

**EDAKKANDI DINESHAN @ P. DINESHAN
 & ORS v. STATE OF KERALA.**

- ❖ **TOPIC :** Accused Cannot claim Acquittal on Ground of Faulty Investigation
- ❖ **BENCH :** Justices Sudhanshu Dhulia and Prasanna B. Varale.
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding the accused claim acquittal solely on grounds of faulty investigation
- ❖ **OBSERVATION**
 - The Supreme Court held that the accused cannot claim acquittal solely on grounds of faulty investigation. It explained that defective investigation does not automatically benefit the accused persons and Courts will have to consider the rest of the evidence relied on by the prosecution.
 - “Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not injure the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as the statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.” held Justices Sudhanshu Dhulia and Prasanna B. Varale.
 - The brief factual matrix of the case was that a hartal was called by the Rashtriya Swayam Sevak Sangh (RSS). The same led to violent clashes between the members of RSS and the Communist Party of India (M). This resulted in the death of two people. The accused persons were found guilty by the trial court of several charges under the Indian Penal Code including murder
 - However, as the matter reached the High Court, some accused were acquitted and the conviction of the rest was confirmed. It is the later set of accused that filed this present appeal challenging their conviction.
 - At the outset, the Court took note of a long-standing rivalry between both groups. Addressing the appellant's contention of contradictions found in prosecution witnesses' testimonies, the Court said that

- there were minor variations
- Instead, the Court found the testimonies to be truthful and trustworthy. To bolster, the Court referred to the recent case of Birbal Nath vs State of Rajasthan, wherein it was held that mere variation in two statements would not be enough to discredit a witness.
 - The Court also applied the principle of “Noscitur a sociis” according to which the meaning of a word can be determined by the context of the sentence.
 - “Though this principle Is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have been seen in the context of the entire set of events that had transpired that night.” the Court said.
 - Another important principle discussed by the Court was “falsus in uno, falsus in omnibus”, which means false in one thing, false in everything.
 - However, it highlighted that this principle is not a rule of evidence and only because of some minor contradictions, rest of the testimony cannot be discarded. Reliance was placed on Ram Vijay Singh Vs. State Of Uttar Pradesh.
 - “As we have already mentioned above, the principle of 'falsus in uno, falsus in omnibus' does not apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false
 - It is the duty of the Court to separate the grain from the chaff.”
 - “Thus in our opinion, merely because the dead body of Sujeesh was found at a place little away from the place of body of other victim Sunil, it cannot be the sole and decisive factor to discard the entire case of prosecution.”
 - Moving forward, even though the Court observed that the investigation had not taken place in a proper and disciplined manner, it denied any relief to be given to the accused based on it

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- To strengthen its findings, the Court referred to the decision in *Paras Yadav & ors. vs. State of Bihar*, 1999 (2) SCC 126, wherein it held:
- “Para 8 - ..the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not
- Before parting, the Court also stated that even if the eyewitnesses were assumed to be interested witnesses, there was no inconsistency in their statements. Thus, it did not raise any reasonable suspicion with regard to their evidence.
- “Their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased Sunil and Sujeesh are in harmony with each other.” the Court said.
- Based on the above observations, the Court dismissed the appeal and affirmed the impugned order of the High Court.

RAMESH V STATE OF RAJASTHAN

- ❖ **TOPIC:** Rajasthan High Court Questions Special POCSO Judge For Denying Bail to Man Not Named in Victim Statement
- ❖ **BENCH :** Justice Anil Kumar Upman
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Regarding bail to a man not even named by the minor victim in her statement
- ❖ **OBSERVATION**
 - The bench of Justice Anil Kumar Upman opined that the increasing tendency of trial courts in rejecting bail petitions in a "casual and routine manner" even in appropriate cases was concerning and needed to stop as it not only increased agony of accused persons languishing in an overcrowded prison system of India but also increased burden on High Courts
 - “Denying such a right in a routine manner even in appropriate cases amounts to failure of the courts in performing the sacrosanct

- judicial function, which is the paramount feature of the judicial system in this country. Trial Courts functioning at the district level make up the very foundation of the Indian Judicial system which makes it even more important for the High Courts to not condone such practices of the Trial Courts.”
- The Court was hearing a bail application filed by the accused in a POCSO case and it was his argument that the bare perusal of the victim's statement made it clear that no allegations were levelled against him by the accused in her statement, neither was he even named in the same. Despite that, his bail application was rejected.
- After hearing the contentions, the Court aligned with the argument put forth by the applicant and held that generally in sexual offences,
- the victim was considered as the star prosecution witness and victim's statement under Section 164, CrPC, had an important effect on the decision in a criminal case which could not be ignored. Hence, the Court expressed surprise over the Trial Court not taking the statement into consideration while deciding the bail application.
- “To my utter surprise and dismay, learned Special Judge further proceeded to observe in the order dated 30.08.2024 that after framing of charge,
- evidence of important prosecution witnesses are to be recorded, which means the court concerned has already premeditated his mind not to consider arguments advances on behalf of the petitioner on the point of charge and thereby not discharging him in any case whether he has strong case in his favour. Such type of observations are totally uncalled for.”
- The Court further opined that every arrest was a relief and pain which had to be justified based on evidence and closely scrutinized by all supervisory authorities including judiciary. It held that arrest/detention had many psychological impacts especially in light of overcrowded prison system of Indian in which accused were ill-treated and deprived of basic human needs.

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- The Court observed that all these factors highlighted the importance of bail and judiciary in protecting everyone's rights.
- It reiterated the Supreme Court's emphasis on bail being the rule and jail being the exception, and stated that despite this, Trial Courts were declining bail applications in a casual manner that was in turn overloading the High Courts.
- “In my considered opinion such a routine and causal approach should be deprecated particularly when Trial Court and High Court are exercising concurrent jurisdiction of bail under Section 439 Cr.P.C. (483 BNSS).”
- In this background, the Court allowed the bail application of the applicant and sought explanation from the POCSO Judge on why he did not consider the statement of the victim given under Section 164, CrPC

Dr Jenbagalakshmi v The State of Tamil Nadu and Another

- ❖ **TOPIC** : S.21 POCSO Act| Doctor Not Responsible To 'Verify' Age of Victim or 'Ascertain' If offence Has Been Committed
- ❖ **BENCH** : Justice Murali Shankar
- ❖ **FORUM**: Madras High Court
- ❖ **MAIN ISSUE**
 - Regarding a doctor responsibility to 'verify' or 'ascertain' the age of a victim brought in for abortion, for the purposes of reporting crime under POCSO Act.
- ❖ **OBSERVATION**
 - The Madras High Court has recently observed that a Doctor does not have a responsibility to 'verify' or 'ascertain' the age of a victim brought in for abortion, for the purposes of reporting crime under POCSO Act.
 - Section 19 of the POCSO Act put a legal obligation on a person to inform the relevant authorities when he/she has knowledge that an offence under the Act had been committed. Section 21 deals with the punishment for failing to report or record a sexual offence.

- The High Court relied on the decision of the Apex Court in SR. Tessy Jose and others v State of Kerala which held that the 'knowledge' requirement foisted on the Doctor cannot be that they ought to have 'deduced' from circumstances that an offence has been committed. It thus quashed the case lodged against a Doctor for failing to report an incident.
- “As the Hon'ble Apex Court has astutely noted, the petitioner bore no responsibility to verify the victim girl's age or ascertain whether offences had been committed. In light of this, this Court has no hesitation in concluding that the provision of Section 21(1) of the POCSO Act are inapplicable to the petitioner,” the court said.
- Justice Murali Shankar noted that the case against the Doctor was registered solely based on the statement of the defacto complainant,
- The minor's sister and without conducting any preliminary inquiry. The court added that such treatment of medical professionals may discourage them from taking risks to save the lives of the patients. The court lamented the recent attack on doctors and remarked that false complaints against doctors could lead to harassment by police which in turn may cause them immense stress, damage their reputation, and impact their ability to practice the profession
- In the present case, the Doctor along with two others were charged with offences under Section 5(1), 5(j)(ii), 6(1), and 21(1) of the POCSO Act and Section 312 of IPC. The case of the prosecution was that the victim girl, aged 17, was brought to the petitioner's hospital by her maternal aunt, and on testing, it was found that she was 9 weeks pregnant. Thereafter, at the time of abortion, the victim failed to cooperate, and there was profuse bleeding.
- Thus, she was taken to Trichy Government Hospital where she died, despite treatment. Thus, based on a complaint by the victim's sister, the complaint was lodged.
- The petitioner argued that when the victim was brought to the hospital by her aunt, the petitioner inquired about her age and she was told that the victim was 18 years old and unmarried.

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- The petitioner further submitted that when the victim and her aunt insisted on aborting the fetus, she refused the same and informed them that she would have to report it to the police and the District Collector as the victim was unmarried and on informing the same, the victim and her aunt left the hospital.
- The petitioner further informed that when the victim and her aunt again came to the hospital with complaints of dizziness and weakness,
- She commenced to give IV fluids as the victim's hemoglobin and blood pressure was low. She also submitted that she had taken all steps to ensure that the victim was taken to the Trichy Government Hospital. Thus, she submitted that the allegations in the FIR were completely false and that she was innocent.
- The petitioner also argued that an essential element under the POCSO Act was the victim's minority status and in the present case, the victim had stated that her age was 18 years.
- It was argued that in the present case, the victim's age was contradicted by the records and thus, the police's reliance on the sister's statement alone was insufficient.
- The court noted that the Doctor bore no responsibility to verify the victim's age or ascertain whether any offence has been committed. The court added that with respect to the offence under Section 312 of IPC, the prosecution had not alleged that the petitioner or her staff at the hospital had done any action that would have caused the victim's death.
- The court noted that the prosecution had failed to establish any prima facie case against the doctor and thus permitting the prosecution would be unnecessary, unwarranted and would be an abuse of process of law. Thus, the court was inclined to quash the case and allowed the doctor's plea.

Som Dutt & Ors. v. State of HP and Anr

- ❖ **TOPIC:** Pensionary Benefits For contractual Period Before Regularization Must Include annual Increments
- ❖ **BENCH :** Justice Jyotsna Rewal Dua
- ❖ **FORUM:** Himachal Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding the direction to count the contractual service for pension
- ❖ **OBSERVATION**
 - A single judge bench of the Himachal Pradesh High Court comprising of Justice Jyotsna Rewal Dua, held that the direction to count the contractual service for pension requires the inclusion of annual increments for the relevant period in the pension calculation
 - The petitioner was working as a Trained Graduate Teacher (TGT) on the contractual basis. Later his service was regularised but his contract service period was not considered by the respondents for the purpose of calculating pensionary benefits. He filed a civil writ petition for direction to the State to consider his tenure as contractual TGT for the purposes of pension and other benefits under CCS (Pension) Rules 1972.
 - The court ordered the respondents to consider the petitioner's request within six weeks. The respondents considered petitioner's tenure as contractual employee for purposes of pensions, however rejected claims for increments based on such contractual tenure.
 - 'Aggrieved by State's action, the petitioner filed the writ petition for relief.
 - It was contended by the petitioner that he continued in regular service after the contractual service therefore he was entitled to annual increments in pensionary benefits. On the other hand it was contended by the state that the nature of employment before regularization of petitioner was contractual, therefore, it cannot be counted for the purpose of annual increments.
 - It was held by the court that petitioner was entitled for counting of the contractual services as qualifying service for the purpose of pension under the CCS Pension Rules 1972 and also for the purpose of grant

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of annual increments. Further the respondent authority was directed by the court to consider the position of the petitioner for grant of annual increment. It was directed by the court to complete the exercise within a period of six weeks.

- With the aforesaid observations, the writ petition was disposed of.

Abhishek Bhaskar v. Director, Directorate of Employment and training development

❖ **TOPIC :** Failure to Comply with Condition Not Specified In Recruitment Rules or Advertisement, can't Justify Rejection of candidate's Appointment

❖ **BENCH :** Justice Rakesh Mohan Pandey

❖ **FORUM :** Chhattisgarh High Court

❖ **MAIN ISSUE**

- Regarding the failure to comply with a condition which was not stipulated in the recruitment rules or advertisement

❖ **OBSERVATION**

- A single judge bench of the Chhattisgarh High Court comprising of Justice Rakesh Mohan Pandey held that failure to comply with a condition which was not stipulated in the recruitment rules or advertisement, cannot serve as a valid ground for rejecting a candidate's appointment
- The Directorate Of Employment And Training Department, Raipur issued an advertisement on 06.05.2023 for recruitment to the post of Training Officers in 23 streams. The petitioner submitted the application form as he had the requisite qualifications for the advertised post. The petitioner was shortlisted and was called for verification of the documents. He appeared before the respondent authorities for verification of the documents.
- Despite verification of documents, the authorities did not issue the appointment order in favor of the petitioner on the ground that the petitioner failed to submit documents relating to the mode of payment of salary.
- The petitioner made a representation before the respondent authorities but it was rejected on the ground that the petitioner was not getting salary either through bank account or post office

- The respondent said that as per the clauses of the guidelines of NCVT, the engaged instructors or trainees should be paid their remuneration/salary only through banks/post offices. But the petitioner failed to place on record any document with regard to the requirements as stated in the Management Manual for Industrial Training Institutes.
- Aggrieved by the same, the petitioner filed the writ petition.
- It was argued by the petitioner that the condition given in the Management Manual was directory in nature. The object of the instruction was to bring transparency and uniformity to the system. It was further contended that there was no such provision in the Chhattisgarh Industrial Training (Non-Gazetted) Class-III Service Recruitment Rules, 2014 (the Rules of 2014) and such condition was not inserted in the advertisement
- It was also contended that no such requirement was added during the amendment to Rules of 2014 in the year 2019. It was further argued by the petitioner that the candidature of the petitioner was inquired into by the respondent authorities and there was no adverse report against the petitioner.
- On the other hand, it was contended by the state that some of the candidates have worked in other states,
- Therefore it was necessary for those workers to submit documents with regard to the mode of payment of salary to prove their credibility. It was further contended that according to the application form, the petitioner was required to submit documents showing mode of payment of salary, experience certificate, order of appointment etc. It was further contended by the state that technical education is the subject of the concurrent list and Rules have been framed by the Union of India and the same are being followed by the state
- It was observed by the court that there was no requirement to submit documents showing mode of payment of salary because as per the application form, the candidates were required to submit the experience certificate, salary details, appointment order etc. And that there was no such condition in the advertisement also.

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- It was further observed by the court that instructions issued by the NCVT in the Management Manual for Industrial Trainee Institutes provide for payment of salary to vocational instructors of ITIs/ITCs (Regular/Contract basis) through banks/post offices only. But this condition was not mentioned either in the recruitment Rules or in the advertisement
 - Therefore, it was observed by the court that the instruction was directory in nature and its noncompliance will not lead to the rejection of the candidature of any of the candidates.
 - It was held by the court that the reason assigned by respondent, while rejecting the representation of the petitioner was not sustainable in the eyes of the law as the same was contrary to the Rules and conditions provided in the advertisement.
- Therefore, the order passed by respondent was quashed by the court. It was further held that the candidature of petitioner shall not be rejected on the ground that he failed to place on record any document with regard to the mode of payment of salary.
 - It was ordered by the court to the respondent that the appointment procedure should be completed within a period of 60 days and thereafter, issue the appointment order in favour of the petitioner within a period of 15 days.
 - With the aforesaid observations, the writ petition was disposed of.



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