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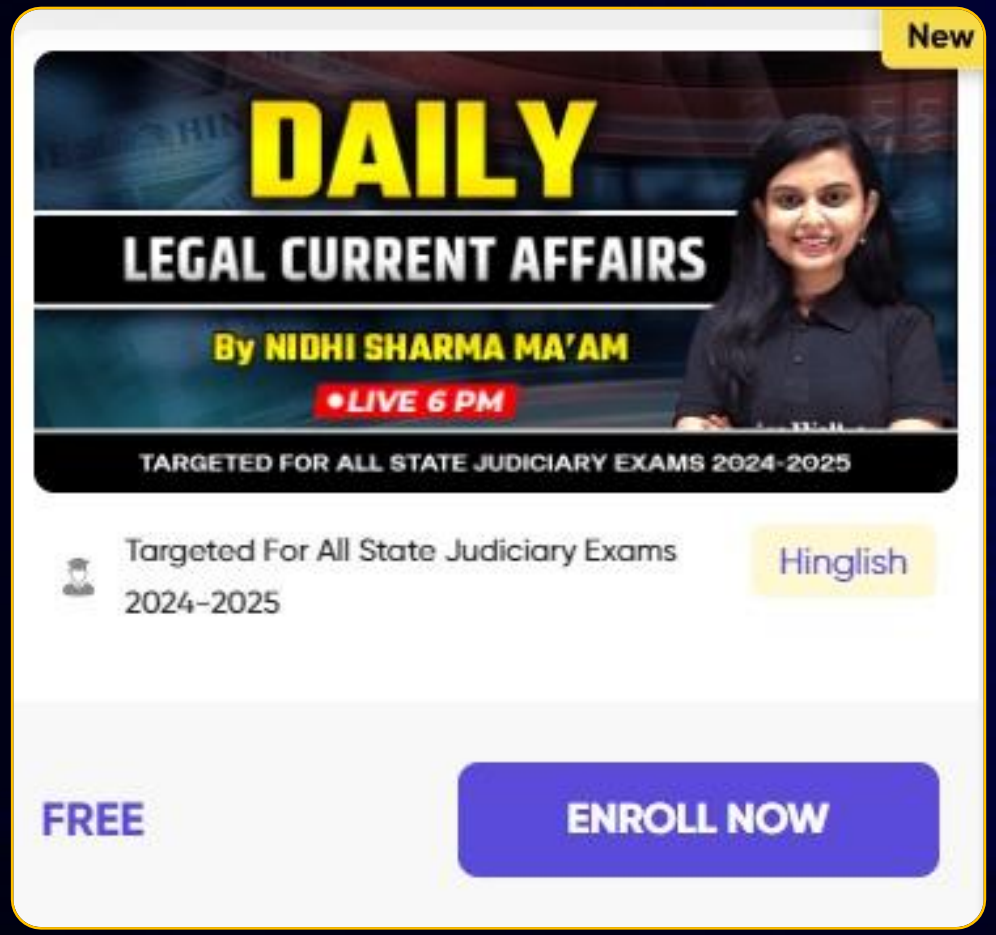

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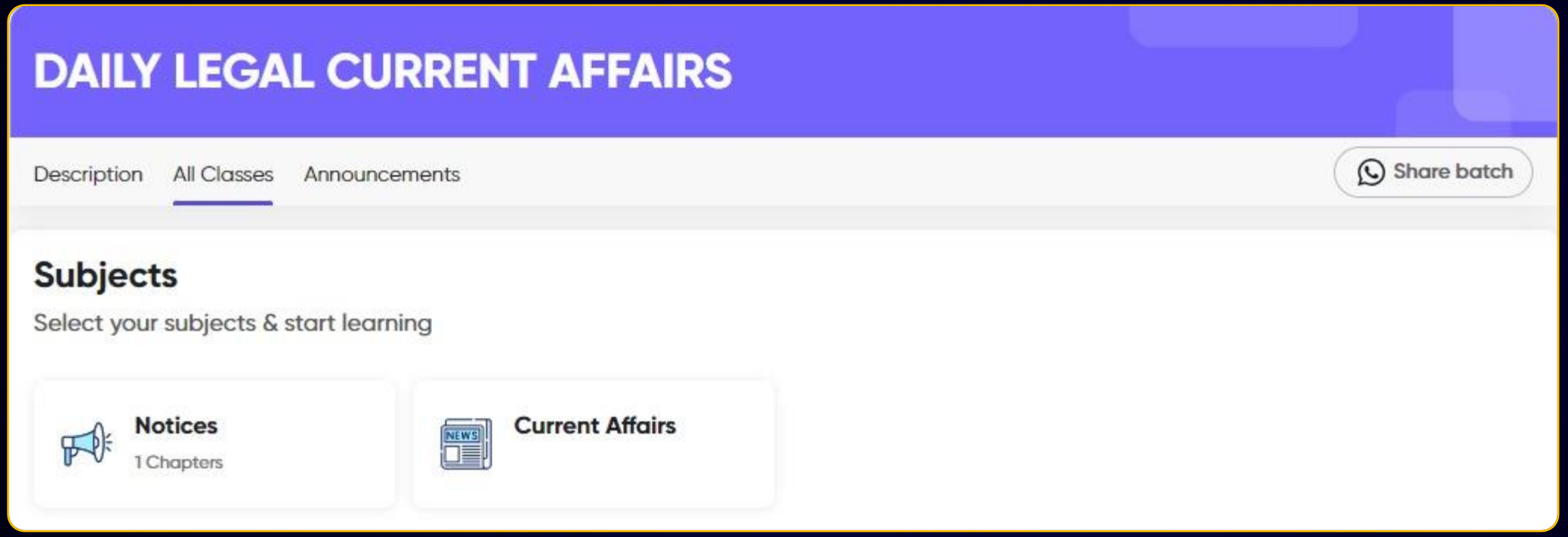

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Topic : Air Force Sports Complex Not A 'Public Authority' Under RTI Act: Delhi High Court

CASE NAME: Air force sports complex (afsc) v. Lt. Gen s s dahiya

BENCH : Justice Sanjeev Narula

FORUM: Delhi High Court

Topic : Main Issue

Whether Air Force Sports Complex (AFSC) is a ‘public authority’ under the Right to Information Act, 2005 (RTI Act) or not.

Topic : Background

- A single judge bench of Justice Sanjeev Narula was considering the AFSC's challenge to the Central Information Commission's (CIC) order, which held it to be a 'public authority' under the RTI Act.
- A retired officer of the Indian Air Force (respondent) had filed an RTI application before the Central Public Information Officer (CPIO), Air HQ seeking information regarding the alleged misuse and commercial exploitation of lands under the AFSC, Air Force Station in New Delhi.

- While the CPIO provided information based on the records available, it was stated that the AFSC was not a public authority under the RTI Act and thus the provisions would not be applicable to it.
- The respondent filed an appeal before the First Appellate Authority, which dismissed his application. In a second appeal before CIC, it held that AFSC qualified as a 'public authority' under Section 2(h) of the RTI Act and directed the CPIO to provide the information requested by the respondent.

- In its order, the CIC, held the AFSC to be a 'public authority' mainly on two grounds. First, as the AFSC operates on government land, it constitutes substantial financing by the government and second, as the management of AFSC serves Air Force Officers, it implies significant government control.

Topic : Observation

- The Delhi High Court has observed that the Air Force Sports Complex (AFSC) is not a 'public authority' under the Right to Information Act, 2005 (RTI Act) on the ground that the government does not exercise significant control over AFSC and its operations are not dependant on funding from the government.
- The Court referred to Section 2(h) of the RTI Act, which defines a 'public authority'.

- The Court here noted that AFSC does not fall within clauses a to c of the provision as it is not a body established by the constitution, parliament, state legislature or any government notification.
- It thus had to determine whether AFSC fell within clause d(I) or (ii), which relates to bodies owned, controlled or substantially financed by the government or non-governmental organizations receiving significant government funding.

- With respect to such bodies, the Court said that bodies which may not be directly established by the government but are significantly influenced by it through control or financial support fall under the RTI Act.
- On whether the government exercises pervasive control over AFSC, the Court noted that AFSC is an autonomous entity governed by its own rules and by-laws and has not been established by any specific law or owned by the government.

- The Court stated that the officer serve in roles incidental to their primary duties and do not actively shape AFSC's daily decision-making, It was of the view that the arrangement appeared to be an organizational convenience than a demonstration of substantive control.
- It thus observed that the AFSC operates sufficiently independently of governmental control.

- On whether the AFSC was substantially funded by the government, the Court stated that the mere grant of subsidies by the government would not amount to substantial financing unless it is proved that the body would struggle to exist without the same.
- The Court noted that mere provision of land without a documented concession does not automatically imply substantial financing.

- It stated “The absence of a formal allotment document or payment does not, in itself, prove that AFSC is substantially financed by the government. For the Respondent's contention to hold, they would need to demonstrate that AFSC's operations are so dependent on the use of this government land that its very existence would be imperilled without it.”

- The Court observed that the use of land for training officers is incidental and that AFSC's operations are not reliant on the land to the extent that its survival depends on government support.
- It stated that AFSC contributions and subscriptions from its members for maintenance of its land and infrastructure.

- It thus stated that this indicates financial independence rather than reliance on government resources and that the occupation of government land itself does not signify financial dependence.
- The Court thus held that the AFSC does not qualify as a 'public authority' under Section 2(h) of the RTI Act and quashed the CIC's order.

Topic : Supreme Court Sets Aside Kerala HC's Orders For Disciplinary Proceedings Against Lakshadweep Judicial Officer

CASE NAME: : K. CHERIYA KOYA VERSUS

MOHAMMED NAZER M.P. & ORS. ETC

BENCH : Justices Hrishikesh Roy and SVN Bhatti

FORUM: Supreme Court

Topic : Main Issue

Whether Kerala HC's Orders For Disciplinary Proceedings Against Lakshadweep Judicial Officer can be set aside or not.

Topic : Observation

- The Supreme Court recently set aside orders for disciplinary proceedings against a Judicial Officer, noting that the records pertaining to the case alleged to have been mishandled by him were not considered by the Kerala High Court at the time of passing of orders for suspension and enquiry.
- The same rendered the initiation of disciplinary proceedings legally invalid, the Court said.

- A bench of Justices Hrishikesh Roy and SVN Bhatti was dealing with the case of a suspended Sub-Judge-cum-Chief Judicial Magistrate of the Union Territory of Lakshadweep.
- Against him, two petitions under Article 227 of the Constitution were filed before the Kerala High Court by 11 convicted persons, alleging that he, as a Judicial Magistrate,

- rendered the order of conviction without examining the Investigating Officer and/or affording opportunity to the accused to cross-examine the witness.
- Initially, on 14.12.2022, the High Court adjourned the matter, requisitioning records from the court of the CJM, Amini, Lakshadweep, in a sealed cover. However, when the matter was next listed on 23.12.2022,

- the Court passed orders directing the Lakshadweep administration to place the appellant under suspension and ordered a detailed inquiry on his conduct as a Judicial Officer.
- The appellant preferred two review petitions, however, the same were only partly allowed, substituting the Kerala High Court as the Disciplinary Authority to take appropriate action against him.

- Aggrieved, the appellant approached the Supreme Court. It was contended that the High Court passed the order dated 23.12.2022 (directing suspension and enquiry), even though records were requisitioned from the Court of the CJM, Lakshadweep on the preceding date and not received by the said date (ie 23.12.2022).
- Going through the case records, the Supreme Court noted that the matter was adjourned by the High Court on 14.12.2022, with the tentative next date of hearing set as 05.01.2023.

However, this date was not reflected in the order.

- It called an affidavit from the Registrar General of the High Court of Kerala, who stated that as per directions in order dated 14.12.2022, records were called from the CJM Court, Amini, Lakshadweep on 15.12.2022 and the sealed cover containing records was received in the High Court on 26.12.2022.

- As such, the Supreme Court observed, the records from the CJM Court were received in the High Court on 26.12.2022, but order directing suspension and enquiry of the appellant was rendered prior to such receipt, on 23.12.2022.
- Accordingly, it was of the opinion that disciplinary proceedings against the appellant were initiated on the basis of a legally invalid order.

- "The adjudication of the matter on 23.12.2022, in the absence of the complete records being reviewed, would render the said order dated 23.12.2022 legally invalid and is liable to be set aside," the court said.
- Under these circumstances, and upon being apprised that the proceedings for appellant's enquiry under Section 340 CrPC had been dropped, the top Court allowed the appeal(s) and set aside the decision dated 23.12.2022 as well as the orders passed in the review petitions.

- The original petitions were restored to their original numbers and the Chief Justice of the High Court directed to issue appropriate orders for their early hearing.

Topic : Bombay High Court Slaps Rs 1 Lakh Cost On Husband Who Opposed Wife's Plea To Transfer Divorce Proceedings Despite Her Hardships

CASE NAME: S vs R

BENCH : Justice Milind Jadhav

FORUM: Bombay High Court

Topic : Main Issue

Regarding transfer of proceedings.

Topic : Observation

- The Bombay High Court recently came to the aide of a woman, who was being 'compelled' by her estranged husband to travel at least 8 hours along with her pre-term born now 15-months old son, to attend divorce proceedings and also slapped a fine of Rs 1 lakh on the husband in order to ameliorate her hardships.
- Single-judge Justice Milind Jadhav noting the 'hardships' of the woman, transferred the divorce proceedings initiated by the husband at Vasai in Thane district to Bandra Family Court in Mumbai.

- The judge noted that the wife is having a minor son to provide care and support including his medical needs, whereas the husband did not pay even a single farthing to redress and ameliorate the difficulty faced by her. Further, the judge noted that the journey from Mahim in suburban Mumbai to Vasai in Thane district, is an 'arduous' one, especially in the local trains.
- The judge noted that to attend proceedings in Vasai Court, the applicant woman will have to take a local from Mahim to Vasai Road Station,

- thereafter alight at Vasai Road Station and go to Vasai Road bus stand to take a bus to the Vasai Court which is situated in the interior at a distance of 6.7 kms and would have to undertake the same journey while returning back from Vasai Court to her residence at Mahim.
- "If the wife has to travel along with her minor son, it would be all the more difficult for her to travel, since boarding and alighting from the local train on the western railway corridor at any given time during the day is an extremely difficult proposition considering that trains are overcrowded at all times.

- thereafter alight at Vasai Road Station and go to Vasai Road bus stand to take a bus to the Vasai Court which is situated in the interior at a distance of 6.7 kms and would have to undertake the same journey while returning back from Vasai Court to her residence at Mahim.
- "If the wife has to travel along with her minor son, it would be all the more difficult for her to travel, since boarding and alighting from the local train on the western railway corridor at any given time during the day is an extremely difficult proposition considering that trains are overcrowded at all times.

- While undertaking the train journey, she would have to take care of her infant, which would add to her degree of difficulty. That apart, from Vasai Road bus station to the Court and back, there are only two modes of public transport available namely the MSRTC buses which are always overcrowded and in the alternate auto-rickshaws which ply the said distance at an exorbitant cost," Justice Jadhav said in the order passed on October 3.

- The Court further noted that while the woman was dependent on her parents, the husband owned three salons at Vasai and earned well. It rejected the argument of the husband that he would pay the travel expenses for the wife and thus she should travel to Vasai.
- "Financially, the husband is therefore, well off. Merely due to that reason, he cannot insist that he will bear the travel cost of the wife to attend the proceedings in Marriage Petition in Vasai. The submission made by husband is without consideration of the wife's case altogether.

- Not once has the husband considered the fact that she is required to support and care for her 15 month old son and if she is to attend the proceedings in Vasai Court, how and who would take care of the child in her absence," the bench said.
- Further, the judge noted these multiple hardships faced by the wife on almost all counts and therefore opined that by not transferring the divorce proceedings, the court cannot add to the difficulty and woes of the wife.

- "It is seen that the wife is a single mother requiring to take care of her infant, who is born pre-term and is therefore facing constant health issues. The well-being of the son should undoubtedly be at the forefront and of paramount importance for the parents.
- However in the present case the entire responsibility is on the mother and the father has completely exonerated himself of his duty as a parent to the detriment of the mother and child. I can see no remorse or sympathy in the submissions made by the father through his advocate," the judge underscored.

- Thus, the court transferred the proceedings to Family Court, Bandra and while doing so imposed 'exemplary costs' of Rs 1 lakh on the husband, to be paid to the wife.
- "The wife, in my opinion has clearly endured suffering for the last 21 months from the date of birth of her son and further more from the date of filing of the Marriage Petition by the husband in the Vasai Court,
- In my opinion, the wife deserves the award of costs as it would go a long way in ameliorating her hardship and difficulty in the interest of justice," the judge added.

Topic : Kerala HC Declines To Quash Case Against Priest Who Allegedly Engaged In Sexual Intercourse On Pretext Of Marriage By Offering To Leave Priesthood

CASE NAME: Fr. Jose Mathai Myladath v State of Kerala

BENCH : Justice A. Badharudeen

FORUM: : Kerala High Court

Topic : Main Issue

Whether proceedings can be quashed Against Priest Who Allegedly Engaged In Sexual Intercourse On Pretext Of Marriage By Offering To Leave Priesthood or not.

Topic : Observation

- The Kerala High Court had declined to quash proceedings against a priest who allegedly committed sexual intercourse with a lady by giving her promise to marriage, by making her believe that he would give up his priesthood.
- The crime was registered against the Priest by the complainant for offences punishable under Sections Section 376, 376(2)(n) and 342 of the IPC.

- Justice A. Badharudeen held that prime facie allegations are made out and proceedings cannot be closed against the accused. Additionally, the Court stated that filing a petition to quash the case and its subsequent withdrawal were no grounds to close the proceedings against the accused.
- “Adverting to the facts of the case, as discussed, it is perceivable that the defacto complainant, who is legally eligible to solemnise marriage as there was no legal marriage at any point of time,

- was given promise of marriage by the accused after expressing his readiness to give up his Priesthood, after subjecting the defacto complainant to repeated sexual intercourse promising to marry her, retracted from the marriage.
- Since the relationship continued on the promise of marriage, there is no delay in lodging the FIR.

- Thus, prima facie, allegations are made out warranting trial of the matter and in such a case, there is no reason to close the proceedings merely on the fact that earlier the defacto complainant filed a petition to quash the crime."
- The petitioner submitted that he was innocent of all allegations. It was also stated that the complainant had previously filed a petition to quash the proceedings, stating that there was no sexual harassment and that the complaint was filed due to misunderstanding.

- The petitioner also stated that the FIR was lodged after a delay of more than 3 months. It was also stated that the complainant had a public notice/message on social media claiming that allegations against her and the petitioner were fake and defamatory.
- The complainant submitted before the Court that the accused offered to marry her by leaving his priesthood and committed sexual intercourse with her repeatedly.

- It was stated that she agreed to withdraw the proceedings after the accused promised to take care of her, but he later retracted that promise. It was further stated that the public notice/message was not made by her.
- The Court noted that the FIS and FIR state that the petitioner committed sexual intercourse with the complainant on the assurance that he would look after and marry her.

- The Court noted that the complainant has a child from her earlier relationship with another man. The Court noted that the complainant was not in a legal marriage previously and was therefore legally eligible to get married.
- Further, it stated that the authenticity of the public notice/message sent on WhatsApp that the allegations were false was disputed by the complainant.

- The Court thus stated that the genuineness of the messages was a matter of evidence to be considered during the trial.
- As such, the Court declined to quash the proceedings against the petitioner.

Topic : Punjab & Haryana High Court Directs Panjab University To Pay ₹1 Lakh To Law Student For Failing Him By Arbitrarily Reducing Marks

CASE NAME: Rohan Rana v. Panjab University and others

BENCH : Justice Jasgurpreet Singh Puri

FORUM: Punjab and Haryana High Court

Topic : Main Issue

Whether a cost can be imposed on Panjab University for declaring a law student 'fail' in a paper of BA LLB 6th Semester.

Topic : Observation

- The Punjab and Haryana High Court has imposed a cost of Rs 1 Lakh on Panjab University for declaring a law student 'fail' in a paper of BA LLB 6th Semester.
- Considering the seriousness of the issue that may have an effect on the career of student, Justice Jasgurpreet Singh Puri directed the Vice Chancellor to look into the issue and take corrective measures within two months.

- “Since the career of the petitioner has been affected because of wrongful action of the respondent-University, he is entitled for exemplary costs in the nature of compensation which are assessed as Rs.1,00,000 (rupees one lac only) which shall be paid by the respondent-University to the petitioner within a period of two months from today,” the Court observed.

- It added that the University would pay the amount and then the Vice Chancellor would be at liberty to recover the same from officials who may be found guilty in the department inquiry.
- The student had challenged the result declared in December 2023 of the paper 'Land Law and Rent Laws' for which re-appear examination was held in May 2023. He had earlier failed in the paper when exam was taken in May 2019.

- When the student had taken admission in the academic session of 2016-17, the criteria of 60:40 marks - 60 for the theory paper and 40 for internal assessment was applicable.
- However, the regulations were amended in 2022 w.e.f from December 2018 and the ratio of theory paper and internal assessment was changed from 60:40 to 80:20. A student was required to secure 45 percent marks in internal assessment and theory paper jointly.

- When the student took the examination in May 2023, he was given the paper with maximum marks of 80. He scored 54 and thus was successful. However, the university adopted a process of scaling down the student's marks from 54 out of 80 to 41 out of 60. This way he was declared fail.
- The University had also justified the decision, saying since the student was of academic session 2016 but had appeared in May 2023,

- he was subjected to a paper of the ratio of 80:20 instead of 60:40 and thus his marks were reduced proportionately.
- However, the Court found the reasoning to be perverse and absolutely unsustainable.

- “When a student has been subjected to his examination paper carrying maximum marks of 80 and he passes the examination by securing 54 marks then in case the University needs to scale down and reduce the marks on proportionate basis then the same has to be done by adopting any formula prescribed under any law.

- There is nothing on record nor it has been shown to the Court and rather it has been so stated by the officers who are present in the Court and learned counsel for the respondent-University that there is no formula designed and there is no law or source of power by which such a power was exercised by the examination department of the University".
- It added the decision was based on whims and fancies which had an effect on the career of a student.

- It was not only illegal and perverse but it is also deprecated by this Court, the Single Judge said.
- The Court also rejected the argument of past practice and said the same is not supported by any provision of law.
- “If errors or illegal actions have been committed by the respondent-University, the same cannot be applied to the present case merely because the same is a past practice.

- The respondent-University is always within its rights to incorporate any provision having a force of law to exercise a power for the purpose of creating any equality or proportionate distribution of marks which is absent in the present case.
- However, the same cannot be done only on the basis of precedents which ultimately deprives the rights of their own students," it said.

- The Court further said students of the University cannot be left to the whims and fancies of the varsity staff who create their own law.
- The Court also said the university was well aware that the student ought to have been given a theory paper of 60 marks but instead was given a paper of 80 marks to avoid their own workload.

- “But the consequence of the same was that the marks of petitioner were reduced by scaling down from 54 to 41 which resulted in less than 45% marks and failed the petitioner.
- Such scaling down by the administrative staff of examination branch was without any provision or authority of law,” the Court said as it set aside the result and asked the university to process the grant of degree to the student.

Topic : Recording Conversation With Officer In Police Station Is Not An Offence Under Official Secrets Act: Bombay High Court

CASE NAME: Subhash Athare vs State of Maharashtra

BENCH : Justices Vibha Kankanwadi and Santosh Chapalgaonkar

FORUM: Bombay High Court

Topic : Main Issue

Whether the act of recording audio in a police station will become an offence under the stringent Official Secrets Act (OSA) or not.

Topic : Background

- The bench was dealing with the petitions filed by Subhash and Santosh Athare, two brothers seeking to quash the Jul 19, 2022 FIR lodged against them by the Pathardi Police for offences under the OS Act.
- The FIR was lodged pursuant to an incident of April 21, 2022, wherein three persons allegedly barged into the house of the Athare brothers, assaulted their old mother and even tried to outrage her modesty.

- However, on April 26, Subhash was irked to learn that only a non-cognisance (NC) offence was lodged by the officers of the Pathardi Police Station. And when he sought to know from the officers, why the did not register an FIR, he was allegedly abused in filthy language.
- Subsequently, on May 2, 2022, the police officers called Subhash to the police station and pressurised him to withdraw his complaint.

- It is then that Subhash recorded the conversation with the police officer and him in his phone. He then lodged a complaint with the Director General of Police (DGP) of Maharashtra highlighting the 'threats' issued to him and his brother by the officers, for filing the case.
- While the applicants argued that the instant FIR was lodged with an ulterior motive, the State justified the the FIR.

Topic : Observation

- The Bombay High Court last month held that the act of recording audio in a police station would not become an offence under the stringent Official Secrets Act (OSA).
- A division bench of Justices Vibha Kankanwadi and Santosh Chapalgaonkar, sitting in Aurangabad, quashed an FIR lodged against two brothers, one of whom works as a Constable with the Mumbai Police,

- who were booked under the Official Secrets Act for recording conversation with a police officer, within the police station at Pathardi, Ahmednagar.
- The bench noted that the entire episode as alleged in the FIR lodged on July 19, 2022, had taken place in Police Station and the police invoked the Official Secrets Act, 1923.

- "Section 2 (8) of the said Act defines what is prohibited place. Police Station is not included in the said definition. Section 3 of the Official Secrets Act, 1923 deals with Penalties for spying," the judges noted in the September 23, order.
- Further, referring to section 3 in detail, the judges reproduced the said provision"
- "Penalties for spying. - (1) If any person for any purpose prejudicial to the safety or interests of the State -

- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
- "Anything done in the police is absolutely not included in Section 3. Under such circumstance, ingredients of the said section are not at all attracted (sic)," the judges said, indicating that the act of the accused would not attract provisions of the OS Act.


THANK YOU