



# TAMIL NADU STATE JUDICIAL ACADEMY

Vol:XV

Part: 5

May, 2020

## 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](http://www.tnsja.tn.nic.in) E-Mail: [tnsja.tn@nic.in](mailto:tnsja.tn@nic.in)/[tnsja.tn@gmail.com](mailto: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](mailto: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](mailto:tnsja.rc.mdu@gmail.com)

# INDEX

<b>S. No.</b>	<b>IMPORTANT CASE LAW</b>	<b>PAGE No.</b>
1.	Supreme Court – Civil Cases	II
2.	Supreme Court – Criminal Cases	IV
3.	High Court – Civil Cases	VI
4.	High Court – Criminal Cases	IX

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Taj Mahal Hotel Vs United India Insurance Co. Ltd. and Ors	2020 (3) CTC 353	14.11.2019	<b><u>Section 151 and 152 of Contract Act 1872, -Liability of hotel owner for loss of guest vehicle:-</u></b> Vehicle given to the employee of the Hotel Management for valet parking found stolen. As per Law of bailment, Bailee is liable if goods are lost or damaged while in his possession. Only when the Hotel Management is able to prove that it has exercised reasonable degree of care in respect of the bailed goods it can escape from the liability.	1
2	Ramkhilladi and Ors Vs The United India Insurance Company and Ors	2020 (1) CTC 443	07.01.2020	<b><u>Section 163A of the MV Act.</u></b> Owner/ his legal representatives/ Borrower from owner, cannot maintain a claim Under Section 163A of the M.V. Act.	2
3	Bank of Baroda Vs Kotak Mahindra Bank Ltd.	2020 (4) MLJ 171	17.03.2020	<b><u>Execution of Foreign decree - &amp; Limitation - Sections 13, 44A, 47 and Order 21 Rule 11 (2) of CPC &amp; Articles 136 and 137 Limitation Act, 1963.</u></b> The limitation period for executing a decree passed by a foreign court in India would be the limitation prescribed in the reciprocating foreign country. However, the maximum period will be subject to Indian Limitation Act (3 Years in this case as per Article 137 of Indian Limitation Act).	2
4	Poona Ram Vs Moti Ram (D) Thro' Lrs. & ors	2020 (2) LW 873	29.01.2019	<b><u>Limitation Act 1963 – Section 64 suit for possession of immovable property -When possessory title can be claimed.</u></b> A person who asserts possessory title will have to show that he is under settled or established	3

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				possession - To claim settled possession the possession must be (i) effective, (ii) undisturbed, and (iii) to knowledge of owner or without any attempt or concealment by trespasser - Stray or intermittent acts of trespass will not give rise to possessory right against true owner.	
5	Mohammad Yusuf and Ors Vs Rajkumar and Ors.	2020 (3) CTC 345	05.02.2020	<b><u>Section 17 (1)(b) &amp; Section 17 (2)(vi) of Registration Act and section 43 of Indian Evidence Act:-</u></b> When the Property is the subject matter of the suit then compromise entered in that suit need not require Registration. But if the compromise is entered in respect of immovable property, which is not a subject matter of the suit, then it should be compulsorily registered.	4
6	N.V.International Vs State of Assam and ors.	2020 (3) CTC 510	06.12.2019	<b><u>Limitation Act, 1963 (36 of 1963) Section 5, Article 116 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 37:-</u></b> Time limit prescribed under section 34 will apply for filing an appeal under Section 37 and the maximum time limit for filing such appeal is 120 days only. It will include the delay due to sufficient cause.	4
7	Reliance Life Insurance Co Ltd & Anr vs. Rekhaben Nareshbhai Rathod	2020 (2) LW 929	24.04.2019	<b><u>Insurance Act (1932), Section 45- Insurance Regulatory and Development Authority (Protection of Policy holders' Interests) Regulations (2002), Regulation 2(d)</u></b> As per Item 17 of the “Proposal Form”, at the time of taking the policy the insured is required to submit a detailed disclosure of any other insurance policies held by the proposer including the sum assured. Failure if any, will entitle the insurer to repudiate the claim under the policy.	5

## ***SUPREME COURT - CRIMINAL CASES***

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Station House Officer, CBI/ACB/Bangalore Vs B.A.Srinivasan and Ors.	2020 (2) MLJ (CrI) 254	05.12.2019	<b><u>Section 19 (1) of Prevention of corruption Act :-</u></b> No sanction is necessary under section 19(1) in case where the accused ceased to be a Public servant at the time the court was asked to take cognizance. Therefore, the Protection from prosecution would not be available to Public servant after he demitted the office or retired from service.	6
2	Mahipal Vs Rajesh Kumar and Ors.	(2020) 2 SCC 118	05.12.2019	<b><u>Section 439 of the Code of Criminal Procedure 1973 - Grant of bail regarding :-</u></b> Reason must be stated either for granting or refusing to grant bail. Particularly in serious offences and in cases where the trial court had earlier rejected the bail application, there will be higher burden on the appellate court to furnish specific reasons as to why bail is granted.	6-7
3	Chakarai @ Chakaravarthi Vs State	2020 (1) LW (CrI) 594	24.01.2019	<b><u>Evidence Act section 30 – Extra Judicial confession :-</u></b> Even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and to award life imprisonment to him solely based on extra-judicial confession.	7
4	P. Ramesh Vs State	2020 (1) LW (CrI) 683	09.07.2019	<b><u>Competency of child Witness section 118 of Evidence Act and section 4 of the Oaths Act, 1969:-</u></b> As per section 118 of Evidence Act, any person of any age, who is able to understand the questions put to her/him and is able give rational answers can give evidence. As per Section 4 of the Oaths Act, 1969 except child witnesses under	7

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				the age of twelve years, all other witnesses are required to take oath or affirmation.	
5	Union of India (UOI) Vs Mubarak @ Muhammed Mubarak	2020 (1) LW (CrI) 657 (SC)	07.05.2019	<p><b><u>Section 167 (2) Cr.P.C.:- pre-conditions for extension of remand period beyond 90 days and up to 180 days in the cases falling under Unlawful Activities (Prevention) Act 1967:-</u></b> For extension of remand period beyond 90 days and up to 180 days in the cases falling under Unlawful Activities (Prevention) Act 1967, the Public Prosecutor shall make a report indicating the reasons for such request and court shall record its satisfaction and shall assign the specific reason, in the order of Remand extension.</p>	8

## ***HIGH COURT - CIVIL CASES***

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.	2020 (2) LW 961	08.05.2020	<p><b><u>Arbitration and Conciliation Act 1996, Section 29 A and Section 34</u></b>            After expiry of the term fixed for completion of arbitration proceedings, the arbitrator will become functus officio and the award passed after the period fixed for completion of arbitration proceedings will become void, unless the court extends the term fixed for completion of the arbitration proceedings before passing of the award.</p>	9
2	N.S.Hameed Noohu Vs A.Abdul Rahman	2020 (3) CTC 485	25.02.2020	<p><b><u>Section 53 A of Transfer of Property Act 1882, and Section 12 of Specific Relief Act -</u></b> In the absence of registration of the agreement for sale and in the absence of recital in the agreement regarding handing over of possession in pursuant to the agreement for sale, part performance cannot be claimed. The party seeking part performance shall relinquish all other claims in respect of the contract and should have paid the entire consideration fixed for performance of the whole contract.</p>	9
3	D.Vijayalakshmi Vs V.Hariselvan and ors.	2020 (3) CTC 438	08.01.2020	<p><b><u>Section 28 of the Registration Act:-</u></b>            The extent of property however small, will give raise to jurisdiction, to register the document - It is open to the parties to enter into a bonafide transaction with a view to reduce the burden of stamp duty and such transaction cannot be termed as fraudulent - Unless it is shown that the property itself is not in existence or the conveyor did not</p>	10

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				have title to make such transfer, it cannot be said that, such registration is a fraudulent one to make entire document invalid.	
4	Arulmigu Madasamy Thirukovil Vs AKMP Pettai	2020 (3) MLJ 729	11.12.2019	<b><u>Section 63 and 108 of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.</u></b> The question that whether a person holds office as a hereditary trustee or not? is exclusively within the domain of the authority constituted under the Act. Therefore regarding such question, No Suit will lie as per section 108 of T.N. HR&CE Act.	11
5	Chennai Kumarakottam Sri Sivasubramania Swamy Sevarthigal Sangam Vs Arulmigu Kumarakottam Sri Sivasubramanian Swamy Temple	2020(3) CTC 310	28.01.2020	<b><u>Section 108A of the T.N HR&amp;CE</u></b> Against the order of Deputy Commissioner to treat to the suit property as specific endowment revision can be filed by the aggrieved person before the Government under section 140. Therefore the suit is barred by section 108A of the T.N HR&CE Act	11
6	Rajamani Vs Bank of Baroda	2020 (3) CTC 530 (DB)	13.02.2020	<b><u>Sections 17 &amp; 34 of DRT Act and Order 7, Rule 11 of – Code of Civil Procedure, 1908 (5 of 1908).</u></b> Plaintiffs and defendants are parties before DRT Proceedings. During the pendency of the DRT proceedings the plaintiff filed the suit for partition. Held the suit is specifically barred as per mandate of Section 34 of DRT Act – Therefore the suit is rejected.	11
7	Selvaraj Vs Kanagammal	2020 (3) CTC 513	17.02.2020	<b><u>Section 16 of Hindu Adoptions and Maintenance Act, 1956</u></b> As per section 16 of Hindu Adoptions and Maintenance Act, 1956, registered Adoption Deed will carry statutory presumption.	12



S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				In such case, bare denial of adoption without material evidence will not rebut the presumption.	
8	Jailani Vs. Valliammal and Ors	2020(3)CTC 540	06.02.2020	<b><u>Evidence Act section 101 to 104 – Burdon of proof :-</u></b> In a suit for ejectment based on title, the court is bound to enquire or investigate the title first before going into any other question that may arise in that suit. Further, it will be incumbent on the part of the court to record a finding on the claim of title.	12
9	Krishnamoorthy Vs Nagammal and Ors	2019(3)C TC 215	29.01.2019	<b><u>Even if there are concurrent findings, if it is perverse, then it can be interfered in the Second Appeal under section 100 of Code of Civil Procedure</u></b> If a tenant is put in possession of property, in the capacity as prospective purchaser, under an agreement for sale, with a condition that he will lose his right of specific performance if he failed to discharge his part of the contract, and despite that the plaintiff failed to perform his part of the contract, then he cannot retain the possession as a tenant and he is bound to deliver the possession to the Vendor. Concurrent finding given by trial court and the First Appellate Court is set aside and the Second Appeal is allowed.	13

## ***HIGH COURT - CRIMINAL CASES***

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Union of India and Ors Vs Rema Srinivasan Iyengar and Ors	2020 (3) CTC 281	17.02.2020	<p><b><u>Section 2, 11 and 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013,</u></b> Solitary allegation of intemperate language against the female employee does not constitute offence under the said act. At the same time, mere inability to prove the complaint, will not render it false. Malicious intention must be specifically established before recommending any disciplinary action against the complainant.</p>	14
2	Raghava. R., Partner of Dinamalar Group, Dinamalar(RF) Vs Educomp Solutions Ltd.	2020(3) CTC 527	19.03.2020	<p><b><u>Section 482- Indian Penal Code, 1860 (45 of 1860), Sections 499&amp; 500-</u></b> To attract section 499 &amp;500 of Indian Penal Code there must be an element of malice or ulterior motive on the part of the accused to cause disrepute to the reputation of the Respondent/Complainant.</p>	14
3	Magesh deodatta Gupta Vs State of Tamil Nadu	2020 (2) MLJ (Cri) 476	04.09.2019	<p><b><u>Section 228 of Criminal procedure code</u></b> Held that:- Judge cannot act merely as a Post office or a mouth-piece of the prosecution. While framing Charges the court shall consider the probabilities of the case and total effect of the evidence and the documents produced before the court and should follow the procedure laid down under section 228 Cr.P.C. The practice of just reproducing the wording in the final report should be deprecated.</p>	14

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	V.Arulmozhi vs. State of Tamil Nadu	2020 (1) LW (Cri) 510	02.01.2020	<b><u>Section 156(3), 200 of Code of Criminal Procedure :-</u></b> In the absence of prima facie case, to constitute any cognizable offence, the Judicial Magistrate should not have ordered further investigation.	15
5	Natarajan Vs State	2020 (1) LW (Cri) 514	13.12.2019	<b><u>Evidence Act Section 30 Extra Judicial Confessions :-</u></b> Extra judicial confession can be given before VAO. Such a confession can't be said to be a weak evidence. Further, when an accused pointed out, were a dead body or incriminating material was concealed, he is bound to disclose whether it was concealed by him or not. Failing which court can presume that it was concealed by the accused himself	15
6	Radha @ Radhakrishnan vs. State of Tamil Nadu	CDJ 2020 MHC 1932	06.03.2020	<b><u>Evidence Act –Hostile evidence- Effect</u></b> Though witnesses turned hostile, if their evidence in chief is corroborated by oral or documentary evidence of other witnesses, then it can be relied on to record conviction.	16
7	G. Saravanan Vs. J. Sankaranarayanan	2020 (1) TLNJ 432 (Criminal)	12.05.2020	Criminal Procedure Code, 1973, Section 427 (1) – If 2 or more Judgments are delivered on the same day and <u>if the accused is not undergoing sentence in any other case</u> – then, even if the Judgment is silent as to whether it will run concurrently or consecutively, it has to run concurrently as per the terms of Section 427 (1)CRPC	16
8	P.Parimaladevan vs. State by the Inspector of Police, CCIW CID, Vellore, Vellore District.	(2020) 2 MLJ (CrI) 324	05.11.2019	Quashing of Criminal Proceedings – Exoneration of Criminal Charges – Tamil Nadu Co – operative Societies Act, 1983, Section 156(6), 87 Where an employee of a Co-	17

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
				operative society is found liable for Supervisory lapse, it cannot be said that he is criminally liable unless such lapse is coupled with mens- rea. On the other hand if an employee has been exonerated in proceedings under Section 87 of act, it is necessarily to be implied that he had neither misappropriated nor fraudulently retained money or other property and he is not guilty of breach of trust or willful negligence.	
9	S. Santhanagopal and Ors. Vs. Respondent: Union of India and Ors.	2020 (2) LW 67	04.02.2020	<u>Section 500 and 501 IPC -</u> Merely reporting an interview in the News paper without adding anything new would not amount to defamation. In granting sanction for prosecution under section 500 and 501 IPC application of mind is the foremost necessity. Non-application of mind cannot be ruled out when the G.O. for prosecution is passed within a lightening speed of 24 hrs.	17

# **SUPREME COURT CIVIL CASES**

**2020 (3) CTC 353**

**Taj Mahal Hotel Vs United India Insurance Co. Ltd. and Ors**

**Date of Judgment: 14.11.2019**

## **Section 151 and 152 of Contract Act 1872, and liability of hotel owner for guest vehicle:-**

Vehicle given to the employee of the Hotel Management for valet parking found stolen – contented by the Hotel Management that, the service is gratuitous service and the Hotel Management is not liable.

Held that: - When custody or possession of vehicle is perfectly handed over to the Hotel Management under valet parking system then the law of bailment will apply.

As per section 151 and 152 of the Contract Act, the bailee will be liable if goods are lost or damaged while in his possession. Only when the bailee is able to prove that he has exercised reasonable degree of care in respect of the bailed goods can he escape from the liability. Thus in this case, Hotel Management is burdened with duty to provide safety against theft or damage to the guest goods and is under liability to prove that it has taken adequate safety measures to protect the guest goods.

The Hotel management may say that there is a clause in the Parking token that “valet parking at owners risk” and the service is a gratuitous one. But reasonable person could expect higher quality and safety of service from such star hotels due to high prices they charge and guest has implicate expectation that they would entitled to adequate safety of vehicles handed over for valet parking in such reputed 5 star Hotel.

The hotel Management not only have appointed security guard to attend such service but also should have taken additional measures to guard against any situation that may result in wrongful loss or damage to the car of his guest. If hotel or its servant actively connived against or acted negligently in safe guarding the vehicle delivered for valet parking then mere inclusion of the class “valet parking at owners risk” in the parking token will not come to the rescue of the hotel management.

\*\*\*\*\*

**2020 (1) CTC 443**

**Ramkhiladi and Ors Vs The United India Insurance Company and Ors.**

**Date of Judgment: 07.01.2020**

**Whether borrower of the vehicle is entitled to make a claim Under Section 163A of the MV Act.**

Held that:- Section 147 of M.V. Act, does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

Therefore owner/ his legal representatives / Borrower from owner, cannot maintain a claim Under Section 163A of M.V. Act.

However, it has been held that, the legal representatives / Borrower from the owner can step in to the shoes of the owner and can claim Rs. 1 Lakh, assured for the owner, as per the terms and conditions of the contract of insurance.

\*\*\*\*\*

**2020 (4) MLJ 171**

**Bank of Baroda Vs Kotak Mahindra Bank Ltd.**

**Date of Judgment: 17.03.2020**

Civil - Foreign decree - Execution of - Sections 13, 44A, 47 and Order 21 Rule 11 (2) of Code of Civil Procedure, 1908 and Articles 136 and 137 of Limitation Act, 1963.

The appellant Bank, filed execution petition at Additional City Civil court in terms of Section 44A read with Order 21 Rule 3 of Code nearly after fourteen years from the date of the foreign decree -EP court dismissed the EP as time barred – Aggrieved by it then, bank approached the High Court and the High court also upheld the view of the trial court - Hence, the present appeal -

While dismissing the appeal the Apex court has summarized that

(i) Section 44A of Code is only an enabling provision which enables the District Court to execute the decree as if the decree had been passed by an Indian court and it does not deal with the period of limitation.

(ii) The limitation period for executing a decree passed by a foreign court (from reciprocating country) in India would be the limitation prescribed in the reciprocating foreign country. Obviously this would be subject to the decree being executable in terms of Section 13 of the Code of Civil Procedure.

(iii) A party filing a petition for execution of a foreign decree must also necessarily file a written application in terms of Order 21 Rule 11 Clause (2) and without such an application it would be impossible for the Court to execute the decree. The application for executing a foreign

decree would be covered under Article 137 of the Limitation Act and the applicable limitation would be three years.

(iv) The period of limitation would start running from the date the decree was passed in the foreign court of a reciprocating country. However, if the decree holder first takes steps-in-aid to execute the decree in the cause country, and the decree was not fully satisfied, then he could then file a petition for execution in India within a period of three years from the finalization of the execution proceedings in the cause country.

\*\*\*\*\*

**2020 (2) LW 873**

**Poona Ram Vs Motiram (D) Th. Lrs. & ors**

**Date of Judgment: 29.01.2019**

Limitation Act 1963 – Section 64 suit for possession of immovable property -When possessory title can be claimed.

In a Suit for declaration of title and for possession, the plaintiff shall establish his possession of the suit property. Further in order to claim possessory title, the Plaintiff not only will have to prove his own case, but he also has to show that he has better title than any other person.

A person can be said to be in settled possession, if he is in possession over property for a sufficiently long period of time to the acquiescence of true owner. Stray or intermittent acts of trespass will not give rise to such a right against true owner. As such, occupation of a property by a person as an agent or a servant acting at instance of owner would not amount to actual legal possession. To claim settled possession, the possession should contain an element of animus possidendi. A casual act of possession will not have the effect of interrupting the possession of the rightful owner and it will not mature into settled possession.

Stray possession could be obstructed or removed by the true owner even by using necessary force.

In a nutshell, to claim settled possession, the possession must be (i) effective, (ii) undisturbed, and (iii) to knowledge of owner or without any attempt at concealment by trespasser.

\*\*\*\*\*

**2020 3 CTC 345**

**Mohammade Yusuf and Ors Vs Rajkumar and Ors.**

**Date of Judgment: 05.02.2020**

**Section 17 (1)(b) & Section 17 (2)(vi) of Registration Act and section 43 of Indian Evidence Act :-**

A copy of the decree passed in earlier suit was sought to be marked as a document in the subsequent suit and such request was turned down by the trial court on the ground that, it is unregistered and can't be admitted in evidence.

The question arose is "Whether compromise decree was required to be registered under Section 17 of Registration Act".

Held that: By virtue of Sub-section (2)(vi) of Section 17, any decree or order of a Court does not require registration. But on conjoint reading of Section 17(1)(b) and Section 17(2)(vi), it is clear that, a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration.

In this case as the decree passed in earlier suit was subject matter of the earlier suit the compromise decree in question did not require registration, Therefore, the orders of the courts below are set-aside. The compromise decree was directed to be exhibited by the trial court.

\*\*\*\*\*

**2020 (3) CTC 510**

**N. V. International Vs State of Assam**

**Date of Judgment: 06.12.2019**

Limitation Act, 1963 (36 of 1963) Section 5, Article 116 – Arbitration and Conciliation Act, 1996 (26 of 1996), Section 37- Appeal filed with Delay of 189 days. Appellant contended that Unlike Section 34, Section 37 does not exclude Section 5 of the Limitation Act and the delay condonation application filed under section 5 of the Limitation Act, is maintainable

Held that:- Appeal Proceeding is continuation of Original proceedings . Therefore, the maximum limitation period envisaged under section 34 of Arbitration Act will apply to Appellate proceedings also.

For filing an appeal, under Section 37, against the order of, either allowing or dismissing an application filed under section 34, the period of limitation is 90 days. However, for sufficient cause court can condone the delay in filing appeal up to 30 days **and not thereafter.** Therefore the maximum limit for filing such appeal is 120 days only. Decision in Lachmeswar prasad shukul and other vs Keshwar Lal chaudhuri and others reported in AIR 1941 Federal Court Page 5 is followed.

\*\*\*\*\*



**2020 (2) LW 929**

**Reliance Life Insurance Co Ltd & Anr vs. Rekhaben Nareshbhai Rathod**

**Date of Judgment : 24.04.2019**

Insurance act (1932), Section 45- Insurance Regulatory and Development Authority (Protection of Policy holders' Interests) Regulations (2002), Regulation 2(d)

Insurance company repudiated the claim of the insured on the ground that there was a non-disclosure of prior insurance cover in the proposal form which is a material fact and ought to have been disclosed by the insured.

Held that: The fundamental principle is that insurance is governed by the doctrine of uberrimae fidei. As per Item 17 of the proposal form, at the time of taking the policy, the insured is required to submit detailed disclosure of, any other insurance policies held by the proposer including the sum assured. In this case two months before the contract of insurance entered into with the insurance company, the insured had obtained another insurance cover for his life. Failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

\*\*\*\*\*

# **SUPREME COURT CRIMINAL CASES**

**2020 (2) MLJ (CrI) 254**

**Station House Officer, CBI/ACB/Bangalore Vs B.A. Srinivasan and Ors.**

**Date of Judgment: 05.12.2019**

**Section 197, 227 and 239 of Cr.P.C. and section 13 and 19 of Prevention of corruption Act 1988**

FIR filed against the accused under sections 419, 420, 467, 468, 471 read with Section 120B of the Indian Penal Code, 1860 and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988- Discharge petition filed by the 1<sup>st</sup> respondent challenging the issue of sanction to prosecute - Petition dismissed by the trial court - But allowed by the High Court observing that Protection from prosecution will subsist for the Public servant even after his retirement.

Question arose as to “Whether previous sanction is required to proceed against a public servant under the Prevention of corruption Act even after his retirement?”

**Held that:-**

Protection under section 197 will be available in respect the offence said to have been committed, while a public servant is acting or purporting to act in discharge of the official capacity. But where such act is performed using the office as a mere clog for unlawful gain then such acts are not protected.

Further, it has been held that no sanction is necessary under section 19(1) in case where the accused is ceased to be a Public servant at the time the court was asked to take cognizance.

Therefore, the Protection from prosecution would not be available to Public servant after he demitted the office or retired from service.

\*\*\*\*\*

**(2020) 2 SCC 118**

**Mahipal Vs Rajesh Kumar and Ors.**

**Date of Judgment: 05.12.2019**

**Section 439 of the Code of Criminal Procedure 1973 - Grant of bail regarding**

Bail application is rejected by the Additional Sessions Judge –But High Court allowed the bail, without expressing any finding or opinion on the merits of the case, - Hence, this appeal.

Held that:- Though at the stage of granting bail, a detailed examination of evidence and elaborate discussion of documents need not be undertaken, there is a need to indicate in such orders the reasons for prima facie concluding why bail was being granted. Particularly, when

**the earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish the specific reasons as to why bail is granted.**

In this case the statement of the occurrence witness recorded during investigation disclose in detail, the overt act committed by the accused – Further 27 injuries also noted in the Post Mortem Report – As the High Court has granted bail without assigning any reason, it raises a presumption, that the said order is passed without application of mind and hence it requires the intervention of the apex court.

\*\*\*\*\*

**2020 (1) LW (Crl) 594**

**Chakarai @ Chakaravarthy Vs State**

**Date of Judgment: 24.01.2019**

**Evidence Act section 30 – Extra Judicial confession**

Whether conviction can be recorded solely based on extra Judicial Confession?  
Held that:- When the Investigation Officer and the witnesses have acted impartially then the Extra-judicial confession cannot be relied upon.

Further it has been held that even if the extra-judicial confession is to be believed, it would be unsafe to convict the accused and to award life imprisonment to him solely on the basis of on extra-judicial confession.

\*\*\*\*\*

**2020 (1) LW (Crl) 683**

**P. Ramesh Vs State**

**Date of Judgment: 09.07.2019**

**Competency of Child Witness section 118 of Evidence Act and section 4 of the Oaths Act, 1969:-**

Appellant was tried for the murder of his wife and for the commission of an offence under Section 498A of the IPC. The trial court Judge prevented the recording of evidence of PW-3 and PW-4 manifestly on an erroneous ground that the children were unable to identify the person before whom they were deposing.

Held:- A child will become an incompetent witness only if the court considers that, the child was unable to understand the questions and answer them in a coherent and comprehensible manner. If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.

Section 4 of the Oaths Act, 1969 requires that all witnesses except the child witnesses under the age of twelve years has to take oath or affirmation.

Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined even without oath or affirmation.

Directions given to the learned trial judge to assess objectively the capacity of the two child witnesses before recording their evidence, consistent with the law laid down in State of Maharashtra vs. Bandu alias Daulat, in a child friendly environment.

\*\*\*\*\*

**2020 (1) LW (Crl) 657 (SC)**

**Union of India (UOI) Vs Mubarak @ Muhammed Mubarak**

**Date of Judgment: 07.05.2019**

**Section 167 (2) Cr.P.C.:- pre-conditions for extension of remand period beyond 90 days and up to 180 days in the cases falling under Unlawful Activities (Prevention) Act 1967:-**

It has been held that, the following ingredients shall be fulfilled, for filing extension of remand, beyond 90 days in cases Under Unlawful Activities (Prevention) Act 1967.

First, it has to be established with reasons that it has not been possible to complete the investigation within the period of 90 days.

Secondly, a report shall be submitted by the Public Prosecutor seeking extension of time.

Thirdly, the said report shall indicate the progress of investigation and the specific reasons for detention of the Accused beyond the period of 90 days.

Finally, the court should have Satisfied with the report of the Public Prosecutor and shall assign proper reason in its order for extension of remand beyond 90 days and up to 180 days.

\*\*\*\*\*

# HIGH COURT CIVIL CASES

2020 (2) LW 961

**Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.**

**Date of Judgment: 08.05.2020**

**Arbitration and Conciliation act 1996 Section 29 A, 34**

Arbitral award passed after the lapse of the period described for completion of arbitration, without obtaining specific order from the court for extension of the life term of the arbitration Proceedings. - Validity of such award called in question in this appeal.

Held that:- After expiry of the term fixed for completion of arbitration proceedings, the arbitrator will become functus officio. He himself cannot extend the time limit for completion of the arbitration proceedings. Only court can extend the period for making of award after expiry of the period describe under section 29A (1) or Section 29A(3),

Such an application should be moved by the parties either prior to or after the expiry of the time limit originally fixed, but strictly before making the arbitral award.

Under section 28(1) of the Old Arbitration Act 1940, court had power to extend the term of arbitrator, even if award is passed without seeking extension. But no such provision is incorporated in section 29 A of the Arbitration Act 1996. Therefore, the award passed after the expiry of term of office of the arbitrator and without any court order for the extension of term of office of the arbitration Proceedings, cannot be ratified. In the result, the award is set aside. Appeal is allowed.

\*\*\*\*\*

2020 (3) CTC 485

**N.S.Hameed Noohu Vs A.Abdul Rahman**

**Date of Judgment: 25.02.2020**

**Section 53 A of Transfer of Property Act 1882, and Section 12 of Specific Relief Act part performance:**

**When a plaintiff is entitled to performance of part of the contract :-**

Plaintiff agreed to sell two plots. As the defendant failed to perform his part of obligation, the contract was terminated by the plaintiff on 11.08.2004 and the amount was forfeited. After receipt of the legal notice, the defendant issued a reply notice alleging that that he paid Rs. 1,00,000/- as advance to the plaintiff's son and infact the plaintiff only failed to execute the sale deed. Defendant further contended that he paid the entire a sale consideration in respect of Plot No. 27 and he was put in possession of it and that he had even constructed a house in it, spending sum of Rs. 4,50,000/-.

Plaintiff filed a suit for recovery of possession and the defendant filed a suit for specific performance.

Trial court decreed the suit for specific performance in respect of plot no 27 and decreed the suit for declaration in respect of Plot no 26.

Aggrieved by the common Judgment, Plaintiff has filed this appeal. The defendant did not appeal against that common Judgment.

Held that: In this case as the Sale agreement came into existence on 26.04.2003, that is after the introduction of sub section 1A of section 17 of Registration Act, 1908, it requires registration for the purpose of claiming part performance under section 53A of TP Act 1882.

Further the sale agreement did not contain any recital to the effect, that the possession was delivered in pursuance of part of performance of the agreement. The defendant also has not mentioned in the reply anything about handing over of possession and the construction alleged to have been made by him in the suit property. Only during that trial such plea is raised. Section 12 makes it clear that, to claim part performance, one must relinquish all other claims relating to remaining part of contract including all right to compensation, either for deficiency or damage sustained to him through the default of the other party and he should also have paid to the other party entire consideration fixed for whole performance of the contract.

In this case the dependant has not paid whole of the contract amount and the suit also filed by the defendant for specific performance nearly after one year from the date of filing of suit by the plaintiff for declaration and recovery of possession.

Therefore, in the absence of registration of the agreement of sale and in the absence of recital in the agreement regarding handing over of possession in pursuant of the agreement for sale and in the absence of payment of consideration in respect of whole of the contract the defendant could not be entitled to relief of part performance. Plaintiff is directed to return the part of the sale consideration received by him with the cost of construction made by the defendant in the suit property. On such payment plaintiff will be entitled into recovery of possession and the defendant shall vacate and handover possession along with construction. Appeal allowed accordingly.

\*\*\*\*\*

**2020 (3) CTC 438**

**D.Vijayalakshmi Vs V.Hariselvan and ors**

**Date of Judgment: 08.01.2020**

Section 28 of the Registration Act:-

Registration completed at Kerala. Major portion of the property situated in Tamilnadu and only a Small portion of the property is situated in Kerala – effect of Registration called in question in view of section 28 of the Registration Act.

Whether registration outside the state will make the entire document void.

Held:- Howere be the extent of property is small, it will give raise to jurisdiction to register the document and as per section 64 and 65 ,necessary information will be sent by the authority registering the document to the Registering authority having Jurisdiction over the other parts of the property covered under the registered document.

Unless it is shown that the property itself is not in an existence or that the conveyor did not have title to makes such a transfer, it cannot be said that such registration is a fraudulent one to make entire document invalid. It is open to the parties to enter into a bonafide transaction with a view to reduce the burden of stamp duty and such a transaction cannot be termed as fraudulent. Further in order to invalidate the registration made outside the state it should be proved that such transaction happened after the amendment. There cannot be a universal rule that all documents registered outside the state could be invalid and amount to fraud.

**2020 (3) MLJ 729**

**Arulmigu Madasamy Thirukovil Vs AKMP Pettai**

**Date of Judgment: 11.12.2019**

**Section 63 and 108 of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.**

Plaintiff filed the suit contending that he is the hereditary trustee and defendant is interfering with his functioning and attempt to take over management of the temple. Trial court decreed the suit. Appellate court held that the suit is not maintainable. Against which the second appeal is filed.

Held that:- As per section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, the decision as to the question whether a person holds office as a hereditary trustee or not is exclusively within the domain of the authority constituted under the T.N. HR&CE Act,

As per section 108 of T.N. HR&CE Act, where a provision has been made under the Act for resolution of the dispute or for determination or deciding a question then a suit with regard to such question or dispute will be barred.

\*\*\*\*\*

**2020(3) CTC 310**

**Chennai Kumarakottam Sri Sivasubramania Swamy Sevarthigal Sangam Vs Arulmigu Kumarakottam Sri Sivasubramanian Swamy Temple**

**Date of Judgment: 28.01.2020**

**Section 108 Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959**

Deputy Commissioner treated to the suit property as specific endowment and issued certificate to temple to recover it – same is confirmed by commissioner. Suit filed for declaration that property belongs to plaintiff society- Whether such suit is Maintainable.

Held:- Against the order of the Deputy Commissioner to treat the suit property as specific endowment revision can be filed by the aggrieved person before the Government under section 140. The appellant /Plaintiff has instituted the suit without exhausting alternate remedies provided under the T.N HR&CE Act. Hence the suit is barred by section 108A of the T.N HR&CE Act.

\*\*\*\*\*

**2020 (3) CTC 530 (DB)**

**Rajamani Vs Bank of Baroda**

**Date of Judgment: 13.02.2020**

Sections 17 & 34 DRT Act and Order 7, Rule 11 of – Code of Civil Procedure, 1908 (5 of 1908),

Joint Family Property mortgaged with Bank – Pending the Proceedings before DRT in 2011 – Suit filed for Partition and separate possession of Joint Family Property filed in 2015.

Stand of Plaintiff is that the property is mortgaged by Defendants without his consent and knowledge.

Whether the suit is Maintainable?

Held that:- The Plaintiff is a defendant before DRT and the defendants in this suit is also duly contesting the matter before DRT. Suit apparently filed only to stall the proceedings before DRT and to prevent the Bank from proceeding further – Suit specifically barred as per mandate of Section 34 of DRT Act – Application filed by Bank under Order 7, Rule 11 rightly allowed by Trial Court – Appeal dismissed.

\*\*\*\*\*

**2020 (3) CTC 513**

**Selvaraj Vs Kanagammal**

**Date of Judgment: 17.02.2020**

Section 50 – Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), Section 16 – Adoption and Maintenance Act, 1956.

After observing all Customary rights, DW2 is given in adoption to R in 1984 – Adoption Deed is registered - Natural father and adopted daughter (DW2) deposed to prove the adoption –

Question arose – Whether Adoption is established?

Held:- Natural father is a competent person having special means of knowledge about the adoption and he is also party to the said document. His evidence is relevant under Section 50 of the Evidence Act.

As per section 16 of Hindu Adoptions and Maintenance Act, 1956 Adoption Deed being registered also carries Statutory presumption – Except for bare denial, nothing brought on record by the other side to deny said presumption – Adoption, held, established.

\*\*\*\*\*

**2020 (3) CTC 540**

**Jailani Vs Valliammal and Ors**

**Date of Judgment: 06.02.2020**

**Evidence Act section 101 to 104 –Burden of proof :-**

Held that:- Mere because that, the defendants admitted that the suit property originally belonged to the Plaintiffs forefather, the burden of proof will not shift to the defendant. In a suit for declaration of title and possession, irrespective of the question whether the defendants have proved their case or not" the Plaintiff could succeed only on the strength of his own title.

In a suit for ejection based on title, the court is bound to enquire or investigate that question first before going into any other question that may arise in a suit and it is incumbent on the part of the court, to record a finding ,on the claim of title to the suit land made on behalf of the plaintiff.

Though in the plaint, the plaintiffs have stated that their father obtained patta for the suit properties, they have not produced the patta standing in the name of their father. The plaintiffs filed only Ex. A.1, a partition deed and claimed title through the same. The plaintiffs have not specifically explained how they have derived title to the properties. Since the plaintiffs have not explained as to how the suit properties belonged to their father by way of producing oral and documentary evidence, the Court can very well come to a conclusion that they have not proved



the partition deed Ex.A.1. Therefore, the claim made by the plaintiffs on the basis of Ex.A.1, partition deed is of no merit.

\*\*\*\*\*

**2019 (3) CTC 215**

**Krishnamoorthy Vs Nagammal and Ors**

**Date of Judgment: 29.01.2019**

Even if there are concurrent findings if its perverse-it can be interfered with in the second appeal under section 100:-

Tenant entered in to an agreement for sale of the tenanted property and was put in possession in capacity as prospective buyer. Thereafter tenant failed to perform his part of the contract and filed suit claiming specific performance and injunction. Owner filed another suit claiming recovery of possession. Both suits ended in favour of the tenant at the trial court and in the first appellate court – Hence this second Appeal.

Held:- If tenant is put in possession of property in capacity as prospective purchaser does not revert to his position as tenant. There is a distinction between a case where lessee becoming mortgagee of the property and an agreement holder put in possession as a prospective purchaser. In the agreement, it is clearly stated that the respondent will lose the right the tenancy, if she failed to perform her part of the contract. In the above circumstance, therefore the possession of the respondent is not as a tenant and there is no necessity for the appellant to approach the revenue Courts, as there is no subsisting relation of Landlord and Tenant.

Both appeals are allowed. The respondent is directed to deliver the possession of the suit property to the Appellant/Owner within 6 months.  
(Judgment in P. Subramanian Udayar v. Eswari and others reported in (2001) 2 MLJ 19 is followed).

\*\*\*\*\*

# **HIGH COURT CRIMINAL CASES**

**2020 (3) CTC 281**

**Union of India and Ors Vs Rema Srinivasan Iyengar and Ors**

**Date of Judgment: 17.02.2020**

**Sexual Harassment of Women Workplace (Prevention, Prohibition and Redressal) Act 2013, Section 2, 11 and 14.**

Enquiry under this Act has to be full-fledged one not preliminary one .It is mandatory to Provide an opportunity to the accused to defend himself -If the complaint is found to be false with malicious intent complainant can be penalized- Mere inability to prove will not render the complaint false- Malicious intention must be specifically established before any disciplinary action is recommended against the complainant.

Solitary allegation of intemperate language against the female employees does not constitute offence under the said Act. The Act is indented to provide an equal standing for women in workplace and a cordial workplace where dignity and self respect are protected. Act cannot be misused to harass someone with exaggerated or nonexistent allegations, Order of central administrative criminal quashed.

\*\*\*\*\*

**2020(3) CTC 527**

**Raghava. R., Partner of Dinamalar Group, Dinamalar(RF) Vs Educomp Solutions Ltd.**

**Date of Judgment: 19.03.2020**

**Section 482- Indian Penal Code, 1860 (45 of 1860), Sections 499& 500-**

Term 'Fraud' used in publication- Defamation - whether established- Order of Consumer Court directing Complainant to pay damages for deficiency in service published in Tamil Daily- Term 'Fraud' used in news Report- Complaint is filed alleging defamation.

Held:- Complainant after promising to provide smart class to Students by employing Teachers, failed to employ Teachers- Term 'fraud' used in caption of Report is to catch eyes of readers - No element of malice or ulterior motive to report anything defamatory- Defamation not established by reporting verdict of Consumer forum- No disrepute caused to Respondent/Complainant-Consequently, Criminal proceedings quashed.

\*\*\*\*\*

**2020 (2) MLJ (Cri) 476**

**Magesh Deodatta Gupta Vs State of Tamil Nadu**

**Date of Judgment: 04.09.2019**

**Section 228 and 482 Cr.P.C. & Section 120B, 418 and 420 of IPC**

Trail court framed the charges against the accused under section 418, 420 and 120B IPC challenged by way of quash petition.

Held that:- The trial court cannot act merely as a post office and as a mouth piece of prosecution .It has to consider the probabilities of the case and the total effect of evidence and the documents produced before it , and any basic infirmities appearing in the case and so on. Magistrate framed charges by reproducing the wording in the final report without even changing any where Magistrate directed to follow the procedure laid down under section 228 Cr.P.C. and frame charges against the accused and proceed with trial.

\*\*\*\*\*

**2020 (1) LW (Cri) 510**

**V.Arulmozhi vs. State of Tamil Nadu**

**Date of Judgment: 02.01.2020**

**Section 156(3), 200,482 Criminal Procedure Code, -challenges to order for further investigation**

First the respondent filed PIL in Writ petition No 11052 of 2016 alleging that the petitioner supported superior officer in preparing fraudulent tour allowance bill, latter withdrawn by the respondent after complete argument. Then he filed a complaint in respect of the same matter under section 156 (3) Cr.P.C. and the matter was referred to police for investigation. Petitioner filed quash petition to set aside the order. During the pendency of the quash petition investigating officer has reported that the case is closed as mistake of fact. Thereafter the respondent filed protest petition in which the Judicial Magistrate has ordered for further investigation- Against that order this quash petition is filed.

Held: On perusal of record, there is no prima facie material to constitute any cognizable offence. Even in the earlier order of dismissal of the complaint court has remarked that the respondent is aggrieved against his promotion and has made reckless allegations against this petitioner. Respondent has suppressed earlier proceedings in the protest petition. Under this circumstances continuing further investigation will be abuse of process of law. Without prima facie case of commission of cognizable offence JM should not have ordered for further Investigation and this original petition is allowed.

\*\*\*\*\*

**2020 (1) LW (Cri) 514**

**Natarajan Vs State**

**Date of Judgment: 13.12.2019**

**Section 30 of the Evidence Act:- Extra judicial confessions to VAO – Reliability section 27**

**recovery –effect of.**

What will be the effect of giving confession before VAO?

Held that :- In 2006 (1) CTC 150 (Sivakumar Vs State of Police) it has been held that there is no village magistrate system is in existence now and hence section 72 of Cr.R.P. has become a redundant one and there is no bar for VAO to record extra judicial confession.

Therefore extra judicial confession can be given before VAO and it cannot be said that such confession is a weak piece of evidence.

Further it has been held in this case that, when an accused point out where a dead body and incriminating material concealed without stating that it was concealed, the court can presume that it was concealed by the accused.

\*\*\*\*\*

**CDJ 2020 MHC 1932**

**Radha @ Radhakrishnan vs. State of Tamil Nadu**

**Date of Judgment: 06.03.2020**

**Prosecution Witness turned hostile during Cross Examination - Evidentiary value of it:-**

P.W.s 1, 2 and 4 are eye witnesses to the occurrence, of which P.W.2 is the injured eye witness. They deposed clearly in chief examination. However, curiously, on the very same day in the afternoon session during cross examination they diametrically taken a 'U Turn' and had deposed that they do not know the accused. Trial Court convicted the accused - Validity of their evidence is called in question in this appeal.

Held that:- It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version.

PW1,2,and 4 have categorically deposed that the accused had come to the place where they were playing carrom board and had picked up a quarrel in the early part of evening and again in the later part of the evening, at about 7.30 p.m they picked up quarrel and in the course of the said transaction, the accused had stabbed P.W.2 on his chest. The testimonies of P.W.s 1, 2 and 4, corroborate each other not only on all material aspects, but their testimony is cogent and go hand-in-hand with each other detailing the happenings during the course of the evening. Their testimony is also corroborated by the evidence of PW 6 and 7.

Therefore conviction imposed by the trial court is affirmed but the sentence of imprisonment of for 10 years with fine is reduced to five years.

\*\*\*\*\*

**2020 (1) TLNJ 432 (Criminal)**

**G. Saravanan Vs. J. Sankaranarayanan**

**Date of Judgment: 12.05.2020**

**Section 427 (1) of the Code of Criminal Procedure, 1973, –**

Petitioner was prosecuted for an offence under Section 138 of N.I. Act in respect of two criminal cases and was acquitted by trial court. But in appeal he was sentenced to undergo 1 year simple imprisonment in both cases and was directed to pay a fine of Rs.1000/- in both cases. Revision filed is dismissed confirming the judgment of sentence and conviction passed in both the cases by the First Appellate Court. Hence this Criminal Original Petition is filed praying for an order that sentences passed in each cases has to run concurrently with the sentence passed in the other case.

Held that:— Suppose on a single day, an accused is found guilty and sentence to imprisonment in more than one case, then, it is for the court concerned to clarify, as to whether the sentence in the subsequent case has to run concurrently or consecutively.

Section 427 (1) Cr.P.C. will apply only when, at the time of passing the subsequent sentence the accused is already undergoing any previous sentence.

In this case convictions and sentences are passed in both the cases on the very same day and the petitioner was not already undergoing any sentence of imprisonment in respect of any earlier case. Therefore section 427(1) of Cr.P.C., will not kick in.

Therefore, both the sentences has to run concurrently.

\*\*\*\*\*

**(2020) 2 MLJ (Crl) 324**

**P.Parimaladevan Vs State by the Inspector of Police, CCIW CID, Vellore, Vellore District.**

**Date of Judgment: 05.11.2019**

**Quashing of Criminal Proceedings – Exoneration of Criminal Charges – Tamil Nadu Co – operative Societies Act, 1983, Section 156(6)and Section 87 :-**

Petitioner is the accused in CC 453/2016 on the file of the Judicial Magistrate Court No II, Vellore .He has filed the quash petition on the ground that he is exonerated from the proceedings under section 87 of the Co-operative societies Act and hence the entire criminal proceedings against him is to be quashed.

Held: When an employee of the society is found liable for Supervisory lapse, the same will not constitute any criminal action against him. If such an employee has been exonerated in the proceedings under Section 87 of the said Act, it has to necessarily be implied that he had neither misappropriated nor fraudulently retained the money or other property, nor is guilty of breach of trust or wilful negligence. The offences for which the petitioner has now been charged with, are in effect, the very same overt acts, for which he has been exonerated in the enquiry under Section 87 of the said Act.

Hence the criminal proceedings against the accused is quashed.

\*\*\*\*\*

**2020 (2) LW 67**

**S. Santhanagopal and Ors. Vs Union of India and Ors.**

**Date of Judgment: 04.02.2020**

**Section 500 and 501 IPC -**

Regarding the publication of a news in 'Dinamalar' on 4.9.14 in respect of the chief Minister of Tamilnadu a criminal complaint was lodged against the petitioner under section 500 and 501 IPC based on a GO in G.O. Ms. No.802 and 803 Public (Law & Order H) Dept., dated 05.09.2014.

The said G.O and the Criminal complaint are called in question by the petitioner in this quash petition

Held that:-

The right to reputation is an inherent right guaranteed by Article 21 and hence, the right to freedom of speech and expression under Article 19(1)(a) has to be balanced with.

In the present case, the print media, has merely reported the interview of Dr. Subramanian Swamy, without adding anything to it. which is even evident from the Government Orders and it can't be said that the publication has harmed the reputation of the office of the Hon'ble Chief Minister of Tamil Nadu in respect of her conduct in the discharge of her public functions and the ingredients for the filing of a complaint by the Public Prosecutor, as enumerated in Section 199 (2) Cr.P.C. itself has not been fulfilled.

Further, application of mind in the grant of sanction is the foremost necessity. In this case the sanction has been accorded within a span of 24 hrs. From the speed with which such prosecution has been initiated hast cannot be definitely ruled out and also the non-application of mind can't be ruled out.

Therefore the said G.O is setaside and the prosecution initiated against the petitioner is quashed.

\*\*\*\*\*