



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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1	M.Arumugam Vs Ammaniammal and others	2020 (1) TNLJ 136 (Civil)	08.01.2020	<b><u>Sections 6 &amp; 8 of the Hindu Minority &amp; Guardianship Act, 1956, Whether Karta is the guardian for the minor member of Joint Family?</u></b> Held :- A Karta is only the manager of the joint family property and is not the guardian of the minor members of the joint family. However, a natural guardian cannot dispose of the share of the minor in the joint family property.	1
2	Sri Prabodh Ch. Das and another Vs Mahamaya Das and others	2019 (17) SCALE 604	13.12.2019	<b><u>Civil Procedure – CPC – Order XLI Rule 17(1)</u></b> In the absence of the Appellant or his Counsel an appeal cannot be disposed on merit. Matter remitted back to the High Court.	1
3	Om Parkash Vs Amar Singh	(2019) 10 SCC 136	21.10.2019	<b><u>Civil Procedure Code, 1908 – Or. 21 R. 35(3) and 25 – Bailiff not submitted any report seeking Police assistance in execution.</u></b> Held:- The act of the Police deploying Police force to deliver the property using the order of the Court as Umbrella is un warranted. Police force cannot be used for delivery of possession without specific orders of the court.	2
4	Union of India and others Vs Unicorn Industries	(2019) 10 SCC 575	19.09.2019	<b><u>Applicability of Promissory Estoppel</u></b> While considering applicability of the doctrine it has been held that Public interest is the superior equity which can override individual equity. Government decisions if taken considering larger public interest then the doctrine of promissory estoppel will not apply	2

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	BSES Yamuna Power Ltd. Vs Ghanshyam Chand Sharma and another	2020 (1) CTC 335	05.12.2019	<b><u>Rule 26 of the Central Civil Services (Pension) Rules, 1972</u></b> The resignation would not amount to voluntary retirement – upon resignation, the past service of the employee will get forfeited.	3
6	N.Mohan Vs R.Madhu	2020 (1) CTC 343	21.11.2019	<b><u>Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 13, Section 96 – Limitation Act, 1963 (36 of 1963), Article 5</u></b> When the defendant filed Appeal under section 96(2) Code of Civil Procedure against an exparte Decree and if the said appeal is dismissed, then thereafter, the defendant cannot file an application under order 9, rule 13, Code of Civil Procedure.	3
7	Ramkhiladi and another Vs United India Insurance Co. Ltd and another	2020 (1) CTC 443	07.01.2020	<b><u>Motor Accident – Claim against owner/insurance company of vehicle driven by deceased - Maintainability of petition filed under section 163A of Motor Vehicles Act 1988</u></b> Deceased riding a borrowed Motorcycle met with an accident with another Motor cycle that was rash and negligently driven – No claim made against the driver/owner or insurance company of offending vehicle – Claim only made against owner and insurance company of vehicle, which was borrowed by deceased. Held:- Deceased had stepped into shoes of owner of vehicle borrowed by him – Claim petition against owner and insurance company of borrowed vehicle not maintainable.	3
8	Ambalal Sarabhai Enterprises Ltd. Vs K.S.Infraspac LLP and another	2020 (1) CTC 101	04.10.2019	<b><u>Dispute relating to immovable property – when can be a commercial Dispute.</u></b> Dispute relating to immovable property may not be commercial dispute, unless it falls under section 2(1)(c)(vii) – Immovable property to be used exclusively in trade or commerce.	4

<b>Sl. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
9	Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar Vs Krishna Nandan Singh and another	2020 (1) CTC 220	02.09.2019	<b><u>Rejection of plaint</u></b> Mere contemplation or possibility that right may be infringed and that too without any legitimate basis does not disclose cause of action – Vexatious suit should not be permitted. Plaint rejected.	4
10	Rathnamma and others Vs Sujathamma and others	2020 (1) CTC 120	15.11.2019	<b><u>Hindu Marriage Act, 1955 - Section 7</u></b> Marriage between persons coming within the prohibited degrees – Validity of. Held- In the absence of customary ceremonies or custom permitting marriage between prohibited degree, the marriage is not recognized in law under section 7 of Hindu Marriage Act 1955.	4

## SUPREME COURT - CRIMINAL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Lakshman Vs State of Karnataka and others	(2019) 3 SCC (Cri) 760 : (2019) 9 SCC 677	17.10.2019	<b><u>Penal Code, 1860 – Ss. 403, 406, 420 and 506-B – Cheating – Breach of trust</u></b> Where there exists a fraudulent and dishonest intention at time of commission of offence, law permits the victim to take proceedings, both civil and criminal as against the wrongdoer.	5
2	Ravishankar alias Baba Vishwakarma Vs State of Madhya Pradesh	(2019) 3 SCC (Cri) 768 : (2019) 9 SCC 689	03.10.2019	<b><u>Penal Code, 1860 – Ss. 302, 376, 376-A and 201 -Case based on Circumstantial evidence :-</u></b> Held :- Even death sentence can be imposed in cases based on circumstantial evidence. (Further Held that the Mandate of not disclosing identities of the victims of sexual offences should be followed by all courts including Supreme Court.)	5
3	Ebha Arjun Jadeja and others Vs State of Gujarat	(2019) 3 SCC (Cri) 821 : (2019) 9 SCC 789	16.10.2019	<b><u>TADA ACT S. 20-A(1):-,</u></b> If offences under other Acts are serious like murder, rape, smuggling, NDPS Act, POCSO Act offence(s), etc., investigation cannot be delayed only because TADA Act is involved. For recording of information about commission of offence under TADA by police prior approval of the District Superintendent of Police, is held, mandatory. As offences under TADA are very serious, a senior officer should look into the matter to ensure that an offence under TADA is made out to grant sanction.	6
4	Jagdishraj Khatta Vs State of Himachal Pradesh	(2019) 3 SCC (Cri) 839 : (2019) 9 SCC 248	26.04.2019	<b><u>Penal Code, 1860 – Ss. 306 &amp; 498-A</u></b> Abetment of suicide and cruelty – Proof of abetment – Need to establish conduct of accused which drove deceased to commit suicide.	6

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	Prabhash Kumar Singh Vs State of Bihar (Now Jharkhand)	(2019) 3 SCC (Cri) 847 : (2019) 9 SCC 262	12.09.2019	<p><b><u>Forensic Evidence :-</u></b>  <b><u>Section 302 IPC :- Deceased killed in close range firing</u></b>  Fact that there was no exit wound and that neither assault weapon nor bullet recovered, is immaterial as unshaken eyewitness account was corroborated by medical evidence.</p> <p>Absence of residue of undigested food in stomach of deceased insignificant as process of digestion in normal, healthy persons may continue for a long time after death.</p>	6
6	Sudam alias Rahul Kaniram Jadhav Vs State of Maharashtra	(2019) 3 SCC (Cri) 851 : (2019) 9 SCC 388	01.10.2019	<p><b><u>Awarding of Death penalty</u></b></p> <p>Irrevocable punishment of death must only be imposed when there is no other alternative, and in cases resting on circumstantial evidence, the doctrine of prudence should be invoked</p> <p>while sentencing the accused aggravating circumstances such as brutality, enormity and premeditated nature, and mitigating circumstances such as socio-economic background and age of the accused and , extreme emotional disturbance of the accused at the time of commission of the offence, and so on has to be considered.</p>	7
7	State of Arunachal Pradesh Vs Ramchandra Rabidas	(2019) 10 SCC 75	04.10.2019	<p>Motor Vehicles Act, 1988 – Ch. XIII (Ss. 177 to 210-D) – <b><u>Whether prosecution for offence under Motor vehicle Act and under IPC is maintainable</u></b></p> <p>Held:- Under Section 26 of the General Clauses Act there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. Offences under Ch. XIII of MV Act cannot abrogate applicability of Ss.297, 304, 304-A, 337 and 338 IPC. Therefore prosecution is maintainable both under MV Act and IPC.</p>	7

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	Javed Abdul Rajjaq Shaikh Vs State of Maharashtra	(2019) 10 SCC 778	06.11.2019	A. Medical Jurisprudence - Distinction between hanging and strangulation. Explained B. Whether conduct of the accused will absolve him from the guilt. Held: - Though it is true that appellant took deceased to the hospital, this does not imply that appellant was innocent. C. Post mortem/ Inquest report which will prevail over. Held:-that the post-mortem report will prevail over inquest report.	8
9	State of Rajasthan Vs Sahi Ram	(2019) 10 SCC 649	27.09.2019	<b><u>Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 42 and 8/15 – Search and seizure</u></b> Held,:- When seizure of material is proved on record and is not even doubted or disputed, then entire contraband material need not be placed before court – At times the material could be so bulky, for instance as in the present case, that it may not be possible and feasible to produce the entire bulk before the court.	8
10	Surinder Singh Deswal @ Col.S.S.Deswal and others Vs Virender Gandhi and another	2020 (1) CTC 456	08.01.2020	Appellants convicted under section 138 of act for dishonour of cheques – Lower Appellate court suspended sentence subject to condition of depositing 25% of amount of compensation – On non-compliance with condition, lower appellate court held that suspension of sentence deemed to be vacated – Held, non-compliance of condition of suspension of sentence such order well within jurisdiction of lower appellate court.	9



## HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Surya Pelle Chemical & Mould Vs Hi-lite leathers, Vaniyambadi and others	2020 (1) TNLJ 1 (Civil)	10.07.2019	<p><b><u>Civil Procedure Code, 1908, Order 36, Rule 5,6,9 &amp; 11 r/w Order 21, Rule 55</u></b> – Suit filed for recovery of Money is compromised at Lok Adalat and decree is recorded. 3<sup>rd</sup> party filed application for obstruction and is allowed. Held:- Once the suit decreed the court has become functus officio. The Court can entertain application only for correction of errors arising on account of accidental slips or omission.</p>	10
2	A.V.Murugan Vs K.Maheswari and others	(2020) 1 MLJ 8 LNINDORD 2019 BMM 5978	12.09.2019	<p><b><u>Code of Civil Procedure, 1908, Order 1 Rule 10 – Scope of impleading defendants at the behest of the defendant in counterclaim</u></b> Held :- Counter-claim was in nature of cross-suit and Defendant wants to implead these parties as Defendant in suit – Defendant entitled to add them as Defendants since he was “dominus litis” insofar as counter-claim was concerned.</p>	10
3	Vijaya Lakshmi and others Vs M.Vasanthi and others	2020 (1) TNLJ 68 (Civil)	05.12.2019	<p><b><u>Retirement benefits</u></b> First plaintiff married the deceased in the year 1989 and having 2 children – Marriage between the deceased and D.3 was registered and proved through Ex.B5 – D.3 was made as a nominee in the service register of the deceased maintained with the employer Held :- Merely, because the D.3 was made as a nominee of the deceased/husband in the service records, it would not automatically confer any right to her to claim as legal heir of the deceased – Appeal dismissed.</p>	11
4	G.Senjilakshmi Vs The District Revenue Officer, Cuddalore and others	2020 (1) TNLJ 72 (Civil)	02.01.2020	<p><b><u>Constitution of India, 1950, Article 226 – Transfer of Property</u></b> Assignment was cancelled by Land Revenue Officer due to the reason that land was assigned to Scheduled caste community unless and until the petitioner is able to establish her right stating that her vendor had lawful right over the property petitioner cannot challenge the impugned proceedings – Petition dismissed with directions.</p>	11

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	N.Indira Vs V.Sugandha and others	2020 (1) TNLJ 77 (Civil)	13.12.2019	<b>Family Pension &amp; Retirement Benefits</b> – Claim by Divorced first wife and Second wife – As per the Pension Rules/Scheme, only a legally wedded spouse is entitled for the terminal and pensionary benefits of the deceased employee – The appellant/first defendant, who was a divorcee, may not be entitled for the family pension-ineligibility of the first wife would not entail the second wife for receiving the family pension.	11
6	Rajesh Devi Vs Jai Prakash	I (2020) DMC 166 (DB) (P&H)	01.05.2019	<b><u>Divorce decree Appealed – But other spouse died –Maintainability of</u></b>  Held : Appeal is maintainable even if the other spouse died during pendency of appeal.	12
7	Kalavathy Vs Arulmighu Ramantheeswarar Temple, Porur, Chennai.	2020 (1) L.W. 214	23.05.2019	<b><u>Section 6(2) of the H.R. &amp; C.E. Act</u></b> Suit for recovery of arrears of rent and for mandatory injunction to direct defendant to remove the storey building of the suit property.  <u>Held:</u> The suit filed by the Executive officer without obtaining permission from the commissioner not maintainable.	12
8	State of Tamil Nadu rep. by its District Collector, Cuddalore and another Vs Amudha and another	2020 (1) L.W. 346	15.11.2019	<b><u>Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act (2014)</u></b>  <u>Directions issued:</u> No hostel, lodging house or homes for women and children shall function across the State from 1 <sup>st</sup> March 2019 without the license issued by the statutory authority.	12
9	Ananthkrishnan Vs K.G.Rangasamy and others	2020 (1) L.W. 355	19.12.2019	<b><u>Transfer of property Act, Section 58, Mortgage by title deeds - Whether Xerox copy of title deed is admissible as evidence?</u></b> <b><u>Evidence Act, Sections 3, 76, 79, 64, 65,</u></b> Held:- when any document is a registered document Xerox copy of it is not admissible as secondary evidence. Only certified copy of a registered copy is to be admitted as secondary evidence in the absence of the original deed	13

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
10	Sivasankaran Vs S.B.Raman	2020 (1) L.W. 66	12.11.2019	<b><u>Easements-Pathway-Injunction.</u></b> It is now settled position of law that when there is a bonafide dispute raised by the defendant, a bare injunction suit is not maintainable and a suit for declaration of title will have to be filed. Accordingly regarding Pathway dispute a bare injunction suit is not maintainable and a suit for Declaration of title will have to be filed.	13
11	Ramesh Venkat, Rep by Power of Attorney Holder Vs Narashimhan and others	2020 (1) CTC 398	04.04.2019	<b><u>Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 35(3) &amp; Order 21, Rule 97 -Delivery of possession – who can resist</u></b> Held :- Only judgment debtor and person, who claims derivative title from said judgment-debtor alone would be bound by decree and cannot resist delivery of possession – A person, who sets up independent title, can resist execution.	13
12	Lakshmanaperumal Raja @ Alagar Raja Vs Muthulakshmi and others	2020 (1) CTC 416	23.07.2019	<b><u>Suit for declaration of title and injunction – Alternative prayer for recovery of possession – Maintainability of</u></b> Held, claim for relief of injunction and alternative prayer for recovery of possession, not sustainable.	14
13	Thangamuthu and others Vs A.Jeyaraj	2020 (1) CTC 47	12.09.2019	<b><u>Registration Act, 1908 (16 of 1908), Section 17 – Indian Stamp Act, 1899 (2 of 1899), Section 35 –</u></b> Unregistered and insufficiently stamped sale Deed .is not admissible . Non-registration, cannot be cured by paying deficit stamp duty and penalty – such documents cannot be looked into even for collateral purposes– Failure to object at time of marking, not fatal and could be raised subsequently.	14

## HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Madasamy and others Vs State	2020 (1) TNLJ 6 (Criminal)	04.12.2019	<p><b><u>Indian Penal Code, 1860, Sections 143, 188 and 283</u></b></p> <p>Scope of Registration of FIR and investigation for an offence under section 188 explained</p>	15-16
2	Pradeep Raj Vs State	2020 (1) TNLJ 33 (Criminal)	12.12.2019	<p><u>Section 376 IPC</u> was made rigorous only in the year 2013 vide <u>Central Act 13 of 2013</u>. Under the law as it stood then, consensual sex between a male and a girl of 16 and 18 years was not rape.</p>	16
3	Krishnamoorthy and another Vs A.Tamilarasu	2020 (1) TNLJ 39 (Criminal)	17.12.2019	<p>As per section 199 Cr.P.C. a complaint for defamation complaint can be filed only by an aggrieved person -"<u>Section 199 Cr.P.C.</u> is mandatory. If a Magistrate take cognizance of offence of defamation on a complaint filed by one other than the aggrieved person, the trial and conviction will be void and illegal (See AIR 1972 SC 2609) : (1973 Cri LJ 52).</p>	16
4	State by Inspector of Police, Manamadurai, Sivagangai District Vs M.Kaviarasan and others	2020 (2) TNLJ 51 (Criminal)	03.01.2020	<p><u>Criminal Procedure Code, 1973, Section 439 (2)</u> – Cancellation of bail – Rape and circulating nude photos in social media by accused persons – Bail application of A.1 dismissed, but granted to other accused by the sessions court on the ground that they were in custody for more than a month and investigation reached a substantial stage –Held – bail granted by the sessions court is liable to be cancelled.</p>	17

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	M/s VGN Developers P Ltd., and another Vs The Deputy Director, Directorate of Enforcement	2020 (1) L.W. (CrI.) 1	04.10.2019	<b><u>Under Section 24 of Money Laundering Act</u></b> – Burden of proof is on a person charged with an offence of money laundering – Investigation by the Central Bureau of Investigation and the respondent are different – It cannot be stated that a mere closure by the Central Bureau of Investigation would provide a death knell to the proceedings of the respondent. It is well open to the respondent to investigate and proceed further when an offence is made out under the provisions of Prevention of Money Laundering Act, 2002.	17
6	K.Pazhani and others Vs State and others	2020 (1) L.W. (CrI.) 11	05.12.2019	<b><u>A) Prevention of Corruption Act, (1988), Sections 7, 13(1)(d), (2).</u></b>  Held :- When receipt of money is not disputed and stand established through evidence contradiction of evidence on the phenolphthalein test is of no importance  <b><u>B. Court below awarded a sentence less than that prescribed under the Act Whether can be enhanced even without appeal</u></b>  Held :- Yes. No reason by the court below to award a lesser sentence than the one prescribed under the statute – No appeal is required to be filed by respondents seeking enhancement.	18
7	Udhyanithi Vs State	2020 (1) L.W. (CrI.) 95	12.11.2019	<b><u>Object of recording of 164 statement</u></b>  It is to use it to deter the witness from changing his version later Credibility of the witness could be impeached under section 155(3) and section 145. A statement given under section 164 by mother of victim girl can only be used to contradict or/and corroborate substantive piece of evidence – Even a 164 statement must be proved.	18

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	Sam Asir Ayyavoo and another Vs State	2020 (1) L.W. (CrI.) 108	29.11.2019	<b><u>To constitute offence under section 294(b)</u></b> – Obscene acts or words must be done or uttered at or near any public place – If the same is not done at or near any public place, the fundamental requirement not satisfied – In a personal dispute between two parties – Mere oral threat without anything more does not constitute criminal intimidation.	19
9	S.Ariharan Vs State and another	2020 (1) L.W. (CrI.) 112	26.11.2019	<b><u>Whether anticipatory bail can be granted in a case filed under the Schedule Caste and Schedule Tribe Act under Section 438 of Cr.P.C.</u></b> Held that petition for anticipatory bail is maintainable even if the case is registered under SC/ST (Prevention of Atrocities) Act 1989, However it is reiterated that only the High Court can grant the relief of anticipatory bail and not the sessions courts.	19
10	Kumaresan Vs State Rep. by Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai	2020 (1) L.W. (CrI.) 147	17.10.2019	<b><u>Whether JM has power to order the accused to give voice sample</u></b> Held that the Magistrate has the power to order a person to give a sample of his voice for the purpose of investigation of a crime – Respondent to ensure that the text, which petitioners would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text.	20
11	Lakshmi Nursing Home Vs State and another	2020 (1) L.W. (CrI.) 150	28.11.2019	<b><u>Condition precedent to initiate action for Medical Negligence :</u></b> Criminal proceedings for medical negligence can be initiated only after obtaining an independent and competent medical opinion from doctors in Government service – Further opinion of the doctor should also satisfy the Bolam test.	20

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
12	M.Murugammal Vs State	2020 (1) L.W. (CrI.) 156	21.11.2019	<p><b><u>Petition filed to alter FIR under section 302 instead of section 174 – Requirement under section 174 – explained.</u></b></p> <p>The issue as to whether the offence could be altered under Section 174 to 302 CR.PC. Would be outcome of the Inquest Report. Therefore, in the absence of such intimation, the further course of inquest taken by the respondent police would be rendered as invalid and hence Executive Magistrate namely Revenue Divisional Officer, Tondiarpet, Chennai is suo motu impleaded as a party respondent to conduct an inquest.</p>	20
13	Suresh Chandar Vs Inspector of Police, Ariyur Police Station, Vellore District	2020 (1) L.W. (CrI.) 158	21.08.2019	<p><b><u>Disposal of property</u></b></p> <p>A property not only includes its original form but also converted or exchanged at a later point of a time – Gold remains intact, only its form has been changed – It cannot be a ground to deprive the return of property to the lawful owner.</p>	21
14	K.Rajanarayanan alias Ki.Ra Vs P.Kathiresan and another	2020 (1) CTC 80	16.10.2019	<p><b><u>Indian Penal Code, 1860, Section 504</u></b></p> <p>The Magistrate in such cases must see: (i) whether allegations made in complaint are so absurd on basis of which no prudent person can reach just conclusion that there is sufficient ground for proceeding against Accused; and (ii) if proceedings maliciously instituted with ulterior motive – Caution must be exercised before taking cognizance or registering case in such matters – such complaints stifling fundamental right of Free Speech are abuse of process of law Intentional insult, intimidation and humiliation must be directed at individual member and not against group of members or crowd or public in general though these may comprise of SC/ST.</p>	21

# **SUPREME COURT CIVIL CASES**

**2020 (1) TNLJ 136 (Civil)**

**M.Arumugam Vs Ammaniammal and others**

**Date of Judgment: 08.01.2020**

**Hindu Minority & Guardianship Act, 1956, Section 6 & 8 –**

A Karta is the manager of the joint family property and not the guardian of the minor members of the joint family – Section 6 of the Act provides that the natural guardian of a minor Hindu shall be his guardian for all intents and purposes except so far as the undivided interest of the minor in the joint family property is concerned – Natural guardian cannot dispose of the share of the minor in the joint family property – This principle would not apply when a family settlement is taking place between the members of the joint family – When such dissolution takes place and some of the members relinquish their share in favour of the Karta, it is obvious that the Karta cannot act as the guardian of that minor whose share is being relinquished in favour of the Karta – In such an eventuality it would be the mother alone who would be the natural guardian and, therefore, the document executed by her cannot be said to be a void document – At best, it was a voidable document in terms of Section 8 of the Act and should have been challenged within three years of the plaintiff attaining majority

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**2019 (17) SCALE 604**

**Sri Prabodh Ch. Das and another Vs Mahamaya Das and others**

**Date of Judgment: 13.12.2019**

Civil Procedure – CPC – Order XLI Rule 17(1)

Plaintiffs filed suit for declaration of their title, recovery of possession and for mesne profits – Trial Court dismissed the suit – First appeal filed by plaintiffs was allowed by the District Judge – Plaintiffs were declared as owners of the suit land, entitled for recovery of possession of the suit property – Second appeal was listed for hearing several times – When the matter was taken up for hearing on 21.1.2015, counsel for appellants/defendants was not present to argue the matter and no request was made on his behalf – High Court proceeded to decide the appeal on merits itself – After consideration of the materials on record, the High Court dismissed the appeal on merits – Whether the High Court was justified in dismissing the second appeal on merits in the absence of counsel for appellants –

Held, No –matter remitted back to the High Court for fresh disposal.

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**(2019) 10 SCC 136**

**Om Parkash Vs Amar Singh**

**Date of Judgment: 21.10.2019**

Civil Procedure Code, 1908 – Or. 21 Rr. 35(3) and 25 –

Bailiff not submitted any report seeking Police assistance in execution. No material placed before the Court to indicate that any application was made to the Tahsildar either by the Bailiff or by the Decree Holder. Procedure adopted by Police to deliver the property using the order of the Court as Umbrella is wholly unwarranted and impermissible and held that Police force cannot be used for delivery of possession without specific orders of court .

However – Considering peculiar circumstances of case that Decree Holder is the successful bidder in the Court auction and serious of litigation created by Judgment Debtor to prevent a delivery of possession to the decree holder for long time without right, title or interest the error committed by authorities are pardoned and the authorities are cautioned not to venture into such things in future

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**(2019) 10 SCC 575**

**Union of India and others Vs Unicorn Industries**

**Date of Judgment: 19.09.2019**

Promissory Estoppel – Applicability – Nature and Scope – Invocation of the Doctrine – Principles summarised – Medical studies indicating role of tobacco, gutkha and pan masala (with or without tobacco) and related products in oral cancer. . The Oncologists as early as in 2004 had strongly advocated banning of gutkha and pan masala. It has further been found that, the percentage of teenagers consuming the hazardous product was very high and as such exposing a large chunk of young population of this country to the risk of oral cancer. Taking into consideration this aspect, the State has decided to withdraw the exemption granted for manufacture of such products

Held :- While considering applicability of the doctrine it has been held that Public interest is the superior equity which can override individual equity. Moreover the doctrine of estoppel cannot be invoked for enforcement of a promise made contrary to law. Government decisions when taken considering larger public interest doctrine of promissory estoppel will not apply.

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**2020 (1) CTC 335**

**BSES Yamuna Power Ltd. Vs Ghanshyam Chand Sharma and another**

**Date of Judgment: 05.12.2019**

Service Law – Central Civil Services (Pension) Rules, 1972, Rule 26 – Resignation after prescribed period of service – Whether amounts to voluntary Retirement?

Held, the resignation would not amount to voluntary retirement – upon resignation, employee forfeits past service under Rule 26 – Resignation materially distinct from Voluntary Retirement – Where employee resigned from service, no question of whether he has in fact ‘voluntarily retired’ or ‘resigned’ – Legal consequences flowing from resignation under applicable laws, distinct from consequences flowing from voluntary retirement – Two may not be substituted for each other based on length of employee’s tenure - past services being forfeited under Rule 26, employee not entitled to pensionary benefits – Appeal allowed – Finding of Single Judge that Employee ‘Voluntarily retired’ set aside – Ratio laid down in Senior Divisional Manager, LIC vs. Shree Lal Meena, 2019 (4) SCC 479, followed.

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**2020 (1) CTC 343**

**N.Mohan Vs R.Madhu**

**Date of Judgment: 21.11.2019**

When the defendant filed Appeal under section 96(2) Code of Civil Procedure against an ex parte Decree and if the said appeal has been dismissed, thereafter, the defendant cannot file an application under order 9, rule 13, code of civil procedure. This is because after the appeal filed under section 96(2) of the code has been dismissed, the original decree passed in the suit merges with the decree of the appellate court. Hence, after dismissal of the appeal filed under section 96(2) code of civil procedure, the appellant cannot fall back upon the remedy under order 9, rule 13, code of civil procedure.

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**2020 (1) CTC 443**

**Ramkhilladi and another Vs United India Insurance Co. Ltd and another**

**Date of Judgment: 07.01.2020**

**Motor Accident – Claim against owner/insurance company of vehicle driven by deceased - Maintainability of petition filed under section 163A of Motor Vehicles Act 1988**

Motor Accident – Claim against owner/insurance company of vehicle driven by deceased - Maintainability of – Deceased riding a borrowed Motorcycle met with an accident with another Motor cycle that was rash and negligently driven – no claim made against the driver/owner or insurance company of offending vehicle – claim only made against owner and insurance company of vehicle, which was borrowed by deceased – Held, deceased had stepped into shoes of owner of vehicle borrowed by him – claim petition against owner and insurance company of borrowed vehicle not maintainable – decision in Ningamma case relied upon – deceased not a third party with respect to vehicle driven/borrowed by him – claim under section 163-A ought to have been made against owner/driver and or insurance company of offending vehicle, as a third party claim – dismissal of claim petition by high court, upheld – appeal dismissed.

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**2020 (1) CTC 101**

**Ambalal Sarabhai Enterprises Ltd. Vs K.S.Infraspac LLP and another**

**Date of Judgment: 04.10.2019**

Dispute relating to immovable property – when commercial Dispute – Dispute relating to immovable property may not be commercial dispute, unless it falls under section 2(1)(c)(vii) – Immovable property to be used exclusively in trade or commerce – words used exclusively in trade or commerce to be interpreted purposefully – word used denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”.

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**2020 (1) CTC 220**

**Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar Vs Krishna Nandan Singh and another**

**Date of Judgment: 02.09.2019**

Properties divided by metes and bounds under partition deed among brothers – Alienation of property by sharer to Third party – Challenge made by one of brothers assailing alienation by a Suit for declaration that the sale deed is null and void and to enforce right to Pre-emption - Petition filed for Rejection of plaint filed

Held :- – Partition deed does not give any right of Pre-emption to Plaintiff – Plaintiff does not disclose any cause of action, There shall be a Clear right to sue and there shall be legitimate cause of action– Vexatious Suit. In absence of any right to repurchase or pre-emption Mere contemplation or possibility that right may be infringed would not disclose cause of action – Plaintiff rejected.

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**2020 (1) CTC 120**

**Rathamma and others Vs Sujathamma and others**

**Date of Judgment: 15.11.2019**

Hindu Marriage Act, 1955 (25 of 1955), Sections 5, 7 & 11 – Indian Evidence Act, 1872 (1 of 1872), Section 102 – Marriage alleged between persons of less than 21 years and 18 years and between prohibited degrees – Validity of marriage – Plaintiff not pleaded any custom permitting marriage within prohibited degree – No proof of solemnization of marriage by customary ceremonies and rites – Agreement of marriage not valid certificate of Registration of Marriage – Held, in absence of customary ceremonies or custom permitting marriage between prohibited degree, marriage not recognized in law under section 7 – Burden of prove marriage was on plaintiff – Plaintiff cannot succeed to estate of deceased on basis of marriage, which she failed to prove – Appeal allowed – Judgment and Decree of Trial Court dismissing Suit, restored.

## **SUPREME COURT CRIMINAL CASES**

**(2019) 3 SCC (Cri) 760 : (2019) 9 SCC 677**

**Lakshman Vs State of Karnataka and others**

**Date of Judgment: 17.10.2019**

A. Penal Code, 1860 – Ss. 403, 406, 420 and 506-B – Cheating – Breach of trust –

Accused having agreed to sell lands to victim, which had been sold prior to agreement between accused and victim.. Where there exists a fraudulent and dishonest intention at time of commission of offence, law permits victim take proceedings both civil and criminal against the wrongdoer for having committed an offence of criminal breach of trust or cheating

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**(2019) 3 SCC (Cri) 768 : (2019) 9 SCC 689**

**Ravishankar alias Baba Vishwakarma Vs State of Madhya Pradesh**

**Date of Judgment: 03.10.2019**

Penal Code, 1860 – Ss. 302, 376, 376-A and 201

Victims owing to their tender age could not have put up any resistance – Likely that there might be no ocular evidence – But when the case is proved beyond reasonable doubt, and when all the requirements for awarding death sentence are satisfied then not awarding death sentence for lack of ocular evidence is not correct approach –

Death sentence can be imposed even in the cases based on circumstantial evidence only. There cannot be an absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence – Such a standard would be abused by seasoned criminals

In sexual offences the identity of the victims should not be disclosed and this mandate should be followed by all courts including Supreme Court.

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**(2019) 3 SCC (Cri) 821 : (2019) 9 SCC 789**

**Ebha Arjun Jadeja and others Vs State of Gujarat**

**Date of Judgment: 16.10.2019**

Accused persons carrying arms in areas notified under TADA – Obtaining sanction under S. 20-A(1), held, mandatory.

If offences under other Acts are serious like murder, rape, smuggling, NDPS Act, POCSO Act offence(s), etc., investigation cannot be delayed only because TADA Act is involved – But if offence(s) under other statutes are of the nature of an ancillary offence, then information cannot be recorded without complying with S. 20-A(1) of TADA.

For recording of information about commission of offence under TADA by police prior approval of District Superintendent of Police, is held, mandatory – Its non-compliance cannot be cured by S. 465 Cr.P.C. and it vitiates entire proceedings

As offences under TADA are very serious, a senior officer should look into matter to ensure that an offence under TADA is made out to grant sanction

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**(2019) 3 SCC (Cri) 839 : (2019) 9 SCC 248**

**Jagdishraj Khatta Vs State of Himachal Pradesh**

**Date of Judgment: 26.04.2019**

Penal Code, 1860 – Ss. 306 and 498-A – Abetment of suicide and cruelty – Proof of abetment – Need to establish conduct of accused which drove deceased to commit suicide – Allegations of cruelty, harassment, mistreatment, etc. by appellant husband which allegedly drove deceased wife to commit suicide, not established at all – Neither based on testimony of family of deceased, nor alleged letter written by deceased shortly before her death – Acquittal, restored.

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**(2019) 3 SCC (Cri) 847 : (2019) 9 SCC 262**

**Prabhash Kumar Singh Vs State of Bihar (Now Jharkhand)**

**Date of Judgment: 12.09.2019**

- A. Penal Code, 1860 – S. 302 – Deceased killed in close range firing by appellant at the instigation of deceased appellant, who was his father – Cause of death, being hemorrhage and shock caused by bullet injury from firearm, established by PW 5 (doctor) – Fact that there was no exit wound, nor assault weapon nor bullet recovered, is immaterial as unshaken eyewitness account was corroborated by medical evidence – As place of occurrence was near two teashops within a city, it cannot be said that there would not have been adequate lighting at night –
- B. Time of death/Rigor mortis – Absence of residue of undigested food in stomach of deceased insignificant as process of digestion in normal, healthy persons may continue for a long time after death.

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**(2019) 3 SCC (Cri) 851 : (2019) 9 SCC 388**

**Sudam alias Rahul Kaniram Jadhav Vs State of Maharashtra**

**Date of Judgment: 01.10.2019**

Penal Code, 1860 – S. 302 – Awarding of Death sentence

Irrevocable punishment of death must only be imposed when there is no other alternative, and in cases resting on circumstantial evidence, the doctrine of prudence should be invoked.

A review proceeding cannot be treated as an appeal in disguise.-By review application an applicant cannot be allowed to reargue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal. Re-appreciation of entire evidence on record while hearing review petition, is held impermissible. While sentencing the accused aggravating circumstances such as brutality, enormity and premeditated nature, and mitigating circumstances such as socio-economic background and age of the accused and, extreme emotional disturbance of the accused at the time of commission of the offence, and so on has to be considered.

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**(2019) 10 SCC 75**

**State of Arunachal Pradesh Vs Ramchandra Rabidas**

**Date of Judgment: 04.10.2019**

**Motor Vehicles Act, 1988 – Ch. XIII (Ss. 177 to 210-D) – Whether prosecution for offence under Motor vehicle Act and under IPC is maintainable**

Held :- An act or an omission can constitute an offence under IPC and at the same time, be an offence under any other law. Under Section 26 of the General Clauses Act there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. Offences under Ch. XIII of MV Act cannot abrogate applicability of Ss.297, 304, 304-A, 337 and 338 IPC. Therefore prosecution is maintainable both under MV Act and IPC.

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**(2019) 10 SCC 778**

**Javed Abdul Rajjaq Shaikh Vs State of Maharashtra**

**Date of Judgment: 06.11.2019**

A) Medical Jurisprudence - Distinction between hanging and strangulation.

Held :- In case of hanging, fracture of larynx and trachea is very rare and that too it may be found in judicial hanging – On the other hand, fracture on larynx, trachea and hyoid bone indicates strangulation. In case of throttling by hand, fracture of larynx and trachea cannot occur – It occurs in strangulation by using hand and blunt object like stone and stick, if strangulation is caused, in that case fracture of the larynx, trachea and hyoid bone has been found also – In ligature strangulation it can be either by leg or by any other means – Mugging is when strangulation is brought about with the foot, knee, bend of elbow or some other solid substances.

B) Whether conduct of the accused will absolve him from the guilt

Held :- Though it is true that appellant took deceased to the hospital, this does not imply that appellant was innocent – Having regard to the other evidence pointing it to be a case of throttling, apparently appellant sought to build up a case of deceased dying as a result of suicidal hanging. Yet, in his questioning under S. 313 Cr.P.C. he did not specifically set up a case of hanging as such – Thus, in light of the overall facts and circumstances of the case, conviction for murder of his wife by appellant, confirmed.

C) In case of contradiction between Inquest Report and Post Mortem Report as to the injury which will prevail over

Held :- No doubt medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency the post-mortem report will prevail over the inquest report.

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**(2019) 10 SCC 649**

**State of Rajasthan Vs Sahi Ram**

**Date of Judgment: 27.09.2019**

Narcotics, Intoxicants and Liquor – Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 42 and 8/15 – Search and seizure – When seizure of material is proved on record and is not even doubted or disputed, held, entire contraband material need not be placed before court – At times the material could be so bulky, for instance as in the present case, that it may not be possible and feasible to produce the entire bulk before the court – Further, held, if seizure is otherwise proved, what is required to be proved, is fact that samples taken from and out of contraband material were kept intact, that when samples were submitted for forensic examination seals were intact, that report of forensic experts shows potency, nature and quality of contraband material and that based on such material, essential ingredients constituting an offence are made out.

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**2020 (1) CTC 456**

**Surinder Singh Deswal @ Col.S.S.Deswal and others Vs Virender Gandhi and another**

**Date of Judgment: 08.01.2020**

Appellants convicted under section 138 of act for dishonour of cheques – Lower Appellate court suspended sentence subject to condition of depositing 25% of amount of compensation – on non-compliance with condition, lower appellate court held that suspension of sentence deemed to be vacated – Held, non-compliance of condition of suspension of sentence such order well within jurisdiction of lower appellate court.

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# **HIGH COURT CIVIL CASES**

**2020 (1) TNLJ 1 (Civil)**

**Surya Pelle Chemical & Mould Vs Hi-lite leathers, Vaniyambadi and others**

**Date of Judgment: 10.07.2019**

Civil Procedure Code, 1908, Order 36, Rule 5,6,9 & 11 r/w Order 21, Rule 55 – Suit for recovery of Money– Application for attachment of property before judgment also filed – Attachment ordered – matter referred to Lok Adalat – Compromise decree recorded – Award passed for Rs.1,50,00,000/- But Compromise schedule not adhered to – Application filed to bring the property attached for sale – 3<sup>rd</sup> party filed application for obstruction and it is allowed – Plaintiff came to know that attachment has been raised – has filed the revision in the High Court where in it has been held that.

Once the suit decreed the court has become functus officio. The Court can entertain application only for correction of errors arising on account of accidental slips or omission – District Court had no jurisdiction to pass any order in the Interlocutory Application – CRP (NPD) is allowed.

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**(2020) 1 MLJ 8**

**LNINDORD 2019 BMM 5978**

**A.V.Murugan Vs K.Maheswari and others**

**Date of Judgment: 12.09.2019**

Civil Procedure – Impleadment of Parties – Counter claim – Code of Civil Procedure, 1908, Order 1 Rule 10 – Suit filed by 1<sup>st</sup> Respondent / Plaintiff for partition of suit property purchased by Plaintiff and Petitioner / Defendant jointly – Counter claim made by Defendant in written statement –

Held, Defendant had set up counter-claim against Plaintiff by pleading certain facts – As per said pleadings, Defendant wants to add certain parties as Defendants, considering them as proper and necessary parties and in their absence, no effective order could be passed and whose presence was necessary for complete and final decision – Counter-claim was in nature of cross-suit and Defendant wants to implead these parties as Defendants in suit – Defendant entitled to add them as Defendants since he was “dominus litus” insofar as counter-claim was concerned – Lower Court proceeded to consider application like in normal suit where Plaintiff was “dominus litus” – Order passed by lower Court suffers from illegality, therefore, set aside – Impleading petition allowed – Revision allowed.

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**2020 (1) TNLJ 68 (Civil)**

**Vijaya Lakshmi and others Vs M.Vasanthi and others**

**Date of Judgment: 05.12.2019**

Retirement benefits — First plaintiff married the deceased in the year 1989 and having 2 children – Marriage between the deceased and D.3 was registered and proved through Ex.B5 – D.3 was made as a nominee in the service register of the deceased maintained with the employer – Trial Court held that the deceased married the first plaintiff in the year 1989 and when the marriage was subsisting, he married the D.3 – Second marriage between the deceased & D.3 is void – Merely, because the D.3 was made as a nominee of the deceased/husband in the service records, it would not automatically confer any right to her to claim as legal heir of the deceased – Appeal dismissed.

**2020 (1) TNLJ 72 (Civil)**

**G.Senjilakshmi Vs The District Revenue Officer, Cuddalore and others**

**Date of Judgment: 02.01.2020**

Constitution of India, 1950, Article 226 – Transfer of Property – Assignment was cancelled by Land Revenue Officer due to the reason that land was assigned to Scheduled Caste community – If a condition of assignment is violated, any transaction done in violation of such condition will be a nullity – Petitioner has to establish that she is entitled to be the owner of the property in her individual right, that her vendor had a right to sell the property in favour of the petitioner and that the sale deed executed by him is valid in the eye of law – Unless and until the petitioner is able to establish her right stating that her vendor had lawful right over the property, petitioner cannot challenge the impugned proceedings – Petition dismissed with directions.

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**2020 (1) TNLJ 77 (Civil)**

**N.Indira Vs V.Sugandha and others**

**Date of Judgment: 13.12.2019**

Family Pension & Retirement Benefits – Claim by Divorced first wife and Second wife – As per the Pension Rules/Scheme, only a legally wedded spouse is entitled for the terminal and pensionary benefits of the deceased employee – Once the first respondent/plaintiff not established that she is the legally wedded spouse of the deceased employee, then she is incapable of getting any relief – The appellant/first defendant, who was a divorcee, may not be entitled for the family pension – Ineligibility of the first wife would not entail the second wife for receiving the family pension

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**I (2020) DMC 166 (DB) (P&H)**

**Rajesh Devi Vs Jai Prakash**

**Date of Judgment: 01.05.2019**

(i) **Divorce decree – Appeal – Maintainability** – Appeal at the instance of spouse, challenging decree passed against him/her of divorce, maintainable even if the other spouse dies during pendency of appeal.

(ii) **Hindu Marriage Act, 1955 – Sections 13(1)(i), (ia)** – Adultery – Cruelty – Non-impleadment of adulterer, co-respondent – Respondent-husband miserably failed to prove act of adultery on part of appellant-wife by leading cogent and convincing evidence – Petition filed by him, knowing fully well about the person with whom appellant was living alleged life of adultery but without impleading him as co-respondent not maintainable.

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**2020 (1) L.W. 214**

**Kalavathy Vs Arulmighu Ramantheeswarar Temple, Porur, Chennai.**

**Date of Judgment: 23.05.2019**

**Section 6(2) of the H.R. & C.E. Act**

Suit for recovery of arrears of rent and for mandatory injunction to direct defendant to remove the storey building of the suit property.

Held: The suit filed by the Executive officer without obtaining permission from the commissioner not maintainable.

**2020 (1) L.W. 346**

**State of Tamil Nadu rep. by its District Collector, Cuddalore and another Vs Amudha and another**

**Date of Judgment: 15.11.2019**

**Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act (2014)**

**Directions issued:** No hostel, lodging house or homes for women and children shall function across the State from 1<sup>st</sup> March 2019 without the license issued by the statutory authority – Fire and Rescue Services to process all pending applications – District Collectors to process all the applications.

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**2020 (1) L.W. 355**

**Ananthakrishnan Vs K.G.Rangasamy and others**

**Date of Judgment: 19.12.2019**

**Transfer of property Act, Section 58, Mortgage by title deeds - Whether Xerox copy of title deed is admissible as evidence?**

**Sections 3, 64, 65, 76, 79 of Indian Evidence Act**

Held:- When the document is registered document, Xerox copy is not admissible as secondary evidence. Only certified copy of a registered copy is to be admitted as secondary evidence in the absence of the original deed. Original documents at the relevant time were in the custody of the State Bank of India – Recitals as if originals were handed over to create deposit of title deeds when the documents were already in the bank create serious doubt. Equitable mortgage set up is only in order to defeat rights of fourth defendant who purchased property – Sale consideration was paid to discharge mortgage loan with the bank and minors' interest is also protected by depositing their respective share in bank. Father was alive and no reason why mother should be shown as guardian of the minor – Mortgage executed by the minor either by himself or as guardian is also held void.

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**2020 (1) L.W. 66**

**Sivasankaran Vs S.B.Raman**

**Date of Judgment: 12.11.2019**

**Easements/Pathway, Injunction.**

**Injunction/Pathway, Title dispute.**

It is now settled position of law that, when there is a bonafide dispute raised by the defendant, a bare injunction suit is not maintainable and a suit for declaration of title will have to be filed.

Accordingly regarding Pathway dispute a bare injunction suit is not maintainable and a suit for Declaration of title will have to be filed.

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**2020 (1) CTC 398**

**Ramesh Venkat, Rep by Power of Attorney Holder Vs Narashimhan and others**

**Date of Judgment: 04.04.2019**

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 35(3) & Order 21, Rule 97 – Delivery of possession –Who can resist – Person setting up independent title, whether bound by decree – Every person, who is in possession of property which is subject matter of decree cannot be said that he/she would be bound by decree

Held, Apex court in Bhanwar Lal vs. Satyanarain, CDJ 1994 SC 162 very clearly held that only judgment debtor and person, who claims derivative title from said judgment-debtor alone would be bound by decree and cannot resist delivery of possession – Hence, person, who sets up independent title, can resist execution.

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**2020 (1) CTC 416**

**Lakshmanaperumal Raja @ Alagar Raja Vs Muthulakshmi and others**

**Date of Judgment: 23.07.2019**

Suit for declaration of title and injunction – Alternative prayer for recovery of possession – Maintainability of - Plaintiffs not specific whether they are in possession or not – Plaintiffs did not plead that defendants trespassed into suit property on a particular date – Admittedly, first defendant runs business in suit property – Documents establish that 1<sup>st</sup> defendant paying property tax and EB charges and having building in suit property.

Held, claim for relief of injunction and alternative prayer for recovery of possession, not sustainable – Lower appellate court erred in granting relief of recovery of possession, when there was no specific allegation of encroachment – Judgment and decree of lower appellate court set aside – Judgment and Decree of Trial court dismissing suit, confirmed – second appeal allowed.

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**2020 (1) CTC 47**

**Thangamuthu and others Vs A.Jeyaraj**

**Date of Judgment: 12.09.2019**

a) Registration Act, 1908 (16 of 1908), Section 17 – Indian Stamp Act, 1899 (2 of 1899), Section 35 – Unregistered and insufficiently stamped Sale Deed. Document, inherently bad for non-registration, cannot be cured by paying deficit stamp duty and penalty – such documents cannot be looked into even for collateral purposes - Document, falling under section 35 of stamp Act, not admissible for any purpose whatsoever, including collateral purpose

b) Practice and Procedure – Objection regarding inadmissibility of inherently inadmissible document – Failure to object at time of marking, not fatal and could be raised subsequently.

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# HIGH COURT CRIMINAL CASES

2020 (1) TNLJ 6 (Criminal)

**Madasamy and others Vs State**

**Date of Judgment: 04.12.2019**

Indian Penal Code, 1860, Sections 143, 188 and 283 – Vinayagar Idol Immersion Procession – Road block by petitioner – CC TV Camera not installed against conditions imposed – Case registered – Quash petition – Except the official witnesses, no one has spoken about the occurrence – charges are very simple in nature and trivial – Respondent Police not a competent person to register FIR for the offences under Section 188 of IPC. – Liable to be quashed – Complaint does not even state as to how the protest formed by the petitioners violated the conditions and does not satisfy the requirements of Section 143 of IPC – Final report cannot be sustained – To be quashed – Petition allowed.

In the case of Jeevanandham and others Vs State rep. by the Inspector of Police, Karur District reported in 2018-2-L.W.(CrI.) 606 the following guidelines were issued regarding offence under section 188 of IPC:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C. will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorized, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

(e) The promulgation issued under Section 30(2) on the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the police.

(f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

(g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

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**2020 (1) TNLJ 33 (Criminal)**

**Pradeep Raj Vs State**

**Date of Judgment: 12.12.2019**

Indian Penal Code, 1860, section 376 & 417 –

Section 376 IPC was made rigorous only in the year 2013 vide Central Act 13 of 2013. Under the law as it stood then, consensual sex between a male and a girl of 16 and 18 years was not rape.

Appeal against conviction and sentence – Sexual intercourse on false promise to marry girl “X” – No forcible ravish – Facts and circumstances of the case do show that “X” was coaxed into submitting herself to the wishes of the appellant on the promise of marriage – “X” must have been between 16 and 18 years – Consensual sex between a male and a girl of 16 to 18 years was not rape – Both of them were from the same village and “X” would not have anticipated that there would be hurdles for their marriage – Offence under Section 376 IPC cannot be sustained – Sufficient materials available to sustain the conviction of the appellant of the offence under Section 417 IPC for having deflowered “X” on the promise of marrying her and thereafter, refusing – Conviction and sentence under s. 376 IPC set aside and under section 417 IPC reduced from one year to six months rigorous imprisonment – Appeal partly allowed.

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**2020 (1) TNLJ 39 (Criminal)**

**Krishnamoorthy and another Vs A.Tamilarasu**

**Date of Judgment: 17.12.2019**

Indian Penal Code, 1860, Section 153-A, 500, 501(b), 502(b), 504 & 505 – Defamation – Publication of false article in a newspaper – Petition to quash the proceedings – Constitutional freedom of speech and expression is not absolute and is always subjected to reasonable restriction and there is always a presumption in favour of the accused in such cases – No mala fide intention can be attributed to the petitioners and the entire article does not cast aspersions on the respondent / complainant and his community – Entire proceedings to be quashed – Petition allowed.

1995 CRI.L.J. 277 in which it has been held thus:

As per section 199 Cr.P.C, a complaint for defamation complaint can be filed only by an aggrieved person -“Section 199 Cr.P.C. is mandatory. If a Magistrate take cognizance of offence of defamation on a complaint filed by one other than the aggrieved person, the trial and conviction will be void and illegal (See AIR 1972 SC 2609) : (1973 Cri LJ 52).

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**2020 (2) TNLJ 51 (Criminal)**

**State by Inspector of Police, Manamadurai, Sivagangai District Vs M.Kaviarasan and others**

**Date of Judgment: 03.01.2020**

Criminal Procedure Code, 1973, Section 439 (2) – Cancellation of bail – Rape and circulating nude photos in social media by accused persons – Offence under Sections 342, 354(c), 366(A), 376(2), 509 IPC & Sections 6, 12, 14(1) of POCSO Act and Section 67(A) and (B) of Information Technology Act – Bail application of A.1 dismissed, but granted to other accused on the ground that they were in custody for more than a month and investigation reached a substantial stage – Contented that accused were granted bail by the Court below and respondents had not come under adverse notice or the prosecution – Case of A-2 to A-4 stands in the same footing as that of A-1 – All the four accused blackmailed the victim and had sexual relationship with her by turns – Absolutely no justification in treating A-2 to A-4 on a different footing – Court below had not taken into consideration the fact that the victim is a minor – Supreme Court has made a distinction between cancelling the bail granted by the Court below, on the ground that the bail conditions have been breached on the one hand and those cases where the bail ought not to have been granted on the other – Case comes under second category – Bail cancelled.

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**2020 (1) L.W. (CrL) 1**

**M/s VGN Developers P Ltd., and another Vs The Deputy Director, Directorate of Enforcement**

**Date of Judgment: 04.10.2019**

Prevention of Money Laundering Act (2002), Section 2(m) ‘proceeds of crime’, Section 24, Burden of proof, Section 45(1).

Petitioners contend that once the predicated offence itself was closed by the order of the Court, pending proceedings has to be quashed.

“Held that under Section 24 – Burden of proof is on a person charged with an offence of money laundering – Investigation by the Central Bureau of Investigation and the respondent are different – It cannot be stated that a mere closure by the Central Bureau of Investigation would provide a death knell to the proceedings of the respondent. It is well open to the respondent to investigate and proceed further when an offence is made out under the provisions of Prevention of Money Laundering Act, 2002.

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**2020 (1) L.W. (Crl.) 11**

**K.Pazhani and others Vs State and others**

**Date of Judgment: 05.12.2019**

**A) Prevention of Corruption Act, (1988), Sections 7, 13(1)(d), (2).**

Corruption – Demand and receipt – Survey of lands – Demand by village administrative officer and village assistant – Phenolphthalein test – Whether proper.

Held :- When receipt of money is not disputed and stand established through evidence contradiction of evidence on the phenolphthalein test is of no importance.

**B) When the minimum sentence prescribed for the offence is One Year Court below awarded a sentence of six months imprisonment together with fine. Whether can be enhanced even without appeal**

Held :- Yes. No reason by the court below to award a lesser sentence than the one prescribed under the statute – No appeal is required to be filed by respondents seeking enhancement.

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**2020 (1) L.W. (Crl.) 95**

**Udhyanithi Vs State**

**Date of Judgment: 12.11.2019**

Criminal Procedure Code, Section 164, Protection of Children from Sexual Offences (POCSO) Act Section 4, 5(m) Evidence Act

Accused committed sexually assault on a girl aged 4 years. Mother turned hostile. Prosecutor has omitted to mark the 164 CRPC statement given by the mother of the victim

Held :- A statement given under section 164 by mother of victim girl can only be used to contradict or/and corroborate substantive piece of evidence – Even a 164 statement must be proved. The Object of recording of 164 statement is to use it to deter the witness from changing his version later Credibility of the witness could be impeached under section 155(3) and section 145. If the witness denies 164 statement, it is the duty of the prosecutor to put suggestions by showing the statement and by asking whether it was he or she who gave the statement also signed the same otherwise 164 statement cannot be relied upon .

In this case there is sufficient evidence on record and hence held that Presumption under section 29 starts from the date when prosecution for offence under section 5(m) commenced – the appellant having failed to discharge the burden is liable to convicted - conviction confirmed but sentence modified.

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**2020 (1) L.W. (CrL.) 108**

**Sam Asir Ayyavoo and another Vs State**

**Date of Judgment: 29.11.2019**

**The allegation is that to settle share in the business accused exerted threat and used abusive language through phone calls –Whether it will attract section 294(b) IPC and section 506(ii) IPC**

Held :- To constitute offence under section 294(b) – obscene acts or words must be done or uttered at or near any public place – If the same is not done at or near any public place, the fundamental requirement not satisfied – In a personal dispute between two parties – mere oral threat without anything more does not constitute criminal intimidation.

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**2020 (1) L.W. (CrL.) 112**

**S.Ariharan Vs State and another**

**Date of Judgment: 26.11.2019**

Scheduled Castes and the Schedules Tribes (Prevention of Atrocities Act) (1989), Section 15, Section 18, 18A/Central Act (No.27 of 2018).

**A) What is the duty of the I.O. and public prosecutor regarding service of notice on the pro complainant**

**Held** :- When an accused in a case under the Atrocities Act takes out an application for grant of anticipatory bail, he has to necessarily implead the victim/dependant/defacto complainant. It shall be the duty of the investigation officer to inform the defacto complainant/victim/dependant about the listing of the case. This function has to be discharged by the I.O. and public prosecutor in an expeditious manner. It is not necessary for the accused or the petitioner to serve the papers on the victim or effect notice in any other mode.

**B) Whether Anticipatory bail can be granted in a case committed against Scheduled Caste and Scheduled Tribe**

Held -Regarding anticipatory bail section 438 is not the sole repository of the power to grant anticipatory bail – High Courts are endowed with inherent powers to make such orders as to secure the ends of justice — Petitions can be filed under Article 226 of the Constitution of India or under section 482 Cr.P.C.

As the complaint appears to be false and belated and intended to counter the disciplinary action taken against the complainant held that the accused are entitled to get anticipatory bail.

However it is reiterated that only the High Court can grant the relief of anticipatory bail and not the sessions courts – In view of section 18 A, section 438 of Cr.P.C. Stands excluded in cases arising under the Atrocities Act.

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**2020 (1) L.W. (CrL) 147**

**Kumaresan Vs State Rep. by Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Chennai**

**Date of Judgment: 17.10.2019**

Criminal Procedure Code, Section 311-A, Section 120B I.P.C Prevention of Corruption Act (1988), Sections 7, 8, 9, 13(2) r/w 13(1)(a) and (d).

**Whether JM has power to order the accused to give voice sample?**

Inspector of police CBI filed a petition to direct the petitioners to give specimen voice and its is challenged

Held :- that the magistrate has the power to order a person to give a sample of his voice for the purpose of investigation of a crime – Respondent to ensure that the text, which petitioners would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text.

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**2020 (1) L.W. (CrL) 150**

**Lakshmi Nursing Home Vs State and another**

**Date of Judgment: 28.11.2019**

**Offence under Section 304-A, IPC :- Condition precedent for investigation into Criminal negligence of the Doctor is emphasized**

During blood transfusion the victim died. Complaint filed against the petitioner alleging that he committed criminal negligence by using contaminated blood during blood transfusion – Investigating officer before proceeding against the doctor or a hospital will have to necessarily obtain an independent and competent medical opinion from doctors in Government service – opinion of the doctor should also satisfy the Bolam test. Investigation officer has not followed mandatory requirement – complaint given after nearly two years from the date of incident – FIR quashed.

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**2020 (1) L.W. (CrL) 156**

**M.Murugammal Vs State**

**Date of Judgment: 21.11.2019**

Criminal Procedure Code, Sections 174, 302.

Petition filed to alter FIR under section 302 IPC instead of section 174 Cr.P.C. – Requirement under section 174 – explained.

Held, that the issue as to whether the offence could be altered under Section 174 Cr.P.c to 302 IPC. would be outcome of the Inquest Report. Therefore it is mandatory that when an officer in charge of the Police Station receives information that a person committed suicide or otherwise he shall immediately give intimation of it to the nearest Executive Magistrate empowered to hold inquest and thereafter he can proceed in the manner provided under 174 Cr.P.C. In the absence of such intimation, the further course of inquest taken by the respondent police is invalid and hence Executive Magistrate namely Revenue divisional officer, Tondiarpet, Chennai is suo motu impleaded as a party respondent to conduct an inquest.

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**2020 (1) L.W. (CrL) 158**

**Suresh Chandar Vs Inspector of Police, Ariyur Police Station, Vellore District**

**Date of Judgment: 21.08.2019**

**Criminal Procedure Code, Section 452**

**Whether stolen property converted in to Gold Jewels, golden ornaments or ingots can be returned .**

**Held:** A property not only includes its original form but also converted or exchanged at a later point of a time – Gold remains intact, only its form has been changed – It cannot be a ground to deprive the return of property to the lawful owner.

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**2020 (1) CTC 80**

**K.Rajanarayanan alias Ki.Ra Vs P.Kathiresan and another**

**Date of Judgment: 16.10.2019**

**Essential ingredients of section 504 of IPC**

The Magistrate in cases under section 504 IPC must see: (i) Whether allegations made in complaint are so absurd and on the basis of which no prudent person can reach just conclusion that there exist sufficient ground for proceeding against Accused; and (ii) Whether the proceedings are maliciously instituted with ulterior motive – Such complaints stifling fundamental right of Free Speech are abuse of process of law. Therefore caution must be exercised before taking cognizance or registering case in such matters

Intentional insult, intimidation and humiliation must be directed at individual member and not against group of members or crowd or public in general though these may comprise of SC/ST. The expression “Avan” in Tamil not insulting connotation, but indicates high degree of intimacy – Such utterance in name of caste, made in generalized terms against all and sundry and not individual specific, would not make out offence under Section 3(1) – Elementary ingredients of section 3(1)(x) of Act not present.

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