

**Ratheesh Kumar @ Babu v. The State of Kerala & Anr**

- ❖ **TOPIC :** Private Defence
  - Must Be Strictly Preventive, Not Punitive Or Retributive In Nature: Supreme Court
- ❖ **BENCH:** Justices JB Pardiwala and R Mahadevan
- ❖ **FORUM:** Supreme Court
- ❖ **FACTS**
  - A criminal appeal against the appellant's conviction for the offence of murder. To provide a brief factual background, the appellant owned his own agricultural farm.
  - The deceased was trying to put up a fence in some part of his land and the same was objected to by the appellant's father.
  - It was the prosecution's case that the appellant and his father caught hold of the deceased and the appellant stabbed him.
  - Though the father was acquitted, the appellant was convicted via the Trial Court's order. The same was affirmed by the High Court. Thus, the present appeal.
- ❖ **MAIN ISSUE**
  - Whether private defence must be strictly preventive or not.
- ❖ **OBSERVATION**
  - The Supreme Court observed that private defence must be strictly preventive and not punitive or retributive.
  - The Court reiterated that causing death can only be justified when the accused is faced with a reasonable apprehension of death or grievous hurt.
  - The impending danger must be present, real or apparent., the Court said.
  - At the outset, the Court perused the concerned provisions of private defence provided under the Indian Penal Code. It opined that in order to determine whether apprehension was reasonable, facts and circumstances will have to be seen.
  - The court, while deciding this question of fact, is to take into consideration various facts, like the weapon used, the manner and nature of assault, the motive and other circumstances., it added.
  - Building on these observations, the Court opined that the facts do not suggest such reasonable apprehension of imminent danger on the part of the accused. Not only this but there was also no imminent threat

- to the appellant's property.
- The Court also pointed out that the appellant has also failed why putting up a fence was vehemently opposed by him and his father.
- In view of these observations, the Court categorically refused to interfere with the impugned orders
- However, considering that the appellant was a convict for around nine years, the Court left it open for him to plead remission before the State government.
- If the case of the appellant falls within the remission policy of the State of Kerala then the authority concerned shall look into the same., the Court concluded.
- ❖ **IMPORTANT PROVISION DISCUSSED**
  - Section 300 IPC Exception 2 (Culpable homicide is not murder if the accused exceeded their right of private defense in good faith )

**X (Minor) D/O Shri Nitish Janardan Bharadwaj And Smt. Smita Nitish Bharadwaj And Others v/s Union Of India And Others**

- ❖ **TOPIC :** Father's Consent For Renewing Child's Passport Not Required If Mother Files Declaration As Per Passport Rules: MP High Court
- ❖ **BENCH:** Justice Vinay Saraf
- ❖ **FORUM:** Madhya Pradesh High Court
- ❖ **FACTS**
  - the petitioners through their mother had applied for the renewal of their passports.
  - After receipt of application, the Regional Passport Office, Bhopal/Respondent No. 2 issued a communication to the father of petitioners/respondent No.3 – Actor Nitish Bharadwaj. Bharadwaj refused to extend the consent for renewal of passport of the children and strongly objected for issuance of passports to his minor daughters.
  - Thereafter, the Assistant Passport Officer by impugned communication asked the mother of petitioners to obtain the Court permission for issuance of passport to minor children.
- ❖ **MAIN ISSUE**
  - Whether the passport of minor children can be renewed without father's consent or not.
- ❖ **OBSERVATION**
  - The Jabalpur Bench of Madhya Pradesh High Court directed that the Regional

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Passport Office, Bhopal to renew the passports of the minor daughters of actor Nitish Bharadwaj while holding that the passport of minor children can be renewed without father's consent if there is no prohibitory order from any competent court.

- Justice Vinay Saraf referred to the Passport Rules wherein declaration in the Form of Annexure (C) has to be submitted by the parent who has applied for issuance of passport, in case the other parent of minor child has not given consent.
  - The declarant is required to declare that there is an ongoing case between the parents for divorce and custody of minor child but the competent Court has not issued any prohibitory order for issuance of passport without consent of other parent.
  - "There is no prohibition in the Passport Rules that without any consent of the father, passport cannot be issued to minor child. Even there is no provision that in the absence of any prohibitory order, the permission from the Court is required," the Court said.
  - The high court after hearing the parties concluded that the main legal issue in the present matter is whether passport can be renewed without consent of the father of minor child, if there is no prohibitory order from any competent Court.
  - The court opined that all other issues are not required to be considered in the present petition and the father is at the liberty to raise these issues before Family Court, Mumbai if he wishes to.
  - Thus, the court allowed the present petition and quashed the communication by the Passport Officer and directed Regional Passport Office, Bhopal to renew the passport of the petitioners.
- ❖ **IMPORTANT PROVISION DISCUSSED**
- Article 21 Constitution (Right to Life and Personal Liberty)

### XXX v State of Kerala

- ❖ **TOPIC:** Medical Evidence Of Hymen Being Intact By Itself Not Sufficient To Hold That There Was No Penetrative Sexual Assault Or Coitus: Kerala HC
- ❖ **BENCH:** Justice A. Badharudeen
- ❖ **FORUM:** Kerala High Court
- ❖ **FACTS**
  - The petitioner is the sole accused who is accused of kidnapping a child, his close relative, from the lawful custody of her parents and committing penetrative sexual assault upon her in a country boat.
  - It is also alleged that the accused restrained the victim who tried to escape and threatened and intimidated of killing her. Crime was registered for committing offences punishable.
  - The petitioner approached the Special Court seeking discharge in the case.
  - The Special Court held that prima facie case is made out by the prosecution and discharge was denied.
  - The petitioner thereafter approached the High Court, contending that the accusation against him was unfounded and that he was falsely implicated to seek vengeance due to family disputes.
- ❖ **MAIN ISSUE**
  - Regarding the medical evidence showing that hymen is intact by itself.
- ❖ **OBSERVATION**
  - The Kerala High Court has said that medical evidence showing that hymen is intact by itself would not prove that there was no penetrative sexual assault or coitus.
  - Justice A. Badharudeen thus dismissed a criminal revision petition of the petitioner on finding that the prosecution has made out a prima facie case that he kidnapped the minor child with intent to sexually assault her.
  - The Court found that the petitioner has not proved that the prosecution has given a false case out of animosity.
  - The Court further observed that prosecution materials prove that the child was kidnapped from the lawful custody of parents with an intention of sexually assaulting her.
  - It has to be held that the trial court disallowed the petition for discharge in a case where prosecution materials are

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specifically made out, necessitating trial of the matter. Therefore, dismissal of discharge petition moved by the petitioner would require no interference and hence this petition is liable to be dismissed', stated the Court.

- As such, the Court dismissed the criminal revision petition.

#### ❖ **IMPORTANT PROVISIONS DISCUSSED**

- Section 363 IPC (kidnapping)
- Section 341 IPC (wrongful restraint)
- Section 376(1)(3) IPC (rape)
- Section 506(i) IPC (criminal intimidation)

### Union of India v. M/s Des Raj Nagpal Engineers & Contractors

❖ **TOPIC:** Irregularity & Curable Defect Cannot Be Grounds For Dismissal Of Application U/S 34 Of Arbitration Act: J&K High Court

❖ **BENCH:** Justice Sanjeev Kumar and Justice Puneet Gupta

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

#### ❖ **FACTS**

- The dispute arose with respect to a contract agreement executed between Union of India through Chief Engineer and the respondent.
- To resolve the dispute the parties, refer the matter to arbitration and appointed a sole arbitrator.
- Then, the arbitrator passed an award against the appellant. Aggrieved by this, the appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award passed by the arbitrator.
- The Single Judge dismissed the application and then the appellant filed an appeal under Section 37 of the Act challenging the impugned order.

#### ❖ **MAIN ISSUE**

- Regarding an irregularity and a curable defect in respect to the dismissal of the application filed under Section 34 of the Arbitration Act.

#### ❖ **OBSERVATION**

- The Jammu & Kashmir and Ladakh High Court held that the failure of the Chief Engineer to sign the pleadings, which were signed by the Garrison Engineer would only be an irregularity and a curable defect and would not entail dismissal of the application

filed under Section 34 of the Arbitration Act without providing opportunity to the appellants to correct the irregularity.

- The defect, if at all it has there, was curable and was not fatal to the maintainability of the application itself.
- The court allowed the appeal and set aside the impugned order passed by the Single Judge.
- The court noted that Order XXVII of the Code of Civil Procedure deals with suits by or against the Government.
- Rule 1 provides that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may by general or special order appointed on this behalf.
- The Government of India has, in the exercise of powers conferred by Rule 1 of Order XXVII aforesaid, issued notification authorizing different officers to sign the pleadings on behalf of Government of India in any suit by or against the Government.
- The court observed that it is not disputed by the respondent that the Garrison Engineer, who signed the application under Section 34 of the Act on behalf of Union of India/Government of India was not the person authorized by the Government of India to represent it in civil proceedings by or against the Government
- The court held that the Single Judge has totally misconstrued the nature of contract i.e. made by the President on behalf of Union of India and has erroneously treated the Chief Engineer, who had executed the arbitration agreement/contract agreement on behalf of the President, as party to the arbitration agreement.

#### ❖ **IMPORTANT PROVISIONS DISCUSSED**

- Section 34 Arbitration Act (Deals with the grounds on which a court can set aside an arbitral award)
- Section 37 Arbitration Act (Allows for appeals against orders from an arbitrator or court.
- Order XXVII of the Code of Civil Procedure deals with suits by or against the Government.
- Rule 1 provides that in any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may by general or special order appoint in this behalf

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