## Mahesh Damu Khare Vv. The State Of Maharashtra

- **TOPIC** : 'Worrying Trend' : SC Expresses concerns At using Criminal Law Against Men After Breakup of Consensual relationship
- **BENCH** : Justice N. Kotiswar Singh
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding the criminal law against men on allegations of rape on the false pretext of marriage after a long consensual relationship turned sour
- **OBSERVATIONS**
  - The Supreme Court has expressed concerns about the "worrying trend" of invoking criminal law against men on allegations of rape on the false pretext of marriage after a long consensual relationship turned sour.
  - While quashing an FIR in a rape case against a man, a bench comprising Justice BV Nagarathna and N Kotiswar Singh observed : ''It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.''
  - The Court added, ''if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences.
  - It will open the scope for imputing criminality to such long-term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful''.
  - The same bench had expressed similar concerns in a judgment delivered last week as well.
  - The appellant challenged the Bombay High Court's dismissal of his writ petition seeking quashing of an FIR filed against him under Sections 376 (rape), 420 (cheating), 504 (intentional insult), and 506 (criminal intimidation) of the Indian Penal Code (IPC). The complainant alleged that the appellant had engaged in a sexual relationship with her under a false promise of marriage for nearly a decade.
  - The appellant contended that the relationship was consensual and the allegations were false, initiated only after he discontinued financial assistance to the complainant.
  - The Court rejected the complainant's argument that the appellant had forceful intercourse with her under the garb of a false marriage promise.
  - The judgment authored by Justice N. Kotiswar Singh noted that the decade-long physical relationship, maintained without consistent protest or objection, suggested consensual involvement rather than coercion. The Court said that it was implausible that the complainant could have continued the relationship for nine years under a mere promise of marriage, without any evidence of deception at the outset.
  - ''Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.'', the Court observed.
  - Also, the court touched upon the aspect of consent where the complainant alleged that her consent to physical intercourse was taken under a misconception of fact.
  - ''In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have a physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.'', the Court said.
  - ''In light of the aforesaid facts and circumstances and for the reasons discussed above, we are of the

opinion that in the present case no prima facie case has been made out about commission of an offence of rape punishable under Section 376 IPC.

- Further, on perusal of the FIR it is also noted that no allegations of cheating have been made against the appellant to fall within the scope of Section 420 IPC nor of any of the offences under Sections 504 and 506 of the IPC.'', the court observed.
- Accordingly, the appeal was allowed.

## X v. Government Of Nct Of Delhi And Ors.

- **TOPIC** : Compensation To Acid Attack Victims Once Awarded Can't Be Arbitrarily Reduced Below Minimum Threshold : Delhi High Court
- **BENCH :** : Justice Tara Vitasta Ganju.
- **FORUM**: Delhi High Court
- **MAIN ISSUE**
  - Regarding the decision of awarding compensation to acid attack victims under the Delhi Victim Compensation Scheme, 2015.
- **OBSERVATIONS**
  - The Delhi High Court has recently observed that once the decision of awarding compensation to acid attack victims under the Delhi Victim Compensation Scheme, 2015, has been made, it cannot be arbitrarily reduced below the minimum threshold of Rs. 3 lakh.
  - "By no stretch of the language of the Scheme and the various judicial pronouncements discussing the requirement of adequate compensation, it can be inferred that the minimum compensation amount as set out is contradictory to its intended purposes of providing adequate rehabilitation and care to Acid Attack victims. Thus, this Court is unable to agree that the Scheme and the Schedule warrants an alternative interpretation by this Court," Justice Tara Vitasta Ganju.
  - The Court made the observations while allowing the plea moved by an acid attack victim seeking minimum compensation of Rs. 3 lakh in terms of the scheme.
  - The woman, a doctor by profession, was assaulted by a few persons who also threw acid on her in 2018.
  - She challenged the decision of the Criminal Injuries Compensation Board made in 2019 which decided her to grant minimum compensation of Rs. 30,000. The decision was computed in the backdrop of magnitude of injuries reported to be 5-6% superficial burns over legs.
  - The Court noted that the schedule of the Delhi Victim Compensation Scheme, 2015 sets out that for acid attack victims, where injuries are less than 50%, a minimum of Rs.3 lakhs which is payable and a maximum of Rs.5 lakhs.
  - It said that DSLSA is at liberty to exercise its discretion to examine what amount is to be paid - provided the amount is between Rs.3 lakhs and Rs.5 lakhs.
  - "This Court finds that such interpretation would be the correct interpretation of the legislative intent of the Scheme especially since it sets out a separate quantification for different types of acid attacks," the Court said.
  - It ordered: "The Respondent No.4 is directed to award the Petitioner the minimum compensation in the sum of Rs. 3 lakhs, less the interim compensation already awarded within eight weeks from the date of this decision."

## Gram Panchayat Of Village Budho Pundher V. Punjab Wakf Board And Others

- **TOPIC:** Any Land Declared As Masjid, Graveyard In Revenue Records Must Be Protected As Waqf Even If Unused By Muslims For Long : P & H High Court
- **BENCH :** Justice Sureshwar Thakur and Justice Sudeepti Sharma .
- **FORUM:** Punjab & Haryana High Court
- **MAIN ISSUE**
  - Regarding any entry in the revenue records declaring the land as "Takia, graveyard and Maszid"
- **OBSERVATIONS**
  - The Punjab & Haryana High Court has said that any entry in the revenue records declaring the land as "Takia, graveyard and Maszid" is required to be protected even if the same is not used by Muslim community for a long time.
  - The Court rejected the plea filed by a Gram Panchayat challenging the decision of a Waqf Tribunal whereby the Tribunal declared a land as waqf property and restrained the Gram Panchayat from disturbing its possession.
  - Justice Sureshwar Thakur and Justice Sudeepti Sharma said, "...any entry in the revenue records declaring the land as Takia, graveyard and Maszid, enjoys conclusivity, and, is required to be ensured to be protected even at the site concerned, despite evidence of purported prolonged non-user thereof by the Muslim community."

- The Court noted that admittedly the disputed land was donated by Maharaja Kapurthala and declared as "Takia, graveyard and the Maszid" to Nikke Sha, Slamat Sha sons of Sube Shah on 14 Katak in 1922.
- The Sha brothers migrated to Pakistan after partition and subsequently, the land was mutated in the name of the Gram Panchayat.
- However, after partition a re-survey was conducted in the year 1966, and the apposite Misl Haqiat was prepared whereby in the ownership column the State was declared to be the owner, whereas, in the relevant classification column the property was described as Maszid, graveyard and Takia. of the Gram Panchayat.
- Considering the revenue entry, the disputed property as "Gair Mumkin Maszid, Takia as well as graveyard", the Wakf Tribunal, declared the land as Waqf property.
- The bench relied on Syed Mohd. Salie Labbai (dead) by LRs and others V. Mohd. Hanifa (dead) by LRs and others, 1968 wherein the Apex Court held that, "once a Kabarstan has been held to be a public graveyard then it vests in the public and constitutes a wakf and it cannot be divested by non-user but will always continue to be so whether it is used or not."
- The Court also rejected the Gram Panchayat's argument that the Waqf Tribunal was not entitled to adjudicate the declaration suit and pass the impugned order.
- "...the entry of Shamilat Deh (common land used for village benefit) as exists in the relevant revenue records, is of the least legal significance, nor does it erode the conclusivity of truth, as becomes assigned to the entry of Takia, graveyard and Maszid, nor the jurisdictional competence to try the lis, is vested in the statutory authorities, contemplated in the Punjab Act, rather the jurisdictional competence to try the lis, solitarily vests in the Punjab Wakf Tribunal," opined the bench.
- Speaking for the bench Justice Sureshwar Thakur said that, the entry in the classification column of the relevant revenue entry (referring land as Graveyard and Masjid), enjoys precedence over the entry in the revenue records describing the disputed lands as Shamlat Deh (common land used for village benefit).
- In the light of the above, the Court held that the decision of Waqf Tribunal to declare the land as Waqf property and passing the injunction order restraining the Gram Panchayat is valid and within the purview of the law.

## Pola Vijaya Babu v. The State Of Andhra Pradesh and Others

- **TOPIC:** 'Social Media Bully' Who Spread False information, uses Vulgar Words Isn't A Social Activates , Distinct From Critic of Govt. Andhra Pradesh HC
- **BENCH** : Chief Justice Dhiraj Singh Thakur and Justice Ravi Cheemalapati
- **FORUM:** Andhra Pradesh High Court
- **MAIN ISSUE**
  - Regarding a Public Interest Litigation plea on the alleged indiscriminate arrest of social media activists.
- **OBSERVATIONS**
  - While considering a Public Interest Litigation plea on the alleged indiscriminate arrest of social media activists, the Andhra Pradesh High Court distinguished between a "critic of the government" who express themselves on social media and a "social media bully" who uses the platform to bully an individual, an officer or a person in authority by spreading false information or who uses vulgar language.
  - In doing so the court observed that such persons using the social media platforms cannot be called social media activists, and the platform does not give any immunity to a person from whatever is said on social media which otherwise constitutes an offence. Dismissing the PIL with Rs 50,000 cost, the court said that plea appeared to have been filed with "political motives".
  - The court made the observation while hearing a PIL petition filed by a journalist, highlighting the alleged indiscriminate arrest made by the police authorities, affecting the liberty of "social media activists in general". The plea alleged that the State machinery was being "misused by the police authorities" and the plea sought appropriate orders to restrain the arrests of social media activists, especially those who are "not aligned to the ecosystem of the present ruling party".
  - A division bench of Chief Justice Dhiraj Singh Thakur and Justice Ravi Cheemalapati in its November 13 order said, "A social media activist is one who can express his views on the social media, and that can only be done through an electronic device like a computer or an advanced phone. A critic of the Government, who expresses himself or herself on the social media, is a person who is fully aware of his rights and, therefore, a

social media activist is a person, who is well informed and aware of what goes on in the society and has the capacity to criticize the acts of omission or commission of those in power or authority".

- The court then said that failed to understand how a public interest litigation plea is maintainable in so far as this section of the society is concerned, who is well informed, who does not suffer any handicap on account of poverty or penury, and is well capable of challenging the action of the State if they feel that the same is not legally appropriate or was not warranted in law.
- This the court said after noting that a PIL is "meant to protect those who are unable to fight for themselves".
- It thereafter said, "At this stage, we need to emphasize that there is certainly a distinction between a critic of the Government who expresses himself or herself on the social media and a social media bully, who uses the platform to bully an individual, an officer or a person in authority by spreading false information, maligning the character of a person or his family members by use of unparliamentary language which at times may be vulgar. The platform may also be used for spreading hatred amongst communities to bring about social unrest. The toxicity of such comments has a devastating effect on the law-abiding citizens, who may suffer such a targeted attack as a well organized strategy".
- The bench said that such persons using the social media platform "cannot be said in the least to be social media activists".
- "A social media platform does not give any immunity to a person from whatever is said in the social media which otherwise constitutes an offense in law. On the other hand, such elements need to be dealt with in accordance with law, especially those who are available as 'guns for hire'," it added.
- The counsel for the petitioner had argued that the police authorities have been making arrests indiscriminately for malafide reasons only because they chose to criticize the functioning of the Government and their officers to intimidate those who do not support the current party in power. It was contended that action of the State and the police authorities is with a view to curtail the freedom of expression of journalists, which is protected under Article 19(1)(a) of the Constitution of India.
- It was argued that there is a definite pattern adopted by the police authorities in trying to silence the criticism against the Government and false cases have been foisted on defenceless victims.
- It was also contended that the persons who have been incarcerated, arrested or against whom criminal cases have been registered have resorted to the "legal remedies before the competent fora".
- The petitioner however contended that an inquiry is required into the functioning of the police authorities and further compensation be paid to those who have suffered at the hands of the State.
- The court took note of the FIRs registered against certain individuals at various police stations under various provisions of the BNS as well as the Information Technology Act.
- The court then said, "While the petitioner may proclaim himself to be a protector of the rights of his fraternity, that is journalists in general, some of whom may also be present on the social media, yet we have to see as to whether on the basis of facts contained in the petition and those urged before us during the course of arguments by the learned Senior Counsel, warrants exercise of our jurisdiction under Article 226 of the Constitution of India".
- Enumerating on the purpose of Public interest litigation the bench said that it was a concept innovated by the courts with the view to protect the fundamental and other rights of the people who are unable to fight for such rights on account of the "existing social inequality, economic disadvantage or poverty".
- "It was meant to protect those who are unable to fight for themselves, for example, bonded labourers, child labourers and labour in the unorganized sector, and prisoners," the court underscored.
- It said that Courts have through various pronouncements repeatedly cautioned that litigation in the name of public interest is not permitted to be misused for purposes other than for which it was envisaged and conceived.
- "When we test the facts of the present case on the touchstone of the legal principles discussed hereinabove, it can be seen that the present petition has been filed to espouse cause not of persons who are downtrodden, or belong to an economically weaker section of the society, who are incapable of approaching the Courts for protecting their rights or challenging the action of the State, rather, the petitioner seeks to espouse the cause of a community of social media activists as they are called, who cannot, by any stretch of imagination, be said to be either marginalised or suffer an economic handicap, and cannot take resort to the remedies which are otherwise available to them in

law," the court said.

- Noting the petitioner's contention that the concerned individuals have resorted to appropriate remedies under law, the court, based on the material on record dismissed the PIL as misconceived and also imposed costs of Rs.50,000 on the petitioner.

## XXX v. XXX

- **TOPIC**
  - Wife Must show Cogent Reasons To Transfer Matrimonial Proceedings Instituted by Her, Mere Transferrable Job Not Ground : P & H high court
- **BENCH :** Justice Sumeet Goel
- **FORUM:** Punjab and Haryana High Court
- **MAIN ISSUE**
  - Regarding the transfer of matrimonial cases.
- **OBSERVATIONS**
  - The Punjab and Haryana High Court has said that the transfer of matrimonial cases cannot be allowed merely on the ground that the wife being in transferable job has shifted to another place.
  - Justice Sumeet Goel said, "In case; if the wife in question is employed in a transferable job, she cannot be permitted to seek transfer any repeated transfer(s) of the matrimonial related litigation(s) if her job results in her being transferred from one place to another. The latitude required to be exercised in favour of a wife, while dealing with the plea for transfer of a matrimonial dispute, cannot be stretched to such an extent that the Court is approached for transfer of such matrimonial related litigation at the mere asking of the wife."
  - The Court emphasised that in matrimonial disputes, often, a pragmatic approach while exercising power to transfer proceedings is undertaken to resolve undue hardship to the wife/woman, by shifting the place of the trial/hearing to accommodate her convenience (of commuting, or being a primary caregiver to young children, or akin attending factors).
  - "Such a convention ought not be interpreted as an advantage accorded to the wife, but a concession attributable, only and only, towards facilitating the proceedings and expeditious resolution," it said.
  - The Court highlighted that, the concession cannot be claimed as an entitlement or be allowed to turn into a cause for recurring shifting of trials, if the wife has chosen to shift her place of living or she is employed in such a job wherein she can be transferred frequently.
  - These observations were made while hearing the plea filed by a wife seeking transfer of maintenance plea under Section 407 of Cr.P.C. read with Section 482 of Cr.P.C from Punjab's Mohali to Barnala.
  - After examining the submissions, the Court noted that the transfer is primarily sought for on the ground that she has now shifted from Mohali to Barnala.
  - Convenience Of Wife Is Not Absolute Right, the Court said that the convenience of wife is a paramount factor for consideration for transfer of matrimonial related proceedings but the same is not a matter of absolute right bestowed upon the wife.
  - It added that "cogent reasons" are required to be shown for transfer of a case. "In other words, the convenience of the wife is indubitably an important factor to be considered in the proceedings which are initiated/instituted at the instance of the husband. However, the converse cannot be said to be applicable with the same vigour. In a given case; if the wife has instituted proceeding(s) pertaining to matrimonial dispute at her own instance, she would be required to show pertinent reasons for seeking transfer thereof," said the Court.
  - Justice Goel opined that the above ground by itself "cannot be construed to be a factor sufficient enough to direct for transfer of the maintenance proceedings initiated at her instance."
  - The Court elucidated further that in case the transfer petition in hand is granted, it will indubitably result in financial burden upon the husband.
  - In light of the above, the Court held that no cause is made out to direct for transfer of the maintenance petition

## Shahjahan And Others vs. State of U.P. and connected appeals

- **TOPIC :** Possibility of Victim Herself being A Partner In Crime : Allahabad High court Acquits 7 Convicts in 2004 'Minor' kidnapping , Rape Case
- **BENCH :** Justice Ashwani Kumar Mishra and Justice Dr Gautam Chowdhary
- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding seven accused, convicted in connection with a July 2004 minor girl's kidnapping and rape case
- **OBSERVATIONS**
  - The Allahabad High Court recently acquitted seven accused, convicted in connection with a July 2004 minor girl's kidnapping and rape case, as it observed that the allegations made against

the accused were fabricated, intended to serve as a cover-up and create a defence for the victim, who was herself implicated in a separate kidnapping case involving a minor boy.

- A bench of Justice Ashwani Kumar Mishra and Justice Dr Gautam Chowdhary refused to accord the status of a sterling witness to a victim, finding that neither her statement was credible nor the same was supported by medical evidence on record.
- As per the prosecution's case, the Informant (father of the victim) lodged a written report on July 23, 2004, stating that the accused, Kasim, had enticed his 16-year-old minor daughter (Victim) on June 17, 2004.
- The investigation proceeded, and ultimately, the victim was recovered on August 8, 2004. She deposed that the accused persons (Preetam, Kasim and Lala @ Shakir) first abducted her, whereafter she was taken to different places, including at the residences of sisters of Kasim (Shahjahan and Gulshan) and was subjected to sexual assault.
- She also deposed about the attempt by the two accused (Preetam and Kasim) to kidnap a minor child in Delhi, and that she (the victim) was compelled by these two accused to participate in it and that, in fact, she had not participated in this part of the crime.
- The first charge sheet was submitted on September 30, 2004, against the accused Kasim, Preetam, Lala @ Shakir under Sections 363, 366, 368 & 376(g) IPC.
- A subsequent charge sheet was filed against Ajijur Rehman, Smt. Shahjahan, Javed, and Smt. Gulshan. Charges were framed against the accused applicants under Sections 363, 366, 368, and 376 IPC.
- Challenging their conviction, the accused persons moved the HC, wherein it was argued that the victim, a major, had joined the company of the accused, Preetam and Kasim, on her own.
- It was also contended that the FIR, filed with a delay of more than one month, was purposive since the victim herself was implicated in a case of the kidnapping of a minor child.
- Thus, it was submitted that she had lodged the FIR only to wriggle out of said criminal case and invent an excuse for her in the criminal proceedings lodged against her.
- Lastly, it was also argued that her conduct in not reporting the incident of rape to anyone. However, she travelled to multiple places by public transport, exposing the falsity of the prosecutrix.
- On the other hand, the AGA, for the state, submitted that the FIR lodged against the victim at Delhi (for kidnapping a minor boy) was a separate and distinct crime which has no relevance for the criminal prosecution lodged against the accused-appellants in the present case.
- It was also argued that the victim had consistently implicated the accused persons, and there was no reason to disbelieve her version.
- Having heard the submissions of the counsels for both sides, the Court noted that, as per the doctor's radiological report, the victim was above 18 years of age at the time of the incident.
- The Court said that this doctor's evidence clearly demolished the prosecution case regarding a minority of the victims on the date of the incident.
- Further, regarding the kidnapping case of a minor boy, the Court noted that on the same day when the victim was recovered, the kidnapped child was also found in the same district, and this coincidence raised suspicions, especially since the victim was implicated as an accused of kidnapping by the child's mother.
- The Court also factored in that, though the victim had alleged that she was physically assaulted by the accused and force was applied to her. However, the medical evidence on record did not support her version.
- Against this backdrop, the Court refused to accord the victim the status of a sterling witness as it neither found her statement credible nor supported by medical evidence on record.
- The Court also observed that a distinct object was being achieved to falsely implicate the accused persons since the implication of the accused persons would constitute a defence for the victim in the offence of the kidnapping lodged against her at Delhi.
- In that view of the matter, the Court found substance in the submission advanced on behalf of the appellants that the allegation against the accused persons of having enticed the victim or subjected her to sexual assault was, in fact, a cover-up and was intended to create a justification for the victim in the criminal proceedings instituted against her in the courts at Delhi.
- ‘‘ We cannot discard the possibility of the victim herself being a partner in crime’’, the Court further observed.
- With this, the conviction of the accused person was set aside, and their appeals were allowed.

## Jagdigh Prasad v. Arvind Kumar & Ors.

- **TOPIC :** Class 10 Mark sheet Is A Public Document , credible And Authentic As Proof of Birth: Rajasthan High court
- **BENCH :** Justice Anoop Kumar Dhand
- **FORUM:** Rajasthan High Court
- **MAIN ISSUE**
  - Regarding the election tribunal's decision disqualifying a man from the post of Sarpanch
- **OBSERVATIONS**
  - Upholding the election tribunal's decision disqualifying a man from the post of Sarpanch as he had two additional children after cut off date, the Jaipur bench of the Rajasthan High Court reiterated that matriculation certificate (Class 10 mark sheet) is a public document and is credible and authentic as per Section 35 of the Indian Evidence Act.
  - This, the court said, was especially in light of the fact that the birth dates appearing in the Class 10 Mark sheets had attained finality as the same had not been challenged.
  - The bench of Justice Anoop Kumar Dhand was hearing a petition filed by a Sarpanch who was adjudged as disqualified for the post in an election petition decided by the Additional Senior Civil Judge on the ground of Section 19 of the Rajasthan Panchayati Raj Act, 1994 on the ground that he had two children after the cut-off date of November 27, 1995. The election of the petitioner was also set aside by the tribunal.
  - For context, Section 35 of the Indian Evidence Act lays down relevance of entry in a public record and provides that an entry in any public or other official book stating a fact and made by a public servant in the discharge of his official duty was in itself a relevant fact.
  - Section 19 of the Act deals with qualification for election as a Panch of a member and provides that if any person had more than two children after 27th November, 1995, he/she shall be disqualified to contest the election.
  - Referring to the decision of the Supreme Court in Rishipal Singh Solanki Vs. State of UP (2022) the court said that the "matriculation certificate is a public document and the same is credible and authentic", as per the provisions of Section 35 of the Evidence Act.
  - The high court said that the petitioner was not sure about the date of birth of son—whether he was born before or after the birth of his daughter. It noted that in the petitioner's nomination form the son is shown as elder to the daughter, while before the Tribunal the son was shown as younger to the daughter. The high court noted that three different dates of birth of the son are available on the record.
  - The court said that the petitioner himself is not sure about the correct date of birth of his son and hence it was that the petitioner has not come before the Court with the correct date of birth of his son.
  - It then said, "In view of the aforesaid facts, reasons and judicial pronouncements, the judgments relied upon by counsel for the petitioner are of no help to the petitioner, looking to the peculiar facts and circumstances of this case because the entry regarding date of birth of the children in their marksheets of Class 10th in the records of Board of Secondary Education, has not been challenged by anyone, hence the same has attained finality and no reason has been assigned by the petitioner that on what basis incorrect dates of birth of his son and daughter were recorded in the records of Class 10th marksheet by the Board of Secondary Education.
  - He has miserably failed to satisfy this Court that if dates of birth of his son and daughter are not correct in the marksheets of Class 10th issued by the Board of Secondary Education, even then why no steps have been taken by anyone of them, for correction of the date of birth in the records of Board of Secondary Education.''
  - The Petitioner was elected as a Sarpanch and his election was challenged by the respondent (his opponent) on the grounds that he had two children after the cut-off date of November 27, 1995 and thus was disqualified.
  - It was argued that the petitioner had submitted incorrect information regarding the birth dates of his son and daughter in his nomination papers while as per their Class 10th Marksheets, their ages were July 5, 1996, and July 5, 1998, respectively.
  - On the other hand, it was the petitioner's case that at the time of filling his nomination form, the petitioner had inadvertently filled wrong birth dates of his son and daughter i.e. July 5, 1990 and July 15, 1994 respectively. However, the correct birth date of his son was January 1, 1995 as per the register maintained by the Government School, and of his daughter was April 15, 1995 as per the private school record.
  - It was further submitted that the petitioner had also furnished the school admission forms for this

birth dates but without considering the same, the judgment was passed against the petitioner. It was argued that Class 10th Marksheets could not be treated as the sole criterion to determine the date of birth when other evidence was available.

- The high court in its order also referred to the Supreme Court's decision in Ashwani Kumar Saxena v State of M.P. in which it was held that the matriculation certificate issued by CBSE would be given precedence over any other evidence of the birth date.
- Furthermore, the Court also took into account various other factors like, the school admission forms were submitted not by the petitioner but the children's uncle who was not examined to prove these documents.
- Further, it noted that no steps were taken by the petitioner or the children for getting their birth dates corrected in the Class 10th Marksheets, hence the same were treated as final and correct. Moreover, the petitioner's son had also gotten a job based on his class 10th marksheet.
- In this background, the Court referred to the Rajasthan High Court case of Smt. Ummed Kanwar v. Prabhu Singh in which it was held that the standard of proof required in an election petition was not ‘‘beyond reasonable doubt’’ but only ‘‘preponderance of probability’’, and observed.
- ‘‘It was incumbent upon the Tribunal to consider and appreciate the totality of Election Petitioner's evidence before it juxtaposed to the defence evidence... It was not within the jurisdiction of the Election Tribunal to overlook the mark-sheets issued by a competent officer of the Board of Secondary Education pertaining to the date of birth of two children of the petitioner.’’
- Finding no infirmity with the tribunal's order the high court upheld the same.
- "This Court finds no merit and substance in this petition, accordingly the same is liable to be and is hereby dismissed," the court said. It also directed the Election Officer to declare the result of bye elections held for the post of Sarpanch Gram Panchayat Bhuriyawas, Tehsil Thanagaji, District Alwar forthwith and proceed further in accordance with law.