

## HDFC BANK LTD. v. THE STATE OF BIHAR & ORS

- ❖ **TOPIC :** Bank Juristic Person, No Mens Rea' SC Quashes FIR Against HDFC Bank & Officials For Violating Income Tax Dept Order
- ❖ **BENCH :** Justices BR Gavai and KV Viswanathan



- ❖ **FORUM::** Supreme Court
- ❖ **MAIN ISSUE**
  - Whether a criminal case is registered against HDFC Bank Ltd. Can be quashed or not for violating the notice issued by the Income Tax Department to stop the operation of bank accounts, fixed deposits, and lockers of an income tax assessee.
- ❖ **BACKGROUND**
  - In this case, the IT Department issued notice to the Appellant/Bank under Section 132 (3) of the Income Tax Act, 1961 to stop the operation of the assessee's bank account, fixed deposits, and locker.
  - Later on, the department allowed the assessee to operate the bank account but maintained the status quo on the operation of fixed deposit and bank locker.
  - The allegations against the appellant/bank officials were that they had violated the notice issued by the department by allowing the assessee to operate the bank locker.
  - Resultantly, the FIR was registered against them under Sections 34, 37, 120B, 201, 206, 217, 406, 409, 420 and 462 of the Indian Penal Code, 1860.
- ❖ **OBSERVATIONS**
  - The Supreme Court quashed a criminal case registered against HDFC Bank Ltd. for violating the notice issued by the Income Tax Department to stop the operation of bank accounts, fixed deposits, and lockers of an income tax assessee.
  - The bench comprising Justices BR Gavai and KV Viswanathan set aside the High Court's decision which refused to quash the case registered against

- officials of the HDFC Bank Ltd. for violating the IT Department order and allowing the assessee to operate the bank locker when the prohibitory order regarding operation of the bank locker was in operation.
- Finding force in the Appellant's contention, the judgment authored by Justice Gavai pointed out that the essential ingredients of the provisions of aforesaid offences were not met out to book the appellant/bank for the said offences.
- The appellant-bank is a juristic person and as such, a question of mens rea does not arise.
- However, even reading the FIR and the complaint at their face value, there is nothing to show that the appellant-bank or its staff members had dishonestly induced someone deceived to deliver any property to any person, and that the mens rea existed at the time of such inducement.
- As such, the ingredients to attract the offence under Section 420 IPC would not be available."
- "For bringing out the case under criminal breach of trust (S. 409 IPC), it will have to be pointed out that a person, with whom entrustment of a property is made, has dishonestly misappropriated it, or converted it to his own use, or dishonestly used it, or disposed of that property."
- The Court added that since there was no entrustment of any property with the appellant bank, the ingredients of Section 462 IPC are also not applicable.
- "Likewise, since the offences under Section 206, 217 and 201 of the IPC requires mens rea, the ingredients of the said Sections also would not be available against the appellant-bank. The FIR/complaint also does not show that the appellant bank and its officers acted with any common intention or intentionally cooperated in the commission of any alleged offences.
- As such, the provisions of section 34, 37 and 120B of the IPC would also not be applicable.", the court said.
- Applying the ratio of Bhajan Lal v. State Of Haryana, the Court found it the fit case to quash the FIR because the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- "The First Information Report being Case No. 549 of 2021 registered at Gandhi Maidan Police Station, Patna on 22nd November, 2021, against

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certain officials of the appellant-bank working at its Exhibition Road Branch, Patna for the offences punishable under Sections 34, 37, 120B, 201, 206, 217, 406, 409, 420 and 462 of the Indian Penal Code, 1860 is also quashed and set aside qua the appellant-bank.”, the court held.

- Accordingly, the appeal was allowed.

### Central Warehousing Corporation & Anr. v. M/S Siddharth Tiles And Sanitary Pvt. Ltd.

- ❖ **TOPIC :** Eviction order Under Public Premises Act Doesn't bar Arbitration For Contractual Disputes : SC
- ❖ **BENCH :** Justice PS Narasimha and Justice Sandeep Mehta



- ❖ **FORUM::** Supreme Court
- ❖ **MAIN ISSUE**
  - Whether Eviction order under public premises does bar arbitration or not for contractual disputes.
- ❖ **OBSERVATIONS**
  - The Supreme Court observed that an eviction order passed by the Estate Officer under the Public Premises Act would not come in the way while invoking the arbitration clause upon filing an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (“Arbitration Act”) for appointment of an arbitrator to decide contractual disputes.
  - The bench comprising Justice PS Narasimha and Justice Sandeep Mehta observed that when the agreement entered between the parties specifically contains an arbitration clause saying that the dispute arising out of an agreement (especially renewal of the agreement) would be resolved by the arbitration then the order of the estate officer under the Public Premises Act ejecting the party being in unauthorized possession after the expiry of the agreement would not restrain the dispossessed party to invoke the arbitration clause

- to decide the dispute arising out of the agreement.
- This was the case where the respondent availed the warehousing facility from the appellant to keep its goods in the appellant's warehouse. An agreement was entered between them containing the relevant clauses including the clause to invoke arbitration in the event of occurrence of any dispute between the parties related to the terms of the agreement.
- The respondent sought renewal of the agreement after the validity of the agreement expired.
- However, the appellant rejected the plea for renewal of the agreement on the grounds of non-payment of renewed warehousing facility fees.
- Since the dispute pertained to the non-renewal of the agreement by the appellant because of the non-payment of the revised fees during the subsistence of the agreement, therefore, the respondent considering the dispute to be arising out of the agreement invoked the arbitration clause and filed an application under Section 11(6) of the Arbitration Act for the appointment of the arbitrator.
- The High Court while exercising powers under Section 11(6) referred the dispute to the arbitration because there exists a valid arbitration clause, and the dispute could be well settled by the arbitrator in arbitration proceedings. Following this, the appellant/warehousing company approached the Supreme Court protesting against the referral of the dispute to the arbitration.
- Affirming the High Court's decision, the judgment authored by Justice PS Narasimha framed a question of whether the provision of the Public Premises Act overrides the provisions of the Arbitration Act.
- The Court observed that the High Court didn't commit an error while referring the dispute to the arbitration considering the fact that the dispute arose with respect to the revision of the storage charges and renewal of the agreement was based on the construction of the agreement itself.
- "These two disputes will undoubtedly arise out of the agreement between the parties and the resolution of such disputes is clearly covered by the arbitration clause. After the recent decision of this court in SBI General Insurance Co. v. Krish Spinning the remit of the referral court to consider an application under Section 11(6) is clear and unambiguous. We need to just examine the existence of an arbitration agreement.”, the court observed.
- “For the reasons stated above, we have no hesitation in rejecting the petition and we further

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hold that the appellant must bear the costs for this unnecessary litigation which we quantify at Rs. 50,000/-.’, the court held.

- Accordingly, the appeal was dismissed.

### Bcc Developers & Promoters Pvt. Ltd v. Bhupender Singh & Anr

- ❖ **TOPIC :** Court Under S.9 of Arbitration Act Can Grant Interim Measure To Protect Property From Being ‘Wasted’ While Hearing Appeal U/S 37, Delhi HC
- ❖ **BENCH :** Chief Justice Manmohan and Mr. Justice Tushar Rao Gedela



- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
  - Whether the court in the exercise of powers under Section 37 of the Arbitration Act, is obligated to consider the merits or not.
- ❖ **BACKGROUND**
  - The present appeal was filed under Section 37 of the arbitration act by BCC Developers, the appellants. In this appeal, an interim order passed by a single judge was challenged in which the appellants were restrained from alienating the property which was the subject matter of an agreement to sell executed on August 5, 2023.
  - This agreement was entered into between the appellant and Bhupender Singh and another, the respondents in which the property was sold for a consideration of Rs. 8.21 crore.
  - The respondent paid an advance amount of Rs. 1.65 crore towards the completion of the agreement. The remaining payment had to be made in installments. When the respondents failed to make the first two instalments, the agreement was terminated by the appellant on January 3, 2024.
  - The appellant also forfeited the amount of Rs. 65 lakhs and returned the amount of 1 crore to the respondent.

- Thereafter a petition under Section 9 of the arbitration act was filed by the respondent seeking to prevent the appellant from disposing of the property.
  - The appellant argued that since the respondent failed to make the required payment, the action of termination of contract and forfeiture of amount was justified.
  - They further contended that the property did not overlap in any manner with the disputed property for which a suit was pending before the Judicial Additional Collector in Behror, Rajasthan.
  - The respondent argued that the appellants had already sold 84% part of the property during the pendency of the Section 9 petition and at that time no interim measure was in operation.
- ❖ **OBSERVATIONS**
- The Delhi High Court Bench of Chief Justice Manmohan and Mr. Justice Tushar Rao Gedela held that the court in the exercise of powers under Section 37 of the Arbitration Act, is not obligated to consider the merits or otherwise of the facts as stated by the litigants.
  - Suffice it to state that the High Court under Section 9 of the Act is empowered to exercise jurisdiction as an interim measure to protect the property, items or goods from being wasted.
  - The court observed that the court is justified to grant interim reliefs under Section 9 of the arbitration act to protect the subject matter of the suit from being wasted or disposed of. The court further observed that the order passed by the single judge was based on a prima facie finding of overlapping properties and forfeiture of Rs. 65 lakh. The interim measures passed were justified.
  - The court further noted that matters with respect to payment default and others facts should be decided by the arbitral tribunal and not by the court under Section 9 of the arbitration act. The court further observed that at this stage, the role of the court is to assess whether a prima facie case exists for granting interim protection and if such protection is not granted whether it would cause an irreparable harm.
  - The court agreed with the conclusion drawn by the single judge wherein the appellant was restrained from transferring the property. The court noted that the respondent had raised genuine concerns of ownership and subsequent attachment of the property due to ongoing civil proceedings in the court. The court further noted that this overlap between the parties raised apprehensions that the transfer of the property could seriously affect the rights of the respondent.

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- The court further observed that a significant part of the property had already been sold by the appellant in the absence of interim protection. The court apprehended that if the appellant is not further enjoined from transferring the remaining property, the purpose of the arbitration proceedings would be defeated. Therefore, the remaining property had to be protected by passing an interim order under Section 9 of the act.
- The court further rejected the argument of appellant pertaining to delay in commencing the arbitral proceedings and observed that appropriate remedies were available under the arbitration act.
- The court concluded that this Court finds that the learned Single Judge has in fact satisfied himself about the principles encompassing the triple test before grant of any interim order. In that view of the matter, this Court does not find any violation of law by the learned Single Judge.
- Accordingly, the court held that there is no merit in this appeal and the same is dismissed along with the pending applications.

### XXXX v. XXXX

- ❖ **TOPIC** : Forcing Couple To Live Together After 7 Years of separation would Itself Amount To Mental Cruelty, Punjab & Haryana HC
- ❖ **BENCH** : Justice Sudhir Singh and Justice Jasjit Singh Bedi
- ❖ **FORUM**: Punjab and Haryana High court



- ❖ **MAIN ISSUE**
  - Whether divorce can be granted or not to a couple who were living separately for 7 years
- ❖ **OBSERVATIONS**
  - The Punjab & Haryana High Court has granted divorce to a couple who were living separately for 7 years, observing that the marriage between the parties has become "unworkable" and has reached

the stage of beyond repair and if the parties are called upon to stay together, it may lead to mental cruelty to both of them.

- Justice Sudhir Singh and Justice Jasjit Singh Bedi said, "...the parties, who have been living separately since 2017, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties. The Court was hearing an appeal filed by the wife against the order of a family court whereby her plea for divorce on the ground of cruelty was rejected. It was alleged by the wife that from the beginning of the marriage in 2005, the husband and his family used to harass her for dowry. However, the Family Court had dismissed the plea observing that the allegation levelled by the wife is general in nature. After hearing the submissions, the High Court considered the question, "Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?"
- The Court noted, "although the wife was unable to provide evidence of physical cruelty or desertion before the Family Court, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than seven years and during this period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day."
- Speaking for the bench Justice Sudhir Singh noted that even mediation proceedings between the parties failed.
- "Indisputably, the parties have been living separately since 2017. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship," added the Court.
- It relied on a catena of judgments including the Supreme Court's decision in K. Srinivas Rao v. D.A. Deepa (2013) to underscore that when a marriage is dead for all purposes, it cannot be revived by the Court's verdict.
- It also considered that the husband is defending the judgment and decree passed by the Family Court,

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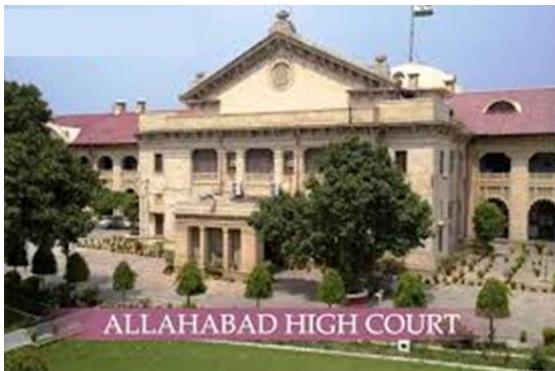
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but on the other hand, his behaviour during mediation proceedings remained adamant.

- The bench further noted that the husband did not make any effort to bring his wife back to the matrimonial home, nor had he filed any petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.
- "This clearly speaks volumes of the conduct of the respondent-husband that he is not bothered about the well being and maintenance of the appellant-wife and their son. The only aim of the respondent-husband appears to be to frustrate the appellant-wife's claim and further keep her engaged in the protracted litigation," said the bench.
- In the light of the above, the Court allowed the wife's appeal and granted divorce to the couple.

### State of UP vs. Balwan Singh And 3 Others

- ❖ **TOPIC :** 'Victim' Appears to be a Consenting Party, Allahabad HC Upholds Acquittal of 4 In 2009 Rape Case
- ❖ **BENCH :** Justice Rajiv Gupta and Justice Ram Manohar Narayan Mishra



- ❖ **FORUM:** Allahabad High Court
- ❖ **MAIN ISSUE**
  - Whether the acquittal of 4 men is correct or not in connection with an alleged rape case dating back to the year 2009.
- ❖ **BACKGROUND**
  - As per the facts of the case, on April 22, 2009, defacto complainant Munna Lal filed a complaint at a Police Station in Kanpur Dehat stating that his minor daughter was abducted on April 7, 2009, by accused Balwan Singh and Akhilesh.
  - After searching for her, the complainant got to know from one Akhilesh that his brother Siya Ram and his brother-in-law had taken away his daughter. Fearing for her safety, he reported the incident to the police.

- Following a search by the police, the victim was finally recovered on May 3, 2009, along with the accused, Balwan Singh, near a railway station. Accused Balwan was taken into custody, and the victim was sent for a medical examination.
- The medical examination revealed no injuries; however, the victim's hymen was found torn, and she came out to be over 18 years old based on radiological assessment.
- In the opinion of the lady doctor, the victim was found to be used to sexual intercourse, and no definite opinion about rape was given.
- Charges were framed against accused-appellants [Balwan Singh, Akhilesh, Siya Ram, and Vimal Chandra Tiwari] under Section 376 and 366 IPC.
- In its judgment acquitting the accused, the Trial Court found, based on the evidence adduced before it, that the victim, a major, had left her home willingly with the accused.
- Despite getting opportunities to seek help, she made no effort to alert anyone or raise the alarm about her alleged abduction, and this proved that she had voluntarily accompanied the accused.
- Therefore, it was discerned that she was neither taken by the accused against her will nor was subjected to sexual intercourse against her will, and hence, the accused were acquitted of the charges.
- Challenging their acquittal, the state moved the HC on the grounds that the trial court had misread the evidence adduced during trial as both the witnesses of facts, the PW1 (informant/complainant), the father of the victim and PW2 (victim) had fully proved the guilt of the accused respondents.
- It was also contended that the victim had categorically stated in her evidence that the applicant had committed bad work, which implied that she was subjected to rape. Thus, it was prayed that their acquittal be set aside.

#### ❖ **OBSERVATIONS**

- The Allahabad High Court recently upheld the acquittal of 4 men in connection with an alleged rape case dating back to the year 2009, as it concurred with the view of the trial court that the victim appeared to be a consenting party.
- A division bench comprising Justice Rajiv Gupta and Justice Ram Manohar Narayan Mishra noted that it is a settled principle that while exercising appellate powers, even if two reasonable views/conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the Trial Court.
- Against this backdrop, when the division bench examined the facts of the case, it found that the FIR

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was lodged 15 days after the incident, and the prosecution did not properly explain this inordinate delay.

- The bench also noted that the informant (PW-1) was not an eyewitness, and the main witness was Rohit (the brother of the victim), but he was not examined during the trial for reasons best known to the prosecution.
- The Court further noted that the victim remained in the company of accused Balwan, as per her testimony, for 25- 26 days. Still, she never raised any alarm to seek assistance from passersby while on a journey or made a complaint to the wife of the family members of the accused, in whose house she was allegedly confined.
- The Court also considered the fact that her medico-legal examination report did not corroborate the allegations that she was subjected to sexual assault, as no mark of external or internal injury were found on her person and that she was found to be aged around more than 18 years in her medical age determination report.
- In view of this, the court dismissed the state's appeal at the admission stage itself, finding no reasons to doubt the trial court's judgment.

### Surendra Kumar v State of Kerala

- ❖ **TOPIC :** Husband Pledging Wife's gold Without Her consent is Criminal Breach of Trust U/S 406 of IPC : Kerala HC
- ❖ **BENCH :** Justice A. Badharudeen



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
  - Regarding conviction of a husband
- ❖ **OBSERVATIONS**
  - The Kerala High Court has refused to intervene in the conviction of a husband who was found guilty of criminal breach of trust under Section 406 of Indian Penal Code (IPC) for pledging his wife's

gold, without her consent.

- Single bench of Justice A. Badharudeen held that all the elements of the offence are made out. It observed, "In the instant case the prosecution case is that the mother of PW1 gifted 50 sovereigns of gold ornaments to PW1 and the same was entrusted by PW1 to the accused for keeping the same as a trustee in a bank locker. The accused instead of keeping the gold ornaments in a bank locker, dishonestly misappropriated and converted that property for his own use by pledging the same in Muthoot Fincorp and thereby violated the trust and thereby PW1 suffered loss out of the same. Thus, in the instant case, the ingredients to attract offence under Section 406 of IPC is fully made out. In such a case, there is no reason to disbelieve that the accused committed the offence punishable under Section 406 of IPC."
- The prosecution case is that the mother of the wife of the accused, gifted her daughter 50 sovereigns of gold ornaments during her marriage.
- The wife entrusted this gold to her husband asking him to keep the same in a bank locker. The accused, without his wife's knowledge, pledged the gold in a financial company.
- The trial court convicted the accused and sentenced him to undergo simple imprisonment for 6 months. When the case came before the Sessions Court by way of appeal, the court in addition to the 6 months' simple imprisonment directed the accused to pay compensation of Rs. 5,00,000 which shall be paid to his wife.
- The accused challenged this finding saying that the offence is not made out from the evidence.
- The Court observed that the husband was entrusted with the gold which he dishonestly misappropriated and converted it to his own use, violating the trust of his wife and causing her loss.
- The Court held that the offence of criminal breach of trust is fully made out and there is no need to interfere with the decision of the trial court and appellate court.

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