

Abhijit Padale v. State of Maharashtra

- ❖ **TOPIC:** No Person Can Be Arrested Merely Based On Allegations Of Committing A Crime
- ❖ **BENCH:** Justices Revati Mohite-Dere and Prithviraj Chavan
- ❖ **FORUM:** Bombay High Court
- ❖ **MAIN ISSUE**
 - Whether a person can be arrested or not merely because s/he is facing allegations of having committed some offence
- ❖ **FACTS**
 - The petitioner was arrested by the Vakola Police Station in Mumbai under Sections 384 (extortion) and 506 (criminal intimidation) of the Indian Penal Code (IPC) on January 15, 2022, within a few hours of the registration of the crime.
- ❖ **BACKGROUND**
 - The judges noted that the petitioner was produced before the Magistrate Court in Andheri on January 16 and the Magistrate noted that the petitioner was arrested in violation of the Arnesh Kumar guidelines and therefore, he was remanded to Magistrate's Custody.
 - Thereafter, the petitioner immediately moved a bail application, however, due to the non-availability of the prosecutor, he was kept in custody till January 18, 2022, when the regular Magistrate granted him bail.
 - No person can be arrested merely because s/he is facing allegations of having committed some offence, the Bombay High Court said recently while holding the arrest of a Thane-based journalist by the Mumbai Police, illegal.
 - It also ordered the Mumbai Police to pay Rs 25,000 compensation to the petitioner.
- ❖ **OBSERVATIONS**
 - A division bench of Justices Revati Mohite-

Dere and Prithviraj Chavan noted that the journalist - Abhijit Padale, was arrested under charges of extortion and criminal intimidation, both of which provide for maximum punishment upto four years and three years, respectively.

- The existence of the power to arrest is one thing, the justification for the exercise of it is quite another.
- Apart from the power to arrest, the Police officers must be able to justify the reasons thereof, the bench made it clear.
- "No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a Police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation," the bench underscored.
- "The action of the State, however, must be "right, just and fair". These basic cautions have been ignored in this case before arresting the Petitioner," the bench opined.
- The bench therefore held that the arrest of the Petitioner was not legal.

Madhab Chandra Pradhan & Ors. v. State Of Odisha, Special Leave Petition

- ❖ **TPOIC:** POCSO Act - Child Victim Of Traumatic Sexual Assault Must Not Be Repeatedly Called To Testify In Court
- ❖ **BENCH:** Justices Sudhanshu Dhulia and Ahsanuddin Amanullah
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - The petition was filed by a man who was booked in 2009 under Sections 363-A, 366 of IPC upon filing of the complaint by the woman's father for allegedly enticing his daughter for marriage. The petitioner pleaded that he got married to the alleged victim in 2010 and out of wedlock three children have been born.
- ❖ **BACKGROUND**
 - Recently, the Supreme Court dismissed the plea

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of an accused in a case under the Protection of Children from Sexual Offences (POCSO) Act of 2012 ("POCSO Act") seeking recall of the victim under Section 311 of CrPC who was already cross-examined by the defence.

❖ **OBSERVATIONS**

- The Court said that once the defence was granted ample opportunities to cross-examine the victim than the victim could not be recalled for further cross-examination as it would defeat the purpose of the POCSO Act.
- "When the victim has been examined and then cross-examined at length twice already, mechanically allowing an application for recall of the victim, especially in trial of offences under the POCSO Act would defeat the very purpose of the statute.", the bench comprising Justices Sudhanshu Dhulia and Ahsanuddin Amanullah observed.
- The Court's observation was based on the textual interpretation of Section 33 (5) of the POCSO Act, which casts a duty upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court.
- It is to ensure that the child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident.
- Upon finding that ample opportunities were given to the defence counsel to cross-examine the victim, the Court held it would not be in the interest of justice to allow the recall application of the accused/appellant.
- Accordingly, the Special Leave Petition filed by the accused was dismissed.

Mohd. Yasin and Ors v. State of Chhattisgarh

- ❖ **TOPIC:** Mere Recovery Of Weapon Can't Justify Conviction Sans Established Motive
- ❖ **BENCH:** Chief Justice Ramesh Sinha and Justice Bibhu Datta Guru
- ❖ **FORUM:** Chhattisgarh High Court
- ❖ **MAIN ISSUE**

- Whether the conviction of four men accused in a 2017 murder case is valid or not.

❖ **FACTS**

- The case originated from an incident in 2017 when Rajeev Bhosale, the complainant, reported the death of his associate Bablu alias Irfan by shooting.
- According to Bhosale's account, the incident occurred while they were returning from a family birthday party. Bhosale stated that their car was intercepted by four masked men on motorcycles near Sejbahar, Raipur.

❖ **BACKGROUND**

- During the confrontation, one of the assailants, whom Bablu identified as "Asif," allegedly shot him in the head. Bablu succumbed to his injuries while being transported to the hospital.
- The prosecution argued that the murder was the result of a long-standing feud between the accused and the deceased.
- This narrative was supported by the trial court, which convicted the four appellants-Mohd. Yasin, Shekh Gufran Ahmad, Mohd. Aasif Ahmad, and Shekh Samir Ahmad-based on eyewitness testimony, including that of Rajeev Bhosale, and forensic evidence that purportedly linked the weapons seized from the accused to the crime scene.
- The charges against the accused were framed under Sections 341, 302, and 302/34 of the Indian Penal Code (IPC), along with various sections of the Arms Act.
- In their appeal, the appellants challenged the trial court's findings, asserting that the prosecution had failed to conclusively prove their identities and involvement in the crime.
- They argued that the sole eyewitness, Rajeev Bhosale, had provided inconsistent testimony, particularly concerning the identification of the accused during the trial.
- The appellants also raised concerns about the handling of forensic evidence, noting that the ballistic examination of the recovered weapons had not been conducted in a timely manner,

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thereby compromising the integrity of the evidence.

- The Chhattisgarh High Court has overturned the conviction of four men accused in a 2017 murder case, underscoring the importance of a clear and established motive in criminal prosecutions.
- ❖ **OBSERVATIONS**
 - The division bench, comprising Chief Justice Ramesh Sinha and Justice Bibhu Datta Guru, ordered acquittal and observed:
 - Mere recovery of weapon from the appellants cannot become the basis of conviction when there is no established motive for commission of offence.
 - In criminal cases, the guilt should be proved beyond any reasonable doubt that a reasonable man with ordinary prudence can have. There should be no doubt whether the accused is guilty or not.
 - If there is slightest doubt, no matter how small it is, the benefit will go to the accused.
 - The High Court, in its judgment, carefully examined the principles of law governing the identification of accused persons in criminal cases.
 - The Court reiterated that when a prosecution case hinges solely on the identification of the accused-whether through a Test Identification Parade (TIP) or in-court identification-the prosecution bears the burden of proving that the accused were not previously known to the witnesses.
 - The Court further stated that the prosecution is required to provide corroborative evidence to eliminate any possibility that the witnesses had an opportunity to see the accused before the incident occurred.
 - Regarding the testimony of Rajeev Bhosle, the Court found it unreliable, noting that Bhosle had testified that the appellants were masked and that the incident occurred at night.
 - This incorrect identification during the trial cast doubt on the credibility of the witness, and the Court determined that a conviction could

not be based on such testimony.

- The appellants, the Court noted, had also raised a specific defense, claiming that the deceased and Rajeev Bhosle were involved in financial disputes and that Bhosle and his brothers had been jailed for various offences.
- In light of these considerations, the Court concluded that the prosecution failed to prove its case beyond a reasonable doubt. Accordingly, the Court granted the benefit of the doubt to the appellants, allowed the Criminal Appeal, and set aside the conviction judgement.

State of Odisha v. Nabin Dehury

- ❖ **TOPIC:** Disproportionate & Unwarranted, Orissa High Court Commutes Death Penalty Of Man Convicted For Triple Murder
- ❖ **BENCH:** Justice Sangam Kumar Sahoo and Justice Chittaranjan Dash
- ❖ **FORUM:** Orissa High Court
- ❖ **MAIN ISSUE**
 - Whether the death penalty imposed upon a man convicted by the trial Court for commission of murder of three members of a family is valid or not.
- ❖ **FACTS**
 - The appellant Nabin Dehury was accused of committing murder of the deceased Giridhari Sahu by giving him fatal blows by means of a 'tangia' (axe).
 - After such an assault, he proceeded to the second spot of occurrence where he committed the murder of the deceased Pirobati Behera and Sabitri Sahu by means of axe blows.
- ❖ **BACKGROUND**
 - The appellant Hemananda Dehury was accused of aiding the appellant Nabin Dehury by restraining the deceased Sabitri Sahu while she was attempting to rescue the deceased Pirobati Behera.
 - He was further accused of dragging Sabitri Sahu by her hair, which facilitated the fatal assault on her by the appellant Nabin Dehury.

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- Getting information about the occurrence, the police took up the investigation and upon its completion, the police filed a charge-sheet against the appellants under Section 302/34 of the IPC.
- The trial Court, after analyzing the evidence on record, found both the appellants guilty of the offence charged and sentenced appellant Nabin Dehury to death and appellant Hemananda Dehury to imprisonment for life.
- The trial Court referred the matter to the High Court, as per the provision under Section 366 of the CrPC, for confirmation of the death penalty imposed upon one of the appellants. The appellant Nabin Dehury filed a jail criminal appeal and appellant Hemananda Dehury filed a criminal appeal challenging their respective convictions.
- The Odisha High Court commuted the death penalty imposed upon a man convicted by the trial Court for commission of murder of three members of a family, including two women, in order to wreak vengeance relating to a landed property dispute.

❖ **OBSERVATIONS**

- The Court underlined that the defence counsel confronted the said witness in the cross-examination regarding the statement made by him in the statement made before the police under Section 161 and before the Magistrate under Section 164 of the CrPC. The defence counsel had stressed that the witness did not state that appellant Nabin Dehury gave blows after blows by means of an axe to the deceased Giridhari Sahu.
- But surprisingly, when the High Court inspected the case records, it was found that the witness had in fact stated about the assault in his statement recorded under Section 161 of the CrPC.
- Thus, the Court was perturbed by the fact that the trial Court did not point out absence of contradiction in both the statements
- Accordingly, the Court found the statement of the witness to be reliable and trustworthy. It

- was of the considered view that the trial Court correctly placed reliance upon such testimony.
- During the course of argument, the Court had directed the Senior Superintendent, Circle Jail to collect all relevant information regarding the past life of the appellant-convict, psychological condition and post-conviction conduct.
- It had also directed him to take the assistance of the Probation Officer and also of a Psychologist/Jail Doctor to assess the mental state of the appellant.
- In pursuance of such order, the concerned official had submitted a report which suggested that the appellant had good relations with the co-villagers and his post-conviction conduct also remains satisfactory.
- It, however, came to light that due to the long-standing ancestral property dispute between the two families, the appellant used to remain 'upset' and was also taking medications for combating mental trauma.
- The Bench further observed that the appellant comes from a rural and economically poor background. As he lost the legal battle relating to his landed-property, he committed the murder of the three deceased.
- Before parting, the Court clarified that the life imprisonments shall mean the remainder of natural life of the appellant without any remission or commutation.
- It also directed the State Government to pay compensation to the children and kin of the deceased under the relevant provisions of the Odisha Victim Compensation Scheme, 2018.

ADP v. State of Maharashtra

- ❖ **TOPIC:** Girl Who Eloped With Paramour Days Before Her Marriage Fixed By Parents Cannot Be Booked For Cheating By Groom
- ❖ **BENCH:** Justices Ajay Gadkari and Dr Neela Gokhale
- ❖ **FORUM:** Bombay High Court

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❖ **MAIN ISSUE**

- Whether a girl eloping with her paramour before marrying the groom with whom her parents fixed her marriage, can be booked for cheating by the groom and his parents ?

❖ **FACTS**

- According to the prosecution case, the petitioner's family met the complainant and his family through some family friends and 'match-makers' and after visiting each others' residences, they agreed to get their children married to each other.
- The marriage was fixed for May 1, 2022 after their engagement in March 2022.

❖ **BACKGROUND**

- Both families got busy making preparations for the marriage. The complainant's family claimed to have purchased jewellery and trousseau for the girl.
- However, on April 29, 2022, the petitioner's family visited the house of the complainant and informed his family that their daughter had been missing since April 28, 2022.
- They informed the groom's family that they had already lodged a missing complaint with the local police. The groom's family, however, lodged an FIR against the to-be bride's family and the to-be bride herself for cheating the groom.
- The groom's family highlighted that they incurred over Rs 1.62 lakhs for the preparations of their marriage.
- The Bombay High Court has held that if a girl elopes with her paramour before marrying the groom with whom her parents fixed her marriage, she cannot be booked for hearing by the groom and his parents.

❖ **OBSERVATIONS**

- A division bench of Justices Ajay Gadkari and Dr Neela Gokhale gave the ruling while quashing a First Information Report (FIR) lodged against a girl, her parents and brother, all residents of Pune, for allegedly cheating a

man's family, with whom the girl's marriage was fixed after her engagement.

- "The facts in the present case prima facie do not disclose commission of the cognizable offence of cheating. There is no whiff of any dishonesty or intention to deceive in any of the statements of the witnesses as recorded by the Police," the judges noted.
- It is a regrettable case of a hapless young woman who went along with her parents' decision to marry the complainant man but at the last minute developed cold feet to enter a charade of a marriage, the bench opined.
- To make out an offence under cheating the intention to cheat or deceive should be right there from the beginning, the bench said, adding that in the present case, no such intention to cheat from the beginning could be made out from the complaint.
- However, the bench held that no case of cheating was made out since there had been no intention to cheat or dishonesty since inception.

Mst Shameema Begum v. Javid Iqbal Khan

- ❖ **TOPIC:** DV Act, No Need For Trial To Grant Interim Residence Order, It Is An Urgent Relief To Protect Woman From Taking Shelter On Road

- ❖ **BENCH:** Justice Sanjay Dhar

- ❖ **FORUM:** Jammu and Kashmir and Ladakh High Court

❖ **MAIN ISSUE**

- Whether a Magistrate, while considering an interim residence order under the Domestic Violence Act (DV Act), is required to conduct or not a full trial but only needs to be satisfied with the application filed by the aggrieved person.

❖ **FACTS**

- The case originated when the petitioner, legally wedded wife of the respondent, filed a

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complaint under Section 12 of the DV Act before the Judicial Magistrate 1st Class (Munsiff), Kupwara.

- She alleged that her husband subjected her to verbal, emotional, and physical violence and denied her basic necessities such as food, medicine, and shelter.

❖ **BACKGROUND**

- Along with her petition, she sought monetary compensation and a residence order under Section 23 of the DV Act.
- Adjudicating the matter the trial Magistrate passed an ex parte interim order directing the respondent to provide accommodation and protection to the petitioner.
- However, the respondent challenged this order before the Principal Sessions Judge, Kupwara dismissed the appeal with the direction that the respondent could seek modification of the order before the trial Magistrate.
- Subsequently, after hearing both parties, the trial Magistrate, while declining interim monetary compensation due to the petitioner's employment as a government teacher, directed the respondent to provide a safe and secure residence to the petitioner in the shared household.
- The petitioner challenged the Sessions Judge's order before the High Court, arguing that the Appellate Court had misinterpreted Sections 19 and 23 of the DV Act, leading to a grave miscarriage of justice.
- The petitioner asserted that the Magistrate has the authority to grant interim relief, including a residence order, without the need for a full trial.
- The Jammu and Kashmir and Ladakh High Court has clarified that a Magistrate, while considering an interim residence order under the Domestic Violence Act (DV Act), is not required to conduct a full trial but only needs to be satisfied with the application filed by the aggrieved person.

❖ **OBSERVATIONS**

- Setting aside an order passed by the Principal Sessions Judge, Kupwara, who had wrongly interpreted the scope of the DV Act, Justice Sanjay Dhar observed that Section 23 of the DV Act gives power to a Magistrate to pass an interim order of the nature as provided in the said provision.
- Residence order is an urgent relief to protect a woman from taking shelter on the road. Therefore, passing of an interim order of the nature as defined under Section 19 of the Act is well within the jurisdiction of a Magistrate.
- Justice Dhar, after hearing the petitioner's counsel and examining the relevant legal provisions, observed that Section 23 of the DV Act empowers a Magistrate to grant interim orders of various kinds, including residence orders under Section 19, without the necessity of holding a trial.
- The Court further highlighted that the DV Act is designed to provide immediate relief to victims of domestic violence, and the Magistrate's role at the interim stage is to protect the aggrieved person by drawing satisfaction from the application itself.
- The Court explained that while Section 19 permits final residence orders upon the conclusion of a trial, it does not preclude the Magistrate from issuing an interim residence order under Section 23 since such an order is crucial to prevent the aggrieved person from being left without shelter.
- Criticizing the Sessions Judge's interpretation as contrary to the objectives of the DV Act, the High Court found the impugned order to be legally unsustainable and set it aside, thereby restoring the trial Magistrate's order that granted the petitioner interim residential relief.

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