

24 September 2024

**JUST RIGHTS FOR CHILDREN ALLIANCE v. S.
Harish**

- ❖ **TOPIC:** Storage Of Child Pornography Without Deletion Or Reporting Indicates Intention To Transmit, Constitutes POCSO Act Offence
- ❖ **BENCH:** CJI DY Chandrachud and Justice JB Pardiwala
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether mere storage of child pornographic material without any intention to transmit the same will be an offence under the Protection of Children from Sexual Offences Act (POCSO Act) or not.
- ❖ **FACTS**
 - In the present case, based on a letter received by the Additional Deputy Commissioner of Police (Crime against women and children), a case was registered against the accused for downloading child pornographic material in his mobile.
- ❖ **BACKGROUND**
 - During the investigation, the mobile phone was seized and a Forensic analysis was conducted which confirmed that the mobile phone had two files which contained child pornography content involving teen boys.
 - The court took cognizance of the offence under Section 67B of the Information Technology Act 2000 and Section 14(1) of the POCSO Act. The accused had approached the High Court seeking to quash the criminal proceedings.
 - The Madras High Court's decision was grounded in several key points: the accused had only downloaded the material for private viewing,
 - It was not published or transmitted, and it was argued that merely downloading and watching child pornography is not an offence under Section 67-B of the Information Technology Act, 2000.
 - The single bench noted that to attract the offences under the POCSO Act, a child or children must have been used for pornography purposes. In the present case, the court noted that the accused had watched pornography videos but had not used a child or children for pornographic purposes.
 - This, in the opinion of the court, could only be construed as a moral decay on the part of the accused person.
 - Now High Court's decision was challenged in the Supreme Court

❖ **OBSERVATIONS**

- Setting aside a Madras High Court judgment which held that mere storage of child pornographic material without any intention to transmit the same was not an offence under the Protection of Children from Sexual Offences Act (POCSO Act), the Supreme Court held that the storage of such material, without deleting or without reporting the same, would indicate an intention to transmit.
- Observing that the High Court committed an "egregious error" in quashing the criminal proceedings, the bench comprising CJI DY Chandrachud and Justice JB Pardiwala set aside the decision and restored the criminal prosecution.
- The Court held that from the failure on the part of accused in the present case in deleting, destroying or reporting the material, the foundational facts necessary to invoke the statutory presumption of culpable mental state could be said to have been prima facie established.
- For the purpose of sub-section (1), the necessary foundational facts that the prosecution may have to first establish is the storage or possession of any child pornographic material and that the person accused had failed to delete, destroy or report the same.
- Just because material was deleted before FIR registration, it cannot be said that no offence is made out.
- The Court clarified that the term 'storage' and 'possession' that has been used in the said provision does not require that such 'storage' or 'possession' must continue to be there at the time of registration of an FIR or any criminal proceeding.
- The Court also suggested the Parliament amend the term 'child pornography' with the term 'child sexual exploitative and abusive material' and requested the Union to bring an Ordinance to bring about the amendment.
- The Court has directed the Courts to not use the term 'child pornography'.
- The judgment authored by Justice Pardiwala contains various guidelines and suggestions regarding the enforcement of the POCSO Act.

**Azhar Javed v. State of Rajasthan &
Ors.**

- ❖ **TOPIC:** Rajasthan HC Quashes Censure Order Against Govt School Teacher For Substandard Class 8 Results, Finds No Specific Allegation Against Him
- ❖ **BENCH:** Justice Anoop Kumar Dhand

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❖ **FORUM:** Rajasthan High Court

❖ **MAIN ISSUE**

- Whether an order of censure can be set aside or not which is passed against government school teacher, over the result of Class 8 Board Examination in the concerned school being below the standard set by Department of Education

❖ **FACTS**

- The Petitioner was a primary school teacher who was served with a charge-sheet under the 1958 Rules alleging that the result of the Class 8 Board Examination was below the standard prescribed by the Education Department-below 40%, due to his "slackness and carelessness".
- This finding was recorded as a "misconduct" against the petitioner and as a penalty the censure order was passed.

❖ **BACKGROUND**

- The Government Teacher approached the High court related to the same order.
- Granting relief to a government school teacher, the Jaipur bench of the Rajasthan High Court set aside an order of censure passed against him over the result of Class 8 Board Examination in the concerned school being below the standard set by the Department of Education.

❖ **OBSERVATIONS**

- For context, an Order of Censure is a formal act by the government to communicate that a public servant has been guilty of some misconduct due to some blameworthy act or omission and thus was awarded a formal punishment.
- Referring to decisions of the high court on the issue, a single judge bench of Justice Anoop Kumar Dhand noted that in the instant case there was no allegation that the result of the concerned school was lowered down "due to commission or omission" on the part of the petitioner teacher.
- "The result remained below the norms fixed by the Department of Education, may be for several reasons and without arriving at a finding that the result came down due to commission or omission on the part of the petitioner, the petitioner could not have been penalized under Rule 17 of the (Rajasthan Civil Services Classification, Control and Appeal) Rules of 1958.
- Hence, the impugned order dated 30.11.2017, passed by the respondents, is not tenable in the eye of law and the same is liable to be quashed and set aside and is hereby quashed and set aside," the court said.
- The counsel for the petitioner argued that the unexpected result could not be a reason for issuing a charge-sheet and punishing the Petitioner.

- Allowing the teacher's plea, the high court set aside the censure order.

Marshall Amubhai Vadariya v. State Of Gujarat & Anr

❖ **TOPIC:** Every Case Where A Man Fails To Marry A Woman Despite Promise Of Marriage Not Rape U/S 376 IPC

❖ **BENCH :** Justice Divyesh A Joshi

❖ **FORUM:** Gujarat High Court

❖ **MAIN ISSUE**

- Whether a rape FIR registered against a man for allegedly inducing a woman into a physical relationship on a "promise of marriage" can be quashed or not.

❖ **FACTS**

- The High Court was hearing a petition moved by a man seeking quashing of a 2019 FIR registered under IPC Sections 376 (rape), 506 (criminal intimidation).

❖ **BACKGROUND**

- The complainant woman had alleged that the accused entered into a physical relationship with her by giving her a promise to marriage. They continued to meet each other and the accused had called her at his farm and again made a physical relationship with her.
- Once the complainant realised that she was pregnant, she informed the accused; however he allegedly declined to accept it and backed out from his promise of marriage. She thereafter approached the police for registration of an FIR.
- The accused said that even assuming that the allegation pertaining to promise of marriage was true, it would still not amount to rape. He said that the woman-a consensual party-had filed a frivolous complaint.
- It was submitted that the FIR was filed after a period of six months and after registration of the complaint, the complainant woman delivered a baby boy.
- However, during the course of investigation, after the DNA samples of the baby boy and the accused were sent to FSL it was found in the report that the accused was not the biological father.
- It was further contended that during the pendency of the quashing petition, the complainant had married another man and despite service of notice, she had chosen not to appear, clearly showing that she may not be interested in pursuing the matter further.

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❖ OBSERVATIONS

- While quashing a rape FIR registered against a man for allegedly inducing a woman into a physical relationship on a "promise of marriage", the Gujarat High Court recently said that in every case where a man fails to marry a woman despite such a promise would not attract the offence of rape under Section 376 IPC.
- The man can be held guilty, the court said, only if it is proved that the promise of marriage was given without any intention to honour it, being the sole reason because of which the woman had agreed to a sexual relationship.
- Referring to Section 376 IPC a single judge bench of Justice Divyesh A Joshi in its order said, "A cursory perusal of the above provision makes it clear that in the entire provision, there is not a whisper about a person committing rape on a woman being her love interest. Because the word love in itself carries 'consent'".
- It said that Section 376(2)(j) pertains to a woman who is incapable of giving consent, which means that it is either a girl of a tender age, not matured enough to understand things and the consequences of the consent being given by her for the proposed act, or a mentally disabled girl/woman.
- The high court further remarked that just like IPC Section 498A cruelty cases and those under Domestic Violence Act, cases of "consensual sexual relationship being later converted into allegations of rape are rapidly increasing".
- The high court then said, "Now the question arises that mere say of a woman of being promised to marry by the accused, can be so believable so as to hold the accused guilty of the offence of rape. The answer is 'No'. In every case where a man fails to marry a woman despite a promise made to her, cannot be held guilty for committing the offence of rape".
- The man can be held guilty only if it is proved that the "promise to marry was given with no intention to honour it" and was the only reason due to which the woman agreed to a sexual relationship, the court added.
- The court observed that in a case where a girl who is fully aware of the nature and consequences of the sexual act, gives consent for it based on a promise of marriage, continues the relationship for a long period, then in such cases it becomes "really difficult to determine" whether the reason behind the consent was only the promise of marriage and not a "mutual desire to be together".
- Noting that there was a distinction between false promise and a breach of promise, the court said that

false promise pertains to a promise which the accused had no intention to fulfil from the beginning. Meanwhile a breach of promise may happen due to many factors, it said.

- "The court must consider the evidence and the circumstances in every case before reaching a conclusion, but if the court finds that the prosecutrix was also equally keen, then, in that case, the offence would be condoned," the high court said.
- Before concluding, the court noted that after the complaint was registered, the woman gave birth to a baby boy which she had claimed to be through the relationship with the accused.
- It noted that the report on the DNA samples of the accused and the baby boy, suggests that the samples are not matching and the accused is not the biological father.
- After holistically considering the facts and circumstances and the tenets of law the court was of the view that the man's plea deserved consideration. It went on to allow the man's plea and quashed the FIR as well as all consequential proceedings arising from it.

Arvind Singh Sengar v. Smt. Prabha Singh

- ❖ **TOPIC:** Parties Staying Separately For Their Jobs Does Not Prove Desertion
- ❖ **BENCH:** Justice Saumitra Dayal Singh and Justice Donadi Ramesh
- ❖ **FORUM:** Allahabad High Court
- ❖ **MAIN ISSUE**
 - Whether parties staying separately for jobs will prove desertion or not.
- ❖ **FACTS**
 - The parties got married in 1999 and had a child in 2000. The husband was posted in Jhansi, whereas the wife was posted in Auraiya. Since the parties were living separately, the appellant-husband filed a suit for restitution of conjugal rights which was decreed ex-parte in 2004.
 - Later when the ex-parte order was recalled at the instance of the respondent-wife in 2006. The appellant withdrew the proceedings and instituted divorce proceedings in 2007 alleging desertion and cruelty.
- ❖ **BACKGROUND**
 - Recently, the Allahabad High Court has held that parties staying separately for jobs does not prove desertion.
 - The Court observed that the respondent-wife had led evidence regarding the husband visiting her

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when she was ill in June 2003 and going to her school to apply for medical leave thereafter.

❖ **OBSERVATIONS**

- The Court held that the allegation that the respondent had deserted the appellant in June 2003 was rightly disbelieved by the Family Court.
- In light of the facts that the respondent was working 2 kms away from the appellant's ancestral home and the fact that her applying for a job in Auraiya was within the knowledge of the appellant, the division bench of Justice Saumitra Dayal Singh and Justice Donadi Ramesh held "Merely because the parties may have remained separated for reason of their separate jobs with one working at Jhansi and the other at Auraiya, the fact occurrence of desertion may never be sustained on the strength of such vocational/employment compulsion faced by the parties."
- Though allegations of cruelty were made against the respondent-wife, the Court observed that the respondent had led evidence regarding cruelty by the appellant, when the appellant had failed to prove his case.
- Accordingly, the Court upheld the dismissal of divorce proceedings instituted by the appellant-husband.

The State of Jharkhand V. Rahul Kumar

❖ **TOPIC:** Victimology Not Just About Compensation, But Proportionate Punishment

❖ **BENCH:** Justices Ananda Sen and Gautam Kumar Choudhary

❖ **FORUM:** Jharkhand High Court

❖ **MAIN ISSUE**

- Whether the capital punishment for a man convicted of the rape and murder of a 19-year-old woman in Ranchi is correct or not, emphasizing that victimology extends beyond mere compensation.

❖ **FACTS**

- The incident dates back to 2016, when the 19-year-old victim, a student at RTC Institute of Technology, was brutally assaulted after returning home from her classes.
- The victim lived in Booti Basti, Ranchi, and was alone in her house at the time of the crime.
- The next morning, the informant's daughter tried to contact her but found her mobile phone switched off. Growing concerned, the informant asked a neighbour, the wife of Anil Kumar Singh, to check on the victim.

❖ **BACKGROUND**

- Upon arrival, the neighbour discovered the door ajar and smoke billowing from inside.
- Inside the house, the victim was found lying in a severely burnt condition, with the bed and mattress still on fire.
- The police were notified, and a First Information Report (FIR) was lodged under multiple sections of the Indian Penal Code, including Section 448 (house trespass), 302 (murder), 376 (rape), and 201 (causing disappearance of evidence).
- Following an investigation, a charge sheet was filed against the appellant, leading to a trial in which the lower court found the accused guilty and sentenced him to death.
- The accused filed an appeal challenging the conviction and sentence, arguing that the case was based purely on circumstantial evidence.
- The defence emphasised that it is a well-established legal principle that circumstantial evidence must form an unbroken chain, pointing conclusively to the guilt of the accused without any alternative explanation.
- The counsel for the appellant also pointed out that the accused was a 25-year-old man with no prior criminal record, which should be considered in mitigating the sentence.
- The Jharkhand High Court has confirmed the capital punishment for a man convicted of the rape and murder of a 19-year-old woman in Ranchi, emphasizing that victimology extends beyond mere compensation.

❖ **OBSERVATIONS**

- The division judge bench comprising Justices Ananda Sen and Gautam Kumar Choudhary noted, "Victimology is not all about victim compensation, which cannot be a recompense for valuable life lost to crime in such circumstances. It is also to inflict punishment proportionate to the nature and gravity of offence. We will fail the victim and the society if capital punishment is not awarded in such cases."
- The court, after reviewing the evidence, observed that the crime was not a spontaneous act but a premeditated and meticulously executed assault.
- The Court observed, "This is not a case where crime was the outcome of sudden spurt of passion, but was diabolically planned and ruthlessly executed. Evidence discloses that appellant stalked the deceased, attempted to take a room on rent in her house, and thereafter, stayed in a room in a nearby temple complex. He waited for the opportune moment and when the victim was alone in her house on the night of the incident, the offence was committed and immediately

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thereafter, the appellant absconded from the place of occurrence."

- The court emphasised that deterrence is a recognized objective of penal law, alongside reformation and crime prevention.
- The guidelines for imposing capital punishment have been established by a series of judicial precedents.
- The court noted that this was not the accused's first offence, as he had previously raped a minor girl, filmed the incident, and made it viral. After being granted bail, he absconded.
- The court also observed that he had been involved in multiple cases of theft, including stealing mobiles, computers, and other electronic goods in Patna, Lucknow, and Ranchi, where he had been charge-sheeted in most instances.
- "In order to conceal his identity, he was using stolen mobiles. These are cases which relate to the period both before and after the present incidence which took place in 2016.
- Conduct of the appellant does not reflect a semblance of remorse and any hope for reform. Against the weight of these aggravating circumstances, it is indeed difficult to ferret any mitigating circumstance," the court said.
- On these grounds, the court upheld the death sentence imposed by the lower court and dismissed the criminal appeal.

Meghraj v. State of Rajasthan

- ❖ **TOPIC:** Rajasthan High Court Grants Bail To Husband Noting That His Extra-Marital Affair Would 'Per Se' Not Attract Abetment Of Wife's Suicide
- ❖ **BENCH :** Justice Rajendra Prakash Soni
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Whether a bail can be granted to man who is accused of abetting his wife's suicide.
- ❖ **FACTS**
 - The father in law (complainant) lodged a report that after his daughter married the accused in 2014, she was subjected to harassment, beaten up and mistreated by her in-laws and husband.
 - It was alleged that the husband was an alcoholic who was involved in an illicit relationship with another woman and it was this extra-marital affair of the accused.

❖ **BACKGROUND**

- It was alleged that in April, the husband's brother called the complainant father informing him that his daughter had committed suicide.
- The complainant claimed that when he arrived at his daughter in-laws' house, he suspected that she had been murdered and that the scene had been staged to appear as a suicide.
- While granting bail to a man accused of abetting his wife's suicide, the Rajasthan High Court recently observed that solely because a husband was involved in an extra-marital relationship and there was some suspicion in the wife's mind, cannot be regarded as abetment under Section 306 IPC.
- After considering the facts of the case, a single judge bench of Justice Rajendra Prakash Soni said, "This Court is of the opinion that no doubt there is some evidence about the illicit relationship of husband of deceased but in the absence of some other acceptable prima facie evidence on record, the ingredients of Section 306 of the IPC, which includes abetment to drive a woman to commit suicide, could not be found prima facie satisfied. The court after perusing through the record said, that it prima facie revealed, that the complainant father of the deceased in his statements had not stated anything regarding any kind of abetment meted out to the deceased, except stating that since his daughter's marriage, her husband had been "harassing and beating" her.
- "Except for the alleged extra marital relationship that may be illegal and immoral, nothing has been brought out by the prosecution to show that the petitioner had provoked, incited or induced the wife to commit suicide," the court said.
- Noting that the accused was not involved in any other matter, the factum of the trial taking time, the high court without going into the merits, granted bail to the husband.

Satyanarayan Meena v. State of Rajasthan & Ors.

- ❖ **TOPIC:** Suppressing Pending Criminal Case Ground To Deny Employment Irrespective Of Gravity Of Charges
- ❖ **BENCH :** Justice Vinit Kumar Mathur
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Whether a relief can be granted to a rejected candidate for the post of a primary school teacher ("petitioner") on the grounds of not disclosing the fact of a pending criminal case against him in the

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application form as well as filing a false self-declaration form to that effect.

❖ **FACTS**

- The petitioner had cleared the relevant examination for the post and was called for document verification during which it was revealed that there was a pending criminal case against him.
- As a result, he was not given the appointment and the petitioner filed a petition before the Court.

❖ **BACKGROUND**

- Rajasthan High Court denied relief to a rejected candidate for the post of a primary school teacher ("petitioner") on the grounds of not disclosing the fact of a pending criminal case against him in the application form as well as filing a false self-declaration form to that effect.
- The bench of Justice Vinit Kumar Mathur held that the seriousness of the offence for which the petitioner was accused of was not relevant but suppression of the material fact was itself a ground to deny the employment.

❖ **OBSERVATIONS**

- It was opined that since the post in question was that of a primary school teacher, the conduct and character of the employee became more relevant and important.
- "When a person is entrusted with the pious duty of imparting education and Sanskar to the young children, then the most important & relevant criteria for selection of that person should be truthfulness and unimpeachable integrity."

- Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee.
- The choice/option whether to continue or not to continue such an employee always must be given to the employer."
- In line with the ruling, the Court also observed that the relevant question was not the charges in the pending criminal case against the petitioner but the fact of him suppressing the information for seeking employment which in itself was a ground for denying him the employment.
- The Court opined that if the credential of the candidate was based on the foundation of falsehood, fraud and misrepresentation, then the institution in which he would be posted as a teacher would be bleak.
- Hence, the Court held that the petitioner did not deserve leniency in this regard even if he was meritorious. Accordingly, the petition was dismissed.

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