## Manohar Lal v. Hon'ble Punjab And Haryana High Court And Ors

- **TOPIC :** Habeas Corpus Plea For Accused In Judicial Custody By Order Of Competent Court Not Maintainable
- **BENCH :** Justice Kuldeep Tiwari


- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Whether Habeas Corpus Plea For Accused In Judicial Custody By Order Of Competent Court will be maintainable or not.
- **OBSERVATIONS**
  - The Punjab & Haryana High Court has said that a habeas corpus plea seeking the release of the accused, who is in judicial custody by virtue of an order passed by a court of competent jurisdiction, and whose regular bail application has also been dismissed by the trial Court concerned, is not maintainable.
  - Justice Kuldeep Tiwari refused to entertain the habeas corpus plea of a man, who argued that judicial custody of a man was illegal because the police officers while arresting the accused "did not adhere to the provisions of Section 41-A of the Cr.P.C., therefore, the basic order of granting police remand becomes tainted with illegality."
  - Manohar Lal filed the writ of habeas corpus, under Article 226 of the Constitution, read with Section 3(2) of the Judges (Protection) Act, 1985.
  - Lal, who was arrested in a fraud case in consonance with an order passed by a court of competent jurisdiction, and a regular bail application was also dismissed by the trial Court.
  - After hearing the submissions, the Court opined that the writ was devoid of any merit.
  - Reliance was placed on the Supreme Court's decision in a case titled Col. Dr. B. Ramachandra Rao V/s State of Orissa and others'', wherein it was held that a writ of habeas corpus cannot be granted to a person, in case he is undergoing the sentence of imprisonment imposed on him by a competent court.
  - Consequently, the writ petition was dismissed, "with liberty to the petitioner to raise all such issues, as canvassed in the instant petition, before the court of competent jurisdiction at the time of seeking relief of regular bail."

## SXXXX v. VXXXXX

- **TOPIC:** Adultery Not An Obstacle For Granting Custody To Mother Of Minor Child
- **BENCH** : Justice Sureshwar Thakur and Justice Sudeepti Sharma


- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Whether Adultery is an Obstacle For Granting Custody To Mother Of Minor Child or not.
- **FACTS**
  - The Court was hearing an appeal of a mother against an order of a Family Court whereby it declined to give custody under the Hindu Minority and Guardianship Act in 2020 of the two minor children aged 6 years and 3 years and only allowed visitation rights to her.
- **BACKGROUND**
  - The couple were married in 2009 and two children were born out of wedlock in 2010 and 2013.
  - It was alleged that the husband started harassing his wife for dowry and asked her to leave the matrimonial home in 2016.
  - However, the children have remained with their father and grandparents since then.
- **OBSERVATIONS**
  - The Punjab & Haryana High Court has said that a mother entering into adultery is not an obstacle for her to receive custody of a minor child as she is still capable of giving motherly love to her children.
  - The Court directed the husband to restore the

custody of the wife's two minor children during the pendency of the plea while remanding the matter back to the Family Court.

- Justice Sureshwar Thakur and Justice Sudeepti Sharma said, "The entering of any live-in relationship by any partner to a lawful marital relationship, which may have overtones of adultery, thus is not required to be working as an obstacle rather for the mother to receive the custody of her infant/nascent children, as thereby completest motherly love and affection becomes bestowed upon them."
- The Court opined that the adultery of any parent cannot be the grounds for denying child custody.
- The bench further said that a minor child is in need of the affection of both mother and father and even if the assuming that the mother of a minor child is in a live-in relationship, "thereby the care, affection or the endowment of motherliness, upon the minor child, but cannot become curtailed or fettered in any manner."
- "The above is a dire biological need, and/or is a biological bondage inter se the mother and the minor children, which cannot be snapped, even if marital ties amongst the husband and the wife become severed or become snapped," said the Court.
- Speaking for the bench Justice Thakur said that the question of whether the mother is living in adultery cannot be decided in the present case also because the same is not appropriate in the present proceeding and could have been considered if it was a plea for divorce.
- In the light of the above the Court remanded the matter back to the Family Court and asked to refer the same to the counsellors.
- "The counsellor concerned, on receiving the reference, may seek the assistance of the child psychologist, who may after prolonged deliberations with the minor children thus shall make unearthings whether the children are afflicted with the malady of Parental Alienation Syndrome," added the bench.
- While setting aside the impugned order of the Family Court, it directed the father and grandparents of the children to hand over the custody to the mother till the matter is decided by the Family Court.
- The Court also directed the child psychologists to assist the counsellors working at the Mediation Centres concerned. It further directed the District Health Officers in the States of Punjab and Haryana and in Union Territory, Chandigarh to regularly appoint child psychologists at all the Mediation Centres.

## Arockiasamy v. The State of Tamil Nadu & Anr.

- **TOPIC :** Section 195 CrPC Bar Not Applicable When Forgery Was Committed On Document Before It Was Given As Evidence In Court
- **BENCH :** Justices Hrishikesh Roy and R Mahadevan


- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Will Section 195 CrPC Bar will be Applicable or not When Forgery Was Committed on Document Before It Was Given As Evidence In Court.
- **FACTS**
  - As per the allegations, the respondents had fraudulently obtained stamp paper and prepared an unregistered sale agreement.
  - Thereafter, a suit was filed by them seeking certain reliefs and, in the suit, the forged document was filed.
  - The allegations however did not indicate whether the documents were forged when the matter was sub-judice before the Civil Court.
- **BACKGROUND**
  - Criminal proceedings were initiated against the respondents alleging inter-alia forgery of documents filed in Court.
  - The High Court quashed these proceedings, holding that there could be no FIR/private complaint for forgery of a document filed before Civil Court until the finality of the litigation.
- **OBSERVATIONS**
  - Dealing with a case involving allegations of forgery, the Supreme Court recently reiterated that there is no embargo under Section 195(1)(b)(ii) of CrPC to examine an allegation of forgery of documents filed in Court, when such forgery is committed before its production.
  - As per Section 195(1)(b)(ii) of the Code of Criminal Procedure, a Court can take cognizance of an offence of forgery in relation to a document submitted in evidence in a Court proceeding only

on a written complaint of an officer authorised by that Court (where the forged document was produced)

- "Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis".
- In view of disposal of the civil suits in 2021, it was further opined that the High Court proceeded on a wrong assumption that the civil litigation between the parties had not attained finality.
- Relying on Iqbal Singh, the bench of Justices Hrishikesh Roy and R Mahadevan concluded that the bar under Section 195(1)(b)(ii) of CrPC was not attracted. Accordingly, the appeals were allowed and the order of the High Court set aside.

## Saheb, s/o Maroti Bhumre etc. v. The State of Maharashtra

- **TOPIC :** Unbelievable That Eyewitness Identified Attackers Despite Power Outage
- **BENCH :** Justices Sanjay Kumar and Aravind Kumar


- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether the Supreme Court can set aside murder conviction in the 2006 case or not.

**FACTS**

- The deceased was the village head of Singi village and was murdered in his house due to political rivalry.
- Admittedly, at the time of the incident, there was a power cut due to load shedding.
- BACKGROUND
- The deceased's wife, who is the sole eye witness as testimonies of three other eyewitnesses were discarded, claimed that there was sufficient moonlight to identify all the accused and the weapons that they used during the attack.
- As per brief facts, the deceased Madhavrao Krishnaji Gabare along with his family members were attacked by the nine accused persons with axes and sticks at the residence of the deceased in Village Singi. The deceased died on the spot.
- Out of the 15 witnesses of the prosecution, four were eyewitnesses. The eyewitnesses included the wife of the deceased, the son of the deceased, the nephew and the nephew's wife of the deceased.
- The wife had stated that the deceased, her son and her daughter-in-law along with her were present at the crime scene as they were also attacked and sustained injuries.
- In 2008, the Additional Sessions Judge held nine accused persons guilty of offences punishable under Sections 148, 302 and 324, both read with Section 149, of the Indian Penal Code, 1860 (IPC). It relied on the testimony of the four eyewitnesses.
- On an appeal before the Bombay High Court, the Court acquitted six accused and sustained the conviction of three accused persons only for the offences of Section 302 read with 149 and 148 IPC.
- Aggrieved by this, two accused persons challenged the conviction in a criminal appeal before the Supreme Court, while the remaining accused person did not file an appeal against the confirmation of his conviction.

**OBSERVATIONS**

- The Supreme Court acquitted two persons who were convicted for the offence of murder holding that their convictions were solely based on the testimony of the deceased's wife, who claimed she eye-witnessed the incident despite a power outage but failed to identify the assaulter and the weapon used for attack.
- The Court stated that the guilt of the present appellants hinges solely upon the testimony of the widow.
- The prosecution did not examine the son's wife as the key eye witness.
- The Court found that the narration of facts differed from what she had stated in the complaint.
- The Court observed that her deposition before the Trial Court and her initial complaint ‘‘embellished her narration of how the attack occurred, resulting in a lot of inconsistencies. Further, she tried to include more witnesses and added extra details of the assault in her deposition.’’
- The Court concluded: ‘‘The contradictions in her story would raise reasonable doubt, as her statement in her deposition that she was attacked after the attack on the deceased was made to buttress her narration as to who attacked the

deceased with axes, but in the first instance, she had stated that the accused attacked all of them as soon as they entered the house.''

- The Court held: ''As already noted, the appellants have suffered 10 years' incarceration. Given the lacunae in the prosecution's case and the shaky evidence adduced in support thereof by PW-1, we necessarily have to extend the benefit of doubt to the appellants. The appellants are, therefore, acquitted of the offences under Section 148 IPC and Section 302 IPC read with Section 149 IPC.''

## CRIMINAL PETITION No.9953 of 2024

- **TOPIC :** Driving Vehicle Without Number Plate Not 'Cheating' U/S 420 IPC: Telangana High Court
- **BENCH :** Justice K. Sujana


- FORUM: **Telangana High Court**
- **MAIN ISSUE**
  - Whether Driving Vehicle Without Number Plate will be Cheating' U/S 420 IPC or not.
- **FACTS**
  - The case emerged from a routine vehicle checking operation where police stopped the petitioner who was driving a two-wheeler without a number plate.
- **BACKGROUND**
  - The police seized the vehicle and registered a case at Charminar Police Station, under Section 420 of IPC and Section 80(a) of the Motor Vehicles Act, 1988
  - Pursuant to this the petitioner approached the High Court praying for quashing of the case.
- **OBSERVATIONS**
  - While quashing a cheating case registered against a two wheeler driver, the Telangana High Court said that the allegation of driving a vehicle without a number plate does not attract Section 420 IPC.
  - A single judge bench of Justice K. Sujana noted that the sole allegation against the accused—of driving without a number plate, does not fall under the purview of Section 420 (Cheating and dishonestly inducing delivery of property) of IPC.
  - Regarding Section 80(a) of the Motor Vehicles Act, the court said that the provision deals with the procedure for applying and granting permits to vehicles and does not specifically address the offence of driving without a number plate.
  - ''In the light of the submissions made by both the learned counsel and a perusal of the material available on record, it appears that the only allegation against the petitioner is that he drove the vehicle without number plate, as such, the vehicle was seized, which does not come under the purview of Section 420 of IPC.
  - Further, the petitioner was also charged for the offence punishable under Section 80(a) of the Act and the said Section speaks about the procedure in applying for and granting permits to the vehicles.
  - Therefore, driving the vehicle without a number plate does not attract Section 80(a) of the Act," the court observed.
  - The high court further said that if the petitioner drove the vehicle without a number plate, the Police will have to "impose a fine" as per rules or register the case under the concerned provisions.
  - The court also observed that the averments in the complaint did not constitute the offence as alleged against the petitioner, and went on to quash the case registered against the petitioner.

## Jagdish Prasad Dixit v. State Of Madhya Pradesh

- **TOPIC :** MP High Court "Shocked" At Police Support To Accused In A Rape Case, Suspects "Deliberate" Rise In Improper DNA Tests In Multiple Rape Cases
- **BENCH :** Justice G.S. Ahluwalia


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- **FORUM:** MP High Court
- **MAIN ISSUE**
  - Regarding rape case where conduct of the Police during investigation exhibited "support" to the accused.
- **FACTS**
  - The applicant is booked under Sections 376-D, 294, 506, 34 of IPC.
  - His blood samples were collected and as per the DNA test report, very low uninterpretable Y-chromosomes were found.
- **BACKGROUND**
  - Police filed a closure report, which came to be rejected by the trial Court.
  - Hence, the present application for pre-arrest bail.
- **OBSERVATIONS**
  - State opposed bail, asserting that the applicant had evaded arrest, resulting in proceedings under Sections 82 and 83 of the Cr.P.C.
  - The Madhya Pradesh High Court has expressed "shock" at a rape case where conduct of the Police during investigation exhibited "support" to the accused.
  - The bench of Justice G.S. Ahluwalia, while dealing with the anticipatory bail application of an accused involved in gang rape and other charges, observed, ‘‘It is really shocking that on one hand, rape on a girl is not only a heinous offense, but it is also an attack on the emotions and self-respect of the prosecutrix and at the same time, police was out and out to support the accused persons. Time has come when the police must show its seriousness as well as concern about the safety of girls.’’
  - It also raised concerns regarding the Police not paying heed to the Supreme Court judgment that the accused has no say in the matter of investigation.
  - Court has already considered the conduct of Police in investigating the matter and has found that the closure report which was filed by the police was not worth acceptance, coupled with the fact that in spite of the fact that the applicant was available with the police, still police did not take any coercive action and were all the time dancing to the tune of the applicant contrary to the law laid down by Supreme Court that investigation as per the dictation of accused cannot be done.
  - The High Court rejected the application and went on to flag recurring reports of very low uninterpretable Y-chromosomes in DNA tests in multiple cases, raising concerns about the quality of forensic procedures.
  - It observed,"Whether the lab is not equipped with an approved DNA test kit or the scientific officers are deliberately avoiding conducting the DNA test properly, is a matter which is to be considered by the Director General of Police," and asked the DGP to intervene.

## Dr Tanveer Hussain Khan & Ors v. Andleeba Rehman & Ors

- **TOPIC** Proceedings U/S 12 DV Act Not Strictly Criminal In Nature, Bar Preventing Magistrates From Revoking Their Own Orders Is Not Applicable
- **BENCH :** Justice Sanjay Dhar


- **FORUM:** Jammu and Kashmir HC
- **MAIN ISSUE**
  - Regarding the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act)
- **FACTS**
  - The case arose from a petition filed by petitioner Dr. Tanveer Hassan Khan and others, challenging an application under Section 12 of the D.V. Act, pending before the Judicial Magistrate, Kupwara.
- **BACKGROUND**
  - The petitioner had entered into wedlock with Respondent Andleeba Rehman, in May 2022, and a child was born from this union.
  - The petitioner alleged that the respondent harassed his family and insisted that he separate from his elderly parents. Tensions escalated, and the respondent returned to her parental home.
  - According to the petitioner, further issues arose when the respondent resumed contact with her ex-husband, an action that the petitioner disapproved of.
  - Challenging the proceedings the petitioners argued that the application under Section 12 of the D.V. Act should be quashed as the allegations made by Respondent No. 1 were vague and lacked specific detail.
  - He further argued that the respondent did not reside in the territorial jurisdiction of the Court at Kupwara, rendering the proceedings invalid.

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## ❖ OBSERVATIONS

- The Jammu and Kashmir and Ladakh High Court has clarified that proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) are not strictly criminal in nature.
- Consequently, the bar preventing Magistrates from revoking or cancelling their own orders is not applicable in these cases, it added.
- In his pronouncement on the nature of proceedings under the Act Justice Sanjay Dhar emphasized that Magistrates have the authority to drop proceedings against the accused parties if they find that no case is made out against them.
- Justice Dhar, after reviewing the arguments, highlighted that under Clause (a) of Subsection (1) of Section 27 of the D.V. Act, a Magistrate within whose territorial limits the aggrieved person temporarily or permanently resides has the authority to hear the case.
- Since Respondent No. 1 claimed temporary residence in Kupwara, the Magistrate was justified in entertaining the petition. Any dispute over the respondent's residence could only be addressed during the trial, not at this preliminary stage, he underscored.
- Commenting on the Nature of the Proceedings under Section 12 of the D.V. Act, the Court clarified that proceedings under the D.V. Act do not have the same character as a criminal complaint or prosecution.
- Therefore, a Magistrate, after hearing from both parties, can revoke an interim order or even drop proceedings altogether if it is found that the husband or his relatives were wrongly implicated or if no valid case is established for an interim order, the court reasoned.
- Noting that the petitioners had approached the High Court without filing their response to the petition under Section 12 of the D.V. Act before the Magistrate the Court observed that the petitioners should first file their response or an application to drop the proceedings before the Magistrate.
- ‘‘The learned Magistrate, after hearing both the parties, shall pass appropriate orders in accordance with law within one month from the date such application is filed by the petitioners’’, the bench concluded.

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