

26 September 2024

IN RE: REMARKS BY HIGH COURT JUDGE DURING COURT PROCEEDINGS

- ❖ **TOPIC :** 'You Can't Call Any Part Of India As "Pakistan"', Supreme Court Disapproves Of Karnataka HC Judge's Comments, Accepts Apology
- ❖ **BENCH :** Chief Justice of India DY Chandrachud, Justice Sanjiv Khanna, BR Gavai, Surya Kant and Hrishikesh Roy



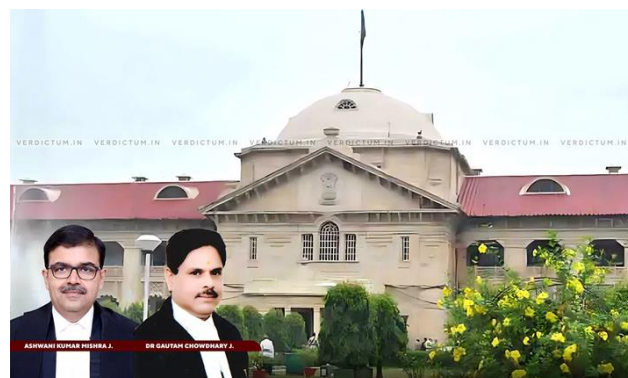
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether judges should avoid casual comments which are misogynistic and prejudicial to any community or not.
- ❖ **FACTS**
 - The viral clippings of the controversial comments made by Justice V Srishanandan of Karnataka High Court during hearings.
 - In one video, he was seen referring to an area in Bangalore, which is apparently Muslim-dominated, as "Pakistan". In another video, he was seen making objectionable remarks to a woman advocate.
- ❖ **OBSERVATIONS**
 - The Supreme Court cautioned that judges should avoid casual comments which are misogynistic and prejudicial to any community.
 - "You can't call any part of the territory of India as "Pakistan". It is fundamentally contrary to the territorial integrity of the nation", Chief Justice of India DY Chandrachud orally said expressing concerns about the remarks made by a Judge of the Karnataka High Court who called a particular locality of Bengaluru as "Pakistan".
 - The Court today decided not to pursue the matter further in the light of the regret expressed by the Judge in the open court after the Supreme Court's intervention over the viral video clips. At the same time, the Court made several significant

observations on the need for the judges to express restraint, particularly in the age of electronic media where there is wide reportage of the court proceedings.

- "Casual observations may well reflect a certain degree of individual bias particularly when they are likely to be perceived as being directed against a particular gender or community. Courts therefore have to be careful not to make comments in the course of judicial proceedings which may be construed as being misogynistic or prejudicial to any segment of our society," the bench observed in the order.
- The Court noted from the report of the Registrar General of the Karnataka High Court that the observations made by Justice Srishananda were unrelated to the subject matter.
- The bench emphasised in its order that the heart and soul of adjudication is impartiality and fairness. Judges must be guided by only the values which are enshrined in the Constitution, the bench reminded.
- It was last week that two video clips of Justice Vedavyasachar Srishananda of the High Court surfaced on social media, in which he was seen making objectionable remarks.
- Following that, on September 20, the Supreme Court took suo motu cognizance of the remarks and sought a report from the Registrar General of Karnataka High Court.

In Re v. Shri Yogendra Trivedi

- ❖ **TOPIC :** Advocates Can't Be Discourteous Or Use Intemperate Language Against Judges
- ❖ **BENCH :** Justice Ashwani Kumar Mishra and Justice Dr. Gautam Chowdhary



- ❖ **FORUM:** Allahabad High Court

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❖ **MAIN ISSUE**

- Whether Advocates, being officers of the court should be courteous towards the Judges or not.

❖ **FACTS**

- In suo moto contempt proceedings against a lawyer, the Allahabad High Court has held that Advocates, being officers of the court, must be courteous towards the Judges.
- The Civil Judge (Junior Division/Fast Track Court (CAW)), Kanpur Nagar made a reference to the High Court regarding conduct of the contemnor advocate in proceedings before the Court on 03.02.2023.

❖ **OBSERVATIONS**

- It was stated that the contemnor had questioned the Presiding Officer as well as snatched the files from the Court staff. It was stated that the contemnor had also misbehaved on other dates of hearing.
- The Presiding Officer and the High Court both were not satisfied with the apology tendered by the Advocate and he was directed to tender a fresh unconditional apology. Thereafter, the Advocate submitted a fresh affidavit stating his unconditional apology.
- The bench of Justice Ashwani Kumar Mishra and Justice Dr. Gautam Chowdhary observed, "instances of the kind in which the advocates show discourteous behaviour towards the Presiding Judge cannot be tolerated. The Judges can function only in a cordial atmosphere. Being an Officer of court an Advocate cannot be expected to be either discourteous to the Judge or use intemperate language against the Presiding Officer."
- Though the Court was inclined on taking a serious view, but keeping in mind that the contemnor was a young advocate with no previous records, the Court left him with a warning.
- The Court directed the District Judge to submit a report after 2 years regarding the conduct of the contemnor.

Mahesh Raut v. State of Maharashtra

❖ **TOPIC** : Imprisonment Does Not Restrict Individual's Right To Pursue Education

❖ **BENCH** : Justices Ajay Gadkari and Dr Neela Gokhale

❖ **FORUM**: Bombay High Court

❖ **MAIN ISSUE**

- Whether imprisonment of an individual has the right to education or not.



❖ **FACTS**

- The Bombay High Court recently observed that imprisonment of an individual does not restrict his or her right to education.
- A division bench of Justices Ajay Gadkari and Dr Neela Gokhale made the observation while ordering a Mumbai-based Law College, to admit Mahesh Raut, one of the accused in the Bhima-Koregaon case, as a student for the LLB course for the academic year 2024-2027.
- "Imprisonment does not restrict an individual's right to pursue further education. Denying the opportunity to take admission in the College despite a seat being allotted by following the due process as prescribed, is a violation of the fundamental right of the Petitioner. In these circumstances, we are inclined to allow the Petitioner to take admission in the LL.B. course in the Siddharth Law College for the Academic Year 2024-25 for the batch of 2024-2027," the bench observed.
- Notably, a special court had earlier permitted Raut to appear in the Common Entrance Test (CET) exams held earlier this year.
- He was placed at rank 95 on the merit list. Following the due procedure, Raut paid the fees for seat allotment and was allotted a seat in Siddharth Law College in Mumbai. However, he now moved the High Court seeking a direction to the college to admit him as a student.
- The University of Mumbai and also the Law College, contended that since LLB is a professional course, the students have to maintain a minimum of 75 per cent attendance.
- But since he is lodged in the Taloja Jail, Navi Mumbai, he will not be able to maintain the attendance record and thus he should not be given admission, the varsity argued.
- It further argued that since Raut will not be able to attend regular classes, he will miss the lectures and due to low attendance he will not be permitted to sit for the exams and thus the petition must be dismissed.

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- However, the petitioner argued that the special court had granted him permission to appear for the Maharashtra CET exams and thus, his right to education needs to be protected.
- The bench in its order, noted that the main purpose for appearing in the CET exams was to secure an admission in a Law College.
- "The purpose of appearing for the CET examination was obviously to seek admission for the LLB course in a law college. He has passed the exam and is allotted a seat in the Siddharth Law College. There is no gainsaying at this stage in objecting to him being admitted in the College pursuant to having passed the CET examination and being allotted a seat in the College," the bench opined.
- It therefore, ordered the College to admit the petitioner.

Smt. Tripti Singh v. Ajat Shatru

- ❖ **TOPIC** : False Criminal Prosecution By Wife May Create Reasonable Apprehension Regarding Personal/Family Safety, Constitutes Cruelty
- ❖ **BENCH** : Justice Saumitra Dayal Singh and Justice Donadi Ramesh



- ❖ **FORUM**: Allahabad High Court
- ❖ **MAIN ISSUE**
 - Regarding the false criminal prosecution case by wife.
- ❖ **FACTS**
 - Parties got married in 2002 and a son was born to them. Respondent alleged that the appellant-wife had deserted him in 2006 and subsequently, he instituted divorce proceedings.
- ❖ **BACKGROUND**
 - In 2011, he amended his plaint to add cruelty as a ground of divorce as false criminal cases had been lodged by the appellant against the respondent and his family members for, inter alia, demand of dowry. On such false allegations, his family

members were arrested and later granted bail.

❖ **OBSERVATIONS**

- The Allahabad High Court has held that a false criminal prosecution case by the wife against the husband and his family may create reasonable apprehension in mind of the husband regarding the safety of his family and himself if he were to stay in the matrimonial relationship.
- It was held that such false criminal prosecution is sufficient to constitute cruelty under Section 13 of the Hindu Marriage Act, 1955.
- The Court observed that the appellant-wife had lodged the FIR regarding demand of dowry after 6 years of marriage and after filing of the divorce petition by the husband.
- The parents and respondent were exonerated as the appellant could not support her allegation with evidence and also had turned hostile. Accordingly, the Court held that cruelty was proven.
- Challenging the decree of divorce granted by the Additional Principal Judge, Family Court, Kanpur Nagar, counsel for appellant pleaded that the criminal cases were filed due to the cruelty/ bad behaviour faced by the appellant in her matrimonial life. However, the Court observed that such allegations were not proved.
- It was further argued that the appellant had turned hostile in the criminal proceedings to revive her matrimonial relationship with her husband.
- Though the appellant claimed that there was settlement/ compromise between the parties, no such document was brought on record before the Court.
- The Court observed that even though the parties may refer to each other's parents as in-laws, once the arrest of the parents and allegations against them have been found to be false, strict proof of cruelty may not be demanded.
- It was held that if the demand of dowry was proved, then it would have been a different case.
- However, since the allegations were false and had affected the reputation of the respondent and his family, the Court observed that the respondent was meted out cruel behaviour and may not want to cohabit with the appellant due to fear of the same being repeated in future.
- The bench comprising Justice Saumitra Dayal Singh and Justice Donadi Ramesh held that "Divorce sought being a civil proceeding, everything apart, its institution may never have offered the respondent spouse (in that proceeding) motivation to get even with her spouse-by lodging a false criminal case. That act committed by the appellant led to loss of reputation and standing of

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the respondent and his family, in his society. Having suffered that, the respondent cannot be expected to cope with that and revive his matrimonial relations.”

- Observing that both parties were well educated, the Court held that respondent-husband suffered loss of reputation due to false criminal prosecution by the appellant-wife and thus, would be exposed to the risk of the same in future.
- Accordingly, the Court upheld the decree of divorce.

Smt Anitha T v. Kerala State Civil Supplies Corporation Limited

- ❖ **TOPIC** : Hindu Marriage Act Children Born Out Of Void Marriage Also Have Right To Property Of Parents
- ❖ **BENCH** : Justice Harisankar V. Menon



- ❖ **FORUM**: Kerala High Court
- ❖ **MAIN ISSUE**
 - Whether pension benefits can be granted to three children born from a man's invalid second marriage, which he entered into without dissolution of the first marriage.
- ❖ **FACTS**
 - The petitioner married C. Sreenivasan as per Hindu customs in the year 1983 and they have a daughter born in the wedlock.
 - He worked as an Assistant Salesman in Kerala State Civil Supplies Corporation.
- ❖ **BACKGROUND**
 - During the subsistence of the first marriage, he entered into a second marriage with another woman in 1986. Subsequently, he obtained an ex parte divorce from the petitioner which was later set aside by the Family Court.
 - Both he and his second wife embraced Islam, and they got married as per Islamic customs. He had three children from the second marriage.
 - The petitioner's husband died in the year 2015 and

the Corporation denied her request for terminal/pension benefits due to the disputes over his legal heirs. Meanwhile, the woman who did the second marriage with the deceased and her children obtained a legal heirship certificate.

- The petitioner has thus approached the High Court with a writ petition seeking for declaration that she, her daughter and her mother are the legal heirs of the deceased. Petitioner also seeks to quash the legal heirship certificate issued to the second wife and requests that the Corporation releases the terminal and pension benefits of her late husband.
- The petitioner contended that the deceased's religion change will not will not dissolve the Hindu marriage entered into.
- It was argued that the second marriage of a Hindu husband after conversion to Islam without dissolution of first marriage is invalid and void. It was also stated that conversion was done to perform a second marriage and to deny the petitioner legal heir benefits.
- ❖ **OBSERVATIONS**
 - The Kerala High Court recently granted terminal and pension benefits to three children born from a man's invalid second marriage, which he entered into without dissolution of the first marriage.
 - Justice Harisankar V. Menon relying upon the Apex Court decision in *Revanasiddappa v. Mallikarjun* (2023) and amended Section 16 of the Hindu Marriage Act (legitimacy of children of void and voidable marriages) observed that children born out of a void marriage will also have right to the property of parents.
 - The Court further noted that the second marriage was entered into by the parties in 1986, whereas they embraced Islam and entered into legal marriage as per Muslim laws only in 1994. The Court thus stated that the second marriage was entered into without dissolution of the first marriage.
 - The Court found that even though the second marriage was declared as void marriage, he had entered into the second marriage and the parties lived together as husband and wife and they had three children also.
 - It thus stated that the three children born out of that marriage are also entitled to terminal benefits of the deceased.
 - The Court also stated that granting a legal heirship certificate to the petitioner and her daughter would not take away the rights of the other three children born out of the deceased's second marriage.
 - As such, the Court directed legal heirship certificates to be granted to the petitioner, her

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daughter, and the three children from the deceased's second marriage along with their mother. It also directed granting the pension/terminal benefits to the petitioner, her daughter, mother-in-law and the three children born out of the second marriage.

Hindustan Chemicals Company V. Cyanides And Chemicals Karmachari Sangh & Anr

- ❖ **TOPIC** : Gujarat High Court Upholds Award Passed By Industrial Tribunal Based On Principle Of 'Equal Pay For Equal Work'
- ❖ **BENCH** : Justices A S Supehia and Mauna M Bhat



- ❖ **FORUM**: Gujarat High Court
- ❖ **MAIN ISSUE**
 - Whether the award passed by the Industrial Tribunal Based on Principle of 'Equal Pay for Equal Work' is correct or not.
- ❖ **BACKGROUND**
 - A settlement was entered into between Hindustan Chemicals Company (appellant) and its employees on 21.03.1996.
 - As per the settlement, the benefits arising out of the settlement would extend only to the employees who were employed in the Company before 31.12.1994.
 - Seventeen employees who joined the employment after 31.12.1994 and were not signatories to the settlement dated 21.03.1996 approached the Industrial Tribunal claiming the benefits that arose out of the settlement.
 - The Industrial Tribunal passed an award granting benefits to them.
 - Consequently, the Company filed a writ petition against the award before the Single Judge who affirmed the award citing the principle of 'equal pay for equal work'.
 - The Single Judge referred to the decision of the Apex Court in Jagjit Singh & Ors wherein it was held:
 - "In our considered view, it is fallacious to

determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependents would suffer immensely, if he does not accept the lesser wage."

- Citing the principle of 'equal pay for equal work' based on a catena of judgments including Mohammad Alimam and others, National Engineering Industries Ltd., the Single Judge upheld the Award of the Tribunal holding that no error was committed by the Tribunal in granting the benefits arising out of the settlement to the workers who were not signatories to the settlement.
- Aggrieved by the decision of both the Tribunal and the Single Judge, the Company filed an appeal before the Division Bench.

❖ **OBSERVATIONS**

- A division Bench of the Gujarat High Court comprising of Justices A S Supehia and Mauna M Bhat of the Gujarat has held that if employees who perform similar duties as their colleagues aren't given benefits such as allowances attached to a pay structure, it will be discriminatory and against the principle of 'equal pay for equal work'.
- The court perused clause 7 of the settlement which stated, "that the terms of the settlement shall be applicable to the permanent workman employed in the company on 31st December, 1994 and are still in employment of the Company. Further it is clarified that no benefit in any manner will be payable to those workmen who have joined the company or who will be joining the company after 31st December, 1994."
- It was observed that there was no dispute regarding the appointment of the respondents after 31.12.1994.
- It held that the respondents working in different departments had a similar wage structure, however the allowances attached to the wage structure were not availed by them as per the settlement like their colleagues.
- The Court held that the appellant Company did not dispute that the work performed by the respondent-employees was similar to that of their colleagues in the same departments.
- Since the Company had implemented a pay structure and associated allowances, the same

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would apply to all employees under the principle of "equal pay for equal work," unless a distinction in job responsibilities was demonstrated.

- The Court held that it would be discriminatory if the employees working in the same department, performing similar work/duties would have two different wages/allowances.
- Making these observations, the Court dismissed the appeal filed by the Company and affirmed the decision of the Tribunal and the Single Judge.

Khusruddin Ansari v. State of Maharashtra

- ❖ **TOPIC :** Ensure No Other Surgery Takes Place Under Mobile Torchlight
- ❖ **BENCH :** Justices Revati Mohite-Dere and Prithviraj Chavan



- ❖ **FORUM:** Bombay High Court
- ❖ **MAIN ISSUE**
 - Related to surgery or delivery taking place in mobile torchlight in any of the civic or State-run hospitals
- ❖ **OBSERVATIONS**
 - Observing that 'lives are precious' the Bombay High Court told the Brihanmumbai Municipal Corporation (BMC) and also the National Medical Commission (NMC) to play a 'proactive' role and ensure that no other surgery or delivery takes place in mobile torchlight in any of the civic or State-run hospitals.
 - A division bench of Justices Revati Mohite-Dere and Prithviraj Chavan was hearing a plea filed by the husband of Shahidunnisa Shaikh, who died after a C-section delivery in the civic-run Sushma Swaraj Maternity Hospital in Mumbai's Bhandup. Her husband alleged that the wife's C-section was performed using a mobile torchlight as the electricity connection in the hospital on the relevant day was down.

- Pursuant to an earlier hearing, Advocate Ganesh Gole appeared for the NMC and submitted that the apex body is yet to receive any representation either from the petitioner or the BMC against the alleged 'misconduct' of doctors.
- "Since we have not come across any representation by the civic authorities to take action against misconduct, we have not taken any action," Gole told the judges.
- At this, Justice Mohite-Dere suggested that the instant petition can be considered as a representation by the NMC and lamented that the authorities must refrain from taking 'hyper-technical' views in such matters.
- "Just because there is no representation or the name has changed from Indian Medical Council (IMC) to NMC does not mean that your powers have also changed. You can still take suo motu cognisance and take action against the non-maintenance of medical records etc," the bench made it clear.
- The judges sought to know if there are some Standard Operating Procedures (SOPs) for hospitals in the State to function. "Like is there any SOP for one to begin a hospital, what are the requirements for one to comply with for starting a hospital, what all amenities are needed, what action can be taken if the SOPs are not complied with," the bench said,
- Kantharia submitted that the death took place because the junior doctor took the step of operating the woman on his own in the mobile torch light even as the electrical engineer was repairing the lights in the hospital as the electricity was down.
- "What is the role of the BMC which is the sanctioning authority for permitting hospitals. Whether you have regular inspections? Whether they have the necessary amenities. In the instant case, how long was the generator not functional? Who is responsible for checking this? Madam Kantharia, there are too many questions which need an answer. So it's better you call a responsible officer from BMC tomorrow ," Justice Mohite-Dere said while adjourning the case.

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