

Chabi Karmakar & Ors. v. The State Of West Bengal

- ❖ **TOPIC :** When Dowry Demand Isn't Established, Conviction For Dowry Death Under S.304B IPC Unsustainable
- ❖ **BENCH :** Justices Sudhanshu Dhulia and JB Pardiwala



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether the conviction in the dowry death case can be set aside or not.
- ❖ **OBSERVATIONS**
 - The Supreme Court set aside the conviction for dowry death (under Section 304-B of IPC) after noting that the prosecution was not able to prove that the deceased wife was subjected to cruelty or harassment by the husband soon before her death in connection with the demand of dowry.
 - The Court set aside the convictions of the husband, sister-in-law and the mother-in-law of the deceased. The trial court had sentenced them to undergo life imprisonment, which the High Court also approved.
 - Setting aside the conviction, the Supreme Court stated that unless it was proved that the alleged cruelty or harassment faced by the deceased wife from her husband and in-laws was in connection with the demand of dowry, then conviction under Section 304-B of IPC would not be sustainable.
 - The bench comprising Justices Sudhanshu Dhulia and JB Pardiwala relied on the judgment in the case of Rajinder Singh vs. State of Punjab (2015), where the Court had discussed the ingredients of Section 304B of IPC as follows:
 - "There are four such ingredients and they are said to be:
 - (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

- (b) such death must have occurred within seven years of her marriage;
- (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (d) such cruelty or harassment must be in connection with the demand for dowry."
- Upon perusing the material placed on record, especially the testimonies of the prosecution witnesses, the Court found that "these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry."
- "With respect to the demand for dowry, they have just made some general statements which are not sufficient to convict the appellants under Section 304 B of IPC.", the court added.
- The court said that the trial court and High Court committed an error while raising a presumption of dowry death under Section 113 B of the Indian Evidence Act, 1982.
- "Trial Court raised a presumption under Section 113B of Evidence Act to convict the appellants under Section 304B of IPC. The High Court did not go into the question of whether the trial court was right in relying upon Section 113 B of the Evidence Act."
- The Court stated that the mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A of IPC unless the prosecution has not proved that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry.
- Since the case of abetment of suicide under Section 306 of IPC and cruelty under Section 498A of IPC was made out against the husband, therefore the conviction under these two provisions was upheld, however, the conviction under Section 304B of IPC was set aside as no case was made out by the prosecution for dowry death.
- With respect to the offences under Section 306 and 498 A, the Court convicted the appellant No. 2(husband) and sentenced him to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count.

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Abhishek Banerjee And Anr. v. Directorate Of Enforcement

- ❖ **TOPIC:** PMLA Prevails Over CrPC Regarding Procedure For Summoning Persons
- ❖ **BENCH :** Justices Bela M Trivedi and Satish Chandra Sharma
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether Prevention of Money Laundering Act (PMLA), 2002, will prevail over the Code of Criminal Procedure, 1973 (CrPC) in relation to the summoning of a person or not.



❖ **OBSERVATIONS**

- The provisions of the Prevention of Money Laundering Act (PMLA), 2002, will prevail over the Code of Criminal Procedure, 1973 (CrPC) in relation to the summoning of a person, held the Supreme Court in the judgment dismissing the appeals of Trinamool Congress MP Abhishek Banerjee and his wife Rujira Banerjee challenging the summons issued by the Enforcement Directorate for their appearance in Delhi in connection with a coal scam case.
- The main argument raised by the petitioners was that they can't be summoned to New Delhi which is beyond the territorial limits of the place of offence and that the ED can summon them only at Kolkata and not at New Delhi.
- It was argued that Section 50 of the PMLA merely indicates the substantive power of ED to summon but does not provide the procedure for exercise of such power.
- Hence, the procedure for summons should be as per the CrPC, they argued, while highlighting that as per the proviso to Section 160 CrPC, a woman cannot be summoned beyond her place of residence.
- A bench comprising Justices Bela M Trivedi and Satish Chandra Sharma, while rejecting the petitioners' arguments, noted that Section 71 of the PMLA gives PMLA overriding effect over other laws.

- According to Section 65 PMLA, the provisions of the Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of the PMLA in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act. References were made to Sections 4(2) and 5 as well.
- The Court also noted that there are glaring inconsistencies between Section 50 PMLA and Section 160 CrPC such as :
 - Section 50 PMLA is gender-neutral whereas Section 160 is not.
 - Section 160 CrPC is regarding "investigation" while Section 50 PMLA deals with "inquiry".
 - Statements recorded under Section 50 PMLA are not hit by Article 20(3) of the Constitution whereas the statements recorded under Section 160 CrPC cannot be used in evidence except for the limited purpose stated in the proviso to Section 162 of the Code.
- The Court noted that as per the sub-section (3) of Section 50, all the persons summoned are bound to attend in person or through authorized agents as the officer may direct and are bound to state the truth upon any subject respecting which they are examined or make statements, and to produce the documents as may be required.
- As per sub-section (4) thereof every proceeding under sub-sections (2) and (3) is deemed to be a Judicial proceeding within the meaning of Section 193 and Section 228 of the IPC.
- As per sub-section (4) of Section 63, a person who intentionally disobeys any direction issued under Section 50 is liable to be proceeded against under Section 174 of the IPC.
- The Court therefore found no illegality in the notice issued by the Court of Chief Judicial Magistrate, Patiala House Courts, New Delhi against Rujira under Section 63 PMLA r/w Section 174 IPC.

Sreejith Mon v. State of Kerala and Another

- ❖ **TOPIC:** Duty Of Court To Restore Litigant For Loss Suffered Due To Negligence Of Court
- ❖ **BENCH :** Justice A. Badharudeen

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❖ **FORUM:** Kerala High Court

❖ **MAIN ISSUE**

- Whether it is a Duty Of Court To Restore Litigant For Loss Suffered Due To Negligence Of Court or not.

❖ **FACTS**

- The petitioner is accused of committing offences under Section 376 of Indian Penal Code (rape) and Section 3, 4 (penetrative sexual assault) 7 and 8 (sexual assault) of Protection of Children from Sexual Offences Act (POCSO).

❖ **BACKGROUND**

- The matter was before the Special Fast Track Court and the prosecution evidence was completed. At this stage, the Special Court noticed a petition filed by the prosecution as early as in 2017 to conduct the DNA profiling of the accused.
- The Court ordered the petitioner to appear before the police station on 9th August 2024 from where he will be taken to the Forensic Department of Medical College for taking blood samples to conduct DNA profiling.
- The petitioner approached the High Court against this order and argued that such a belated consideration of the petition would go against his interest.
- After forensic examination and postmortem of the child victim, human spermatozoa and sperm was detected in the pants, top and bedsheet used by her. The prosecution urged that the order passed by the special court was to collect a very material piece of evidence and it does not cause any prejudice to the accused.

❖ **OBSERVATIONS**

- The Kerala High Court has observed that the concept of restitution of the litigant for the loss suffered due to negligence of the court is a fundamental principle of Indian Judiciary and Jurisprudence.
- This principle follows the legal maxim of Actus Curiae Neminem Gravabit which means that 'An act of Court shall prejudice no-one', that is, if a litigant suffers any loss due to the negligence of the

Court, the Court is duty bound to restore the matter, as it would have been if the court has not committed that mistake.

- Justice A. Badharudeen held that this principle is applicable not only when the Court had acted erroneously but also to the actions of the Court which was made because it was not correctly apprised of the facts or law.
- If a loss is caused to a party due to such an order of the court and the loss can be assessed in monetary terms, the disadvantaged party is entitled to be compensated for the same.
- The Court, after discussing the principle of the restitution, held that the delay in considering the application by the Court would not cause any prejudice. The Court held that the delay is the fault of the Court and thus held that there is no legal bar in collecting crucial evidence when serious offences are alleged against the accused.
- The case was accordingly dismissed.

Dilkhush Shrigiriwar v. State of Maharashtra

❖ **TOPIC :** Crossed All Limits Of Humanity, Bombay High Court Upholds Man's Conviction For Rape Of Mentally Challenged Girl

❖ **BENCH :** Justice Govind Sanap



❖ **FORUM:** Bombay High Court

❖ **MAIN ISSUE**

- Whether the conviction given by lower court to Man for raping mentally challenged girl is correct or not.

❖ **FACTS**

- An appeal filed by the appellant challenging the December 24, 2020 judgment of a special court, which convicted him under Section 376 (2) (j) (rape with woman, who incapable to give consent) and 376 (2) (l) (raping a woman with physical or mental disability) of the Indian Penal Code (IPC).

❖ **BACKGROUND**

- According to the prosecution case, the victim's mother, the complainant in the case, in November

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2016 lodged a complaint after noting that her differently abled daughter missed her periods for four consecutive months from August.

- She then took the victim to government hospital, where upon a urine test, it was revealed that she was pregnant with some 16 weeks. The doctors suggested the mother lodge an FIR and subsequently one was lodged with the Mul Police Station in Chandrapur.
- The mother in her complaint named at least three men including the appellant, whom, she stated, often visited her house even during her absence as she went to work from morning till evening.
- Meanwhile, the doctors performed an abortion procedure on the victim and the foetus was preserved for DNA tests and subsequently, the blood samples of the three suspects were sent for DNA tests, reports of which were received on February 4, 2017.
- The DNA tests confirmed the appellant to be the biological father of the foetus and also the victim was found to be the biological mother of the foetus.
- Observing that he crossed all the limits of humanity, the Bombay High Court bench at Nagpur, recently upheld the conviction of a man for raping and impregnating a neighbourhood girl, who was suffering from Down syndrome.
- Single-judge Justice Govind Sanap noted from the material on record that there was sufficient evidence to prove beyond reasonable doubt that it was the appellant, who raped the victim having mental disability (90 per cent).
- The judge noted that the accused, who is the neighbour of the victim, took undue advantage of the situation.
- "The victim could not even tell her name. The crime committed by the accused has crossed all the limits of humanity. It was a crime not only against the victim but also against society. The accused, knowing fully well that the victim was mentally retarded, committed such a gruesome crime with her. The crime committed by the accused indicates that in order to satisfy his lust, he took advantage of the mental condition of the victim. The crime is deplorable. Such a crime is bound to shock the collective consciousness of society. The accused has crossed the bounds of humanity," the court observed.

Emco Limited v. Delhi Transco Limited

- ❖ **TOPIC :** Twelve-Month Period For Arbitral Award Begins From Completion Of Pleadings, Not Statement Of Defense: Delhi High Court
- ❖ **BENCH :** Justice C. Hari Shankar



- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Whether Twelve-Month Period For Arbitral Award Begins From Completion Of Pleadings or not.
- ❖ **FACTS**
 - The dispute originated from two Purchase Orders issued by the Delhi Transco Limited (Respondent) to Emco Limited (Petitioner) which included a provision for resolving disputes through arbitration.
 - When the parties could not agree on arbitration, the Petitioner filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of an arbitrator.
- ❖ **BACKGROUND**
 - On 22 May 2018, the High Court referred the matter to the Delhi International Arbitration and Conciliation Centre (DIAC) to appoint an arbitrator. Almost a year later, on 7 May 2019, Justice M.K. Mittal, a former Judge of the Allahabad High Court, was appointed as the Arbitrator.
 - During the interim period, the Petitioner filed a statement of claim and the Respondent responded with a statement of defence and counterclaim.
 - On 25 May 2019, during the first personal hearing, the Arbitrator allowed the petitioner time to file a rejoinder to the defence and a reply to the counter claims and to settle the pending arbitral fees.
 - By 4 July 2019, the Arbitrator noted that the Petitioner had not filed the rejoinder as required.
 - Despite the Petitioner's submission of financial constraints, the Arbitrator suspended the Petitioner's claim under Section 38(2) of the Arbitration Act and asked the Respondent whether

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it wished to proceed with its counterclaims.

- On 22 July 2019, the petitioner entered into corporate insolvency proceedings before the National Company Law Tribunal (NCLT) in Mumbai.
 - Consequently, the Petitioner was absent from the next hearing. The Arbitrator rescheduled the matter and again directed the Petitioner to file the rejoinder by the subsequent date.
 - On 31 October 2019, the Arbitrator recorded that the hearing was adjourned sine die, with the liberty for the parties to apply for revival post the completion of the Corporate Insolvency Resolution Process (CIRP).
 - The proceedings remained adjourned sine die until 10 June 2024. During this period, the Petitioner's insolvency was not revived leading to liquidation proceedings initiated on 9 August 2021.
 - On 9 September 2022, the petitioner was acquired by Sherisha Powertech Pvt Ltd (SSPL) which undertook to continue all ongoing claims and receivables.
 - Despite attempts to revive the proceedings, the DIAC erroneously informed the parties via email that the arbitral proceedings had been terminated and requested bank details for a refund of fees.
 - On 10 June 2024, the Arbitrator revisited the matter and acknowledged the DIAC's erroneous email. The Petitioner argued that the time for passing the award had not expired as per Sections 29A(1) and 23(4) of the Arbitration Act, while the Respondent contended that the proceedings should be deemed terminated due to the prolonged inaction.
 - The Arbitrator granted the Petitioner time to initiate appropriate proceedings under Section 29A which led the Petitioner to approach the High Court for the extension of the arbitral mandate.
- ❖ **OBSERVATIONS**
- The Delhi High Court bench of Justice C. Hari Shankar has held that Section 29A(1) of the Arbitration and Conciliation Act, 1996, when read with Section 29A(4), implies that the mandate of the arbitral tribunal terminates if the tribunal does not issue the award within twelve months of completing the pleadings under Section 23(4).
 - The bench held that the twelve-month period is to be calculated from the completion of pleadings, not from the date of filing the Statement of Defense (SOD).
 - It held that the phrase "under sub-section (4) of Section 23" is included because Section 23(4) refers to the filing of the SOD, but it does not mean that the twelve-month period should start from the

SOD filing date.

- It held that interpreting Section 29A(1) to require the award to be issued within twelve months from the SOD filing date would effectively rewrite the provision.
- Section 23(4) states that the statement of claim and the statement of defense shall be completed within six months from the date of the arbitrator receiving notice of his appointment, unless the parties agree otherwise.
- Section 29A(1) requires that the arbitral tribunal must make its award within twelve months from the date when the pleadings are completed.
- Section 29A(4) that if the arbitral tribunal does not make the award within the twelve-month period specified in Section 29A(1), the tribunal's mandate will terminate unless the Court extends it.

Balwinder Singh v. State of Punjab

- ❖ **TOPIC:** To Avoid Trial Process Itself Is The Punishment, Supreme Court Grants Bail To Undertrial; Reaffirms Right To Speedy Trial
- ❖ **BENCH :** Justices Hrishikesh Roy and R Mahadevan



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding the bail to undertrial
- ❖ **FACTS**
 - The petitioner was an accused in a murder case of 2020. The High Court, while rejecting his bail application on April 30, 2024, had directed the trial to be completed within five months.
 - Although the 5 months period is about to end, the examination of 17 more prosecution witnesses is yet to complete.
- ❖ **OBSERVATIONS**
 - The Supreme Court recently granted bail to an undertrial prisoner in custody for over four years, considering the delay in the trial.
 - "An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would

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infringe the right of an accused guaranteed under Article 21 of the Constitution," observed a bench comprising Justices Hrishikesh Roy and R Mahadevan.

- The Court also noted that the accused has been under custody since June 2020 and 6 co-accused have already got bail.
- "Considering the above and to avoid the situation of the trial process itself being the punishment particularly when there is presumption of innocence under the Indian jurisprudence, we deem it appropriate to grant bail to the petitioner Balwinder Singh. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court," the Court ordered.



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