

25 September 2024**Dr. Rajesh Singh And Another v. State of U.P. and Another**

- ❖ **TOPIC:** Summoning A serious Affair, More so When Issued After Rejecting Closure Report
- ❖ **BENCH:** Justice Saurabh Shyam Shamshery
- ❖ **FORUM:** Allahabad High Court
- ❖ **MAIN ISSUE**
 - Whether the court can quash the case against the doctor couple
- ❖ **FACTS**
 - The applicants are doctors who also run Singh Life Care Hospital Ltd, Rajepur in Ghazipur district.
- ❖ **BACKGROUND**
 - The complainant father lodged an FIR under IPC Sections 147(rioting), 302(murder), 323(voluntarily causing hurt to a person) and 504 (Intentional insult with intent to provoke breach of the peace) alleging death of his son by unknown person at the hospital in the intervening night of September 18-19, 2015.
 - In the post mortem report, it was found that the cause of death was 'Coma and Haemorrhagic shock as a result of Ante-Mortem Injuries'.
 - It was alleged in the FIR that the complainant had admitted his wife into the hospital for surgery.
 - He claimed that when his son had gone to call the doctor couple, they allegedly beat him up with the intention of killing him; it was claimed that when the complainant's daughter and nephew ran into the direction of the noise, they found that the couple and three staff members were beating his son in a room.
 - He claimed that the deceased was beaten up so much that he "died on the spot".
 - Complainant, his daughter and his nephew claimed to be eye-witnesses of the incident.
 - The order notes that the nephew of the complainant who had given a different version as compared to the complainant and his daughter state had in her statement under Section 161 Cr.P.C. and before SIT that initially some dispute arose between deceased and attendants of other patients, which was intervened by staff of the hospital.
 - Thereafter, the deceased was taken outside the hospital and left alone and he later died due to an accident.
 - Thereafter, a Special Investigation Team took over the case and several witnesses were examined and cross-examined.
 - Lie detector tests and Narco tests were conducted on 4 witnesses, including the daughter and the nephew. In the Final Report, it was stated that the

deceased died due to road accident and there was no culpable homicide.

- The Complainant filed a protest petition against the Final Report wherein the Chief Judicial Magistrate, Ghazipur after considering the protest petition and the final report went on to reject the outcome of the Final Report and issued summons to the applicants and others. Revision against this order was dismissed by the sessions court. The doctor couple thereafter approached the High Court.
- ❖ **OBSERVATIONS**
 - The Allahabad High Court recently quashed criminal proceedings against a Doctor couple- who are also owners of a hospital in Rajepur-in a case where the deceased who had accompanied his mother in the hospital, was allegedly removed and later died in a road accident thereafter.
 - The high court passed the order while hearing a plea moved by the doctor couple against the summoning order of the magisterial court as well as the sessions court order which had rejected their revision plea against the summoning order.
 - Notably, the special investigation team probing the case had submitted its final report ruling out culpable homicide. The magisterial court in its order rejected the final report and issued summons to the doctor couple and other accused.
 - The couple moved a revision plea which was dismissed by the sessions court; subsequently they moved the High Court.
 - Observing that a detailed investigation was carried out by the SIT while issuing the Final Report, a single judge bench of Justice Saurabh Shyam Shamshery observed, "To summon is a serious affair and it becomes more serious when a summon is issued after rejecting outcome of investigation i.e. a Final Report. The required reasons are missing in impugned order. Entire investigation i.e. by police, by Special Investigation Team along with Scientific Investigation could not be rejected merely for sake of it, rather there must be reasons to reject it however, such reasons are missing in impugned order".
 - The High Court observed that the investigation was detailed. Regarding the facts, it was observed that the deceased was left outside the hospital by the staff as well as his attendants and he met with a road accident.
 - The court observed that to reject the Final report and take cognizance thereafter, the CJM ought to have given reasons in support of issuing summons to the applicants.
 - The Court held that once the daughter of the complainant had said in her test that she had not

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seen the applicants at the time of occurrence and did not recognize them, summons against them should not have been issued.

- Accordingly, the Court quashed the proceedings against the couple, along with four other persons who were not before the Court as a detailed analysis of the evidence had been done by the Court.

Namdeo Bansode v. State of Maharashtra

- ❖ **TOPIC:** Any And Every Cruelty or Harassment of Wife Will Not Attract Section 498 A of IPC
- ❖ **BENCH:** Justice Sanjay Mehare
- ❖ **FORUM:** Bombay High Court
- ❖ **MAIN ISSUE**
 - Whether a husband can be convicted or not for abetting the suicide of his wife by torturing.
- ❖ **FACTS**
 - The bench was dealing with a criminal appeal filed by a man challenging his conviction under Sections 498A and 306 of the IPC by a court in Aurangabad on April 28, 2004.
- ❖ **BACKGROUND**
 - It was the prosecution case, that the accused husband harassed the wife and demanded gold jewellery from her parents and since she could not fulfil the same, he would subject her to physical and mental torture.
 - The accused, however, claimed that the wife took the extreme step as she was 'depressed' for not being able to conceive. He further contended that on the day of the suicide, the wife wanted to go to her parental home along with her brother but the accused did not let her go, due to which she ended her life by consuming pesticide.
- ❖ **OBSERVATIONS**
 - The Bombay High Court while acquitting a husband convicted for abetting the suicide of his wife by torturing her, held that Section 498A of the Indian Penal Code (IPC) does not attract in any and every harassment or type of cruelty.
 - Single-judge Justice Sanjay Mehare sitting at Aurangabad held that to convict a person under Section 498A, the prosecution must establish 'continuous' harassment.
 - Section 498A of the IPC does not attract every harassment or every type of cruelty. The prosecution has to establish that the beating and harassment of the deceased were with a view to force her to commit suicide or to fulfil the illegal demand of dowry.

- Mere harassment for dowry or causing grave injury to her life or limb or health is not cruelty, as explained in Section 498-A of IPC.
- To constitute the offence under this Section, it is to be established that the harassment was caused by coercing the woman to meet unlawful demands.
- To hold the accused guilty for the offence punishable under Section 498A of the IPC, there should be a case of continuous state of affairs of torture by one to another," the judge said.
- The allegations in the instant case, revealed that the accused husband caused cruelty to the deceased wife by persistent demand for money for the golden ornaments.
- She was subjected to physical as well as mental cruelty as her parents could not satisfy the demands of the accused as they were financially poor. The prosecution case revealed that the accused husband went to fetch her back when she used to stay with her parents and he had assured he would not ill-treat her and only then she went to cohabit with him.
- The bench noted that the woman died within 2 years of her marriage.
- It noted that for a reasonably long period the woman stayed with her parents alleging that the husband was demanding gold ornaments.
- Thereafter, she returned with the husband, after he went to fetch her back and on an assurance he allegedly gave to her parents that he will not harass her.
- The judges noted that very vague and omnibus allegations were levelled by the wife's parents against the husband and thus, the same fell short to hold him guilty.

X v. Y

- ❖ **TOPIC:** Wife compelled To leave Matrimonial House Due To Husband's Extra Marital Affair Makes Her victim of Domestic Violence
- ❖ **BENCH:** Justice Subramonium Prasad
- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Related to domestic violence.
- ❖ **FACTS**
 - The parties got married in 1998. The wife alleged that the husband used to abuse her mentally, verbally and physically. She further alleged that in 2010, he brought a lady to the house with whom he was having an extra marital affair, introduced her to his parents and stopped coming to the matrimonial house.

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- She alleged that her in-laws threatened her not to take any action against the husband, else he would stop financial support to her and her kids. Furthermore, it was alleged that the husband got married to the lady and had a daughter with her.

❖ **OBSERVATIONS**

- The Delhi High Court has recently observed that a husband living with another lady and having a child with her makes the wife a victim of domestic violence under the Domestic Violence Act.
- Justice Subramonium Prasad made the observation while rejecting a husband's plea against grant of monthly maintenance of Rs. 30,000 to his wife.
- He also challenged grant of Rs. 5 lakh to the wife for the injuries sustained by her, including mental torture, Rs.3 lakh as compensation and Rs.30,000 as litigation costs.
- Dismissing the husband's plea, Justice Prasad rejected his contention that the complaint filed by the wife did not come within the four corners of the Domestic Violence Act.
- The court said that the wife had to leave her matrimonial house because she was unable to tolerate the fact that her husband was living with another woman.
- While upholding the grant of monthly maintenance of Rs. 30,000, the court said that the fact that the wife was capable of earning cannot work to her detriment.
- "The fact that the Respondent is able bodied and can earn a livelihood does not absolve a husband not to provide maintenance to his wife and children," the court said.
- It added, "Indian women leave their jobs to look after the family, cater to the needs of their children, look after their husbands and his parents.
- The contention that the Respondent is only a parasite and is abusing the process of law is nothing but an insult not only to the Respondent herein but to the entire womankind."

XXXXXX v. State Of Haryana

- ❖ **TOPIC:** Cannot Say that 15 Yr Old Victim Did Not Know Repercussions of statements Given By Her
- ❖ **BENCH:** Justice Sanjeev Prakash Sharma and Justice Sanjay Vashisth
- ❖ **FORUM:** Punjab & Haryana High Court
- ❖ **MAIN ISSUE**
 - Whether a man's conviction can be suspended or not.

❖ **FACTS**

- The Punjab & Haryana High Court has suspended the conviction against a man convicted for committing rape on a minor, observing that the alleged 15 and a half year old victim turned hostile in the Trial Court.
- During the proceeding the counsel for the convict submitted that the prosecutrix turned hostile in the Court and resigned from her earlier statement supporting the prosecution's case which she stated to have been recorded under duress.

❖ **OBSERVATIONS**

- Justice Sanjeev Prakash Sharma and Justice Sanjay Vashisth noted that "...the statements of the prosecutrix recorded in the court, have not been accepted by the trial Court.
- The victim was more than fifteen and a half years of age at the time of incident, and she cannot be said to be not knowing the repercussions of her statements made in the Court where she deposes of not having been violated."
- The Court was hearing a plea for suspension of conviction of a man convicted for committing rape of a 15-and-a-half-year-old girl under Sections 4 (2) POCSO Act, Section 3(1)(w) SC/ST Act and sentenced to rigorous imprisonment of 20 years and 2 years of imprisonment.
- Counsel for the appellant contended that the allegations were levelled that the rape was committed by the two persons, and the other accused has been acquitted by the trial Court.
- He further pointed out that, as per the custody certificate, the accused has already been in custody for more than four and a half years.
- After hearing the submissions, the Court noted that the statements of the prosecutrix recorded in the court, have not been accepted by the trial Court.
- The bench opined that the victim was more than fifteen and a half years of age at the time of the incident, and she cannot be said to be not knowing the repercussions of her statements made in the Court where she deposes of not having been violated.
- The division bench noted further that "the mother and father or the victim in their statements have not stated anywhere of their daughter being minor, nor the birth certificate procured by the police was shown to them in cross-examination after they turned hostile."
- Without delving into the merit, the Court allowed the plea and directed the release of the convict on bail.

Ranjit Singh & Anr v. State Of Uttarakhand & Ors.

- ❖ **TOPIC:** Courts Cannot Prepone Date of Hearing without giving Notice to other Party
- ❖ **BENCH:** Justices Abhay S. Oka, Ahsanuddin Amanullah, and Augustine George Masih
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether courts can postpone the date of hearing without giving notice or not.
- ❖ **FACTS**
 - It was a case where the trial court proceeded ex-parte against the defendant on April 22, 2002, and fixed a date for ex-parte hearing on 30th May 2002.
- ❖ **OBSERVATIONS**
 - In a recent case, the Supreme Court deprecated the practice of postponing the date of hearing without giving an opportunity of hearing to the defendant.
 - An application was filed by the defendant for setting aside the ex-parte order. It was contended by the defendants that they were present on April 22, 2002, when the ex-parte order was passed against them but they were under the impression that the matter would not be taken up due to the unavailability of the Judge.
 - In response to the plaintiff's contention that the defendant's version regarding the unavailability of the judge was mischievous, the court said that the defendant may lose the right to file a written statement when a suit is proceeded ex-parte against him but nothing precludes him from cross-examining the plaintiff to prove the falsity of the plaintiff's case.
 - "At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation.", the court said.
 - Now, the clear picture which emerges is that the suit was decreed ex parte without giving proper opportunity to the defendants to defend themselves. On 22nd April 2002, when the order directing that the suit would proceed ex parte was passed, the date fixed for ex parte hearing was 30th May 2002. On that date, the defendants could have appeared and applied for setting aside the said order.

- The Court could have always favourably considered that application by putting the defendants to conditions. However, without waiting till 30th May, 2002, on 3rd May 2002, without issuing notice to the defendants, the suit was taken up by the Trial Court, and an order of striking out the defendants' defence was passed, obviously, without hearing the defendants.
- Therefore, an illegality has been associated with the conduct of the suit proceedings and the manner in which the ex parte decree was passed. Consequently, we propose to set aside the orders dated 22nd April, 2002 and 3rd May, 2002 and relegate the suit to that stage.", the court observed.

Manish v. State Of Nct Of Delhi & Anr.

- ❖ **TOPIC:** S.125 CrPC, wife Not Disentitled to Claim Maintenance Merely Because she Seeks divorce
- ❖ **BENCH:** Justice Amit Mahajan
- ❖ **FORUM:** Delhi High Court
- ❖ **MAIN ISSUE**
 - Whether a wife can be disentitled from claiming any maintenance merely because she seeks divorce after having left the company of her husband due to sufficient reasons.
- ❖ **FACTS**
 - The Delhi High Court has recently observed that a wife cannot be disentitled from claiming any maintenance merely because she seeks divorce after having left the company of her husband due to sufficient reasons.
- ❖ **OBSERVATIONS**
 - Justice Amit Mahajan further reiterated that merely because the wife is educated cannot be a ground to deny her maintenance.
 - The court dismissed the plea moved by a husband challenging a family court order passed in November 2022, awarding monthly maintenance of Rs. 5,500 to the wife.
 - It was also directed that the maintenance amount will be increased by 10% after every two years in view of the inflation. The Family Court had also awarded litigation expenses of Rs. 12,000 in favour of the wife.
 - While the husband had admitted his income as Rs. 13,000 per month, the Family Court assessed the same as Rs. 16,000 per month on the basis of the minimum wage in Delhi.
 - It was the wife's case that her husband was a drunkard who used to beat her and that he and his family members harassed and taunted her for

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insufficient dowry. She also alleged that the husband neglected to maintain and bear her expenses, despite having sufficient means.

- Rejecting the plea, the court noted that the family court found the wife's testimony to be credible and more trustworthy and there was no reason to interfere with the said observation merely on account of certain minor discrepancies in her testimony.
- Justice Mahajan reiterated that there is a tendency to downplay the income when a person is embroiled in a matrimonial dispute and that even income tax returns do not necessarily provide an accurate reflection of the actual income in such cases.

- "There is no material on record to show expenses incurred by the petitioner towards his parents as well. Merely a bald averment of the petitioner that he was living with his parents is insufficient," the court said.
- It added that it was incumbent on the husband, who was an able-bodied man, to financially support his wife and that no evidence was adduced by him to show that she was capable of maintaining herself.



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