

Asha v. State of Kerala and Another

- ❖ **TOPIC :** Subsequent Police Report Not Invalid Merely Because Court's Permission For Further Investigation Was Not Taken
- ❖ **BENCH :** Justice A. Badharudeen



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Regarding the Police Report.
- ❖ **BACKGROUND**
 - In this case, the petitioner moved the High Court to quash the proceedings pending against her in a crime registered against her for allegedly being in an "unlawful assembly" and attacking the wife of the complainant.
 - She submitted before the Court that she was not named in the FIR but she was arraigned as an accused subsequently based on a further investigation held without the permission of the Court after the final report was filed.
 - She alleged that she was arraigned as an accused as she had filed a complaint against the complainant and 8 others saying that they had attacked her on the same day before the alleged crime which the present case is dealing with.
 - The FIR against which the petitioner moved for quashing was registered under IPC Sections 447(criminal trespass), 323(voluntarily causing hurt), 341(wrongful restraint), 324(Voluntarily causing hurt by dangerous weapons or means), 325(Punishment for voluntarily causing grievous hurt), 326(Voluntarily causing grievous hurt by dangerous weapons or means), 307(attempt to murder).
- ❖ **OBSERVATIONS**
 - While hearing a plea to quash an FIR containing allegations of attempt to murder, the Kerala High Court held that an additional or a subsequent police report cannot be held as invalid just because the investigation officer did not seek the court's permission before conducting further

investigation.

- In doing so, the high court, while emphasizing the need to obtain the court's permission as a practice, however held that even in the absence of such permission, the final report is legally sustainable.
- A single judge bench of Justice A. Badharudeen held that though the practice of seeking permission before conducting further investigation is upheld by judicial decisions, none of those decisions hold that a final report based on such further investigation is "non-est".
- Section 173(8) of Cr.P.C enables further investigation in a crime after the final report is submitted. The section does not require the investigation officer to take the permission of the court before conducting further investigation in the matter.
- However, there is a catena of decisions of the Supreme Court which held that the Investigating officer has to take permission of the Court before further investigation in order "to keep comity between the court and the Investigating Agency".
- The high court while referring to the Supreme Court's decisions observed that no ratio has been laid down in any of the decisions to hold that "when a supplementary/additional final report has been filed on the basis of a further investigation, without obtaining formal permission would make the same non-est".
- It noted that in BNSS, the proviso to Section 193(9) says that further investigation may be conducted during the trial with the permission of the Court trying the case and the same shall be completed within a period of 90 days which can be extended with the Court's permission.
- The Court noted that she was arraigned as an accused based on the statements of witnesses the police recorded during further investigation. It further said that the supplementary/additional final report is "legally sustainable".
- "Be it so, inclusion of the petitioner as 6th accused in this crime is with the aid of necessary materials. Now the trial court accepted both the final reports and took cognizance of the matter. In such a case, it could not be held at this stage that the petitioner is innocent and she got impleaded as additional 6th respondent without any materials or in derogation of the procedure of law. Thus, the prayer herein would necessarily fail," the court said while dismissing the quashing petition.

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Ajith Pillai v. State of Kerala

- ❖ **TOPIC** : Watching Woman Or Capturing Her Images Not Voyeurism U/S 354C IPC Unless In Circumstances Where She Would Expect Privacy: Kerala High Court
- ❖ **BENCH** : Justice A. Badharudeen



- ❖ **FORUM**: Kerala High Court
- ❖ **MAIN ISSUE**
 - Whether watching a woman or capturing her images will be voyeurism u/s 354C IPC or not.
- ❖ **OBSERVATIONS**
 - The Kerala High Court has held that the offence of voyeurism under Section 354C of IPC will not attract attention when a woman's photos were clicked by two men, while she was standing in front of her house without any secrecy.
 - Justice A. Badharudeen made it clear that the offence is attracted only upon watching or capturing images of a woman engaging in a 'private act' as mentioned under the provision.
 - The explanation to Section 354 C defines 'private act' as an act of watching a private act carried out in a place where a person usually expects privacy. This includes situations where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is engaged in a sexual act that is not ordinarily done in public.
 - The bench thus quashed the proceedings against the accused under Section 345C on finding that the alleged occurrence of capturing images took place when the de facto complainant was standing in front of her house without any secrecy.
 - The petitioner is the first accused alleged of committing offences punishable under Sections 354C (Voyeurism) and 509 (Word, gesture or act intended to insult woman's modesty) of the IPC has approached the High Court to quash the charge sheet and all further proceedings against him.
 - The allegation against the petitioner is that he and the second accused reached in front of the house of the de facto complainant in a car and took

photographs of her and the house. It is also alleged that the accused showed gestures with sexual overtures and outraged her modesty.

- Court stated that the term private act is defined under the explanation to attract an offence of voyeurism. The court stated that the offence under voyeurism is not attracted when the alleged occurrence was in front of the house of the de facto complainant.
- As such, the Court held that voyeurism was not made out and quashed the proceedings under Section 354C of the IPC. It also stated that the Trial Court while framing the charges shall consider whether the alleged overt acts would attract an offence of sexual harassment under Section 354A of the IPC.
- The Court also ordered that prosecution under Section 509 of IPC can continue. As such, the petition was partly allowed.

Dr. Ansh Pandya Vs The State Of Madhya Pradesh And Other

- ❖ **TOPIC** : MP High Court Issues Notice Over Delay In Rural Posting As Part Of MBBS Course, Imposition Of ₹25 Lakh Penalty For Breaching Bond Conditions
- ❖ **BENCH** : Justice Sanjeev Sachdeva and Justice Vinay Saraf



- ❖ **FORUM**: Madhya Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding the delay In Rural Posting As Part Of MBBS Course.
- ❖ **OBSERVATIONS**
 - In response to a petition challenging the delay in rural postings and the imposition of a 25 lakh Rupees penalty for breaching the mandatory rural Bond the Madhya Pradesh High Court has issued notice to the state of Madhya Pradesh the Director of Medical Education the Commissioner of health.
 - The petitioner, a recent MBBS graduate, argued that these conditions were adversely affecting his

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career progression and constitutional rights. The petition was listed in front of a division bench consisting of Justice Sanjeev Sachdeva and Justice Vinay Saraf.

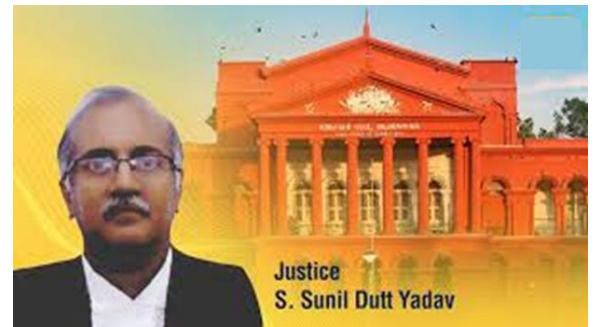
- The case revolves around the petitioner, a student who graduated from LN Medical College in Bhopal and had received his MBBS degree through the government Mukhyamantri Medhavi Vidyarthi Yojana scholarship scheme.
- Upon graduation as required by his education agreement the petitioner signed the rural service Bond committing to serve in a rural posting for five years or faces a penalty of rupees 25 lakhs. Completing his MBBS in March 2023 and a year-long internship in March 2024 the petitioner was not offered his rural September 2024.
- According to the petitioner the 6 months delay not only delayed his plan to sit for the PG examination but also resulted in him falling behind his peers academically and professionally.
- The petitioner's counsel Aditya Sanghi argued that the delay was arbitrary and medical graduates are required under government regulation to receive the rural posting within 3 months of completing the degrees.
- The counsel argued that as per Pre-PG Rules, a mandatory provision requires rural posting within 3 months and the delay constitutes a violation of these regulations.
- The delay hampers the chances to pursue postgraduate studies along with their peers.
- The petition also brings into question the Rs 25 lakh penalty imposed on the rural Bond condition terming it as 'exorbitant' and 'ultra vires' to the constitution principles.
- The petitioner's counsel claims that discussions in the Parliament and the National Medical Council have also taken place regarding the penalty amount and has been contested at various levels of the government.
- The exorbitant penalty has led to mental and financial stress on students with some cases even reporting suicide at times by medical graduate who felt forced into services under challenging conditions.
- The counsel for the petitioner argues that for a state like Madhya Pradesh which is economically disadvantaged, such penalties can be disproportionately burdensome on the students.
- Additionally, the petitioner contended that the bond was signed under duress as the student has no choice but to agree to the condition upon the admission to Medical School. Many of these conditions including the mandatory rural posting

requirement and the associated penalty were reportedly not fully disclosed until later, leaving the students without a realistic option to opt out.

- In light of these arguments the court has directed the respondent to file the reply within 4 weeks and allowed 2 weeks for rejoinder. The matter is scheduled for hearing in January 2025.

ShriRam General Insurance Co. Ltd. vs Radha Devi And Ors

- ❖ **TOPIC :** Insurance Companies Liable For Paid Drivers And Cleaners Under Motor Vehicle Act When Additional Premium Is Accepted: Patna High Court
- ❖ **BENCH :** Justice Sunil Datta



- ❖ **FORUM :** Patna High Court
- ❖ **MAIN ISSUE**

- Whether Insurance Companies will be Liable or not For Paid Drivers And Cleaners Under Motor Vehicle Act When Additional Premium Is Accepted.

❖ **OBSERVATIONS**

- The Patna High Court has ruled that an insurance company must cover the liability for a paid driver and cleaner under the Motor Vehicle Act, 1988, when the vehicle owner pays an additional premium for their coverage.
- The court emphasized that once the insurance company accepts the additional premium, it extends its liability to cover risks associated with the paid driver and cleaner, shifting the owner's risk to the insurer.
- Justice Sunil Datta, presiding over the case, stated, "When the owner of a vehicle pay additional premium and the same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicle Act, 1988. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid driver and cleaner under the insurance policy, which is a matter of contract. On payment of such additional

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premium by the owner, the liability of the owner shifts upon the insurance company.

- Thus, the risk of a paid driver and cleaner would be covered under the insurance policy. Only when the additional premium is not paid, liability would be as per the Employee Compensation Act, 1923.”
- “In my view, by accepting additional premium, the Insurance company indemnifies the owner for paid driver and/or cleaner and risk of driver/cleaner is covered under it,” Justice Dutta further clarified.
- In this case, a tractor with a trailer overturned due to the driver's rash and negligent driving, resulting in the death of the cleaner, Premshankar Modi, at the scene.
- A police case was registered under Sections 279 and 304A of the Indian Penal Code, and following investigation, a charge sheet was filed against the tractor driver, Phantoosh Kumar. The Tribunal later awarded compensation to the claimants after hearing both parties.
- It was contended by the Counsel for the Appellant that the Tribunal erred in not identifying that the deceased was not a cleaner, considering that the tractor only had seating capacity for a single person, making the deceased a gratuitous passenger.
- As a result, he contended that liability could not be imposed on the Insurance Company. Additionally, he noted that the tractor was insured solely for agricultural use but was being utilized for commercial purposes, as it was carrying iron rods in the trailer.
- In response, the Respondent's Counsel submitted that the deceased was indeed the cleaner, not a gratuitous passenger, and that witness testimony and documentary evidence supported this.
- The Court observed that these objections—regarding the deceased's role and the tractor's insurance use—were raised only on appeal and contradicted the case record.
- The Court noted that the occurrence of the incident was undisputed, leaving only two issues to address: whether the appellant was liable to pay compensation, and whether the awarded amount was appropriate, particularly concerning the deceased's monthly income and future prospects as raised by the appellant.
- The Court reiterated that, “It is well settled that assessment of compensation cannot be done with mathematical precision. The Motor Vehicle Act, 1988 provides for assessment of just and fair

compensation.”

- Considering this principle, the Court decided not to interfere with the income assessment of the deceased at this stage.
- The Court further observed that the appellant had not raised any objections before the Tribunal regarding the tractor's insurance being solely for agricultural purposes or the deceased being a gratuitous passenger. These objections, raised for the first time on appeal, lacked merit and contradicted the case record.
- The Court clarified that previous cases cited by the appellant, involving deceased persons as gratuitous passengers, were inapplicable here.
- It held, “the judgment of this Court referred by the learned counsel for the appellant where the deceased was traveling as a gratuitous passenger are not applicable in this case.
- The cleaner employed by the owner of the vehicle cannot be termed as a gratuitous passenger in the fact and circumstances of the case.”
- For these reasons, the Court held the appeal to be without merit and dismissed it, while upholding the Tribunal's judgment.
- The Court directed the appellant, the insurance company, to deposit the awarded amount, along with accrued interest as specified by the Tribunal's decision, after deducting any previous payments made to the claimants.

Matthew Johnson Dara V. Hindustan Urvarak And Rasayan Ltd

- ❖ **TOPIC :** When Previous Employer Accepts Resignation, New Employer Can't Deny Appointment To Selected Employee
- ❖ **BENCH :** Justice Jyoti Singh



- ❖ **FORUM:** Delhi High Court

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❖ **MAIN ISSUE**

- Regarding the appointment to selected employees.

❖ **BACKGROUND**

- The employee was working as a General Manager (Finance) at Brahmaputra Valley Fertilizer Corporation Limited (BVFCL). In January 2024, Hindustan Urvarak and Rasayan Ltd. (respondent) advertised a vacancy for the post of Vice President (Finance).
- The employee applied, successfully passed the selection process, and was offered the position in a letter dated June 7, 2024. He was required to join by July 5, 2024.
- Upon receiving this offer, the employee submitted his resignation to BVFCL on the same day, requesting to be relieved within 15 days. He was on probation and believed that he didn't need to serve a notice period.
- However, BVFCL did not process his resignation immediately. Instead, BVFCL issued a memorandum on June 15, 2024, retroactively confirming his service, which effectively delayed his release.
- The employee decided to join Hindustan Urvarak and Rasayan Ltd. on July 8, 2024, when he could not get any response from BVFCL. He submitted an undertaking to the respondent that he would provide a relieving letter from BVFCL within 30 days.
- BVFCL, however, issued a show-cause notice on July 12, 2024, questioning his departure and threatening disciplinary action.
- The employee filed a writ petition in the Gauhati High Court, which stayed any disciplinary proceedings by BVFCL and instructed the BVFCL to process his resignation.
- Despite the order from the Gauhati High Court, Hindustan Urvarak and Rasayan Ltd. revoked the employee's joining on August 19, 2024, citing his failure to provide the relieving letter within the stipulated time.
- Aggrieved by the same the petitioner filed a writ petition in the Delhi High Court, challenging the revocation.

- By order dated 28.08.2024, the Delhi High Court directed the respondent not to take further steps to fill-up the vacancy in question.
- It was contended by the employee that the Gauhati High Court already observed that BVFCL had issued an order dated 03.10.2024 accepting the resignation of the employee and relieving him from service.
- Therefore the employee contended that in view of the relieving letter issued by BVFCL, there should be no hindrance in permitting the employee to join back on the post of Vice President (Finance) with the respondent as that was the only ground for revocation.
- On the other hand it was contended by the respondent that the post of Vice President (Finance) was lying vacant.
- They submitted that the sole reason for revoking the joining of the employee was his not being relieved by BVFCL and that employee's merit or credentials were not in question as he was a candidate selected by the respondent.

❖ **OBSERVATIONS**

- A single judge bench of the Delhi High Court comprising Justice Jyoti Singh, while deciding writ petition held that if an employee has already been relieved by the previous employer, then the new employer can't deny appointment to employee who has passed the selection process.
- It was observed by the court that the only reason for revoking the joining of the employee was that he was unable to furnish a relieving letter from BVFCL, as per the undertaking given by him to produce the relieving letter within 30 days of joining. It was further observed that BVFCL has relieved the employee w.e.f. 03.10.2024 and therefore, the basis of the order no longer survives and there is no obstacle in the way of the employee from joining the respondent.
- It was further observed by the court that respondent had not initiated any fresh process for filling up the post in question and therefore, the post is lying vacant on which the employee can join back. The impugned order dated 19.08.2024 passed by the respondent was quashed by the court.
- It was held by the court that respondent shall permit the employee to join back on the post of Vice President (Finance) within a period of one week with all consequential benefits. With the aforesaid observations, the writ petition was allowed.

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