## State through the Inspector of Police CBI/ACB/Chennai v. S. Murali Mohan

- **TOPIC** : Supreme Court Sets Aside Madras HC Judgment Which Was Signed & Uploaded After Judge's Retirement
- **BENCH :** Justice Abhay Oka and Justice Augustine George Masih


- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether a Madras HC Judgment which was signed & uploaded After Judge's Retirement can be set aside or not
- **BACKGROUND**
  - The CBI filed the present SLP challenging the quashing of a disproportionate assets case against an IRS officer.
  - The corruption case involves an IRS officer from the 1999 batch, who was accused of amassing assets worth over Rs. 3.2 crores, allegedly disproportionate to known sources of income, between January 2002 and August 2014.
  - The Court had earlier sought a report following CBI's claim that the judge had pronounced a one-line order in Court quashing the case but the certified copy of the judgment was made available after the judge's retirement.
  - Further, the CBI claimed that the Chief Justice of the HC had ordered the case to be heard de novo.
- **OBSERVATIONS**
  - The Supreme Court restored a quashing petition related to a corruption case to the file of the Madras High Court, noting that the judgment in the case was signed and uploaded after the judge, Justice T. Mathivanan, had retired.
  - Justice Abhay Oka, after dictating the order, emphasized, ‘‘There should not be a single incident like this’’ referring to the issuance of the detailed judgment after the judge's retirement.
  - A bench of Justice Abhay Oka and Justice Augustine George Masih noted the report of the Registrar General and the Joint Registrar of the Personal Assistance Section of the Madras HC that indicated that the detailed judgment was received from the judge after his retirement on May 26, 2017.
  - ‘‘Faced with this situation we have no option but to set aside the judgment dated 15th May 2017 and restore CRL OP No. 2245 of 2017 to the file of the High Court’’, the Court stated in its order.
  - The Supreme Court referred to the report submitted by the Registrar General of the Madras HC.
  - The report indicated that the case bundle, along with the detailed judgment dated May 15, 2017, was received by the Personal Assistance Section on July 17, 2017, and was sent for uploading on July 18, 2017. The judgment was eventually uploaded on July 20, 2017.
  - A report from the Joint Registrar of the Personal Assistance Section was also attached to the Registrar's submission.
  - The report indicated the case in question was not among the nine cases previously ordered for a de novo hearing by the Chief Justice.
  - However, considering the circumstances, the Supreme Court found it necessary to set aside the judgment dated May 15, 2017, and restore the quashing petition to the file of the Madras High Court.
  - The Court directed that the restored petition be listed before the roster bench of the HC on October 21, 2024, and that the petitioners and respondents be present on that day. No further notice will be issued.
  - On the scheduled date, the High Court was ordered to fix a date for the final hearing of the case, taking into account that the petition is from 2017.
  - The Supreme Court also held that any interim relief granted until May 15, 2017, would continue until the restored petition is decided by the HC. The Court made it clear that it had not made any determinations on the merits of the case and left all issues open for the HC to decide.
  - The Supreme Court has previously dealt with similar issues.
  - Recently, a bench led by Justice Oka quashed another judgment by Justice Mathivanan on the grounds that the judge had released a detailed judgment five months after his retirement, which the Court described as "gross impropriety."

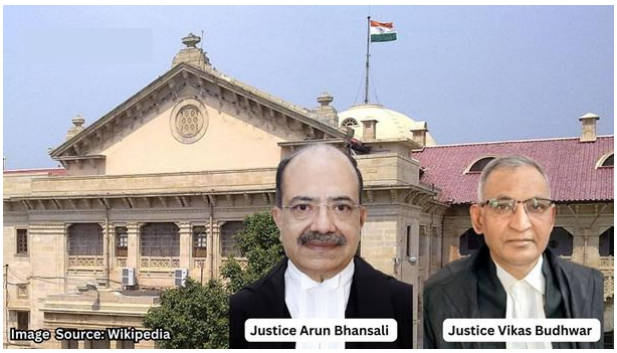
## Sub Inspector Sanjay Kumar V. State Of Uttar Pradesh & Ors.

- **TOPIC :** Supreme Court Upholds Punishment Of Censure On UP Police Sub-Inspector For Not Completing Investigations On Time
- **BENCH** : Justices PS Narasimha and Sandeep Mehta


- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether a penalty of censure imposed on a Sub-Inspector of Police in Uttar Pradesh for not performing his duties and not completing the assigned investigations within the specified time frame is correct or not.
- **OBSERVATIONS**
  - Recently, the Supreme Court upheld a penalty of censure imposed on a Sub-Inspector of Police in Uttar Pradesh for not performing his duties and not completing the assigned investigations within the specified time frame.
  - A show cause notice was served to the appellant who was posted as Sub-Inspector at Police Station Hanumanganj, District Khushinagar, Uttar Pradesh condemning the appellant for gross negligence, indifference, and selfishness while performing his duties.
  - In reply to the show cause notice, the appellant explained that most of his time was consumed in managing VIP duties and other external duties assigned to him, and consequently, he could not complete the investigation of 13 cases pending with him.
  - However, after being unsatisfied with the appellant's explanation, he was handed down a penalty of censure vide letter issued by the Superintendent of Police.
  - The appellant contested the penalty of censure claiming that no opportunity of hearing was granted to him before handing down a penalty of censure before the High Court.
  - He urged that the impugned order and the consequent communication issued by the Superintendent of Police, District Khushinagar, are in clear breach of the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991.
  - However, the writ petition stands dismissed by the Single Bench as well as the Division Bench of the High Court.
  - The appellant referred to Rule 5 read with Rule 14(2) of the Rules, 1991, and urged that no notice in writing was issued to the appellant before subjecting him to the penalty of censure.
  - Following this, an appeal was preferred before the Supreme Court.
  - Affirming the decision of the High Court, the bench comprising Justices PS Narasimha and Sandeep Mehta observed that no error was committed by the SP while handing down a penalty of censure to the appellant.
  - The Court rejected the Appellant's argument that no opportunity was offered to him before handing down the penalty by the SP.
  - It recorded that an order issued by the Additional DGP based on which SP decided to penalize the Appellant was based on an explanation offered by the Appellant.
  - Apparently, the censure entry directed to be recorded vide letter dated 7th March, 2022, was awarded by the Superintendent of Police, District Khushinagar, who was competent to do so as per Rule 7(2) of the Rules, 1991.
  - His order dated 16th November, 2021 was passed by the Additional Chief Secretary, Home (Police), after taking into consideration the entire material on record including the detailed factual report forwarded by the Additional Director General of Police which included the explanation of the appellant and assigned reasons for reaching the conclusion that the appellant did not show interest in the disposal of the investigations which was treated to be a sign of gross negligence, indifference and selfishness while performing duties and was thus highly condemnable.
  - Therefore, the contention advanced by the learned counsel for the appellant that the censure entry was directed to be recorded by an Officer who was not competent and that the same suffers from the vice of nonadherence to the rules/principles of nature justice is not tenable.'', the judgment authored by Justice Sandeep Mehta said.
  - Resultantly, the Appeal was dismissed and the impugned judgment was upheld.

## Km Sakshi v. Govt Of India And 3 Others

- **TOPIC** : Medical Board's Opinion On Age Only An Estimation, Not Accurate, Allahabad HC Grants Relief To Class 6 Girl Denied Admission For Being 'Overage
- **BENCH :** Justice Arun Bhansali and Justice Vikas Budhwar




- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Whether an order which had upheld a school's decision to deny admission to a female student in class 6 based on a report which allegedly indicated that she was about 15 years old can be set aside or not.
- **BACKGROUND**
  - The petitioner student applied for admission to Class-VI, Jawahar Navodaya Vidyalaya, with January 25, 2011 as her birth date supported by birth certificate, aadhaar card and vaccination certificate. She was selected in the merit list. However, the principal of the institution, suspecting her age, sent the student for a medical examination.
  - On the opinion/report of the Chief Medical Officer stating that her real age was 15 years, i.e., two more years than the maximum age limit, the petitioner was denied admission.
  - Aggrieved, she approached the single judge bench in a writ petition in November 2022 which was dismissed in March this year. Against this dismissal she approached the division bench in appeal.
  - During the pendency of the appeal, the High Court directed the Standing Counsel to get a report pertaining to the authenticity of the birth certificate relied upon by the petitioner.
  - Time was also granted to the petitioner counsel to determine whether the petitioner had studied Class-VI and Class-VII during the sessions 2022-23 and 2023-24 at some other school.
  - Counsel for petitioner submitted that the petitioner had not studied at any other school in the interim.
  - Upon the Standing Counsel verifying the authenticity of the birth certificate, petitioner's counsel contended that rejection of admission by the respondents was unjustified.
  - He further contended that under Section 4 of the Right of Children to Free and Compulsory Education Act, 2009, the petitioner should be admitted in an age-appropriate class as she could not complete her education due to being denied admission by the respondents.
  - Counsel for the respondent argued that admission was based on the brochure of the institution. Once the medical board found her to be overage, denial of admission was justified. It was further contended that the petition has been rendered infructuous on account of the petitioner being overage for Class-VI since denial of admission.
- **OBSERVATIONS**
  - The Allahabad High Court recently set aside an order which had upheld a school's decision to deny admission to a female student in class 6 based on a report which allegedly indicated that she was about 15 years old.
  - Noting the authenticity of the student's birth certificate which was questioned by the school to deny admission, the court said that subjecting the student to medical examination was "wholly unjustified and high-handed".
  - A division bench of Chief Justice Arun Bhansali and Justice Vikas Budhwar in its September 24 order held that the opinion of the medical board constituted by the Chief Medical Officer to check the student's age, was "not accurate" and had only "given an estimation".
  - The Court observed that under Section 14 of the Right of Children to Free and Compulsory Education Act 2009, the age of the child shall be either determined by birth certificate issued under the Births, Deaths and Marriages Registration Act 1886, or any other such document as may be prescribed.
  - Examining the brochure relied on by the respondents, the Court observed that the provision for examination by the medical board is applicable only when proof of age provided is other than what is mentioned under Section 14 of the 2009 Act.
  - "The School at best could get the authenticity of the certificate checked," the court said.
  - It further said that the student's birth certificate was authenticated through an independent agency of the Government counsel who produced the report, authenticating the certificate and had also produced

further material like a family register supporting the student's date of birth.

- "Besides the above, the opinion of the medical board is also not accurate and is always given as an estimation only," the court held.
- The division bench observed that the single judge bench without examining the aspects in the matter had dismissed the student's plea while relying on judgment—wherein crucial details like the doctor's signature, date, etc. were missing—which was different on facts from the present student's case.
- "The petitioner had approached the Court in time, i.e., within one month of passing of the order by the respondents on 20.10.2022 and, therefore, she cannot be made to suffer on account of delay in decision of the writ petition and the present special appeal," the court said.
- Accordingly, the bench set aside the single judge bench's order and allowed the plea. It further directed the respondents to "accord admission" to the student in a class appropriate to her age in terms of Section 4 of the Act within a period of two weeks.

## The State of Jharkhand v. Pawan Kumar Singh

- **TOPIC :** Jharkhand HC Commutes Death Sentence Of Constable Who Opened Fire On Milk Supplier For Demanding Dues, Says Section 27 Arms Act Not Attracted
- **BENCH :** Justices Ananda Sen and Gautam Kumar Choudhary


- **FORUM:** Jharkhand High Court
- **MAIN ISSUE**
  - Whether a death sentence imposed on a Railway police constable who opened fire on the family of his neighbor-milk supplier, for demanding dues can be commuted or not.

- **BACKGROUND**
  - The case involved a Death Reference filed by the State and a Criminal Appeal by the accused, arising from a Sessions Court judgment where the appellant was sentenced to death under Sections 302 and 307 of the IPC and Section 27 of the Arms Act.
  - The appellant, a constable in the Railway Protection Force, had shot and killed three members of a family, including the informant's parents and one sister, while injuring the informant and another sister, Suman Devi.
  - The appellant's defence argued that the trial court had not properly considered the guidelines laid down by the Supreme Court in awarding the death sentence. These guidelines include a balance of factors such as the gravity of the crime, the criminal's potential for reform, and the proportionality of the punishment.
  - The defence also pointed out that the appellant had no prior enmity with the victims, no premeditated intent to kill, and that the crime occurred in a moment of emotional disturbance.
  - The appellant was 26 years old with a clean service record, and the dispute had reportedly arisen over a demand for unpaid milk supplied by the victims.
- **OBSERVATIONS**
  - The Jharkhand High Court has commuted the death sentence imposed on a Railway police constable who opened fire on the family of his neighbour-milk supplier, for demanding dues.
  - While doing so, the Court held that since the Constable had used his service pistol, conviction under Section 27 of the Arms Act 1959 cannot stand.
  - The Court clarified that Section 27 of the Act does not apply in all cases involving the use of firearms, but is limited to instances where the firing is in violation of Section 5 or Section 7 of the Arms Act, such as firing by an unlicensed individual or by a prohibited arm.
  - In this case, the accused had used a service pistol, legally issued to him, thus making the conviction under Section 27 of the Arms Act unsustainable.
  - The division bench comprising Justices Ananda Sen and Gautam Kumar Choudhary observed, "Before entering into the issue of death sentence, on the face of it, finding and sentence under Section 27 of the Arms Act is an error apparent on record.
  - Section 27 of the Arms Act does not apply in all cases of firing, but is limited to only such cases where it is in violation of Section 5 and 7 of the Arms Act, 1959.

- Thus, where it is a firing by one having no license, or by a prohibited arms, then it will invite conviction under Section 27 of the Arms Act.
- In the present case, firing was resorted to by a service pistol by the accused to whom it was issued, therefore, it is not a case of either firing by an unlicensed or prohibited arm and, so conviction under Section 27 of the Arms Act is not sustainable.''
- The Court concluded, ''Considering the above factors like absence of past enmity, absence of preplanning in execution, and offence being the outcome of momentary emotional disturbance, we are of the view that this is a case where the alternative to death sentence is not foreclosed, so as to make it the only available option of sentencing.''
- As a result, the Court commuted the death sentence to rigorous imprisonment for a minimum of 25 years without remission, along with a fine of Rs. 10,000 for the offence under Section 302 of the IPC. The conviction under Section 27 of the Arms Act was set aside.

## XXX v State of Kerala & Connected Matter

- **TOPIC:** Law Doesn't Give Exception From DNA Profiling On Ground That Accused And Victim Are Siblings
- **BENCH :** Justice A. Badharudeen


- **FORUM:** Kerala High Court
- **MAIN ISSUE**
  - Whether the CrPC or the Bharatiya Nagarik Suraksha Sanhita (BNSS) gives exception from DNA profiling on the ground that the accused and victims are siblings or not.
- **OBSERVATIONS**
  - The Kerala High Court has stated that neither the CrPC nor the Bharatiya Nagarik Suraksha Sanhita (BNSS) gives exception from DNA profiling on the ground that the accused and victims are siblings.
  - The accused and victim here are siblings, and the accused is alleged to have committed offences punishable under Sections 376, 376(3) (punishment for rape) of the IPC,
  - Section 5j(ii) (aggravated penetrative sexual assault) and Section 6(1) (punishment for aggravated penetrative sexual assault) of the POCSO Act.
  - Justice A. Badharudeen dismissed the criminal miscellaneous cases filed by the accused and the victim challenging the seizure of blood samples collected for DNA profiling.
  - The allegation against the accused is that he impregnated the 14-year-old minor victim.
  - When the minor was brought to the hospital for scanning, the hospital authorities informed the police. Based on the statement obtained from the mother, police registered the FIR.
  - The counsel for the accused argued that the case was based on the intuitions of the police and that his blood sample was collected forcefully without his consent or permission of the jurisdictional court.
  - It was argued that the accused is the direct brother of the victim and that if the DNA profiling result is found positive, it would be fatal to the interest of the accused as well as the victim. It was argued that forceful collection of samples without any reasonable basis violates the fundamental rights guaranteed under Articles 14 and 21 of the Constitution.
  - Similarly, the victim also approached the Court to quash the seizure of blood samples collected from her body by coercing her and without the permission of the jurisdictional court.
  - The DNA profiling result was in a sealed cover before the Court.
  - Section 53 of the CrPC provides for the examination of the accused by a medical practitioner at the request of a police officer and Section 54 provides for the examination of the arrested person by a medical practitioner at the request of the arrested person. The Court noted that Sections 51 and 52 of the BNSS also have similar provisions.
  - Court said, ''Going by the contentions raised by the defacto complainant as well as the victim, the same have no legal footing since collection of blood samples from the accused is legally permissible as part of the investigation under Sections 53 and 54

of the Cr.P.C read with Explanation(a) to Section 53. Sections 51 and 52 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (`BNSS' for short) are the para materia provisions.''

- As such, the Court dismissed the criminal miscellaneous cases filed by the accused and the victim.

## Budhu Nag Chatar V. The State of Jharkhand

- **TOPIC :** Confession Made By An Accused Before Panchayat Qualifies As Extra-Judicial Confession
- **BENCH** : Justices Ananda Sen and Gautam Kumar Choudhary


- **FORUM:** Jharkhand High Court
- **MAIN ISSUE**
  - Whether a confession made by an accused person before the Panchayat will be qualified as an extra-judicial confession or not.
- **BACKGROUND**
  - According to the case facts, the informant's co-villager went missing, and during the search, it was revealed that he was last seen with his cousins (the appellants). After this, he wasn't seen again.
  - During the interrogation, the appellants admitted to killing the co-villager at night. Thereafter, in order to hide the evidence, they concealed the body 5 km deep in the forest.
  - Based on their disclosure, the body was recovered, and a case was filed under Sections 302, 201/34 of the IPC against both appellants. The trial court convicted them, leading to the present appeal.
- **OBSERVATIONS**
  - The Jharkhand High Court has held that a confession made by an accused person before the Panchayat qualifies as an extra-judicial confession.
  - The Court emphasised that an extra-judicial confession can serve as the basis for conviction if the person before whom the confession is made is impartial and not hostile toward the accused.
  - A division bench comprising Justices Ananda Sen and Gautam Kumar Choudhary noted, ''Confession made by the accused persons before the Panchayat will come within the meaning of extra-judicial confession and the veracity of it, is established by the recovery of the dead body from the jungle area. The place of recovery deep inside the jungle and knowledge of it to the appellants, raises a presumption under Section 106 of the Evidence Act.''
  - It was incumbent on their part to have explained as to how they came to know about it. Extra judicial confession is a weak piece of evidence, but in the present case, recovery made on its basis lends credence to its credibility.
  - Extra Judicial confession can form the basis for conviction, if the person before whom it is made, appears to be unbiased and not inimical to the accused.
  - It was contended by the appellants that there weren't any eyewitnesses to the crime, and the case was built on an extra-judicial confession, which was regarded as weak evidence.
  - Furthermore it was argued that there wasn't any corroborative evidence to establish their guilt.
  - The Court noted, ''This is a somewhat unique case, in that confession leading to recovery of the dead body was not made to the police, but before a Village Panchayat. Confession made to police is not admissible into evidence, and only facts which are deposed as discovered in consequence of information received, from a person accused of any offence, in the custody of a police officer, is admissible under Section 27 of the Evidence Act.''
  - The court further observed that the confession made by the accused before the Panchayat qualifies as an extra-judicial confession, and its credibility is confirmed by the recovery of the dead body from a jungle area.
  - Considering these factors, the court opined, ''extra judicial confession made by the appellants in the present case leading to recovery of the dead body from remote forest area, can be acted upon and made the basis for conviction of the appellants. There is no infirmity in the judgment of conviction and sentence passed and there does not exist any strong reason to differ with the finding of the learned trial Court.''
  - With this, the court dismissed the criminal appeal.

## Hafeez & Ors. v. State of Rajasthan

- **TOPIC** : Cutting Someone's Nose Causes Permanent Disfigurement, Affects Self Esteem And Brings Social Stigma
- **BENCH** : Justice Rajendra Prakash Soni


- **FORUM:** Rajasthan High Court
- **MAIN ISSUE**
  - Whether Cutting Someone's Nose Causes Permanent Disfigurement or not.
- **BACKGROUND**
  - The facts of the case were that the accused and the complainant were brothers-in-laws since they were married to each other's sisters. However, due to certain matrimonial issues, both were living separately from their wives.
  - The complainant had fixed his marriage to some other woman without divorcing the accused's sister.
  - Due to such tension between the two families, one day when the complainant was on his way, he was grabbed by some acquaintances and family members of the accused who also held his nose, and the accused cut the nose using a sharp weapon.
  - It was the case of the accused that the complainant had sustained only one injury which was neither a fracture nor supported by any expert opinion to be of life-threatening nature. Hence, it was argued that the accused should be released on bail.
- **OBSERVATIONS**
  - Rajasthan High Court observed that the act of cutting someone's nose is a serious crime due to its physical, emotional and social implications. It held that the nose is a crucial part of the human body having both functional and cultural significance because in Indian culture, cutting off a person's nose was a form of punishment or revenge.
  - The bench of Justice Rajendra Prakash Soni was hearing a bail application filed by the accused who was charged with the offence of causing grievous hurt and attempt to murder.
  - ‘‘In view of this Court, the nose is a crucial part of the human body with both functional and symbolic importance. It also holds social and cultural significance, being a prominent feature of the face that contributes to identity, appearance and self-esteem. Cutting of nose would have permanent consequences such as disfigurement. The disfigurement caused by removing someone's nose can lead to significant emotional distress and social stigma.’’
  - Finally the Court held that the manner of committing the crime crossed all limits of cruelty and thus looking at its gravity coupled with the antecedents of the applicant, the bail was rejected.