

R v. B

- ❖ **TOPIC :** Fundamental Right of Privacy Includes Spousal Privacy, Law Cannot Permit snooping by Spouses : Madras High Court
- ❖ **BENCH :** Justice GR Swaminathan



- ❖ **FORUM:** Madras High Court
- ❖ **MAIN ISSUE**
 - Whether the fundamental right of privacy includes spousal privacy or not.
- ❖ **BACKGROUND**
 - In the present case, the husband had filed the petition for dissolution of marriage on the grounds of cruelty, adultery and desertion on the wife's part.
 - The husband examined himself as a witness and marked the call data record of the wife. The wife filed an application seeking to reject the document which was dismissed as premature by the sub-judge. The wife had challenged this order through the civil revision petition.
 - The court noted that though some courts had relied on Section 14 of the Family Courts Act to rule in favor of the admissibility of evidence obtained in breach of privacy, there was no legislative validation of evidence obtained by violating the fundamental right to privacy.
 - As per Section 14 of the Family Courts Act, the family court could receive as evidence any report, statement, document, information, or matter that, in its opinion, would assist in dealing with the dispute effectively.
- ❖ **OBSERVATIONS**
 - The Madras High Court has observed that the fundamental right of privacy includes spousal privacy. The court noted that the law could not permit or encourage snooping by one spouse on another. The court thus observed that the evidence that was obtained by invading the privacy of the partner was inadmissible in the court.

- “Law cannot proceed on the premise that marital misconduct is the norm. It cannot permit or encourage snooping by one spouse on the other. Privacy as a fundamental right includes spousal privacy also and evidence obtained by invading this right is inadmissible,” the court observed.
- Justice GR Swaminathan thus came to the rescue of a wife against the order of the Paramakudi Subordinate Court refusing to reject the call records of the wife that was submitted by the Husband during the trial of a marital dispute. The court noted that the husband had stealthily obtained the information pertaining to the call history of his wife and thus had breached the wife's privacy.
- The court also observed that the information that was obtained without the wife's consent could not be viewed benignly and it was necessary to lay down that the evidence procured in breach of privacy was not admissible as only that would prevent spouses from surveilling each other.
- The court remarked that trust was the bedrock of marital relationships and spouses must have faith and confidence in each other.
- The court also emphasized that women had their own autonomy and were entitled to expect that their private space is not invaded.
- “Trust forms the bedrock of matrimonial relationships. The spouses must have implicit and total faith and confidence in each other. Snooping on the other destroys the fabric of marital life. One cannot pry on the other. Coming specifically to the position of women, it is beyond dispute that they have their own autonomy. They are entitled to expect that their private space is not invaded. The wife may maintain a diary. She may jot down her thoughts and intimate feelings. She has every right to expect that her husband will not read its contents except with her consent. What applies to diary will apply to her mobile phone also,” the court said.
- The court noted that the husband had reached out to the service provider and obtained the call records when the mobile phone and sim were in his custody. The court also noted that the call records produced by the husband were not accompanied by a certificate contemplated under Section 65B(4) of the Indian Evidence Act and thus the sub-court should not have deferred taking a decision in the matter.
- The court further noted that when marital misconduct was alleged, the same could be proved through authoritative means by calling upon the interrogatories.

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

- The court added that the charged spouse could also be called upon to file an affidavit with express warning that false information would lead to prosecution for perjury.
- The court opined that in exceptional circumstances, the court could even take it upon itself to unearth the truth but it could not proceed on the premise that marital misconduct is the norm and allow any snooping by the partner.
- Thus, the court allowed the wife's petition and set aside the order of the Magistrate.

Vikram Sharma v. State Bank of India

- ❖ **TOPIC** : Bank can't withhold Superannuation Benefits Explicitly Granted In Removal Order Despite Ongoing Service Dispute
- ❖ **BENCH** : Justice Sunita Yadav and Justice Milind Ramesh Phadke



- ❖ **FORUM**: Madhya Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding the superannuation benefits.
- ❖ **BACKGROUND**
 - The appellant was removed from service at the State Bank of Indore (later merged with State Bank of India) where he had served since February 1985; initially as a Clerk/Cashier and later as a Computer Operator. Following allegations of illegally advancing loans, he was suspended and subsequently removed from service on April 1, 2008.
 - The removal order specifically granted him superannuation benefits, including pension, provident fund, and gratuity, without disqualification from future employment.
 - The appellant's initial challenge to his removal through Writ Petition No. 1096 of 2009(S) resulted in the High Court quashing the removal order. However, the Division Bench set aside this order and directed him to raise an industrial dispute.
 - When the appellant approached the bank for his

superannuation benefits, he was asked to sign blank forms, which he refused, leading to the present litigation.

❖ **OBSERVATIONS**

- Madhya Pradesh High Court: A Division Bench comprising Justice Sunita Yadav and Justice Milind Ramesh Phadke partially allowed a writ appeal challenging the Single Judge's order that had directed the appellant to raise an industrial dispute regarding his superannuation benefits.
- The Court held that when a removal order explicitly grants superannuation benefits, these cannot be withheld by directing the employee to approach the Industrial Tribunal, as the tribunal reference was meant only for challenging the removal itself.
- Firstly, the Court emphasized that the original removal order dated April 1, 2008, explicitly provided for superannuation benefits. This provision in the removal order itself established the appellant's clear entitlement to these benefits, making them independent of any dispute regarding the removal.
- Secondly, examining the earlier Division Bench order, the Court clarified that the direction to approach the Industrial Tribunal was specifically limited to challenging the removal from service, not the superannuation benefits. The Court found no dispute regarding the appellant's entitlement to retirement benefits, noting that even the respondent bank hadn't challenged this aspect.
- Thirdly, regarding the recovery of outstanding loans from the appellant's benefits, the Court upheld the Single Judge's observation about following the principles laid down in High Court of Punjab and Haryana v. Jagdev Singh (2016) and State of Punjab v. Rafiq Masih (2015).
- This effectively meant that while the bank could pursue recovery, it must do so within the established legal framework for recovering dues from retirement benefits. Finally, the Court directed the bank to release the terminal dues if not already done, subject to the principles established in the aforementioned decisions. Accordingly, the writ appeal was partially allowed.

Dharamdas Bhalejar v. The State of Madhya Pradesh and Ors

- ❖ **TOPIC** : Acceptance of Qualifications At time of Appointment can't be Questioned After 30 Years, Unless Fraud is Alleged
- ❖ **BENCH** : Justice Vivek Jain

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

❖ **FORUM:** Madhya Pradesh High Court



❖ **MAIN ISSUE**

- Whether acceptance of qualification at the time of appointment can be questioned after 30 years or not

❖ **BACKGROUND**

- An order dated 20/12/2023 by the Additional Collector, District Balaghat, initiated a fact-finding inquiry into an allegedly forged disability certificate produced by Dharamdas Bhalekar, at the time of his service entry in 1993.
- The inquiry was initiated based on a complaint suggesting that the petitioner only had 15% temporary disability at the time of appointment, rather than the required permanent disability of at least 40% under the Persons With Disabilities Equal Opportunities, Protection of Rights and Full Participation Act 1995. The petitioner challenged the enquiry.

❖ **OBSERVATIONS**

- A Single Judge Bench of Justice Vivek Jain partially allowed a writ petition challenging an inquiry into a disability certificate submitted for employment three decades ago.
- The court held that while authorities can investigate allegations of forgery, they cannot question the acceptability of qualifications that were accepted at the time of appointment after such a significant time lapse, particularly when there are no specific allegations of fraud.
- Firstly, examining the complaint's contents, the court observed that it did not allege the certificate was forged or manufactured, but rather claimed it showed only 15% temporary disability. The court emphasized the crucial distinction between accepting an unacceptable certificate and dealing with a forged certificate.
- The court noted that the complainant had not alleged the petitioner lacked even the 15% temporary disability mentioned in the certificate, nor claimed the certificate was never issued. These omissions were significant as they indicated no clear allegations of fraud or forgery.

- The State authorities had appointed the petitioner in 1993 "with open eyes," having full knowledge of the certificate showing 15% temporary disability.
- The court noted that this was not a case of suppression or misrepresentation of facts, but of oversight.
- Thus, the court concluded that authorities cannot suddenly question their predecessors' acceptance of qualifications after 30 years, as "settled things cannot be allowed to be unsettled in this manner at the drop of a hat".
- However, recognizing the need to balance various interests, the court allowed an inquiry, but limited its scope strictly to investigating whether the disability certificate was genuinely issued by the appropriate authority.
- Thus, the petition was partially allowed, with the specific direction that if the certificate is found to be validly issued, no adverse action can be taken merely because the disability percentage was deemed unacceptable at the time of appointment.

MANGAL KUMAR DAWAR v. STATE OF PUNJAB AND ORS

- ❖ **TOPIC :** "Detainee Awaited At Home For Diwali" : P & H HC Grants Bail to Mother – Son Duo Allegedly Illegally Detained in Fraud Case

- ❖ **BENCH :** Justice Sanjay Vashisth



- ❖ **FORUM:** Punjab & Haryana High Court

❖ **MAIN ISSUE**

- Whether bail in an alleged fraud case can be granted or not where a mother and son was allegedly illegally detained.

❖ **OBSERVATIONS**

- The Punjab & Haryana High Court has granted bail in an alleged fraud case where a mother and son were allegedly illegally detained.
- The court added that the plea was preponed to

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

October 31st, considering the fact that due the festival of Diwali, the presence of the accused at their home was awaited.

- It was alleged that a sitting AIG is a relative of the complainant and the police party, who is hand in glove with the complainant's family, converted the civil dispute into criminal matter.
- Justice Sanjay Vashisth said, "Prima facie the contention raised by the counsel for the petitioner through present petition seems to be more probable and if truly so, undoubtedly, undue harassment has already been caused to the detainees by the police. However, the same is still under examination before the Court."
- The complaint was filed alleging that the detainee Meena Rani, proprietor of firm namely M/s Manmohan Enterprises has taken two godowns on lease from complainant Tejinder Kaur situated in Ludhiana. The Possession with the detainee is said to be on the basis of admitted lease-deed dated 20.11.2019, which came into force w.e.f. 01.12.2019 for five years, and additional lease-deed dated 29.05.2023.
- Counsel for the petitioner contended that execution of first lease-deed by the complainant is not disputed. However, the second lease-deed dated 29.05.2023 has been disputed by the complainant.
- It was alleged that an FIR was lodged on October 24, to harass the detained persons under Sections 420, 465, 467, 468, 471, 120-B, 427 of IPC.
- Counsel for the petitioner also contended that there was a constant pressure from the police to hand over the original additional lease- deed dated 29.05.2023 in the police station and despite repeated requests for issuance of formal notice in regard to the demand of the original lease-deed, such requests were flatly refused and never any notice was received.
- Petitioner and detainees got apprehensive that in case, the said lease-deed is handed-over to the police, same would either be destroyed or would be tampered with.
- After hearing the submissions, the Court asked the SHO as to where the complainant is and why she is not present before this Court, he replied that complainant – Tejinder Kaur, is residing in the United States of America (USA) and the FIR has been lodged on account of her complaints dated 04.04.2024 and 15.05.2024.
- "No plausible and satisfactory explanation has been given by Mr. Gurdial Singh, SI/SHO that once version of the complainant for committing the criminal offence was available with the police, why no action was taken immediately by the police on

the complaints dated 04.04.2024 and 15.05.2024 itself, when even complainant herself was present in the Country at the relevant time," the Court said.

- Justice Vashishth highlighted that why suddenly after submission of report by the police before the Illaqa Magistrate, a criminal case has been registered now, despite there being no immediate complaint or reminder by the complainant and also, she being not present in the country.
- The judge said, "To explain all this, no satisfactory explanation has been given by either Dr. Dharminder Singh Lamba, DAG, Punjab or Mr. Gurdial Singh, SI/SHO, who is also present in the Court."
- In the light of the above, the Court while exercising the inherent jurisdiction under Section 528 of BNSS, 2023, read with constitutional mandate and considering that there is no allegation of involvement of the detainees in any other criminal case, the Court granted bail to mother-son duo.
- The Court listed the matter for November 25, for further examination of the contents of the allegations mentioned in the petition and in specific, the role of the police officials.
- "Meanwhile, it will be open for the Director General of Police, Punjab, to get an independent inquiry conducted qua the alleged role of police in the matter in accordance with law, and on doing so, let a report be submitted before this Court on the next date of hearing," the judge added.

Ram Babu v. State of U.P.

- ❖ **TOPIC :** 'Eyewitnesses, First Informant Ganged Together To implicate Accused': Allahabad HC Acquits Man In 1982 Murder Case
- ❖ **BENCH :** Justice Siddhartha Varma and Justice Ram Manohar Narayan



- ❖ **FORUM:** Allahabad High Court

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

❖ **MAIN ISSUE**

- Whether a man who was convicted in a 1982 murder case can be acquitted or not.

❖ **OBSERVATIONS**

- The Allahabad High Court recently acquitted a man who was convicted in 1982 murder case, as it noted that two eye-witnesses and the first informant had ganged together to implicate the accused.
- A bench of Justice Siddhartha Varma and Justice Ram Manohar Narayan Mishra also observed that the prosecution story contained many lapses, which made the case doubtful, and the case against the accused-appellant was not proved beyond a reasonable doubt.
- As per the FIR lodged in this case, on August 21, 1982, around 7:30 to 8:00 PM, the victim (Jagram) was allegedly killed by Ram Babu (appellant-accused) and Kisna (now dead) during a gambling dispute as the accused were aggrieved that the victim had won the game.
- The FIR, lodged at the instance of the first informant (Takdeer Singh), claimed that Kisna used an axe while Ram Babu (appellant-accused) throttled the victim, and the eye-witnesses (Laxman Singh and Mulayam Singh) reportedly saw the attack with torches.
- After the murder, the assailants allegedly dragged Jagram's body to a well and disposed of it there.
- Upon the conclusion of the trial, the Sessions Judge, Jalaun at Orai, in May 1983, convicted the accused Ram Babu under Section 302 read with Section 201 IPC and sentenced him to life imprisonment. Challenging his conviction, the accused-appellant filed the instant Criminal Appeal.
- The Court also noted that if the eyewitnesses had indeed witnessed the murder, the FIR would have been filed solely under Section 302 IPC (murder) rather than including Section 201 IPC (disposal of evidence), indicating uncertainty about the location of the dead body.
- The Court further observed that there might be a possible dispute concerning some accounting about the cracker business, which was being done by the deceased.
- Therefore, the first informant and the two eye-witnesses, namely Laxman Singh and Mulayam Singh, might have ganged together to implicate the appellant in the instant case.
- Court's observations came as it noted that while Mulayam Singh, Laxman Singh and the first informant though were not of the same family they

were definitely close to each other.

- The Court also pointed out that when the investigation was being done and it was alleged that gambling was done with the help of playing cards, at least an effort ought to have been made to recover the playing cards and keep them in police custody. Neither the playing cards nor any of the torches in the light of which the incident was seen were taken into custody.
- In view of these observations, the Court allowed the appeal and acquitted the accused by setting aside the trial court's judgment.

Doctor v. State of Maharashtra

- ❖ **TOPIC** : Matrimonial Dispute is Not Moral Turpitude; Cannot Be used To Block Spouses' Right To Education : Bombay High court
- ❖ **BENCH** : Justices Vibha Kankanwadi and Santosh Chapalgaonkar



- ❖ **FORUM**: Bombay High Court
- ❖ **MAIN ISSUE**

- Whether a matrimonial dispute or case is a 'personal dispute' which can be termed to be an offence related to 'moral turpitude' or not.

❖ **OBSERVATIONS**

- In a significant order, the Bombay High Court bench at Aurangabad recently held that a matrimonial dispute or case is a 'personal dispute' which cannot be termed to be an offence related to 'moral turpitude' to impact either of the spouses right to pursue further education in their lives.
- A division bench of Justices Vibha Kankanwadi and Santosh Chapalgaonkar permitted a husband to pursue his All India Ayush Post Graduate Entrance Test (AIAPGET) - 2024, a course for which he was held 'ineligible' on the ground that he has been booked in a Section 498-A case along with charges under the stringent Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
- According to the petitioner, he was appointed as

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

Medical Officer – Group B and posted at Primary Health Center at Tamloor in Nanded on July 18, 2019. On April 16, 2024, a public notice was issued inviting on-line applications for the AIAPGET - 2024 and the petitioner having the requisite qualifications, sought the mandatory no objection certificate (NOC) since he was a government employee at the relevant time.

- By an order passed on June 28, 2024, the Deputy Director of Health Services in Nanded granted an NOC to the petitioner, following which he appeared in the exams and cleared the same with 184 marks out of the total 400. However, the Deputy Director of Health Services withdrew the NOC on September 24, 2024 after noting that a criminal case was pending against the petitioner.
- The authority relied on a Government Resolution (GR) issued on July 19, 2023 which indicated the policy of the Government to regulate the grant permission for pursuing Post-Graduate education to 'in-service' Medical Officers. A specific clause (Clause 4.5) in the GR, the authority pointed out, prescribed that a Medical Officer, against whom a departmental inquiry or criminal case is pending or proposed, shall be treated as 'ineligible' for NEET-PG entrance test.

- The judges, while rejecting the argument of the prosecution, noted that the withdrawal of NOC granted in favour of the petitioner is only for the reason that a criminal case is pending against him.
- There is no stipulation in the impugned order that the petitioner had obtained NOC by suppression of fact about pendency of criminal case," the bench said.
- The bench, therefore, quashed the NOC withdrawal order and held the petitioner 'eligible' for the AIAPGET-2024 course and ordered his admission to the said course.



JUDICIARY

—WALLAH—

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>