

### X v. State of Punjab and others

- ❖ **TOPIC :** Judges May commit Errors Sometimes, Doesn't Mean They are Biased or Fair Trial is Compromised : Punjab & Haryana High court
- ❖ **BENCH :** Justice Sumeet Goel



- ❖ **FORUM:** Punjab and Haryana High Court
- ❖ **MAIN ISSUE**
  - Regarding the order of a trial judge by Superior court.
- ❖ **OBSERVATIONS**
  - The Punjab and Haryana High Court has said that if an order of a trial judge is found erroneous by a Superior Court, that does not by itself lead to an inference that the trial judge is biased or influenced.
  - It further said that judicial officers may make errors sometimes—which can be corrected—due to "tremendous strain"; however, to seek transfer of trial in such a situation, amounts to subterfuge.
  - A single judge bench of Justice Sumeet Goel said, "It must be borne in mind that a Presiding Officer/trial Judge who discharges his duty may commit errors sometimes.
  - The same can well be rectified by a higher/superior Court, but the factum of an order passed by the Presiding Officer/trial Judge having been found erroneous by a high/superior Court can, by no stretch of imagination, ipso facto lead to an inference that such Presiding Officer/trial Judge is biased or influenced or the prospect of fair trial has been compromised."
  - The Court also added that a Presiding Officer or a trial Judge has to perform his duty and not to succumb to the pressure put by the litigant(s) by making callous allegations and he is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case.
  - "Judicial Officers often function and discharge their duties in an environment which is overloaded

- with various stakeholders, literally and figuratively, breathing down their necks. They may, at times, err, owing to tremendous strain, which can be remedied in multiple ways. However, to cast aspersions on or besmirch their judicial work due to a development/order, unacceptable or unpalatable to a litigant, therefore pleading for transfer of trial etc. by such litigant is plainly subterfuge," the Court added.
- The Court said that if transfer of trial is allowed on such grounds then the litigants will lead to "neigh yield anarchy in the adjudicatory process" and the litigants will indulge in forum hunting "which tendency needs to be curbed with an iron hand."
  - These observations were made while hearing the plea of a woman seeking transfer of the trial in a cruelty and dowry demand case lodged by her, from Punjab's Mania District To Bathinda.
  - She submitted that her parents are old and will not be able to accompany her for Court proceedings in Mansa, where trial is pending. She also alleged that the trial judge is prejudiced against her, as he had issued bailable warrants against her for her non-appearance as a prosecution witness.
  - In the present case, the High Court said that the wife was not mandatorily required to attend each and every date of hearing in the trial court since she is the complainant.
  - "Her interest, in the trial, can well be taken care of by a Counsel. It is neither pleaded nor is decipherable from the factual matrix of the case that she is facing any difficulty in engaging a Counsel. Nevertheless, if the need arises, she may seek the assistance of a Legal Aid Counsel by making a requisite plea before concerned quarters," the high court said.
  - The High Court further found no infirmity in the trial court's order issuing bailable warrants against the petitioner after noting that it was issued after she and two other witnesses were not coming forward to record their testimonies.
  - While rejecting the petitioner's argument that the fair trial is compromised because the trial judge has passed an allegedly biased order, the high court said, "The unscrupulous attempt, by the petitioner, in casting aspersions on the learned trial Court by reliance upon the order dated 02.08.2024 deserves to be deprecated and responded with abhorrence."
  - It however refrained from imposing exemplary costs upon the petitioner after noting her age, the fact that she had no antecedents regarding raising such "scandalous issues" and that the present matter arose out of a matrimonial dispute.
  - It thereafter dismissed the woman's plea, adding

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that its observations will not affect the merits of the case before the trial court.

### Sharun v. State of Kerala and Others & Connected cases

- ❖ **TOPIC :** POCSO Accused can Get Unredacted Prosecution Records, Balance To Be Struck Between Their 'Right To Defend' And Minor's Privacy, Kerala HC
- ❖ **BENCH :** Justice A. Badharudeen



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
  - Regarding the 'Right to defend ' and 'Minor's Privacy'.
- ❖ **OBSERVATIONS**
  - The Kerala High Court has recently observed that an accused in a POCSO case is entitled to get unmasked copies of the prosecution records to effectively defend his case, while emphasizing that in such matters a balance has to be struck by courts between the "privacy of the victims" and the accused's right to defend themselves.
  - A single judge bench of Justice A. Badharudeen in its order said, "When reading Section 207 and 208 of Cr.P.C. in juxtaposition with Section 19(4) of the Kerala Criminal Rules of Practice, brought into in view of the verdict of the Apex Court the right of the accused to get all documents which form part of the prosecution records to defend his case is well protected.
  - At the same time, Section 33(7) of POCSO Act imposes restrictions so as to ensure that the identity of the child is not disclosed. So the courts should consider a balance between the privacy of the victims of rape and POCSO offences with that of the right of the accused to defend his case and also give effect to all the above provisions, without making any of the provisions as redundant or superfluous".
  - Section 207 CrPC pertains to the supply to the

- accused a copy of police report and other documents. Section 208 pertains to supply of copies of statements and document to accused in other cases triable by Court of Session.
- Meanwhile Section 33 of the POCSO Act pertains to the procedure and powers of the Special Court. Subsection 7 states that the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial, provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- Therefore, the court said, when prosecution records are given to the accused in compliance with provisions of the CrPC and POCSO Act, it won't be fair to hold that the accused is not entitled to get the records without being masked to defend the case.
- It further said that if the statements are masked, it would be "difficult to use the statements for contradicting" the witnesses properly.
- The Court however emphasized that it is the duty of the accused and his counsel to "ensure that the privacy of the victim" would not be infringed by way of printing, publishing, reporting or commenting.
- The petitioners who are accused in different POCSO cases had approached the High Court challenging the decision of the respective special courts denying them unmasked copy of prosecution records.
- The Court also added that the accused would not be entitled to copies of contents of pendrive/ memory card/ CD/ DVD in the form of digital evidence which would contain chats or visuals of the victim detrimental to her privacy.
- The Court held that in such cases, the decision of the Supreme Court in Gopalakrishnan @ Dileep v. State of Kerala (2019) is to be followed.
- The Court observed that an accused has a constitutional right to a fair trial. The Court added that he has a right to defend his case and prove his innocence for which he should get all the prosecution records before trial to point out the flaw in the prosecution case and establish his innocence in an appropriate manner.
- "Therefore, the view taken by the Special Courts in the orders impugned not to provide unmasked copies of prosecution records under the guise of protecting privacy of the victim, could not be justified and the same is not within the orbit of fair trial or part of the fair trial. Therefore, the orders impugned are set aside," the court said.

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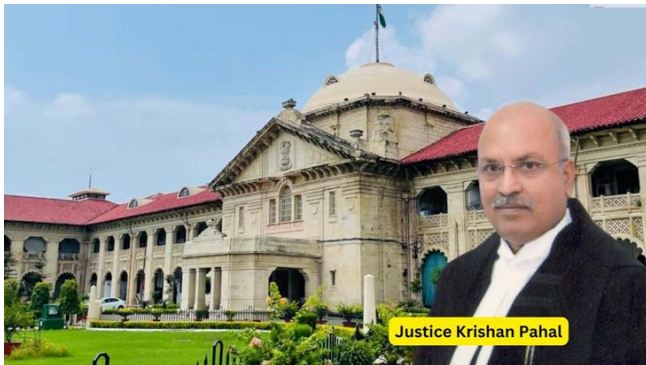
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- Allowing the petitions, the high court ordered the respective Special Courts to serve unmasked copies of the prosecution records to the accused/or his counsel after directing them to ensure privacy, without disclosing it in public domain.

### Pratap Singh v. State Of U.P. And 3 Others

- ❖ **TOPIC** : Allahabad HC Denies Bail to Govt School Principal Accused of Sexually Abusing Girl Students
- ❖ **BENCH** : Justice Krishan Pahal



- ❖ **FORUM**: Allahabad High Court
- ❖ **MAIN ISSUE**
  - Whether a bail can be granted or not to the principal of a government primary school on the allegations of sexually abusing female students and showing them 'indecent' on his mobile phone.
- ❖ **OBSERVATIONS**
  - The Allahabad High Court recently denied bail to the principal of a government primary school in Bulandshahr district of the state who was arrested in March this year on the allegations of sexually abusing female students and showing them 'indecent' on his mobile phone.
  - Considering the victims' tender age, which ranged from 9 to 13 years, a bench of Justice Krishan Pahal did not find it a fit case for granting bail to the applicant (Pratap Singh).
  - UP Police booked the accused under Sections 354, 354-Ka, 376AB I.P.C., Section 9M/10 and 5MF/6 POCSO Act and Section 3(2)5 SC/ST Act after it was alleged that he used to 'fondle' female students, touched their private parts inappropriately and used to show them specific sexually explicit material on his mobile.
  - It was also alleged that six children from the O.B.C. and S.C. categories discontinued going to school due to the alleged acts committed by the accused.
  - Seeking bail in the case, his counsel argued before

the HC that the informant and the other family members of the other victims did not get any scholarship from the State, as such, the applicant had been falsely implicated in the present case.

- The accused also sought to plead alibi, as his counsel contended that since the accused was suffering from cough and breathlessness, he was advised to rest between March 10 and 25, 2024 (the period during which the alleged crime is said to have been committed).
- It was also submitted that the accused was a previous cancer patient, and there is every possibility of him again being affected by the said ailment as he has been languishing in jail since March 25, 2024.
- On the other hand, the counsel for the state government opposed his bail plea on the ground that the said victims were of tender age between 9 and 13; as such, it was argued that the offence committed by the applicant was of grievous dignity.
- It was also submitted that the medical certificate submitted by the accused is fake and had been subsequently fetched by him.
- In view of these submissions, the single judge rejected the bail application, finding it to be devoid of merits.

### Ranidan Singh v. State of Rajasthan & Ors. and connected petition

- ❖ **TOPIC** : NO Prior Approval U/S 17 A prevention of Corruption Act For Laying 'Trap' Against Public Servant Demanding Illegal Gratification, Rajasthan HC
- ❖ **BENCH** : Justice Rajendra Prakash Soni



- ❖ **FORUM**: Rajasthan High Court
- ❖ **MAIN ISSUE**
  - Whether prior approval is required under Section 17A of the Prevention of Corruption (PC) Act to "trap" a public servant who allegedly demands gratification or not.

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## ❖ **BACKGROUND**

- The Court was hearing two quashing petitions moved by the then Circle Inspector (CI) and the then Assistant Sub-inspector (ASI) of the concerned police station booked under the Act.
- An FIR was registered against some people in relation to cheating in a competitive exam. For conducting investigation in relation to this FIR, the ASI along with some constables went to the firm of the complainant in the present case alleging that he sold illegal devices/goods to the accused in the cheating case.
- Subsequently, Rs. 1 lakh, two mobile phones, three CPUs, two laptops and one DVR were confiscated from the complainant.
- When the complainant was taken to the police station, he was allegedly beaten up by the then CI who also allegedly demanded Rs. 5 Lakh from him and when he expressed his inability to pay, he was threatened with false charges.
- After being released on bail, the complainant went to the police station, with a voice recorder attached, demanding return of his belongings, however, the two policemen were not present and over the phone, they stated that his belongings would only be returned if he paid them.
- When he again went in the evening to the police station, the CI returned only two CPUs, asking the complainant to not mention the rest of his stuff or the money.
- When the CI and other policemen grew suspicious of the complainant, he was apprehended to another room where the voice recorder was taken away, however, the complainant managed to keep a pen driver recorder that had captured the entire conversation.
- This pen drive recorder was handed over by the complainant to an ACB constable, and eventually the present FIR was lodged against the petitioner.
- The petitioners' contended that as per Section 17A PC Act, no police officer could conduct an enquiry or investigation for an offence alleged to have been committed by a public servant under the Act without the prior approval of the competent authority of the State. Since no such approval was taken, the counsel termed the entire proceedings to be a mockery of law.

## ❖ **OBSERVATIONS**

- The Jodhpur bench of the Rajasthan High Court has said that no prior approval is required under Section 17A of the Prevention of Corruption (PC) Act to "trap" a public servant who allegedly demands gratification.
- In doing so, the high court further said that the

provision is only triggered if there is allegation of an offence committed under the PC Act.

- A single judge bench of Justice Rajendra Prakash Soni in its order further said that such approval was needed only at the stage of investigation or enquiry and not for laying a trap.
- After perusing the material on record, the Court observed that Section 17A by itself, requires that an enquiry or inquiry or investigation shall not be undertaken without prior approval of the Government.
- However, the first proviso also states that such approval shall not be necessary where a public servant has been caught on the spot, in the act of committing an offence under the Prevention of Corruption Act, and thereafter, an inquiry and investigation are to be conducted for that offence," it noted.
- The Court further stated that the mandate of "prior approval" under the provision was designed to protect the public officials from "malicious, vexatious or baseless" complaints against public servants by introducing a "safeguard". The provision aims to ensure that legitimate actions in the course of their official duties were not hindered by the fear of legal repercussions, the court added.
- In this light, the Court observed that in the present case the plan to trap the petitioners "red-handed also failed" which meant that it was not a case of on-spot arrest of the petitioners while they were committing or attempting to commit an offence under PC Act.
- It further observed that the alleged acts were committed in connection with the FIR of cheating in competitive exams, i.e. the alleged offence arose out of the actions done during the discharge of their duties.
- Thus, the petitioners were entitled to protection under Section 17A, it noted. In this background, the Court ruled that the petitioners could not have been prosecuted in the matter without prior approval of the Government, and thus, the registration of FIR against them was totally illegal and amounted to gross abuse of law.
- "As such, lodging of FIR against the petitioners without the approval of the competent authority is void ab initio. According to this Court, investigations is proscribed sans prior approval of the competent authority. Therefore, provision of Section 17A of the Act of 1988 would create a road-block in the way of the investigating officer to proceed further."

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- Accordingly, the petitions were allowed, and the court quashed the FIR against the petitioners.

### G.Shrilakshmi v. Anirudh Ramkumar

- ❖ **TOPIC :** Family court should not insist on Physical Presence of Parties while Presenting Petition And For Future Hearings, Madras High Court
- ❖ **BENCH :** Justice M Nirmal Kumar



- ❖ **FORUM:** Madras High Court
- ❖ **MAIN ISSUE**

- Whether Family Courts should insist on the physical presence of the parties/spouses at the time of presenting the petition and for future hearings or not.

#### ❖ **OBSERVATIONS**

- In a significant decision, the Madras High Court has held that the Family Courts should not insist on the physical presence of the parties/spouses at the time of presenting the petition and for future hearings.
- Justice M Nirmal Kumar observed that virtual proceedings provided an opportunity to modernize the system and make it more affordable and citizen-friendly.
- The court thus held that family courts should make use of the video conferencing facilities without insisting on the physical presence of the parties and should not raise technical objections by insisting on the physical presence at any stage.
- “Virtual proceedings provide an opportunity to modernize the system by making it more affordable and citizen friendly, enabling the aggrieved to access justice from any part of the country in the world. Thus the Family Court to ensure that such a system of conducting the proceedings through video conferencing is put to usage without insisting on the presence of petitioner even from the time of first presentation till the conclusion of proceedings. The Family Court henceforth not to raise technical objections and insist on physical appearance of

- petitioner/parties at any stage,” the court observed.
- The court noted that Section 530 of the BNSS emphasized holding even criminal trials through electronic mode. The court added that recently, the justice dispensation system has seen much advancement in the use of technology, and the family court's insistence on physical presence would defeat the very purpose of the video conferencing facility.
- “In the recent past, the justice dispensation system has seen much advancement in the use of technology in conducting the Court proceedings, to use the system of video conferencing. The recently introduced BNSS (Bharatiya Nagarik Suraksha Sanhita) (New Criminal Procedure Code) Section 530 emphasis even in criminal cases trial and proceedings to be held in electronic mode,” the court said.
- The court thus held that Family Courts should allow petitions to be filed either by the parties directly or by the Power of Attorneys of the parties provided that they are properly registered and adjudicated. It added that the Power of Attorneys, who should not be a lawyer, should be allowed to appear and prosecute the case by presenting the petition with relevant documents, materials and proof affidavit required for the case in physical form.
- The court added that the parties could be present through virtual mode from their respective places and place of location and the courts can verify the petition, proof affidavit, documents produced and record the same as evidence and pass appropriate orders.
- The court was hearing criminal revision petitions against the technical and procedural objections raised by the Family Court in entertaining the petition for Divorce by mutual consent under Section 13B of the Hindu Marriage Act.
- In all the cases, the parties intended to dissolve their marriage by mutual consent and had filed a petition under Section 13B of the Hindu Marriage Act for the same. Since the parties were residing in the USA and New Zealand, they had filed interim applications to allow them to attend the court through video conferencing and to allow their power of attorneys to conduct the case on their behalf. The family court however insisted that the parties attend the proceedings through the consulate.
- The counsel for the parties submitted that the Family Court failed to consider that as per Rule 3

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of the Madras High Court Video-Conferencing Rules 2020, a coordinator was mandatory only when the witness or a person accused of an offense was to be examined. It was submitted that the present matrimonial cases were civil in nature and it was not possible for the parties to appear through the consulate considering the 12.5 hours of time difference in the functioning of the Family Court and the consulate.

- The court noted that the majority of petitions filed under Section 13B seeking divorce by mutual consent were kept in abeyance or stalled due to the non-appearance of parties in person as in most cases, the parties faced some difficulties in appearing personally due to various reasons. The court thus found it necessary to issue directions to obviate the difficulties faced by the parties.
- The court thus ordered accordingly and directed the Family Court to take the petitions on file.

### Sumer Singh v. The presiding officer, labour court

- ❖ **TOPIC** : Employee's History of Misconduct Justifies Dismissal Despite Minor Final Charge, Punjab and Haryana HC Upholds Termination
- ❖ **BENCH** : Justice Jagmohan Bansal



- ❖ **FORUM**: Haryana High court
- ❖ **MAIN ISSUE**
  - Whether the dismissal of a transport conductor is correct or not.
- ❖ **BACKGROUND**
  - Sumer Singh, the petitioner, was employed as a conductor in the Haryana Transport Department from 1977 until his termination in 1995. Over the course of his 18-year career, he faced 52 departmental proceedings for various forms of misconduct, including embezzlement of funds, absence from duty, and misbehavior with senior officers. These proceedings resulted in several punishments, such as censure, recovery of funds, and stoppage of annual increments.

- The incident leading to Singh's dismissal occurred after a complaint was filed by Suraj Bhan, an inspector in the department. Following this complaint, Singh was served with a charge sheet for, among other things, speaking loudly to a senior officer.
- A departmental inquiry was initiated, and Singh, upon admission of his guilt, was found responsible for misconduct. Although he was initially given a chance to rectify his behavior, he committed further acts of embezzlement during the intervening period, which resulted in his dismissal on March 9, 1995.

#### ❖ **OBSERVATIONS**

- High Court of Haryana, Justice Jagmohan Bansal upheld the dismissal of a transport conductor, finding that the termination justified given the employee's extensive history of misconduct.
- The court held that while the final charge related to insubordination, the disciplinary authority could consider the employee's past record of 52 departmental proceedings, including multiple instances of embezzlement, when determining punishment.
- The court affirmed that High Courts cannot interfere with disciplinary decisions unless the punishment is so disproportionate as to shock the conscience of the court.
- The court upheld the Labour Court's ruling, which had found the departmental inquiry to be valid and justified. The court noted that Singh's previous conduct could not be overlooked when determining the severity of the punishment. The Labour Court's findings revealed that Singh had been repeatedly implicated in acts of embezzlement and insubordination.
- The Labour Court had remarked that Singh did not deserve the sympathy of the court, as his repeated violations suggested a pattern of behavior that posed a nuisance to both the department and the general public.
- Further, in considering the scope of judicial review in disciplinary matters, the High Court cited a precedent from the Supreme Court, *Union of India v. P. Gunasekaran* (2015), which limited the extent to which courts could interfere with disciplinary decisions.
- According to this precedent, a High Court cannot re appreciate evidence or question the proportionality of punishment unless it is so disproportionate that it shocks the conscience of the court. In Singh's case, the court found no reason to interfere, as the evidence of misconduct was clear, and the punishment was proportionate to the

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offenses committed.

- The court also referred to the Supreme Court's ruling in *Union of India v. Subrata Nath* (2022), reiterating that both the disciplinary authority and the appellate authority are vested with the power to assess evidence and determine appropriate penalties based on the gravity of the misconduct.
- The court held that Singh's dismissal was neither arbitrary nor capricious, as it was based on substantial evidence of repeated misconduct over a prolonged period.
- Thus, the court concluded that Singh's dismissal was justified. The petition was dismissed, and the court declined to intervene in the disciplinary action taken by the Transport Department.



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