## Raj Singh Gehlot V. The Anti-Corruption Bureau

- **TOPIC :** ''Vigilance Bureau Initiated Criminal Proceeding To Harass'' : P & H HC Quashes Corruption Case Against Former Minister
- **BENCH :** Justice Mahabir Singh Sindhu
- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Regarding two FIRs against former Congress food, civil supplies and consumer affairs minister Bharat Bhusan Ashu, and others in a corruption case pertaining to the alleged foodgrain tender and transportation scam
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- **OBSERVATION**
  - The Punjab & Haryana High Court quashed two FIRs against former Congress food, civil supplies and consumer affairs minister Bharat Bhusan Ashu, and others in a corruption case pertaining to the alleged foodgrain tender and transportation scam
  - Two FIRs were lodged under the Prevention of Corruption Act and provisions of the IPC by Ludhiana and Jalandhar Vigilance Bureau in an alleged Rs. 2,000 crore scam involving the transportation of foodgrains during the Congress Government in 2017-2022.
  - Justice Mahabir Singh Sindhu said, "The irresistible conclusion would be that criminal proceedings have been initiated against petitioner(s) by the Vigilance Bureau at the instance of complainant.
  - just to harass them and as such, it amounts to misuse of powers by the Bureau, for the reasons, which are unknown to law."
  - According to the FIR, the former minister was involved in corrupt practices by awarding tenders for the transportation of foodgrains and allegedly received a bribe for compromising tender for food procurement and transportation.
  - After examining the submissions, the Court in Ludhiana FIR found that the amendment to the tender policy was made "to facilitate everyone concerned and there was no intention to give benefit to any particular person."
  - The judge also took note of the fact that the policy was also challenged by filing the writ petition but it was dismissed.
  - "The amendment of Clause 5(G) of the Policy for 2020- 21, which has been made the sole basis for initiation of criminal prosecution,
  - has already been judicially reviewed by the Division Bench(es) of this Court and the same is duly upheld. Moreover, the Policy for 2020-21 was framed by the Government of Punjab and thus, it cannot be said that the decision to that effect was taken, solely by the petitioner-Bharat Bhushan Sharma @ Ashu," added the Court
  - Analysing the prosecution case the Court concluded that "there is no hesitation to observe that allegations leveled in the FIR do not disclose any cognizable offence and at best, complainant could have availed remedy of judicial review against the amended Policy for 2020-21; but certainly, there was no occasion to prosecute the petitioner(s) on that count.
  - Justice Sindhu highlighted that the allegations in both the FIRs are the same and there was no occasion for the Vigilance Bureau, Jalandhar, to register a second FIR on the same cause of action. ''It amounts to double jeopardy and as such, the present FIR is liable to be quashed.''

## Rangarajan Narasimnhan v State of Tamil Nadu

- **TOPIC :** Madras HC Grants Interim Bail To Temple Activist, Asks Him To Refrain From Making Objectionable Comments Against Women
- **BENCH** : : Justice V Lakshminarayanan
- **FORUM:** Madras High Court
- **MAIN ISSUE**
  - Whether a bail can be granted or not to temple activist Rangarajan Narasimham for allegedly making derogatory comments against a woman on social media.
- **OBSERVATION**
  - The Madras High Court has granted bail to temple activist Rangarajan Narasimham for allegedly making derogatory comments against a woman on social media.

- While granting interim bail, Justice V Lakshminarayanan asked Narasimham to delete all the offensive messages and refrain from making any vituperative comments against women in any of the social media forums. The court also directed Narasimhan not to commit any similar offences
- Previously, in another case, the High Court had also ordered a two-week 'social media detox' for Narasimhan for his distasteful comments against an industrialist. The court had also imposed a fine on him and commented that protectors of Sanatana Dharma should refrain from using such unsavoury words.
- In the present case, Narasimham had made a social media 'cry' stating that he had spent a lot of time and money appearing before the Supreme Court and since the matters were not listed
- It was a wasted trip. When the defacto complainant replied to this, Narasimhan used derogatory words. Feeling aggrieved, the defacto complainant made a complaint on December 19, which was registered for offences under Sections 75 and 79 of the BNS 2023 and Section 4 of the Prohibition of Harassment of Women Act 2002, Section 67 of the Information Technology Act 2000. Pursuant to this, he was arrested.
- The Registry had initially raised an objection of maintainability since Narasimhan had approached the High Court even before approaching the Principal Judge. To this, his counsel TS Vijayaraghavan argued that as per Section 483 of the BNSS, the jurisdiction of the High Court and the Court of Session was concurrent and hence the petition was maintainable.
- Since the Principal Sessions Court was closed for the Christmas Holidays, the judge was inclined to hear the matter noting that the matter concerned life and liberty of an individual.
- Vijayaraghavan also argued that Section 75 of the BNS was not attracted in the present case since it required a response which amounted to sexually harassing a person. Further, he pointed out that Section 73 was bailable. He also submitted that the statement was a mere transliteration of the regular usage in Tamil.
- The court, on perusing the documents opined that the complaint did not attract the offence under Section 73 of the BNS or Section 4 of the Prohibition of Harassment of Women Act. Since all the other offences were bailable, the court ordered accordingly

## Prabha Shankar Dwivedi And 3 Others vs. State Of U.P. Human Rights Commission Thru. Chairman Maanav Adhikar Bhawan Lok And 4 Others

- **TOPIC :** Prima Facie State Human Rights Commission Has No Jurisdiction To Deal with Child Custody Issues
- **BENCH :** Justice Rajan Roy and Justice Brij Raj Singh
- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding the jurisdiction of the State Human Rights Commission in respect to dealing with child custody matters.
- **OBSERVATIONS**
  - In a prima facie view, the Allahabad High Court has observed that the jurisdiction of the State Human Rights Commission doesn't extend to dealing with child custody matters.
  - A bench of Justice Rajan Roy and Justice Brij Raj Singh took exception to and ultimately stayed the Commission's orders, which included directions to present the children before the commision for recording of their statements regarding their custody.
  - Essentially, on November 6, 2024, a woman (mother of two minor children) died under mysterious circumstances. Her parents (opposite party no. 4 and 5) filed a criminal case against her husband, who is currently in jail. The FIR was lodged under Sections 103(1), 115(2), 852, and 351(2) BNS, 2023.
  - Thereafter, the father of the deceased (opposite party no. 4) submitted an application to the UP DGP on November 11, 2024
  - Claiming that the two minor children of the deceased were essential witnesses in the ongoing criminal case; however, their whereabouts were unknown.
  - The application also raised concerns about their safety, claiming that their lives were in danger. In the application, he requested the UP DGP to locate the children and hand them over to him and his wife, claiming that

they were the only ones who cared for their welfare.

- Since a copy of this application was also sent to the Chairman of the State Human Rights Commission (SHRC), the Commission took cognizance of the matter. It issued an order requiring the Investigating Officer (IO) to submit a report regarding the children's welfare.
- In response, the IO submitted a report stating that the two children were in the custody of Sarju Prasad Dwivedi, an advocate (petitioner no. 2), and Ashwani Kumar, the cousin of petitioner no. 1.
- On November 14, 2024, the SHRC considered the report and ordered the Investigating Officer to produce the children before it on November 19, 2024, to record their statements about the issue of their custody.
- Furthermore, the commission also directed the petitioner nos. 1 and 2 (relatives of the children from their father's side) to produce the children before the Commission.
- On December 5, 2024, another order was issued by the SHRC, taking note of the ill health of petitioner no. 2, who was unable to appear before the Commission with the children. The Commission directed the Investigating Officer to verify this claim.
- Now, the petitioners moved the HC, challenging both the order of the Commission, arguing that the custody of the minor children is not an issue which can be gone into or adjudicated by the Human Rights Commission, more so when no violation of human rights had been alleged.
- It was also contended that the issues pertaining to custody etc. are to be seen by the appropriate court/forum as prescribed in law such as the Guardians and Wards Act, 1890, the Commission for Protection of Children Rights Act, 2005, Juvenile Justice Act etc, the Commission has no role in the present case.
- After hearing the parties and perusing the record, the Court noted that IO had already recorded the statements of the child once and that no hindrance would be created if their further statements were to be recorded.
- So far as the question of custody was concerned, the Court prima facie opined that the State Human Rights Commission had exceeded its jurisdiction while making observations in the orders dated that the statement of the children was necessary to be recorded before the Commission for the purposes of custody and seeing their attendance for the said purpose.
- " The Commission, prima facie, may not have jurisdiction so far as custody of children is concerned, as there are specific remedies prescribed in this regard in other statutes," the Cort remarked.
- In view of this, the Court stayed the impugned orders in so far as the Commission proposes to proceed in the matter with regard to custody of petitioner nos. 3 and 4 and their production before it in this regard.
- The Court also clarified that it would be open for the Investigating Officer to take all steps necessary to investigate the criminal case and that petitioners nos. 1 and 2 shall cooperate in the same
- So far as the issue of custody is concerned, the court gave the liberty to the opposite party no. 4 to initiate such proceedings as they may be advised to do, as per law, as also for a fair investigation in the criminal case, if required. The matter is now listed for hearing after 8 weeks

## Ghulam Ahmad Bhat Vs State of J&K

- **TOPIC:** J & K HC Reaffirms Quranic Injunctions, Secures Muslim Daughter's Inheritance Right After 43 – Year Legal Battle
- **BENCH :** Justice Vinod Chatterji Koul
- **FORUM:** Jammu and Kashmir and Ladakh High Court
- **MAIN ISSUE**
  - Regarding the sanctity of Quranic injunctions concerning inheritance rights the Jammu and Kashmir and Ladakh High Court
- **OBSERVATION**
  - Underscoring the sanctity of Quranic injunctions concerning inheritance rights the Jammu and Kashmir and Ladakh High Court has ruled in favor of a Muslim woman's right to inherit her father's property, resolving a 43-year-long legal battle initiated by the late Mst. Mukhti. The

court reaffirmed that the inheritance rights of daughters, as ordained in Surah An-Nisa of the Holy Quran, are inviolable and must be upheld without delay or prejudice.

- ‘‘It is from Verse 11 of Surah An-Nisa, a duty, obligation, command, ordain, injunction to assign/give the share to the daughter(s). Even its plain reading, in my opinion, bestows the right of inheritance first to a female, then to a male survivor’’, Justice Vinod Chatterji Koul observed.
- The case revolved around a prolonged dispute over property rights initiated by the late Mst. Mukhti, a daughter seeking her share of her father's estate
- Mukhti, the biological daughter of Munawar Ganai, filed a suit asserting her entitlement to one-third of her father's property under Muslim Personal Law. However, the suit was dismissed due to technical grounds, namely her failure to explicitly claim possession.
- Following her demise, her children pursued the claim, leading to a Division Bench judgment in 1996 that affirmed Mukhti's right to inherit. Despite this, technical hurdles and a series of flawed decisions by revenue authorities delayed the execution of the judgment
- The Settlement Officer and Settlement Commissioner not only ignored the binding Division Bench ruling but also erroneously excluded Mst. Mukhti from her rightful inheritance. This forced her children to approach the High Court for justice.
- Delivering a scathing critique of the systemic obstacles faced by the petitioners, including the misuse of procedural technicalities Justice Koul reaffirmed the Quranic injunctions outlined in Surah An-Nisa, Verse 11
- Which unequivocally provide daughters a share in their parents' inheritance. The court observed that inheritance rights are an essential aspect of Islamic law, designed to ensure fairness and equity.
- The court highlighted that procedural lapses should not defeat substantive justice. Justice Koul emphasised,
- "Whenever there is a conflict between substantial justice and hyper-technicality, substantial justice is to be preferred to avoid defeating the ends of justice
- A key part of the court's discussion focused on the concept of co-ownership as Justice Koul clarified,
- "Even if one of the co-sharers is in possession of the property, his possession cannot be considered adverse against other co-sharers. The right of the latter will not be lost by the mere fact that one co-sharer is in exclusive possession.
- The same principle applies to heirs of a deceased Muslim, where possession by one heir is deemed to be on behalf of all co-heirs, the court explained, highlighting the rights of the petitioners remained intact despite the prolonged litigation.
- Condemning the selective application of Islamic principles by those who diligently practice religious rituals yet deny inheritance rights to women Justice Koul noted the disturbing trend of invoking customs to sideline Quranic commandments.
- "It is painful to see a brother argue against his sister's rightful share, relying on procedural absurdities. Such contentions are not only unacceptable but deprecatory.", he remarked.
- Furthermore the court referenced multiple Supreme Court judgments, such as Sawarni v. Inder Kaur (1996) and Jitendra Singh v. State of Madhya Pradesh (2021), to underline that mutation entries in revenue records neither create nor extinguish ownership rights
- They merely serve fiscal purposes and cannot override the substantive rights of lawful heirs.
- In view of these observations the court quashed the orders of the Settlement Officer and Commissioner, declaring them void for contravening the Division Bench's 1996 judgment. Justice Koul directed the Revenue Department to implement the judgment within three months, granting Mukhti's children their mother's rightful share
- In cases where third-party interests may have been created, the court ordered equivalent compensation in land or market value, the court concluded.

## G Swamy AND B Devendrappa

- **TOPIC** : Election Petition Questioning Caste Certificate of Elected Representative Maintainable Before High Court: Karnataka HC
- **BENCH** : Justice Anant Ramanath Hegde
- **FORUM**: Karnataka High Court
- **MAIN ISSUE**
  - Regarding Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990
- **OBSERVATION**
  - The Karnataka High Court has held that Karnataka Scheduled Castes and Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990, does not take away the jurisdiction of the High Court to decide an election dispute questioning the caste of a returned candidate to the Legislative Assembly
  - Justice Anant Ramanath Hegde dismissed the application made under Order VII Rule 11 of the Code of Civil Procedure, 1908, by B Devendrappa seeking to dismiss the election petition filed by G Swamy challenging Devendrappa's election
  - Originally, Swamy –the petitioner had filed an election petition before the high court questioning the Devendrappa's (respondent) election to Jagaluru Vidhanasabha Constituency claiming that the Constituency is reserved for Scheduled Tribe whereas the respondent belongs to Other Backward Community and so is ineligible to contest the election.
  - Meanwhile Devendrappa moved an application contending that the caste certificate, issued in his favour holds good till it is cancelled by the District Caste Verification Committee (DVCV). He claimed that only the DCVC formed under the Karnataka Scheduled Castes Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.,) Act, 1990, has the jurisdiction to decide on the validity of the caste certificate.
  - Thus, the election petition questioning the respondent's caste is not maintainable and impliedly barred in view of the Act of 1990.
  - Counsel for the petitioner opposed this, contending that it is only the High Court, under the Representation of the People Act, 1951 (Act of 1951) which has the jurisdiction to try the questions raised in the petition.
  - The bench firstly noted that admittedly, Jagaluru Assembly Constituency is reserved for Scheduled Tribe
  - In case, the petitioner succeeds in establishing that respondent does not belong to the Scheduled Tribe, then the respondent's election has to be set aside, it said. Thus it held, ‘‘This being the position, the contention that there are no material facts constituting the cause of action has to be rejected
  - On the issue of a bar on the high court to decide on the returned candidate's caste in an election petition, the court referred to sections 80 and 80A, 100(1)(a) and Section 5(a) of the Representation of the People (RP) Act which prescribes that only the High Court shall have the jurisdiction to decide the Election Petition, grounds for declaration of election as void and Qualification for membership of a legislative assembly.
  - Then it said ‘‘On a conjoint reading of Sections 80, 80A, 100(1)(a) and Section 5(a) of the Act of 1951, it is explicit the election petition questioning the election of a returned candidate on the ground that the returned candidate does not possess the prescribed qualification has to be decided only by the High Court in the exercise of jurisdiction under Section 80A of the Act of 1951 and none else.’’
  - The court thereafter said that the object of the Karnataka Scheduled Castes Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.,) Act 1990, is to "facilitate the reservation in appointments in favour of members in the Schedule Castes, Scheduled Tribes and Other Backward Classes in certain sectors"
  - It noted that the rules framed under the Act also provide for the procedure of issuing caste certificates, and appeals by the aggrieved person and also provide for the Committee to verify the caste and income certificate issued under the Act. It thereafter said, "This Act of 1990 does not deal with the election dispute at all. More importantly,

the fundamental question is whether the State has the power to legislate over the matters concerning the election to a Legislative Assembly".

- The court further noted that the under Entry No.72 in List-I of Seventh Schedule of the Constitution of India, it is the "Parliament which has the power to legislate" relating to the election of the Member of the Parliament and the Member of the Legislative Assembly.
- It said that the power of the State is to legislate on matters relating to election to the Legislative Assembly is in Entry No.37 of List-II of the Seventh Schedule.
- This entry reads as under: a. Elections to the Legislature of the State subject to the provision of any law made by the Parliament.
- The court then observed, ''Entry No.37 enables the State to make law relating to the Elections to the Legislature of the State, subject to the law made by the Parliament. However, the Act of 1951, the law made by the Parliament dealing with election to the Legislative Assembly is in force and the said Act does not provide any such power to the State.
- Thus, the Act of 1951 governs the election to the Legislative Assembly of a State.''
- Holding that in view of Article 254 of the Constitution of India, even assuming that there is any inconsistency in the Act of 1951 and Act of 1990, or that the provisions of both Acts overlap, the Act 1951 being the central legislation prevails over.
- Finally it held ''State has no power to legislate contrary to matters listed in List-I to the Seventh Schedule of the Constitution of India.
- In fact, the State has not enacted any law or provision overstepping its legislative competence to curtail the scope of Sections 80 and 80A of the Act of 1951. This being the position there is no scope to raise a contention that in view of the Act of 1990, the High Court cannot decide the issue concerning the returned candidate's caste.''
- It added ''The DCVC is a creature of a statute with a statutorily defined role.
- Its exclusive jurisdiction is confined to the caste certificates covered under the Act of 1990 and not beyond and certainly the jurisdiction conferred on it will not eclipse the jurisdiction of the High Court conferred under the Act of 1951.''
- Accordingly it rejected the respondent's application seeking dismissal of Swamy's petition.

## Imperial Consultants and Securities vs. Deputy CIT

- **TOPIC :** ITO Acted On Complete Change of Opinion on Same Material With Intent To Review Assessment Order Passed By Him : Bombay HC quashes Reopening
- **BENCH** : Justice G.S Kulkarni and Justice Advait M Sethna
- **FORUM:** Bombay High Court
- **MAIN ISSUE**
  - Regarding the the reassessment proceedings,
- **OBSERVATION**
  - While setting aside the reassessment proceedings, the Bombay High Court held that 'change of opinion' or 'review of already completed assessment', is not permitted to AO
  - While holding so, the Division Bench of Justice G.S Kulkarni and Justice Advait M Sethna observed that there is no whisper of allegations against the assessee that income that has escaped assessment was attributable to the assessee for not disclosing fully & truly all material facts necessary for assessment
  - The petitioner/ assessee company, engaged in investment and trading of shares and securities, filed its return, after which a notice u/s 142(1) was issued calling upon the assessee to furnish a brief note on the nature of business, copies of return, P&L A/c, Tax Audit Report along with relevant schedules, as also statement of computation of total income showing the working of income admitted under each head as also auditor's report in Form No.29B,
  - In regard to Book Profit u/s 115JB along with computation of Book Profit and liability thereon. Even though assessee furnished copies of balance sheet, profit and loss account and tax audit report u/s 44AB,

he however informed the AO that it is not having any book profit and it has a business loss, hence, the tax payable as per normal provisions was higher than MAT as per Section 115JB. Thereafter, the assessee was called upon to furnish information related to agreement for secured loan, party wise details of deposits, trade payables, etc.

- Finally, the AO passed assessment order u/s 143(3) making a disallowance u/s 14A, holding that the interest-bearing funds were utilized for making investments which were capable of yielding income exempt u/s 10. Accordingly, a disallowance of interest of Rs. 2.71 Crores paid on the borrowings was made. When the appeal before the CIT(A) was pending consideration and five years have passed, the assessee received notice u/s 148.
- Later, the NFAC also passed an order disposing of the objections whereby it upheld the reassessment initiated by AO vide notice u/s 148.
- The Bench found from the reasons for reopening as furnished to the assessee, that the Assessing Officer has not stated that the petitioner has failed to disclose fully and truly all material facts necessary for assessment.
- In fact the reasons for reopening are clearly based on the records which were already submitted by assessee in course of assessment proceedings, added the Bench
- From perusal of the record, the Bench noted that during the assessment proceedings, there was a series of correspondence between the assessee and the AO, and assessee had filed detailed replies furnishing all the information, which would clearly go to show that there was a complete disclosure of all details
- In the reasons for reopening, the AO had taken a clear position that the assessee has not utilized the funds for its own business and had diverted the funds to noninterest-bearing transactions, i.e., interest free advances to related parties, added the Bench.
- The Bench explained that the statement as contained in the reasons for reopening not only breaches the mandate of the first proviso to Sec 147, namely, that the assessment could be reopened only on the failure of the assessee to fully & truly disclose all material facts necessary for his assessment, but also, amounting to a clear change of opinion of AO
- The AO while issuing the notice u/s 148 has clearly acted without jurisdiction, as the reasons as furnished to assessee, in no manner whatsoever make out a case on the failure on part of assessee to fully & truly disclose all the materials, added the Bench.
- The Bench also emphasized that the reasons demonstrate that the entire basis for reopening is on the materials which was already available with the AO, in finalizing the assessee's assessment u/s 143(3)
- If this be so, the AO was acting on a complete change of opinion on the same material and / or intending to have a review of the assessment order passed by him, which is not permissible, added the Bench.
- Thus, the High Court allowed the Assessee's petition, while concluding that the AO had failed to adhere to the mandate of first proviso to Sec 147, by forming an opinion on the same material, which was available with him in course of original assessment.