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1 Medical Board Must Report Physical & Mental Health Of Pregnant Person Even If Pregnancy Is Above 24-Weeks & There Are No Foetal Abnormalities: Supreme Court

In an important judgment, the Supreme Court observed that when a medical board formed in terms of the Medical Termination of Pregnancy (MTP) Act 1971 examines a pregnant person with a gestational age above twenty-four weeks, it must opine about the physical and mental health of the person, even if there are no substantial foetal abnormalities.

The bench comprising Chief Justice of India DY Chandrachud, Justices JB Pardiwala and Manoj Misra underscored the importance of the medical board's report in helping the Court to evaluate a plea for abortion being made by a person whose pregnancy has crossed the upper limit of 24 weeks. However, as per Section 3(2B) of the MTP Act, pregnancy above 24 weeks can be terminated if the medical board opined that such termination was necessary by the diagnosis of any of the substantial foetal abnormalities.

In the instant case, while dealing with the pregnancy of 28 weeks of a minor rape survivor, the medical board opined against termination by stating that substantial foetal abnormalities were not diagnosed. The reprot did not record any opinion of the board regarding the physical and mental health of the minor girl.

In this regard, the judgment recalled that in XYZ v. State of Gujarat (2023 LiveLaw (SC) 680), it was held that "the medical board or the High Court cannot refuse abortion merely on the ground that the gestational age of the pregnancy is above the statutory prescription."

Medical board cannot simply refuse abortion by saying condition under Section 3(2B) has not been met

The judgment stated that when a person approaches the court for permission to terminate a pregnancy, the courts apply their mind to the case and make a decision to protect the physical and mental health of the pregnant person. In doing so the court relies on the opinion of the medical board constituted under the MTP Act for their medical expertise. The court would thereafter apply their judicial mind to the opinion of the medical board.

"Therefore, the medical board cannot merely state that the grounds under Section 3(2-B) of the MTP Act are not met. The exercise of the jurisdiction of the courts would be affected if they did not have the advantage of the medical opinion of the board as to the risk involved to the physical and mental health of the pregnant person. Therefore, a medical board must examine the pregnant

person and opine on the aspect of the risk to their physical and mental health," CJI Chandrachud wrote in the judgment.

The opinion of the pregnant person must be given primacy in evaluating the foreseeable environment of the person

As per Section 3(3) of the MTP Act, in determining whether the continuance of a pregnancy would involve such risk of injury to the health, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

The judgment stressed on the need for giving primacy to the fundamental rights to reproductive autonomy, dignity and privacy of the pregnant person by the medical board and the courts.

"The delays caused by a change in the opinion of the medical board or the procedures of the court must not frustrate the fundamental rights of pregnant people. We therefore hold that the medical board evaluating a pregnant person with a gestational age above twenty-four weeks must opine on the physical and mental health of the person by furnishing full details to the court," the judgment stated.

The right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution

The Court reiterated that the "right to choose and reproductive freedom is a fundamental right under Article 21 of the Constitution."

In this case, the minor and her mother, decided to carry the pregnancy to the full term, rethinking their iniitial decision. In that view of the matter, the Court recalled its initial order allowing the termination of pregnancy.

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2 Supreme Court Discusses Concept Of 'Parental Alienation Syndrome' In Child Custody Dispute

The Supreme Court has discussed the concept of "Parental Alienation Syndrome(PAS)" in a judgment delivered in a case between an estranged couple for the custody of their children.

PAS is a syndrome whereby one parent, who has custody of the child, promotes feelings of disaffection against the other parent in the mind of the child, which ultimately influences the child's preference for one parent in a court litigation for custody.

"Parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact," the Court quoted from a judgment delivered by an English Court i.e., the High Court of Justice Family Division in Re C ('parental alienation'; instruction of expert) [2023] EWHC 345 (Fam).

The judgment also quoted from the discussion in the precedent Vivek Singh v. Romani Singh, (2017) 3 SCC 231 regarding the psychological effects of PAS on children :

i)First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

ii)Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.

The bench comprising Justices Vikram Nath and Satish Chandra Sharma made this discussion in the context of addressing the argument of one of the contesting spouses that the children were expressing preference for the other parent because of the feelings of estrangement instilled in them.

In this context, the bench reiterated that the Courts must not readily infer PAS on the part of one parent.

“Courts ought not to prematurely and without identification of individual instances of ‘alienating behaviour’, label any parent as propagator and / or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely”

“Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of ‘alienating behaviour’ in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children.”

In the instant case, on facts, the Court held that the appellant could not have been said to have engaged in “parent alienating behaviour”.

The Court also reiterated the principle that the principal consideration whilst deciding an application for guardianship under the Act in the exercise of its parens patriae jurisdiction would be the ‘welfare’ of the minor children.

The judgment explained that the matter should be decided on the basis of a holistic and all-encompassing approach including inter alia (i) the socio-economic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall- wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as mandated under Section 17(3) of the Guardians and Wards Act .

Credit – Live Law

3 Conviction Can't Be Set Aside Merely Because Prosecution Witness Turned Hostile: Supreme Court

The Supreme Court on Wednesday (May 08) held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him.

Affirming the decision of the High Court and Trial Court, the bench comprising Justices BR Gavai and Sandeep Mehta declined to aside the conviction of the accused merely because the prosecution witness didn't support the prosecution's case in their cross-examination.

Noting that there was a considerable gap between the prosecution witnesses examination-in-chief and cross-examination, the Judgment authored by Justice BR Gavai indicated that the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused.

By placing reliance on the case of C. Muniappan and Others v. State of Tamil Nadu, the court stated that the evidence of such prosecution witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a scrutiny thereof.

However, after scrutinizing the testimony of the prosecution witnesses and the victim under Section 164 of Cr.P.C. and medical evidence, the court noted that there was sufficient corroboration to the version given by the victim in her chief examination.

"when the evidence of the victim as well as prosecution witnesses is tested with the FIR, the statement recorded under Section 164 Cr.P.C. and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.", the court said.

The court upheld the conviction of the accused based on the testimony of the prosecutrix/victim after her testimony in the examination in chief led to sufficient corroboration with the Section 164 Cr.P.C. statements and the expert evidence.

Accordingly, the appeal was dismissed.

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4 Supreme Court Allows Interim Release Of Delhi CM Arvind Kejriwal Till June 1

In a significant development, the Supreme Court on May 10 (Friday) allowed interim release of Delhi Chief Minister Arvind Kejriwal, who is in judicial custody in the Delhi liquor policy case, till June 1.

The Bench of Justices Sanjiv Khanna and Dipankar Datta passed the order.
The bench remarked that the liquor policy case was registered by ED in August 2022, yet Kejriwal was arrested only in March 2024 (after nearly one and half years).

It may be recalled that Kejriwal was arrested by ED from his residence on March 21, after the Delhi High Court refused to grant him interim relief earlier in the day. He has been under custody ever since.

During the hearing on May 3, the Supreme Court Bench had shown an inclination to consider the question of interim bail for Kejriwal in view of the Lok Sabha Elections. On subsequent dates, vehement opposition to the grant of interim bail was shown by Solicitor General Tushar Mehta and Additional Solicitor General SV Raju, who argued that the ED had "evidence" against Kejriwal and election campaigning ought not to be a criteria for considering grant of interim bail.

The bench however had observed that it was dealing with the case of an elected Chief Minister, not a habitual offender, and the general elections take place only once in 5 years. During the hearing on May 7, the bench orally suggested that if indeed interim release was directed, Kejriwal would not be allowed to perform official duties, as that would have a cascading effect.

Yesterday, ED filed an affidavit before the Supreme Court, opposing the grant of interim bail to Kejriwal. Today, Solicitor General of India Tushar Mehta submitted that Amrit Pal Singh, detained under the National Security Act over Khalistani activities, has also approached the Court for bail to contest in elections. SG stated that grant of bail to Kejriwal on the ground of elections will create a cascading effect.

Justice Khanna also mentioned that final arguments in Kejriwal's petition challenging the ED arrest would be attempted to be concluded next week.

"August 2022, the ED registered the ECIR. He was arrested in March 2024. For one and a half years he was there. Arrest could have been even afterwards or

before. Then, 21 days here or there should not make any difference," Justice Khanna was heard saying during the hearing. It may be noted that earlier, the bench had questioned the ED about the timing of Kejriwal's arrest which was carried out soon after the Lok Sabha elections were notified.

Solicitor General was also heard pleading that the bench should impose conditions for bail, such as Kejriwal should not speak to the press about the case and should surrender on the last date. Per contra, Senior Advocate Dr Abhishek Manu Singhvi, appearing for Kejriwal, requested that he be granted bail till June 4, the date of declaration of results. However, the bench said that he would have to surrender on June 2.

Bail conditions

(a)He shall furnish bail bonds in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Jail Superintendent;
(b)He shall not visit the Office of the Chief Minister and the Delhi Secretariat;
(c)He shall be bound by the statement made on his behalf that he shall not sign official files unless it is required and necessary for obtaining clearance/ approval of the Lieutenant Governor of Delhi;
(d)He will not make any comment with regard to his role in the present case; and
(e)He will not interact with any of the witnesses and/or have access to any official files connected with the case.

Background

Kejriwal had petitioned the Supreme Court in April this year, after his writ petition challenging the ED arrest was dismissed by the Delhi High Court on April 9. Notice came to be issued on his plea on April 15, with the matter being directed to be listed in week commencing April 29. Subsequently, when the top Court website showed next date of hearing as May 6, Singhvi mentioned the matter before a Justice Khanna-led Bench on April 26.

After the mentioning, the matter was listed on April 29, when Senior Advocate AM Singhvi led arguments on behalf of the AAP chief and questioned the necessity and timing of his arrest. When the matter was heard on the next day, ie April 30, Singhvi alleged that ED withheld the material favoring Kejriwal. During this hearing, the court posed 5 queries to ASG SV Raju, appearing for the agency, which were sought to be answered by him on May 3.

On May 3, while Singhvi concluded arguments, the ASG began leading arguments for ED. Anticipating that the hearing might not conclude anytime soon, the bench put the ASG on notice that it may hear him on the question of Kejriwal's interim bail in view of the Lok Sabha elections.

Subsequently, on May 7, ASG Raju made submissions on behalf of ED. The

same were supplemented in part by SG Mehta and countered by Singhvi. Primarily, SG Mehta argued that politicians could not be treated as a class apart. He asked that if Kejriwal can be granted interim bail for elections, why should jailed farmers be not released during harvesting season.

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5 Advocates Not Liable Under Consumer Protection Act For Deficiency Of Services : Supreme Court

In a crucial development, the Supreme Court on Tuesday (May 14) held that advocates cannot be held liable under the Consumer Protection Act 1986 (as re-enacted in 2019) for deficiency of services. The Court held that professionals have to be treated differently from persons carrying out business and trade.

As a corollary, the Court held that complaints against advocates alleging deficiency of services are not maintainable before the Consumer Forum.
A bench of Justices Bela Trivedi and Pankaj Mithal overruled a 2007 judgment of the National Consumer Disputes Redressal Commission which ruled that the services rendered by lawyers are covered under Section 2 (o) of the Consumer Protection Act 1986.

Justice Trivedi, reading out the operative part of the judgment, stated that the judgment has distinguished profession from business and trade. A professional requires high level of education, skill and mental labour; success of a professional is dependent on various factors which are beyond their control. Therefore, a professional cannot treated at par with businessmen under the Consumer Protection Act.

The bench also opined that the judgment in Indian Medical Association v. VP Shantna (1995) 6 SCC 651, which held that doctors and medical professionals can be held liable under the Consumer Protection Act, requires to be revisited. The bench requested the Chief Justice of India to refer VP Shanta judgment to a larger bench for reconsideration.

Professions different from trade and business

“We have distinguished profession from business and trade. We have said that a profession would require advance education and training in some branch of learning or science. The nature of work is specialisation and skill, substantial part of which is mental than manual. Having regard to the nature of work of a professional, which requires a high level of education and training and proficiency, and which involves skill and specialised kind of mental work operating in specialised spheres, where actual success depends on various factors beyond one’s control, a professional cannot be treated equally or at par with a businessman or a trader or a service provider of products or goods,” Justice Trivedi stated.

"We are therefore of the considered opinion that the very purpose and object of the Consumer Protection Act 1986 as re-enacted in 2019 was to provide protection to the consumers from unfair trade practices and unethical business practices. There is nothing to suggest that the legislature ever intended to include professions or professionals within the purview of the Act," Justice Trivedi added.

Justice Trivedi clarified that the judgment does not propose to hold that advocates cannot be sued in ordinary courts of law.

Legal profession is sui generis

The Court held that legal profession is sui generis in nature having regard to the nature and role of advocates and cannot be compared with other professions. The relationship between a client and an advocate has unique attributes. Advocates are generally perceived to be the agents of their clients and owe fiduciary duties to them. Advocates have to respect the autonomy of the clients and are not entitled to make concessions or undertakings without specific instructions from their clients. Advocates are bound by the clients' instructions. Thus, a considerable amount of control is exercised by the client over the advocate in the manner they render their duties before the Court.
"All these attributes strengthen our opinion that services hired by a client of an advocate would be a contract of personal service and would therefore stand excluded from the definition of service contained in Section 2(42) of the Consumer Protection Act 2019," the judgment stated. Justice Pankaj Mithal wrote a separate but concurring judgment in which he considered the position of law in other countries.

The Division bench had heard the matter at length before reserving its judgment on February 26.

The NCDRC held that a lawyer may not be responsible for the favourable outcome of a case as the result/outcome does not depend on only the lawyer's work. However, if there was a deficiency in rendering services promised, for which he receives consideration in the form of a fee, then the lawyers can be proceeded against under the Consumer Protection Act.
Moreover, it was also opined that the contract between the client and a lawyer is bilateral. On receipt of fees, the commission said the lawyer would appear and represent the matter on behalf of his client.
It is against this order that the appeal was filed before the Supreme Court. Earlier, in 2009, the Top Court had stayed the impugned judgment of the Commission.

Arguments Advanced Before The Court
The matter was argued by a battery of senior advocates contending that a

lawyer is not just a mouthpiece for her client but is also an officer of the court. It was also stressed that a certain amount of immunity and independence is necessary for a lawyer while discharging his/ her duties as an Officer of the Court.

The arguments ranged from the importance of an independent of bar so that a lawyer must be able to speak fearlessly without any binding contract to the possibility of parallel proceedings. One, the appeal from the suit and Second, the complaint, against the advocate, before the consumer forum.

Another argument that gathered the spotlight in the matter was how the medical profession was different from the legal one. This was in view of the Supreme Court judgment in Indian Medical Association v VP Shantha's (1995) 6 SCC 651, which held that healthcare services are covered under the Act. One of the attempts to win this argument was made while arguing that lawyers do not have control over the environment in which services are rendered.

Senior Advocate V Giri who was appointed as an amicus curiae in the matter had also addressed the Bench at the last date of the hearing. Inter-alia, he had argued that once the lawyer, being the agent of his client, appears and acts on his behalf before the Court, then the same cannot be tantamount to a relationship between the service provider and service consumer.

Another crucial argument advanced by Giri was that the lawyers who are engaged to appear before the Courts of law or before different forums may have to be treated slightly differently from lawyers who are approached for their legal services like opinions, consultations, and drafting of agreements.

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6 Services Rendered By Advocates Come Under Contract Of Personal Service: Supreme Court

The Supreme Court (today on May 14) held that the Services rendered by an advocate would come under the "a contract of personal service" as opposed to a "contract for service".

In layman terms, 'a contract of personal service' relates to an arrangement where an individual is hired for rendering his/ her services. However, in the case of "contract for service" the services are availed from an independent service provider. Therefore, while in the former case, the individual is an employee, in the latter case it is always a third party.

To reason this, a Bench of Justices Bela Trivedi and Pankaj Mithal outlined certain unique attributes that are linked to a relationship between an Advocate and her Client. To name a few, these included fiduciary duties owed by an advocate to her client, advocates are not required to make concessions unless it is expressly instructed by her client, advocate being her client's representative shoulders a lot of responsibility, and she is expected to follow the instructions of her client and not upon her own judgment.

To quote from the judgment:

1)Advocates are generally perceived to be their client's agents and owe fiduciary duties to their clients.

2)Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation.

3)Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client.

4)It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client.

5)An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.

6)The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

The Division Bench held so while deciding an appeal that raised the issue of whether advocates can be held liable under the Consumer Protection Act for deficiency in services. The Division bench had heard the matter at length before reserving its judgment on February 26.

The instant appeal had emanated from the decision of the National Consumer Disputes Redressal Commission (NCDRC) in the year 2007. Inter-alia, the Commission had held that if there was any deficiency in service rendered by the Advocates/Lawyers, a complaint under the Consumer Act would be maintainable.

Thus, the issue before the Court was whether advocates can be held liable under the Consumer Protection Act 1986 (as re-enacted in 2019) for deficiency of services.

Answering this, the Court perused the definition of 'Service' and noticed that it clearly excludes Services rendered under a contract of personal service. Thus, the Court went on to decide whether the Services provided by the advocates can be classified under "a contract of personal service." Against this backdrop, the Court made the aforesaid observations.

The Court also drew its strength from the decision of Dharangadhra Chemical Works Ltd. Vs. State of Saurashtra and Others., AIR 1957 SC 264. Therein it was held that "the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer".

In order to assess whether the client exercises direct control over the Advocate, the Court cited several provisions of the Civil Procedure Code. One such concerned provision was Order III Rule 4, as per which a pleader cannot act in the Court for any person unless he/she is appointed by such person. Now, the document for appointing a pleader. The document used for the appointment of a pleader is known as "Vakalatnama".

The Court noted that by virtue of such "Vakalatnama," advocates have certain duties, including the one to their client.

In view of this above projection, the Court noted that "a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment."
After citing the above attributes, the Court concluded that Services of an advocate would come under the contract 'of personal service' thus, the same would stand excluded from the definition of Service as provided under section 2(42) of the Act.

Credit – Live Law

7 ‘Grounds Of Arrest’ Must Contain All Basic Facts To Provide Opportunity To Accused To Oppose Remand & Seek Bail : Supreme Court

The Supreme Court, in its judgment delivered today on May 15, distinguished between the ‘reasons for arrest’ and ‘grounds of arrest’. The Court said that there is a significant difference between these two phrases.

It explained that ‘reasons of arrest’ are formal and could apply generally to any person arrested of an offence. Elaborating, the Court also cited several of these formal parameters that varied from preventing the accused person from committing any further offence to taking measures for proper investigation of the case. On the other hand, ‘grounds of arrest’ are personal and specific to the person arrested.

“These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused.”

The Bench of Justices BR Gavai and Sandeep Mehta held so while declaring NewsClick founder and Editor-in-Chief Prabir Purkayastha’s arrest and his remand in a case under the Unlawful Activities (Prevention) Act 1967 as illegal. The Court rested its reasoning on the fact that the grounds of the arrest were not supplied to him in writing.

Under the scanner was a decision of the Delhi High Court upholding Purkayastha’s arrest by the Delhi Police. Against this order, he had approached the Top Court.

The High Court, in its impugned order, had held that grounds of arrest were conveyed to the Purkayastha in writing through the arrest memo. However, the same was found as unacceptable by the Apex Court. In the judgment authored by Justice Sandeep Mehta, it was categorically stated that the arrest memo only had ‘reasons for arrest’ and not ‘grounds of arrest’.

“Column No. 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the ‘reasons for arrest’ which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the ‘grounds of arrest’ would be personal in nature and specific to the person arrested.,” the Court noted in its judgment.

The Court stressed on the significance of conveying the grounds of arrest to the accused person for enabling him to defend himself against custodial remand and seek bail.

“Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail.”

“Thus, the ‘grounds of arrest’ would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature.,” the Court added.

It may be recalled that Purkayastha has been in custody since October 3 last year under the UAPA in a case over receiving Chinese funds to propagate anti-national propaganda. The arrest and remand having been declared invalid in the eyes of the law and set aside, the Court ordered the release of Purkayasatha. However, it said that the release would be subject to his furnishing the bail and bonds to the satisfaction of the trial Court since the chargesheet has been filed.

Credit – Live Law

8 Agency Won't Be Terminated Upon Death Of Principal If Agent Has Interest In Property Which Is Subject Matter Of Contract: Supreme Court

The Supreme Court observed that the death of the original contractor would not preclude the agent (power of attorney) from initiating the proceedings arising out of the contract if the agent holds an interest in the contract being expressly mentioned in the contract.

Reversing the findings of the High Court, the bench comprising Justices BR Gavai and BV Nagarathna stated that where the agent has himself an interest in the property, expressly mentioned in the contract, which forms the subject matter of the agency then the contract of agency wouldn't be terminated under Section 201 of Indian Contract Act, 1872 ("1872 Act") upon the death of the principal.

Section 201 of the 1872 Act prescribes conditions where the contract of agency would get stand terminated, where one of the conditions is the death of the principal contractor.

Section 202 of the 1872 Act deals with situations where an agent has an interest in subject matter. It states that where the agent has an interest in the property that forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

The court opined that when the power of attorney, being an agent, holds an interest in the contract then there wouldn't be an automatic termination of the agency upon the death of the principal contractor under Section 201 of the Act as Section 201 of the Indian Contract Act couldn't be read in isolation by ignoring Section 202 of the Act when the agent holds an interest in the contract.

In the present case, the principal contractor executed a power of attorney in favor of the appellant. After the death of the principal contractor, the respondent sought for termination of the agency i.e., power of attorney. However, it was contended by the appellant that since he holds an interest in the contract therefore the termination of the agency upon the death of the original contractor wouldn't be done based on Section 201 of the Act.

The appellant by placing reliance on Section 202 of the Act contended that since he holds an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

“However, learned Single Judge could not have read Section 201 of the Indian Contract Act in isolation by ignoring Section 202 of the Indian Contract Act. The learned Single Judge failed to take into consideration that on account of the assignment deed, an interest accrued in the said contract in favour of the appellant. Indisputably, the said contract was the subject matter of the agency and as such in the absence of an express provision to the contrary, the appellant was entitled to continue with the said agency.”, the court observed.

Based on the aforesaid observation, the appeal was allowed and the appellant was allowed to continue the agency i.e., power of attorney.

Credit – Live Law

9 Fundamental Right To Health Includes Customer's Right To Be Made Aware Of Quality Of Products : Supreme Court

The Supreme Court has declared that the the fundamental right to health encompasses the right of a consumer to be made aware of the quality of products being offered for sale by manufacturers, service providers, advertisers and advertising agencies.

To protect this right, the Court directed that henceforth, before an advertisement is printed/aired/displayed, a Self declaration shall be submitted by the advertiser/advertising agency on the lines contemplated in Rule 7 of the Cable Television Networks Rules, 1994.

The direction was passed by a bench comprising Justices Hima Kohli and Ahsanuddin Amanullah in the Patanjali case (Indian Medical Assocaition v. Union of India and others) on May 7. In the copy of the order uploaded today, the Court made certain pertinent observations regarding the customers' rights.
It may be recalled that the case was filed by the IMA seeking regulation of the misleading medical advertisements published by Patanjali Ayurved Ltd. During the course of the case, the Court initiated contempt proceedings against Patanjali Ayurved, its founders Baba Ramdev and Acharya Balkrishna.
Advertisers and endorsers are equally responsible for issuing false and misleading advertisements.

In the order dated May 7, the Court commented on the responsibility of celebrities and influences who endorse products in advertisements.
The Court also noted that there is no robust mechanism available for the customer to lodge complaints for violation of Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022 framed by the Ministry of Consumer Affairs.

The Court directed that the Self-declaration shall be uploaded by the advertiser/advertising agency on the Broadcast Sewa Portal run under the aegis of the Ministry of Information and Broadcasting. As for the advertisements in the Press/Print Media/Internet, the Ministry is directed to create a dedicated portal within four weeks from May 7.

Immediately on the portal being activated, the advertisers shall upload a Self-declaration before any advertisement is issued in the Press/Print Media/Internet. Proof of uploading the Self-declaration shall be made available

by the advertisers to the concerned broadcaster/printer/publisher/T.V. Channel/electronic media, as the case may be, for the records.

No advertisements shall be permitted to be run on the relevant channels and/or in the print media/internet without uploading the self- declaration as directed above. The above directions shall be treated as the law declared by this Court under Article 141 of the Constitution of India.

Credit – Live Law

10 Tenant Continuing In Possession After Expiry Of Tenancy Liable To Compensate Landlord By Paying 'Mesne Profits' : Supreme Court

The Supreme Court held that if the tenant continues to remain in the rented premises even after the tenancy rights are extinguished, then the landlord would be entitled to receive compensation in the form of 'mesne profit' from the tenant.

"While the above-stated position is generally accepted, it is also within the bounds of the law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires.", the bench comprising Justices JK Maheshwari and Sanjay Karol said.

The question that appeared before the Supreme Court was whether the tenant would be liable to pay compensation to the landlord in the form of 'mesne profit' when there was no eviction order against the tenant but continued to remain in the rented premise.

Answering affirmatively, the Judgment authored by Justice Sanjay Karol observed that the tenant would be liable to pay the mesne profit to the landlord for the period he had been a 'tenant at sufferance'.

"Tenant at sufferance" is a tenant who enters upon the land by lawful title but continues in possession after the title has ended.

The Court's observation drew support from its Judgment of Indian Oil Corporation Ltd. V. Sudera Realty Private Limited, 2022 LiveLaw (SC) 744, where also it was observed that the tenant while continuing in possession after the expiry of the lease became liable to pay mesne profits.

"In our considered view, the effect of the words 'determination', 'expiry', 'forfeiture' and 'termination' would, subject to the facts applicable, be similar, i.e., when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves...Therefore, in any of the these situations, mesne profit would be payable.", the court observed.

"we may record a prima facie view, that the respondent-tenant has for the reasons yet undemonstrated, been delaying the payment of rent and/or other

dues, payable to the petitioner-applicant landlord. This denial of monetary benefits accruing from the property, when viewed in terms of the unchallenged market report forming part of the record is undoubtedly substantial and as such, subject to just exceptions, we pass this order for deposit of the amount claimed by the petitioner-applicant, to ensure complete justice inter se the parties.", the court concluded.

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11 Can Muslim Women Claim Equality In Succession? Can Will Be Executed For Entire Property As Per Mohammedan Law? Supreme Court To Decide

The Supreme Court has decided to determine, inter-alia, whether Muslim women have the right to claim equality in succession in light of Article 14 (Right to equality) and 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of the Indian constitution.

The question arose before the bench of justices C.T Ravikumar and Rajesh Bindal, who were deciding a civil appeal.

The factual background of the matter was such that the respondents have filed a suit claiming that a will executed, by late Hazi, left the properties with his three sons, leaving out his fourth son. The Trial Court had decreed the suit. However, the same was modified by the lower appellate Court directing that Hazi could execute Will only to the extent of 1/3rd of his estate. Thus, only the remaining 2/3rd estate were to be divided amongst the legal heirs equally.

Notably, when the matter reached the High Court, the aforesaid order was set aside, and the Trial Court's order was restored. Thus, the present appeal.
During the hearing, it was argued that the testator is entitled to bequeath one-third of their estate to a third party, while the remaining two-thirds must be distributed equally among the legal heirs. However, this one-third limitation can be waived if the legal heirs give their consent.

The judgments cited also included one Karnataka High Court's decision in Narunnisa v. Shek Abdul Hamid., AIR 1987 KANT 222. Therein, a reference was made to a precedent where the ratio was that if a Muslim father leaves behind a son and a daughter, and the daughter does not agree to the father's will giving 3/4th of the property to the son and 1/4th to her, she will be entitled to claim 1/3rd of the property as her share of inheritance and not 50%.

In view of these present facts and circumstances, the Court framed the above question and the following questions:

Whether Muslim women have right to claim equality in succession in view of the mandate of Constitution of India under Articles 14 and 15 thereof in the light of Article 44.

Whether a testator, who is governed by Mohammedan Law, is entitled to execute a Will of his entire estate left, according to his wish?

Whether a testator, who is governed by Mohammedan Law, can execute a Will to the extent of 1/3rd of the estate left by him in favour of any or more of his legal heirs without the consent of other legal heirs?.

The Court also appointed Senior Advocate V. Giri as an Amicus Curiae in the case and also asked Advocate-on-Record Amit Krishnan to assist him in the matter.

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12 Bail Can Be Cancelled By Same Court Which Granted It If There Are Serious Allegations Even If Accused Hasn't Misused Bail : Supreme Court

In a recent decision, the Supreme Court observed that the same Court which granted bail to an accused can cancel the bail if there are serious allegations against him although the accused has not misused the bail.

"If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.", the bench comprising Justices Hima Kohli and Ahsanuddin Amanullah said.

The Judgment authored by Justice Hima Kohli observed that while deciding whether a question of grant of bail to an accused who is alleged to have committed a serious offence, the court must consider relevant factors like "the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail."

It was contended by the informant/appellant that the accused in a murder case was granted bail by the High Court without taking into consideration material evidence placed on record by the prosecution showing the involvement of the accused in the crime.

"The High Court has ignored the fact that the appellant-complainant has stuck to his version as recorded in the FIR and that even after entering the witness-box, the appellant-complainant and three eyewitnesses have specified the roles of the accused/respondents in the entire incident. The High Court has also overlooked the fact that the respondents have previous criminal history details whereof have been furnished by the Counsel for the State of UP.", the court observed.

“Furthermore and most importantly, the High Court has overlooked the period of custody of the respondents-accused for such a grave offence alleged to have been committed by them. As per the submission made by learned counsel for the State of UP, before being released on bail, the accused-Waseem had undergone custody for a period of about two years four months, the accused-Nazim for a period of two years eight months, the accused-Aslam for a period of about two years nine months and the accused Abubakar, for a period of two years ten months. In other words, all the accused-respondents have remained in custody for less than three years for such a serious offence of a double murder for which they have been charged.”, the court added.

While examining all the factors collectively, the Court concluded that the respondents/accused did not deserve the concession of bail.
The appeal was allowed

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13 NDPS Act | Confiscation Of Vehicle Can't Be Ordered Without Hearing Its Registered Owner : Supreme Court

The Supreme Court has held that an order passed under the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) for the confiscation of a vehicle will be illegal if it was passed without hearing the owner of the vehicle. Referring to Section 63 of the NDPS Act, the Court said that an order confiscation of an article cannot be passed until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto.

A bench comprising Justices JB Pardiwala and Manoj Misra was hearing an appeal filed against the order of the Rajasthan High Court affirming the confiscation of vehicle (a dumper) under the NDPS Act. The appeal was filed by the registered owner of the vehicle.

A case was registered against the appellant and two other accused for the offences under the NDPS Act. However, the appellant absconded and the trial was held only against the other two accused. After the trial, the trial court acquitted the other two accused giving them the benefit of doubt. However, the trial court also ordered the confiscation of the vehicle.

After the acquittal of the other two accused, the appellant came to be arrested. He was released on bail. He challenged the order of the trial court for confiscation of the vehicle on the ground that he was not heard. The High Court rejected his challenge.

The Supreme Court set aside the direction for confiscation after noting that the owner was not heard during the proceedings.

"The plain reading of Section 63 indicates that the court cannot order confiscation of an article until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto. It is true that at the time of the order of confiscation of the dumper, the appellant herein was not arrested. Had he been put to trial along with the other two co- accused, probably he would have submitted before the trial court why the confiscation order may not be passed."

"The fact remains that the appellant is the registered owner of the dumper. In terms of the provisions of Section 63 of the NDPS Act, the appellant has a right

to be heard by the court before the final order of confiscation is passed and the seized vehicle is put to auction," the Court observed.

The appellant was directed to file an application before the trial court for opportunity of hearing regarding the confiscation. After the application is filed, the trial court was directed to decide within a period of two weeks.

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14 Litigants Should Be Allowed To Appear Virtually If Court Thinks Their Presence Is Required : Supreme Court

Observing that the personal presence of the litigant suffering from ailments can be sought through a virtual medium when there's a facility in the High Court to appear through a virtual mode, the Supreme Court on Monday (May 20) provided a relief to the litigant by staying an operation of the Calcutta High Court's order which had directed the personal appearance of the litigant.

The Vacation Bench comprising Justices Dipankar Datta and Satish Chandra Sharma questioned the impugned order of the Calcutta High Court calling for the personal appearance of the petitioner on the next date of hearing, i.e., 22nd May 2024, when their presence isn't even required in the case.

"We are also at loss to comprehend as to why despite the advancement of science and technology and with the introduction of facilities for virtual hearing in the High Courts, the Court did not consider it desirable to grant liberty to the two petitioners to appear before it through the virtual mode.", the court said.

"The dispute that the High Court is seized of arises out of a marital discord between the spouses and the situation, prima facie, was not such so as to call for the Court's insistence for personal presence of both the petitioners including the ailing petitioner no.2 by taking an arduous journey from a distant place like Mumbai (to Kolkata) despite his medical conditions. If the Court thought it fit to interact and bring about a settlement between the parties, an attempt to achieve it by allowing the petitioners to attend proceedings through the virtual mode ought to have been made.", the court added.

Petitioner no.2 underwent an organ transplant in the recent past, he is afflicted by other ailments too calling for surgery thus making it inadvisable for him to travel to Kolkata to attend court proceedings physically. Moreover, petitioner no.1 had physically appeared before the Court earlier yet, she too has been ordered to be produced in court by the police without apparent justification.

"The impugned order is bound to operate harshly against the petitioners. We expect the Court to exercise restraint unless any party repeatedly acts in breach of its order to undermine its dignity, prestige and majesty, thereby attracting the contempt jurisdiction. Exercise of discretion judiciously could

have prevented the proceedings from reaching this Court.", the court observed.

Based on the above premise, the court stayed the operation of the order requiring the personal appearance of both petitioners on 22nd May 2024 and granted them the liberty to appear before the High Court through a virtual mode.

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15 PMLA Accused Who Has Spent Half Of Maximum Sentence As Undertial Can Be Given Bail Under S.436A CrPC : Supreme Court

The Supreme Court has reiterated that the benefit of Section 436A of the Code of Criminal Procedure is applicable even to an accused under the Prevention of Money Laundering Act, 2002 (PMLA).

As per Section 436A CrPC, a person who has spent one half of the maximum period of the prescribed sentence as an undertrial shall be released on bail. In this case, the accused would complete 3½ years of incarceration on 26th May, 2024, meaning he would complete half of the prescribed sentence.

In the 2022 judgment in Vijay Madanlal Choudhary v. Union of India, the Supreme Court had held that Section 436A CrPC can be applied in PMLA cases.
"It is to be noted that the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act," the judgment in Vijay Madanlal held.

Applying this precedent, the bench comprising Justices Abhay S Oka and Ujjal Bhuyan in the instant case chose to allow the release of the undertrial prisoner on bail as per Section 436A CrPC.

"This Court has held that Section 436A of the Code of Criminal Procedure, 1973 (for short "CRPC") will apply even to a case under the PMLA. But the Court can still deny the relief owing to the ground such as where the trial was delayed at the instance of the accused, " the bench observed.

In this case, even the charges have not been framed and hence it cannot be said that the accused has delayed the trial, which has not even started.
"In the facts of the case, we find that there is no prospect of even the trial commencing, as the charge has not been framed. In these facts, we find that the appellant will be entitled to be enlarged on bail under section 436A of the CRPC on 27th May, 2024," the Court observed.

The Court stated that the bail formalities will be completed before the trial court.

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16 Principles Relating To Dying Declaration : Supreme Court Explains

The Supreme Court held that corroboration of the dying declaring statement isn't required when it inspires the confidence of the court to convict the accused.

"The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.", the bench comprising Justices Abhay S Oka and Ujjal Bhuyan said.

Referring to precedents, the Court summarised the principles relating to dying declaration as follows :

(i)It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(ii)Each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;

(iii)It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(iv)A dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

(v)A dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;

(vi)In order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.

The court clarified that the minor inconsistencies in the version of the prosecution witnesses deposing the correctness of the dying declaration would not prove fatal to the prosecution if the prosecution witnesses' statements were in convergence to the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor.

The appellant contested their conviction based on the fact that there were inconsistencies in the prosecution witnesses' evidence, therefore the dying declaration couldn't be relied upon to convict the appellant. Refuting such contentions, the Court accepted the deceased declaration as a valid piece of evidence.

"The contents of the dying declaration have been proved by PW-6, PW-12 and PW-13. Though there are certain inconsistencies in their evidence, it is quite natural. Moreover, those are not material and do not affect the sub-stratum of her statement. The incident had occurred on 22.07.2002 with the dying declaration recorded on the same day within a couple of hours whereas the evidence was tendered in court by the above witnesses after 5 years. Such inconsistencies are bound to be there. In fact, identical statements by the material witnesses may create doubt in the mind of the court about the credibility of such evidence, as being tutored. That being the position, we are inclined to accept the dying declaration of the deceased (Ex. 59) as a valid piece of evidence.", the Judgment authored by Justice Ujjal Bhuyan observed.

Accordingly, the court noted that there was no reason to doubt the correctness of the dying declaration of the deceased which has been proved in evidence as the attending doctor has certified that the deceased was capable of narrating her statement. Moreover, the substance of the dying declaration is also borne out by the medical history of the patient recorded by the doctor which has also been proved in evidence.

"That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt.", the court observed.

The appeal was dismissed, holding that the appellant was guilty of committing the offence which was proved beyond all reasonable doubt.

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