Sonu Choudary v. State of NCT Delhi

- **TOPIC :** Offence within Restaurant Not 'House Trespass' As per Sections 442, 452 IPC : Supreme Court
- **BENCH :** Justice Bela M Trivedi and Justice Satish Chandra Sharma

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding the offence of house trespass
- **OBSERVATIONS**
  - Observing that a restaurant cannot be said to be either a place used for human dwelling or worship or the custody of the property, the Supreme Court set aside the conviction of a person accused of the offence of "house trespassing after preparation for hurt" under Section 452 of IPC.
  - The bench comprising Justice Bela M Trivedi and Justice Satish Chandra Sharma noted that the restaurant does not meet the criteria of a "house" under Section 442 IPC because it is neither a dwelling, a place of worship, nor a place for the custody of property. Thus, the necessary element for an offence under Section 452 was not fulfilled.
  - As per Section 442 of IPC, the offence of House Trespass is said to be committed by entering into or remaining in any building, tent, or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property.
  - Section 452 of the IPC punishes an act of entering or remaining on a property after preparing to cause harm or commit other criminal acts. ''452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend.''
  - It was the case where the appellant-accused had visited the Restaurant, and upon refusal of the restaurant's owner to provide a jug of water for consumption of alcohol, the accused voluntarily caused hurt to the owner with a knife. Thereafter, an FIR under Sections 324 and 452 of IPC was registered against the accused. The trial court convicted the appellant accused, and the High Court affirmed the conviction. Following this, an appeal was preferred before the Supreme Court.
  - Maintaining the conviction for voluntarily causing hurt under Section 324 of IPC, the court set aside the conviction under Section 452 and noted that since the essential requirement of Section 452 IPC when read with Sections 441 and 442 of IPC was not fulfilled, therefore no offence could be brought under Section 452 of IPC.
  - The Court observed that ''the 'house trespass' being an essential ingredient for convicting a person under Section 452, it has to be proved by the prosecution that the accused committed the house trespass and criminal trespass by entering into or unlawfully remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, as contemplated in Section 442 IPC.''
  - Upon perusing the facts of the case, the court observed that, admittedly, ''the incident had taken place in a restaurant run by the injured which cannot be said to be either a place used for human dwelling or for worship or for the custody of the property. Hence, the very ingredients of the offence under Section 452, namely, the criminal trespass as contemplated in Section 441 and house trespass as contemplated in Section 442 having not been made out by the prosecution, the appellant could not have been convicted for the offence under Section 452 IPC.''
  - The court partly allowed the appeal, upholding the conviction and sentence for Section 324 IPC but acquitting the appellant under Section 452 IPC.
  - Since the appellant had already served two years, he was ordered to be released if he was not required in any other case. However, he remained liable to pay the fine for the conviction under Section 324

IPC.

M/S Crystal Transport Private Limited & Anr. v. A Fathima Fareedunisa & Ors.

- **TOPIC :** Partnership Act | Outgoing Partner Entitled To Share In Profits Derived From His Share In Assets of Firm : Supreme Court
- **BENCH :** Chief Justice DY Chandrachud and comprising Justices JB Pardiwala and Manoj Misra

- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding partners in partnership firm
- **OBSERVATIONS**
  - In a recent ruling, the Supreme Court held that if a partner is carrying on business with the assets of the firm, till a final settlement is made, the outgoing partner would have the right to seek accounts and a share in the profits which might be derived from his share in the assets of the firm.
  - The bench led by Chief Justice DY Chandrachud and comprising Justices JB Pardiwala and Manoj Misra observed that when an entity takes over the assets of a partnership without an outgoing partner's consent, the profits earned by the entity using the partnership firm's assets would be proportionally distributed to the outgoing partner.
  - The case involves a dispute over the dissolution and settlement of accounts of a partnership firm, Crystal Transport Service, originally formed in the early 1970s. The firm's dissolution was prompted by accusations from one partner (the plaintiff) that funds were diverted from the firm without her consent. The main issue at hand concerns the division of assets and profits following dissolution and the responsibilities of partners regarding firm assets.
  - The appellants contested the demands of profits made by respondent no.1 (plaintiff) after the dissolution of the firm. They contended that liability cannot be fastened on the appellant company to share its profit for any period beyond 15.11.1978 i.e., the date of dissolution of the firm, particularly when the first appellant utilized no assets of the erstwhile firm.
  - Rejecting the appellant's contention, the judgment authored by Justice Misra observed as follows:
  - ‘‘In the instant case, the finding, which appears on the record, is to the effect that the fourth defendant (appellant company) had taken over the assets of the firm. Therefore, in light of the provisions of Section 37 of the 1932 Act, if the fourth defendant is carrying on business with the assets of the firm, till a final settlement is made, the plaintiff, who would fall in the category of an outgoing partner, would have the right to seek for accounts and a share in the profits which might be derived from his share in the assets of the firm.’’
  - ‘‘As to what extent the business of the appellant company is derived from the assets of the firm is a matter of evidence which parties may have to adduce in the course of the proceedings relating to the preparation of the final decree pursuant to the order of remand.’’, the court added.
  - Accordingly, the appeal was dismissed.

T.V.S.N. Prasad and others v. Resham Singh

- **TOPIC :** Not Liable For Contempt If Undertaking Is Given By Unauthorized Person
- **BENCH:** Justice Sureshwar Thakur and Justice Sudeepti Sharma
- **FORUM:** Punjab & Haryana High Court

- **MAIN ISSUE**
  - Regarding Contempt of Court
- **OBSERVATIONS**
  - The Punjab & Haryana High Court set aside the charges framed for contempt of court, observing that the undertaking given by the State counsel

following the instruction of the official was not authorised to give the undertaking.

- A case seeking direction for conducting an exam of Kanungo for promotion to the post of Naib Tehsildar was filed, however the same was disposed of in view of the undertaking given by the State counsel following the instruction of Inspector, Director Land Record, that the same will be conducted within two months. The charges for contempt of court were framed when the exam was not conducted within the time frame submitted before the Court.
- Justice Sureshwar Thakur and Justice Sudeepti Sharma said, "neither any willful nor any intentional disobedience became caused to the order..., which otherwise for reasons...is prima facie banked upon flawed instruction(s) becoming received and thereafter also becoming successfully thereonwards, thus becoming conveyed to this Court, but without evident exercisings of care and caution."
- The bench also observed that since the Inspector lacked authority to instruct the State counsel the undertaking "lacks credence."
- It also opined that the Single judge made the decision of framing charges for contempt of court in the most slipshod manner. "the learned Contempt Bench did evidently ill maneuver itself to not only ride roughshod over the apposite extenuating circumstance, wherebys the said justifiable extenuating circumstance but in a most slipshod manner, thus became completely overlooked, but subsequently also proceeded to make an ill categorical finding that the order (supra) became willfully disobeyed," noted the Court.

- These observations were made while hearing the appeal against the order of a single judge whereby it directed to frame charges under Contempt of Court Act for wilful disobedience of undertaking given by Inspector Director Land Record to conduct departmental exam for promotion of Naib Tehsildar within two months.
- The bench said that the single judge overlooked that the reason given by the department that the officials are busy in the election duty was justifiable and moreover, the undertaking lacked authority.
- It stated further that the "the ill prolongations of the trauma and agony, which the appellants would face, thus is required to be ebbed at this very stage."
- Stating that there is merit in the appeal, the Court discharged the authorities from the contempt of court charges.

Onkar Kalmankar v. Public Information Officer

- **TOPIC :** RTI | Disclosure of Marks Obtained By Candidates In Public Recruitment Process Is Not Invasion of Privacy
- **BENCH:** Justices Mahesh Sonak and Jitendra Jain

- **FORUM:** Bombay High Court
- **MAIN ISSUE**
  - Regarding disclosure of marks obtained by candidates in a public recruitment
- **OBSERVATIONS**
  - In a significant ruling, the Bombay High Court held that the disclosure of marks obtained by candidates in a public recruitment process would not invade the privacy of the candidates and that such disclosure is permissible under the Right To Information (RTI) Act, 2005.
  - A division bench of Justices Mahesh Sonak and Jitendra Jain quashed the orders passed by a Public Information Officer (PIO) and the subsequent ones passed by the First and Second Appellate Authorities, which denied disclosure of information related to the marks obtained by the candidates in a public recruitment process, stating that the same would invade their right to privacy.
  - The bench noted that the issue pertained to the selection process for the post of Junior Clerk in the District Court at Pune, which was initiated by inviting applications from all eligible candidates by issuing a public advertisement.
  - "In that sense, this public process must be transparent and above board. The marks obtained by the candidates in such a selection process cannot ordinarily be held to be 'personal information, the disclosure of which has no relationship to any public activity or interest.' Furnishing such information would also not cause an unwarranted invasion of the individual's privacy," the judges

held.

- The confidence in the selection process would be boosted by disclosing the marks obtained by all the candidates in the written test and interviews, the bench said, adding that the transparency and accountability in a public recruitment process would be promoted by disclosing such information.
- "The disclosure of marks in a public recruitment process cannot be said to be purely personal information, the disclosure of which has no relationship to any public activity or interest or which would cause an unwarranted invasion of the privacy of the individual. In any event, the larger public interest justifies the disclosure of such information. Such disclosure would promote transparency and accountability and dispel the lingering doubts about wrongdoings in the public recruitment process. Such disclosures would strengthen the recruitment process by boosting public confidence in it," the bench observed.
- The legislature has not exempted all personal information under Section 8(1)(j) of the RTI Act but only such personal information, the disclosure of which has no relationship to any public activity or interest, the bench noted.
- The judges, further said that since the selection process for Junior Clerks at the District Court in Pune was essentially a public activity which commenced with public advertisement inviting applications from eligible candidates, the disclosure of marks obtained by the candidates participating in such a process would amount to personal information, the disclosure of which has no relationship to any public activity or interest.
- "Similarly, in the context of a public examination for selection to a public post, we are doubtful whether the disclosure of marks obtained by the candidates would amount to any unwarranted invasion of the privacy of such candidates. The legislature has advisedly used the expression 'unwarranted.' Therefore, not any and every invasion of an individual's privacy is exempted from disclosure. Only what is exempted from disclosure is unwarranted invasion," the bench emphasized.
- Confidentiality of any examination is vital to protect its integrity. No party can insist on the disclosure of any information denting such confidentiality or compromising the integrity of the examination itself, the bench, maintained, however, adding, "Withholding such information unnecessarily allows doubts, however unreasonable, to linger, which is not very healthy in promoting transparency and accountability in the working of public authorities and public recruitment processes. Regarding RTI, it is repeatedly asserted that sunlight is the best disinfectant."
- The bench was seized with a petition filed by one Onkar Kalmankar, who sought the detailed list of marks obtained by all the 363 candidates, who appeared for the Marathi Typing Test, English Typing Test and Interviews, for the post of Junior Clerks in the Pune District Courts.
- The petitioner contended that he secured 250th rank for English Typing and 289th rank in the Marathi Typing Test. He also was interviewed by the relevant authorities and later on after he gave an interview, a list of selected persons was displayed but his name was not mentioned in the selected candidates' list and thus he sought information on why he was not admitted. While the petitioner's plea was rejected by the PIO, the First and Second Appellate Authorities, the High Court Bench quashed the said orders and ordered the concerned authorities to disclose the details.

Suseelan v. State of Kerala & Another

- **TOPIC :** Over speed & High speed are Relative Terms, Driving at High Speed By Itself Doesn't Mean Accused Was Rash or Negligent : Kerala High court
- **BENCH:** Justice C S Sudha

- **FORUM:** Kerala High Court
- **MAIN ISSUE**
  - Regarding an accused under Section 304 Part II of the IPC
- **OBSERVATIONS**
  - The Kerala High Court upheld the conviction imposed upon an accused under Section 304 Part II of the IPC for causing the death of a motor bike

rider by driving his car on the wrong side of the road after consuming alcohol beyond the permissible limit.

- Section 304 defines culpable homicide not amounting to murder. A person is convicted under Section 304 Part II of the IPC when he does an act with the 'knowledge' that such an act is likely to cause death.
- Justice C S Sudha observed that the accused was not speeding his car but he drove the car after consuming alcohol beyond the permissible limit. It observed that the accused was unable to manage or control the car and drove on the wrong side of the car with the presumption of knowledge that if he hit pedestrians or people travelling in vehicles, death would be caused.
- ‘‘Merely because the vehicle is being driven at a high speed does not show that the driver was rash or negligent by itself.
- ‘‘High speed’’ or ‘‘over speed’’ as it is often referred to, is a relative term. It is for the prosecution to bring on record materials to establish as to what is meant by "high speed" in the facts and circumstances of the case. In a criminal trial, the burden of proving everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved.
- Criminality is not to be presumed, subject of course to some statutory exceptions. In the absence of any material on record, no presumption of "rashness" or "negligence" could be drawn by invoking the maxim "res ipsa loquitur".
- As per the prosecution's allegation, the deceased was riding a motorbike with his wife and son as pillion passengers when the car driven by the accused who was under the influence of alcohol came from the opposite direction on the wrong side of the road and hit the motorbike. The deceased was killed instantly and his wife and son sustained injuries.
- The accused was convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.
- He was sentenced to rigorous imprisonment for three years and to a fine of rupees twenty-five thousand rupees.
- Aggrieved by the compensation and sentence, the wife and son of the deceased have preferred an appeal and an appeal was also filed by the accused challenging the conviction.
- The counsel for the accused argued that an offence under Section 304 Part II of IPC was not made out, and at most though not admittedly, it would only constitute an offence punishable under Section 304A of IPC by relying upon State of Karnataka v. Satish (1998).
- Section 299 defines culpable homicide and Section 304 is culpable homicide not amounting to murder. Section 304A of the IPC is attracted when death is caused due to rash or negligent act not amounting to culpable homicide.
- On analyzing the provisions, the Court stated that when an act was done with the intent or knowledge that it would result in death, such an act would not come within the purview of Section 304A of the IPC and would come within the ambit of culpable homicide.
- Referring to various precedents, the Court stated thus, ‘‘Where rash or negligent act is preceded with the knowledge that it is likely to cause death, the offence punishable under Section 304 Part II IPC would be attracted.
- In a case where negligence or rashness is the cause of death and nothing more, Section 304A IPC would be attracted. However, where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC.’’
- The Court was thus considering whether the accused drove with the knowledge that his act was likely to cause death to attract the punishment under Section 304 Part II IPC for culpable homicide not amounting to murder.
- Relying upon Alister Anthony Pareira, the Court stated that the accused had the presumption of knowledge that his act of driving the car on the wrong side of the road after consuming alcohol beyond the permissible limit was likely to or in the ordinary course of events, sufficient to cause the death of pedestrians or persons travelling in vehicles.
- On analyzing the evidence, the Court stated that the car had no mechanical defects. It also found that the accused was driving the car after consuming a considerable amount of alcohol. It said, ‘‘The accused drove the vehicle through the wrong side of the road with the full knowledge that by his act, death could be caused.’’

- As such, the Court upheld his conviction under Section 304 Part II of the IPC.
- ‘‘That being the position, it can only be held that the accused was driving the vehicle in a rash manner sufficient to attribute on him knowledge of the consequences which would bring the act within the scope of Section 304 Part II IPC.’’
- Accordingly, the appeals were dismissed.