



NEWSLETTER ON WOMEN & CHILD RIGHTS



Vol. 9

Issue : March 2023



Newsletter on Women & Child Rights

Edition: Monthly
Volume: 9
Issue: March 2023

Published by : Anbay Legal
Editor: Ms. Radhika Goel
Co- Editor: Mr. Pranjal Apurva and Mr. Brij Bhushan Singh



Disclaimer:

All information provided in this newsletter, except where appropriately referenced, is entirely the work of the editor.

The newsletter is sent to you purely for informational purposes. The facts/opinions provided in this newsletter do not constitute legal advice and should not be relied upon in any case except with the guidance of a legal counsel.

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 9th 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 March 2023 and includes all the major judgements and orders passed by the Supreme Court of India and various High Courts in March 2023.

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 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.



ANBAY LEGAL

TABLE OF CONTENT

<u>S. No.</u>	<u>CASE NAME</u>	<u>TOPIC</u>	<u>Pg. No.</u>
<u>HIGH COURT OF DELHI</u>			
1.	Jasmine Kaur Chhabra v/s Union of India	Right of Transgender person	6
<u>HIGH COURT OF BOMBAY</u>			
2.	ABC v/s XYZ	Right of Transgender person	8
<u>HIGH COURT OF KARNATAKA</u>			
3.	Mallikarjun Desai Goudar v/s State of Karnataka & Anr	Quashing of Rape case	11
4.	Jayanna B @ Jayaram v/s State of Karnataka	POCSO Act	13
<u>HIGH COURT OF PUNJAB & HARYANA</u>			
6.	Bhanu Kiran v/s Rahul Khosla & Ors	Domestic Violence Act	16
<u>HIGH COURT OF ALLAHABD</u>			
5.	Om Prakash v/s State of U.P. & Anr.	POCSO Act	19



HIGH COURT OF DELHI

- ◆ Jasmine Kaur Chhabra v/s Union of India & Ors. [Right of Transgender person]



JASMINE KAUR CHHABRA v/s UNION OF INDIA & ORS.

WRIT PETITION (CIVIL) No. 2997 OF 2021

TOPIC: Rights of Transgender person

DATE OF ORDER/JUDGEMENT: 14.03.2023

BACKGROUND OF THE CASE

A Public Interest Litigation was filed seeking action as per the Swacch Bharat Abhiyan guidelines, for construction of separate toilets for the Transgender Community. The aim was to maintain the hygiene of the toilets in order to uphold the rights of the transgender community, which has also been enshrined in the judgment of NALSA v. UOI.

The Delhi government had responded last year stating that the work will be done on fastrack basis ensuring separate toilets. However, NDMC and PWD were unable to show the status report on the construction of the toilets.

DECISION OF THE COURT

The Court stated that NDMC and PWD had a time of 8 weeks for construction of toilets for transgender community, post which both NDMC and PWD will have to submit a status report. If they fail to comply with the same, then Chairman of NDMC and Secretary of PWD will have to personally appear on the next date of hearing.



HIGH COURT OF BOMBAY

◆ ABC v/s XYZ [Rights of a transgender person]



ABC v/s XYZ

(WRIT PETITION 4037 of 2021)

TOPIC: Transwoman is a woman under Domestic Violence Act.

DATE OF ORDER/JUDGEMENT: 16.03.2023

BACKGROUND OF THE CASE

The petition was filed by the husband of the respondent being aggrieved by the order of the Lower Court. The respondent had filed a case under Domestic Violence Act and was awarded a monthly maintenance of Rs. 12,000/- by the Judicial Magistrate First Class, Baramati and same was upheld by the Additional Sessions Judge, Baramati.

The respondent is a trans woman, who had undergone her Sex Reassignment Surgery on 1st June 2016 and later on 21st July 2016, married the petitioner. However, due to matrimonial discord, she filed a case of domestic violence against the petitioner.

The writ has been filed by the petitioner on the ground that the respondent will not be an aggrieved person under the Domestic Violence Act, since the right has been conferred upon “woman” and the respondent does not qualify as a woman.

DECISION OF THE CASE

The Court taking a liberal view placed reliance on the judgment of NALSA v/s Union of India, focusing on para 105 and 129 of the NALSA judgment, the court observed that –

“There is no manner of doubt that transgender persons or either a male or female who has performed a sex change operation are entitled to gender to their choice. The object and purpose of the provisions of the Domestic Violence Act 2005 is to provide more effective protection of the right of the women guaranteed who is victims of violence of any kind that occurs within the family...”

...Therefore, while interpreting the definition of aggrieved persons in tune with the object and purpose of the Act, such definition needs to be interpreted with the broadest possible terms. The word ‘woman’ in section 2(a) is no more limited to the binary of women and men and includes the transgender person also who has changed her sex in tune with her gender characteristics. Therefore, in my opinion, the Transgender who has performed surgery to change gender to a female, needs to be termed as an aggrieved person within the meaning of Section 2(a) of the Domestic Violence Act, 2005.”





HIGH COURT OF KARNATAKA

- ◆ Mallikarjun Desai Goudar v/s State of Karnataka & Anr [Quashing of rape charges]
- ◆ Jayanna B @ Jayaram v/s State of Karnataka [POCSO Act]



MALLIKARJUN DESAI GOUDAR v/s STATE OF KARNATAKA & ANR

(CRIMINAL PETITION NO. 4761 of 2022)

TOPIC: Quashing in a rape case

DATE OF ORDER/JUDGEMENT: 28/02/2023

BACKGROUND OF THE CASE

The petition is filed by an accused against whom a case of rape has been instituted. The 2nd respondent/complainant and petitioner were acquaintances and eventually in a relationship and had consensual sexual relationship. The 2nd respondent claimed that the petitioner made false promise of marriage to have sexual intercourse with her. They were in a consenting relationship for 5 years, however, the marriage could not take place. After which the 2nd respondent filed a case of rape against the petitioner.

Thereafter, the petitioner has filed quashing application against the charges of rape levelled against him.

DECISION OF THE COURT

The Court observed that the petitioner and 2nd respondent were in a relationship for 5 years and allegation of rape have been made only before the relationship could be turned into a marriage due caste equations.

“ It is the length of the relationship and the acts in such period of such relationship between the two that takes away the rigor of ingredients of Section 375 of the IPC, for it to become an offence under Section 376 of the IPC.

... Though the complaint and the statement narrates that the petitioner has had sexual intercourse with the complainant, initially forcibly, but the said force cannot be seen to continue for five long years. The narration would clearly indicate that the relationship was consensual.”

Therefore, stating the above, the quashing petition was allowed partly, quashing the charges under section 376, 354, 406 and 504 of the IPC, however, sustained the charges under section 323 and 506 r/w 34 of IPC.



JAYANNA B @ JAYARAM v/s STATE OF KARNATAKA

(CRIMINAL PETITION NO. 3987 of 2022)

TOPIC: POCSO Act

DATE OF ORDER/JUDGEMENT: 13.02.2023

BACKGROUND OF THE CASE

The petitioner-accused filed a quashing application under section 482 of Cr.P.C., against the dismissal order passed by the trial court in application recalling the P.W.-1/victim for cross-examination in the special case no. 510/2017 for offences under section 4 & 8 of the POCSO Act.

The Learned Counsel for the petitioner-accused during the trial, had sought adjournment for cross-examination which was rejected by the court and cross-examination of the P.W.-1 was taken as 'nil' opportunity. Thereafter, the petitioner-accused filed the recall application but that got rejected and matter was posted for final arguments.

DECISION OF THE COURT

The Court observed that the compliance of section 33 of the POCSO Act, which states that the victim should not be called to the court frequently for cross-examination, is important but it cannot be at the expense of taking away the opportunity from the accused to cross-examine the prosecution witness.

The court further observed that-

“ Of course, there was a defect on the part of the learned counsel for the accused for not cross-examined the prosecution witness and he sought time. However, the Court at first instance, though rejected ought to have considered sympathetically and allowed the applicant to cross-examine P.W.1.

... The trial Court ought to have given one more opportunity to the petitioner for cross-examination of the witness. Accordingly, the order of the trial Court deserves to be set aside.”





HIGH COURT OF PUNJAB & HARYANA

- ◆ Bhanu Kiran v/s Rahul Khosla & Ors [Power of Appellate court under section 29 of DV Act]



BHANU KIRAN v/s RAHUL KHOSLA & ORS.

(CRR- 2485-2022 (O&M))

TOPIC: Section 29 of DV Act

DATE OF ORDER/JUDGEMENT: 28.02.2023

BACKGROUND OF THE CASE

The petitioner had filed a case under section 12 of the DV Act seeking maintenance and further filed another application for interim maintenance under section 23 of the DV Act.

The Magistrate directed the respondent to pay an interim maintenance of Rs. 60,000/- per month to the petitioner. However, the respondent filed an appeal before the Sessions Court under section 29 of the DV Act against the order of the magistrate granting interim maintenance. The Sessions Judge partially allowed the appeal and revised the interim maintenance to Rs. 15,000/- per month.

Thereafter, the petitioner filed an appeal against the order of the Sessions Judge questioning the extend of Section 29 of DV Act, and stating that it is only limited to final order and not interim orders.

DECISION OF THE COURT

The Court was of the view that the appeal against the interim order passed under section 23 of the DV Act is maintainable before the Sessions Court under Section 29 of the DV Act.

The Court observed that the DV Act is a special legislation and therefore, the provisions of appeal under CrPC are not applicable against the order passed by Magistrate under the Act.

The Court further observed that –

“ courts/tribunals are always possessed with incidental and ancillary powers which are necessary to adjudicate the dispute. Whether a power is incidental or ancillary to power conferred by statute depends upon the necessity to carry out the power conferred by the Statute.

... Under DV Act, Magistrate is competent to pass final as well as interim orders. Sessions Court is appointed as appellate authority to entertain appeal against order passed by Magistrate.

... if it is held that appellate court in terms of Section 29 has no power to pass interim order, it would amount to curtailing the powers of appellate court. It seems to be contrary to settled canons of law that appellate authority or court unless specifically barred can exercise all those powers which are vested in subordinate authority.”

Stating the above, the Court held that appellate court has power to pass interim orders under section 29 of the DV Act.

ANBAY LEGAL



HIGH COURT OF ALLAHABAD

- ◆ Om Prakash v/s State of UP & Anr. [POCSO case cannot be quashed based on compromise.]



OM PRAKASH v/s STATE OF U.P. & ANR.
(APPLICATION U/S 482 NO. 8514 OF 2023)

TOPIC: *Compromise in POCSO Cases*

DATE OF ORDER/JUDGEMENT: *15.03.2023*

BACKGROUND OF THE CASE

An FIR was filed by the complainant/opposite party no. 2 against the accused/applicant. The complainant was a widow and was friends with the accused. However, the accused made false promises to marry the complainant and established carnal relations with her, he also molested the daughter of the complainant. Therefore, the FIR was filed under 376 and POCSO Act.

However, Applicant and opposite party no. 2 have gotten married as per Hindu rites and rituals. Therefore, the opposite party no. 2 filed an application before the Special Judge stating that she does not wish to pursue the matter further. In line with the application, the applicant filed a quashing application before the HC.

DECISION OF THE COURT

The Court observed that-

“Prosecution in heinous offences such as rape and molestation of minors, which are punishable under the Act of 2012, the victims do not have the freedom to compromise as if it were a compoundable offence or a civil cause. The State is the forerunner of the prosecution and it is the State who have to pursue the prosecution to its logical conclusion. The endeavour of the Court in a matter involving such a heinous offence is to determine the truth of the allegations. The purpose is not to persecute the accused nor is it to let him off, because his relations with the complainant has taken a happier turn.”

The Court rejected the application and stated that the offences alleged in this case are of a serious nature including rape and molestation of a minor, in such circumstances, the case against the accused cannot be quashing based on a compromise.



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.	DSLISA	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)

REFERENCES

Online resources:

1. <https://main.sci.gov.in/judgments>
2. <https://delhihighcourt.nic.in/case.asp>
3. <https://www.mhc.tn.gov.in/judis/madras-do/index.php/casestatus/caseno>
4. <https://hckinfo.kerala.gov.in/digicourt/Casedetailssearch>
5. <https://hphighcourt.nic.in/#>
6. <https://www.sconline.com/>





ANBAY LEGAL

NEW DELHI LUCKNOW

CONTACT US:



anbay.legal@gmail.com, info@anbaylegal.com



011-35592375



251, Upper Ground Floor, Kailash Hills, East of Kailash, New Delhi- 110065

2nd Floor, Gyan Vihar Colony, near Kamta Power House, Chinhath, Lucknow, U.P.- 226028



<https://www.anbaylegal.com/>