State v. Ramdin and Anr.

- **TOPIC :** Women Died Within 4 Walls Of In - Laws' Home And Was Cremated Hurriedly : Rajasthan HC Overturns 22 – Yr Old Acquittal In Dowry Death Case
- **BENCH** : Justice Pushpendra Singh Bhati and Justice Madan Gopal Vyas
- **FORUM**: Rajasthan High Court
- **MAIN ISSUE**
  - Regarding the bail bonds of the accused father-in-law and the mother-in-law.
- **OBSERVATIONS**
  - Overturning a 22-year old acquittal in a dowry death case, the Jodhpur bench of the Rajasthan High Court cancelled the bail bonds of the accused father-in-law and the mother-in-law, noting that they failed to explain the circumstances leading to the woman's death since the alleged crime took place within the four walls of their home.
  - The court said that the duo failed to discharge their obligation under Section 106 of the Indian Evidence Act which lays down that when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him.
  - The bench further observed that the trial court "misread" the evidence and adopted a "hyper-technical approach" while considering the testimonies of the witnesses, which was not desirable in cases relating to social-welfare provision, especially when dowry-deaths was deeply entrenched in Indian society.
  - The Court was hearing the State's appeal filed against the acquittal order passed by the trial court in 2002 in an alleged case of dowry death that took place in 2001 within 3 years of marriage.
  - It was the case of the appellants that the victim was continuously harassed by the accused regarding insufficient dowry.
  - Despite many such dowry demands being fulfilled by the victim's family, the harassment continued, and one day, they were informed that the victim was murdered by the accused and cremated in a hurried manner without informing them, to destroy evidence.
  - It was submitted that even two months before the alleged murder, when the victim visited her maternal family, she mentioned the incessant harassment she was being subjected to.
  - The counsel argued that despite the prosecution story being corroborated by many witnesses, the accused were acquitted on account of benefit of doubt by the trial court.
  - On the other hand, the counsel for the accused submitted that there was no evidence of any demand soon before the victim's death and hence no alleged charges were proved against the accused.
  - After hearing contentions from both sides, the Court referred to the Supreme Court case of Chabi Karmakar & Ors. v State of West Bengal (2013) in which the 4 ingredients to prove the offence of dowry death were given. These are:
  - 1) Death of the victim to be caused by any burns or bodily injury,
  - 2) within 7 years of marriage,
  - 3) soon before her death she was subjected to harassment,
  - 4) such harassment to be in connection with the demand for dowry
  - The Court perused the records and ruled that in the present case the first two ingredients were fulfilled. In relation to the third ingredient, the Court made a reference to another Supreme Court case of Satbir Singh and Anr. v State of Haryana (2021) in which it was held that the term ''soon after'' was relative with no straight-jacket formula and the harassment could also be spread over a period. The requirement was that the demand, harassment based on such demand and the date of death should not be too remote.
  - In this light, the Court opined that even though the victim visited the family 2 months before her death when she talked about the continued harassment, it was not too long a time to make the claim stale especially in light of the prolonged cruelty. This thereby established a "proximate and live link'' between the cruelty and her consequential death.
  - With regard to the woman's "hurried and uninformed cremation" the court said that owing to Section 106 of the Act, the burden was upon the accused who were present in the house to explain the facts.
  - If no or false explanation was given, it became an additional link in the chain of circumstances. The Supreme Court had further held that the crimes like dowry deaths were generally committed in complete secrecy,
  - And it was very difficult for the prosecution to lead evidence, but that did not mean that the crime committed in complete secrecy or inside the houses shall go unpunished.

- In light of this analysis, the Court observed that since the death of the victim took place inside her matrimonial house, following by a hurried cremation without informing the family or the police that prevented post-mortem of the body, reflected the intention of the accused in concocting a story and destructing evidence to shield themselves.
- Furthermore, since the other ingredients of the offence were proved by the prosecution, the onus shifted on the accused to explain the circumstances within which the incident took place as per Section 106 of the Act. However, since the accused remained silent and provided no cogent explanation, the Court tilted in favour of their conviction.
- ‘‘This Court therefore, in light of the factual matrix and the precedent law cited above observes that in the present case the prosecution has discharged its initial burden and have thereby made out the case in its favour by proving the essential ingredients of the offence in question and at the same time, the accused-respondents have failed to discharge the onus put upon them by virtue of Section 106 Indian Evidence Act, thereby tilting the case towards their conviction.’’
- Opening that the order of the trial court suffered from illegality, perversity and errors of laws, the acquittal order was set aside, and the accused were sentenced to imprisonment, cancelling their bail bonds.

Lt. Col. Suprita Chandel v. Union Of India And Ors

- **TOPIC:** SC Grants Permanent Commission to Women Army Officer Who Was Denied Benefits Given To Similarly Situated Others
- **BENCH** : Justice BR Gavai and Justice KV Viswanathan
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding a female Army Lieutenant Colonel permanent commission.
- **OBSERVATIONS**
  - The Supreme Court ruled in favor of a female Army Lieutenant Colonel, granting her permanent commission after she was unfairly left out while others in similar situations were extended the same benefit.
  - The appellant-Lt. Col, commissioned as a Short Service Commission (SSC) Officer in the Army Dental Corps in 2008, assailed the Armed Forces Tribunal's (AFT) decision which had not considered her case for permanent commissioning.
  - The appellant along with other applicants was entitled to three chances to secure a permanent commission. However, following an amendment in 2013 in the original policy, the appellant was denied the third opportunity for permanent commission, which other officers similarly situated had been granted.
  - The AFT granted relief to other applicants by allowing them a one-time age relaxation. However, the appellant was denied benefit as she was not a party to the original case due to personal difficulties.
  - Setting aside the AFT's order, the bench comprising Justice BR Gavai and Justice KV Viswanathan observed that denying the benefit of permanent commission to the appellant when other similarly situated applicants were extended the benefits of the permanent commission shows discrimination with the appellant.
  - The Court said if other officers were given age relaxation and considered under the old policy, the appellant should have received the same benefit.
  - Moreover, the court rejected the argument that since the appellant didn't join the litigation therefore she was not entitled to receive the benefit granted to those who litigated. Instead, upon placing reliance on the cases of Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others (1975) and K.I. Shepherd and Others vs. Union of India and Others (1987) the Court observed that ‘‘where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favor, others similarly situated ought to be extended the benefit without the need for them to go to court.’’
  - Moreover, the Court noted the respondent authorities should have automatically extended the same benefit to the appellant.
  - The respondent authorities on their own should have extended the benefit of the judgment of AFT, Principal Bench in OA No.111 of 2013 and batch to the appellant. To illustrate, take the case of the valiant Indian soldiers bravely guarding the frontiers at Siachen or in other difficult terrain.
  - Thoughts on conditions of service and job perquisites will be last in their mind. Will it be fair to tell them that they will not be given relief even if they are similarly situated, since the judgment

they seek to rely on was passed in the case of certain applicants alone who moved the court? We think that would be a very unfair scenario. Accepting the stand of the respondents in this case would result in this Court putting its imprimatur on an unreasonable stand adopted by the authorities.'', the judgment authored by Viswanathan J. said.

- Consequently, upon setting the impugned order, the Court directed the respondents to:
- a. Grant the appellant a permanent commission with effect from the same date as similarly situated officers, and
- b. Extend all consequential benefits, including seniority, promotions, and arrears.
- ''We direct that the appellant's case be taken up for grant of Permanent Commission and she be extended the benefit of Permanent Commission with effect from the same date the similarly situated persons who obtained benefits pursuant 16 to the judgment dated 22.01.2014 in O.A. No. 111 of 2013 of the Principal Bench of the AFT. All consequential benefits like seniority, promotion and monetary benefits, including arrears shall be extended to the appellant. \
- The above directions shall be implemented within a period of four weeks from today.'', the court held.
- Accordingly, the appeal was allowed.

Piyush Shyamdasani v. State of U.P along with connected cases

- **TOPIC:** Jyoti Shyamdasani Murder Case: Allahabad HC upholds Conviction of 5 Including Husband, Acquits His Alleged Lover
- **BENCH :** Justice Arvind Singh Sangwan and Justice Mohd. Azhar Husain Idrisi
- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding Life imprisonment in connection with the 2014 Kanpur's Jyoti Shyamdasani murder case.
- **OBSERVATIONS**
  - Last month, the Allahabad High Court upheld the conviction of 5 accused persons, who were found guilty by trial court and sentenced to Life imprisonment in connection with the 2014 Kanpur's Jyoti Shyamdasani murder case. The persons convicted included the deceased's husband.
  - The Court, however, acquitted the 6th accused, the alleged lover of the deceased's husband, who was accused of being a part of the entire murder conspiracy.
  - A bench of Justice Arvind Singh Sangwan and Justice Mohd. Azhar Husain Idrisi upheld the trial court's findings, which were based on the extensive circumstantial evidence and testimonies, that A-1/Piyush Shyamdasani (Husband of the deceased), along with his co-conspirators (4 in numbers), had orchestrated the murder of his wife in a calculated manner and after that, left her in a secluded place to escape the punishment.
  - The Court also noted that as per the scientific evidence as well, the prosecution had been able to prove that four of the five accused (A-3 to A-6) actively participated in the commission of the offence of murder of Jyoti in conspiracy with accused A-1.
  - On the other hand, acquitting A-2 (Manisha Makheeja), the alleged lover of A-1 (husband of the deceased), the Court noted that there was no conclusive evidence linking her to the murder conspiracy.
  - The Court added that, per the prosecution's evidence, the call records only showed A-2 in contact with A-1, not with the other accused, and her relationship with A-1 did not conclusively prove a conspiracy. Thus, she was acquitted.
  - According to the FIR filed by A-1, the incident occurred on the night of July 27, 2014, when A-1 and his wife, Jyoti, visited a restaurant. After leaving the restaurant, as they were on their way home, their car was allegedly ambushed by assailants on motorcycles.
  - In the FIR, A-1 claimed that the assailants forced him out of the car and abducted his wife. Later, her body was discovered. However, during the investigation, it was revealed that a conspiracy was at the heart of the incident and that A-1 had orchestrated the murder of his wife through contract killers (Renu @ Akhilesh Kanaujiya, Sonu Kashyap, Ashish Kashyap and Awadesh Chaturvedi).
  - After the trial court convicted them for the offence of Murder.
  - The High Court, in its 105-page judgment, observed that the trial court had rightly recorded the finding that it was unnatural for a husband not to protest when some unknown assailants were trying to abduct his wife by forcing him out of the car.
  - '' ...Instead of speeding away from the car or showing any protest, he has virtually surrendered before the said persons. His own version that he was hit by some pointed weapon on his hand, is not proved by any medical evidence,'' the Court

observed. Importantly, the Court noted that it had also come on the record that the accused A-1 and A-3 to A-6 were in continuous conversation with each other.

- Further, concerning the role of A-3 to A-6, the Court noted that the disclosure statements of these accused contained details about the disposal of the knife, handkerchief, and the victim's jewellery, and the said articles were later on recovered at their instance, which made their statements admissible under Section 27 of the Evidence Act.
- The Court further factored in that the FSL report confirmed that the bloodstains on the recovered knife matched the victim's blood, and this fact further corroborated the recovery made pursuant to the disclosure statement of the accused.
- However, regarding the role of A-2 in the criminal conspiracy with A-1 and A-3 to A-6, the Court noted that though there was evidence that she was well acquainted with accused A-1, there was no such clinching evidence to hold her guilty of criminal conspiracy with accused A-1 and A-3 to A-6.
- Thus, while the conviction of the accused A-1 and A3 to A-6 were upheld, the conviction of A-2 was set aside, and she was acquitted of the charges

BANKAT GARODIA v. ADITYO PODDAR

- **TOPIC** : Order Passed U/S 11 Cannot Be Recalled If Valid Arbitration Agreement Exists To Justify Reference of Parties To Arbitration : Calcutta HC
- **BENCH** : Justice Sabyasachi Bhattacharyya
- **FORUM:** Calcutta High Court
- **MAIN ISSUE**
  - Regarding an order passed under Section 11 of the Arbitration Act
- **OBSERVATIONS**
  - The Calcutta High Court bench of Justice Sabyasachi Bhattacharyya has held that an order passed under Section 11 of the Arbitration Act on the basis of an arbitration clause cannot be recalled merely on the ground that reply given to a notice under section 21 was suppressed.
  - The present application has been filed seeking recall of an order dated August 30, 2024 passed under Section 11 of the Arbitration Act.
  - The order is sought to be recalled on primarily three grounds: the arbitration agreement lacked a valid arbitration clause, material facts were suppressed pertaining to giving a reply to a notice under Section 21 and the petitioner was not present when the order was passed.
  - It is the case of the petitioner that there should be a clear intention emanating from the arbitration clause that the matter would be referred to the arbitration by the parties which was not the case in the present case. Reliance was placed on the Calcutta High Court judgment in Blue Star Limited vs. Rahul Saraf, 2023.
  - In response, the respondent submitted that the present petitioner might have filed a review application which, having not been done, the present application is not maintainable in law.
  - It also argued that insofar as the allegation that a reply was given to the Section 21 notice, no proof of service has been annexed to the recall application, thus belying the allegation that any such reply was given and suppressed. It is reiterated that no such reply was received by the applicant in the Section 11 application at any point of time.
  - It is also submitted that even if it is assumed without admitting that there was such a reply, the reply annexed to the recall application does not indicate any denial to the existence of the arbitration clause but merely contains denials on the merits of the allegations.
  - The court at the outset observed that the first of such grounds as discussed by the Supreme Court in Budhia Swain (supra) for recalling an order is that the court was misled by a party and the second that hearing was not given to one of the parties.
  - Hence, although the present application is not couched as such as a review application, the court decided to consider it a review application and proceeded to analyse the arguments of the petitioner on merits.
  - The court while going through the annexures to the recall application observed that the purported reply which was given by the present petitioner to the Section 21 notice did not dispute the very existence of the arbitration agreement.
  - The court observed that even if the reply of the petitioner to Section 21 notice was received by the applicant under Section 11 application in which the reference to arbitration was denied, such denial constitutes a refusal to appoint an arbitrator rendering the petition under Section 11 seeking appointment of the arbitrator maintainable.
  - It further noted that in Blue Star Limited (supra), this court has observed that a valid arbitration agreement must demonstrate a clear and unambiguous intention of the parties to refer disputes to arbitration and a mere possibility to refer disputes to arbitration after the dispute having

arisen does not satisfy the requirements of a binding arbitration agreement.

- The context of the present case, however, is different. Here it is not a case of distinction between a clause which keeps open an option to the parties to refer the disputes to arbitration as opposed to a mandatory clause to refer such disputes to arbitration, the court noted.
- ‘‘Clause 21 envisages in clear terms ‘‘Dispute Resolution and Arbitration’’, thereby indicating the intention of the parties, at least prima facie, to choose arbitration as the chosen mode of dispute resolution in respect of the agreement ‘‘ the court observed.
- A careful perusal of the relevant clauses in the present agreement shows that Clause 21 clearly stipulates that the same pertains to Dispute Resolution 10 and Arbitration. The use of the expression 'arbitration' clearly indicates that the parties intended to refer the disputes to arbitration as the chosen alternative dispute resolution mode. ‘‘Clause 21 amply caters to the ‘‘prima facie satisfaction’’ element which is the root of the jurisdiction of the Section 11 Court.
- Hence, on a bare perusal of Clause 21 and Clause 22 (which is the jurisdiction clause confining the jurisdiction exclusively to courts at Kolkata), it cannot be said that the prima facie satisfaction arrived at by the Section 11 Court was patently bad in law or an error apparent on the face of the record’’ the judge said.
- It also noted that regarding the absence of the present petitioner, which was the respondent in the Section 11 application, On the relevant date when the order under recall was passed, the same cannot be a good ground for recall of the order, since it is evident from the record that notice of the pendency of the application was given to the present petitioner. In fact, in the recall application, it is admitted that the present petitioner did have notice of the pendency of the Section 11 application.
- Finally, the court observed that as to the alleged suppression of the reply given to the Section 21 notice, even if it is assumed that the said reply was received by the applicant in the Section 11 application, the same, even if disclose at the relevant juncture, would not change the outcome of the Section 11 application. As such, the said non-disclosure, even if any, cannot be termed as a ‘‘suppression’’ sufficient to be elevated to the level of a fraud practised on the Court.
- Accordingly, the present recall application was dismissed.

The State Of Telangana v. C. Shobha Rani

- **TOPIC :** S.197 CrPC | Once Denied, Sanction to Prosecute Public Servant Cannot Be Granted Again on Same Material : Supreme Court
- **BENCH :** Justice MM Sundresh and Justice Aravind Kumar
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding a sanction to prosecute a public servant
- **OBSERVATIONS**
  - The Supreme Court recently held that once a sanction to prosecute a public servant has been denied, it cannot be granted again unless new material is presented to the competent authority justifying the subsequent sanction.
  - ‘‘The subsequent sanction was given based on the same material, therefore, in the absence of any other contra material which weighed in the mind of the sanctioning authority, the same cannot be sustained in the eye of law’’, the Court said.
  - The bench comprising Justice MM Sundresh and Justice Aravind Kumar heard a criminal appeal filed by the State of Telangana against the High Court's decision quashing criminal proceedings against the respondent (C. Shobha Rani), who had been charged under multiple sections of the Indian Penal Code (IPC), including Sections 420 (cheating), 467 (forgery of valuable security), 468 (forgery for purpose of cheating), 471 (using as genuine a forged document), 120B (criminal conspiracy), and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.
  - The appellant-state argued that the High Court had quashed the proceedings without examining the merits of the case, solely on the grounds that the subsequent grant of sanction to prosecute the respondent was vitiated. This was because it was based on the same material that had been presented when the earlier sanction was denied.
  - The High Court held that a mere change of opinion, by itself, could not justify the grant of subsequent sanction.
  - The primary issue before the Supreme Court was whether the High Court erred in quashing the charges under the IPC and Prevention of

Corruption Act, and if the sanction granted subsequently was valid despite being based on the same material that had earlier been rejected.

- The Court agreed with the High Court's opinion on the refusal to grant subsequent sanction and said that a mere change of opinion was insufficient to sustain the sanction, as there was no new evidence or grounds presented that would justify reversing the decision of grant of previous sanction.
- However, the Court found force in the appellant's contention that the High Court failed to delve into the merits of the case.
- ''However, we find force in the other submission made by learned senior counsel for the appellant that the High Court did not even go into the charges pertaining to Sections 420, 467, 468, 471 and 120B of the IPC. We are also in agreement with the submission made by learned senior counsel appearing for the appellant that there is no need for grant of sanction under Section 197 of IPC.''
- ''In such view of the matter, we are inclined to set aside the impugned judgment insofar as quashing of charges against the respondents under Sections 420, 467, 468, 471 and 120B IPC alone is concerned.'', the court held.
- The Court allowed the appeal in part and the matters were remitted to the High Court for fresh consideration with respect to the applicability of Sections 420, 467, 468, 471, and Section 120B of IPC requested to be decided preferably within four months.

Shankar Soni v. The State of Madhya Pradesh and Others

- **TOPIC :** Recovery From Class III Employee Post – Retirement Illegal without Misrepresentation of Fraud : Madhya Pradesh High Court
- **BENCH** : Justice Anil Verma
- **FORUM:** Madhya Pradesh High Court
- **MAIN ISSUE**
  - Regarding a recovery order against a retired Class III employee
- **OBSERVATIONS**
  - A single judge bench of Justice Anil Verma set aside a recovery order against a retired Class III employee, Hari Shankar Soni. It held that recoveries of excess payments made to Class III and IV employees after retirement are impermissible, unless there is misrepresentation or fraud. It also held that any specific undertaking allowing such recovery must have been in force when the payments prompting recovery were made.
  - It confirmed that such undertakings cannot be applied retrospectively. Hari Shankar Soni, a retired Field Officer, served the State of Madhya Pradesh for 41 years from 1979 to 2020. At the time of his retirement, dues such as gratuity and leave encashment were delayed. While dues were eventually disbursed, Rs. 2,26,587 was deducted, allegedly due to some excess payment made between 2006 and 2015.
  - This recovery was based on a retirement undertaking signed by Soni. Soni filed a writ seeking a refund of the recovered amount.
  - Firstly, the court referred to the case of Rafiq Masih and noted that recoveries from retired employees or employees nearing retirement are impermissible. This is especially so, it held, when excess payments are not attributable to fraud or misrepresentation.
  - The court used Rafiq Masih to enumerate situations where recovery is inequitable, which specifically included cases involving Class III and IV employees. The court also acknowledged a Finance Department of Madhya Pradesh circular dated 31-03-2016, which again restated that recovery orders against Class III and IV employees are impermissible.
  - The court then analysed the indemnity bond. It rejected the state's contentions and concluded that the bond could not validate any recovery.
  - It noted that the bond was executed by Soni at the time of retirement, while the payments were made years earlier. The court held that the bond must have been undertaken at the same time as the payments in question, and it would not cover recoveries for payments made much earlier. Cursorily, the court also noted that the State had failed to provide Soni an opportunity to contest the alleged overpayment before effecting recovery, thus violating the principles of natural justice.
  - The court declared the recovery of Rs. 2,26,587 from Soni illegal and set aside the recovery order. It directed the State to refund the recovered amount along with interest at 6% per annum from the date of recovery until repayment.