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IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

Website: www.tnsja.tn.nic.in E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE,

No.251, Scheme Road, Race Course, Coimbatore – 641 018,

Telephone No: 0422 – 2222610 / 710

E-Mail:tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI,

Alagar Koil Road, Madurai – 625 002,

Telephone No: 0452 – 2560807 / 811

E-Mail:tnsja.rc.mdu@gmail.com

INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	I
2.	Supreme Court – Criminal Cases	III
3.	High Court – Civil Cases	V
4.	High Court – Criminal Cases	VIII

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Oriental Insurance Co. Ltd. Vs Tejparas Associates & Exports Pvt. Ltd	2020 (4) CTC 616	03.10.2019	<u>Limitation Act, 1963 (36 of 1963), Sections 5 & 14 – Arbitration & Conciliation Act, 1996 (26 of 1996), Sections 34 & 37</u> – Difference between the delay in presentation of the Petition and the delay in re-presentation of the returned petition before the proper Court – Discussed.	1
2	Shivakumar and others Vs Sharanabasappa and others	2020 (4) CTC 321	24.04.2020	<u>Indian Succession Act, 1925 (39 of 1925), Section 63 – Evidence Act, 1872 (1 of 1872), Sections 68, 101 to 103 – Proof of Will Proof of Will:-</u> Held :- Party relying on Will not only have to prove the execution but also have to offer cogent and convincing explanation for the suspicious circumstances.	1
3	Guru Nanak Industries, Faridabad and others Vs Amar Singh (Dead) through L.Rs.	2020 (4) CTC 363	26.05.2020	<u>Partnership Act, 1932 (9 of 1932), Sections 37 & 48</u> – Distinction between the effect of dissolution of partnership and resignation of a Partner from the partnership – Discussed.	2
4	Kavita Kanwar Vs Pamela Mehta & others	2020 (4) CTC 429	19.05.2020	<u>Indian Succession Act 1925 Code of Civil Procedure 1908 Order 8 Rule 5(2) & 10</u> Where the genuineness of a will is in issue in a case, whether a defendant who has not filed the written statement can be allowed to participate in the trial. Held: Yes.	2

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	The Authorised Officer, Indian bank Vs D.Visalakshi and others.	2020-3-LW-498	23.09.2019	<p><u>Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (2002), Sections 14, 35, 37 General clauses act (1897), Section 17</u></p> <p>Question is whether Chief Judicial Magistrate (CJM) is competent to process the request of the secured creditor to take possession of secured asset under section 14.</p> <p>Held: An inquiry conducted under Section 14, is a sui generis inquiry – It is an administrative function regarding verification of the affidavit and documents relied upon by the parties. CJM is equally competent as CMM to deal with the application moved by the secured creditor under section 14 of the 2002 SARFAESI Act.</p>	2

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	S.Kasi Vs State, through the Inspector of Police, Madurai.	2020 (4) CTC 587	19.06.2020	<p><u>Constitution of India, Articles 21 and 22(2) – Code of Criminal Procedure, 1973 (2 of 1974), Sections 167(2) & 439 – Interpretation of Statutes –</u></p> <p>Held:- Order passed by Supreme Court dated 23.3.2020 to extend period of Limitation due to COVID -19 Pandemic is intended only for the benefit of litigants who have to take remedy in law. The Said Order cannot be construed to extend period of filing Charge-sheet by Police as contemplated under Section 167(2). Accused cannot be detained beyond the said period of 60 days or 90 days as the case may be without filing Charge-sheet.</p>	3
2	D.Devaraja Vs Owais Sabeer Hussain	2020 (3) MLJ (CrI) 211(SC)	18.06.2020	<p><u>Code of Criminal Procedure Code, 1973, Sections 197,245 and 482 -</u></p> <p>In a complaint against the public servant Whether previous sanction is necessary for taking the charge sheet in to file.</p> <p>Held, if, on face of complaint, act alleged appears to have reasonable relationship with official duty then previous sanction is necessary for taking cognizance on the complaint.</p>	3
3	Parminder Kaur @ P.P. Kaur @ Soni Vs State of Punjab	CDJ 2020 SC 624	28.07.2020	<p><u>Code of Criminal Procedure, 1973 - Mandate of Section 313 Explained:-</u></p> <p>Held:- After the prosecution closes its evidence the accused must be given an opportunity of explanation through Section 313(1) (b). Any alternate version of events or interpretation proffered by the accused must be carefully analyzed and considered by the trial Court in compliance</p>	4

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				with the mandate of Section 313(4) Cr.P.C.	
4	Somasundaram @ Somu Vs The State Rep. By The Deputy Commissioner of Police	2020 (3) MLJ (Cr1) 48 (SC)	03.06.2020	<u>Sections 109,302,347,364,365 and 387 of Indian Penal Code,1860 –</u> Complaint filed on missing of Ex-MLA- Abduction followed by murder - Presumption. Held, Where abduction followed by murder the duty will cast on the abductor to explain what happened to the victim. If he failed to do so, in appropriate cases court may presume that abductor is the murderer.	4

HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Cholamandalam MS General Insurance Co. Ltd., Vs S.Ayyannar and others	2020 (4) CTC 272	11.05.2020	<p><u>Motor Vehicles Act, 1988 (59 of 1988), Sections 166, 168 & 176 – Tamil Nadu Motor Accidents Claims Tribunal Rules, 1989, Rules 21 & 22 – Code of Civil Procedure, 1908 (5 of 1908), Order 20, Rule 6 –</u></p> <p>Whether drawing up of Decrees by Claims Tribunals and filing of Decree in Appeals against Award of Claims Tribunal are necessary? Held:- Motor Accident Claims Tribunals are not Civil Courts. Tribunal cannot pass a Decree, Hence the question of filing of decree in appeal will not arise. (Directions issued to Motor Accident claims Tribunals in the state of Tamilnadu and Puducherry)</p>	5
2	N.Maniraj Vs Union of India and others	2020 (4) CTC 542	05.08.2019	<p><u>Section 7-B of the Indian Telegraph Act, 1885 (13 of 1885)</u></p> <p>Whether Application under Section 34 of 1996 Act maintainable against award passed under Telegraph Act. Held:- Section 7-B(2) of Telegraph Act postulates that award is final. Therefore challenge to award under Section 34 of Arbitration Act is not maintainable.</p>	5
3	Amertham Vs Thannace and another	2020 (4) CTC 395	02.06.2020	<p><u>Registration Act, 1908 (16 of 1908), Section 49 – Indian Stamp Act, 1899 (2 of 1899), Section 35</u></p> <p>What is mean by collateral transaction? Held, Collateral transaction should be one, which does not create or extinguish title or interest in immovable property.</p>	6
4	Bojaraj Textile Mills Ltd., Vs Presiding Officer, EPF Appellate Tribunal, New Delhi and others	2020 (4) CTC 407	23.09.2019	<p><u>Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), Section 14-B</u></p> <p>When damages for belated remittance can be levied?" Held: Damages can be levied where delay was intentional. In</p>	6

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				cases, when there is no mens rea or actus reus, levy of damages wholly illegal and opposed to Principles of Law.	
5	S.Ilangoo Vs The Union of India and others	2020-3-LW-477	29.05.2020	<u>National Highways Act (1956), Section 9 National Highways Fee (Determination of Rates and Collection) Rules (2008)</u> What shall be the distance between two toll Plaza on the National High Way? Held: As per Rule 8(2) of the National Highways Fee (Determination of Rates and Collection) Rules (2008) In the same section of the National Highway and towards the same direction in between two toll plazas, there must be a distance of 60 kilometers.	6
6	Sethuraman and others Vs Arulsamy and others	2020-3-LW-417	05.06.2020	<u>Adverse Possession/Plea, proof, burden Evidence Act, Sections 68, 90, ancient document:-</u> On whom the burden of proof will lie? When title of property sold in court-auction is challenged. Held :- In a Court auction sale, when title of property sold in court-auction is challenged burden is on one who asserts that the judgment debtor, had title to that property when it was sold.	7
7	V.G. Santhosam and others Vs Shanthi Gnanasekaran and others	2020 (5) MLJ 198	24.02.2020	<u>Arbitration and Conciliation Act, 1996, Section 37 -</u> Code of Civil Procedure,1908, Order 1 Rule 10 – Whether Arbitrator under Arbitration & Conciliation Act 1996, is empowered to implead a party, who was not party in Arbitration Agreement. Held :- It was improper on part of Arbitrator to adjudicated civil rights of parties under General Laws. Therefore, arbitrator cannot implead a person when he is not party to arbitral agreement. In case of such order by the	7

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				arbitrator right of appeal could not be denied.	
8	A.Ibrahim Vs Executive Officer, Nandhivaram Guduvancheri Town Panchayat, Chengalpattu Taluk, Kanchipuram District	2020 (5) MLJ 83	11.11.2019	<p><u>Tamil Nadu District Municipalities Act 1920, Sections 255 and 257 and Sections 33, 34 and 35 of the Tamil Nadu Public Health Act,1939:-</u></p> <p>Held, besides the licence issued by Food Safety and Standards Authority of India (FSSAI) slaughter house establishment should also comply with the requirements mentioned under Section 33, 34 and 35 of Act 1939, to carry on slaughter house.</p>	8

HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Lakshmi Narayanan Vs Kamatchi	2020 (4) CTC 656	16.03.2020	<u>Sections 28 & 32 of Protection of Women from Domestic Violence Act, 2005 and Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2005:-</u> Complainant left the respondent in 2008. Complaint filed in 2018 Held:- For filing complaint under the Domestic Violence Act, period of limitation is one year. Hence the Complaint is barred by Limitation.	9
2	The State, Rep. by the Public Prosecutor High Court, Madras Vs. Vazhivittan & Another	2020 (3) MLJ (CrI) 140	19.03.2020	<u>Illegal Gratification – Hostile Witness – Sections 7 and 13 of Prevention of Corruption Act, 1988, :-</u> Held, even if a witness, who is crucial to the prosecution, has turned hostile, still, his evidence remains admissible and it could be taken into consideration for appreciating the entire gamut of facts placed before the Court.	9
3	Sumathi Vs State and another	2020-2-L.W. (CrI.) 131	26.02.2020	<u>Accident in a fire work factory- Under Factories Act Accused admitted the offence and paid fine. Latter prosecuted under Section 9(B)(1)(a) of Explosives Act, 1884 - will it amount to Double Jeopardy</u> Held :- If the petitioner had previously been prosecuted and punished for the same offence for which they are now being prosecuted. Article 20(2) of the Constitution will be attracted. Since, the object of punishment provided under Factories Act and Explosives Act, IPC are different it cannot be set that such prosecution will amount to Double Jeopardy.	10
4	Marimuthu Vs State Rep. by The Inspector of Police, Tirunelveli District	2020 (3) MLJ (CrI) 107	05.11.2019	<u>Indian Penal Code, 1860, Sections 300,302,304 and 342 – Murder on Sustained Provocation</u> Held, act of maintaining adultery by victim with Appellant's wife, would have been lingering in mind of the	10

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				appellant for quite some time, tormenting him continuously, which, at one point of time, erupt, made him to lose his self-control. Therefore, certainly the case will fall under Exception 1 of Section 300 on ground of “sustained provocation” - Appeal partly allowed.	
5	Lakshmanan Vs State by the Inspector of Police, Cheyyur Police Station, Kancheepuram	2020 (3) MLJ (Crl) 129	04.06.2020	<u>Section 302 of Indian penal code – Appreciation of evidence</u> when prosecution evidence is totally unacceptable ,accused cannot be convicted merely because of the reason that the FIR is filed without delay and the name of the accused found place in the FIR.	11
6	Adaikalasamy Vs State by the Inspector of Police, Thuvaarankurichi Police Station, Trichy District	2020 (3) MLJ (Crl) 118	08.01.2020	Rash and Negligent Driving – Appreciation of evidence – Indian Penal Code, 1860, Sections 279 and 304 (A) – Held:- Driving a Vehicle at high speed is not sufficient to satisfy the requirement of driver had driven the vehicle in a rash and negligent manner.	11
7	Jenifer William Vs Regional Passport Officer, Regional Passport Office, Race Course Road, Madurai and another	2020 (3) MLJ (Crl) 122	27.02.2020	<u>Section 103(b) and 12 (1)(b) of Passport Act -</u> Whether Pass port can be impounded for the failure of the applicant to disclose the pendency of FIR at the time of issuance of the passport Held:- Mere pendency of FIR cannot be construed as pendency of a criminal case. Therefore Passport can't be impounded for not disclosing the FIR in the application for the issuance of the Passport.	12
8	Chinnasamy & Others Vs The Deputy Superintendent of Police, Udumalpet.	2020 (2) LW (Crl) 1	22.06.2020	<u>Identification of prisoners Act 1920, Sections 2(a), 4, 5A</u> Held:- Non-obtaining of prior permission for taking the photographs of the accused can be termed as some “irregularity” but that will not affect the merit of the case.	12

SUPREME COURT CIVIL CASES

2020 (4) CTC 616

Oriental Insurance Co. Ltd. Vs Tejparas Associates & Exports Pvt. Ltd

Date of Judgment: 03.10.2019

Limitation Act, 1963 (36 of 1963), Sections 5 & 14 – Arbitration & Conciliation Act, 1996 (26 of 1996), Sections 34 & 37.

Petition originally filed before one Court within the period of limitation. But it was returned with a direction to be presented before appropriate Court – The Petitioner represented the same before the appropriate Court but beyond the time prescribed in the order of return - The same was dismissed as time barred. Hence this Appeal.

Held that: - There is a distinction between presentation of a petition and representation of that petition. The order of returning of the plaint is an involved process. Such an involved process indicates that, the petitioner is bona fide in prosecuting the case in some other court. Therefore, Section 14 of Limitation Act will apply and the delay could be excused for sufficient reasons.

2020 (4) CTC 321

Shivakumar and others Vs Sharanabasappa and others

Date of Judgment: 24.04.2020

Indian Succession Act, 1925 (39 of 1925), Section 63 – Evidence Act, 1872 (1 of 1872), Sections 68, 101 to 103 – Proof of Will.

a) Testator subscribed his signature on Page Nos.1, 3 & 5 of the will – But Pages 2 & 4 were not signed. whether it is a suspicious circumstances to negate a will?

b) When a court can remand a case?

Held that :-

a) Mere proof that the testator was of sound mind at the time of execution of the will and that, he signed in the presence of attestors, will not remove suspicious circumstances. Party relying on the Will not only has to prove the attestation but also has to offer cogent and convincing explanation for the suspicious circumstances shrouded in the Will. Whether circumstance is suspicious or not, depends on facts and circumstances of each case. Shaky or doubtful signature, feeble and uncertain mind of testator, unfair disposition of property, unjust exclusion of Legal Heirs more particularly the dependents, active Participation in the preparation of Will by beneficiary are few examples of suspicious circumstances. The said instances are illustrative only and not exhaustive. As for as this case is concerned there is no legal requirement that all pages should be signed. If the testator signs only at the end of Will that will be sufficient.

b) Occasion for remand would arise only when actual findings of trial Court are reversed and the Appellate Court considers that retrial is necessary. If the available evidence is sufficient enough to decide the issues Appellate Court should follow mandate of Rule 24 and shall determine the issues finally, and shall dispose the case.

2020 (4) CTC 363

Guru Nanak Industries, Faridabad and others Vs Amar Singh (Dead) through L.Rs.

Date of Judgment: 26.05.2020

Partnership Act, 1932 (9 of 1932), Sections 37 & 48 – Distinction between dissolution of partnership and resignation of a Partner from the partnership and the consequence of retirement of one partner from Partnership firm consisting of two Partners.

Partnership Firm constituted by two brothers ‘A’ & ‘S’ – S Claim that ‘A’ had resigned and had voluntarily accepted payment of Share Capital.

Held that, there is a clear distinction between ‘retirement of a Partner’ and ‘dissolution of a Partnership Firm’. On retirement of the Partner, the reconstituted firm continues and the retiring Partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act.

Partnership must have at least two Partners. Therefore, in a Partnership Firm consisting of two Partners if of one Partner retires it will amount to dissolution of Firm – Order of High Court directing dissolution of Firm and Settlement of Accounts, upheld.

2020 (4) CTC 429

Kavita Kanwar Vs Pamela Mehta and others

Date of Judgment: 19.05.2020

Indian succession Act 1925 Code of Civil Procedure 1908 Order 8 Rule 5(2) & 10

Where genuineness of a will is in issue whether a defendant who has not filed the written statement can participate in the trial.

Held: Yes. Probate court is a court of conscience. In order to get Decree even if it is ex parte decree Profounder of the will has to satisfy the conscience of the court. Therefore, the defense raised by the defendant on the suspicious circumstances as to the execution of will is admissible in evidence even if the defendant failed to file the written statement.

2020-3-LW-498

The Authorised Officer, Indian Bank Vs D.Visalakshi and others.

Date of Judgment: 23.09.2019

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (2002), Sections 14, 35, 37 General clauses act (1897), Section 17.

Question is whether Chief Judicial Magistrate (CJM) is competent to process the request of the secured creditor to take possession of secured asset under section 14.

Held: An inquiry conducted under Section 14, is a sui generis inquiry – It is an administrative function regarding verification of the affidavit and documents relied upon by the parties. It is a quasi judicial inquiry though a non-judicial process. Functions of the Chief Judicial Magistrate is equivalent to the functions of the Chief Metropolitan Magistrate. Therefore, CJM is equally competent to deal with the application moved by the secured creditor under section 14 of the 2002 Act.

SUPREME COURT CRIMINAL CASES

2020 (4) CTC 587

S.Kasi Vs State, through the Inspector of Police, Madurai.

Date of Judgment: 19.06.2020

Constitution of India, Articles 21 and 22(2) – Code of Criminal Procedure, 1973 (2 of 1974), Sections 167(2) & 439 – Interpretation of Statutes – Closure of Courts and general extension of limitation due to COVID-19 pandemic Order passed by Supreme Court dated 23.03.2020 extending limitation for filing Petitions/Applications/Suits/Appeals/all other proceedings in view of COVID-19 pandemic situation – Applicability to Default Bail.

Held, Order was for benefit of litigants, who have to take remedy in law as per applicable Statute for a right. The said Order cannot be construed to extend period of filing for Charge-sheet by Police as contemplated under Section 167(2) – Right of prosecution to file Charge-sheet even after period of 60 days/90 days is not barred – Accused cannot be detained beyond said period without filing Charge-sheet.

2020 (3) MLJ (CrI) 211(SC)

D. Devaraja Vs Owais Sabeer Hussain

Date of Judgment: 18.06.2020

Quashing of complaint – Sanction – Code of Criminal Procedure Code, 1973, Sections 197, 245 and 482.

Respondent filed private complaint against accused/Appellant/Deputy Commissioner of Police and other police officials, alleging ill-treatment and police excesses while Respondent was in police custody - Magistrate took cognizance of the private complaint, even though no previous sanction had been obtained from the Government – On application by appellant under section 482 - High Court remitted the complaint back to the Magistrate, with inter alia liberty to the accused appellant to apply for discharge-Against that order this appeal is filed.

Whether Magistrate could not have taken cognizance against appellant, in private complaint in absence of sanction under Section 197 of the Code of Criminal Procedure.

Held, if, on face of complaint, act alleged appears to have reasonable relationship with official duty then previous sanction is necessary for taking cognizance of the complaint. Where criminal proceedings was prompted by mala fides and instituted with ulterior motive, without prior sanction then power under Section 482 of the Criminal Procedure Code should be exercised to quash the proceedings, to prevent abuse of process of court.

In this case the allegation itself is ill-treatment under police custody. Therefore previous sanction is required to proceed further. Hence complaint is quashed for want of sanction and the appeal is allowed.

CDJ 2020 SC 624

Parminder Kaur @ P.P. Kaur @ Soni Vs State of Punjab

Date of Judgment: 28.07.2020

Mandate of Section 313 Code of Criminal Procedure, 1973 and section 506 Indian penal code -

Held: - After the prosecution closes its evidence the accused is given an opportunity of explanation through Section 313(1) (b). Any alternate version of events or interpretation proffered by the accused must be carefully analyzed and considered by the trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defense could endanger the conviction itself.

For successful conviction under Section 506 of IPC mere utterances of words by the accused is not sufficient. It must be proved that with intent to cause alarm or to compel doing/abstaining from some act, the accused gave the threat the complainant.

2020 (3) MLJ (Crl) 48 (SC)

Somasundaram @ Somu Vs The State Rep. by The Deputy Commissioner of Police

Date of Judgment: 03.06.2020

Indian Penal Code, 1860, Sections 109,302,347,364,365 and 387 – Complaint filed on missing of Ex-MLA –Abduction followed by murder - Trial court convicted Appellants for abduction and murder. Hence appealed.

Held, where abduction followed by murder the duty is cast on the abductor to explain what happen to the victim. If he failed to do so, in appropriate cases court may presume that abductor is the murderer.

HIGH COURT CIVIL CASES

2020 (4) CTC 272

Cholamandalam MS General Insurance Co. Ltd., Vs S.Ayyannar and others

Date of Judgment: 11.05.2020

Motor Vehicles Act, 1988 (59 of 1988), Sections 166, 168 & 176 – Tamil Nadu Motor Accidents Claims Tribunal Rules, 1989, Rules 21 & 22 – Code of Civil Procedure, 1908 (5 of 1908), Order 20, Rule 6

Whether drawing up of Decrees by Claims Tribunals and filing of Decree in Appeals against Award of Claims Tribunal are necessary?

Held :- Motor Accident Claims Tribunals are not Civil Courts. Tribunal cannot pass a Decree, which is power conferred on Civil Court.

Accordingly, following directions issued:

- (a) Drafting Decrees for awards passed in Motor Accident cases, by Claims Tribunal and at Appellate level, to cease forthwith;
- (b) Free copies of Award to be delivered to parties;
- (c) Copy of award, duly authenticated by Presiding Officer of Tribunal, will suffice for purposes of Appeal under Section 173 of Act and Rule 23(2) of Rules, High Court Registry not to insist on filing separate certified copies;
- (d) Relevant details for execution of award to be mandatorily incorporated into all awards passed by Motor Accident Claims Tribunals in State.

The above Directions will equally apply to Claims Tribunal in Union Territory of Puducherry and Appeals arising there from.

2020 (4) CTC 542

N.Maniraj Vs Union of India and others

Date of Judgment: 05.08.2019

Indian Telegraph Act, 1885 (13 of 1885), Section 7-B – Arbitration and Conciliation Act, 1996 (26 of 1996), Sections 2(4) & 2(5) – Arbitration Act, 1940 (10 of 1940), Sections 46 & 47:-

Whether Application under Section 34 of 1996 Act maintainable against award passed under Telegraph Act.

Held: - Arbitration Act, 1996 would apply to every Arbitration, even if it is Arbitration under any other enactment in force. If provisions of Arbitration inconsistent with other enactment then other enactment would apply. Section 7-B(2) of Telegraph Act postulates that award is final. Therefore challenge to award under Section 34 of Arbitration Act not maintainable.

For every wrong law provides a remedy. Therefore on the basis of the Legal Maims – Ubi jus ibi remedium the Award of Arbitrator under Indian Telegraph Act can be subjected to Judicial Review by invoking Article 226 – Ratio laid down in M.L.Jaggi and Saji Geevarghese followed.

2020 (4) CTC 395

Amertham Vs Thannace and another

Date of Judgment: 02.06.2020

Registration Act, 1908 (16 of 1908), Section 49 – Indian Stamp Act, 1899 (2 of 1899), Section 35 – Plaintiff claimed adverse possession and marked unstamped unregistered sale deed to prove possession.

Whether unstamped and unregistered sale deed is admissible in evidence for collateral purpose in a suit for declaration of title.

Held, Collateral transaction should be one, which does not create or extinguish title or interest in immovable property. As plaintiff claims title and the suit itself is filed for declaration of title unregistered sale deed cannot be admitted in evidence – Trial Court right in holding that document is inadmissible in evidence for want of stamp duty and registration – Civil Revision Petition dismissed.

2020 (4) CTC 407

Bojaraj Textile Mills Ltd., Vs Presiding Officer, EPF Appellate Tribunal, New Delhi and others

Date of Judgment: 23.09.2019

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), Section 14-B – Petitioner carrying on business of textiles, suffered financial losses and paid EPF contribution in installments after obtaining due permission from Court – For belated remittance damages to the tune of Rs.59.38 lakhs levied upon petitioner.

The question involved is “When damages for belated remittance can be levied?”

Held that, damages can be levied where delay was intentional. In cases, when there is no mens rea or actus reus, levy of damages wholly illegal and opposed to Principles of Law.

In this case petitioner, genuinely facing financial difficulty and he did not deliberately cause delay in payment of contribution. Therefore, the order of R1, levying penalty on the petitioner is set aside.

2020-3-LW-477

S.Hangoo Vs The Union of India & others

Date of Judgment: 29.05.2020

National Highways Act (1956), Section 9 National Highways Fee (Determination of Rates and Collection) Rules (2008)

Whether respondents can have toll plaza at Shenbagampettai when there is one toll plaza in Lembalakudi as in between these two places, it is only 23 kilometers and will it be justifiable or violating provision under rule 8(2).

Held: Rule 8(2) is clear that in same section of the National Highway and towards the same direction in between two toll plazas, there must be a distance of 60 kilometers, within which, no further or other toll plaza can be established.

Therefore, it is held that retaining of two toll plazas at Lembalakudi and at Shenbagampettai within distance of 23 Kilometres in very same NB 36 and in the same Highways section and direction is violative of rule 8(2).

2020-3-LW-417

Sethuraman and others Vs Arulsamy and others

Date of Judgment: 05.06.2020

Adverse Possession/Plea, proof, burden Evidence act, Sections 68, 90, ancient document:-
Court auction sale – when title of property sold in court-auction is challenged on whom the burden of proof will lie?

Held :- In a Court auction sale, when title of property sold in court-auction is challenged burden is on one who asserts that the judgment debtor, had title to that property when it was sold – If the defendants intends to supersede the title of plaintiff on grounds of possession, they ought to have pleaded and proved adverse possession.

2020 (5) MLJ 198

V.G. Santhosam and Others Vs Shanthi Gnanasekaran and Others

Date of Judgment: 24.02.2020

A) Alternative Dispute Resolution - Arbitration - Impleadment petition - Arbitration and Conciliation Act, 1996, Section 37.

Code of Civil Procedure, 1908, Order 1 Rule 10.

1st Respondent was not party to arbitration agreement nor signatory in Partnership Deed or any dispute relating to civil rights were subjected to arbitral adjudication –1st Respondent for past many years had not raised dispute regarding reconstitutions of Partnership Deeds between partners. Arbitrator allowed impleadment petitions filed by 1st Respondent in arbitration claims, hence these appeals.

Whether Arbitrator under Act empowered to implead party, who was not party in Arbitration Agreement, with reference to dispute raised between parties through contract.

Held – 1st Respondent was neither partner nor right flows from and out of Partnership Deed. Impleading petition relating to law of Inheritance and arbitration proceedings was not forum adjudication of such civil rights. It was improper on part of Arbitrator to adjudicate civil rights of parties under General Laws. Arbitrator exercised excess jurisdiction beyond scope of Act and Impleading petition to be rejected as not maintainable.

It has been further held that, once impleadment was allowed, then right of appeal could not be denied.

2020 (5) MLJ 83

**A.Ibrahim Vs. Executive Officer, Nandhivaram Guduvancheri Town Panchayat,
Chengalpattu Taluk, Kanchipuram District**

Date of Judgment: 11.11.2019

Tamil Nadu District Municipalities Act 1920, Sections 255 and 257 and Sections 33, 34 and 35 of the Tamil Nadu Public Health Act, 1939:-

Respondent/Executive Officer ordered to close shop. Petition filed on the ground that petitioner holds valid license to run meat stall and the order of 1st Respondent/Executive Officer to close shop is arbitrary and contrary to law.

Whether order of 1st respondent to close shop of petitioner, sustainable.

Held, besides the licence issued by Food Safety and Standards Authority of India (FSSAI) petitioner establishment of slaughter house should also comply with the requirements mentioned under Section 33, 34 and 35 of Act 1939 to carry on the slaughter house. Till date petitioner has not obtained license from local authority. Therefore, there is no illegality in the impugned order.

HIGH COURT CRIMINAL CASES

2020 (4) CTC 656

Lakshmi Narayanan Vs Kamatchi

Date of Judgment: 16.03.2020

Protection of Women from Domestic Violence Act, 2005 (43 of 2005), Sections 28 & 32 – Protection of Women from Domestic Violence Rules, 2005, Rule 15(6).

The respondent left the Matrimonial home in the year 2008 itself, thereafter, there are so many proceedings pending against the Petitioner and the Respondent in respect to their Family disputes. Petitioner herein has been continuously paying the Maintenance to the Respondent in the maintenance case. Now Complaint filed by the wife in 2018 under D.V. Act 2005, against Petitioner and two others, claiming Maintenance.

Whether the complaint is maintainable under the Protection of Women from Domestic Violence Rules, 2005.

Held, Complaint under D.V. Act should be filed within one year from the date of the domestic violence incident – In the instant case the complainant left her husband in the year 2008 and this complaint is filed in 2018. Therefore it is barred by limitation and it is held as an abuse of process of Court – Complaint and proceedings in Domestic Violence case, quashed – Cr.O.P. allowed.

2020 (3) MLJ (Crl) 140

The State, Rep. by the Public Prosecutor High Court, Madras Vs Vazhivittan and Another

Date of Judgment: 19.03.2020

Illegal Gratification – Hostile Witness – Sections 7 and 13 of Prevention of Corruption Act, 1988.

It is alleged by PW3 / Complainant that, the Accused / Commercial Tax Officer and Assistant of Commercial Tax Department illegally demanded money for processing forms – Trial Court acquitted Accused/ Respondents for offences under sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, hence this appeal by state.

Whether the evidence of P.W.3 could be relied upon, even though he has turned hostile.

Held, even if a witness, who is crucial to the prosecution, has turned hostile, still, his evidence remains admissible and it could be taken into consideration for appreciating the entire gamut of facts placed before the Court- Charge framed against the accused is under the Prevention of Corruption Act and once the prosecution has discharged its initial presumption to show the act of the accused, the weight shifts on the shoulder of the accused to rebut the presumption. Except for stating that the case against them is a foisted one, no presumptive material has been placed before the Court to infer that the accused has, in fact, rebutted the presumption laid on his shoulder, by adducing necessary evidence. Minor contradictions / inconsistencies / discrepancies / embellishments in the evidence of the witnesses will not in any way affect the substratum of the prosecution. Judgment of trial court is not only perverse, but it suffers the vice of illegality and, therefore, the said acquittal set aside - Appeal allowed.

2020-2-L.W. (CrI.) 131

Sumathi Vs State and another

Date of Judgment: 26.02.2020

Sections 286, 337, 338, 304 (A) of Indian Penal Code and Section 9(B)(1)(a) of Explosives Act, 1884.

Petitioner previously prosecuted U/s 41, Rule 61D&Section 38(3) rule 61(9) (f)(i)(s), Section 87 rule 95 Schedule XXIV item 3(f) of Factories Act before the court of the Additional Chief Judicial Magistrate Madurai. He admitted the offence and paid fine. Again for the very same offence prosecuted under Sections 286, 337, 338, 304 (A) of Indian Penal Code and Section 9(B)(1)(a) of Explosives Act, 1884.

Whether it will amount to Double Jeopardy?

Held: Article 20(2) talks about “same offence”. Therefore what has to be seen is that whether the petitioner had previously been prosecuted and punished for the same offence for which they are now being prosecuted. If the answer is in the affirmative, the protection guaranteed under Article 20(2) of the Constitution will be attracted.

IPC and Factories Act operates in different field .In short the object of imposing punishment in both cases is different. Taking Judicial notice of recurring accidents in factories manufacturing crackers and fireworks this court feels that unless penal responsibility is fastened on the persons in charge of the establishments, there will not be any deterrence and we will continue to be lax in the matter of adhering to safety norms.

Therefore held that the petitioner's herein cannot claim that having paid a fine amount of Rs.2.50 lakhs, she must be exempted from facing the impugned criminal prosecution under the penal code.

2020 (3) MLJ (CrI) 107

Marimuthu Vs State Rep. by The Inspector of Police, Tirunelveli District

Date of Judgment: 05.11.2019

Murder – Sustained Provocation – Indian Penal Code, 1860, Sections 300,302,304 and 342 –Appellant convicted by Trial Court for murder of deceased/ victim for hitting victim with grinding stone, hence this appeal.

Whether case fell under category of culpable homicide not amounting to murder, punishable under section 304.

Held, act of maintaining adultery by victim with Appellant’s wife, would have been lingering in mind of Appellant for quite sometime, tormenting him continuously, which, at one point of time, erupt, made him to lose his self-control, causing of death of victim by attacking him with grinding stone. Appellant had not voluntarily provoked himself and there were incidents/occurrences, .Facts of present case fell under Exception 1 of Section 300 on ground of “sustained provocation” and it was culpable homicide not amounting to murder – Conviction and sentence passed by trial Court modified in respect of section 304 (i) – Conviction and sentence under Section 342 sustained –Appeal partly allowed.

2020 (3) MLJ (Cr) 129

Lakshmanan Vs State by the Inspector of Police, Cheyyur Police Station, Kancheepuram

Date of Judgment: 04.06.2020

Section 302 of Indian penal code – Appreciations of evidence:-

PW1 and 2 gave evidence that they saw the occurrence from a distance of 300 meters. Considering the argument of the prosecution side that FIR registered without any loss of time and the name of the accused were mentioned in the FIR, court has believed the evidence of PW1 and 2 and has convicted the accused. Hence this appeal is filed.

Held: The possibility of seeing a person from a distance of 300 meters itself is quite difficult notwithstanding the fact that there are no objects that would hinder the viewing. From a distance of 300 meters, even if a person raises an alarm, that too in an open field, the chances of hearing such alarm can neither be audible nor can be heard clearly at. PWs 1 and 2 have only stated that the family of the accused and their family are not in talking terms. It is grossly insufficient to hold that due to past motive, the occurrence had taken place. Though name of the accused has been clearly mentioned in the FIR naming the accused in the first information report may not be sufficient to hold the accused guilty of the charges especially prosecution evidence is totally unacceptable. Therefore, the case of the prosecution has to fall to ground.

2020 (3) MLJ (Cr) 118

Adaikalasamy Vs State by the Inspector of Police, Thuvaarankurichi Police Station,

Trichy District

Date of Judgment: 08.01.2020

Rash and Negligent Driving – Appreciation of evidence – Indian Penal Code, 1860, Sections 279 and 304 (A) PW2 to PW4 cited as eye witnesses to the case deposed in their evidence that driver of vehicle drove his vehicle in speedy manner- Trial Courts convicted the Petitioner/accused under sections 279 and 304 (A) for driving vehicle rashly and negligently and causing death of victim. Hence this revision.

Held:- PW1 had not stated that accused drove vehicle in rash and negligent manner. PW2 to PW4 though stated in their evidence that driver of vehicle drove his vehicle in speedy manner, they had not stated that driver of vehicle drove his vehicle in rash and negligent manner. Driving vehicle at high speed would not satisfy the requirement of driver driving the vehicle in a rash and negligent manner.

In the absence of any material as to rash and negligent driving, no presumption of rashness or negligence could be drawn by invoking the maxim Res Ipsa Loquitur. Therefore the impugned judgment of conviction and sentence is set aside and the Petitioner is acquitted and the revision is allowed.

2020 (3) MLJ (Crl) 122

**Jenifer William Vs Regional Passport Officer, Regional Passport Office, Race Course Road,
Madurai and another**

Date of Judgment: 27.02.2020

Section 103(b) and 12 (1)(b) of Passport Act - Passport issued during the pendency of FIR Whether such pass port can be impounded.

When the petitioner was about to travel abroad through Trivandrum Air port he was stopped and his passport was seized - Show cause notice issued to the petitioner u/s 103(b) and 12 (1)(b) for impounding passport for suppression of pendency of criminal case -Hence this petition is filed for direction to 1st Respondent /Regional Passport Officer to return passport to Petitioner.

Whether this Court could direct 1st Respondent to return passport to Petitioner.

Held, Mere pendency of FIR cannot be construed as pendency of a criminal case and it cannot be said that the petitioner has suppressed the material fact of pendency of the criminal case. At time of application for passport, Petitioner was not aware of pendency of First information Report. Final Report had been filed only after issuance of passport. Except mentioning the name Petitioner in final report, no specific allegation was made against him in any of cases. Petitioner was prepared to give undertaking in writing to passport issuing authorities or Court concerned regarding details of employment and his stay abroad. Therefore Petitioner could not be prevented from going abroad and passport could not be withheld/ impounded by 1st Respondent on account of pendency of cases. 1st Respondent is directed to return Passport issued to Petitioner after obtaining affidavit of undertaking from Petitioner – Petition disposed of.

2020 (2) LW (Crl) 1

Chinnasamy and Others Vs The Deputy Superintendent of Police, Udumalpet

Date of Judgment: 22.06.2020

Identification of prisoners Act 1920, Sections 2(a), 4, 5A, Udumalpet, Murder, Conspiracy, honour killing – Appeal - Trial court convicted A1, A4 to A8, granted death sentence – Appeal by sate against acquittal of others.

Whether illegality by the Investigating officer in the form of taking photographs of the accused without prior permission of the Court is fatal to the prosecution?

Held :- Non-obtaining of prior permission for taking the photographs of the accused can be termed as some “irregularity” but that will not affect the merit of the case.

In every trial there is bound to be some violations. Unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. Any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case.
