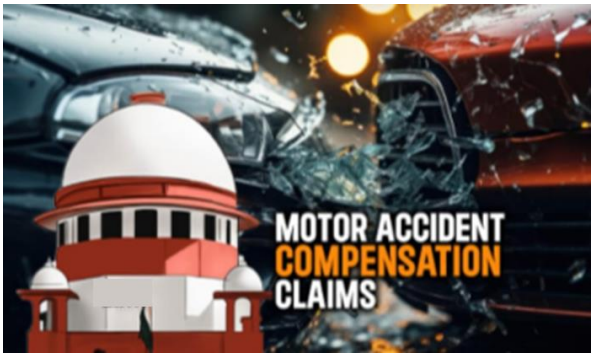
K.S. Muralidhar V. R. Subbulakshmi & Anr

- **TOPIC** : Motor Accident Compensation, SC Awards Rs.15 Lakhs As Compensation For 'Pain & suffering' To Claimant with 100% disability
- **BENCH :** Justices CT Ravikumar and Sanjay Karol



- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding the case of a motor accident injured.
- **OBSERVATIONS**
  - Dealing with the case of a motor accident injured, the Supreme Court recently analyzed the jurisprudence on "pain and suffering" (one of the heads under which compensation is awarded to motor accident victims) and enhanced the amount of compensation awarded - beyond what was prayed for.
  - A bench of Justices CT Ravikumar and Sanjay Karol, allowing the appeal of the injured-appellant, awarded a compensation of Rs.15 lakhs under the head "pain and suffering" even though the appellant had prayed for Rs.10 lakhs.
  - Keeping in view the above-referred judgments, the injuries suffered, the 'pain and suffering' caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, award Rs.15,00,000/- under the head 'pain and suffering', fully conscious of the fact that the prayer of the claimant–appellant for enhancement of compensation was by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded."
  - Going through a plethora of judicial precedents and other scholarly material across various disciplines (bioethics, medical ethics, psycho-oncology, anesthesiology, philosophy, sociology), the Court found a commonality emerging that a person's understanding of oneself is "shaken or compromised" at its very root at the hands of consistent suffering.
  - "In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (supra); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life", it said.
  - To briefly state facts of the case, the appellant was travelling in his company vehicle when it collided with a container lorry being driven negligently. He suffered 90% permanent disability.
  - The Motor Accident Claims Tribunal took the appellant's functional disability as 100% and held the insurance company liable to pay Rs.58,09,930/- with 6% interest per annum (excluding future medical expenses of Rs.1,00,000/-).
  - Aggrieved by the MACT order, both the appellant and the insurance company appealed to the Karnataka High Court.
  - The High Court enhanced the amount of compensation from Rs.58,09,930/- to Rs.78,16,390/-. Challenging the High Court order, the appellant approached the Supreme Court and sought enhancement of compensation awarded under the heads future medical expenses, future prospects, and pain and suffering.
  - The Supreme Court modified the award of compensation on two counts - future prospects and 'pain and suffering'. The total amount liable to be paid to the appellant was held to be Rs.1,02,29,241/-.
  - In enhancing the compensation under the head 'pain and suffering', the Court noted that there was no dispute as to the injuries sustained by the appellant being serious, and their effects on his life being long-lasting.
  - It took into consideration a doctor's testimony, which recorded that the appellant was wheelchair bound, could not do any work, would need help for all his day-to-day activities and that the impairment was likely permanent.

Randeep Singh @ Rana & Anr. V. State Of Haryana & Ors.

- **TOPIC :** Confession of Accused can't Be Proved under S.27 Evidence Act, only Statements Relating to Discovery of Facts Admissible : SC
- **BENCH** : : Justices Abhay S. Oka, Ahsanuddin Amanullah, and AG Masih
- **FORUM:** Supreme Court

❖ **MAIN ISSUE**
- Regarding Section 27 of the Evidence Act.

❖ **OBSERVATIONS**
- The Supreme Court clarified that under Section 27 of the Evidence Act, only the specific portion of the statement of the accused which is directly linked to the discovery/recovery of evidence is admissible, and that the confession of the accused cannot be incorporated while proving a statement under Section 27. The Court held that inadmissible parts of such statements cannot be incorporated in the prosecution witness's chief examination.
- The bench comprising Justices Abhay S. Oka, Ahsanuddin Amanullah, and AG Masih expressed concern about trial courts getting influenced if such inadmissible confessions are incorporated.
- In this case (an appeal against a conviction in the murder case), the accused allegedly made statements regarding the place where the dead body was disposed of. However, the examination-in-chief of the investigating officer included the confession of the accused about his involvement in the murder.
- The Court observed that the investigating officer attempted to prove the confessions allegedly made by the accused to a police officer, which is impermissible.
- "There is a complete prohibition on even proving such confessions. The learned Trial Judge has completely lost sight of Sections 25 and 26 of the Evidence Act and has allowed PW-27 to prove the confessions allegedly made by the accused while they were in police custody," the Court observed.
- Justice Oka, in the judgment, criticized this practice, emphasizing that the trial court should not have included the inadmissible confession in the deposition. According to Section 27 of the Evidence Act, only the portion of the accused's confessional statement that directly leads to the discovery of facts while in police custody is admissible.
- ‘‘What is admissible is only such information furnished by the accused as relates distinctly to the facts thereby discovered. No other part is admissible. By Exhibits 'P55' and 'P56', it is alleged that the accused showed the places where the deceased was abducted, where he was murdered and where his body was thrown. In this case, even the inadmissible part of the statement under Section 27 of the Evidence Act has been incorporated in the examination-in-chief of PW-27. The learned trial judge should not have recorded an inadmissible confession in the deposition.
- A confessional statement made by the accused to a police officer while in custody is not admissible in the evidence except to the extent to which Section 27 is applicable. If such inadmissible confessions are made part of the depositions of the prosecution witnesses, then there is every possibility that the Trial Courts may get influenced by it.’’, the court said.
- Since, the entire prosecution case was based on circumstantial evidence which was not proved beyond a reasonable doubt, and the chain of events was not established to convict the accused, hence the court acquitted the accused charged with offences of abduction and murder under IPC.
- Accordingly, the appeal was allowed.

Pooja Anand v Ashokan K. and Another

❖ **TOPIC:** Filing Complaint Against A person Before Lawful Authority Does not Attract The offence of Defamation : Kerala High court

❖ **BENCH :** Justice P. V. Kunhikrishnan

❖ **FORUM**: Kerala High Court

❖ **MAIN ISSUE**
- Regarding quashing a case of defamation.

❖ **OBSERVATIONS**
- The Kerala High Court while quashing a case of defamation, observed that the complaint filed in the present case before a lawful authority which was enquired by it, will not attract an offence under

Section 500 IPC.

- Justice P. V. Kunhikrishnan in its order said that the fourth exception to Section 499 IPC says that, it is not defamation to publish a substantially true report of the proceedings of a court of justice or of the result of any such proceedings.
- "Admittedly, in this case, a complaint is filed before the Chief Minister and before the Director of Pariyaram Medical College, where the 1st respondent was working, in which certain allegations are made by the petitioner and her mother. The Chief Minister forwarded the same to the police station concerned. In such circumstances, it cannot be said that the defamation as defined under Section 499 IPC is made out.There is no publication of any imputation or making any imputation.
- The complaint is filed before a lawful authority, which was enquired by the authority concerned. That will not attract the offence under Section 500 IPC," the court said.
- The petitioner had filed a complaint against her sister's husband before the Director of Pariyaram Medical College, where he was employed. She stated in her complaint that her brother-in-law was misbehaving with her and also has been attempting to get the property of her mother transferred in his name and his wife's name.
- The petitioner's mother had also earlier submitted a petition before the Chief Minister in 2014 against the brother-in-law, stating that he and his wife were trying to misappropriate her property.
- The petitioner further said that the brother-in-law and her sister had been pressurizing her by raising false allegations that the former got forged documents related to her property and professional degree.
- A defamation suit was filed at the instance of the brother-in-law of the petitioner against the petitioner and her father. The petitioner approached the High Court to quash this case.
- Perusing the defamation complaint the high court said, "The main allegation is about the complaint filed against the 1st respondent which resulted in a Police enquiry and the summoning of the 1st respondent by the Police. Admittedly, the petitioner filed a complaint before the Director of Pariyaram Medical College, where the 1st respondent was working and also a complaint by the mother of the petitioner before the Chief Minister which was forwarded to the Police Station concerned".
- The petitioner submitted before the Court that when her mother was alive, she had filed a petition before the Chief Minister saying that petitioner's sister and husband were trying to misappropriate her property. A police investigation was going on in that matter.
- The brother-in-law had claimed that his reputation suffered because the contents of the complaint filed by her was circulated among his colleagues at his work.
- Finding that Section 500 IPC is not made out by the high court while allowing the plea, quashed the prosecution against the petitioner.

Sh. Laldingluaia v. The State of Mizoram and Anr.

- **TOPIC :** 20 yrs Sentence U/S 4(2) POSCO Act can't Be Imposed when Accused was Booked only U/S 4 : Gauhati High court
- **BENCH :** Justice Michael Zothankhuma and Justice Marli Vankung

- **FORUM**: Gauhati High Court
- **MAIN ISSUE**
  - Regarding the judgment and sentence order passed by a Trial Court under Section 4 of the POCSO Act.
- **OBSERVATIONS**
  - The Gauhati High Court at Aizwal recently set aside the judgment and sentence order passed by a Trial Court under Section 4 of the POCSO Act, on the ground the charge was framed without specifying the charge to be under Section 4(1) or 4(2) of the POCSO Act and the Trial Court did not put any preliminary questions to the victim child, before recording her evidence.
  - The division bench comprising Justice Michael Zothankhuma and Justice Marli Vankung observed, "...before recording the evidence of the 6 year old victim, the learned Trial Court did not put any preliminary questions to the child, to satisfy itself as to whether the victim child had the capacity/capability to understand the questions put

to her and as to whether she could give rational answers to the same. This was a necessity, so as to take away any doubt, with regard to the understanding capacity of the victim child and to do away with any doubt regarding the child having being tutored, inasmuch as, the evidence of the Medical Officer does not inspire confidence.''

- The prosecution case in brief was that an FIR dated December 23, 2021 was submitted by the informant (PW-1), the mother of the victim, who stated that on the evening of December 23, 2021 at around 3:30 pm, her 6 year old daughter visited the house of the appellant and came home with a frightened look on her face. On questioning her, her daughter told her that the appellant had inserted his private parts into her private parts and told her not to tell her mother about it or else she would be scolded badly.
- Pursuant to the said FIR, a case was registered against the accused-appellant under Section 4 of the POCSO Act, 2012.
- The Trial Court convicted the accused-appellant and vide its sentence order dated September 07, 2023 sentenced him to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 10,000/-.
- The accused-appellant challenged the said judgment and order of the Trial Court on the ground that the Trial Court did not satisfy itself as to whether the victim child was tutored or not, prior to recording her evidence.
- The Amicus Curiae submitted that unless the satisfaction of the Trial Judge is recorded, with regard to the capability of the victim child to understand questions put to her and that the victim child was capable of giving rational answers, the conviction of the appellant, solely on the basis of the evidence of the child witness was not sustainable.
- It was further submitted that the medical report and the evidence given by the Medical Officer (PW-3) has not clarified as to whether the hymen of the victim had been ruptured or not. It was averred that no specific finding has been made by the Medical Officer with regard to whether there was any bruise/laceration/swelling etc. of the external genitalia of the victim girl.
- The Amicus Curiae further submitted that when the charge framed against the appellant has been made only under Section 4 of the POCSO Act, without specifying whether it should be under Section 4(1) or 4(2), which carries different minimum sentences, the sentence imposed upon the appellant under Section 4(2), without convicting the appellant under Section 4(2) was not justified.
- The Additional Public Prosecutor as well as the Legal Aid Counsel admitted that there has been a mistake committed by the Trial Court in not framing a specific charge under Section 4 (2) of the POCSO Act.
- Therefore, they submitted that the conviction of the appellant under Section 4, without specifying whether it is relatable to Section 4 (1) or 4 (2) was not proper.
- The Court noted that in the instant case the charge has been framed only under Section 4 of the POCSO Act, without specifying the charge to be under Section 4 (1) or 4 (2) of the POCSO Act.
- ''The sentence of the appellant has been made under Section 4, vide Order dated 07.09.2022, for a minimum period of 20 years, though the same can be done only in terms of Section 4 (2) of the POCSO Act. As the charge was framed only under Section 4 of the POCSO Act, we are of the view that the appellant could not have been sentenced for a term of 20 years under Section 4 of the POCSO Act, as the same can be done only in terms of Section 4 (2). Due to the above reasons, it appears that the appellant was not given a proper opportunity to defend himself, with regard to the charge and sentence apparently given under Section 4 (2) of the POCSO Act,'' the Court noted.
- The Court highlighted that due to the absence of a specific charge, i.e., Section 4(1) or 4(2) of the POCSO Act, at the time of framing of the charge stage and thereafter, there is a likelihood of the appellant being misled into believing that the charge has been framed under Section 4(1) also.
- It was observed by the Court that when there is a serious lacuna which could cause prejudice to the appellant, the benefit of doubt should be given to the accused, as he could have been sentenced for a minimum of 10 years under Section 4 (1) of the POCSO Act.
- The Court further noted that before recording the evidence of the 6 year old victim, the Trial Court did not put any preliminary questions to the child, to satisfy itself as to whether the victim child had the capacity or capability to understand the questions put to her and as to whether she could give rational answers to the same.
- ''In view of the above reasons, we are of the view that in this particular case, the evidence of the victim child cannot be the sole basis for convicting the appellant, unless the safeguards mentioned above are undertaken. We are of the view that the

matter should be re-considered by the learned Trial Court, after following all the requirements/procedures required to be followed in law,'' the Court said.

- Thus, the Court set aside the impugned judgment and order and remanded back the case to the Trial Court to take up the proceedings from the state of framing of charge.

Devendra Nath Choubey V. The State of Jharkhand

- **TOPIC :** 'Apprehension' of criminal Force caused By Accused' Gestures sufficient to Constitute Assault : Jharkhand HC Upholds Conviction U/S 353 IPC
- **BENCH** : Justice Anubha Rawat Choudhary

- **FORUM :** Jharkhand High Court
- **MAIN ISSUE**
  - Regarding the actual use of criminal force conditions in relation to assault.
- **OBSERVATIONS**
  - The Jharkhand High Court has ruled that the actual use of criminal force is not a condition precedent to attract the offence of assault defined under Section 351 of the IPC, which is punishable under Section 353 applicable.
  - The Court held that the mere apprehension in the victim's mind about the potential use of criminal force, created by the accused's gestures, is sufficient to constitute the offence.
  - The bench of Justice Anubha Rawat Choudhary, presiding over the case, noted that Section 353 IPC deals with crimes arising from assault and the use of criminal force.
  - It clarified, ''Considering the basic ingredients of the definition of 'assault' under Section 351 IPC this Court is of the considered view that if a person enters the office chamber of a public servant while the public servant is performing his official work and abuses and pressurizes the public servant to do a particular task in a particular manner to which the public servant is otherwise not agreeing or questions the public servant with regards to the manner he has discharged his official duty and thereby prevents the public servant to perform his official duty and escalates the situation to such an extent that the public servant is compelled to call the police to control the situation, the act comes within the meaning of assault as defined under Section 351 IPC and consequently, offence under Section 353 IPC is made out.
  - ''Actual use of criminal force is not a condition precedent to attract Section 351 and consequently attract Section 353 of IPC. Apprehension in the mind of the victim about the use of criminal force created by the gesture of the accused is sufficient. Such apprehension is reflected by the action, reaction and follow up action of the victim to tackle the situation and one such action is to call police to handle the situation when the public servant fails to persuade the accused person,'' Justice Choudhary added.
  - The case involved three individuals who entered the office of the informant, a public servant, and demanded the immediate issuance of a death certificate. One of the accused, D.N. Choubey threatened the informant with dire consequences and began to abuse him. The other two accused were identified as Banamali Singh Choudhary, former Pramukh of Chas Block, and Ramlal Singh.
  - A case was registered against the accused under Sections 353, 448, 504/34 of the IPC.
  - The trial court convicted them under Sections 353 and 504/34 IPC but acquitted them of Section 448 IPC charges. The appellate court upheld the conviction, prompting the revision application now before the High Court.
  - The counsel for the Petitioner argued that there was no eyewitness to the incident, and the trial court had relied on the testimony of P.W.-4.
  - It was further argued that no criminal force was used, and there were no allegations against the accused of preventing the informant from performing his official duties.
  - In response, the counsel for the State asserted that the informant, an executive magistrate, was carrying out his duties in his office when the accused entered and committed the crime.
  - The State's counsel emphasized that to invoke Section 353 of the IPC, the presence of criminal force or assault must be proven, and in this case, the essential elements were clearly established.
  - The Court clarified the definition of assault under

Section 351 of the IPC, stating, ‘‘Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault under Section 351 IPC.’’

- The Court further explained that a gesture made with the knowledge that it would cause apprehension of criminal force constitutes assault. Section 353 IPC encompasses both the use of criminal force and assault. The Court added that while mere words do not amount to assault, they may, when coupled with gestures or preparations, give rise to an assault.
- The Court concluded, ‘‘There is no merit in this revision petition calling for any interference in the conviction and sentence of the petitioner and accordingly this revision petition is dismissed.’’

Baba Singh v. State of U.P. and Ors.

- **TOPIC :** Appointment To Government Post cannot Be Denied Due To mere Implication in Dowry Case : Allahabad High court
- **BENCH :** Justice J.J. Munir

- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding the case of an appointment to a government post.
- **OBSERVATIONS**
  - While considering a case of an appointment to a government post, the Allahabad High Court has held that merely being implicated in a criminal case does not de facto form a basis for rejecting the candidate.
  - In the case where the person seeking appointment was the brother of the main accused and had been implicated in case for dowry, Justice J.J. Munir observed that ‘‘Given the social conditions prevalent in society, while women do become victims of cruelty in their matrimonial homes, it is equally true, and by now, judicially acknowledged, that for slight or no infraction, the entire family of the husband is either reported to the Police or brought before the criminal Court by a disenchanted wife or her relatives, alleging cruelty’’.
  - Petitioner applied for the post of Assistant Boring Technician, Minor Irrigation Department in the State of Uttar Pradesh.
  - He appeared in the relevant examination and passed it successfully. He was then called for a verification of his documents. On his arrival, however, the petitioner was denied the issuance of an appointment letter.
  - He was informed that this was due to the fact that he had a pending criminal case against him under Sections 498A and 323 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prevention Act, 1961.
  - In response, the petitioner filed a writ petition praying that the respondents be directed to reconsider his appointment on the basis of the selection results. The Court, while disposing of that petition, directed that the petitioner be allowed to submit a fresh representation to the Chief Engineer, Minor Irrigation Department and that the Chief Engineer decide the representation in accordance with law.
  - Thereafter, the petitioner submitted his representation which was rejected, once again on the grounds that a criminal case was pending against him. Aggrieved by the same, he filed the present writ petition.
  - Petitioner contended that when he applied for the post, he was unaware of the institution of a criminal case against him. He submitted that the case in question was filed by his elder brother's father-in-law against his entire family, barring his brother, for mentally and physically harassing the daughter for dowry. Pursuant to this, a summoning order was issued, on the basis of which the petitioner was declined the appointment letter.
  - It was pleaded that the entire proceedings of the criminal case had been challenged by the petitioner where the Court issued notice to the complainant and stayed further proceedings in the complaint.
  - The Court held that the impugned order was

‘‘riddled and clogged with unnecessary details’’. The Court examined the documents pertaining to the District Management's involvement and Government Order dated 28.04.1958, which outlined the rules for background verification of an individual prior to being appointed to a government service. It held that District Magistrate failed in his duty to report his own views to the Appointing Authority after receiving the relevant report from the police.

- Further, to determine whether the petitioner was to be denied employment, the Court clarified that the purpose of the Government Order dated 28.04.1948 was only to ensure that no man with a criminal antecedent could enter the government. Considering the complex nature of dowry cases, the Court held that where the allegation was not serious and complicity could not be established, the petitioner could not be denied employment on the basis of the same.
- The Court held that the petitioner had not concealed any facts from his employers because there were no pending cases against him when he applied for the post. Reliance was placed on the judgments of the Supreme Court in the case of Commissioner of Police and Ors. v. Sandeep Kumar and Ram Kumar v. State of U.P. and Ors. to hold that for offences arising out of matrimonial disputes, even in the case of trivial offences, public employment was not to be denied.
- Justice Munir observed that the petitioner did not appear to be a man of criminal antecedents. It was observed that there was no proof to conclusively establish that the petitioner committed the crimes he had been accused of, especially given the lack of a proper report by the District Magistrate.
- Regarding the general accusation made against the petitioner's family, the Court relied on the judgment of the Supreme Court in Avtar Singh v. Union of India and Ors. to hold that since the petitioner did not conceal any information, he was not at fault, a fact that was not disputed by the respondents.
- ‘‘This is a case, given the nature of allegations and the offence, besides the nature of proceedings taken, which is a complaint case against the petitioner, who is the brother of the prosecutrix's husband, with no specific role assigned to him in the commission of the offence, where, appointment ought not have been denied.’’
- Allowing the writ petition, the Chief Engineer was directed to reconsider the petitioner's appointment.