsel for the Appellant contended that there had been a flagrant violation of a mandatory provision of Sections 15 and 19 of the JJ Act. She contended that despite knowing the fact that the appellant was CICL at the time of the commission of an offence, the charge sheet was submitted before the trial court by the police. She stressed that the child cannot be tried under the JJ Act unless the preliminary assessment to ascertain whether the child was physically and mentally fit to commit such an

offence was completed.

Finding force in the appellant's contention, the Supreme Court held that the entire proceedings taken against the appellant right from the stage of investigation and the completion of trial stand vitiated as having been undertaken in gross violation of the mandatory requirements of the JJ Act.

"In absence of a preliminary assessment being conducted by the Board under Section 15, and without an order being passed by the Board under Section 15(1) read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused.", the court said against the acceptance of charge sheet by the trial court.

In a nutshell, the court held that the accused who was a child in conflict with the law at the time of the commission of an offence cannot be tried by the trial court but only by the children court as mandated under Section 19 of the JJ Act. The court clarified that it was only after the preliminary assessment report of the JJ Board that the children's court under Section 19 would be eligible to try the accused child.

"By virtue of Section 19(1), the Children's Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.", the court clarified.

While relying on its judgment of Ajeet Gurjar v. State of Madhya Pradesh, the Supreme Court held that the procedure provided under Sections 15 and 19 is to be mandatorily followed by the court while trying the accused child for committing the heinous offence(s) under JJ Act.

The Supreme Court ultimately quashed and set aside the impugned judgment and directed that the appellant who is presently lodged in jail shall be released forthwith, if not required in any other case.

The appeal was allowed accordingly.

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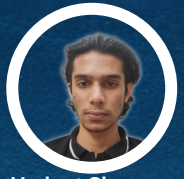

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