

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics
19th August - 25th August 2024

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Understanding the SC/ST (Prevention of Atrocities) Act, 1989

In a significant ruling, the Supreme Court of India clarified the interpretation of the SC/ST (Prevention of Atrocities) Act, 1989, emphasising the necessity of intent in cases of alleged insults or intimidation directed at members of Scheduled Castes (SC) or Scheduled Tribes (ST). The decision, delivered in the case of Shajan Skaria v. State of Kerala, highlights the importance of intent to humiliate based on caste identity, thereby narrowing the scope of what constitutes an offence under the Act.

Intent as a Prerequisite for Offence

The Supreme Court, in its judgement, made it clear that merely insulting a member of an SC or ST does not automatically amount to an offence under the SC/ST Act, 1989. The Court held that for an action to be punishable under Section 3(1)(r) of the Act, the insult or intimidation must be specifically aimed at humiliating the victim on the grounds of their caste identity. This interpretation highlights the critical role of intent, distinguishing between general insults and those motivated by caste-based discrimination.

Justice JB Pardiwala and Justice Manoj Misra, while granting anticipatory bail to Shajan Skaria, the editor of a Malayalam YouTube news channel, emphasised that not all insults against a member of an SC or ST would attract penal provisions under the Act. The bench pointed out that the Act is designed to address insults that reinforce historically entrenched ideas of caste superiority or untouchability, rather than any and all offensive remarks.

The Case Background

The case arose from a news item telecast by Skaria on his YouTube channel, where he criticised the alleged maladministration of a sports hostel by MLA PV Sreenijin. The Kerala High Court had earlier refused anticipatory bail to Skaria, leading to his appeal to the Supreme Court. The apex court set aside the High Court's decision, granting Skaria bail and offering a detailed interpretation of Section 3(1)(r) of the SC/ST Act.

The Court observed that while the comments made by Skaria may have been derogatory, they did not appear to be motivated by Sreenijin's caste. The Court noted that the intention behind the remarks seemed to be defamation rather than caste-based humiliation. Therefore, the basic ingredients necessary to establish an offence under Section 3(1)(r) were not met.

Understanding Section 3(1)(r) of the SC/ST Act

Section 3(1)(r) of the SC/ST Act criminalises intentional insults or intimidation with the intent to humiliate a member of an SC or ST in public view. The Supreme Court's interpretation in this case clarifies that the intent to humiliate must be specifically linked to the victim's caste identity. This means that merely knowing that the victim belongs to an SC or ST is not sufficient to attract the provisions of the Act.

The Court further explained that insults or intimidation driven by the deeply entrenched social practices of untouchability or the supposed superiority of upper castes over lower castes are the kind of actions the Act seeks to punish. Ordinary insults or defamations, even if they involve members of SC or ST communities, do not fall within the purview of Section 3(1)(r) unless they are motivated by caste-based prejudice.

Supreme Court Upholds Fairness in Employment Regularization

In the landmark case of *Maitreyee Chakraborty v. Tripura University & Ors.*, the Supreme Court of India highlighted the importance of fairness and non-arbitrariness in the regularisation of employment, particularly within statutory bodies such as universities. The judgement, delivered by Justices JK Maheshwari and KV Viswanathan, reflects the Court's commitment to ensuring that decisions regarding employment and regularisation are not left to the whims of decision-making authorities but are instead grounded in justifiable reasons.

Background: A Vacancy on Lien

The case revolves around the appointment of Maitreyee Chakraborty as an Assistant Professor (Law) at Tripura University. Her appointment was against a "lien vacancy," a position temporarily vacated by another employee. The employment notification had indicated that the post was likely to be regularised if the lien was vacated and the appointee's performance was satisfactory. Despite these assurances, when the lien was eventually vacated, the University chose not to regularise Chakraborty's appointment. Instead, it decided to re-advertise the post, leading to a legal battle that culminated in the Supreme Court.

Unfair and Arbitrary Exercise of Power

The Supreme Court, while deliberating on the matter, observed that a statutory body like a university cannot act arbitrarily in matters of regularisation. The Court emphasised that decisions affecting an employee's career should be based on concrete reasons rather than subjective preferences or biases of the decision-making authority. The bench criticised the Executive Council of Tripura University for its "delightfully vague" resolution that denied Chakraborty's confirmation without providing any substantial justification.

In the judgement, the Court stated, "The University cannot be heard to say: 'may be the lien is vacated, and your performance is satisfactory, but we do not want to confirm your service'." Such conduct, the Court held, would amount to an arbitrary and unreasonable exercise of power, which

is impermissible for a statutory body. The decision to deny regularisation, according to the Court, lacked any legitimate reasoning and therefore was unjust.

Legitimate Expectation and Public Interest

One of the key issues in the case was whether Chakraborty had a "legitimate expectation" of being regularised once the lien was vacated. The Court recognized that the employment notice, coupled with the resolution of the Executive Council and the terms of her appointment, had indeed given rise to such an expectation. The Court held that her expectation was legitimate and that the University had an obligation to act in a fair and transparent manner.

The University's argument that re-advertising the post was in the larger interest of other potential candidates was dismissed by the Court. It was noted that all eligible candidates had already had the opportunity to apply for the regular vacancy, which had been filled by another candidate. Therefore, re-advertising the post did not serve any greater public interest and only served to unjustly deny Chakraborty the regularisation she was entitled to.

The Court's Decision

In its ruling, the Supreme Court set aside the orders of the Tripura High Court, which had previously ruled against Chakraborty, as well as the resolution of the University's Executive Council that sought to discontinue her services. The Court issued a writ of mandamus, directing the University to reconsider Chakraborty's case for confirmation. The Executive Council was given a period of four weeks to pass a resolution in line with the Supreme Court's judgement, and Chakraborty was to be given all consequential benefits.

The Court's decision in this case reinforces the principle that public authorities, including universities, must exercise their powers fairly and in accordance with established legal principles. Arbitrary decisions, particularly those affecting an individual's employment and livelihood, cannot stand up to judicial scrutiny. This ruling serves as a reminder to all statutory bodies that their decisions must be justified by good reasons and not driven by caprice.

Emphasis on Environmental Compliance

In the recent case of *P Arun Prasad and Anr. v. Union of India and Ors.*, the Supreme Court highlighted the critical role of state organs, particularly those involved in environmental protection, in ensuring timely compliance with directives issued by the National Green Tribunal (NGT). The ruling serves as a significant reminder that statutory bodies, such as the Chhattisgarh Environment Conservation Board (CECB), must prioritise the protection of the environment by adhering strictly to legal and regulatory mandates.

Background of the Case

The case originated from a series of directives issued by the Central Pollution Control Board (CPCB) and subsequent orders by the Supreme Court and the NGT aimed at controlling pollution in highly polluting industries. These directives, issued in February 2014, mandated the installation of Online Continuous Emission Monitoring Systems (OCEMS) and Online Effluent Quality Monitoring Systems (OEQMS) in 17 categories of highly polluting industries. State Pollution Control Boards, including the CECB, were responsible for ensuring the installation and regular operation of these monitoring systems.

The Supreme Court, in its 2017 judgement in *Paryavaran Suraksha Samiti v. Union of India*, reinforced the importance of these measures by directing the installation of effluent treatment plants and real-time monitoring systems to display emission levels publicly. The NGT was entrusted with overseeing the implementation of these directives, allowing individuals and organisations to file complaints regarding non-compliance.

The NGT's Displeasure with CECB

The compliance measures undertaken by the CECB came under scrutiny when Ramesh Agarwal approached the NGT, complaining about non-compliance with the Court's directives in Chhattisgarh. The NGT, upon assessing the situation in February 2023, found that only 84 of the 167 industries in the state had accessible links for monitoring, and the general public could not directly access online data. Moreover, historical data for most industries was unavailable. The NGT ordered the CECB to make its website more user-friendly within 60 days.

In response, the CECB sought an extension of time to comply, citing efforts such as issuing fresh tenders for Internet of Things (IoT) devices and their maintenance. The CECB requested an additional 12 months to enhance real-time data acquisition and accessibility. However, the NGT expressed strong disapproval of the CECB's request, noting a lack of efficiency and competence in addressing the issue, which had been pending for nearly two years. Consequently, the NGT ordered criminal proceedings against the CECB's Chairman and Member Secretary under Section 26 of the NGT Act, 2010, which provides for penal action against those failing to comply with NGT orders.

Supreme Court's Intervention

Aggrieved by the NGT's order, the CECB, along with its Chairman and Member Secretary, appealed to the Supreme Court. In their compliance affidavit, dated January 10, 2024, the CECB reported substantial progress, including providing direct access links to 128 industries by November 2023 and completing the task for all 167 industries by December 2023.

The Supreme Court, while acknowledging the lapses in timely compliance, took a serious view of the CECB's efforts and achievements. The Court emphasised that Section 26 of the NGT Act, which allows for penal action, should be exercised with caution. The Court noted that while there was a delay, it did not amount to willful negligence or a complete dereliction of duty on the part of the CECB. Given that substantial compliance had been achieved, the Court decided to set aside the NGT's order initiating criminal proceedings.

The bench, comprising Justices Sanjiv Khanna, Sanjay Kumar, and R Mahadevan, observed the importance of environmental protection, stating, "Every State organ and, in particular, the wings of the Government associated with environment protection, such as the CECB, must be all the more diligent in ensuring timely compliance with the directions of the NGT." The Court reiterated that such directives are essential for the preservation of ecology and environment and must be given the highest priority.

Non-Performance of Contract: Not a Crime

In the case of *Radheyshyam & Ors. v. State of Rajasthan & Anr.*, the Supreme Court of India made it clear that failing to fulfil an Agreement to Sell does not automatically lead to criminal charges. The Court highlighted that civil disputes should remain within the civil domain and not be escalated to criminal courts without valid grounds.

Civil Dispute, Not Criminal Offence

The Supreme Court emphasised that the issue at hand was a civil dispute over the non-execution of a property sale. The complainant, who had already initiated a civil suit for specific performance, wrongly attempted to use the criminal justice system as leverage. The Court firmly stated that every civil wrong cannot be turned into a criminal case, especially when the dispute revolves around contractual obligations.

No Fraud, No Crime

In its analysis, the Supreme Court found that the FIR did not present any evidence of fraudulent intent or deceit by the appellants. The Court clarified that to prove cheating under Section 420 of the IPC, there must be clear indications of dishonest inducement, which was absent in this case. The mere refusal to complete the sale did not meet the criteria for criminal charges.

Contractual Breach Isn't Criminal

Addressing the charge of criminal breach of trust under Section 406 of the IPC, the Court noted that the advance payment made by the complainant was part of the agreed contractual terms and could not be considered as misappropriated property. The Court ruled that the refusal to register the sale deed did not constitute a criminal breach of trust, further emphasising the civil nature of the dispute.

Upholding Civil Remedies

The Supreme Court concluded by quashing the FIR and overturning the High Court's order, reinforcing that civil remedies should be pursued through civil litigation. The Court's decision serves as a reminder that the criminal justice system should not be misused to enforce civil contracts or to exert pressure in civil disputes. The pending civil suit will continue on its merits, independent of the criminal proceedings.

Reliance Insurance Liable for Claim Denial

In a significant ruling, the District Consumer Disputes Redressal Commission, Vijayapur, Karnataka, held Reliance General Insurance Co. Ltd. responsible for unjustly denying a valid car accident claim. The Commission found that the accident and resulting damage were proven, making the insurance company liable for the claim.

Consumer Commission Sides with Car Owner

The Vijayapur Consumer Commission ruled in favour of the car owner after Reliance General Insurance refused to disburse the insurance amount for a valid claim. The bench determined that the insurance company's rejection, based on a delayed report of the accident, was unjustified.

Delay Not Enough to Deny Claim

The Insurance Company's defence, citing a delay in reporting the accident, was rejected by the Consumer Commission. The Commission held that the delay did not justify denying the claim, as the accident and damages were clearly established.

Vijayapur Commission Orders Compensation

The District Consumer Commission directed Reliance General Insurance to pay Rs. 3,44,188/- for vehicle damages, along with additional amounts for mental agony and litigation costs, after finding the claim denial to be unjust.

Surveyor's Report Crucial in Claim Victory

The Vijayapur Commission emphasised the importance of the surveyor's report, which assessed the damage at Rs. 3,44,188/-. Despite challenges, the report played a key role in securing a favourable ruling for the car owner against the insurance company.

Case of the Week: Hicks v. Faulkner, (1878)

Court: Court of Appeal, United Kingdom

Citation: (1878) 8 Q.B.D. 167

Background:

The case of *Hicks v. Faulkner* was heard in the Court of Appeal in 1878 and is a significant decision in English law concerning the tort of malicious prosecution. The case revolves around the essential elements required to establish a claim of malicious prosecution and the definition of "reasonable and probable cause."

Facts:

The plaintiff, Hicks, was arrested and prosecuted based on allegations made by Faulkner. The prosecution was initiated after Faulkner, an employer, accused Hicks of stealing a brass tap. Hicks was acquitted of the charges, and subsequently, he brought an action against Faulkner for malicious prosecution. Hicks argued that the prosecution was initiated without reasonable and probable cause and with malice, aiming to harm him.

Legal Issues:

The primary legal issue before the court was whether the prosecution initiated by Faulkner was without "reasonable and probable cause" and whether there was malice involved, thereby constituting malicious prosecution. Specifically, the court had to determine:

1. The proper definition and interpretation of "reasonable and probable cause."
2. Whether Faulkner had acted with malice when initiating the prosecution.

Judgement:

The Court of Appeal, led by Brett L.J., ruled in favour of the plaintiff, Hicks. The court held that to establish a claim of malicious prosecution, the plaintiff must prove:

1. The defendant initiated the prosecution.
2. The prosecution ended in the plaintiff's favour.
3. There was an absence of reasonable and probable cause for the prosecution.

4. The defendant acted with malice.

In this case, the court elaborated on the meaning of "reasonable and probable cause," stating that it refers to an honest belief in the guilt of the accused based on the facts known at the time. Brett L.J. emphasised that reasonable and probable cause does not require certainty of guilt but a reasonable belief, grounded in the facts, that the accused is likely guilty.

The court found that Faulkner did not have reasonable and probable cause to prosecute Hicks, as the evidence available to Faulkner did not justify such a belief. Additionally, the court inferred malice from the lack of reasonable cause, as the prosecution seemed to be driven by motives other than bringing a criminal to justice.

Repeated PYQ

Q. All illegal agreements are void but all void agreements are not illegal". Discuss.

Illegal Agreements

An illegal agreement, as defined by the Indian Contract Act, pertains to any contract whose formation, objective, or consideration involves a violation of the law. Section 23 of the Act is particularly instructive; it lays down that the consideration or object of an agreement is deemed unlawful if it is forbidden by law, if it is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent, involves or implies injury to the person or property of another, or the court deems it immoral or opposed to public policy.

The illegality of an agreement thus stems from its inherent nature to contravene legal provisions, moral codes, or societal norms. An illegal agreement is void ab initio, meaning it is unenforceable from the outset. The law does not recognize such an agreement as a valid contract and, therefore, offers no remedy for its breach.

The illegality taints both the agreement itself and any ancillary contracts that derive from it, rendering them all unenforceable.

Void Agreements

Conversely, a void agreement refers to a contract that lacks one or more essential elements required for legal enforceability but does not necessarily involve any illegality. Section 2(g) of the Indian Contract Act describes a void agreement as one that is not enforceable by law. This encompasses a broad range of deficiencies, including, but not limited to, agreements made without consideration (except as otherwise provided by the Act), contracts with incompetent parties, agreements made under a mutual mistake of fact, and contracts whose objectives are vague or impossible to achieve.

Distinction

The critical distinction here is that while void agreements are unenforceable due to their failure to meet certain legal prerequisites, they do not inherently involve an action that is forbidden by law. Therefore, while all illegal agreements are inherently void due to their violation of legal provisions,

not all void agreements are illegal, as their voidness may arise from factors unrelated to the legality of their content or purpose.

This distinction has significant implications for the parties involved. Parties to an illegal agreement cannot seek the aid of the law to enforce their agreement or resolve disputes arising from it, as doing so would involve the law endorsing an illegal act. In contrast, while parties to a void agreement similarly cannot enforce their contract, the unenforceability arises not from an illegality but from a failure to comply with certain legal formalities or prerequisites.

