Rahul Kakran v. Ravi Rai

- **TOPIC :** Medical Negligence : SC Dismisses Appeal of Doctor Held Liable For Surgery on Wrong Leg
- **BENCH** : Justice PS Narasimha and Manoj Misra
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding an appeal filed by a doctor challenging an order of the National Consumer Disputes Redressal Commission holding him liable for medical negligence for conducting the surgery on the wrong foot of a patient.
- **OBSERVATIONS**
  - The Supreme Court dismissed an appeal filed by a doctor challenging an order of the National Consumer Disputes Redressal Commission holding him liable for medical negligence for conducting the surgery on the wrong foot of a patient.
  - A bench comprising Justice PS Narasimha and Manoj Misra dismissed an appeal filed by Dr Rahul Kakran, who worked as an Orthopaedic Surgeon at the Fortis Hospital in 2016.
  - The consumer complaint was based on the allegation that the surgery was performed on the patient's left leg instead of his injured right leg.
  - In June 2024, the NCDRC awarded the patient (named Ravi Rai) a total compensation of Rs 1.10 crores, out of which the hospital was asked to pay Rs 90 lakhs and two doctors(including the surgeon) were to pay Rs.10 lakhs each.
  - The surgeon claimed that an injury was found in the left leg of the patient as well in the operation room and he was advised to take the surgical treatment for which the patient gave an oral consent. The NCDRC found that there was gross medical negligence after noting that all the pre-surgery tests (X-Ray, scan etc) were taken for the right leg and the consent was taken for the right leg.
  - "The Complainant appears to have virtually escaped from the Hospital and ran for his life on account of this mess having been created by the Opposite Parties in proceeding to perform a surgery of the left leg when the surgery was planned to rectify and treat the fracture of the right leg," the Commission observed in the order. The patient later got himself admitted to another hospital for the surgery. The Commission also found that the protocol regarding consent was not followed before operating upon the left leg.
  - The Supreme Court affirmed the findings of the NCDRC by rejecting the surgeon's appeal. "Having considered the matter in detail, we are of the opinion that the National Consumers Disputes Redressal Commission, New Delhi has not committed any error in law or fact. In this view of the matter, the Civil Appeal is dismissed," the bench observed.

XXX v. XXX

- **TOPIC :** POCSO Act, Absence of Semen in Penetrative Sexual Assault will not Weaken Victim's Testimony : Punjab & Haryana High court
- **BENCH** : Justice Sureshwar Thakur and Justice Sudeepti Sharma
- **FORUM**: Punjab and Haryana High Court
- **MAIN ISSUE**
  - Regarding penetrative sexual assault under the Protection of Children from Sexual Offences (POCSO) Act,
- **OBSERVATIONS**
  - The Punjab and Haryana High Court has said that in case of penetrative sexual assault under the Protection of Children from Sexual Offences (POCSO) Act, 2012, victim's testimony cannot be question merely on the ground that no semen is detected in the DNA report.
  - Bench of Justice Sureshwar Thakur and Justice Sudeepti Sharma said, "when in the event of any penetrative sexual assault becoming committed, upon a minor victim, thus does not require semen being detected on the vaginal swabs of the prosecutrix. Resultantly, thereby the absence of any inculpatory semen on the vaginal swab of the minor victim also does not over-rule the evidentiary efficacy of the testification of the prosecutrix."
  - The Court was hearing an appeal against the conviction of an accused under Section 376AB of IPC and Section 6 of POCSO, who was sentenced for rigorous imprisonment of 20 years.
  - An 8 year old girl was repeatedly harassed by the accused and on the fateful day when she was playing outside with her friends, accused took her and committed rape upon the child. The victim narrated the story to her mother and an FIR was lodged.
  - Medical examination of both the victim and the accused was conducted. After the examination of the accused, he was taken to the Juvenile Justice Board and later declared as a child in conflict with

law. After conducting the preliminary assessment the juvenile was tried as an adult.

- After examining the submissions, the Court noted that the issue of taking consent of the victim is out of the question, since she is a minor and incapable of giving valid consent.
- The division bench further noted that the victim was competent to depose and supported the case of prosecution.
- "A wholesome, and, conjoint reading of the testification of the prosecutrix, as carried respectively in her examination-in-chief, and, in her cross-examination, especially when she in her examination-in-chief, has attributed an unrebutted incriminatory role to the accused, thus boost an inference, that the prosecutrix has rendered a truthful confidence inspiring version, in respect of the penal occurrence," noted the Court.
- It highlighted that the testimony of the mother also corroborated with the version written in FIR.
- The court rejected the contention that because the DNA report has not shown any traces of semen in the vaginal swab the testimony of the victim will be doubtful.
- "Argument loses its sheen, as the above alluded clinching incriminatory evidence adduced by the prosecution, especially the confidence inspiring testification of the prosecutrix, thus overcomes the purported lack of incriminatory echoings in the results...as made over the relevant examinations, rather by the DNA expert," said the Court.
- In the light of the above, the plea was dismissed.

Anna Mathew v. State of Maharashtra & Ors.

- **TOPIC:** Bombay High Court Upholds Post – Graduation Medical Admission Criteria For Domiciled Candidates Who Obtained MBBS Degree Outside Maharashtra
- **BENCH** : Justice B. P. Colabawalla and Justice Somasekhar Sundaresan
- **FORUM:** Bombay High Court
- **MAIN ISSUE**
  - Regarding the framework for PG medical course admission in Maharashtra which mandates domiciled candidates who obtained MBBS degree outside the State.
- **OBSERVATIONS**
  - The Bombay High Court has upheld the framework for PG medical course admission in Maharashtra which mandates domiciled candidates who obtained MBBS degree outside the State, to have secured admission to MBBS course under the All-India Quota in any Government Medical College or the All India Institute of Medical Sciences or any other Central Government Institution, to be eligible for State Quota.
  - The court underscored that such a condition helps in filtering of strong credentials and merit for an outside MBBS graduate to be let into State Quota in Maharashtra.
  - A division bench of Justice B. P. Colabawalla and Justice Somasekhar Sundaresan in its order said, ‘‘On the contrary, it becomes clear that since a Maharashtra-domiciled student seeking to secure admission to an MBBS course in a college outside Maharashtra would need to be a high-performing and top-ranking student to secure admission in a government institution under the All-India Quota, imposing such a requirement constitutes imposing a standard of merit. In our opinion such a condition stipulates a filter of strong credentials and merit for an outside graduate to be let into the State Quota in Maharashtra’’.
  - The admissions to post-graduate courses are split between two main quotas – one for MBBS graduates from colleges situated within the State (State Quota) and another for MBBS graduates from colleges situated outside the State (All-India Quota).
  - The State published a policy document ‘‘Procedure for Selection and Admission for Medical Postgraduate Courses at Maharashtra’’, which set out the admission process for post-graduate courses.
  - Paragraph 8.2 of the document states that a MBBS graduate from a recognised Medical College situated in Maharashtra and who has completed one year internship training would be eligible for admission to post-graduate courses in Maharashtra under the State Quota irrespective of domicile.
  - Paragraph 8.3 of the document states that MBBS graduates who are domiciled in Maharashtra but have obtained the MBBS degree from a college situated outside Maharashtra would qualify for the State Quota if they had obtained admission to the MBBS course under the All-India Quota in any Government Medical College or the All India Institute of Medical Sciences or any other Central Government Institution.
  - The petitioner—who completed MBBS from the

Christian Medical College, Vellore, Tamil Nadu (CMC Vellore), but is domiciled in Maharashtra – challenged these two provisions in the policy document on the ground that they are unreasonable, discriminatory and arbitrary, violating Article 14 of the Constitution.

- With regards to Paragraph 8.2, the High Court noted that the policy objective of providing an environment of continuity and stability of location for students in their education path within the same State is well-known.
- It remarked that the impugned provisions represent a reasonable exercise of local social considerations by the policy makers. It was of the view that it was neither unreasonable nor discriminatory.
- ''In our opinion, there is nothing wrong in such an approach in the policy. Policy-makers who draft subordinate legislation ought to be given reasonable play in the joints to address the local social considerations, and the Impugned Provisions represent a reasonable exercise of such policy formulation. There is nothing perverse in the policy choice underlying the Impugned Provisions, and nothing unreasonable or discriminatory in the policy choice, which itself relates to a sub-class of candidates i.e. the State Quota.''
- With regards to Paragraph 8.3, it stated the domicile factor is only being checked and balanced by 'an element of high merit' as an attendant condition.
- The Court further opined that excluding non-government colleges from the stipulation in Paragraph 8.3 was reasonably objective.
- On the choice of State policy, it remarked, ''One may argue that the choice of leaving out non-government medical colleges is unwise and they ought to be treated on par with AIIMS, leaving intact the requirement of the All-India Quota for admission to the MBBS course that the candidate has graduated from. A view that a State policy measure is unwise would not stand elevated to that measure being unconstitutional. One must see manifest perversity and arbitrariness from the provision.''
- It reiterated that since half of the postgraduate seats in Maharashtra are reserved to graduates from outside Maharashtra, the condition in Paragraph 8.3 adds a condition of merit.
- In the present case, the Court noted that the petitioner neither graduated from a Central Government Institution nor did she secure admission to CMV Vellore through the All-India Quota.
- It noted that the petitioner secured admission to CMC Vellore only in her capacity as a member of the minority Christian community. It observed that even though All-India Quota was available for admission to CMC Vellore, the petitioner did not make the cut through it but secured admission in her capacity as a Christian.
- It remarked that that the petitioner could have taken admission in any of the colleges referred to in Paragraph 8.3 through the All-India Quota or to any medical college in Maharashtra,
- But chose to enter CMC Vellore with a minority quota seat. In doing so, the petitioner forfeited her prospects of being considered eligible for a State Quota seat.
- It further noted that the petitioner received offers of admission to MBBS courses back in 2016 even from colleges situated in Mumbai. However, she chose to associate with a high ranking college and joined CMC Vellore.
- The Court observed that the petitioner's grievance was a matter of ''chance litigation'' to widen her options to admissions in post-graduate college.
- It remarked, ''In making that choice, the Petitioner consciously chose not to be regarded as a State Quota candidate for her future post-graduate aspirations in Maharashtra. Indeed, even now, she can compete in the non- State Quota component of seats for the post-graduate course, and she has actually successfully done so. Therefore, her grievance on her entitlement being denied to her is purely a matter of ''chance litigation'' to bring in an element of constitutional invalidity to somehow widen the range of choices now available, shrugging off the consequences of choices already made in the educational path.''
- The Court held that the impugned provisions were fair, reasonable and constitutionally valid. It thus dismissed the petition.

XXXX v. XXXX

- **TOPIC**: Not Being Aware of Legal Remedy Not Ground To condone Delay : Punjab & Haryana High court
- **BENCH** : Justice Sumeet Goel
- **FORUM**: Punjab & Haryana High Court

- **MAIN ISSUE**
  - Regarding condonation of delay filed asserting lack of proper legal advice
- **OBSERVATIONS**
  - "It is the duty of all Courts of justice, to take care for the general good of the community, that hard cases do not make bad law,'' quoted the Punjab & Haryana High Court while refusing to allow plea for condonation of delay filed asserting lack of proper legal advice.
  - Justice Sumeet Goel said, "A mere bald assertion of not having been furnished with proper legal advice cannot constitute a sufficient ground for the condonation of delay. Such a plea, unsupported by cogent evidence or substantial justification, fails to meet the threshold of ''sufficient cause'' as envisaged under the law."
  - The Court added that permitting condonation on such "tenuous grounds" would render the statutory framework governing limitation redundant, thereby undermining its fundamental objective of ensuring finality and discouraging undue protraction of litigation.
  - These observations were made while hearing the plea filed for condoning a delay of 213 days in filing a revision challenging the maintenance order.
  - Counsel appearing for the applicant, while seeking grant of prayer for condonation of delay of 213 days, argued that the applicant was not aware about the remedy available to her to file the revision petition for enhancing the maintenance amount awarded by the trial Court.
  - After examining the submissions, the Court noted that the sole ground for condonation of delay, is that the delay occurred due to the petitioner not having received appropriate legal advice as to the availability of remedy in the form of revision.
  - Justice Goel highlighted that the Limitation Act, 1963 is premised on the principle that litigants must exercise diligence and vigilance in the pursuit of their legal remedies.
  - "To relax this standard without compelling reasons would open the floodgates for frivolous delays, defeating the legislative intent of maintaining judicial discipline and efficiency. While this stance may appear stringent in a country like ours, where a lack of awareness regarding legal rights remains prevalent among the general populace, it reflects the legislative intent behind the law," said the Court.
  - The Limitation Act, 1963 is enacted to serve the collective good, ensuring timely resolution of disputes and fostering legal certainty.
  - It cannot be diluted or relaxed for individual hardships, as doing so would compromise the uniformity and predictability essential for the legal system, added the judge.
  - In the present case, the Court opined that no worthwhile explanation has been given for the same. "No cause, much less sufficient cause, as required in law, has been shown to condone the delay of 213 days in filing the accompanying revision petition."
  - Stating that "the delay is both inordinate and inexplicable", the Court rejected the plea.

St. Stephen's Malankara Catholic Church v. State of Kerala & Ors

- **TOPIC :** Putting Up Boards of Temples, Churches or Mosques on Busy Roads Is Not Religious Practice : Kerala High court
- **BENCH** : Justice Devan Ramachandran
- **FORUM**: Kerala High Court
- **MAIN ISSUE**
  - Regarding unauthorized boards/ banners and public places.
- **OBSERVATIONS**
  - The Kerala High Court observed that putting up boards in busy thoroughfares cannot be said to be a religious practice. The observation was made by Justice Devan Ramachandran while hearing a 2018 plea concerning unauthorized boards/ banners and public places.
  - The Court criticized the administration for being unable to follow the Court's direction and remove all the unauthorised boards from the cities.
  - The Court observed that the judiciary can be effective only if the administration is good.
  - '' There's hardly anything that can be done if the official machinery continues to be either deliberately or otherwise indifferent or inactive.''
  - The Court said that the boards are mainly of political parties and religious places. The Court remarked that nobody can claim putting up boards is a religious practice.
  - "Religious boards are kept- temples, churches. Nobody will do anything out of fear. Anyways, these boards are not religious practice. That's for sure. It is not a religious practice to keep a board of a temple, mosque or church in a busy thoroughfare. That we know. That we can say without fear"
  - The Court remarked that the Secretary of Local Self Government institutions are scared to follow

the Court's order.

- It added that they are scared that if they remove the board of a political party, they will be attacked. The Court observed that they are scared of political parties not in power also, thinking that the party might come to power in future.
- The Court also said that they are not scared of courts as the Court only deals with things in a civilized manner.
- The Court, saying that it will put the Court's might behind the secretary, asked the police to give protection to the Secretaries from any threat they receive for following the orders of the Court in this case. The Court also asked the police to take the miscreants to task and proceed against them as per law.
- The Court further said that it was not against advertisements. However, the Court observed that many of these boards are kept dangerously or causing inconvenience to the public.
- The Court observed that many of these boards are kept on the handrails of the road. The public cannot use the handrails built with their money. Flags are tied on these handrails. Sometimes, the flags become loose and they bend towards the road.
- The Court said that motor vehicles have to drive by evading these flags and they risk an accident. The Court also noted that many of the big boards are bent. The Court said if a good wind comes, this might fall upon some person.
- The Court also remarked that the administration will then pay a compensation of Rs. 10 Lakh and think everything is over.
- The Court said that these people are continuing old practices without even thinking. The Court remarked kids nowadays get their information from social media and not from these boards. The Court challenged the State to get public opinion on whether they want these boards or not.
- ‘‘99% of people are not in approval of this. You ask anybody. You have a referendum. Let the referendum say. Let people say let there be boards’’, the Court remarked orally.
- The Court had earlier ordered that a fine of Rs. 5000 will be collected for every unauthorised board installed. The Court enquired whether the fine can be increased. The Court pointed out that small boards and huge flexes cannot be fined equally.
- The Court asked the Secretary of Local Self Government Institution to appear before the Court online for an interaction.

Minku v. State of Punjab

- **TOPIC :** Conducting Illegal Business of Railway Ticket Booking is Cognizable But Bailable offence : Punjab & Haryana High court
- **BENCH :** Justice Anoop Chitkara
- **FORUM:** Punjab and Haryana High Court
- **MAIN ISSUE**
  - Regarding the the offence of carrying illegal business of ticket booking under the Railways Act (Section 143)
- **OBSERVATIONS**
  - The Punjab and Haryana High Court has held that the offence of carrying illegal business of ticket booking under the Railways Act (Section 143) is bailable and cognizable, even when the Act does not explicitly declare the offense as "Bailable’’.
  - The Court thus granted anticipatory bail to the accused and explained, ‘‘Although the Railways Act, 1989 does not explicitly declare the offense under section 143 as 'Bailable’’ and despite the standing order No. 95 not declaring the offenses under Ss. 143 and 160 as bailable; and irrespective that when the sentence under Section 143 which extends up to three years, would make it fall in the middle row of the classification of offenses described in Part-II of BNSS, 2023 (Non-bailable), the offence under S. 143 is 'Bailable' because the power to arrest have been given only to the officers authorized by a notified order of the Central Government, and per proviso (a) to S. 180-D, when such authorized officer is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he has to release the accused on bail.’’
  - These observations were made while hearing the anticipatory bail plea of one Minku, who was accused of carrying illegal business of ticket booking, under Section 143 of the Railways Act. The Court of Additional Sessions Judge rejected his plea.
  - After examining the submissions, the Court considered the question, ‘‘Is an offense punishable under S. 143 of the Railways Act, 1989, Cognizable and/or Non-Bailable?.’’
  - The Court noted that different views have been taken by various High Courts. The Delhi High Court, Munna Kumar v. State through NCT Delhi,

[2005 (83) DRJ 92], disposed of the plea stating that it would be bailable.

- The Jharkhand High Court in Nishant Kumar Jaiswal @ Nishan Kumar v. The State of Jharkhand, [A B.A. No. 3374 of 2016] said, Chapter XV of the Railways Act, 1989, which deals with penalties and offences and starts from Section 137 and ends from Section 182, nowhere it provides that the offences are non-bailable.
- In view of the above law, the Court held that anticipatory bail application is thus, not maintainable for offence under Section 143 of the Act.Similar view was taken by the Patna High Court in Rakesh Kumar v. The State of Bihar.
- The judge further noted that Section 179 empowers an officer authorized by a notified order of the Central Government to arrest a person accused of committing an offense punishable under Section 143 of the Act, without a warrant or other written authority.
- ‘‘Simply because an accused can be arrested does not make the offense non- bailable. The difference is that when an offense is bailable, the accused must be released on bail after furnishing the applicable bail bonds,’’ opined the Court.
- The judge further highlighted that Since the Railways Act, 1989 is silent about whether the offense punishable under section 143 is bailable or non-bailable, the relevant provision that applies in such situations is Schedule I Part-II of BNSS, 2023, which is the same as it was under CrPC.
- Upon analysing the same, the Court found that, section 143 falls in the category ‘‘if punishable with imprisonment for 3 years and upwards but not more than 7 years’’, it will be cognizable and non-bailable.
- ‘‘Even if an offense is non-bailable, to arrest or not to arrest is the discretion of the Investigator(s), and it is not necessary for the investigator(s) to mandatorily arrest unless the statute directs that such an accused committing a particular offense must be arrested,’’ said the Court.
- Furthermore reference was made to Section 180-D which prescribes ‘‘Inquiry how to be made against the arrested person.’’
- The proviso (a) to the section, states that if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate.
- However, subsequent to the amendment introducing Section 180-D, the Ministry of Railways issued a standing order, which restricted the scope of Section 180-D by clarifying that offenses under the Railways Act are bailable except under Sections 143 and 160, noted the Court.
- The judge concluded that, ‘‘S. 179(1) of the Railways Act impliedly specifies that the offenses under Sections 150 to 152 will be treated as 'Cognizable' only when arrested without a warrant is made by a Railway Servant or a Police Officer of the rank of a Head Constable and above.
- Whereas, under Section 179(2), the offenses under Sections 137 to 139, 141 to 147, 150 to 157, 159 to 167, and 172 to 176 of the Railways Act will be treated as 'Cognizable' only when arrest without a warrant is made by an officer authorized by a notification order of the Central Government. Given the above, an offense punishable under Section 143 of the Railways Act, 1989, is 'Cognizable.’’’
- It further opined that it will be bailable because, as per Section 180-D, when such authorized officer is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he has to release the accused on bail.
- In the light of the above, the Court allowed the plea and anticipatory bail was granted.