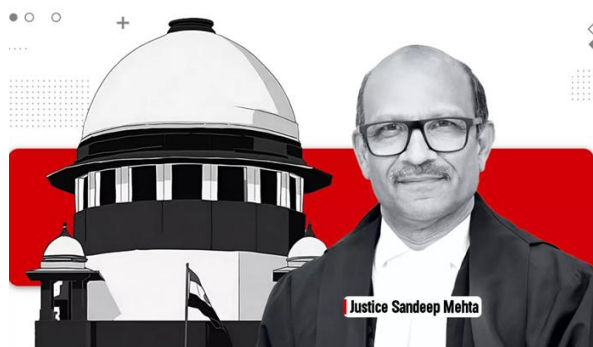


29 October 2024

**RAMRATAN @ RAMSWAROOP & ANR. v.
THE STATE OF MADHYA PRADESH**

- ❖ **TOPIC :** Police's Action To Take Possession Of Immovable Property Without Sanction of Law Reflects Lawlessness : Supreme Court
- ❖ **BENCH :** Justice CT Ravikumar and Justice Sandeep Mehta



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding the police's action in respect to the possession.
- ❖ **OBSERVATIONS**
 - In a recent case, the Supreme Court disapproved of the police's action to take possession of the immovable property by taking keys of the property under an application filed by the litigant.
 - "We believe that this action by the police to take possession of immovable property reflects total lawlessness. Under no circumstances, can the police be allowed to interfere with the possession of immovable property, as such action does not bear sanction by any provision of law.", the bench comprising Justice CT Ravikumar and Justice Sandeep Mehta said.
 - While holding so, the court also observed against the imposition of the onerous bail conditions by the Courts which tends to impact the ongoing civil disputes between the parties.
 - In this case, the appellants/accused were alleged to have committed criminal trespass into the complainant's house and then constructed the wall to seal the entry of the complainants.
 - The High Court while granting bail to the accused put a condition that the police shall carry out a demolition exercise of the wall at the expense of the accused. Also, the High Court directed the police to hand over the keys to the premises to the complainants after the completion of the demolition exercise.

- The second condition was resisted by the State stating that a Civil Suit was pending between the State and the complainant, his wife, and another litigant in which the State has sought a declaration of title and permanent injunction.
- According to the State, the High Court ought not to have ventured into the civil dispute inter se between the parties, as the order to deliver the possession of the property to the complainant (who is the defendant in the pending suit for title declaration), is bound to have prejudicial consequences on the civil rights of the parties.
- Setting aside the conditions put by the High Court, the court said that the High Court had exceeded its jurisdiction under Section 439 of Cr.P.C. by imposing onerous and unreasonable conditions unrelated to the grant of bail i.e., the direction for removal of the wall at the expense of the appellants/accused and handing over possession of the disputed property to the complainant.
- "This Court has consistently emphasised that the Court's discretion in imposing conditions must be guided by the need to facilitate the administration of justice, secure the accused's presence, and prevent the misuse of liberty to impede the investigation or obstruct justice.", the court observed.
- The Court said that it would be impermissible to put such conditions which tantamount to deprivation of civil rights.
- Given the aforementioned, the Court allowed the appeal setting aside the above-mentioned two bail conditions.

Sabbir Khan v. State of Haryana

- ❖ **TOPIC :** S.50 NDPS Act Not Applicable to Vehicle Search, Punjab & Haryana High Court Refuses Bail In Alleged Recovery of 3.5 Quintals of Ganja
- ❖ **BENCH :** Justice N.S. Shekhawat
- ❖



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

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❖ **MAIN ISSUE**

- Regarding section 50 of NDPS ACT.

❖ **OBSERVATIONS**

- The Punjab and Haryana High Court has rejected bail in the alleged drugs case where in a truck driver was allegedly found in possession of 3 quintals and 59 kgs of Ganja, observing that a huge recovery was effected from the truck and it cannot be held that there was non compliance of Section 50 of the NDPS Act.
- Justice N.S. Shekhawat said that, "a huge recovery was effected from the truck and it cannot be held that there was non compliance of Section 50 of the NDPS Act. A bare perusal of Section 50 shows that it applies in the personal search of a person and it does not extend to a vehicle, a container, a company or premises."
- Section 50 specifies the conditions for searching a person under the NDPS Act:
- A person to be searched has the right to be taken to the nearest Gazetted Officer or Magistrate.
- If requested, the officer can detain the person taken to the officer or Magistrate.
- The Gazetted Officer or Magistrate can discharge the person if he/she sees no reasonable ground for a search.
- Women must be searched only by female officers.
- If the authorised officer cannot take the person to a Magistrate or Gazetted Officer due to the possibility of the person to be searched parting with possession of contraband, the authorized officer may search immediately, following section 100 of the CrPC.
- The authorized officer must document the reasons for the search under subsection 5 and report them to the immediate superior within 72 hours.
- The Court also rejected the contention that Section 42 of the NDPS Act would be applicable in the present case and that the same is not complied by the police.
- "The material difference between the provisions of Sections 42 and 43 of the NDPS Act is that Section 42 requires recording of reasons for believing and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure.
- Section 43 does not contain any such provision and as such while acting under Section 43 of the NDPS Act, the empowered officer has the power of seizure of articles etc., and the arrest of a person, who is found to be in possession of any narcotic drugs and psychotropic substances in a public place where such possession appears to him to be unlawful," the judge explained.

- These observations were made while hearing the bail plea under 439 of the CrPC, wherein the accused Sabbir Khan was booked in FIR under Section 20(b)(ii) B of the NDPS Act.
- According to the FIR Khan was apprehended while driving a truck in a naka set up at a Highway on the basis of secret information. It was alleged that 3 quintals and 59 Kgs Ganja were recovered from the truck.
- By following the legal procedure, the accused was arrested and the case property was taken into possession by the police, it added.
- Counsel for the petitioner argued that Khan has been falsely implicated in the present case and was arrested in August 2023 without following the due process of the law.
- Even the grounds of arrest were not supplied to him, added the counsel.
- After considering the submissions, the Court said that the object of the Narcotic Drugs and Psychotropic Substances Act is to make the stringent provisions for the control and regulation of operations relating to those drugs and substances.
- "At the same time, to avoid the harm to the innocent persons and to prevent the abuse of the provisions by the officers, certain safeguards have been provided in the statute, which have been observed strictly," it added.
- Justice Shekhawat highlighted that the provisions under NDPS make it obligatory that the officers connected with the raids must follow the said provisions carefully while carrying out arrest and search, as provided in the Act. To that extent, such a procedure is mandatory.
- However, the failure to comply with these requirements affects the prosecution case and, therefore, ultimately, vitiates the trial.
- Examining the records, the judge said, "It is apparent from the record that the police had complied with the mandatory provisions of law. The petitioner was apprised of his rights, at the time of his arrest and due process had been followed by the police."
- The Court further added that the quantity of 3 quintals and 59 Kgs of Ganja, which was recovered from the petitioner, "falls within the ambit of commercial quantity, as per the provisions of NDPS Act and the bar contained in Section 37 of the Act would be applicable to the facts of the present case."
- In the light of the above, the plea was dismissed.

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Yudhishter Singh Rajpurohit v. State of Rajasthan & Ors.

- ❖ **TOPIC :** Right to Dignity Under Article 21 Includes Being Able To Attend Once In A lifetime Family Rituals Like Son's Wedding : Rajasthan High Court
- ❖ **BENCH :** Justice Arun Monga



- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Whether Right to Life under Article 21 of the Constitution of India also includes Right to live with dignity or not, that encompasses attending once in a lifetime family rituals like the right of a father to attend a son's marriage.
- ❖ **OBSERVATIONS**
 - Rajasthan High Court has ruled that Right to Life under Article 21 of the Constitution of India also includes Right to live with dignity that encompasses attending once in a lifetime family rituals like the right of a father to attend son's marriage.
 - The bench of Justice Arun Monga was hearing a petition filed on behalf of the accused who was in judicial custody for the last 6 years on multiple FIRs with allegations of financial misappropriation and irregularities in relation to a society named Kheteshwar Urban Credit Cooperative Society.
 - The petitioner, who was the son of the accused, acting as his guardian ad litem, was seeking interim bail for his father to be able to attend the wedding of the petitioner (accused's son).
 - The Court observed that Right to life under Article 21 was guaranteed to all irrespective of the individual being an accused or under trial. This right also included the right to dignity of being able to attend once in a lifetime family rituals i.e. the right of a father to attend the marriage of his son.
 - "Right to life does not mean mere right to exist but to live with dignity. Such a right cannot be and ought not be curtailed on the ground that the father of the petitioner father is an accused pending cases." The Court opined that the father of the

petitioner was indeed required to be personally present at the time of marriage of his son not only to facilitate marriage arrangement but to also bless the newlyweds to upkeep his dignity with his family and society.

- Hence, the Court stated that the accused was a person with strong family ties and was not a flight risk. The nature of prosecution evidence against him was mostly all documentary which were seized and there was no likelihood of any kind of tampering with the same.
- Accordingly, the petition was allowed, and the accused was granted an interim bail for 15 days.

V XXXXXX & Anr. v. State of U.T. Chandigarh

- ❖ **TOPIC:** Victim Compensation Scheme More Beneficial To Rape Survivor Can Be Applied Retrospectively : Punjab & Haryana High court
- ❖ **BENCH :** Justice Harpreet Singh Brar



- ❖ **FORUM:** Punjab & Haryana High Court
- ❖ **MAIN ISSUE**
 - Whether the Victim Assistance Scheme of UT Chandigarh, 2018 can be applied retrospectively or not.
- ❖ **OBSERVATIONS**
 - The Punjab & Haryana High Court has said that the Victim Assistance Scheme of UT Chandigarh, 2018 can be applied retrospectively, which means that the rape victim can be given benefit of compensation under the scheme even if the judgement of conviction was passed prior to its enforcement.
 - In the present case, the plea to apply the scheme retrospectively was filed by a rape victim who was impregnated by the assault and gave birth to a child.
 - The judge noted that the Scheme of 2018 was drafted just one year prior to the date of the pronouncement of the judgment of conviction.
 - Justice Harpreet Singh Brar said, "As a welfare

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State, a retrospective effect must be given to such legislations as they aim to grant compensation to victims, especially those who have suffered heinous crimes and sustained profound and lasting physical, psychological, and social impact.

- Therefore, given the gravity of the offence committed against the petitioners, ends of justice would be met if the present case is governed by the Scheme of 2018 as it is more beneficial than its predecessor. Therefore, the question framed above is answered in the positive."
- Perusing the 2018 Scheme, the Court noted that, it nowhere "indicates the nature of its applicability to be prospective or retrospective."
- "Moreover, the eligibility of the petitioners to seek compensation under either of the two Schemes is also not in dispute, as the petitioners are victims of the offence of rape. However, the Scheme of 2012 provides a compensation of Rs. 2 Lakh to Rs. 3 Lakh, the Scheme of 2018 has increased the limit significantly to Rs. 5 Lakh to Rs. 10 Lakh," it added.
- The bench highlighted that the Scheme of 2012 did not have a specific provision of providing compensation to a victim, impregnated on account of rape, while the Scheme of 2018 provides an additional compensation of Rs. 3 Lakh to Rs. 4 Lakh in such cases.
- These observations were made while hearing the plea of a rape victim and her child, under Section 482 CrPC seeking directions to compensate them under the Union Territory of Chandigarh Victim Assistance Scheme, 2018.
- The FIR was filed by the victim under Sections 376(2), 506, 498-A of IPC in 2016 and the rape accused was sentenced to undergo rigorous imprisonment with fine under Sections 376(f) & (n), 506 of IPC.
- Counsel for the petitioner submitted that it is concluded in the conviction order passed by the trial Court that the victim was subjected to rape and sexual assault at the hands of the convict. Further, the medical evidence as well as the DNA test of the convict proves beyond reasonable doubt that he is the father of the child.
- Therefore, the counsel said that the petitioners ought to be granted compensation, to the tune of Rs. 5,00,000 to Rs. 10,00,000, for rape plus Rs. 3,00,000 to Rs. 4,00,000 for pregnancy on account of rape as mentioned in the schedule appended with the Scheme of 2018.
- However, the victim was only granted a meager amount of Rs. 1,00,000 by the trial Court out of the total fine imposed upon the convict, he added.

- Opposing the plea, the State counsel submitted that the accused was convicted in the year 2017 whereas the Scheme of 2018 was brought into force in 2019. Hence, the case of the petitioners would be covered by the Union Territory of Chandigarh Victim Assistance Scheme, 2012.
- After hearing the submissions, the Court considered the question, "Would a victim of rape be entitled to compensation under the Victim Compensation Scheme if the judgment of conviction was rendered prior to the enforcement of the said Scheme?."
- It noted that as per the sentencing order compensation to the victim was granted under Section 357 Cr.P.C only as Rs. 1,00,000 and out of the total fine of Rs. 1,05,000, imposed upon the convict, under Section 376(f) and (n) IPC, was ordered to be paid to her as compensation.
- "Evidently, no direction was issued to the District Legal Services Authority (DLSA), Chandigarh to award compensation to the petitioners in accordance with the Victim Assistance Scheme," added the judge.
- Justice Brar opined that the trial Court has erred in not realizing the gravity of the situation and referring the matter to DLSA for grant of adequate compensation and said that the victim and the child cannot be allowed to suffer for the fault of the trial Court.
- Referring to the definition of the "victim" under the 2018 scheme which states that the meaning is same as 2 (wa) under the CrPC, the Court noted that, "A perusal of Section 2(wa) of the Cr.P.C. would indicate that the term victim would include not only the person who has suffered a loss or injury by the acts/omissions of the offender, but also her legal guardians and legal heirs."
- The Court observed that the Victim Assistance Scheme must be viewed as a social welfare measure.
- It is settled law that the application of such progressive legislations should be interpreted to be retrospective in nature.
- Answering the question considered by the Court in positive, it said that the compensation henceforth granted would ensure that petitioner can provide her daughter with a stable and nurturing environment, free from the external stressors that might otherwise impede her upbringing.
- "This support would help foster her well-being, enabling her to pursue a future filled with opportunity and care. It is trite law that the welfare of the child is paramount and the Courts, while exercising its parens patriae role, must act in a

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manner to best realize it," it added.

- In the light of the above, the Court directed the District Legal Service Authority, Chandigarh to consider the case of the petitioners under the Scheme of 2018 within 4 weeks from the receipt of a certified copy of the order.

Neeraj Saxena v. Rajasthan Electronics and Instruments Ltd

- ❖ **TOPIC :** Right To Travel Abroad Is a Basic Human Right, Denying Permission to Travel Due to Pending Dept Enquiry Violates Article 21 : Rajasthan HC
- ❖ **BENCH :** Justice Anoop Kumar Dhand



- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Regarding Article 21 of the Constitution of India.
- ❖ **OBSERVATIONS**
 - Rajasthan High Court has affirmed that the pendency of departmental enquiry could not be a ground to deny permission to employees to travel abroad. Such rejection of permission amounted to a violation of the fundamental right to personal liberty under Article 21 of the Constitution which could not be taken away except in accordance with the procedure established by law.
 - The bench of Justice Anoop Kumar Dhand was hearing a petition filed by an individual who had filed an application with the government department seeking permission to travel to Singapore for a few days to meet his son.
 - This application was not acted upon by the department for a long time against which the petitioner approached the Court. When the Court issued notice to the department, two days before the case was listed, the department served a charge sheet upon the petitioner initiating a departmental enquiry.
 - It was the case of the counsel for the government-department that in light of the pending

departmental enquiry, the petitioner could not be allowed to travel abroad.

- Rejecting this argument, the Court first held that the charge sheet was filed by the department only to defeat the purpose of the writ petition. Secondly, even if the department wanted to conduct any departmental enquiry, the department had to act in accordance with law.
- The Court referred to the Supreme Court case of Smt. Maneka Gandhi v Union of India in which the expression “personal liberty” under Article 21 was interpreted as having a wider amplitude of including the right to go abroad.
- Furthermore, in the case of Satish Chandra Sharma v Union of India and Ors., the Supreme Court held that the pendency of a departmental proceeding could not be a ground to prevent a person from traveling abroad. While terming the right to travel abroad as a basic human the following ruling was given in the case,
- “The right to travel abroad is an important basic human right for it nourishes the independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience.”
- The Court also made a reference to a case decided by the Supreme Court of United States of America, Ken v Dulles (1958), in which it was held that freedom to go abroad had much social value and represented the basic human right of great significance. And such right to travel was part of “liberty” which could not be taken away from citizens without due process of law.
- In light of this analysis, the Court opined that a balance had to be drawn between the right of the petitioner to travel abroad and right of the department to duly proceed with enquiry against the petitioner, and for the latter, appropriate conditions could be imposed on the petitioner.
- Accordingly, the Court allowed the petition, directing the government-department to grant permission to the petitioner to travel to Singapore by imposing certain conditions.

Anil Kumar v. State Of U.P.Thru.Secy.Niyukti Anubhag- 4,Lko.And Another

- ❖ **TOPIC :** “Deadwood Need to be Removed To Maintain Efficiency In Service” : Allahabad HC Upholds Compulsory retirement of Additional District Judge

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- ❖ **BENCH :** Justice Rajan Roy and Justice Om Prakash Shukla



- ❖ **FORUM:** Allahabad High Court

❖ **MAIN ISSUE**

- Regarding compulsory retirement of an Additional District Judge.

❖ **BACKGROUND**

- Petitioner was appointed as a Munsif and was later promoted as Civil Judge (Senior Division) in 2003. Thereafter, he was promoted as Additional District Judge on 16.08.2013. The District Judge, Badaun recorded an adverse finding in the Annual Confidential Report of the petitioner for the year 2012-13 and did not certify petitioner's integrity.
- Subsequently, a Vigilance Inquiry was set up against the petitioner wherein the allegations made by the District Judge were found to be correct. Accordingly, regular departmental proceedings were initiated against him.
- The Screening Committee, in 2020, suggested compulsorily retiring the petitioner based on his service records. The Administrative Committee of the High Court in their meetings in 2021 recommended withdrawal of judicial work of the petitioner as also his compulsory retirement to the Full Court.
- The Full Court opined that the petitioner ought to be compulsorily retired, the same was approved by the State Government on 29.11.2021. However, the order of compulsory retirement was not communicated to the Inquiry Officer and he proceeded with the inquiry. The Inquiry Officer exonerated the petitioner and the Administrative Committee dropped all charges against him in 2022.
- Accordingly, petitioner approached the High Court under Article 226 of the Constitution of India challenging the order of the Full Court compulsorily retiring him.
- **OBSERVATIONS**
- The Allahabad High Court has recently upheld the

compulsory retirement of an Additional District Judge who after the approval of the State Government on compulsory retirement was exonerated by the Inquiry Officer. It was held that after the order of the State Government compulsorily retiring the petitioner, the inquiry officer had no jurisdiction to continue the proceedings.

- Holding that the orders to compulsorily retire the petitioner were based on his consideration of his entire service records, the bench of Justice Rajan Roy and Justice Om Prakash Shukla held,
- “ Deadwood needs to be removed to maintain efficiency in service. Integrity of a government employee is the foremost consideration in public service. If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has absolute right to compulsorily retire such an employee in public interest.”
- Observing that the compulsory retirement is not a shortcut to avoid departmental inquiry, the Court held that promotions to a judicial officer do not wash away the adverse entries made in the ACRs. The Court observed that order of compulsory retirement is not a punishment and does not attach any stigma to the person. It was held that such an order is passed by a competent authority and is only passed on the subjective satisfaction of the State Government. It was held adherence to principles of natural justice is not required in such cases.
- In HC of Judicature, Rajasthan vs. Bhanwar Lal Lamror & Ors, the Supreme Court held that order for compulsorily retirement can be interfered by the High Court on judicial side, if it found that there was no basis of such decision by the Administrative Committee or that the material against the retirement was present before the Committee and the same was not considered or disregarded.
- The Apex Court had also held that a solitary remark on lack or breach of integrity was sufficient to compulsorily retire a Judicial Officer. Further, it was held that the High Court, on the judicial side, cannot substitute its own view on the satisfaction arrived at by the Full Court and that the High Court cannot rewrite the Annual Confidential Report
- The bench headed by Justice Roy relied on the earlier decision of the Allahabad High Court in Arun Kumar Saxena vs. High Court of Judicature at Allahabad Thru. R.G. and Another, where it was held that the adverse entries by the District Judge cannot be reversed for insufficiency of material. It

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was held that oral complaints are made to the District Judge, which may have been taken into account while granting an adverse entry.

- It was also held that exoneration by the inquiry officer will not wipe out the adverse remarks by a superior office and the same will be considered at the time of evaluating the integrity of the Judicial Officer.
- The Court observed that the entire service records of the petitioner were available before the original Screening Committee and had been considered by them while recommending compulsory retirement of the petitioner.
- While perusing the records, the Court pointed out other instances where integrity of the petitioner had been marked as lacking. One instance where warning had been issued to the petitioner was when he had referred to himself as a VIP level officer in several communications. At other times, petitioners were found passing orders against the settled position of law. It was observed that the petitioner was not maintaining proper records of listing of cases and Presiding Officer's diary.
- It was observed that the private character of the petitioner was also not appreciated as much as in the opinion of the District Judge, "it brought down the image of administration of justice."

- The Court noted that after considering the entire records, the Screening Committee had opined that "the petitioner was a deadwood and had outlived its utility requiring his compulsory retirement in public interest in terms of F.R.56(C)."
- The Court held that once the order of compulsory retirement of the petitioner was passed by the State Government, the master servant relation has ended and the inquiry proceedings stood abated. It was held that the proceedings could have only continued under Civil Services Regulation 351A for decisions regarding pension.
- The Court held that the exoneration of the petitioner by the Inquiry Officer was without any jurisdiction.
- It was held that the allegations of bias were unsustainable as the District Judge who had awarded the adverse entry was not a part of the disciplinary proceedings and the proceedings before the High Court on the administrative side. Observing that a single adverse remark is sufficient for compulsory retirement, the Court held that "In this case, there is sufficient material to sustain the order of compulsory retirement and also subjective satisfaction arrived at in this regard."
- Accordingly, the writ petition was dismissed.



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