

19 September 2024

Ravinder Kumar v. State of Haryana

- ❖ **TOPIC :** PCPNDT Act | Search Of Clinic Illegal If Not Authorized By All Three Members Of District Authority
- ❖ **BENCH :** Justice Abhay Oka and Justice Augustine George Masih



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether the search of a clinic is legal or illegal if it is not authorized by all three members of the District Authority.
- ❖ **FACTS**
 - The appellant, a practicing physician and radiologist, was implicated in a sting operation conducted by the police and local authorities in Gurugram on April 27, 2017.
- ❖ **BACKGROUND**
 - The operation was triggered by allegations that the doctor (co-accused) was involved in a racket related to sex determination and illegal abortions.
 - A decoy patient and a shadow witness informed her that the sex of the foetus was known and sought confirmation through ultrasound as well as an MTP.
 - The co-accused allegedly arranged for the decoy patient to undergo sex determination through ultrasound at the appellant's clinic for Rs.15,000.
 - On the day of the sting operation, the decoy patient was taken to the appellant's clinic for the ultrasound. After the procedure, the police seized the money and a USG report signed by the appellant.
 - An FIR was for offence under Section 23 of the PCPNDT Act, 1994, which prohibits sex determination procedures. Subsequently, the District Appropriate Authority filed a complaint against the appellant and the other accused before the Chief Judicial Magistrate in Gurugram.

- The appellant sought to quash both the complaint and the FIR, but the HC declined to grant such relief, leading to the present appeal.
- ❖ **OBSERVATIONS**
 - The Supreme Court recently held that a search and seizure operation under Section 30 of the Pre Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) must be authorised by all three members of the District Appropriate Authority under the Act collectively, and any decision by a single member is illegal.
 - A bench of Justice Abhay Oka and Justice Augustine George Masih quashed a complaint and FIR filed against a doctor accused of performing sex determination tests and participating in an illegal medical termination of pregnancy (MTP) racket.
 - Section 30(1) of the PCPNDT Act grants the Appropriate Authority constituted under Section 17 the power to search and seize records in a clinic if it has “reason to believe” that an offence under the Act is being committed.
 - The phrase “reason to believe” in Section 30(1) is a safeguard against arbitrary search and seizure, and the entire Authority must form that opinion, the Court observed.
 - The Court allowed the doctor's appeal challenging a judgment of the Punjab and Haryana High Court, which had refused to quash the FIR and complaint.
 - In the present case, the concerned Appropriate Authority constituted under Section 17 of the Act consists of the Civil Surgeon, the District Program Manager of the Women and Child Development Department, and the District Attorney.
 - The Court found that the raid was authorized solely by the Civil Surgeon, without the involvement of the other two members of the District Appropriate Authority, which vitiated the search.
 - The Court further observed that the seizure memo from the raid indicated discrepancies in the composition of the search team. While one document mentioned that three officers conducted the raid, another mentioned four officers.
 - The Supreme Court allowed the appeal, holding that the FIR and the complaint were both solely based on an illegal search, and thus, continuing the prosecution would amount to an abuse of the legal process.

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Sandeep Kumar v. Vinod & Ors.

- ❖ **TOPIC** : Candidate Duly Elected In Democratic Process Can't Be Stopped From Assuming Office: Supreme Court
- ❖ **BENCH** : Justices Sudhanshu Dhulia and Ahsanuddin Amanullah



- ❖ **FORUM**: Supreme Court
- ❖ **MAIN ISSUE**
 - Whether a Candidate Duly Elected In Democratic Process Can Be Stopped From Assuming Office or not.
- ❖ **BACKGROUND**
 - It was a case where the Appellant, one Sandeep Kumar, had won the Panchayat elections for the post of Sarpanch Asaudah (Siwan) in District Jhajjar, Haryana but was unable to assume the charge of the office.
 - Along with the Appellant, three other candidates contested the same post, where one candidate withdrew the nomination, and the nominations of the other two candidates were rejected citing that they didn't fulfill the educational qualifications.
 - After this, only the Appellant was left and was declared elected as Sarpanch.
 - Soon after the Appellant's election, one of the contestants (Respondent No. 1) approached the High Court seeking direction to the state election authorities to consider the matriculation certificate of respondent no.1 and stated that his nomination can't be rejected based on his educational qualification.
 - The High Court passed an order and directed the returning officer to accept the nomination of respondent no.1.
 - Alongside respondent no.1 writ petition, the Appellant also filed a writ petition seeking the direction from the High Court to the DEO to give charge of Sarpanch to the appellant.
 - As the High Court passed no order in the Appellant's petition, he preferred a Special Leave Petition before the Supreme Court.
- ❖ **OBSERVATIONS**
 - Holding that a candidate who has been duly elected

in a democratic process cannot be stopped from assuming the elected office, the Supreme Court directed the District Election Officer of Jhajjar (Haryana) to give the charge of the Sarpanch to the elected candidate who was restrained from assuming the charge of the Office despite having won the election.

- Upon hearing the counsels of the parties, the bench comprising Justices Sudhanshu Dhulia and Ahsanuddin Amanullah noted that respondent no.1 could not have approached the High Court under its writ jurisdiction. Rather, he could have filed an Election Petition challenging the election of the Appellant or for that matter the rejection of its nomination paper by the election authorities.
- “Under these circumstances, we are of the opinion that an interim order needs to be passed in this case as a candidate who has been duly elected in a democratic process cannot be stopped from assuming the elected office, particularly in the manner in which it has been done.”, the Court added.
- “Accordingly, we direct the Deputy Commissioner, Jhajjar, District Jhajjar-cum-District Election Officer (respondent no.6) to forthwith give the charge of Sarpanch of a Village Panchayat namely Asaudah (Siwan), District Jhajjar, Haryana, to the appellant.”, the Court ordered.

Warner Bros. Entertainment Inc. & Ors. V. Moviesmod.Bet & Ors.

- ❖ **TOPIC**: Delhi High Court Passes 'Dynamic+' Injunction To Protect Copyrighted Works Of Warner Bros, Netflix & Others
- ❖ **BENCH** : Justice Saurabh Banerjee



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- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Whether a dynamic+ injunction can be passed or not.
- ❖ **FACTS**
 - The suit was filed by Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Netflix US, LLC, SBS Co. Ltd., SLL Joongang Co. Ltd. and CJ ENM Co. Ltd.
- ❖ **BACKGROUND**
 - It was alleged that the infringing websites were carrying and disseminating the copyrighted content without any license or authorization from the entertainment companies.
 - The Delhi High Court has recently passed a dynamic+ injunction to protect the copyrighted works of Warner Bros, Netflix, Disney and other global entertainment companies.
 - Justice Saurabh Banerjee was dealing with a suit filed by global entities against 45 rogue websites seeking to restrain them from hosting and streaming their copyrighted works in various movies and shows.
- ❖ **OBSERVATIONS**
 - Justice Banerjee said that it was a classic case exhibiting the evolution of “hydra-headed” DNRs or websites for streaming and making available to the public any copyrighted content without appropriate licensing.
 - “Technology, certainly has its (ill)effects, which can be (mis)utilized if there is no proper channelisation. It may be a 'boon' for one, but if it is without any right, it can (soon) prove to be a 'bane' as well,” the court said.
 - It added that the mushrooming of the rogue websites, clubbed by their blatant and utter slavish activities with ulterior purposes, cannot be allowed to continue.
 - The court passed an ex parte ad interim injunction and restrained the rogue websites from streaming or hosting the copyrighted works of the plaintiffs. It further ordered that access to the infringing websites be blocked by internet service providers.
 - The present is a situation where the defendants herein are like a sapling with very few branches and will soon grow into a big tree with many branches and deep roots.
 - The defendants, as also anyone like them, need to be stopped as earliest as possible and they are required to abide by any such order passed by a Court of Law, both in the present as also in the future, which being binding upon them, has to be

followed and adhered by them in letter and spirit,” the court said.

RB v. STATE NCT OF DELHI

- ❖ **TOPIC :** Delhi High Court Sets Aside Charges Framed Against Mother For Failing To Report POCSO Case Against Daughter
- ❖ **BENCH :** Justice Anish Dayal



- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Whether a trial court order is correct or not which is in relation to the framing charges against a mother for failing to report offences under POCSO Act against her 16-year-old daughter who was allegedly raped by her father.
- ❖ **FACTS**
 - The FIR was registered in 2021. The father is facing trial in the case. The plea challenged framing of charges against the mother by the trial court under Section 19(1) (reporting of offences) punishable under Section 21 POCSO Act (mandatory reporting of sexual offenses against children).
- ❖ **BACKGROUND**
 - The prosecutrix had alleged that the father used to sexually assault her on various occasions and had also beaten her.
 - It was also alleged that he had brutally beaten up the mother and threatened her in case she reported the alleged incidents. As per the prosecutrix, the father had unnatural sex with her mother.
- ❖ **OBSERVATIONS**
 - The Delhi High Court has recently set aside a trial court order framing charges against a mother for failing to report offences under POCSO Act against

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her 16-year-old daughter who was allegedly raped by her father.

- Justice Anish Dayal observed that the mother who was herself the victim of sexual abuse by her husband, had become the accused by applying Section 21 of the POCSO Act, wholly insulated from the background facts and circumstances of the case.
- “A mother is sought to be prosecuted for delay in reporting of sexual offence on a child by her own husband, despite the fact that the mother herself was allegedly subject to severe abuse, sexual and otherwise, in her matrimonial home,” the court said.
- It added that there was a possibility that the delay in reporting the case was only because both the mother and the child were living under immense trauma that they could not muster the courage, space or the spirit to go and report to the police.
- “In this case, to not account for the fact that the mother herself who was the victim of sexual abuse, would not care for her only child and for some mala fide reason, not report the offences as mentioned to her by her child, would result in sheer injustice,” the court said.
- Setting aside the trial court order, the court noted that the reason why there was a delay on part of the mother to report the alleged offences was a threat to her own life.
- “Only when the child broke down before the psychiatrist and narrated the sordid details of sexual abuse by her father, then the petitioner realized that it is a matter which needed to be reported and ignoring severe threats by the husband and his family, she did that promptly,” the court said.
- Justice Dayal also observed that sexual abuse occurring within a household, where a perpetrator is the husband or a man, who chooses to dominate the household, can be the most heinous and degenerate.
- Female victims then live under a pall and swathe of fear for their life and personal liberty, the court said.
- Perusing international jurisprudence on the issue of mandatory reporting, the court said that such provisions are enacted to ensure deterrence against child sexual abuse and not in order to punish a victim which, unfortunately in a household with domestic violence, is at times inseparable.

- “Mandatory reporting laws vis-à-vis child sexual abuse are designed with the intention to stop abuse against a child. There cannot be a straight-jacket formula where complex depraved conduct is involved and, as is the present case, along with the prosecutrix, the petitioner herself was under a threat from the accused person,” the court concluded.

X v. State & Anr.

- ❖ **TOPIC:** Delhi High Court Orders Over ₹9 Lakh Compensation To Minor Who Was Sexually Abused By Father, Calls It Essential Part Of 'Curing Justice'
- ❖ **BENCH :** Justice Manoj Kumar Ohri



- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**

- Regarding the compensation to minor who was sexually abused by father.

❖ **FACTS**

- The court was dealing with the victim's plea challenging the trial court order passed in 2022 awarding a final compensation of Rs.10,000 to her. Earlier in 2020, she was awarded interim compensation of Rs. 75,000.

❖ **BACKGROUND**

- In 2021, the accused father committed suicide at his house whereafter the proceedings were abated against him.
- The court perused the Victim Impact Assessment report and said that the victim had undergone severe mental trauma and was subject to aggravated sexual assault at the hands of her father.
- It further noted that the victim's mother was the only earning member of the family who earned a paltry amount of Rs.7,000 per month which was insufficient to raise a family of three.

❖ **OBSERVATIONS**

- The Delhi High Court has recently directed the DSLSA to pay Rs. 9.65 lakh of compensation to a

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minor rape victim who was sexually abused and assaulted by her father in 2018.

- The minor was 17 years of age at the time of the incident.
- “Compensation to the victim is an essential part of curing justice. Compensation not only provides monetary relief but is also an act which seeks to make a person whole again so that the victim can take steps for rehabilitation and start afresh,” Justice Manoj Kumar Ohri said.
- “Although the offence in the present case, i.e. aggravated sexual assault, is not explicitly mentioned in the Scheme, the same would not get in the way of this Court using a similar offence, being 'Unnatural Sexual Assault' as a reference while determining the quantum of compensation,” it said.
- Justice Ohri concluded: “Thus, the compensation which has been finally determined by this Court to be payable to the petitioner is Rs.10.5 lacs. Since Rs.85,000/- already stands paid to the petitioner, the petitioner is now entitled to receive a further sum of Rs.9,65,000/-.”

Rajesh Kumar v. State of Haryana and others

- ❖ **TOPIC :** Once Service Of Similar Situated Employee Is Regularised By Dept, Denying Same Benefit To Others Violates Article 14
- ❖ **BENCH :** Justice Namit Kumar



- ❖ **FORUM:** Punjab and Haryana HC
- ❖ **MAIN ISSUE**
 - Whether not regularizing the service of an employee despite giving the same benefit to other employees would be a violation of Article 14 or not.
- ❖ **FACTS**
 - The Court was hearing a plea to regularize the

service of Rajesh Kumar who joined as 'Mali-cum-Chowkidar' in 1995 in the PWD Department. Kumar was terminated from service in 1997 and reinstated by the Labour Tribunal in 2001 with back wages.

❖ **BACKGROUND**

- However, the award was challenged by the Department before the High Court and recovery of back wages was ordered to be stayed.
- Thereafter, the petitioner was allowed to join duties in 2003 and finally, the said writ petition was allowed in part, whereby Single Bench held that 'since the petitioner has not worked from 01.04.1997 to 03.02.2004, therefore, he was not entitled to full back wages' and was awarded 25 % of the back wages.'
- The Haryana Government in exercise of powers conferred by the proviso to Article 309 of the Constitution, issued a Notification in 2003, regularizing the services of the ad-hoc/contract/daily wages employees, who had completed 03 years of service on 30.09.2003 even if there was a break of 6 months.
- The notification further added that in case such break is not attributable to the employee, the employees who have been engaged before 31.01.1996, shall be regularized provided they fulfill the other conditions.

❖ **OBSERVATIONS**

- The Punjab & Haryana High Court has made it clear that not regularising the service of an employee despite giving the same benefit to other employees would be a violation of Articles 14 and 16 of the Constitution.
- Justice Namit Kumar said, "Once services of the similarly situated persons have been regularized by the respondent department, there is no justification for denying the said benefit to the petitioner, as the same would be discriminatory and violative of Articles 14 and 16 of the Constitution of India."
- Counsel for the petitioner argued that similarly situated employees were regularised and the petitioner was not given the same benefit in spite of fulfilling the eligibility criteria.
- Answering the grievance the department stated that “since the petitioner had been taken back into service on 24.12.2003 and (writ petition), filed by the State of Haryana against the award dated 02.02.2001, is pending in the High Court, therefore, the services of the petitioner cannot be regularized”.
- In light of the above, the Court opined that Kumar cannot be discriminated against and allowed the

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directing "to regularize the services of the petitioner w.e.f. 01.10.2003, as per Policy...with all consequential benefits and the same shall be released to the petitioner within a period of three months from the date of receipt of the certified copy of this order."

Munna v. Municipal Corporation of Delhi

- ❖ **TOPIC :** Delhi High Court Directs MCD To Pay ₹10 Lakh Compensation To Parents For Death Of Their Son Due To Its Negligence
- ❖ **BENCH :** Justice Purushendra Kumar Kaurav



JUSTICE PURUSHENDRA KUMAR KAURAV

- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Regarding compensation to parents of minor child.
- ❖ **FACTS**
 - The Delhi High Court has directed the Municipal Corporation of Delhi (MCD) to pay Rs. 10 lakh as compensation to the parents of a minor child, who passed away after a lantern/slab fell on him from the premises owned by MCD.
 - A single bench of Justice Purushendra Kumar Kaurav found the MCD to be negligent in maintaining safe conditions of its premises and invoked the maxim 'res ipsa loquitur' to place liability on the MCD.
 - The Court first discussed the scope of high court to provide compensation in negligence cases. It observed that it is a settled law that writ courts can direct payment of compensation in cases of violation of human rights and fundamental rights which amount to a Constitutional tort.
 - Referring to various cases, it observed that when right to life under Article 21 of the Constitution is violated, individuals can resort to public law remedy for grant of compensation.
 - It remarked "Thus, undeniably, in cases where Article 21 of the Constitution of India is violated, resort to writ proceedings to remedy their plight by bringing into motion the wheels of public law, and consequently, monetary compensation may also be

granted in appropriate cases."

- Referring to this case, the Court observed that when public authorities fail to fulfill their statutory duty, the presumption of liability would be attracted.
- "Therefore, this Court unhesitatingly concludes that it is a settled law that where the negligence and breach of duty by the State are writ large and duty of care is found to be specifically of the public authorities, the maxim res ipsa loquitur shall apply.
- When the State is under a statutory duty of care and fails to fulfill such duty, the presumption of liability without proof will also attract. "
- The Court then referred to Section 348 of the Delhi Municipal Corporation Act, 1957, which casts an obligation on the Commissioner of MCD to issue directions to the owners or occupiers of buildings in a dilapidated state, which poses a risk to occupants and passers-by, to demolish, secure, or repair such buildings within a specified timeframe.
- It observed that Section 348 indicates that there is an 'unequivocal duty' on part of MCD to maintain safety of the property which is in an impaired state.
- Here, the Court took MCD's statements that due to a dispute in 1995-96, the contractor left the construction work unilaterally and also that the quarters was exposed to pilferage by miscreants. The Court stated that MCD did not show anything to prove that it took actions against the miscreants or for demolishing the dangerous portions of the quarters.
- It noted that the MCD failed to provide any evidence to show that it maintained its quarters adequately.
- The Court thus observed that the responsibility for maintenance of the quarters was on MCD. It stated that MCD had a duty to maintain its property so as to not endanger the lives of passersby or individuals entering the premises.
- It maintained its position that the case is covered by res ipsa loquitur, as the negligence of MCD was manifestly evident.
- The Court thus directed MCD to pay a lump sum of Rs. 10 lakh along with simple interest at the rate of 6% per annum from the date of death of the deceased.

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