

Mohammad Altaf Bhat Vs Principal

- ❖ **TOPIC :** Internal Complaint Committee Cannot Entertain Complaints Filed Beyond Three Month Limitation Period Under POSH Act
- ❖ **BENCH :** Justice Javed Iqbal Wani
- ❖ **FORUM:** Jammu and Kashmir and Ladakh
- ❖ **MAIN ISSUE**
 - Regarding an authority under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act)
- ❖ **OBSERVATION**
 - The Jammu and Kashmir and Ladakh High Court has held that an authority under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act) lacks the jurisdiction to act upon and decide complaints filed beyond the condonable limitation period of three months, as provided under the second proviso to Section 9(1) of the Act.
 - Quashing the proceedings initiated by the Internal Complaints Committee (ICC) against petitioner Mohammad Altaf Bhat on these grounds Justice Javed Iqbal Wani cited K. Reema Parambath Naaluthara Vs. Pradeep T. C. and Ors. reported in 2017 SCC Online Ker 10625 and observed.
 - “That the authority under the Act of 2013, had no power to act upon a complaint and pass orders thereon filed before it, beyond the condonable period of limitation of 3 months provided under proviso 2 of Section 9(1)”.
 - Bhat, a senior officer in the Income Tax Department, was accused of harassment by respondent No. 4, a Tax Assistant under his supervision. The allegations arose from an alleged incident dated April 25, 2016. Initially, the respondent's complaint, filed in 2016, was withdrawn due to lack of evidence. Despite this, the respondent lodged a complaint with the Chief Judicial Magistrate, Srinagar, leading to the registration of an FIR under Section 354 RPC. After a trial, the petitioner was acquitted in September 2018.
 - Subsequently, in October 2017, the respondent filed another complaint before the ICC regarding the same alleged incident. The ICC issued a report in February 2021, recommending a fine of ₹1 lakh against the petitioner and initiating misconduct proceedings.
 - Assailing the proceedings before the High Court the petitioner contended that the ICC's proceedings

- were legally untenable as the complaint was filed beyond the three-month limitation period prescribed under Section 9(1) of the POSH Act.
- The petitioner highlighted that no reasons were recorded by the ICC for condoning the delay, making its actions without jurisdiction. • It was further argued that the ICC disregarded the petitioner's acquittal in related criminal proceedings, and the inquiry was conducted in violation of natural justice principles
- On the contrary the respondents maintained that the allegations of harassment were ongoing and justified the delayed filing of the complaint. They further argued that the ICC conducted a full inquiry in accordance with the POSH Act and provided adequate opportunities to both parties to present their cases.
- Justice Wani, after examining the statutory framework and records, underscored the mandatory nature of Section 9(1) of the POSH Act, which allows filing of complaints within three months of an alleged incident.
- The limitation period can only be extended by another three months if justified by recorded reasons, the court underscored.
- The Court noted that the alleged incident occurred on April 25, 2016, but the complaint was filed on October 16, 2017 far beyond the permissible period.
- The ICC's failure to record reasons for condoning this delay rendered its actions without jurisdiction the court stated and explained that the authority under the POSH Act has no power to act upon a complaint filed beyond the condonable limitation period of three months as mandated by the statute itself.
- “Under these circumstances, the complaint filed by respondent 4 herein against the petitioner herein under the Act of 2013 on 16th of October 2017 regarding an alleged incident dated 25th of April 2016 indisputably could not have been either entertained or else taken cognizance of by the ICC and dealt with thereafter”, the court remarked.
- Terming ICC's recommendations procedurally invalid the court quashed the complaint, holding that the petitioner had been deprived of natural justice during the inquiry.

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XXXX v. State of Haryana

- ❖ **TOPIC :** POSCO Act Being Enacted Subsequently Will Prevail Over SC/ST Act In Case of Conflict
- ❖ **BENCH :** Justice Manisha Batra
- ❖ **FORUM:** Punjab & Haryana High Court
- ❖ **MAIN ISSUE**
 - Regarding the provisions of POSCO Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act
- ❖ **OBSERVATION**
 - The Punjab & Haryana High Court has reiterated if there is a conflict between the provisions of POSCO Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, then provisions of the POSCO Act will be applicable as it was enacted subsequently.
 - It also reaffirmed that a regular bail plea moved in a case registered under the provisions of the two special legislations is maintainable before the high court.
 - Justice Manisha Batra noted, "With regard to the question of maintainability of the present petition, in view of the fact that apart from the offence punishable under Section 6 of POSCO Act, the petitioner has been charge sheeted under the provisions of SC/ST Act as well, learned counsel for the petitioner has relied upon Somashekar v. State by Rural Police Station Authorities Sakaleshpura...
 - Wherein High Court of Karnataka, while dealing with a petition for grant of regular bail had considered the same question and had observed that where the offences punishable under the provisions of two special enactments vis SC/ST Act and POSCO Act are invoked, a petition under Section 439 of the Code of Criminal Procedure (Which is pari materia with Section 483 of BNSS) before the High Court is maintainable".
 - "It was also observed that when there is a conflict between the provisions of two special enactments, it is trite that the provisions of the latter of the two enactments will prevail and since the POSCO Act is a subsequent enactment, therefore, its provisions will prevail over the SC/ST Act," the court added.
 - While noting that State's counsel did not bring any material contrary to it, the high court said that the bail petition before it "cannot be considered to be nonmaintainable.
 - These observations were made while hearing the bail plea in a rape under Sections 376(3), 376(2)(f), 506, 457, 376(2)(n) and 376 of IPC and Sections 6

- and 4(2) of POSCO Act and Section 3 (2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- It was alleged that a minor victim was repeatedly raped on several occasions by a man, during the course of investigation, the victim filed another complaint levelling allegations that the petitioner had been subjecting her to rape from the last two years on the pretext of performing marriage with her. She recorded another statement under Section 164 of Cr.P.C.
 - On the basis of the same, the petitioner had been arrested on June 10, 2022 and is facing trial for commission of aforementioned offences.
 - Counsel for the petitioner Samay Sandhawalia, argued that the petitioner has become entitled to be released on bail since there is a substantive change in the circumstances as FSL and DNA report have been received and the same are negative.
 - After examining the submissions, the Court noted that, "Undoubtedly, the victim had not named the petitioner as the person who had subjected her to aggravated penetrative sexual assault at the first instance and his name has been taken for the first time on 24.05.2022 when she had filed a complaint before the police but on that ground simplicitor, it cannot be assumed that the allegations so levelled by the victim are false."
 - Referring to alleged victim's deposition the Court said, "it is apparent that she has levelled specific and serious allegations against the petitioner of subjecting her to repeated acts of rape/aggravated penetrative sexual assault."
 - Justice Batra further added that merely the prolonged period of incarceration or examination of some material witnesses is not a ground to extend any such benefit.
 - Considering the gravity of the offence, the bail plea was dismissed

M.P. Rashtriya Manganese Mazdoor Sangh v. Manganese Ore (India) Ltd

- ❖ **TOPIC :** Employer Has Right To Lead Evidence Even After Faulty Domestic Enquiry
- ❖ **BENCH :** Justice Vivek Jain
- ❖ **FORUM:** Madhya Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding a workers' union against an award of Central Government Industrial Tribunal (CGIT)

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❖ **OBSERVATION**

- A single bench of Justice Vivek Jain dismissed a petition filed by a workers' union against an award of Central Government Industrial Tribunal (CGIT). The award was passed in favour of a dismissed worker. He was dismissed on account of unauthorized absence and the CGIT had upheld his dismissal. The Court held that an employer can lead evidence before a tribunal to make his case even if the original domestic enquiry is held invalid
- It clarified that the labour court must decide upon the industrial dispute and not merely the validity of a specific dismissal/termination.
- The petitioner, M.P. Rashtriya Manganese Mazdoor Sangh, challenged an award passed by the CGIT that upheld the termination of a worker by Manganese Ore Ltd. The worker was dismissed in 1997 for unauthorized absence, as he failed to report to his transferred location
- The petitioner said that the CGIT had vitiated the enquiry against the worker on procedural grounds in 2015, but later allowed the employer to lead evidence to establish the alleged misconduct. They challenged this before the Court.
- The court cited Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., which permits employers to present evidence before a tribunal even if a domestic enquiry is found to be defective.
- Consequently, the court held that the tribunal must allow both employer and employee to adduce evidence to determine the legality and validity of the termination order. Explaining the rationale, the court said that the Labour court must decide upon the industrial dispute and not merely the validity of a specific dismissal/termination.
- The court also addressed the petitioner's claim that reinstatement was mandatory after the domestic enquiry was invalidated. Relying on Motipur Sugar Factory v. Workmen (AIR 1965 SC 1803),
- The court clarified that the tribunal has a composite role. Its mandate includes assessing not just the procedural validity of the dismissal but the substantive merits of the misconduct allegations. It concluded that the CGIT was justified in allowing the party to establish their case with new evidence.
- Moreover, the court dismissed the argument that the respondent did not apply at the earliest opportunity for permission to lead evidence
- Instead, it noted that the respondent's written statement clearly sought permission. The court then justified the CGIT's initial reluctance to allow this, and its subsequent approval, as a valid exercise of judicial discretion.

- The court also reviewed the worker's personal circumstances and professional conduct after termination. It acknowledged the worker's refusal of reemployment and his decision to pursue a legal career.
- Consequently, it concluded that the petitioner's extended absence, despite available facilities at the transferred location, constituted wilful misconduct. Thus, the court dismissed the petition and upheld the CGIT's order.

Urmila Devi v State of Rajasthan & Ors.

- ❖ **TOPIC:** When Deceased Govt. Employee Married Second Wife Without Divorcing First Wife, Only The Latter Will Get Family Pension
- ❖ **BENCH :** Justice Anoop Kumar Dhand
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Regarding a deceased government employee for family pension
- ❖ **OBSERVATION**
 - Rajasthan High Court has accepted the petition by the first wife of a deceased government employee for family pension on the grounds that no valid divorce took place between them since “social divorce” was not recognized by our legal system. In this light, since the marriage with the second wife was not valid as per the Hindu Marriage Act, 1955 (“the Act”), she could not be seen as “widow” of the deceased employee for being entitled to the family pension
 - “Thus, the second marriage of anyone, without dissolution of first marriage cannot be treated as a valid marriage and such second wife cannot be treated as a 'widow' of the deceased Government Servant in terms of Rule 66 & 67 of the Rules of 1996...In cases where the deceased employee had a second wife without legally divorcing the first wife, only the first wife would be entitled to the pension benefits”
 - Furthermore, the bench of Justice Anoop Kumar Dhand opined that authorities could not ask for succession certificate for claiming family pension since the certificate was granted for recovery of debt or security and family pension did not fall within that purview.
 - A petition was filed by the first wife of the deceased government employee (“petitioner”) seeking family pension. The government employee

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retired in 1983 and in 1987, a divorce petition was filed by him

- However, the same got returned to be filed before the competent court of law. After that no such petition was filed. Furthermore, as a reply to the application for maintenance filed by the Petitioner, the employee had admitted her to be his legally wedded wife but it was contended that social divorce had taken between them.
- In 2016, the government employee died after which the petitioner filed an application seeking family pension. However, the State directed her to get a succession certificate
- The State also argued that before his death, the government employee had submitted an application before the Pension Department to enter the name of the second wife and her children as nominees for the pension.
- After hearing the contentions, the Court held that since separation following a social divorce did not affect legal status of marriage, the petitioner remained the wife of the government employee till his death and now had become his widow.
- "Social divorce" could be an informal term used in some communities to describe a situation where a couple separates and ceases to live as husband and wife without going through the legal process of divorce. This might be accepted socially within a community but has no legal recognition. Such separations do not affect the legal status of the marriage, and the couple would still be considered legally married until a formal divorce is obtained through the courts."
- The Court further held that Rule 66 of the Rajasthan Civil Services (Pension) Rules, 1996 ("the Rules") defined "family" that included widow/widower. However, the term "widow" was not defined in the Rules. It was held that as per Section 5 of the Act, at the time of the marriage between two Hindus, neither should have a spouse living and any marriage contravening conditions under Section 5 were void as per Section 11 of the Act. In this background, it was held that.
- "Hence, it is clear that marriage covered by Section 11 of the Act of 1955 are void from inception and a Hindu woman, who married a Hindu male during subsistence of his marriage, has not been included in the definition of 'family' under the Rules of 1996. The word 'widow' has been kept under Rule 67 for getting family pension and the word "widows" is not included in this rule".

- The Court further observed that recognizing such relation would be detrimental to public interest as that would facilitate the employees contracting second marriage, which was legally impermissible.
- In this light, the Court ruled that the second wife of the employee was not entitled to the family pension since the same was paid to the "wife" and not to those whose marriage was "no marriage" in the eye of law.
- On the question of Succession Certificate, the Court held that as per the Indian Succession Act, 1925, a succession certificate was granted for recovery of debt or security, and family pension did not fall in that purview.
- The Court referred to the Patna High Court case of Ganga Ram v. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna in which it was held that pension was not in the nature of debt, rather it was a property and there was no need for succession certificate for receiving family pension
- Finally, the Court also ruled that even though the marriage with the second wife was illegal, the children born out of that marriage were legitimate and shall be entitled to the terminal benefits of the deceased as per the Rules.
- Accordingly, the petition was allowed, directing the State to give family pension to the petitioner as well as the legitimate children of the deceased with all the arrears with interest @ 9% without pressing on the succession certificate, within 2 months from receiving copy of the order

XXX vs XXX

- ❖ **TOPIC:** When Deceased Govt. Employee Married Second Wife Without Divorcing First Wife, Only The Latter Will Get Family Pension
- ❖ **BENCH :** Justice Devan Ramachandran and Justice M. B. Snehalatha
- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Regarding a woman's choice of dress
- ❖ **OBSERVATION**
 - The Kerala High Court in a recent judgment observed that that a woman's choice of dress should not be subject to moral policing or judgment, especially by the courts.

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- The Court cautioned that the Judge's personal opinions should not be incorporated into judgments. The Division Bench comprising of Justice Devan Ramachandran and Justice M. B. Snehalatha reminded that the Constitution grants everyone equal rights irrespective of gender
- In a custody battle over their 2 children between a divorced couple, the husband had produced screenshots of the pictures of the mother in Bumble. The Family Court while denying custody to the mother stated that she was wearing a 'revealing dress' and therefore is a person of loose morals. The High Court reminded that a woman should not be judged based solely on her dress.
- “That clothing is a form of self-expression being part of an individual's identity, or an expression of general aesthetics. It is unpardonable and impermissible in any civilized society to judge a woman solely on the basis of her dress, or to thus conclude upon her virtue or her modesty, which surely can only be construed as being clothed by rigid notions of patriarchy. The sartorial preferences that a woman makes, is that of her own choice, which cannot be subjected to moral policing or assessment, particularly by courts.
- The High Court said that the observations of the court were not even factually true and the court said that the woman is seen to be dressed modestly in the said photograph.
- The Court further noted that the Family Court didn't advert to the allegation of the woman that her former husband had himself posted these pictures on 'Bumble' in its order. The Court held that this is another reason to say that the conclusions of the family court were unnecessary
- The 2 parties contesting for the custody of their children had obtained divorce with mutual consent. The Family Court found that the mother of the children is not capable of having custody of her children by virtually concluding that she was a person of loose morals, used to wearing loose dresses, posting her pictures on certain dating apps, spending time with her friend, particularly male friends, exhibits uncivil behaviour by using abuses against her husband.
- Against this order, the wife approached the High Court
- The mother had testified before the Family Court that she was locked up by her husband for over nine months and was subjected to cruelty. She said that in a moment of desperation, she contacted a person to hack into her husband's computer system to know what he had planned for her in future. However, she stated that the plan never

- materialised and no hacking was done.
- The High Court saw from one of the screenshots of the WhatsApp chat between the parties that the mother called the father- 'dog' and asked him to give her a divorce.
- The High Court observed that the appellant might have used that word in 'a fit of rage' and being frustrated of not getting a divorce. The High Court held that that is no reason for the Family Court to conclude that she is habituated to such language.
- The High Court observed that the woman had filed for divorce and she must have felt elated on finally obtaining it and celebrated it with her close group of friends. The Court held that the notion that women must be sad in such situations is a misogynistic prejudice.
- “The further holdings of the learned Family Court that a women must always feel sad on obtaining divorce from her husband, exposes misogynistic prejudice and reinforces a very skewed gender stereotype, that a woman ought to be subdued, servile and submissive.”
- The Court said that they had interacted with both the children and they want to stay with their mother but expressed their wish to have occasional visits and meetings with their father.
- The Court said that 'both the children are remarkably bright and articulate, with full command of what they want in life and of what they want from their parents'. The Court granted the permanent custody of the children to the mother.
- The Court further observed that the order of the Family Court had perpetuated notions of gender roles and patriarchy. The Court said such notions perpetuate casual sexism.
- “Consciously or subconsciously, societies impose restrictions on women's autonomy and scrutinize their choices; and they are supposed to adhere to certain standards, including their sartorial choices and appearances. Such unwritten norms perpetuate casual sexism and strengthen the glass ceiling for women, with control being considered exclusively to men.”
- The High Court held that they are denouncing all findings against the appellant by the Family Court as 'the court cannot be suspected to be guilty of even borderline misogyny or sexism'.

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Aman & Others Versus The State Of Madhya Pradesh & Others

- ❖ **TOPIC :** Husband, In – Laws ‘Falsely Implicated’ By Wife in View of Matrimonial Dispute Between Parties : Madhya Pradesh HC Quashes Rape, Dowry FIR
- ❖ **BENCH :** Justice Subodh Abhyankar
- ❖ **FORUM:** Madhya Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding a rape and dowry FIR against a husband and his kin
- ❖ **OBSERVATION**
 - While quashing a rape and dowry FIR against a husband and his kin, the Indore Bench of the Madhya Pradesh High Court said that the petitioner and his family members were "falsely implicated", adding that the lodging of the FIR at the wife's instance appeared to be an act of "wreaking vengeance".
 - The court said this after noting that there existed a pending civil suit filed by the petitioner husband against the complainant wife and another individual seeking a permanent injunction. In thus observed that FIR lodged at the wife's instance appeared have to be filed only to counter the civil suit which existed between the parties.
 - Justice Subodh Abhyankar observed, “Whereas a matrimonial dispute exists between the parties as the petitioner No.1 has already filed a divorce petition against the respondent No.2/complainant on 16.02.2021, whereas the present FIR has been lodged by the complainant on 04.03.2021, which appears to be an act of wreaking vengeance on the accused/petitioners, only as a counterblast to the civil cases.
 - ...Under the facts and circumstances of the case, this Court is satisfied that petitioner no.1 and his family members have been falsely implicated in the criminal case due to matrimonial dispute between the petitioner no.1 and his wife, the respondent no.2 herein, and the continuation of trial against them would only amount to misuse of the process of the Court.”
 - The court was hearing a petition by the petitioner husband and his family seeking quashing the FIR lodged under IPC Sections 354(A) (Sexual harassment and punishment for sexual harassment), 354(B) (Assault or use of criminal force to woman with intent to disrobe), 376 (Punishment for Rape), 323 (Punishment for voluntarily causing hurt), 294 (Obscene acts and

- songs), 506 (Punishment for criminal intimidation) 34 (Acts done by several persons in furtherance of common intention) & 498A (Husband or relative of husband of a woman subjecting her to cruelty) and Sections 3 (Penalty for giving or taking dowry) & 4 (Penalty for demanding dowry) of The Dowry Prohibition Act.
- The FIR was lodged at the instance of the Respondent No. 2-complainant wife wherein she alleged that she was being harassed by the petitioners for not bringing adequate dowry
- She also alleged that she was subjected to unnatural intercourse and her brother-in-law also outraged her modesty, and used to abuse and beat her. She further alleged that her husband used to make private videos of her and threatened her that he would make them viral, pursuant to which an FIR was filed. However, it is alleged that on being granted bail, the petitioners started harassing her again
- The counsel for the petitioners submitted that a total false case has been lodged against the petitioners, who belong to a well-educated family. It is also submitted that in the entire charge-sheet no such video clips or photographs have been seized by the police, which, according to the respondent no. 2-complainant, were taken by the petitioner husband.
- The counsel further submitted that the petitioner husband had already filed a divorce petition against the respondent No.2/complainant, and only as a counterblast to the aforesaid civil cases, a false case has been registered by the complainant. Moreover, the parties had a love marriage hence, there was no question of demand of any dowry etc.
- On the contrary, the counsel for the respondent wife submitted that the petitioners have inflicted extreme atrocities on her, which led her to lodge the FIR.
- It is submitted that the petitioner accused also used to "take his wife to other persons to satisfy their lust", and whereas, the brother-in-law/petitioner No. 4 also used to outrage the modesty of the respondent No.2.
- After perusal of the records, the court observed, “This court finds that apart from the verbal allegations, there is nothing on record to connect the petitioners with the offence.
- It is also found that the complainant herself is well educated, whereas, the petitioner Nos.1 and 4 are also qualified Engineers, the documents regarding which, have already been filed on record, which have not been rebutted by the respondent No.2, whereas petitioner Nos.2 and 3 are the father-in-

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law and mother-in-law of the respondent No.2.”

- The court also noted that as per wife's medical examination, and as per the history given to the doctor it was stated that her husband has left her around four months ago. In the MLC apparently, the doctor has not given any opinion about the rape as claimed by the respondent No.2-complainant wife. The court noted that apparently there was delay of at least four months in lodging the FIR.

- The court concluded that the petitioner no. 1 and his family members were false implicated in the criminal case due to matrimonial dispute between the petitioner no.1 and Respondent No. 2.
- Thus, the present petition was allowed and the FIR and consequential proceedings arising out of it were, thereby, quashed.



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