MONTHLY NEWSLETTER

The Law Desk

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1 PROTEST IS A TOOL IN THE HANDS OF THE CIVIL SOCIETY HELD SUPREME COURT

- AYUSHI RAGHUWANSHI

"*Just as strike is a weapon in the hands of the workmen and lock-out is a weapon in the hands of the employer under Labour Welfare legislations, protest is a tool in the hands of the civil society and police action is a tool in the hands of the Establishment.*" The Hon'ble Apex Court observed in *Ravi Namboothiri vs K A Baiju*[1].

The instant matter revolved around the question of disqualification of the elected candidate in Kerala Panchayat elections on his failure to disclose the fact that he was convicted under the Kerala Police Act, 1960 under Section 38[2] *and Section 52*[3] *for holding Dharna* infront of the Panchayat office in defiance of the Police officer's directions. This matter has yet again shed light on the right to protest of the citizens. The Hon'ble Apex Court held that failure to disclose the fact that he was convicted under the Kerala Police Act, 1960 cannot be a ground for his disqualification.

[1] Para 45, Ravi Namboothiri v K A Baiju, Civil Appeal Nos. 8261-8262 OF 2022

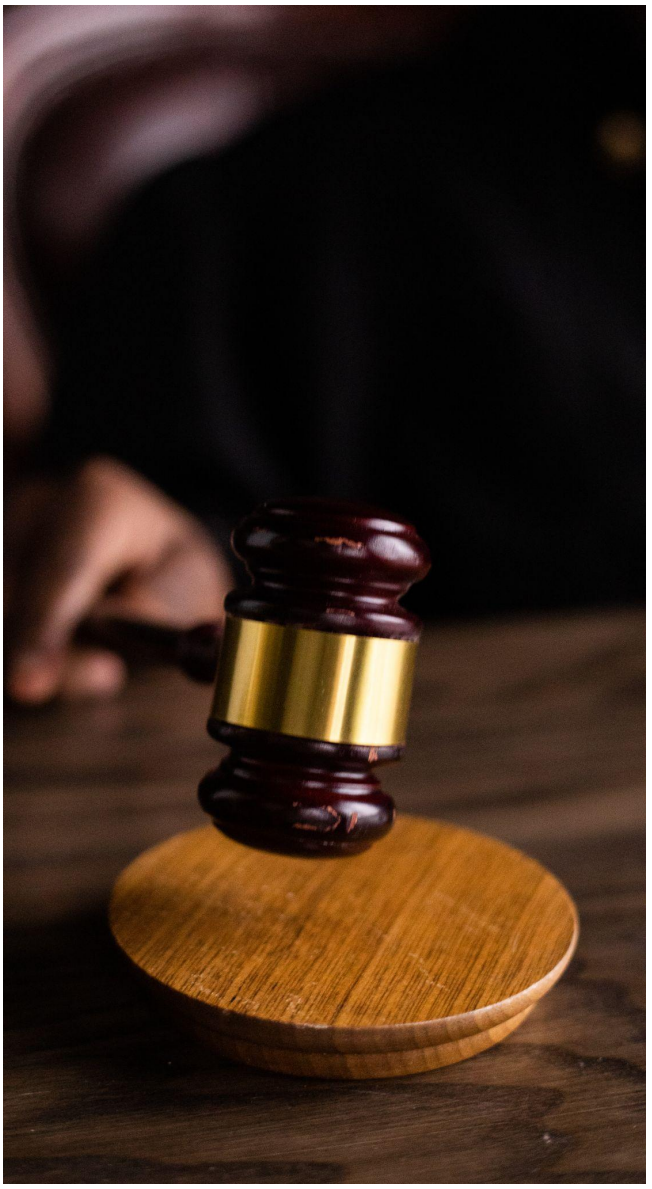
[2] *"Persons bound to conform to reasonable directions of police"*

[3] *"Penalty for failure to conform to lawful and reasonable directions of police officers"*

The Court while deciding the matter remarked, "*Kerala Police Act, 1960 is the successor legislation of certain police enactments of the colonial era, whose object was to scuttle the democratic aspirations of the indigenous population. This aspect should be kept in mind before applying blindfold, the principle 'what is sauce for the goose is sauce for the gander*[4]*'*"

"*Democracy and dissent go hand in hand.*"[5] *The right to Protest is a natural corollary of the right to dissent and dissent is indispensable for the functioning of a democracy. The enactments of the colonial era were designed to suppress dissent and any successor legislation needs to be scrutinized to ensure that the right to dissent is remains uncurbed. Blindfold application of such provisions would be against the democratic spirit of the nation.*

It has been upheld by the Courts time and again that the right to hold peaceful protest is an offshoot of the right to freedom of speech and expression under Article 19(1) (a) and Right to Assemble under Article 19(1) (b) and thus entitled to protection against violation by the



State. "The right to protest is, thus, recognized as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public

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[4] *Para 47, Ravi Namboothiri v K A Baiju, Civil Appeal Nos. 8261-8262 OF 2022*

[5] *Para 17, Amit Sahni v Commissioner of Police & Ors (2020) 10 SCC 439*

affairs where individuals and groups can express dissent and grievances, expose the flaws in governance and demand accountability from State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalized and poorly represented minorities[6].”

As has already been observed by the Court that, “Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same[7].”

“The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order”.[8]

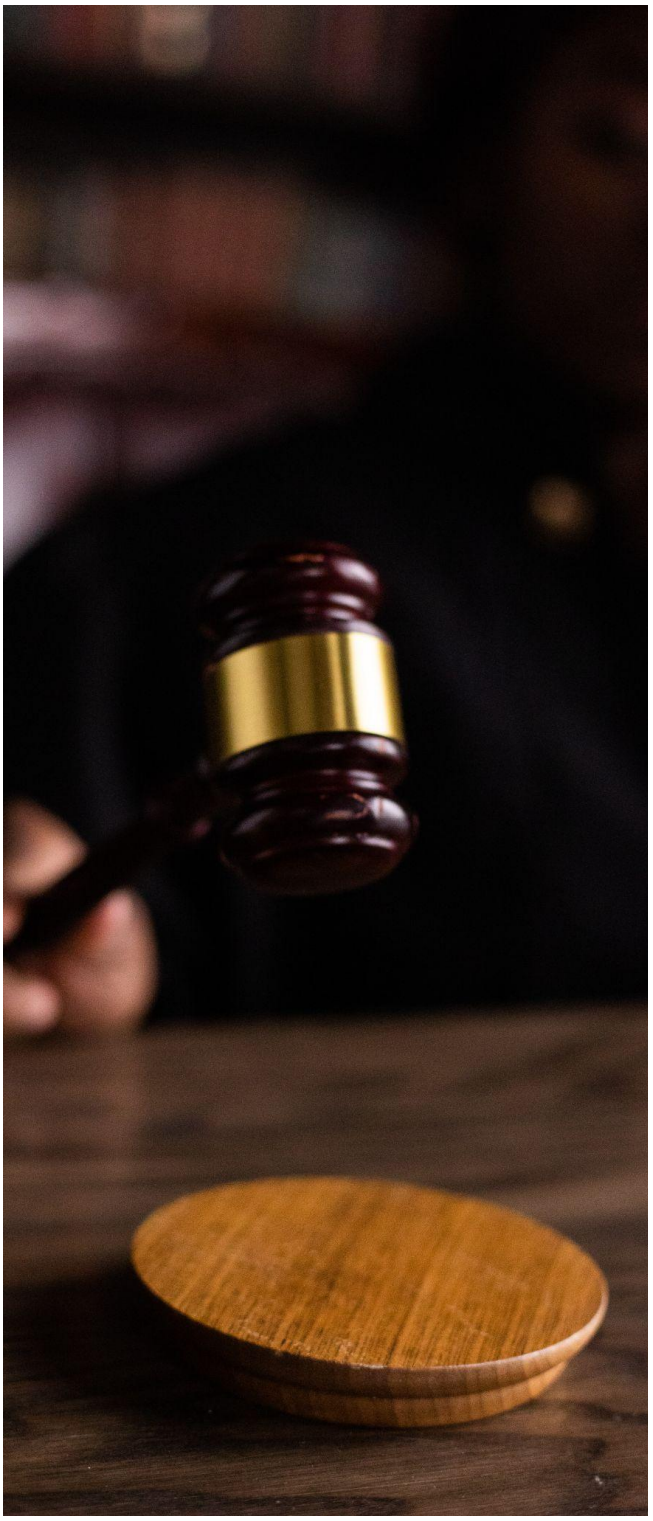
[6] Para 54, Mazdoor Kisan Shakti Sangathan v Union of India (2018) 17 SCC 324

[7] Amit Sahni v Commissioner of Police & Ors (2020) 10 SCC 439

[8] Himat Lal K. Shah v Commissioner Of Police 1973 SCC (1) 227

2 SUPREME COURT UPHELD EWS QUOTA FOR PRIVATE UNAIDED EDUCATIONAL INSTITUTIONS

- SHUBHAM SONI



The Supreme Court ruled that by allowing the State to enact specific rules for admission to private unaided educational institutions, the 103rd Constitution Amendment does not violate the fundamental principles of the Constitution.

In a recent judgment of *Janhit Abhiyan vs. Union of India*[9], the constitutional bench consisting of Justices U U Lalit, Dinesh Maheshwari, S. Ravindra Bhat, Bela M. Trivedi, and J B Pardiwala upheld the reservation provided to the Economically Weaker (EWS) sections in India. The Bench delivered the verdict on November 7th, 2022, with a 3:2 split, concluding that the Amendment and EWS Reservations were constitutionally acceptable. Justices Maheshwari, Trivedi, and Pardiwala wrote separate concurring opinions for the majority, while Justice Bhat submitted a dissent on behalf of himself and Chief Justice U.U. Lalit.

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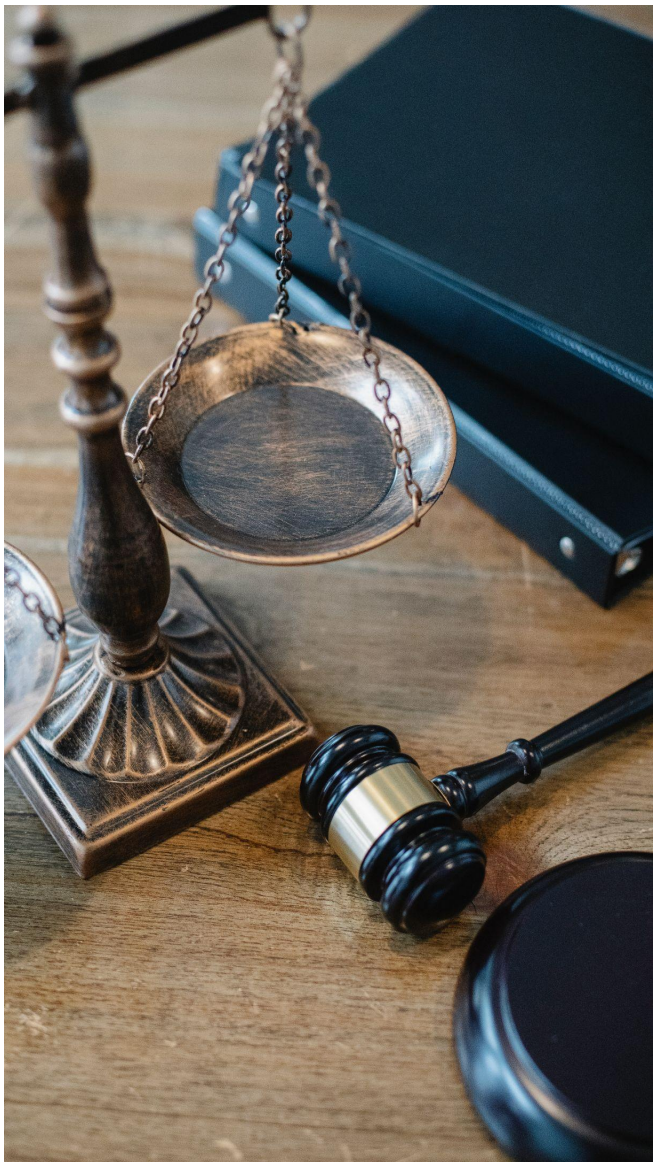
[9] Writ Petition (Civil) No. 55 of 2019



For the reference the case of *Indra Sawhney v. Union of India* (1992) was also discussed on several occasions in the proceedings over the limit of reservations. It was explicitly stated in this case that economic position could never be the only determinant factor of backwardness as money is a variable factor rather than a structural or systematic discriminating tool.

HISTORICAL BACKGROUND

The 103rd Amendment which came into force on January 13, 2019, provided reservation of seats in government educational institutions as well as central government positions to the EWS. It was enacted with an already existing reservation system in order to help the economically disadvantaged parts of society. The major purpose was to include persons from economically disadvantaged segments in society in higher education institutions and jobs in the public sector.

ISSUES

1. **Whether the 103rd amendment violates the basic structure of the constitution?**

The Apex Court held that a concept's potential to change the overall constitutional identity must be considered in order to preserve the basic structure. Social and economic equality must be upheld by states according to the law. The basic structure is not damaged by this.

2. **Whether the 103rd Amendment violates the Right to Equality?**

It was further held that the Right to Equality is not applicable to reservations. Without

changing the reservations granted to SCs, STs, and OBCs, the 103rd Amendment separates out "economically poorer groups" of society. No equality laws are broken by this exclusion.

3. **Whether Art. 15(6) granting EWS reservation in educational institutions is Constitutional?**

EWS reservations make sure that a classifiable set of individuals, those with incomes below a specific threshold, have access to possibilities for work and education. Even though it does not follow a formal definition of equality, it is intended to support directive principles of state policy, including Article 46. As a result, it upholds the constitutional purpose. The socialist objectives outlined in the preamble and the Directive Principles are consistent with EWS reservation in educational institutions.

4. **Whether SC/ST/OBCs be excluded from the scope of EWS reservations?**

The court has said that SC/ST/OBC reservations cannot be made solely based on economic factors. Reservations that are distinct and that look at economic justifications for other classes are constitutionally valid.

5. **Whether the 103rd Amendment breach the 50% limit?**

The Constitution's basic structure is not violated by the 10% reserve for the EWS Quota, and the 50% ceiling was deemed to be "not strict," which permitted the creation of a 10% reservation for the EWS Quota. The legitimacy of a reservation policy that exceeds 50% will rely on the specifics of each instance, including the area and organizational grade for which the reservation is maintained.

CONCLUSION

In the end, there is no question that using the doctrine of basic structure as a tool against the contested amendment and thereby preventing the State's efforts to uphold economic justice as authorized by the Preamble and Directive Principles of State Policy and, among other things, enshrined in Articles 38, 39, and 46, cannot be tolerated. This is primarily since the provisions included in Articles 15 and 16 of the Indian Constitution, which provide for affirmative Action-based reservations, cannot be regarded as basic characteristics since they are an exception to the general norm of equality.

3 SEXUAL HARASSMENT OF A CHILD IS A COGNIZABLE AND NON-BAILABLE OFFENCE U/S SECTION 12 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

SAMAKSH DASOT

The Hon'ble Delhi High Court vide its order dated 24.11.2022 passed in **R.K. TARUN Vs. UNION OF INDIA &ORS. (W.P.(C) 5434/2017)** held that punishment under section 12 of Protection of Children from Sexual Offences Act (hereinafter referred to as **POCSO Act**) are Cognizable and Non-Bailable in nature.

FACTUAL MATRIX

The Applicant had filed the Writ Petition under Article 226 of the Constitution of India, 1950, styled as a Public Interest Litigation seeking to bring to the attention of the Hon'ble High Court regarding the ambiguity revolving around the classification of Section 12 of the POCSO Act, which provides that whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. A perusal of Part II of Schedule I of the Criminal Procedure Code, 1973 enumerates that if an offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, then it will be a cognizable and non-bailable offence, and shall be triable by a Magistrate of the first class (second category). However, if an offence is punishable with imprisonment for less than 3 years or with fine only, then it will be a non-cognizable and bailable offence that shall be tried by any Magistrate (third category).

The issue that has arisen in the instant petition is that as Section 12 of the POCSO Act specifies for a term of imprisonment that can extend up to 3 years, it falls on the cusp of legislative ambiguity that can make it either a cognizable and non-bailable offence or a non-cognizable and bailable offence. It is this uncertainty which has led to the filing of the instant PIL

DECISION

The Hon'ble Delhi High Court placing its reliance on the order passed by the Hon'ble Supreme Court in the *Knit Pro International v. State of NCT of* Delhi and Anr observed that the punishment under section 12 of the POCSO Act, may extend to a term for three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. In that view and after considering Part II of the First Schedule of the Cr.P.C,1973 which states that if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only then the offence can be said to be non-cognizable. Accordingly, it was held that punishment under section 12 of POCSO Act will fall within the scope of the second category of Part II of Schedule I of the CrPC and same will be cognizable and non-bailable offence.

ANALYSIS

The POCSO Act was enacted to protect children from sexual assault, sexual harassment, and pornography and establish special fast track courts for trial in offences of such nature. The act envisioned that sexual acts committed against a child must place a

higher liability on the offender. Indubitably, findings made by the Hon'ble High Court in the present case would provide an impetus to Courts whilst dealing with applications u/s 12 of the Act as the present judgement not just made the law more stringent which is the aim of the POCSO Act but also clarified the ambiguity regarding the punishment u/s 12 of the POCSO Act by observing that the offence us/12 of the Act Cognizable and Non-Bailable in nature which shall have a deterrent effect on the Society

4 IN CASES OF IDENTICAL TRADEMARKS AND IDENTICAL GOODS AND SERVICES, CONFUSION IN PUBLIC CANNOT BE PRESUMED HELD THE SUPREME COURT

- MEGHA JOSHI

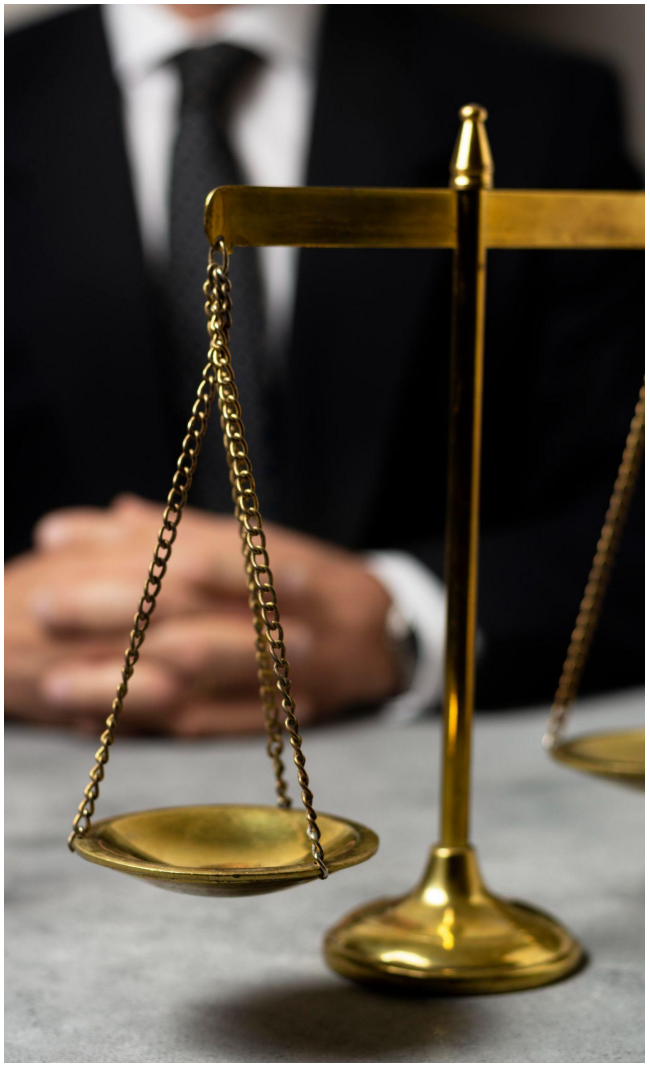
FACTS

In the present case of *RENAISSANCE HOTEL HOLDINGS INC. VS B. VIJAY SAI AND ORS.*, the Respondents were sued by the Appellant, the owner and holder of the trademark "*RENAISSANCE*," seeking a permanent injunction against the use of the allegedly infringing trademark "*SAI RENAISSANCE*" and any other marks that are confusingly similar to the Respondents' mark, "*RENAISSANCE*." The Appellant learned that the Respondents were operating two hotels in Bangalore and Puttaparthi, noting that they had imitated their design, signage, and use of the phrase "RENAISSANCE."

The Respondents refuted the allegation by arguing that the word "RENAISSANCE" was a generic phrase that was frequently used and that the Appellant had not developed a reputation for using it. Additionally, the Respondents claimed to be unaware of the Appellant's use of the mark. The Trial Court determined that the Respondents' mark was being violated and ordered an injunction to stop the Respondents from using it, but the Trial court rejected the Appellant's request for damages.

The Respondents appealed the judgement of the lower court to the High Court. The High Court noted that the Appellant failed to present any evidence of the repute of its mark on a global scale, of any harm done to the mark's distinctiveness or reputation, or of any unfair advantage gained by the Respondents. The appeal was allowed by the High Court since it did not find any violations. The Appellant

addressed the Hon'ble Supreme Court after becoming incensed over the same.



ANALYSIS

The Apex Court considered its ruling in the case of ***Ruston v. Hornsby Ltd.*** in which it has held that, in cases where there was an alleged infringement, the question to be considered was whether the Defendant's mark imitated or was an improper use of the plaintiff's mark. This was done while taking into consideration the High Court's denial of an injunction against the Respondents. It would not be necessary for the plaintiff to demonstrate actual deception or injury caused by the defendant for an injunction to be granted after it was established that the defendant was using the plaintiff's mark in an inappropriate manner.

The High Court and the Trial Court concurred that the marks used by the Appellant and the Respondents were identical, and that the services being provided belonged to the same class, the Supreme Court stated. The High Court, however, erred in ruling that the Appellant's mark had not developed any reputation in India or that the Appellant had not been able to demonstrate dishonest usage on the part of the Respondents, according to the Supreme Court. The target class of consumers being fundamentally distinct meant that the High Court did not find any probability of confusion when applying S. 29(4)(c).

The Apex Court stated that if the marks were identical but the infringing trade mark catered to a different class of consumers or services than the registered trademark, the clause under S. 29(4) would require the Appellant to demonstrate that it had established trans-border repute in India. In the present case, there was no need to consider the

Appellant's mark's repute in India because the Respondents' mark, "SAI RENAISSANCE," was identical to the registered mark of the Appellant, as were the goods and services for which both marks were utilized. In *Ruston v. Hornsby Ltd*., the court stated once a mark was established to be identical to a registered trademark that it was not the court's place to consider whether there might be confusion as a result of the mark's use.

The Supreme Court reiterated that a part could not be interpreted in isolation by citing the ruling in ***Balasinor Nagrik Cooperative Bank Ltd. v. Babubhai Shankerlal Pandya and Ors.*** The High Court committed a mistake, according to the Supreme Court, by concentrating solely on S. 29(4)(c) and failing to consider the other sub-sections of the statute that applied as well.

The Apex Court went on to say that in citing the case of ***Midas Hygiene Industries (P) Limited and Another v. Sudhir Bhatia and Others***, the Court had erred by failing to consider the precedent's specific facts and circumstances, which did not apply in this case. The High Court made a mistake by neglecting the fact that it was also stated that an injunction must follow in the event of an infringement, even if it was mentioned there that "award of injunction becomes essential if it prima facie appears that the adoption of mark was dishonest."

The Khoday Distilleries Limited (now known as Khoday India Limited) v. Scotch Whisky Association & Ors. case was rejected by the Apex Court as it would not apply here because the instant case involved trademark infringement rather than an objection application, and the ***Nandhini Deluxe v. Karnataka Cooperative Milk Producers Federation Limited*** *case* was also held to not be applicable because the instant case involved identical marks being used in different contexts.

CONCLUSION

The Apex Court came to the judgment that the High Court had erred in its interpretation of the test set forth under S.29(4) of the Act of 1999 because it had neglected to consider other provisions that applied to the facts of the case at hand as well as other laws. The Supreme Court overruled the High Court's decision and upheld the Trial Court's well-supported decision.

4 LEGAL NEWS AND UPDATES

1. Odisha's POCSO Court Sentences Man To 20 Yrs Rigorous Imprisonment for Rape Of 10-Yr-Old; Orders ₹4 Lakh Compensation to Victim.

2. Can't Presume A Person To Be Financially Stable Merely Because He Got Married: Allahabad HC

3. The Central Board of Direct Taxes (CBDT) has issued the draft common income-tax return request for inputs from stakeholders and the general public.

4. Yes Bank- DHFL Scam: Supreme Court Directs Examination Of Kapil Wadhwan At AIIMS For Consideration Of Bail On Medical Grounds- The Division Bench, comprising Justices K.M. Joseph and Hrishikesh Roy, said that to "balance the competing interests", it would be prudent to have Wadhawan examined by a team of doctors constituted by the Director of AIIMS Delhi before accepting his bail application.

5. The Gauhati High Court has held that an accused person can be handed over the interim custody of cattle seized consequent to an alleged offense under the Prevention of Cruelty to Animals Act, 1960 ('PCA Act').

6. NCLAT Delhi Upholds Dismissal of Section 9 Petition under the Insolvency and Bankruptcy Code in Absence Of Cogent Evidence To Prove that the goods were supplied to the Corporate Debtor.

7. CBI Not Liable to Furnish Information Under RTI Act, Exempted U/S 24 of the said Act held the Kerala High Court- As per Section 24 of the RTI Act, the Act shall not apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organizations to that Government. [Information about allegations of corruption and human rights violations are not exempted.] Division Bench consisting of Chief Justice S. Manikumar and Justice Shaji P. Chaly observed that as per a notification issued by the Government in 2011, CBI, NIA, and National Intelligence Grid are included in the Second Schedule to RTI Act, and therefore, CBI is not liable to furnish any information.

8. Economic Backwardness Or Social Stigma No Reason To Transgress Statutory Prohibition & Grant Permission For Termination Of Pregnancy: Kerala HC- The Kerala High Court on Monday observed that economic backwardness or the possibility of social stigma cannot be a ground for transgressing the statutory prohibition prescribed by the Medical Termination of Pregnancy Act and granting permission for medical termination of pregnancy.

9. After NIA Fails to File Chargesheet, Delhi Court Grants Default Bail To Kashmiri Youth In UAPA Case A Delhi Court has granted default bail to a 25-year-old Kashmiri youth, after the National Investigation Agency (NIA) failed to file charge sheet within the statutory period against him in a case registered under Unlawful Activities Prevention Act, 1967.

10. 'Society's Outrage No Justification To Suppress Free Speech': Delhi Court Dismisses Complaint Against Kerala MLA KT Jaleel-Additional Chief Metropolitan Magistrate Harjeet Singh Jaspal of Rouse Avenue Courts said that the society's outrage alone is not justification for suppressing free speech, while dismissing the complaint case filed by Advocate G.S. Mani.

11. POCSO Act meant to protect children from sexual exploitation, not to criminalize consensual romantic relationships: Delhi High Court- Justice Jasmeet Singh made the observation in an order granting bail to an accused in a case registered under Sections 363/366/376 IPC & Sections 6/17 POCSO Act last year. The court granted bail to a man charged with accused of rape of a minor girl who, in her own words, had married him out of her own free will.

12. The Supreme Court grants pensionary benefits to Short Service Commission (SSC) Women Officers of IAF not considered for Permanent Commission. The Hon'ble Supreme Court observed that the Appellants who moved Delhi High Court soon after the 2010 Babita Poonia judgment and soon after their release from service should not be denied the benefit emanating from the judgment.

13. Supreme Court to have special bench on Wednesdays, Thursdays to hear tax cases. As of next week, the Supreme Court will only hear disputes involving taxes on a separate bench.

14. 17-year-old minor rape victim's plea for termination of pregnancy of 26 weeks was allowed by the Punjab and Haryana High Court. The Court recently observed that the child, if born, would be a reminder of trauma and agony for the minor.

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