Md. Mahmood Alam vs The State of Bihar

- **TOPIC :** Conviction Under wrong Provision of POSCO Act, Patna High court orders Release of Sexagenarian After 10 years, Enhances Victim's Compensation
- **BENCH :** Justices Jitendra Kumar and Ashutosh Kumar

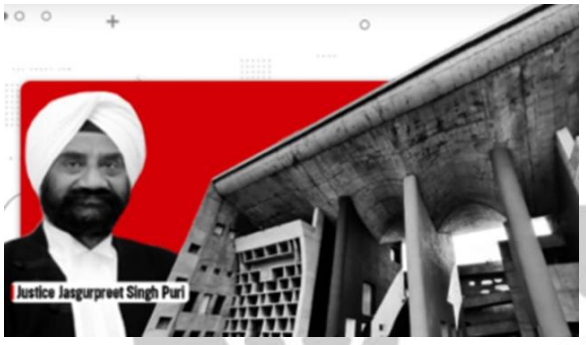
- **FORUM**: Patna High Court
- **MAIN ISSUE**
  - Regarding the release of a man in his sixties, previously convicted by a Sessions Court for the rape of his 12-year-old niece.
- **OBSERVATIONS**
  - The Patna High Court has ordered the release of a man in his sixties, previously convicted by a Sessions Court for the rape of his 12-year-old niece, citing the application of a wrong provision of the Protection of Children from Sexual Offences (POCSO) Act, 2012.
  - The court held that the trial court erroneously sentenced the appellant under Section 6 of the Act, which was not applicable to the offense committed in 2014.
  - The division bench, comprising Justices Jitendra Kumar and Ashutosh Kumar observed, ''we find that the learned Trial Court has applied wrong statutory provisions to punish the convict/appellant by sentencing him under Section 6 of the POCSO Act and sentencing him to rigorous imprisonment for the remainder of natural life.
  - Learned Trial Court has not noticed the facts that the alleged offence has been committed in the year 2014 and at that time there was no such punishment in Section 6 of the Act.''
  - ''Moreover, as per the provisions of Sections 4 and 6 of the POCSO Act, we find that the present case is covered under Section 4 of the POCSO Act and not under Section 6 of the POCSO Act, because the victim has been found to be above 12 years of age and hence, penetrative sexual assault committed against her does not come under aggravated penetrative sexual assault as defined under Section 5 of the POCSO Act,'' the bench added.
  - The bench pointed out that as per Section 5 of the POCSO Act, penetrative sexual assault only on the child below 12 years of age comes in the category of aggravated penetrative sexual assault. If the victim child is above 12 years of age, the penetrative sexual assault is punishable under Section 4 of the POCSO Act.
  - ''Moreover, as per Section 4 of the POCSO Act as existed prior to the amendment in 2019, penetrative sexual assault is punishable with imprisonment of either description for a term which shall not be less than 7 years but which may extend to imprisonment for life and shall also be liable to fine.
  - The penetrative sexual assault committed against the victim also comes under Section 376(1) of the I.P.C. which also provides for the same punishment as provided under Section 4 of the POCSO Act, prior to its amendment in 2019,'' the bench added.
  - The prosecution's case, as outlined in the informant's written report, stated that the appellant, an agnate of the victim's family, took his 10-year-old niece to Banaras under the pretext of assisting his daughter, who was expecting a child. In Banaras, the appellant allegedly hit the niece after administering an intoxicant.
  - The appellant was sentenced by the Sessions Court to undergo rigorous imprisonment for the remainder of natural life and to pay a fine of Rs.50,000/- under Section 6 of the POCSO Act.
  - The Court ruled that while the appellant had been sentenced to 10 years of imprisonment, the period already spent in custody since May 20, 2014, was sufficient to meet the ends of justice.
  - ''In view of the total facts and circumstances of the case, particularly the old age of the appellant, imprisonment of the appellant for 10 years would meet the ends of justice whereas the appellant has been already in custody for more than 10 years since 20.05.2014.
  - Hence, he is sentenced to the period already spent in custody,'' the court held.
  - While noting that the Trial Court had directed compensation of Rs. 4,00,000/- to the victim,

payable by the District Legal Services Authority (DSLSA), the Court decided to enhance this amount by Rs. 1,00,000/- considering the victim's age. The District Legal Services Authority was directed to pay the increased compensation within two months.

- Furthermore, the Court upheld the fine of Rs. 50,000/- imposed by the Trial Court on the appellant, with the amount to be paid to the victim.
- Consequently, the appeal was allowed, and the appellant was directed to be released.

XX v. Punjab University &ors

- **TOPIC:** Law is a Noble Profession, Punjab & Haryana High court Denies Relief To Law Student Caught cheating In Semester Exam
- **BENCH :** Justice Jasgurpreet Singh Puri



- **FORUM:** Punjab and Haryana High Court
- **MAIN ISSUE**
  - Regarding the order can be quashed or not which is related to disqualifying a law student from appearing in any University examination for two years.
- **OBSERVATIONS**
  - The Punjab and Haryana High Court refused to quash the order disqualifying a law student from appearing in any University examination for two years, after he was found cheating during an exam.
  - The Panjab University had caught a BA LLB student of first year with objectionable material during the exam and disqualified him from appearing in any University examination for two years.
  - Justice Jasgurpreet Singh Puri said:
  - "Firstly, the Regulations which have been reproduced provide for two years of disqualification and there is no reason for this Court to give any punishment which is lesser than the same and substituting the same with the aforesaid regulations."
  - Secondly, the petitioner is a student of LL.B. and he would be a future lawyer. The legal profession is a noble profession and is governed by legal ethics, added the Court.
  - The writ petition was filed under Articles 226/227 of the Constitution seeking issuance of a writ in the nature of certiorari for setting aside the order passed by University authorities whereby the petitioner has been disqualified from appearing in any University examination for two years.
  - Counsel for petitioner submitted that two years is a long time regarding his disqualification because his career will be affected and if some directions are issued for reduction of the aforesaid punishment, then his career will be saved.
  - After hearing the submissions the Court referred to Regulations 5(a) and 8 of Panjab University Calendar Volume II which prescribed the "punishment for use of unfair means."
  - As per the aforesaid Regulations, the punishment provided is two years of disqualification when a student is caught in mala fide possession of any of the aforementioned material, noted the Court.
  - In the present case, the judge observed that the petitioner while appearing in the first semester in the subject of Law of Contract was found with handwritten notes which were in his own handwriting.
  - Rejecting the argument that the punishment is disproportionate, the Court said it does not deem it fit and proper to grant indulgence in its exercise of power under Article 226 of the Constitution of India.

Aji v. State of Kerala

- **TOPIC:** Accused Has Right to view Digital Document That Are Part of Prosecution Records Without Affecting Victim's Privacy : Kerala High court
- **BENCH :** Justice A. Badharudeen
- **FORUM:** Kerala High Court
- **MAIN ISSUE**
  - Regarding the accused right to access documents.
- **OBSERVATIONS**
  - The Kerala High Court stated that the accused had the right to access documents, including digital documents excluding those which affect the privacy of the victim.
  - Justice A. Badharudeen stated that the accused cannot be denied the right to view the pen drive containing CCTV visuals which are part of

prosecution records for defending his case, as part of his right to a fair trial.

- ‘‘The right of the accused to defend a case is a salutary right and therefore the accused has a right of access to the documents including digital documents (excluding the same contains privacy of the victim as held in Gopalakrishnan @ Dileep v. State of Kerala [AIR 1996 SC 1393]). Thus, such a right could not be denied and such denial is not fair trial.’’
- The revision petitioner was accused of allegedly committing offences punishable under Sections 447 (punishment for criminal trespass) and 354 (assault or criminal force to outrage woman's modesty) of the IPC and sexual assault and sexual harassment under the POCSO Act.
- The petitioner submitted the application for viewing the pen drive containing CCTV visuals obtained from the house of the accused which was submitted before the Fast Track Special Court.
- The Special Court dismissed the application of the petitioner stating that the pen drive does not have CCTV visuals and that the courtyard of the house was out of coverage of the CCTV camera.
- The petitioner filed the criminal revision petition before the High Court to set aside the order of the Special Court and to permit him to view the pen drive containing CCTV visuals.
- The Public Prosecutor submitted that the original CCTV visuals from his house were with the petitioner itself and an examination of the pen drive submitted before the Court was not necessary.
- The Court stated that the accused cannot be denied the right to view digital documents like CCTV visuals without infringing the victim's privacy in defending his case.
- The Court thus stated that the order of the Special Court denying the right of the petitioner to view the CCTV visuals was not justifiable.
- As such, the Revision Petition was allowed. The Court directed the Special Court to permit the petitioner and his Counsel to view the CCTV visuals on two days when the alleged incident took place before the start of the trial or during the trial.

HINA BASHIR BEIGH v. NIA and other connected matter

- **TOPIC :** Terrorists Misusing Social Media, Using Journalistic Credentials To Incite Violence Are Factors Considered in Sentencing : Delhi High court
- **BENCH :** Justice Prathiba M Singh and Justice Amit Sharma

- **FORUM:** Delhi High Court
- **MAIN ISSUE**
  - Regarding misuse of social media platforms by terrorists.
- **OBSERVATIONS**
  - The Delhi High Court has ruled that factors such as misuse of social media platforms by terrorists and using journalistic credentials for publishing magazines to incite violence are factors which cannot be ignored while awarding sentences in terrorist activities related cases.
  - A division bench comprising Justice Prathiba M Singh and Justice Amit Sharma observed that Courts will have to not merely bear in mind the crime committed in such cases but also its impact and propensity of the person to indulge in a similar crime in future.
  - ‘‘While encrypted platforms permit and encourage privacy and freedom of speech and expression, the misuse of the same by terrorists and banned organizations also would have to be borne in mind,’’ the Court said.
  - It added that such cases would have to be dealt with differently than cases involving innocent persons, who may have been pulled into crime without their knowledge.
  - ‘‘Factors such as funding through bitcoins, as also the use of journalistic credentials to publish and

disseminate magazines to incite violence, also cannot be ignored,'' it said.

- The bench made the observations while dealing with appeals filed by two convicts- Hina Bashir Beigh and Sadiya Anwar Shaikh, seeking reduction of their sentences in a UAPA case.
- NIA had alleged that the convicts were affiliated with the proscribed terrorist organization Islamic State Khorasan Province and were carrying out anti-national activities in India.
- The probe agency further alleged that incriminating anti-nationalist magazine named 'Voice of Hind' etc. were seized on the basis of disclosure made by Beigh. It was alleged that the accused created several anonymous IDs on social media platforms with the intention of concealing their identity while engaging in anti-national activities.
- In May, the NIA court had awarded a sentence of eight years to Beigh under Section 38(2) of UAPA and eight years under Section 39(2) of UAPA with no fine.
- On the other hand, Shaikh was awarded a sentence of seven years under Section 38 of UAPA and seven years under Section 39 of UAPA. All the sentences were to run concurrently. The imprisonment was simple imprisonment.
- Observing that proliferation of crime through the internet and social media platforms cannot be ignored, the Bench analyzed the factors and principles considered by Courts in different jurisdictions while awarding sentence in terror related cases.
- It said that though specific guidelines have not been introduced on a policy level in India, the factors to be seen in awarding sentences are similar to those of other jurisdictions.
- ''While awarding sentences for terrorism-related activities, the Courts will have to, not merely bear in mind the crime committed but also the impact of the same and the propensity of the person to indulge in a similar crime in future. The intent behind providing a range of punishment that could be awarded for an offence is to give the Courts sufficient discretion to consider various aggravating and mitigating factors while awarding sentences,'' the Court said.
- The Bench observed that the fact that both the convicts were ladies who may not be fully aware of the complete plans of the primary accused could be mitigating factors but their association with the main accused as also the circumstances wherein they were seen inciting violence through publications during the CAA-NRC protests, would have to be borne in mind.
- With respect to Hina Bashir Beigh, the Court modified her imprisonment from sentence of 8 years each to imprisonment for 6 years each for offences.
- Regarding Sadiya Anwar Shaikh, the Court modified her imprisonment for a period of 7 years each to imprisonment for a period of 6 years each for offences. No fine was imposed on both the convicts for either of the offences.

The Union of India & Ors. v. Utpal Datta Talukdar

- **TOPIC:** Dismissal from Service Automatically Forfeits Leaves Benefits ; No Express Denial Required : Gauhati HC
- **BENCH** : Chief Justice Justice & Justice N. Unni Krishnan Nair

- **FORUM**: Gauhati High Court
- **MAIN ISSUE**
  - Regarding the Central Administrative Tribunal's order directing Railways to release leave encashment benefits to a dismissed employee.
- **BACKGROUND**
  - The case originated from a disciplinary proceeding against Utpal Datta Talukdar, which resulted in his dismissal from service without compassionate allowance (pension and gratuity).
  - After unsuccessful appeals and revision petitions, Talukdar approached the Central Administrative Tribunal (CAT), Guwahati Bench, seeking release of his Provident Fund dues, Group Insurance Scheme benefits, and Leave Encashment.
  - The CAT, through its order, directed the Railways to release his Leave Encashment benefits. The Union of India challenged this order before the High Court.

❖

❖ **OBSERVATIONS**

- A Division Bench of Chief Justice Justice & Justice N. Unni Krishnan Nair of the Gauhati High Court overturned the Central Administrative Tribunal's order directing Railways to release leave encashment benefits to a dismissed employee.
- The Court held that dismissal from service automatically results in forfeiture of past service under Rule 40 of Railway Services (Pension) Rules, 1993, which consequently leads to forfeiture of all accumulated leave under Rule 504 of IREC. The Court clarified that there is no requirement for explicit denial of leave encashment in the dismissal order as it is an automatic consequence of dismissal.
- Firstly, examining Rule 504 of IREC alongside Rule 40 of Railway Services (Pension) Rules, 1993 (which mandates that dismissal leads to forfeiture of past service), the court established a direct connection between service forfeiture and leave forfeiture. Since leave is earned through service, the court held that forfeiture of past service necessarily results in the forfeiture of accumulated leave.
- Secondly, the court addressed Rule 542(2)(b), clarifying that it merely prescribes the method of computing earned leave and doesn't create an entitlement to leave encashment for dismissed employees. Similarly, Rule 550(B)(1)(ii) was found inapplicable as it was not meant for regular employees like the respondent.
- Thirdly, the court found that the CAT fundamentally erred in holding that Rule 504 had no relevance to leave encashment. The court emphasized that the express text of the provisions implies the contrary, and any interpretation divorcing Rule 504 from leave encashment is untenable.
- Fourthly, the court rejected the argument that leave encashment denial needed explicit mention in the dismissal order.
- It held that such denial is an automatic consequence of dismissal, flowing from the forfeiture of past service, and therefore doesn't require specific mention. The court clarified that the disciplinary authority is not required to make any such observation while dismissing a Railway servant. Consequently, the court allowed the petition and set aside the CAT's order.

State of Karnataka & Others AND Latha H N

❖ **TOPIC:** Blindness Doesn't come in way of discharging Duties of Teacher: Karnataka HC Upholds order to Consider 100% Visually Challenged Candidate

❖ **BENCH :** Justice Krishna S Dixit and Justice C M Joshi

❖ **FORUM:** Karnataka High Court

❖ **MAIN ISSUE**

- Regarding 100 % Visually Challenged Candidate

❖ **OBSERVATIONS**

- Quoting examples of visually impaired persons who have achieved great things in life such as Homer, Helen Keller and Louise Braille among others, the Karnataka High Court has observed that blindness would not come in the way of discharging duties of a teacher.
- A division bench of Justice Krishna S Dixit and Justice C M Joshi held thus while upholding an order passed by the Karnataka State Administrative Tribunal favouring the application made by Latha H N, a member of Scheduled caste and who is 100% blind and directed the authorities to consider her application along with low vision applicants for the post of Graduate Primary Teacher' (Social Studies, teaching Kannada).
- The court also rejected the contention of the state government that the kind of work which a teacher does in ordinary course cannot be discharged by persons with absolute blindness, though their educational qualifications do satisfy.
- Underscoring that "history is replete with instances of blind people who have achieved great things in life", the court cited examples examples of Homer (900 B.C.) of great epics (Iliad and Odyssey), John Milton (1608-1674) [Paradise Lost], Louis Braille (1809-1852) [Braille Script], Helen Keller (1880-1968) [women suffrage] & Srikanth Bolla (CEO of Bollant Industries worth £48 million]. It further

referred to a 2011 Notification issued by the government which clearly stated that ''Secondary School Assistant Grade – II, Assistant Master (Arts and Languages)'' can be blind candidates and then said, ''How blindness would come in the way of discharging duties of a teacher of the kind is difficult to appreciate.''

- It further elaborated that persons with blindness in particular have several positive qualities such as: exceptional ability to adapt; resilience i.e., strong coping mechanism to overcome daily challenges, resourcefulness i.e., skill at finding creative solutions to obstacles; strong listening skills, excellent memory and recall abilities, unwavering commitment to achieving goals, heightened senses of hearing, touch & smell, etc.
- The court said, ''The 2022 Recruitment Notification does not provide for reservation for the blind candidates. Had such reservation been provided, arguably we could have countenanced the contention of learned HCGP that the post in question having been earmarked for candidates of 'low vision' only, blind candidate could not have staked his claim for the same.''
- Noting that as between the candidates of 'low vision' and the candidates of 'absolute blindness', the court said that the priority avails to the later since they are more disadvantageously placed qua the former.
- The court held ''The impugned order of the Tribunal has brought about social justice to the class of persons whom nature has placed at a disadvantageous position; to that predicament, Article 12 Entity should not add by taking an unconscionable stand in adjudication of the cause.''
- It added ''The authority that ought to have earmarked some posts for the blind, or in the alternative should have permitted the blind candidates too to be in the fray along with persons of 'low vision' for the post in question. An argument to the contrary would offend the laudable policy of the State as enacted in the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the present statute namely, the People with Disabilities Act, 2016.''
- Rejecting the petition the court said ''The Tribunal has not excluded the candidates of low vision from the fray; it has only widened the fray by permitting blind candidates in it. Courts & Tribunals have to mould the relief to suit the requirement of law, reason & justice, and the impugned order has achieved that objective.''

Satish AND State of Karnataka

- **TOPIC :** Karnataka High court Quashes Rape charges Against Live – In Partner After 22 – year – long Relationship
- **BENCH :** Justice M Nagaprasanna

- **FORUM:** Karnataka High Court
- **MAIN ISSUE**
  - Regarding rape charges against a man in a live-in relationship, by his partner of 22 years.
- **OBSERVATIONS**
  - The Karnataka High Court has quashed rape charges against a man in a live-in relationship, by his partner of 22 years.
  - A single judge bench of Justice M Nagaprasanna allowed the petition filed by Satish and quashed the case registered against him for sections 323,376,417,420,504,506 of the Indian Penal Code.
  - A detailed order is yet to be made available.
  - While granting interim relief and staying all further proceedings qua the petitioner earlier the court had observed, ''This case forms a classic illustration, as to what can become an abuse process of law. The petitioner and the complainant are said to have been in a relationship for 22 years. After 22 years of relationship, when the relationship turns sour, it is said to have become an offence of rape. It is on the face of it is an abuse of process of law to permit any proceedings, any further, in the case at hand.''
  - As per the complainant, she had earlier married one

Mallaiah and got two children from their wedlock. The complainant's husband was suffering from a deadly disease, therefore she came to Bengaluru in the year 2004 and joined in one hotel for work.

- There, she met the accused who it was alleged promised to marry her and on assurance of providing a good life, she started residing in his house. It was claimed the accused would introduce her as his wife to everyone and used the complainant physically.
- It was also claimed that he received Rs 8 lakh from her and purchased a car and bikes. However, without marrying her, went to his native place and arranged to marry another girl.
- When she asked the accused to marry her, he scolded her with filthy language and made galata. Following this she lodged the complaint. The police on investigation filed its chargesheet in the case.
- Seeking to quash the prosecution the petitioner contended that recitals in the complaint and FIR, it is evident that the complainant and the petitioner were in a relationship for more than 18 years and indulged in consensual sex and as such the consensual act can neither become an offence Section 376 of IPC nor breach of promise would become an offence of cheating under Section 420 of IPC.
- Further, it is apparent that the promise made by the petitioner has no immediate relevance, or direct nexus to the complainant's decision to engage in the sexual act alleged in the complaint.
- Accordingly it was prayed to quash the prosecution.