MOHD. JAHEER @ MUNNE AND ORS. v. THE STATE OF UTTAR PRADESH AND ANR..

- **TOPIC :** You've Slaughtered 6 people & CJM is Granting You Bail! Never Heard of' : SC Denies Relief To convicts
- **BENCH :** Justices Bela M. Trivedi and Satish Chandra Sharma

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding SLPs filed by four persons, challenging the order of the Allahabad High Court whereby their post-conviction bail was cancelled.
- **OBSERVATIONS**
  - The Supreme Court dismissed SLPs filed by four persons, challenging the order of the Allahabad High Court whereby their post-conviction bail was cancelled.
  - They were convicted of murdering six persons but were subsequently granted interim bail by a Chief Judicial Magistrate.
  - In a peculiar set of facts, the convicts were released on bail on March 11 based on compliance with the directions passed by the division bench of the Allahabad High Court in Ganesh v. State of Uttar Pradesh on January 10.
  - By this order, the Allahabad High Court passed general directions instructing all Chief Judicial Magistrates to release the convicts, whose remission or premature release application was pending, on interim bail.
  - Subsequently, many convicts were released on interim bail. However, on May 25, 2024, the full bench (three judges) of the Allahabad High Court in Ambrish Kumar Verma v. State of Uttar Pradesh overruled Ganesh's case and held that the power of remission only lies with the appropriate Government and the division bench could not have issued such directions.
  - Following the full-bench decision, the Allahabad High Court cancelled the bail granted to the convicts by the CJM. Challenging that, the convicts approached the Supreme Court.
  - The matter came before a bench of Justices Bela M. Trivedi and Satish Chandra Sharma.
  - The Court was informed that one of the deceased person's sons filed an application for the cancellation of the bail before the Allahabad High Court which was duly granted on October 19.
  - At the outset, the Counsel for the petitioner requested that he be granted some time to file a rejoinder. However, the bench stated that the cancellation of bail was good in law.
  - Justice Sharma expressed: "6 people were slaughtered. The Magistrate granted you bail on the basis of the order passed in Ganesh's case. The order passed in Ganesh's case was referred to the full bench. The full bench said, 'no, Magistrate cannot do it'...There will be anarchy if people are given bail on those cases where SLP has been dismissed."
  - The counsel submitted that the High Court's order cancelling bail is erroneous because it took into consideration the grounds which were not raised in the case. Moreover, he stated that his client was granted bail before the full bench reference was made and that the division bench which cancelled the bail should not have followed the order of the full bench.
  - However, Justice Sharma stated that the division bench was bound to follow the larger bench's order for "proper judicial discipline". He added: "You have slaughtered 6 people and the Chief Judicial Magistrate is granting you bail. This is never heard of. Very sorry. You could have filed a writ petition for issuance of a direction, directing the State to decide your remission petition but the Chief Judicial Magistrate could not have granted you bail."
  - The Court however directed that the criminal appeals pending before the High Court may be expeditiously decided within 6 months.

HETRAM @ BABLI VS. STATE OF RAJASTHAN & ANR.

- **TOPIC:** While Deciding Application Under S.319 CrPC, Court Must Consider Cross – examination As well : SC

❖ **BENCH** : Justice Abhay S Oka and Justice AG Masih

❖ **FORUM:** Supreme Court

❖ **MAIN ISSUE**

- Regarding an additional accused under Section 319 Cr.P.C.

❖ **OBSERVATIONS**

- In a recent case, the Supreme Court observed that the summoning of an additional accused under Section 319 Cr.P.C. should not be only based on the examination in chief of the prosecution witnesses. The Court said that due credence must be also given to the prosecution witness cross-examination, if exists, before the filing of the application under Section 319 Cr.P.C.
- The bench comprising Justice Abhay S Oka and Justice AG Masih heard an appeal filed by the accused who was aggrieved by the High Court's decision to uphold the complainant's summoning application which was based on the prosecution's witness chief examination without considering their cross-examination.
- The appellant claimed that in their chief examination, the prosecution witnesses gave incriminating evidence against the appellant, however, in their cross-examination, they said that the allegation made by them against the appellant in the examination-in-chief was an omission.
- The appellant pleaded that since both the examination in chief, as well as the cross-examination of the witnesses, were available on record when the application for summoning an additional accused was filed under Section 319 Cr.P.C., therefore it would be improper to decide the application without taking note of the witness's cross-examination.
- ‘‘In the facts of the case, the occasion for considering the application under Section 319 of the CRPC arose after the cross-examination of the only eye witnesses was recorded. Therefore, while deciding an application under Section 319 of the CRPC, the Court must consider the cross-examination as well. If an application under Section 319 of the CRPC is made after the cross-examination of witnesses, it will be unjust to ignore the same.’’, the court said.
- Justice Oka, in the order, reasoned that the application under Section 319 Cr.P.C. shall be considered only when there exists a prima facie case against the new accused. The Court said when there exists a cross-examination of the witness apart from its examination in chief, then the determination of the existence of a prima facie case would be possible while taking note of both the examination in chief and cross-examination.
- Reference was drawn to the case of Hardeep Singh v. State of Punjab (2014), where it was held that if no prima facie case is recorded while deciding an application under Section 319 Cr.P.C. then the courts should refrain from exercising power under Section 319 of the CRPC to summon additional accused.
- Applying the law to the facts of the present case, the Court found that the prosecution witnesses cross-examination statements altogether contradict their examination in chief, thereby making no room to justify the existence of a prima facie case requiring the trial court to exercise power under Section 319 Cr.P.C.
- ‘‘In view of the omissions which are material and which amount to contradiction, obviously no Court could have recorded a satisfaction which is contemplated by Section 319 of the CRPC.
- It is impossible to record a finding that even a prima facie case of involvement of the appellant has been made out.’’, the court observed.
- Accordingly, the appeal was allowed. ‘‘We make it clear that consideration by this Court of the evidence of the two prosecution witnesses is only for the limited purposes of considering the prayer under Section 319 of the CRPC as against the appellant.’’, the court clarified.

XXXX v. XXXX

❖ **TOPIC :** P & H high court Refuses To treat Juvenile Booked Under POCSO Act As ‘Adult’ Based on Psyche Assessment Done With 5 Yrs Delay

❖ **BENCH :** Justice Sanjeev Prakash Sharma and Justice Sanjay Vashisth

❖ **FORUM:** Punjab and Haryana High Court

❖ MAIN ISSUE

- Regarding the order of a Children's Court which tried a juvenile booked under the Protection of Children from Sexual Offences Act (POCSO) Act as an adult.

❖ OBSERVATIONS

- The Punjab and Haryana High Court has set aside the order of a Children's Court which tried a juvenile booked under the Protection of Children from Sexual Offences Act (POCSO) Act as an adult.
- As per Section 15(1) of the J J Act, a Juvenile Justice Board (JJB) is required to make a preliminary assessment regarding the juvenile's mental and physical capacity to commit an offence and the ability to understand its consequences along with the circumstances under which allegedly the offence was committed.
- Section 14(3) of JJ Act states that the preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Board within three months from the date of first production of the child.
- Justice Sanjeev Prakash Sharma and Justice Sanjay Vashisth noted that preliminary assessment of the child herein, to examine his psyche as on the date of alleged incident, was conducted after more than five years and "by that time and it is practically impossible to assess a person of his psychology what he would have been thinking five years back."
- "The entire exercise is found to be an eye-wash and deserves to be set aside.
- We, therefore, hold the appellant not to be fit to have been tried as an adult," the bench added.
- The Court found that the child was arrested on the day of the alleged incident i.e. 30.05.2018. The preliminary assessment as required under Section 15 of the JJ Act was conducted after an application was moved by the Prosecutor on 28.09.2021. The Child had attained the age of 20 years 6 months by then.
- "The very purpose of the provisions of limitation of three months laying down under Section 14(3) of the JJ Act stands frustrated," the Court thus remarked.
- Justice Vashisth also highlighted that after reaching to the conclusion that the juvenile is to be tried as an adult, the proceedings were required to be conducted against the Child in Conflict with the Law (CCL) afresh under CrPC.
- However, the Court noted that the Children's Court "crossed all limits of errors", because the proceedings were to be started by examining the police report and then to frame the charge-sheet, and then to record the statements of the prosecution witnesses before it. Complete prosecution evidence was also required to be put to CCL, as per Section 313 Cr.P.C.
- "None of these proceedings were conducted. To the utter surprise of this Court, such a proceeding is rarely heard of, whereafter, the accused is convicted of an offence and then sentenced for a period of 20 years, without there being any trial as per law," the bench added.
- These observations were made while hearing an appeal against conviction for offence under Section 6 of the POCSO and provisions of IPC, wherein a juvenile was tried as an adult and sentenced to rigorous imprisonment of 20 years for committing sexual assault against a 4-year-old girl.
- After examining the submissions, the Court noted that the alleged offence was committed on 30.05.2018, and the CCL was arrested on the very same day and was also interrogated on 31.05.2018 i.e. next day. After completion of evidence, statement under Section 313 Cr.P.C., was recorded on 03.01.2020 by the Board, as per the proceedings recorded in the summons case.
- Suddenly, after a period of 3 years & 4 months from the date of incident and arrest of the CCL, on 28.09.2021, the Public Prosecutor "woke up" and moved application under Section 15 of the JJ Act for conducting preliminary assessment, Court noted.
- The order under Section 18(3) of the JJ Act (Orders regarding child found to be in conflict with law), was passed by the JJB on 22.03.2022 and exercising the power under Section 19 of the JJ Act, the Children's Court also on 02.04.2022 passed order for conducting trial as per Cr.P.C, it noted further.
- The division bench highlighted that, "In all this process, a period of about 4 years (3 years & 11 months) had passed and the very purpose of fixing the time period for conducting inquiry and

preliminary assessment has been made to suffer in the present case."

- "No legislative purpose is left, even if the law, which is directory in nature, is given complete go-bye by the Courts of law. Right of none else is effected than of the CCL-Dxxx in the present case, whose rights were otherwise required to be protected by the special Statute i.e. JJ Act. Thus, the very objective of the Statute has been defeated," the Court opined.
- Consequently, the Court set aside the order of the JJB to try the juvenile as an adult and treated him as CCL.
- The bench examined the evidence placed before it and found the appellant to be a child and found him guilty of having committed the offence of penetrative sexual assault in terms of Section 5 read with Sections 29 and 30 of POCSO and also guilty of offences under Sections 341, 342 and 506 IPC and accordingly sentenced him to the maximum punishment, which may be provided to a child i.e. of three years.
- Since the appellant had already remained incarcerated for 3 years and 9 months, it held that the appellant had already undergone the complete sentence period.
- While referring to Nipun Saxena and another v. Union of India and others, the bench further recommended Rs.5 lacks compensation to the victim.

Nongthombam Herojit Meitei vs. UOI & Anr.

❖ **TOPIC :** 'Two sets of Rules For Promotion To Same Post, Candidate cannot be Denied Promotion In one And Denied Same in Another': Delhi High Court

❖ **BENCH** : Justices Navin Chawla and Shalinder Kaur

❖ **FORUM:** Delhi High Court

❖ **MAIN ISSUE**

- Regarding two sets of rules lead to promotion to a single post.

❖ **OBSERVATIONS**

- A Division Bench of Delhi High Court comprising Justices Navin Chawla and Shalinder Kaur while allowing a Petition observed that if two sets of rules lead to promotion to a single post, it would not make sense to allow the Petitioner relaxation as per one rule and deny him the same as per another. The Court held that if he was given relaxation while he was appointed to the post, he could not be denied promotion, by whichever mode, if the promotions would entitle him to the same post.
- The Petitioner was a candidate who applied to the post of Assistant Sub-Inspector [Executive] (ASI) after an advertisement was issued in this regard by the Respondents on 29.12.2022 through the Limited Departmental Competitive Examination.
- For the recruitment year of 2022, there were 706 vacancies. The candidates who had a regular service of five years in their respective posts were eligible for appointment and accordingly allowed to appear in the Limited Departmental Competitive Examination.
- The Petitioner appeared in the examinations and qualified with a total score of 139 marks. The Physical Efficiency Test and the Physical Standard Test were to be conducted at CISF 5th RB, Indirapuram, Ghaziabad from 26.06.2024 to 03.07.2024.
- When the Petitioner went to have these tests conducted, he was not allowed to participate since his height was less than 165 cms as was required by the advertisement.
- The Petitioner made a representation to the authorities and stated that he was recruited to the post of Constable (General Duty) in CISF in 2013 when his height was calculated to be only 163 cms, which was as per the eligibility criteria of recruitment. The authority considered his request and on 03.07.2024, he was called to CISF 5th RB, Indirapuram, Ghaziabad for having his height measured again.
- Although he had also explained the height issue in his representation, he was issued a rejection slip based on his height being less than 165 cms. He later submitted another representation which was also rejected.
- Aggrieved, he approached the High Court.
- The Court held that the Respondents did not deny that in the normal course, the Petitioner would be eligible for promotion to the post of ASI.

- However, it was to be determined as to whether the Petitioner could be denied the promotion through LDCE which was a promotion granted sooner than the regular promotion.
- The Court observed that since both the promotions lead to the same post at the end, it would not make sense to deny the accelerated promotion to the Petitioner on the basis of having prescribed different standards.
- It was held that denying the Petitioner promotion considering such a rule would be arbitrary and violative of Article 14 of the Constitution of India.
- The Court relied on the case cited by the Counsel for the Petitioner [Tholu Rocky v. Director General CISF & Ors], wherein it was held, ‘‘The facts disclosed above would demonstrate that a person of schedule tribe of Mizo's and Naga's community is given relaxation in physical standards and the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 provide for height of 162.5 cms. only as against candidates belonging to other categories where the height required is 170/165 cms. Therefore, we do not find any justification or rationale in not extending the same benefit to this tribe at the stage of their promotion to the post of Assistant Commandant.’’
- Citing another decision in Inspector TD Cyril Mimin Zou, the Court stated that it could not be justified as to why the Petitioner could not be granted relaxation of height. It was observed that if the relaxation was not granted, the Petitioner would suffer stagnation without an opportunity to seek promotion to a higher position.
- Making these observations, the Court allowed the appeal.

Smt. Sunita Das v. State of West Bengal & Another

❖ **TOPIC :** Strict Proof of Marriage Not Required To Claim Maintenance When Couple Have Been Living As Husband & Wife For Long time : Calcutta High court

❖ **BENCH :** Justice Ajay Kumar Gupta

❖ **FORUM:** Calcutta High Court

❖ **MAIN ISSUE**

- Regarding strict proof of marriage while claiming maintenance under Section 125 CrPC

❖ **OBSERVATIONS**

- The Calcutta High Court has held that strict proof of marriage is not required while claiming maintenance under Section 125 CrPC for a couple who had been living as husband and wife for a prolonged period of time.
- Justice Ajay Kumar Gupta held: "Where a man and woman have been living together as husband and wife for a reasonably long period of time, strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Code of Criminal Procedure, 1973.
- In proceedings under Section 125 of the Code of Criminal Procedure, 1973 strict proof of marriage is not required. The wife has to prove prima facie case of marriage so as to fulfil the true spirit and essence of the beneficial provision of the maintenance under Section 125 of the Code of Criminal Procedure, 1973."
- The Petitioner/wife challenged the correctness, legality and propriety of the Impugned Judgment/Order dated 16.11.2016 passed by the Additional Sessions Judge, Fast Track Court, 1st Court, Tamluk, Purba Medinipur in Criminal Revision No. 47 of 2015, setting aside the maintenance payable to the wife on the ground that she failed to prove that she is married wife of the Opposite Party No. 2.
- According to the facts, the Petitioner's first marriage was dissolved on mutual consent and thereafter, the Petitioner started residing with her parents.
- The Opposite Party No. 2 and his father, Mr. Bhakti Kumar Das was in the business of money lending and the father of the Petitioner took a loan from them in order to purchase land in the said village.
- When the Opposite Party No. 2 visited the house of the petitioner in order to collect the interest of the said loan, the Petitioner became acquainted with him and gradually a love affair developed between them.
- It is stated that they thereafter eloped and got married and the Opposite Party No. 2 returned the Petitioner to her parental home assuring her that he would convince his parents and would very soon take her to her matrimonial home.
- It was stated that the Opposite Party No. 2 and the Petitioner started living as husband and wife at the parental residence of the Petitioner and the

Opposite Party No. 2 always used to give the Petitioner false assurance about taking her to the matrimonial home.

- It was stated that during this period, the Petitioner discovered that she became pregnant and when it was informed to the Opposite Party No. 2, that he is the father of such child, he became enraged and refused to accept the Petitioner as his wife and denied paternity of the child.
- It was stated that the parents of the Opposite Party No. 2 demanded a dowry of Rs. 1,00,000/- failing which, they will not allow the Petitioner to enter her matrimonial home and would also not accept her as their daughter-in-law. The Petitioner failed to meet the demands of her in-laws and she was forcibly driven out from the matrimonial home.
- Having no means of supporting herself and her child, the Petitioner filed an application under Section 125 of the Code of Criminal Procedure, 1973 against the Opposite Party No. 2 before the Chief Judicial Magistrate at Tamluk, Purba Medinipur praying for maintenance for herself and her minor daughter.
- Upon hearing the arguments of the parties, the court noted that the Petitioner claims herself as legal wife of the Opposite Party No. 2 and she filed an application under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance for herself and her child which had been granted by the trial court.
- However, it was noted that later, the decree of maintenance was modified to enhance the maintenance for the petitioner's daughter, while removing the maintenance accorded to her, because she had not been able to prove the subsistence of the marriage.
- The High Court, however, upon reading Section 125 of the CrPC held that: The object behind the benevolent provision is to prevent vagrancy and ensure that the destitute woman and neglected children are provided promptly with sustenance. Section 125 of the Code of Criminal Procedure, 1973 is meant to achieve a social purpose. It provides speedy remedy for the supply of food, clothing and shelter to the wife and the children.
- Accordingly, it was held that no strict proof was required to be shown by the petitioner regarding her status as the wife of the opposite party. Thus the court modified the order of the ASJ and restored the maintenance payable by the husband to the petitioner.