

28 January 2025

Sunkari Tirumala Rao & Ors v. Penki Aruna Kumari

- ❖ **TOPIC :** S.69 Partnership Act Partner Of Unregistered Firm Can't File Suit For Recovery Against Other Partners : Supreme Court
- ❖ **BENCH:** Justices JB Pardiwala and R Mahadevan
- ❖ **FORUM:** Supreme Court
- ❖ **FACTS**
 - Case arising out of the Andhra Pradesh High Court's decision to dismiss the Civil Revision preferred by the Petitioners against the order of the trial court dismissing the Petitioner's recovery suit against the partner of the same unregistered firm.
 - It was the case where the petitioners (original plaintiffs) had filed the suit for recovery of money as partners of an unregistered partnership firm, against the respondent (original defendant) in her capacity as a partner of the same unregistered partnership firm.
- ❖ **MAIN ISSUE**
 - Whether a partner of an unregistered firm can enforce a contractual right against another partner or not.
- ❖ **OBSERVATION**
 - The Supreme Court reaffirmed that a partner of an unregistered firm cannot enforce a contractual right against another partner. The Court reasoned that the restriction arises from the bar under Section 69 of the Partnership Act, 1932 ("Act"), which prohibits the maintainability of suits between unregistered partners of a partnership firm.
 - Accordingly, the appeal was dismissed.
 - The Court clarified that the bar under Section 69 of the Act applies even before the partnership firm's business commences. However, filing suits for the dissolution of the firm, rendition of accounts, or realization of the property of a dissolved firm remains permissible, even if the firm is unregistered.
 - Affirming the High Court's decision, the Court observed that "the rigours of Section 69(1) would apply on such a suit and the partnership firm being unregistered would prevent the petitioners from filing a bare suit

for recovery of money from the respondent."

- The Court suggested that the plaintiffs should have filed a suit for the dissolution of the firm and rendition of accounts, as such actions are explicitly exempted from the bar under Section 69(3), even if the partnership business had not yet commenced.
- ❖ **IMPORTANT PROVISION DISCUSSED**
 - Section 69 of the Partnership Act, 1932 (Effect of non-registration)

Jyostnamayee Mishra versus The State of Odhisha and Ors.

- ❖ **TOPIC:** Article 14 Doesn't Envisage Negative Equality' : Supreme Court Rejects Plea Based On Illegal Promotion Given To Others
- ❖ **BENCH:** Justice JK Maheshwari and Justice Rajesh Bindal
- ❖ **FORUM:** Supreme Court
- ❖ **FACTS**
 - The case arising out of Orissa High Court's decision where the Appellant, a retired peon, sought promotion to the post of Tracer based on the previous illegal promotion of her counterparts.
 - The Orissa Subordinate Architectural Service Rules, 1979 (referred to as the "1979 Rules"), mandate 100% direct recruitment for the post of Tracer. Despite these rules, instances of promotion from non-feeder posts, such as peons, had occurred, creating a perception of discrimination.
- ❖ **MAIN ISSUE**
 - Regarding the irregular promotions granted in the past.
- ❖ **OBSERVATION**
 - The Supreme Court ruled that irregular promotions granted in the past cannot serve as a basis for continuing illegality.
 - While holding so, the Court dismissed the appeal of a retired peon who sought promotion to the position of Tracer based on the fact that other employees had been promoted to this position, even though the recruitment rules specified that the Tracer role should be filled through direct recruitment rather than promotion from lower-level positions.
 - In rejecting the Appellant's claim, the judgment authored by Justice Rajesh Bindal

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stated that Article 14 of the Constitution prohibits negative discrimination.

- As a result, the promotions granted to other persons were deemed illegal and could not be used as a basis to perpetuate the illegality by promoting the Appellant, a promotion that was not authorized by the Rules.
- Accordingly, the appeal was dismissed.
- ❖ **IMPORTANT PROVISION DISCUSSED**
 - Article 14 Constitution all people within India are equal before the law and have equal protection under the law

Sri Nishant Bhardwaj v. Smt. Rishika Gautam

- ❖ **TOPIC:** Mutual Incompatibility Not Ground To Dissolve Hindu Marriage Within 1 Year Unless There Is 'Exceptional Hardship': Allahabad High Court
- ❖ **BENCH:** Justice Ashwini Kumar Mishra and Justice Donadi Ramesh
- ❖ **FORUM:** Allahabad High Court
- ❖ **FACTS**
 - The parties had filed for mutual dissolution of marriage under Section 13-B of the Hindu Marriage Act, 1955.
 - However, the same was rejected by the Principal Judge, Family Court, Saharanpur on grounds that minimum period for moving the application as provided under Section 14 of the Act, had not elapsed.
- ❖ **MAIN ISSUE**
 - Whether marriage between two Hindus can be dissolved within one year of marriage on grounds of mutual incompatibility or not
- ❖ **OBSERVATION**
 - The Allahabad High Court has held that marriage between two Hindus cannot be dissolved within one year of marriage on grounds of mutual incompatibility, unless there is exceptional hardship or exception depravity as provided under Section 14 of the Hindu Marriage Act, 1955.
 - Accordingly, the court dismissed the appeal against the order of the Family Court leaving it open for the parties to move a fresh application after expiry of 1 year period.
 - The division bench of Justice Ashwini Kumar Mishra and Justice Donadi Ramesh

noted that Section 14 provides for a one year limitation from the date of marriage to file for divorce with the exception that such petition can be entertained if there is exceptional hardship or exception depravity.

- It was observed in the present matter, except the routine ground for mutual incompatibility, no exceptional circumstance was shown to exist to allow parties to file for divorce within one year of marriage.
- It said that application showed "no exceptional hardship or exceptional depravity" so as to invoke jurisdiction under the proviso to Section 14 of the Act.
- The Court held that divorce petition can be rejected where no exceptional circumstance or exceptional depravity has been shown to invoke the proviso to Section 14 of the Act.
- ❖ **IMPORTANT PROVISIONS DISCUSSED**
 - Section 14 of Hindu Marriage Act prohibits the filing of a divorce petition within one year of marriage.

Saurabh Saxena v. Union Of India Thru. Secy. Ministry Skill

- ❖ **TOPIC:** Equivalence Of Qualification For Eligibility Of Employment To Be Decided By Employer, Not Courts: Allahabad High Court
- ❖ **BENCH:** Justice Attau Rahman Masoodi and Justice Subhash Vidyarthi
- ❖ **Forum:** Allahabad High Court
- ❖ **FACTS** : The U.P. Subordinate Services Selection Commission had issued an advertisement for making an appointment on posts including Instructors in sewing technology, among others, with various qualifications prescribed.
 - Appellant, possessing a three years' Diploma certificate in Textile technology granted by the U.P. Technical Education Board, and also a National Craft Instructor Certificate by the National Council for Vocational Training applied for the post.
 - The application was rejected due to the appellant not possessing the requisite qualifications as prescribed.
 - In a representation, the appellant contended that his degree in Cutting and Sewing trade was equivalent to a Diploma in Costume Design and Dress Making. This order was

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rejected by the Commission and challenged in writ.

- The Writ Court held that the appellant does not possess any of the qualifications mentioned in Column 4 of the advertisement, as a Diploma in Textile Technology was not mentioned therein. It was further held that the certificate by the National Council for Vocational Training was not a recognized qualification under the relevant rules.

❖ **MAIN ISSUE**

- Regarding the question of equivalence of qualification for eligibility and employment

❖ **OBSERVATION**

- The Allahabad High Court has held that the question of equivalence of qualification for eligibility and employment is to be decided by the employer and the same cannot be interpreted by the Courts to treat any qualification to be equivalent to qualifications.
- Accordingly, the Court upheld the decision of the Writ Court, and dismissed the special appeal.
- The High Court observed that out of all the qualifications prescribed in Column 4 of the advertisement, none were held by the appellant. There was no clause of equivalence for a Diploma. It was held that if the appellant's claim was allowed, similarly situated persons who did not apply would suffer.

Ameen Batcha v The State

- ❖ **TOPIC:** 'Consensual Relationship Turned Sour': Madras High Court Acquits Man Convicted For Committing Rape On False Promise Of Marriage

- ❖ **BENCH:** Justice Sunder Mohan

- ❖ **FORUM:** Madras High Court

❖ **FACTS**

- A criminal appeal filed by Ameen Batch who was convicted by the sessions court in 2022 for offences under IPC Sections 376 (rape) read with 90 (Consent known to be given under fear or misconception) and Section 417 (punishment for cheating) and sentenced to undergo seven years rigorous imprisonment and pay a fine of Rs. 25,000.
- The prosecution case was that the appellant and the victim had a love affair for 6 years

and when the victim told the appellant that their marriage was not possible since they belonged to different religions, the appellant threatened the victim that he would commit suicide and had sexual intercourse with her on a false promise of marriage.

- Based on the complaint of the victim on July 2020, a case was registered. The case was taken up on file and charges were framed for offences under Sections 417, 376, 294(b) and 352 of the IPC.

❖ **MAIN ISSUE**

- Whether a case against a 26-year-old man who was convicted and sentenced for allegedly raping his partner on a false promise to marry can be quashed or not.

❖ **OBSERVATION**

- The Madras High Court has recently quashed a case against a 26-year-old man who was convicted and sentenced for allegedly raping his partner on a false promise to marry.
- Thus, the court was inclined to allow the criminal appeal and set aside the order of the Sessions Court.
- The court also noted that the victim's statement revealed that the couple's physical relationship was not merely due to the alleged promise to marry and that the couple shared a good relationship
- The court also noted that the victim was aged 24 years at the time of the alleged occurrence and was aware of the consequences of her actions. The court also added that the victim was neither naïve nor gullible.
- The court also noted that the evidence of other witnesses could only establish that the appellant and the victim had close relationship but could not establish the alleged false promise or that the consent was obtained on the alleged false promise.

❖ **IMPORTANT PROVISIONS DISCUSSED**

- Sections 417 IPC (Punishment for cheating)
- Section 376 IPC (Punishment for Rape)
- Section 294(b) IPC (Obscene acts and songs)
- Section 352 of the IPC (Punishment for assault or criminal force)

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