

NEERAJ SUD AND ANR. VERSUS JASWINDER SINGH (MINOR) AND ANR

- ❖ **TOPIC :** Doctor Following Accepted Medical Practices Not Liable For Complications That Arise Post – surgery : Supreme court
- ❖ **BENCH :** Justices PS Narasimha and Pankaj Mithal



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether a Doctor who follows the acceptable practice of the medical profession in the discharge of duties would be liable or not for the patient's post-surgery complications.
- ❖ **OBSERVATIONS**
 - The Supreme Court held that a Doctor who follows the acceptable practice of the medical profession in the discharge of duties would not be liable for the patient's post-surgery complications. "In other words, simply for the reason that the patient has not responded favourably to the surgery or the treatment administered by a doctor or that the surgery has failed, the doctor cannot be held liable for medical negligence straightway by applying the doctrine of Res Ipsa Loquitor unless it is established by evidence that the doctor failed to exercise the due skill possessed by him in discharging of his duties.", the bench comprising Justices PS Narasimha and Pankaj Mithal said.
 - The Court clarified that so long as the doctor follows the acceptable practice of the medical profession in the discharge of his duties, no liability for medical negligence could be imposed on him.
 - "It is well recognized that actionable negligence in the context of the medical profession involves three constituents (i) duty to exercise due care; (ii) breach of duty and (iii) consequential damage. However, a simple lack of care, an error of judgment or an accident is not sufficient proof of

- negligence on part of the medical professional so long as the doctor follows the acceptable practice of the medical profession in discharge of his duties.
- He cannot be held liable for negligence merely because a better alternative treatment or course of treatment was available or that more skilled doctors were there who could have administered better treatment.", the judgment authored by Justice Pankaj Mithal said.
 - The case relates to the lodging of the consumer complaint by the father against the Doctor and PGI, Chandigarh alleging that his minor son's eye vision deteriorated post-surgery.
 - The complainant's claim was based on the medical records kept by the hospital which recorded that at the pre-surgery stage, his son's eye vision was 6/9 which fell to 6/18 in both eyes at the post-surgery stage making his son suffer from double vision.
 - The State Commission rejected the complainant's claims, however, the NCDRC accepted the complainant's claim based on the medical reports stating that post-surgery, the condition of PTOSIS deteriorated from moderate to severe.
 - Setting aside the NCDRC's finding on an appeal filed by the Doctor and Hospital, the Court observed that the doctor cannot be held liable for medical negligence unless the complainant proves that the doctor failed to exercise the skills possessed by him while discharging his duties.
 - "A medical professional may be held liable for negligence only when he is not possessed with the requisite qualification or skill or when he fails to exercise reasonable skill which he possesses in giving the treatment. None of the above two essential conditions for establishing negligence stand satisfied in the case at hand as no evidence was brought on record to prove that Dr. Neeraj Sud had not exercised due diligence, care or skill which he possessed in operating the patient and giving treatment to him.", the court said.
 - The Supreme Court in Jacob Mathew held that a medical professional is liable for negligence if lacking the necessary skill or fails to apply it competently.
 - In this case, the complainant did not present evidence showing that Doctor or PGI lacked or misapplied their expertise, nor was there testimony from an expert body to prove that Dr. Sud did not exercise his skills adequately. Thus, no negligence could be established.
 - Accordingly, the appeal was allowed.

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Saibaj Noormohammad v. State of Maharashtra & Anr.

- ❖ **TOPIC:** Sessions Courts must Order Victim Compensation In cases of Sexual offences Against Minors and Women : Supreme court
- ❖ **BENCH :** Justice BV Nagarathna and Justice Pankaj Mithal



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding sexual offences against minors and women
- ❖ **OBSERVATIONS**
 - The Supreme Court recently mandated that, in cases involving bodily harm, especially in sexual assault cases involving minors or women, Sessions Courts should order victim compensation under Section 357-A of the CrPC(396 of the Bharatiya Nagarik Suraksha Sanhita, 2023).
 - The Court observed that the lack of a compensation order by the Sessions Court delays benefits to victims.
 - This direction must be implemented swiftly by legal services authorities, with provision for interim compensation when appropriate, the Court held.
 - A bench of Justice BV Nagarathna and Justice Pankaj Mithal passed this direction while granting bail to the appellant, convicted under Sections 376-D, 354 of the IPC, and Section 4 of the Protection of Children from Sexual Offences (POCSO) Act.
 - The appellant had challenged the Bombay High Court's March 14, 2024 dismissal of his application seeking suspension of sentence and bail under Section 389 of CrPC.
 - The appellant was sentenced to twenty years in prison and fined Rs.10,000 under IPC and a ten-year imprisonment under the POCSO Act with a fine of Rs.2,500.
 - The Court granted the appellant bail, noting that he had served more than half his sentence and that

there was no likelihood of the sentence being enhanced by the High Court. The Court ordered the appellant's release on bail, subject to conditions set by the Sessions Court, and clarified that this relief should not delay the appeal proceedings.

- The Court directed that a copy of this order be circulated to all High Courts to ensure that Principal District Judges pass it on to Sessions Judges, who are expected to mandate victim compensation as necessary.
- Further, in the current case, the Court recommended that the High Court consider granting interim compensation to the victim under Rule 7 of the POCSO Rules, 2012, and Rule 9 of the POCSO Rules, 2020.
- The Court recorded its appreciation for the assistance provided by Hegde and Unny in addressing victim compensation matters. With these observations, the Supreme Court allowed and disposed of the appeal.

X v. State of Kerala

- ❖ **TOPIC :** Cruelty and Abetment To Suicide Are Distinct offences, Acquittal under one will not Necessarily Lead' To Acquittal in the order
- ❖ **BENCH :** Justice Sophy Thomas



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Regarding the cruelty and abetment of suicide.
- ❖ **OBSERVATIONS**
 - The Kerala High Court recently observed that while marriage is an essential ingredient to attract the offence of cruelty punishable under IPC Section 498A, however for abetment to suicide under IPC Section 306 there need not be any relationship between the "accused and the victim".
 - In observing so, the high court set aside the man's conviction for cruelty under Section 498A IPC

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after noting that except some general statement of harassment there were no specific allegations of matrimonial cruelty against him which prompted the deceased to commit suicide. It further said that Section 498A and 306 were distinct offences for which specific charges are necessary and "acquittal under Section 306 IPC will not necessarily lead to an acquittal under Section 498A of IPC or vice-versa".

- The man had been initially booked for abetment to suicide of his live-in partner; however the trial court found that there wasn't sufficient evidence to convict him under Section 306, and had acquitted him.
- However, from the testimony of prosecution witnesses, the trial court had found that the accused had subjected his wife to cruelty both mentally and physically, and had therefore convicted him under Section 498A IPC and also sentenced him to undergo simple imprisonment for two years. Against this, he approached the high court.
- A single judge bench of Justice Sophy Thomas in its order clarified that a person can be convicted under Section 498A if the evidence proves the commission of that offence, even in the absence of a specific charge under 498A, as long as the charge under Section 306 clearly indicates the necessary elements for attracting an offence under Section 498A.
- The prosecution alleged that the appellant and the deceased were in a live-in relationship and they had two children.
- It was alleged that the deceased committed suicide by consuming poison after being scolded by the appellant.
- The appellant argued that he was convicted for cruelty without framing charges for it and without being given an opportunity to defend it. It was argued that IPC Sections 306 and 498A were distinct offences for which separate charges were to be framed as per Section 218 CrPC. It was also stated that IPC Section 498A cannot be attracted since there was no legal marriage.
- On the other hand, the Public Prosecutor argued that testimony of witnesses prove that appellant was in a marital relationship with the deceased. It was also argued that there is evidence of ill treatment and cruelty to attract prosecution under Section 498A.
- Relying upon Section 222 CrPC, it was argued that an offence under Section 498A is included in an offence under Section 306 of IPC since cruelty is considered as a minor offence as compared to abetment to suicide.

- It was stated that appellant had sufficient notice to defend himself for Section 498A also while answering a charge against him under Section 306 of the IPC.
- The High Court observed that cruelty as mentioned in Section 498A of the IPC is wider and includes cases when the wife suffers cruelty from her husband or his relatives which could even drive her to commit suicide which would amount to abetment to commit suicide.
- On the other hand, the Court observed that to prove abetment to suicide, the offence of abetment has to be proved which is a distinct and separate offence.
- Relying upon Apex Court decisions, the Court further stated that mere omission or defect in framing charges will not by itself be a reason to acquit an accused for an offence which is found to be proved based on evidence on record.
- The Court further stated that marriage is an essential pre-condition to attract an offence under Section 498A, whereas there is no such condition precedent under Section 306 of the IPC.
- The Court stated that no person can be condemned unheard since that would cause a failure of justice. It stated that the appellant cannot be convicted for matrimonial cruelty under Section 498A of IPC when there were no specific allegations of matrimonial cruelty which compelled the woman to commit suicide.
- As such, the Court set aside his conviction under Section 498A of the IPC and acquitted him.

M/s Jaiswal Products v State of Tamil Nadu

- ❖ **TOPIC :** Manufacture of Banned Tobacco Product which is 'Food' can be Prosecuted under Food safety and standards Act : Madras High court
- ❖ **BENCH :** Justice G Jayachandran



- ❖ **FORUM:** Madras High Court

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❖ **MAIN ISSUE**

- Regarding the banned tobacco product.

❖ **OBSERVATIONS**

- The Madras High Court recently upheld the power of the Food Safety Officer to proceed with investigation for sale of banned tobacco products observing that tobacco, with or without any additive was a food product under Section 3(j) of the Food Safety and Standards Act.
- In doing so the court said that the manufacturer was liable to explain the manner in which the product was cleared from the manufacturing unit which was in his exclusive knowledge.
- A single judge bench of Justice G Jayachandran in its order also noted that the manufacturer of the banned tobacco was liable to face prosecution and could not claim that he had no knowledge how the product entered the banned place.
- The court noted that as per Section 109 of the Bharatiya Sakshya Adhiniyam 2023, when any fact was especially within the knowledge of any person, the burden of proving the fact was upon the person.
- The court thus observed that the manufacturer of the tobacco product was supposed to disclose the details of manufacture of his products, to whom the products were sold, etc and when the manufacturer chooses to remain silent, it leads to a statutory presumption that that the product was knowingly distributed in a state where there was a ban.
- The court was hearing a plea by Jaiswal Products, manufacturer of Hans Chhap Tobacco against the proceedings before Katpadi Judicial Magistrate based on a complaint by the Food Safety Officer under Section 52(i) and 63 of the Food Safety and Standards Act 2006 against the manufacturer and seller.
- It was alleged that the Food Safety Officer, having jurisdiction over Vellore District had inspected the shop of one G Mohan where it was found that banned Hans Chhap Tobacco was stocked by the shop owner without any purchase bill. Samples were drawn and tested by the State Laboratory where it was found that it contained nicotine, an unsafe food. Based on this, the complaint was filed which was taken on file by the Judicial Magistrate.
- The petitioner manufacturing company submitted that it was a registered manufacturer under the Excise Act and the GST Act and had been varying on the trade of tobacco. It was argued that tobacco would not fall within the definition of "Food" to invoke the provisions of the Food Safety and Standards Act and thus the action of the Food Safety officer was baseless and without legal sanction.

- It was further submitted that though a notification was issued banning the tobacco products, this notification was stayed by the Delhi High Court and thus on the date of seizure and complaint there was no ban.
- It was also argued that the manufacturer's product was tobacco and would be covered under the COTPA Act instead of the Food Safety Act and thus unless it was mixed with any food product, the manufacturer could not be implicated for manufacturing unsafe food.
- It was also argued that there was no material to show that the manufacturer directly or knowingly sold the products in a State where it is banned.
- The high court then noted that the State of Tamil Nadu had issued a prohibitory order in 2013 as per the Supreme Court directions and this notification had been renewed every year. The court also noted that the Government of India, though its Health and Family Welfare Department had reinforced the need to ban chewing tobacco products.
- The high court also noted that it had in its earlier decisions held that tobacco with or without any additive was a food product under the Act.
- The court also noted that in the present case, the manufacturer, after issuance of show cause notice had not disclosed any information about the manufacture and sale of the tobacco products that was in his exclusive knowledge.
- The court thus held that the manufacturer could prove his case before the trial court by producing documents to prove that they have not sold products to dealers in Tamil Nadu.
- The court was thus not inclined to quash the proceedings and dismissed the plea

**XXX AND STATE BY WOMEN POLICE
STATION & ANR**

- ❖ **TOPIC :** Even if child in Conflict with Law is To Be Tried As Adult, His Bail Application will be Considered U/S 12 JJ Act And Not CrPC
- ❖ **BENCH :** Justice S Vishwajith Shetty



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❖ **FORUM:** Karnataka High Court

❖ **MAIN ISSUE**

➤ Regarding child in conflict with law

❖ **OBSERVATIONS**

- The Karnataka High Court has said that even if a child in conflict with law is ordered to be tried as an adult, as provided under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, his bail application is to be considered under Section 12 of the Act, it cannot be considered under the provisions of Code of Criminal Procedure.
- A single judge bench of Justice S Vishwajith Shetty held thus while allowing a bail petition filed by a minor who is accused of sexually assaulting her minor sister and causing her to become pregnant and who is directed to be tried before a Special Court as an adult.
- The accused is charged for offences punishable under Sections 376, 376(2)(f), 376(2)(n) and 376(3) of IPC and Sections 4, 5(j)(ii), 5(n), 5(l) and 6 of the Prevention of Children from Sexual Offences Act, 2012.
- He had approached the special court seeking bail under Section 439 of CrPC which came to be rejected. Following which he approached the high court.
- Amicus curiae appointed in the case submitted that though order is passed against petitioner under Section 18(3) of the Act of 2015, to hold a trial against him as an adult, for the purpose of bail of the petitioner, who is a child, Section 12 of the Act is applicable and the child is required to be released on bail.
- Moreover, the victim girl and her parents had appeared before the Special Court and had submitted that they have no objection for releasing the petitioner on bail. The victim girl and her parents have not cooperated for the DNA Test.
- The prosecution opposed the plea saying that the petitioner has committed a heinous offence on the minor victim girl who is his sister. In the event, he is enlarged on bail, he is likely to tamper with the prosecution witnesses.

- The bench on going through the records noted that there are three disentitlement categories contemplated in the proviso to Section 12(1) of the Act of 2015, but it would not come in the way of the petitioner's application being considered
- Noting that the victim girl and her parents have not cooperated for the purpose of DNA Test and the adoptive parents of the child born to the victim also have refused to give blood samples of the child for the purpose of DNA Test, the court said, "The petitioner is in custody from 24.07.2023. The trial in the case is yet to commence. The prosecution has in all cited 22 charge sheet witnesses in the present case and the petitioner is being tried as an adult for the alleged offences.
- Therefore, the chance of the trial being completed in the near future is very remote."
- Accordingly it held, "Petitioner's application which was filed under Section 439 of Cr.P.C. before the Special Court was required to be considered as if it is an application under Section 12 of the Act of 2015. Failure to do so has resulted in miscarriage of justice and petitioner's right to liberty has been effected."
- The court allowed the petition and directed release of the accused of executing a personal bond for a sum of Rs.50,000 with one surety for the likesum and other conditions.

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