

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVI — PART 11 — NOVEMBER 2021 \*\***

## COMPENDIUM OF CASE LAWS



### **TAMIL NADU STATE JUDICIAL ACADEMY 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.gov.in](http://www.tnsja.tn.gov.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,

Tamil Nadu, India. PIN: 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, K. Pudur,  
MADURAI,

Tamil Nadu, India. PIN: 625 002

*Telephone No:* (0452) 2560807, 811

*E-Mail:* [tnsja.rc.mdu@gmail.com](mailto:tnsja.rc.mdu@gmail.com)

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**SUPREME COURT - CIVIL CASES**

**Chandra @ Chnada @ Chandraram Vs. Mukesh Kumar Yadav [Civil Appeal No. 6152/2021]**

**Date of Judgment: 01.11.2021**

**Motor Accidents Claim - Minimum Wage Notification - Section 166 of the Motor Vehicles Act, 1988**

The Hon'ble Supreme Court while deciding Civil Appeal on the issue about the yardstick to be followed to fix income of deceased in absence of salary certificate held that, "In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality." thus partly allowed that appeal.

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**National Confederation of Officers Association of Central Public Sector Enterprises and Ors. Vs. Union of India & Ors. [Writ Petition (C) No 229 of 2014]**

**Date of Judgment: 18.11.2021**

**Civil Procedure Code – Section 11 – Res judicata – Constructive Res judicata**

The Hon'ble Supreme Court while deciding a Writ Petition (Civil) held that, "Section 11 of the Code of Civil Procedure 1908 embodies the principles of res judicata and bars the court from deciding issues which have been directly or substantially in issue in an earlier proceeding between the same parties or parties claiming under the same title and have been finally decided.... The principles of res judicata and constructive res judicata, which Section 11 of the Code of Civil Procedure 1908 embodies, have been applied to the exercise of the writ jurisdiction, including public interest litigation. Yet courts have been circumspect in denying relief in matters of grave public importance, on a strict application of procedural rules.... While determining the applicability of the principle of res judicata under Section 11 of the Code of Civil Procedure 1908, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. There is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching the Court in public interest. This Court must be alive to the contemporary reality of "ambush Public Interest Litigations" and interpret the principles of res judicata or constructive res judicata in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself." thus partially allowed the appeal.

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**Punjab State Civil Supplies Corporation Ltd & Anr Vs. M/s Ramesh Kumar and Company and Ors. [Civil Appeal No 6832 of 2021]**

**Date of Judgment: 13.11.2021**

**Arbitration and Conciliation Act 1996**

The Hon'ble Supreme Court while deciding a Civil Appeal held that, "While considering a petition under Section 34 of the Arbitration and Conciliation Act 1996, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34. The District Judge had correctly come to the conclusion that there was no warrant for interference with the arbitral award under Section 34. The jurisdiction of the High Court in a first appeal arising out of a decree in a civil suit is distinct from the jurisdiction of the High Court under Section 37 of the Arbitration and Conciliation Act 1996 arising from the disposal of a petition challenging an arbitral award under Section 34 of the Arbitration and Conciliation Act 1996." thus dismissed the appeal.

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**Rajendra Bajoria And Others Vs. Hemant Kumar Jalan And Others [Civil Appeal Nos. 58195822 of 2021 [Arising Out Of Slp(C) Nos. 27792782 of 2019]**

**Date of Judgment: 21.09.2021**

Order VII Rule 11 - Order VII Rule 13 – Civil Procedure – Partnership Deed – Partnership Act, 1932 –

The Hon'ble Supreme Court while deciding a Civil Appeal held that, "...power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. ...underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. ... As provided under Order VII Rule 13 of the CPC, the order of rejection of the plaint shall not of its own force preclude the plaintiffs from presenting a fresh plaint in respect of the same cause of action." And thus dismissed the appeal.

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**The Chairman, State Bank of India and Anr. Vs. M. J. James [Civil Appeal No. 8223 OF 2009]**

**Date of Judgment: 16.11.2021**

**Doctrine of acquiescence – Estoppel**

The Hon'ble Supreme Court while deciding a Civil Appeal held that, "Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence...Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this

acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation..." thus dismissed the appeal.

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## **SUPREME COURT - CRIMINAL CASES**

### **Attorney General for India Vs. Satish & Anr. [Criminal Appeal No. 1410 of 2021]**

**Date of Judgment: 18.11.2021**

#### **POCSO Act, 2012 – Section 7**

The Hon'ble Supreme Court while deciding a Criminal Appeal held that, "...It is trite saying that while interpreting a statute, the courts should strive to ascertain the intention of the Legislature enacting it, and it is the duty of the Courts to accept an interpretation or construction which promotes the object of the legislation and prevents its possible abuse... the object of enacting the POCSO Act is concerned, as transpiring from the statement of objects and reasons, since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO Act was enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of special Courts for trial of such offences and for matters connected therewith and incidental thereto. Section 7 of the Act, which pertains to the "sexual assault", as it appears that it is in two parts. The first part of the Section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration... the act of touching the sexual part of body or any other act involving physical contact, if done with "sexual intent" would amount to "sexual assault" within the meaning of Section 7 of the POCSO Act..." thus allowed the appeals.

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**M/s Gimpex Private Limited Vs. Manoj Goel [Criminal Appeal No. 1068 of 2021]**

**Date of Judgment: 08.10.2021**

**Section 138 - Negotiable Instruments Act 1881**

The Hon'ble Supreme Court while deciding a Criminal Appeal held that, "Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed... Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint.... a complainant cannot pursue two parallel prosecutions for the same underlying transaction." thus partially allowed the appeal.

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**Ramawatar Vs. State of Madhya Pradesh [Criminal Appeal No. 1393 of 2011]**  
**Date of Judgment: 25.10.2021**

Section 3(1)(x) - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 - Section 34 of the Indian Penal Code, 1860

The Hon'ble Supreme Court while deciding a Criminal Appeal held that,"...the very purpose behind Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 is to deter caste based insults and intimidations when they are used with the intention of demeaning a victim on account of he/she belonging to the Scheduled Caste/Scheduled Tribe community....the aim of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 is to protect members of the downtrodden classes from atrocious acts of the upper strata of the society. The Complainant has, on her own free will, without any compulsion, entered into a compromise and wishes to drop the present criminal proceedings against the accused." thus quashed the criminal proceedings invoking powers under Article 142.

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**Sagar Lolienkar Vs. The State of Goa & Anr. [Criminal Appeal No. 1415 of 2021]**

**Date of Judgment: 18.11.2021**

**Motor Vehicles Act, 1988 – Section 279 and 304A – Appreciation of Evidence**

The Hon'ble Supreme Court while deciding a Criminal Appeal held that, "... appellant has been found to be guilty of offences punishable under Sections 279 and 304A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of the precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.... Having regard to all these factors and bearing in mind the fact that the widow of the victim has not come forward despite notice being served and the compensation of Rs. 3 lakhs has been deposited by the appellant, ... a lenient view can be taken in the matter and the sentence of imprisonment can be reduced..." thus allowed the appeal.

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**State of Madhya Pradesh Vs. Mahendra Alias Golu [Criminal Appeal No. 1827 of 2011]**

**Date of Judgment: 25.10.2021**

**Criminal Procedure Code – Indian Penal Code – Preparation - Attempt**

The Hon'ble Supreme Court while deciding a Criminal Appeal on the distinction between 'Preparation' and 'Attempt' to commit rape held that, "an 'attempt' is a mixed question of law and facts. 'It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by *mens rea*, moral guilt, and its depraving impact on the societal values is no less than the actual commission. There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamount to transgressing the thin space



between 'preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws. 'Attempt' is the direct movement towards the commission after the preparations is over. It is essential to prove that the attempt was with intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes...." thus allowed the appeal.

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## HIGH COURT - CIVIL CASES

### **C. Prakash Vs. S.N. Media & Ors. [OSA (CAD) No.68 of 2021]**

**Date of Judgment: 29-10-2021**

#### Assignment of copyright — non-payment of consideration

The Hon'ble High Court decided on the issue whether the assignment of copyright claimed by the Plaintiff would stand defeated merely on account of the perceived non-payment of consideration by the Plaintiff.

The Court observed that, "... an unpaid assignor of the copyright has a claim in money and such claim sounds only in damages; but notwithstanding non-payment, the assignor ... cannot retract or recover the same except upon a further written instrument being executed by the assignee re-assigning the copyright in favour of the original assignor. ... Section 19 of the Act deals with the mode of assignment and mandates that an assignment of copyright would be valid only if it is in writing. ... Section 19(3) ... does not mandate that the payment of consideration would be a condition precedent to the assignment taking effect. Indeed, when it comes to royalty in respect of assignment of copyright in musical work, traditionally, royalty has been paid after the music has been played notwithstanding the assignment having been made earlier."

The Court found as follows: "Thus, even if it be accepted that the plaintiff herein did not tender any consideration, notwithstanding the plaintiff's assertion to the contrary, for obtaining the assignment in the copyright pertaining to the relevant films, the plaintiff would still be entitled to assert the plaintiff's ownership in respect of the partial assignment made in favour of the plaintiff and, as such, partial owner, the plaintiff

would be entitled to restrain all others from exploiting the same right as such exploitation would amount to infringement within the meaning of the said Act of 1957.”

Thus, the Court set aside the impugned order and granted injunction in favour of the Plaintiff.

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**Karur Taluk Lorry Owners Association Vs. V. Viswanathan [S.A.(MD) No.527 of 2021]**

**Date of Judgment: 27.09.2021**

**Removal of member — natural justice**

The Hon'ble High Court decided on a Second Appeal concerning the removal of the First Respondent from the Appellant Association, wherein the lower courts have issued a declaration and permanent injunction restraining the Appellant from interfering with the First Respondent's rights.

Referring to the decisions in *Maneka Gandhi Vs. Union of India* [AIR 1978 SC 597] and *Canara Bank Vs. V.K. Awasthy* [2005 6 SCC 321], the Court held that, "even in the absence of any provision for issuance of show cause notice in any tailor-made By-Laws, it is implied that a duty is cast upon the Authority to issue a show cause notice before taking any punitive and damaging action and that the minimum protection of rights of the victimised against the arbitrary procedure of any Authority is guaranteed by the law to prevent such Authority from doing injustice. ... The arbitrariness sought to be played by the Appellant-Association cannot be permitted to be duped in the form of By-Laws. Except in a few extraordinary circumstances that compel the Authority to execute his power by infraction of principles of natural justice, in all other cases, certainly, it would have an overriding effect and prevail upon any By-Laws since the principles of natural justice of fundamental rules of procedure are the preliminary basis of a good administrative set up."

Thus, the Court dismissed the Second Appeal upheld the permanent injunction granted by the Trial Court.

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**Legal Manager, Reliance General Insurance Co. Ltd. Vs. Abirami & Ors.**  
**[C.M.A.(MD).No.640 of 2020]**  
**Date of Judgment: 10-11-2021**

**Motor Accident Claim — Calculation of future prospects**

The Hon'ble High Court decided on a Civil Miscellaneous Appeal filed by an Insurance Company against the award of the Motor Accidents Claims Tribunal.

On the first ground of appeal, that the deceased was not wearing a helmet at time of the accident, the Court held that the Appellant/Insurance Company had not raised this plea before the Tribunal, even during the cross examination of the eye witness, and therefore cannot raise this ground at this stage. On the second ground, the Court held that the Tribunal had rightly fixed the monthly income of the deceased.

On the ground of future prospects, the Court referred to the decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. [S.L.P(Civil)No.25590 of 2014]*, and held that since the deceased person was doing business, only 25% is to be added instead of 30% as added by the Tribunal. The Court further observed that the fact that the Claimant, who was the wife of the deceased person, got subsequently married, would not reduce the pain and loss of love and affection.

Thus, the Court modified the award of compensation passed by the Tribunal.

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**M.A.M.R. Muthiah Vs. The Chettinad Charitable Trust & Ors. [A.No.6433 of 2019]**

**Date of Judgment: 22.09.2021**

**Order VII Rule 11, CPC — Rejection of Plaintiff — cause of action — abuse of process**

The Hon'ble High Court in dealing with an Application for rejection of Plaintiff, observed that the Respondent/Plaintiff is well aware of the trusteeship claim of the Applicant, and cannot conceal his knowledge only for the purpose of overcoming the aspect of limitation for laying the present suit, and found that the suit is ex facie barred by limitation and therefore attracts Order VII Rule 11(e). The Court found that the Respondent/Plaintiff was unable to disclose the cause of action for the Suit filed by him, and further observed that "if the main prayer is struck off from the relevant portion, mandatorily and consequentially, all other prayers would fall to ground. ... Therefore, it should be taken that if the rejection of plaintiff in this case is to be accepted, all the prayers forming part of a single *lis* which hinged only on the controversy, namely whether the applicant herein was lawfully inducted trustee of the plaintiff Trust or not, would also be deemed to be rejected. Further, the subject matter of the *lis* before this Court indisputably being the same before the City Civil Court ... this Court does not find any cause of action for laying the present suit. Therefore, on this ground also, this court finds that the suit is to be rejected in terms of sub-clause (a) of Order VII Rule 11 C.P.C." Referring to the decisions in *K.K. Modi Vs. K.N. Modi [(1998) 3 SCC 573]* and *SNP Shipping Service Pvt. Ltd. Vs. Kara Mara Shipping Co. Ltd. [1999 SCC Online Bom 495]*, the Court held that the Suit filed by the Plaintiff is a combination of abuse of process of Court and a mischievous attempt to overshadow the lack of locus standi in maintaining the suit. Thus, the Court allowed the Application and dismissed the Suit.

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**M. Rajesh Panneer Kumar Vs. T. Ponnarasu [C.R.P(MD)No.1104 of 2021]****Date of Judgment: 09-11-2021****Order XXI Rule 35 — scope of Execution Petition**

The Hon'ble High Court dealt with a Civil Revision Petition seeking to set aside the order directing the Plaintiff to deliver the suit property. The Court observed that Order XXI Rule 35 can be invoked only when there is a decree for delivery of possession.

The Court found that the contention of the Petitioner/Defendant is correct as there is no consequential prayer in the plaint for delivery of possession and Court fee also not paid by him, and the Decree is only for cancellation of sale deed.

The Court referred to the decisions in *Vedic Girls Senior Secondary School, Arya Samaj Mandir, Jhajjar Vs. Rajwanti & Ors. [(2007) 5 SCC 97]* and *S. Bhaskaran Vs. Sebastian (Dead) by L.Rs & Ors. [(2019) 9 SCC 161]*, and observed that where the Execution Petition was filed for cancellation of sale deed, the Plaintiff cannot file an Execution Application for delivery for which there is no decree. The Court further observed that the respondent/plaintiff can file a suit for recovery of possession.

Thus, the Court allowed the Civil Revision Petition and set aside the impugned Order.

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**M/s. Metroplitan Transport Corporation (Chennai) Ltd. Vs. M/s. Sowil  
Limited & Anr. [O.P.No.371 of 2013]  
Date of Judgment: 17-09-2021**

**Arbitration clause — conclusion of valid contract**

The Hon'ble High Court in deciding an Original Petition filed against the Award passed by the Arbitrator, referred to decisions of the Supreme Court\*, and observed that "when the terms and conditions appended to the invitation itself is a contract, pursuant to the same, bid has been approved, Letter of Acceptance [LOA] has been issued, certainly there is a concluded contract as far as the work is concerned. ... it cannot be said merely because the formal agreement was not signed after issuance of LOA there is no clause governing the parties to refer the dispute to the Arbitration. The very nature of the invitations and acceptance of the bid pursuant to the invitation by letter dated 17.02.2006 and issuance of Bank Guarantee on 20.02.2006 constitute valid concluded contract between the parties. When the contract contained the Arbitration Clause that itself suffice for referring the dispute for Arbitration."

The Court referred to the decision of the Supreme Court in *SBP & Co. vs. Patel Engineering Ltd., & Anr. [(2005) 8 SCC 618]*, wherein it was held that, "the power exercised by the Chief Justice of the High Court or the Chief Justice of India under section 11(6) of the Act is not an administrative power. It is a judicial power. It is further held that the order passed by the Chief Justice of the High Court or by the designated Judge of that Court is a judicial order, hence an appeal will lie against that order, only under Article 136 of the Constitution to the Supreme Court."

Thus, the Court held that, there is no ground to interfere with the Arbitrator's Award and dismissed the Original Petition.

\* See Also

- MSP Infrastructure Limited Vs. Madhya Pradesh Road Development Corporation Limited [(2015) 13 SCC 713]
- Durga Charan Rautray Vs. State of Orissa & Anr. [(2012) 12 SCC 513]
- National Agricultural Coop. Marketing Federation India Ltd. Vs. Gains Trading Ltd. [(2007) 5 SCC 692]

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**M/s. Olympia Opaline Flat Owners Association (OOOA) Vs. Olympia Infratech**  
**[CMA.Nos.2382 & 2383 of 2021]**  
**Date of Judgment: 27-09-2021**

**Sections 17 and 34, Arbitration & Conciliation Act, 1989**

The Hon'ble High Court in dealing with a Civil Miscellaneous Appeal observed that "One of the main objects of the Arbitration & Conciliation Act is to minimize the supervisory role of Courts in the Arbitral proceedings. ... The scope of challenging an Arbitral Award under Section 34 of the Arbitration & Conciliation Act is limited and that is the reason the Section says "setting aside" and not an "Appeal". Section 34 Application is a summary proceeding and is in the nature of "judicial review jurisdiction" but is not a regular first appeal where re-appreciation of evidence is permissible."

The Court further observed that "If the Courts exercising powers under Section 37 of the Act arising out of interim orders passed by the Arbitral Tribunal under Section 17, completely ignores the scope of challenge to Arbitral Awards under Section 34, it would imply that the jurisdiction of the Court over the interlocutory decision of the Arbitral Tribunal is much wider than the jurisdiction against the final Arbitral Award. In that case, the very purpose of the Arbitration which envisages expeditious disposal of disputes and minimal supervision by Courts over Arbitral proceedings will get defeated."

The Court referred to the decision in *National Highways Authority of India Vs. Gwalior-Jhansi Expressway Ltd. [(2018) 8 SCC 243]*, and observed that "it can be inferred that the Courts while dealing with the appeals arising out of interim orders passed by the Arbitral tribunal cannot totally ignore Section 34 of the Act, where the scope for interference is very limited." Thus, the Civil Miscellaneous Appeals were dismissed.

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**P. Jayanthi & Ors. Vs. The Commissioner, HR&CE Department & Ors. [WP  
No.19258 of 2021]**

**Date of Judgment: 29.09.2021**

Section 34A and 78, HR&CE Act, 1959 — fixation of fair rent — illegal occupation of property

The Hon'ble High Court in deciding a Writ Petition challenging an eviction notice, dealt with the following issues:

- (1) Whether the petitioners are the recognised leaseholders/tenants in respect of the subject temple property?
- (2) Whether the fair rent fixation is being done periodically and in accordance with Section 34A of the Act or not?
- (3) Whether show cause notice is required to be issued under the provisions of the Act, before fixing the fair rent under Section 34A of the Act?

On the first issue, the Court found that, "It is admitted that the leasehold rights are not extended in favour of the petitioners and no name transfers are effected after the death of the father of the petitioners. ... The petitioners are unable to establish that they are the valid leaseholders in respect of the temple properties. ... The petitioners are paying the rent, but not the fair rent as fixed. However, this Court is of an opinion that such rent is improperly fixed by the Authorities and therefore, the Competent Authorities have also committed illegalities and irregularities in not fixing the fair rent periodically once in three years as per Section 34A of the Act.

On the second issue, the Court observed as follows: "Section 34A of the Act contemplates the procedure for fixation of fair rent once in three years. The 'Prevailing Market Rental Value' is to be taken into consideration for fixing the fair rent. ... In this regard, the Rent Fixation Committee is bound to make a comparative study with reference to the amount of rent paid for similar types of properties situate in the

localities, where the immovable properties of the religious institution is situated. Therefore, the Act contemplates complete protection of the temple properties and fixation of lease rent by the Committee. The Department is not fixing the rent in the manner prescribed under the Act. The Executives are bound to implement the provisions of the Act scrupulously in its letter and spirit. ... there was an active or passive collusion between the parties even in not fixing the fair rent once in three years as contemplated under Section 34A of the Act. Even the approach of the Authorities in dealing with illegal occupants is also not up to the satisfaction."

On the third issue, the Court found that the impugned notice is not a Show Cause Notice but a Demand Notice and proceeded to elucidate the difference between the two. The Court observed that "Show cause notices are issued in respect of initiation of certain actions based on complaints or allegations. But demand notices are issued in accordance with the provisions of the Act, informing certain fixation/proposal to the persons concerned, seeking their objections, if any, the procedures are contemplated for fixing the fair rent and issue of demand notice. ... the right of the Lessee or the Tenant, would arise only on fixation of fair rent and after communication of such fair rent. ... Thus, undoubtedly, the principles of natural justice have been complied with in respect of procedures and opportunities provided under the Act itself."

The Court found that the Petitioners are in illegal occupation and have not paid the fair rent, and further by running a profitable business, have caused damages and financial loss to the minor idol and to the temple. The Court held that the Petitioners are liable to be evicted and thus dismissed the Writ Petition.

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**R. Mathiazhagan & Ors. Vs. P.J. Ethiraj & Ors. [A.No.23 of 2020 in A.No.1702 of 2013]**

**Date of Judgment: 09-11-2021**

**Code of Civil Procedure — revocation of leave — jurisdiction**

The Hon'ble High Court decided on an Application arising from a Civil Suit. The Application sought for revocation of leave obtained by the Plaintiffs in a preceding Application. The Court observed that Section 120, CPC makes Sections 16, 17 and 20 of CPC inapplicable to High Courts, and therefore the High Court in exercise of its original civil jurisdiction, is empowered to hear suits for which even a part of the cause of action had arisen within its jurisdiction. The Court referred to the decision in *Indian Mineral and Chemicals Co. & Ors Vs. Deutsche Bank [(2004) 12 SCC 376]* wherein the Supreme Court pointed out that except in rare cases, the question of jurisdiction, particularly territorial jurisdiction, which depends on the evidence should be decided only along with the other issues in the suit after the evidence is recorded, and observed that revocation of leave in such cases is not advisable. Relying on the above decision, as well as the decision in *Raghavan Vs. Kalanithi Maran [2013 (5) CTC 801]*, the Court observed that "A roving enquiry on the evidence available, the effect of the evidence or the probabilities of the case cannot be conducted while considering the application for revocation of leave." On the ground of delay in filing the Application, the Court found that mere pendency of the appeal cannot prevent the Defendants from filing this application earlier in point of time. The Court further referred to the decision in *P.T. Ummer Koya Vs. Tamil Nadu Chess Association [2005 (3) CTC 86]*, and held that the Defendants have not made out a case for revocation of leave and the fact that they had also participated in the proceedings in the suit would disentitle them from seeking revocation of leave granted. Thus, the Application was dismissed.

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**HIGH COURT – CRIMINAL CASES****K. Ruban Vs. State Represented by All Women Police Station, Pollachi,  
Coimbatore District [Criminal Appeal No. 253 of 2021]****Date of Judgment: 22.10.2021****Appreciation of Evidence – POCSO Act, 2012 -**

The Hon'ble High Court while deciding a Criminal Appeal held that, "being an Appellate Court, this Court is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court ... It is settled proposition of law that, when the evidence of prosecutrix is cogent, consistent and trust worthy and inspires confidence of the Court, conviction can be recorded solely based on the evidence of the victim, unless there is a reason to discord or disbelieve the evidence of the sole witness... there is no injury on the body of the victim child and no penetrative sexual assault and therefore the contention that the medical evidence does not support the case of the prosecution is not acceptable... prosecution has proved its case beyond all reasonable doubt and the accused has failed to rebut the presumption under Section 29 and 30 of the POCSO Act. Trial Court has rightly appreciated the evidence of prosecution...." thus the Court upheld the impugned trial court judgment and dismissed the appeal.

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**Mohammed Rikas @ Rikaz Vs. State by The Intelligence Officer, NCB-South Zone Unit, Chennai [Criminal Appeal No. 4 of 2017]**

**Date of Judgment: 21-10-2021**

**NDPS Act — Reduction Of Sentence**

The Hon'ble High Court decided on a Criminal Appeal seeking to set aside the conviction and sentence to undergo 10 years rigorous imprisonment and pay Rs.1 lakh fine for each the offences under Sections 8(c) r/w 21(c) and 8(c) r/w 28 of NDPS Act, and in default to undergo 6 months rigorous imprisonment.

Relying on the decision of the Supreme Court in *Shantilal Vs. State of M.P [(2007) 11 SCC 243]*, wherein the Apex Court reduced the Rigorous Imprisonment of three years to Rigorous Imprisonment of six months, which was subsequently followed in [Crl.A.Nos.161 & 281 of 2014] and [Crl.A.No.561 of 2010 & 57 of 2012, dated 24.07.2013], the Court found that the same rationale can be applied in the present case as well.

The Court considered the fact that the appellant was only a carrier, hasn't involved in any other case, and no adverse remark and behaviour during imprisonment, and the financial position of the appellant, and upheld the conviction and sentence imposed on the Appellant, and reduced the default sentence to 15 days Rigorous Imprisonment.

Thus, the court partly allowed the Appeal.

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**Mrs. S Vs. The Superintendent of Prison & Ors. [W.P. (MD) No. 20261 of 2021]**

**Date of Judgment: 16.11.2021**

**Psychiatric ailments – depression – schizophrenia – Child behaviour and Child Psychology**

The Hon'ble High Court while deciding a writ petition observed that, "Psychiatric ailments are ticking bombs. They lie beneath the surface. Unless they manifest themselves in a concrete manner in the behavior and conduct of the patient, one is hardly aware of it. Every police officer and judge should read Jerry Pinto's "A book of Light: When a Loved One Has a Different Mind". It is a collection of thirteen stories from people who recount their lives with loved ones who have had mental illnesses. When the writ petitioner broke down before me while narrating her husband's condition, I could really empathize. Every stakeholder should also watch the film "A Beautiful Mind" based on the book with the same title by Sylvia Nasar. It is a biography of John Nash, the American mathematician who won Nobel Prize. One then will know what depression is, what is schizophrenia and what is bipolar disorder. Time has come to conduct awareness programs in police training academies and judicial academies to sensitize the officers concerned." And thus upholding the rights of the arrestee having special needs allowed the writ petition.

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**P. Sankara Pandian Vs. The State represented by, The Inspector of Police,  
Kayathar Police Station, Thoothukudi District & Anr. [Criminal Appeal  
(MD)No.553 of 2018]**

**Date of Judgment: 21-10-2021**

**Sections 302 and 316 I.P.C — Prima Facie Burden Of Proof -**

The Hon'ble High Court decided on a Criminal Appeal against the acquittal of an accused charged for offence under Sections 302 and 316 I.P.C.

The Court found that evidence of the Prosecution Witnesses was contradictory and unreliable, and that there was no other evidence available on record to connect the Accused with the death.

On the issue of absence of explanation by the Accused as to the cause of death, the Court observed that, "it is settled law that Section 106 of the Evidence Act, cannot be applied directly against the accused. The initial burden is on the prosecution to establish the prima facie case against the accused. Only thereafter, the burden shifts on the accused. In the instant case, the prosecution has failed to discharge its initial burden. In the said circumstances, failure to offer any explanation by the accused cannot put against him." The Court referred to the decision in *Babu Vs. State of Kerala [(2010) 3 SCC (Cri) 1179]* and observed that, "Law is well settled that, in the appeal against acquittal, the order of acquittal should not be lightly interfered with by the appellate Court, and the appellate Court, should give proper weightage and consideration to the views of the trial Court. The appellate Court should not ordinarily set aside the order of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one." Thus, the Court confirmed the acquittal and dismissed the Appeal.

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**Prabhu Vs. State Rep. by The Inspector of Police, Gobichettipalayam Police Station, Gobichettipalayam, Erode District [Criminal Appeal No. 204 of 2016]**  
**Date of Judgment: 09.11.2021**

**Criminal Procedure Code – Modification of Conviction and Sentence – Appreciation of Evidence**

The Hon'ble High Court while deciding a Criminal Appeal on the issue of the conviction and sentence passed for the offence under Section 304(ii) of IPC held that, "that it is necessary, voluminous injury was intended to be inflicted and the same was sufficient in the ordinary course of nature to cause death....there is no premeditation for committing murder and as admittedly, the accused has not used any deadly weapon. Therefore, taking into entirety of the circumstances, as seen from witnesses, the charge under Section 302 of IPC was modified into Section 304(ii) of IPC by the lower Court, does call for interference....in the set of evidence adduced before the Sessions Court, it could not be concluded that or stated that the accused would have had the knowledge that by pushing the deceased, it is likely to result in his death, appears to be preposterous....conviction and sentence passed under Section 304(ii) of IPC is not sustainable and the accused can at the most be convicted only under Section 323 of IPC. Accordingly, the conviction under Section 304(ii) of IPC is modified to one under Section 324 of IPC." thus partly allowed the appeal.

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**S.Nallathambi Vs. The Deputy Superintendent of Police, Kangeyam Sub Division, Thiruppur District & Anr. [Criminal Original Petition No.19934 of 2021]**

**Date of Judgment: 08.11.2021**

Appreciation of Evidence – Criminal Procedure Code – Dispensation of Compensation – Defamation – Privacy of Victim

The Hon'ble High Court decided on a Criminal Original Petition seeking recall of non-bailable warrant. The Court reckoning the administrative lapses to dispense compensation and held that, "The primary concern of the victim is secrecy, confidentiality and identity of the victim to be maintained, so that she do not come in public glare, making her life miserable." And thus dismissed the petition.

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**Shekar @ Anam Somashekar S/o.Veeraraju Vs. State represented by The  
Inspector of Police, R2 Kodambakkam Police Station, Kodambakkam,  
Chennai [Criminal Appeal No. 670 of 2018]  
Date of Judgment: 30.09.2021**

Criminal Procedure Code – Appreciation of Evidence – Section 380 – Section 302 -  
Indian Penal Code

In an appeal against conviction and sentence under section 302 and 380 of IPC, the Hon'ble High Court, held that, "the circumstances, which have been proved satisfactorily by the prosecution, cannot be ignored...." and thus sustained the conviction under Section 302 IPC however, the conviction under Section 380 was set-aside for want of examination of person from whom the material object was recovered further the criminal appeal was partly allowed and the appellant was acquitted of the charge under section 380 and his conviction and sentence under section 302 was sustained.

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