



NEWSLETTER ON WOMEN & CHILD RIGHTS



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PREFACE

“I measure the progress of a community by the degree of progress which women have achieved.”

-DR. B.R. AMBEDKAR

ANBAY LEGAL is releasing its 6th Volume of monthly newsletter on rights of women and children. The aim is to publish monthly compilations of landmark judgements passed by the Apex Court and High Courts in India, which bring to light various issues that affect women and children and to start a conversation on such matters. This newsletter is for the month of December 2022 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in December.

About Anbay Legal

ANBAY LEGAL is a full-service law firm having its offices at New Delhi & Lucknow. We are a team of dedicated lawyers, including professionals from allied fields to meet the need of corporates and individuals. We believe in high standard of ethical values and honesty with our clients, with commitment to provide high-quality legal advice and solutions in a time bound manner.

About the theme

The theme chosen for this newsletter has been done keeping in mind the necessity behind openly talking about these issues. We don't require a special occasion or platform to raise our voice. Through these judgements we would like to highlight the number of cases that come up daily before the Hon'ble courts for adjudication and how we are taking small steps towards positive change through these landmark judgments.

ACKNOWLEDGMENT

We would like to extend our deepest gratitude to Mr. Ashutosh Kumar Mishra, Managing Partner, Anbay Legal, who through his idea gave us the opportunity to work on such an interesting theme and cover the contemporary issues.

We are thankful to our colleagues Mr. Sandeep Kumar Mishra, Mr. Pramod Kumar, Mr. Rishabh Shukla, Mr. Balraj Singh, Mr. Pranjal Apurva and Mr. Shubham Sharma for sharing their opinion and wisdom with us during the course of this research which played a major role in the development of the Newsletter.

Lastly, we would like to express our appreciation for all the legal interns of Anbay Legal, who have contributed towards the compilation of the Newsletter.

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HIGH COURT OF BOMBAY

- ◆ Harishchandra Sitaram Khanorkar v/s State of Maharashtra (DNA Testing)
- ◆ Sudeep Suhas Kulkarni and Anr v/s Abbas Bahadur Dhanani (Guardianship of a child)
- ◆ Atul Keshav @ Kiran Malekar v/s State of Maharashtra (Rape)



HARISHCHANDRA SITARAM KHANORKAR V/S STATE OF MAHARASTRA

CRIMINAL APPEAL No. 470 OF 2019

TOPIC: DNA Testing

DATE OF ORDER/JUDGEMENT: 15/12/2022

BACKGROUND OF THE CASE

In this case, the appellant is a 55 year old man, who is convicted of raping a minor girl and impregnating her. The victim used to stay with the appellant after her father died and her mother remarried. The victim used to address the appellant as “Mama”. The complainant was victim’s mother, who lodged the FIR after the victim complained of abdominal pain and it was found out that the victim was pregnant. After which, the victim disclosed to her mother that the appellant has been forcefully having sexual intercourse with her.

DNA test was conducted to establish the involvement of the appellant.

DECISION OF THE COURT

The court dismissed the appeal placing huge reliance upon the DNA test conducted of the samples collected from the victim and her infant. The DNA report concluded the victim and the appellant to be the biological parents of the infant born to the victim.

The court observed that –

“21. ... The DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. Modern DNA testing can provide powerful new evidence unlike anything known

before DNA technology as a part of forensic science and scientific discipline not provide any guidance to investigation but also supplies the Court accurate information about the tending features of identification of criminals.”

The court further stated that the offence of rape is not limited to physical assault, it also destroys the very personality of the victim, and therefore, matters of such nature must be dealt with utmost sensitivity.



**SUDEEP SUHAS KULKARNI & ANR v/s ABBAS BAHDUR
DHANANI**

(GUARDIANSHIP PETITION (L) No. 11653 of 2022)

TOPIC: Guardianship of a child

DATE OF ORDER/JUDGEMENT: 08/12/2022

BACKGROUND OF THE CASE

In this case, the petitioner no. 2 gave birth to a child whose biological father is petitioner no. 1. The child was born during the course of the marriage between petitioner no. 2 and the respondent. The petitioner no. 2 and respondent got divorced, and the birth certificate of the child mentions respondent as the father of the child.

The petitioners are facing practical difficulties due to respondent's name in the birth certificate of the child.

After the divorce, the respondent has also provided the petitioners with a NOC declaring the petitioners as the natural & legal guardians of the child. However, since, the child was born outside of marriage, the child is considered to be "illegitimate". The counsel for the petitioner brought to the notice of the court that under Muslim Personal Law, since the child is illegitimate, she no right to inheritance or descent.

DECISION OF THE CASE

The court kept the well-being of the child as the primary concern. The court stated that if Muslim Personal Law is applied to the facts of the present case, then the minor child would be an illegitimate child and lose all the rights to inheritance. However, the petitioners are biological parents of the child and have been able to provide sufficient evidence to prove the same. Also, the biological parents are

claiming the custody of the minor child, which is not being opposed by the respondent.

The court further observed that-

“ This Court is of the opinion that for no fault of the child, it is branded illegitimate for the world at large, which in itself amounts to harassment to the child.”

“...Such a situation where the minor child, for no fault of hers, is left high and dry, cannot be countenanced and therefore, this Court is of the opinion that keeping the interest of the minor child as the paramount consideration, the present petition can be favourably considered.”

The court relied upon the judgment of *Athar Hussain v/s Syed Siraj Ahmed and others*, where the Hon'ble Supreme Court held that in situation of conflict between personal law and provisions of Guardian and Wards Act, 1980, the interest of the minor should be of paramount consideration and provisions of Guardians and Ward Act, 1980 should prevail over personal law.

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AJAY KESHAV @ KIRAN MALEKAR V/S STATE OF MAHARASHTRA

(CRIMINAL APPEAL No. 467 of 2020)

TOPIC: Rape

DATE OF ORDER/JUDGEMENT: 01/12/2022

BACKGROUND OF THE CASE

The appellant is convicted of offences under section 376(2)(f)(i) and section 4 & 6 of POCSO Act. The appellant is the paternal uncle of the victim and the victim was only 4 years only at the time of the incident.

The FIR was lodged by the mother of the victim, after the informant noticed injuries on the private part of the victim.

The present appeal was filed on the ground that the medical reports of the victim clearly shows no signs of penetrative sexual assault and therefore, does not constitute the offence of rape.

DECISION OF THE CASE

The court placed reliance on the oral testimony of the victim, and stated that there were no compelling reasons which would require looking for corroboration of her statements. Referring to the observation made by the Hon'ble Supreme Court in the case of *Aman v/s State of Haryana*, the court held that penetration is *sine qua non* for the offence of rape but it is not necessary that there has to be complete penetration, even partial or slightest penetration can constitute rape.

The court made a very important observation –

“ Rape is a legal term and not the diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is

to the effect whether there is evidence of recent sexual activity whether the rape has occurred or not is a legal conclusion not a medical one.”

The court stated that since the medical report was in support of the statement of the victim, the offence was committed and accordingly, the appeal was dismissed.





HIGH COURT OF PUNJAB & HARYANA

◆ xxx v/s State of Haryana (Filing multiple and false FIRs).



XXX v/s STATE OF HARYANA**(CRM-M-33585-2022 (O&M))**

TOPIC: Filing multiple false FIRs.**DATE OF ORDER/JUDGEMENT: 07/12/2022****BACKGROUND OF THE CASE**

FIR was filed against the petitioner under sections 120-B, 195-A, 34, 384, 389 & 509 IPC. The petitioner allegedly tried to indulge in obscene acts with the complainant's son. The petitioner, on the hand, claimed that it was the complainant's son who forcefully tried to have sexual intercourse with the petitioner. The petitioner had also filed an FIR against petitioner's son and alleged that the FIR filed by the complainant was just a counter-FIR.

During the hearing for regular bail of the petitioner, the counsel for the complainant highlighted that the petitioner was a habitual of filing FIRs against young boys and their family members, intentionally implicating them in false cases of rape, outraging the modesty etc.

DECISION OF THE COURT

The court took into the consideration that the petitioner had already filed 9 FIRs against different persons, out of which in 3 cases, proceedings under section 182 IPC had been initiated against the petitioner.

The court observed that-

“Keeping in view the facts and circumstances of the case, gravity of the alleged offences and the fact that the petitioner is a habitual of filing cases against different persons but without commenting upon the merits of the case, I am of the considered view that the petitioner does not deserve the concession of regular bail.”



HIGH COURT OF KERALA

- ◆ Mathew v/s State of Kerala (Section 7 of Immoral Traffic (Prevention) Act, 1956).



MATHEW v/s STATE OF KERALA**(CRL M. C. NO. 1398 OF 2013)**

TOPIC: Section 7 of Immoral Traffic (Prevention) Act, 1956**DATE OF ORDER/JUDGEMENT: 07/12/2022****BACKGROUND OF THE CASE**

In this case, the petitioner moved a petition under section 482 of Cr.P.C. The petitioner is an accused in C.C. no. 1778 of 2007. The first accused had taken a building located close to a temple for establishing an Ayurvedic Hospital. But instead was running prostitution under the façade of hospital. 2nd accused was the supervisor and 4th & 5th accused were carrying on prostitution. The petitioner was the 3rd accused who was arrested when police officers came to the hospital, along with the other accused.

However, the 3rd accused contended that he was a customer who is not liable under section 7 of the act.

DECISION OF THE COURT

The court held that section 7(1) of the Act penalises persons who fall under the following two categories:

- The person who carries on prostitution and
- The person with whom prostitution is carried on.

“14. The meaning to be ascribed to the words the “person with whom such prostitution is carried on” is significant for this case. Those words will have to be read in conjunction with the definition of the word prostitution. The term prostitution is defined as sexual exploitation or abuse of persons for commercial purposes. Sexual exploitation cannot be done singularly. The person engaged in the act of exploitation is also a person who falls within the term ‘persons with whom such prostitution is carried on’. In other words, the person who exploits or

abuses the prostitute is the person with whom the prostitute carries on prostitution. Thus the act of immoral traffic cannot be perpetrated or carried on without a 'customer'. By using the words 'person with whom the prostitution is carried on' in section 7(1) of the Act, I am of the considered view that the legislature has intended the customer also to be brought within the purview of the penal provisions."

The court further observed that the statute's purpose cannot be overlooked. The act aims to be a deterrent and prevent immoral traffic. Therefore, if "customer" is not brought within the purview of the statute then the act will not be able to achieve its objective.

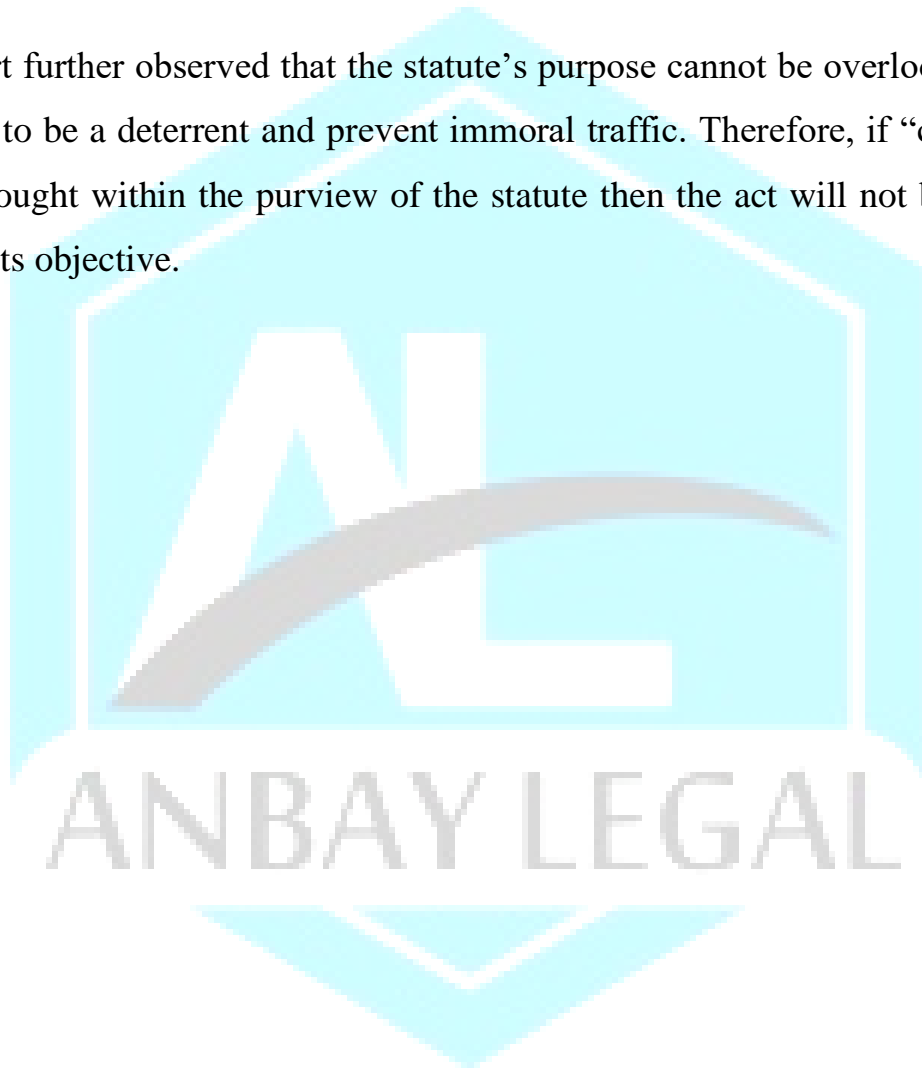


TABLE OF ABBREVIATIONS

<u>S.No.</u>	<u>Abbreviations</u>	<u>Definition</u>
1.	C.M.P	Civil Miscellaneous Petition
2.	C.R.P. (PD)	Civil Revision Petition (PD)
3.	Cr.P.C.	Code of Criminal Procedure, 1973
4.	F.I.R.	First Information Report
5.	I.P.C.	Indian Penal Code, 1860
6.	DLSA	District Legal Service Authority
7.	DSLSA	Delhi State Legal Service Authority
8.	DVC Scheme	Delhi Victim Compensation Scheme
9.	DP Act	Dowry Prohibition Act.
10.	JJ Act	Juvenile Justice Act
11.	POCSO Act	Protection of Children from Sexual Offences Act, 2012
12.	S.L.P.	Special Leave Petition
13.	W.P. (C)	Writ Petition (Civil)
14.	W.P. (Crl)	Writ Petition (Criminal)

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