

Abhishek Krishna Gupta vs The State of Jharkhand and Anr

- ❖ **TOPIC :** Private Party can't seek Punishment For Contempt of court without prior written consent of Advocate General : Jharkhand High court Reaffirms
- ❖ **BATCH :** Justice Sanjay Kumar Dwivedi
- ❖ **FORUM:** Jharkhand High Court
- ❖ **MAIN ISSUE**
 - Regarding a contempt petition filed by an advocate.
- ❖ **OBSERVATIONS**
 - The Jharkhand High Court dismissed a contempt petition filed by an advocate, observing that it was not maintainable under the Contempt of Courts Act as the petitioner lacked locus and failed to fulfil mandatory requirements for initiating such proceedings.
 - Justice Sanjay Kumar Dwivedi, in its decision, observed, "It is well settled if a private party seeks punishment for contempt of Court, He can file a petition only under Section 15 of the said Act with prior written consent of the learned Advocate General. In the case in hand, no such prior written consent has been obtained by Mr. Abhishek Krishna Gupta, Advocate appearing in person and in view of that, he has not fulfilled the mandatory requirement for invoking contempt jurisdiction of the Court."
 - The advocate-petitioner alleged that another advocate, practicing before the High Court, had misrepresented facts to obtain an order in an earlier petition while obtaining the order. The petitioner contended that the advocate had secured an order directing the Central Bureau of Investigation (CBI) to file a counter-affidavit in a matter where the investigation was allegedly completed, and a charge sheet had been filed. The petitioner argued that such suppression warranted the initiation of contempt proceedings.
 - The Court in its Judgement, stated, "The petitioner appearing in person is not party in his personal capacity to the said order against which the present contempt case has been filed and this petition has been presented in his personal capacity, whereas, in the order no liberty was given to any third party to file contempt case and, hence, the petition brought by Mr. Abhishek Krishna Gupta is not maintainable."
 - Drawing from precedents, the Court stated that the

- weapon of contempt is not to be used in abundance or misused. Normally, the Court continued stating, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for.
- "The discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court," the Court held.
 - Imposing costs on the petitioner, the Court initially directed, "this contempt petition is dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand) to be deposited by the petitioner with the Jharkhand State Legal Services Authority (JHALSA) within four weeks."
 - However, acknowledging the petitioner's intent to appeal to the Supreme Court, the Court granted an extension, stating, "At this stage, Mr. Abhishek Krishna Gupta, Advocate appearing in person submits that he will prefer S.L.P. against this order before the Hon'ble Supreme Court and in view of that, further time may kindly be allowed to him."
 - Accordingly, the contempt petition was dismissed.

The Management Committee of Chempazhanthi Agricultural Improvement Co-operative Society and Another v. The Assistant Registrar of Co-operative Societies

- ❖ **TOPIC :** Banks Cannot coerce Defaulters To Pay By Publishing Their Photos, It Violates Right To Privacy & Reputation : Kerala High Court
- ❖ **BENCH :** Justice Murali Purushothaman
- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Whether a bank can publish the photo and details of defaulting borrowers to coerce them to repay loan or not
- ❖ **OBSERVATIONS**
 - The Kerala High Court held that a bank cannot publish the photo and details of defaulting borrowers to coerce them to repay loan. Justice Murali Purushothaman observed that such acts invade a person's right to live with dignity and reputation.
 - "The borrowers cannot be coerced to repay the loans by threatening to damage their reputation and

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

privacy. The publication or display of photographs and other details of defaulting borrowers in public will be an invasion on the right of the borrowers to live with dignity and reputation. Such deprivation of life and personal liberty cannot be made except according to procedure established by law.”

- The Court noted that such acts infringe a person's right under Article 21 of the Constitution. The Court also noted this is not a mode of recovery mentioned in any Act or Rules.
- The petition was filed by the Chempazhanthi Agricultural Improvement Co-operative Society challenging a communication by the Assistant Registrar of Co-operative Societies directing them to remove the flex board displaying the names and photographs of defaulting borrowers in front of their head offices. The Bank submitted that they had demanded money from these defaulters many times before they resorted to this method.
- They submitted that many people repaid their loan after the publication of their details. They said that motivated by the success, they are preparing another set to put up in the Bank premises.
- They argued that this is similar to the “beat of tomtom” mentioned in Rule 81 of the Kerala Co-operative Societies Rule, 1969 which is permitted during the attachment and sale of immovable properties.
- The Court commented that the practice of tomtomming is an outdated and primitive method. The Court however did not decide on the legal validity of the practice as it was not an issue in this case.

Shyamchand Mondal V. The State of West Bengal & Anr.

- ❖ **TOPIC:** Bail Is An Essential Element of The Criminal Justice system, Guarantees Right To Fair Trial : Calcutta High Court
- ❖ **BENCH :** Justice Shampa (Dutt) Paul
- ❖ **FORUM:** Calcutta High Court
- ❖ **MAIN ISSUE**
 - Whether bail is an essential element or not of the criminal justice system
- ❖ **OBSERVATIONS**
 - The Calcutta High Court has held that bail is an essential element of the criminal justice system as it affords a right to a fair trial to the accused in a criminal case.
 - Justice Shampa (Dutt) Paul made these observations in a plea by a man accused under the POCSO act, against an order cancelling his bail

issued by the trial court. She said: "Bail is a rule and jail is an exception. This is in line with Article 21 of the Indian Constitution which guarantees the protection of life and personal liberty to all citizens of India. Article 21 of the Constitution of India guarantees the 'right to life and personal liberty' to every individual and no one should be deprived of it except according to the procedure established by law. It guarantees the fundamental right to live with human dignity and personal liberty."

- "As per the fundamental principle of the Universal Declaration of Human Rights a person is assumed to be innocent unless proven guilty. Therefore, no one shall be deprived of personal liberty unless specified by a fair and just procedure. Bail is an essential element of any criminal justice system, as it guarantees the right to a fair trial for the accused. Bail is a mechanism that secures liberty to the accused without providing any unjustified benefit to them," she added.
- The present revisional application was preferred against an order passed by the Judge, Special Court, Lalbagh, Murshidabad in POCSO Case No. 07/2017 arising out of Jiaganj P.S. Case No. 23 of 2017 dated 04.02.2017 under Sections 376/306 of the Indian Penal Code and Section 4 of the POCSO Act, 2012.
- The initial section under which the accused was charged was Section 306 Indian Penal Code. The accused had been granted bail, the trial had commenced and there had been no prima facie violation of conditions of bail.
- Court noted that there is no observation that the accused had (i) Misused his liberty by indulging in similar criminal activity, (ii) Interfered with the, course of trial, (iii) Attempted to tamper with evidence or witnesses, (iv) Threatened witnesses or indulged in similar activities which would hamper smooth conduct of trial and (v) There is likelihood of his fleeing to another country.
- Accordingly, it set aside the order passed by the trial court.

Anju Bala v. State of Haryana and Ors

- ❖ **TOPIC :** HC upholds Removal of Haryana Municipal Council President For Submitting Fake Class VIII Marksheet
- ❖ **BENCH :** Justice Sureshwar Thakur and Sudeepti Sharma
- ❖ **FORUM:** Punjab & Haryana High Court

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

- ❖ **MAIN ISSUE** : Regarding the removal of Haryana's Sohna Municipal Council President on the grounds of submitting a "fake" class VIII marksheet.
- ❖ **OBSERVATIONS**
 - The Punjab & Haryana High Court has upheld the removal of Haryana's Sohna Municipal Council President on the grounds of submitting a "fake" class VIII marksheet.
 - Justice Sureshwar Thakur and Sudeepti Sharma said, "What magnifies the ill conduct of the present petitioner as but arises from the withholding of the original, where from an adverse inference has been drawn against her, thus, also become borrowed from the trite fact, that the Certificate, has been issued by one Mukesh Upadhyay, who, however unclinchingly and unrefutably, has been stated to be at the time of issuance of same, rather aged 14 to 15 years. Since therebys he was, as aptly concluded by the Enquiry Officer, rather completely disabled to claim that he was an empowered employee of the Educational Institution. As but a natural corollary thereto, the Certificate concerned issued vis-a-vis the present petitioner, thus clearly is a fake and unauthentic Certificate."
 - These observations were made while hearing the plea challenging the order of the State election commission by which the petitioner was removed from the post of Municipal Council Sohana.
 - The complaint was received against Anju Devi that she had submitted a fake marksheet at the time of filing of the nomination and hence she should be disqualified on this ground.
 - Show cause notice was issued and the issue was also raised in the High Court and directions were passed by the court to decide the proceedings expeditiously.
 - As a result of the inquiry, the petitioner was removed by the State Election Commission from the post of the president. Hence, the petitioner moved the High Court.
 - After examining the submissions, the Court noted that the order passed by the State Election Commission was in line with Haryana Municipal Council Act, 1973.
 - Speaking for the bench, Justice Sureshwar Thakur referred to Article 243 V, which is a provision on "Disqualifications for membership."
 - The Court found that a reading of the Article 243 V, "reveals that when any democratically elected

person invites any statutory disqualification, thus for being elected as a member of the Municipality concerned, thereupon the (supra) controversy is amenable for a decision becoming recorded thereons, but only by an authority as becomes created through a valid legislation becoming passed by the State Legislature concerned."

- Since in pursuance to the provisions, the Haryana State Legislative Assembly had made an amendment, the amendment fell in alignment with the Article carried in the Constitution, whereby the decision over the controversy concerned, is amenable to be recorded by an authority to be created for the said purpose, thus by a law becoming passed by the State Legislature concerned, as has been evidently done in the present case, added the bench.
- The Court highlighted that the inquiry made by the officer on the alleged certificate proves that the certificate is a copy of the original and the original is alleged to be destroyed in a fire.
- It further opined that the certificate presented is clothed with fakeness on the face of it and nothing was presented before the officer for comparison and for the proof of the same.
- The Court also found that the certificate was issued by one Mukesh Upadhyay who was 14 or 15 years old at that time, so he could not have been employed in the educational institution. "The certificate is proved to be clearly fake and inauthentic," it was held.
- In light of the above, the plea was dismissed.

X v. Y

- ❖ **TOPIC** : Courts Must Be Cautions In Cases Involving Persons With Unsound Mind, Ensure Their Rights Are Protected : Telangana High Court
- ❖ **BENCH** : Justice K. Sujana
- ❖ **FORUM**: Telangana High Court
- ❖ **MAIN ISSUE**
 - Regarding the courts must proceed with utmost caution in matters involving persons of unsound mind
- ❖ **OBSERVATIONS**
 - The Telangana High Court has underscored that courts must proceed with utmost caution in matters involving persons of unsound mind so that their rights are protected, adding that if a party to a suit alleges that the opposing party is of unsound mind held that the court must conduct a judicial inquiry

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

to determine whether the allegation is true.

- Justice K. Sujana while referring to Andhra Pradesh High Court's decision in Duvvuri Rami Reddi Vs Duvvudu Papi Reddy and others, which lays down certain principles to be followed while declaring a person of unsound mind, said:
- “ In matters involving persons of unsound mind, the Court must exercise utmost caution and diligence to ensure that the rights of such individuals are protected. Order XXXII, Rule 15 of C.P.C places persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rules 1 to 14. When a party to a suit alleges that the opposing party is of unsound mind, the Court must conduct a judicial inquiry to determine whether the alleged person is indeed incapable of protecting his interests in the suit. This inquiry should consist of examining witnesses, the alleged lunatic, and seeking medical expert opinion.
- The Court's inquiry should not be limited to determining whether the person is of unsound mind but also extend to assessing the extent of their mental infirmity. Mental infirmity may arise from physical defects that render the person incapable of communicating their wishes or thoughts. However, the opinion of a medical expert is also relevant, it is not conclusive. The Court must consider all evidence presented, including the expert's opinion, to arrive at a decision.
- The Court may compel the attendance of the alleged lunatic before it and direct them to submit to a medical examination,” she added.
- The case arose out of a matrimonial dispute between a husband and wife. The husband (petitioner in the Civil revision petitions), in 2019 had filed an original petition before the trial court seeking a declaration, mandatory injunction and perpetual injunction against his wife. The wife (respondent in the Civil revision petitions) in 2022, had filed a suit for divorce on grounds of cruelty.
- During the pendency of the suits, the wife filed an application (IA) each in the above-mentioned suits. The applications sought dismissal of the husband's original petition alleging that an insane person had instituted them without the appointment of a next friend under Order 32 Rule 3 CPC. The applications further prayed that the husband's father be appointed as his guardian.
- The wife contended that her husband had admitted to his disability in the proceedings that were initiated by him, seeking custody of their minor child, In which he stated that he could not pay

maintenance on account of being mentally unsound. A certificate of disability issued to her husband by the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India was also filed, and proof was filed to show that previously a guardian was appointed for the husband. It was also placed on record that her husband was compelled to give up the ownership of his bank accounts to his wife due to his mental disability.

- The husband on the other hand contended that he had three undergraduate degrees and a master's degree in law. He was regularly defending his clients in the court of law and hence could not be deemed a person of unsound mind. After hearing both sides, the trial court allowed the wife's applications and held that the husband who was suffering from bipolar disorder was a person of unsound mind and consequently appointed his father as his guardian.
- Challenging these orders, the husband approached the High Court by way of the civil revision petitions.
- The High Court after perusing through the record observed, "trial Court did not conduct any inquiry to determine whether petitioner is of unsound mind before declaring him so and permitted his father to represent on his behalf and did not follow the provisions of Order XXXII Rule 15 of C.P.C. The trial Court also did not send him for examination by the medical officer.
- As such, the orders impugned are not sustainable and the same are liable to be set aside".
- It said that a thorough judicial inquiry, adherence to the prescribed procedure, and consideration of all relevant evidence are essential to ensure that the rights of such individuals are protected.
- The High Court thus set aside the order of the trial court and allowed the husband's civil revision petitions.

Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Limited

- ❖ **TOPIC** : S.12(5) of A& C Act provides For Agreement in writing, Novation can't Be Allowed Only Because of Appointment of Arbitrator At First Instance : Patna HC
- ❖ **BENCH** : Chief Justice K. Vinod Chandran
- ❖ **FORUM**: Patna High Court

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

❖ **MAIN ISSUE**

- Regarding the proviso to Section 12(5)
 - **OBSERVATIONS**
 - The Patna High Court Bench of Chief Justice K. Vinod Chandran has held that the proviso to Section 12(5) specifically provided for a waiver by an express agreement in writing. When the statute provides for an express agreement in writing there can be no novation of the agreement found, by reason only of the appointment of an Arbitrator at the first instance.
 - The present dispute arose with respect to an agreement entered by the petitioner pursuant to a successful bid in the tender process initiated by the respondent. In the agreement, a dispute resolution clause was mentioned in Clause-25. So, the petitioner requests the court for an appointment of an arbitrator under Clause-25 read with the provisions of the Arbitration and Conciliation Act, 1996.
 - The respondent relied on the judgment of The State of Bihar v. Kashish Developers Limited (2024), wherein Clause-25 was interpreted to find that after the amendment of 2016 of the Arbitration and Conciliation Act, 1996, there would be no question of arbitration, going by the language employed in Clause-25. Also, it was mentioned in Clause-25 that no person other than the person appointed by the Engineer-in-Chief or administrative head should act as Arbitrator.
 - And if that is not possible, the matter shall not be referred for arbitration at all.
 - The court noted that the objection now raised is that the arbitration clause itself is rendered otiose, for reason of the amendments brought in Section 12 of the act. There is also no waiver by express agreement in writing as required by the proviso to Section 12(5) of the act.
 - In the present case, the Arbitrator appointed under Section 11 had recused and in those circumstances, there was a review application filed and on resumption of the request case, this objection was raised. The review was allowed on the short ground of the recusal of the Arbitrator appointed under Section 11.
- Additionally, the court noted that Clause-25 was dealt with in extension, and it was also contended that while the appeal of the petitioner was pending before the Managing Director, without giving any opportunity to the Managing Director to consider the appeal, this Court was moved for the appointment of an Arbitrator. It was the contention of the respondent that the appeal having not been considered, the appellant should have presumed that it was rejected and applied to the Managing Director for appointment of an Arbitrator.
 - The court held that this Court could have been approached for appointment only after the expiry of thirty days from the issuance of such notice.
 - Further, the court held that the proviso to Section 12(5) specifically provided for a waiver by an express agreement in writing. When the statute provides for an express agreement in writing there can be no novation of the agreement found, by reason only of the appointment of an Arbitrator at the first instance. Finally, the request was dismissed by the court.
 - The court held that this Court could have been approached for appointment only after the expiry of thirty days from the issuance of such notice.
 - Further, the court held that the proviso to Section 12(5) specifically provided for a waiver by an express agreement in writing. When the statute provides for an express agreement in writing there can be no novation of the agreement found, by reason only of the appointment of an Arbitrator at the first instance. Finally, the request was dismissed by the court.

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>