

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII— PART11 — NOVEMBER 2023****

IMPORTANT CASE LAWS



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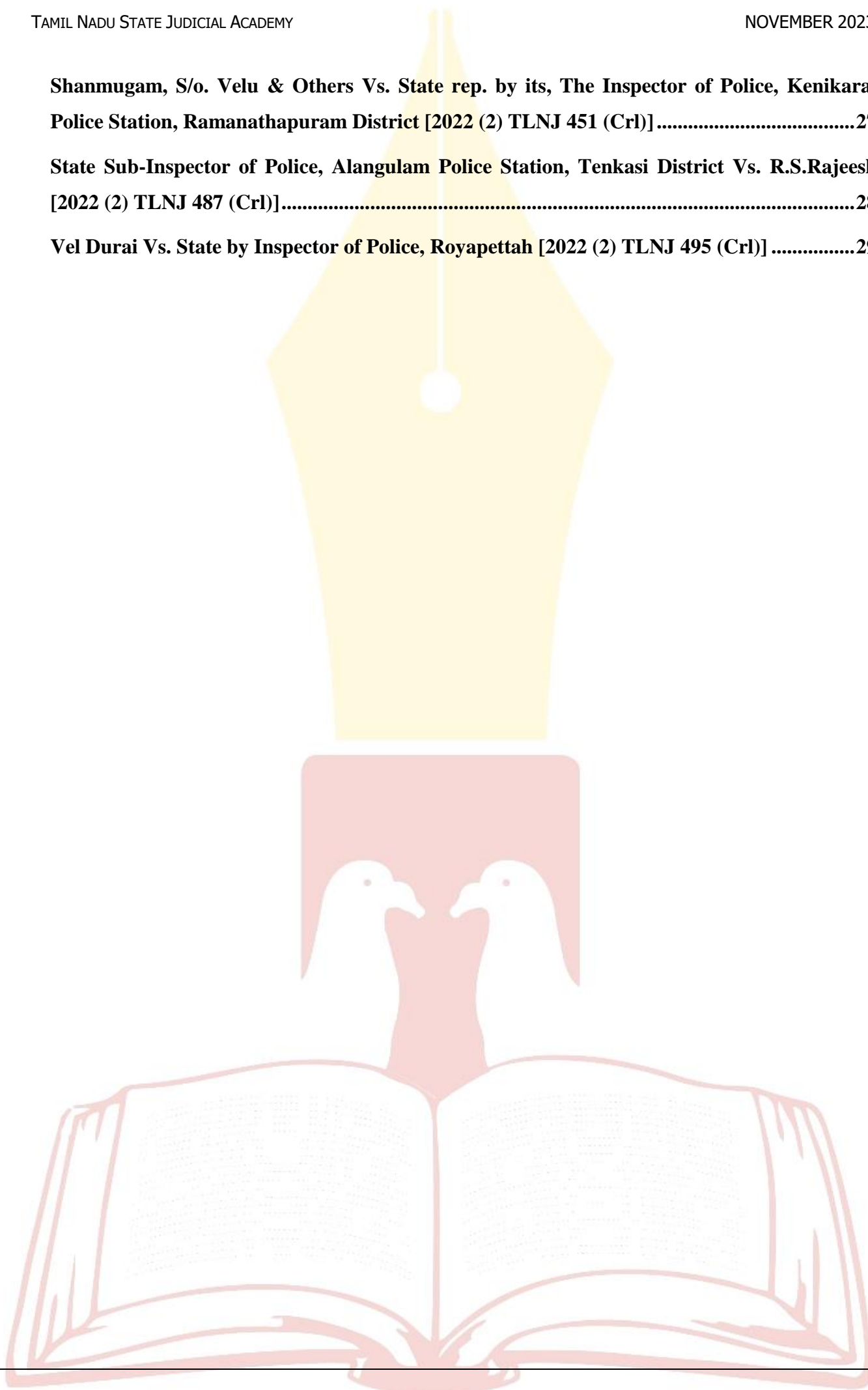
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TABLE OF CONTENTS

SUPREME COURT – CIVIL CASES	1
CELIR LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd & Others [2023 (5) MLJ 649 SC]	1
Prem Kishore & others Vs. Brahm Prakash & others [2023 (6) CTC 90].....	3
Dhani Ram (died) Through LRs. & Others Vs. Shiv Singh [AIR 2023 SC 4787]	5
Aditya Khaitan & Others Vs. IL and FS Financial Services Ltd [AIR 2023 SC 4848]	6
Meena Pradhan & Others Vs. Kamla Pradhan & Another [AIR 2023 SC 4680].....	7
X Vs. State (NCT of Delhi) [2023 (9) SCC 433]	8
SUPREME COURT – CRIMINAL CASES.....	13
Salib @ Shalu @ Salim Vs. State of U.P. & Others [2023 (4) MLJ(Crl) 225]	13
P. Sarangapani (Dead) Through Lr Paka Saroja Vs. State of Andhra Pradesh [AIR 2023 SC 4739].....	14
Makkella Nagaiah Vs. State of Andhra Pradesh [AIR 2023 SC 4564].....	15
Phulel Singh Vs. State of Harayana [AIR 2023 SC 4653]	16
Sunil Vs. State of NCT of Delhi [AIR 2023 SC 4822]	17
HIGH COURT – CIVIL CASES	19
G. Rani & Another Vs. M. Thiagarajan & Others [2023 (5) MLJ 735].....	19
Santha Sathiyanesan & Another Vs. R.C. Sathiyanesan (died) & Others [2023 (6) CTC 9] ..	20
Abdulla & Another Vs. Ismail Pathuma & Others [2023 (6) CTC 54]	22
A. Arjun Vs. Balaji. B [2023 (6) CTC 75]	23
Paramasivam (Died) & Others Vs. Rajamanickam [2023 (4) TLNJ 279 (Civil)]	24
S. Rajasekar V. C. Sakthivel Raajhaa [AIR 2023 MAD 339]	25
HIGH COURT – CRIMINAL CASES	26
R. Ravichandran Vs. The Inspector of Police, Karaikudi North Police Station, Karaikudi. [2023 (2) TLNJ 407(Crl)]	26

Shanmugam, S/o. Velu & Others Vs. State rep. by its, The Inspector of Police, Kenikarai Police Station, Ramanathapuram District [2022 (2) TLNJ 451 (Crl)]	27
State Sub-Inspector of Police, Alangulam Police Station, Tenkasi District Vs. R.S.Rajeesh [2022 (2) TLNJ 487 (Crl)]	28
Vel Durai Vs. State by Inspector of Police, Royapettah [2022 (2) TLNJ 495 (Crl)]	29



SUPREME COURT – CIVIL CASES**CELIR LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd & Others [2023 (5) MLJ 649 SC]****Date of Judgment: 21.09.2023**

(A) Banking and Finance – Right of Redemption – When extinguished – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (As amended by Central Act 44 of 2016), Under the amended Section 13(8) of the SARFAESI Act, once the borrower fails to tender the entire amount of dues with all cost & charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on the date of publication of the auction notice as contemplated under Rule 9(1) of the SARFAESI Rules, 2002 – Once the auction notice is published in accordance with Section 13(8) of the SARFAESI Act, then unless and until the auction is held to be bad and illegal in the facts of the case, the right of redemption of mortgage is not available to the borrower – Appeals allowed.

(B) Banking and Finance – Effect of confirmation of sale – The vested right of an auction purchaser – SARFAESI Rules, 2002, Rule 9(2) – Confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in the appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI Rules, 2002.

(C) Banking and Finance – SARFAESI Rules, 2002, Rule 9(6) – Payment of bid price – Duty of the Bank – Once the entire bid price is paid and there is no stay granted by any forum known to law, the Bank is duty bound to issue a valid Sale Certificate and hand over the physical possession of the secured asset to the auction purchaser.

(D) Banking and Finance – Right of Redemption – Section 13(8) of SARFAESI Act, 2002 (as amended) is inconsistent with Section 60 of the Transfer of Property Act, 1882 – Being a special Act the former prevails over the latter – Section 13(8) of the SARFAESI Act now uses the expression "before the date of publication notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets" which is inconsistent with the general rule under the T.P Act, 1882 that the right of redemption is extinguished only after conveyance by registered deed – In the light of clear inconsistency between Section 13(8) of the SARFAESI Act and Section 60 of the Act 1882 the former special enactment overrides the latter general enactment in light of Section 35 of the SARFAESI Act.

(E) Banking and Finance – Sanctity of a Public Auction – Duty of the Court – SARFAESI Act, 2002, Section 13(8) – It is the duty of the courts to zealously protect the sanctity of any auction conducted – The courts ought to be loath in interfering with auctions, otherwise it would frustrate the very object and purpose behind auctions and deter public confidence and participation in the same.

(F) Constitution – SARFAESI Act, 2002 – Interference under Article 226 – Despite repeated pronouncements the High Court ignored the availability of statutory remedies under the RDBFI Act and the SARFAESI Act, and exercised jurisdiction under Article 226 of the Constitution against challenges made by borrowers – Deprecated.

Prem Kishore & others Vs. Brahm Prakash & others [2023 (6) CTC 90]**Date of Judgment: 29.03.2023**

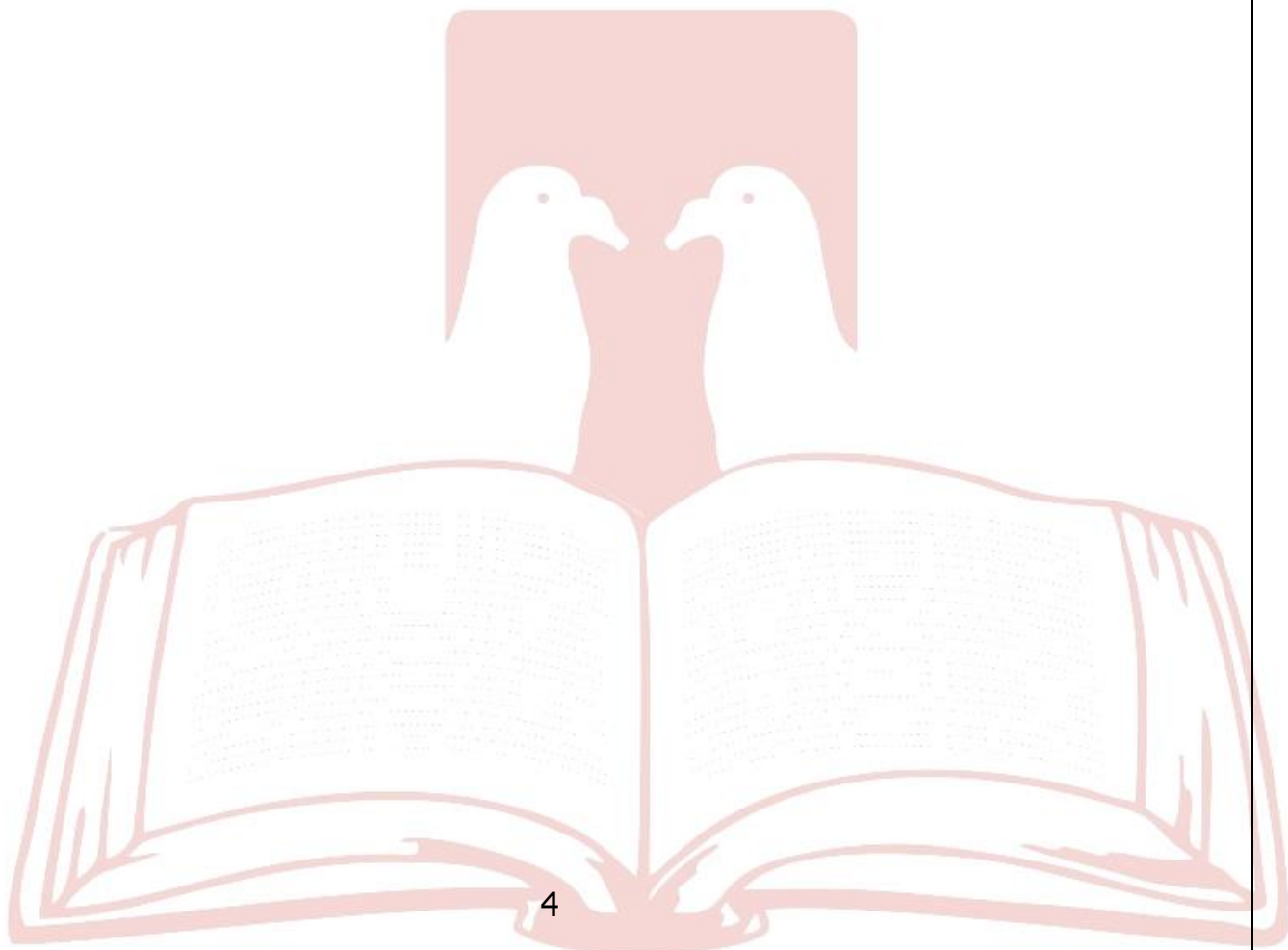
Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaintiff – Plea of Res Judicata – Barred "by any law" – Meaning – Eviction proceedings – Guiding Principles: (i) to reject Plaintiff on ground that Suit is barred by any law, only averments in Plaintiff will have to be referred (ii) Defense made by Defendant in Suit must not be considered while deciding merits of Application (iii) adjudication of Plea of Res judicata requires consideration of pleadings, issues and decision in "previous Suit" – Plea of Res judicata for rejection of Plaintiff is beyond scope of Order 7, Rule 11(d) of Code.

Code of Civil Procedure, 1908 (5 of 1908), Section 11 & Order 7, Rule 11 – Rejection of Plaintiff – Plea of Res judicata – Pre-requisites to determine Plea of Res judicata: (i) "Previous Suit" is decided (ii) Issues in subsequent Suit were directly and substantially in issue in former Suit (iii) Former Suit was between same parties or parties through whom they claim, litigating under same Title (iv) Issues were adjudicated and finally decided by Competent Court to try subsequent Suit.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaintiff – Eviction proceedings – Plea of Res judicata – High Court rejected Eviction Petition on premise that subsequent Petition barred by Res judicata – Tenability – Former Eviction Petition dismissed on merits for non-examination of Witnesses on side of Landlord – Whether former dismissal of Eviction Petition can be treated as dismissal on merits in light of Order 17, Rule 3 of Code – Held, Former dismissal Order of Rent Controller did not purport to be one of dismissal for default or on merits – Dismissal Order of former Eviction Petition is not final decision of Suit within meaning of Order 9, Rule 8 and Order 17, Rule 3 of Code – High Court committed error in taking a view that subsequent Eviction Petition is barred by Res judicata.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 & Section 11 –

Rejection of Plea –Plea of Res judicata – Determination – Procedure to be followed – Court bound to refer copies of pleadings, issues and Judgment of "Former Suit" while adjudicating Plea of Res judicata – Rule of Res judicata does not strike at root of jurisdiction of Court trying subsequent Suit – Res judicata is Rule of Estoppel based on Public policy of achieving finality to litigation – Plea of Res judicata is founded on proof of certain facts and then applying law to facts so found – Plea of Res judicata should be laid in pleadings and then issue must be framed and tried.



Dhani Ram (died) Through LRs. & Others Vs. Shiv Singh [AIR 2023 SC 4787]

Date of Judgment: 06.10.2023

(A) Succession Act (39 of 1925), S.63(c) – Execution of Will – Proof – Though one witness claimed that testator affixed her signatures on the Will in their presence, it was vehemently denied by other attesting witness – First witness also did not state that he affixed his signature on the Will in presence of testator – Thus, neither of the attesting witnesses fulfilled mandate of S.63(c) to prove Will.

(B) Succession Act (39 of 1925), S.63 – Execution of Will – Evidence of attesting witness – Credibility Witness claimed that he had good relations with testator and that she would meet him regularly for some work or other – Testator lived for barely a month and a half after execution of Will – However witness deposed that testator may have lived for 2–3 years after execution of Will – Will was made on one date and registered on another date – However witness deposed that making of Will and its registration took place on same day – Evidence of witness did not inspire confidence on more grounds than one – Since witness did not recall such crucial details, doubt was casted on his credibility.

(C) Succession Act (39 of 1925), S.63 – Hindu Succession Act (30 of 1956), S.15 – Evidence Act (1 of 1872), Ss.68, 71 – Execution of Will – Proof – Neither of the attesting witnesses to Will proved its execution in terms of S.63 – One attesting witness denied execution of document in his presence while other attesting witness did not establish its execution in terms of legal mandate – Neither document writer who scribed Will, nor anyone from Registrar's Office was examined to prove its execution – Compliance with essential legal requirements, in terms of Ss.68 and 71 of Act of 1872 and S.63 of Act of 1925, was not established in order to prove execution of Will – Beneficiary of Will failed to prove execution of Will in terms of mandatory legal requirements – Thus, defendant being a legal heir would be entitled to succeed to properties by way of intestate succession under S.15 of Act of 1956.

Aditya Khaitan & Others Vs. IL and FS Financial Services Ltd [AIR 2023 SC 4848]

Date of Judgment: 03.10.2023

(A) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act (4 of 2016), S.16 – Civil P. C. (5 of 1908), O.8, R.1– (As Amended by Commercial Courts Act (4 of 2016) – Commercial suit – Delay in filing written statement – Condonation of – As per O.8, R.1 as amended by Act 4 of 2016, outer limit within which court or tribunal can condone delay is 120 days from date of service of summons – While summons was served on 07.02.2020, 30 days period expired on 08.03.2020 and outer limit of 120 days expired on 06.06.2020 – Application for taking written statements on record and extension of time was filed on 20.01.2021 – Applying orders passed by Supreme Court on 08.03.2021 and orders made thereafter and excluding time stipulated therein, application filed by defendants on 19.01.2021 was within time – Order of High Court denying to take written statements of defendants on record was set aside.

(B) Maxims – Vigilantibus non dormientibus jura subveniunt – Meaning of – The law assists those who are vigilant, not those who sleep over their rights is a fundamental legal maxim on which statutes of limitations are premised.

Meena Pradhan & Others Vs. Kamla Pradhan & Another [AIR 2023 SC 4680]

Date of Judgment: 21.09.2023

(A) Succession Act (39 of 1925), Ss.276, 63 – Evidence Act (1 of 1872), S.68 – Grant of probate – Execution of Will – Validity – Will was duly executed by testator in favour of plaintiffs in presence of witnesses by his free will when he was in a sound disposing state of mind – Same was proved through testimony of one attesting witness – Said witness categorically stated that testator executed Will and, both he and testator signed Will in presence of each other – There was no evidence to conclude that testator was not in a fit or stable mental condition at time of execution of Will, or that Will was executed under suspicious circumstances, or due to undue influence – Relevant provisions were complied with – Grant of probate was proper.

(B) Succession Act (39 of 1925), Ss.276, 63 – Evidence Act (1 of 1872), S.68 – Execution of Will – Proof – For execution of Will, apart from statutory compliance, it has to be proved that testator signed Will by his own free Will; at time of execution he had a sound state of mind; he was aware of nature and effect thereof and Will was not executed under any suspicious circumstances

X Vs. State (NCT of Delhi) [2023 (9) SCC 433]**Date of Judgment: 29.09.2023**

A. Constitution of India - Art. 21 - Right to reproductive autonomy - Forms part of rights to personal liberty, privacy and bodily integrity encompassed under Art. 21 - Decisional autonomy of woman to procreate or not, an integral part of right to privacy

- Woman is ultimate decision maker whether to continue with pregnancy or to terminate unwanted pregnancy, considering consequences relating to her vital aspects of physical and mental health and life

B. Constitution of India - Art. 21 - Right to reproductive autonomy - Right to dignity - Autonomy to choose one's course of life - Right to dignity inherent in every individual merely by being a human being

- Recognises every woman's right to make reproductive choice to terminate unwanted pregnancy, without undue interference of State - Forcing a woman to continue with unwanted pregnancy violative of her right to dignity

C. Constitution of India - Arts. 14 and 21 - Right to reproductive autonomy - Choice of pregnancy, to continue or to terminate on the woman, irrespective of her marital status - Artificial distinction between married and single woman against spirit of Art. 14 and constitutionally unsustainable

D. Constitution of India - Art. 21 - Right to reproductive autonomy - Includes right to access education and information about contraception and sexual health and right to decide whether and what type of contraceptives to use

E. Constitution of India - Arts. 21, 38 and 47 - Women have right to reproductive healthcare - State's obligation

- State has positive obligation to protect reproductive health and take active steps to help women increase access to healthcare facilities, safe, effective and affordable methods of family planning and enabling them to undergo safe pregnancy or abortion, as they choose - Medical Termination of Pregnancy Act, 1971 - S. 3(2) - Human and Civil Rights – Medical Termination of Pregnancy Rules, 2003, R. 3-B

F. Interpretation of Statutes - Basic Rules - Dynamic/Temporally concordant interpretation/Passage of Time - Social perspective - Interpretation should be in consonance with changing social values, needs of a the time and circumstances

G. Constitution of India - Art.14 - Institution of Marriage - Marriage is no more a precondition to rights of individuals

- Changing socio-cultural mores should be considered - Law should recognise modern non-traditional familial relationship and equal rights of woman life partners as beneficiaries under beneficial legislation

H. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(c) r/w S. 3(2)(b), Explan. 1 (as amended by the Act 8 of 2021) of the MTP Act, 1971 - Underlying fundamental rights aspect

- Provisions inhere right to reproductive autonomy of women, which is a facet of rights covered under Art. 21 of the Constitution - R. 3-B(c) cannot be so interpreted as to extend its benefits to married women only pursuant to change in marital status due to husband's death or divorce, as that would perpetuate stereotype and socially held notion that only married women indulge in sexual intercourse - This artificial distinction between married and single women would be offensive to spirit of Art. 14 of the Constitution - Institution of marriage cannot be a distinguishing feature for denying unmarried or single women's rights under Arts. 21 and 14 of the Constitution

- Medical Termination of Pregnancy Act, 1971 - S. 3(2)(b), Explan. 1(as amended by the Act 8 of 2021) - Constitution of India, Arts. 21 and 14

I. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(c) r/w S. 3(2)(b), Explan. 1 (as amended by the Act 8 of 2021) of the MTP Act, 1971 - Intention of legislature - Beneficial provisions for termination of unwanted pregnancy -Intended to be extended to all women, irrespective of their marital status, married or single

- Substitution of words "any woman or her partner" in place of words "married woman or her husband" in Explan. 1 to S. 3(2)(b) by the Amending Act indicative of

intention of legislature - Words "widowhood or divorce" mentioned in brackets at tail end in R. 3-B(c), held, are only illustrative

- Medical Termination of Pregnancy Act, 1971, S. 3(2)(b), Expln. 1 (as amended by the Act 8 of 2021)

J. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(c) r/w S. 3(2)(b), Expln. 1 (as amended by the Act 8 of 2021) of the MTP Act, 1971 - Mode of interpretation of provisions

- Purposive, harmonious, wide and progressive construction, in consonance with legislative intent, constitutional mandates and obligations under international treaties and conventions, as ratified by India, needed

K. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B - Object - Intended to solve mischief sought to be remedied by the MTP Act, 1971 and is in consonance with scheme of the MTP Act,

L. Medical and Health Law - Medical Termination of Pregnancy Act, 1971 - S. 3 - Interpretation - Holistic approach - Entire section with its sub-clauses should be read as a whole

M. Medical and Health Law - Medical Termination of Pregnancy Act, 1971 - Ss. 3(2)(b)(i), Explns. 1 and 3(3) - Grave injury to mental health of pregnant woman

- Status of her mental health is located in her own self and experiences within her actual or reasonably foreseeable environment and social context - Meaning of mental health should be understood in common parlance - Words and Phrases - "Mental health"

N. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(a) - Survivors of rape or sexual assault - Non-consensual sex with intimate partner or even husband, held, covered for purposes of MTP Act and Rules

- Woman may become pregnant as a result of non-consensual sexual intercourse performed by not only strangers, but intimate partner or even husband - Institution of marriage not concerned with woman's consent to sexual relationship - Notwithstanding Exception 2 to S. 375 IPC (question of constitutionality of which is

pending before Supreme Court), meaning of rape or sexual assault should be understood in the context of the MTP Act and Rules - Penal Code, 1860, S. 375, Exception 2

O. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(a) - Rape or sexual assault - For invoking benefit under Cl. (a), woman need not seek recourse to formal legal proceedings to prove factum of sexual assault, rape or incest

P. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - R. 3-B(b) - Minors

- For limited purpose of medical termination of pregnancy under the MTP Act/Rules, registered medical practitioner (RMP) need not provide information under S. 19(1) of the POCSO Act regarding identity and other personal details of the minor on her or her guardian's request - RMP who has provided information under S. 19(1) of the POCSO Act also exempt from disclosing minor's identity in any criminal proceedings arising from RMP's report under S. 19(1) of the POCSO Act

Q. Human and Civil Rights - Medical Termination of Pregnancy Rules, 2003 - Rr. 3-B(a), (d) to (g) - Reasons for belated disclosure of pregnancy in cases of these categories of women, explained

R. Medical and Health Law - Medical Termination of Pregnancy Act, 1971 - Ss. 3 and 5 - Barriers which are still continuing, to safe and legal abortions in terms of the Act highlighted

S. Interpretation of statutes – Basic Rules – Purposive construction/interpretation/Mischief rule/Heydon's rule – Purposive interpretation – When may be resorted to – Limits of – Principles summarised

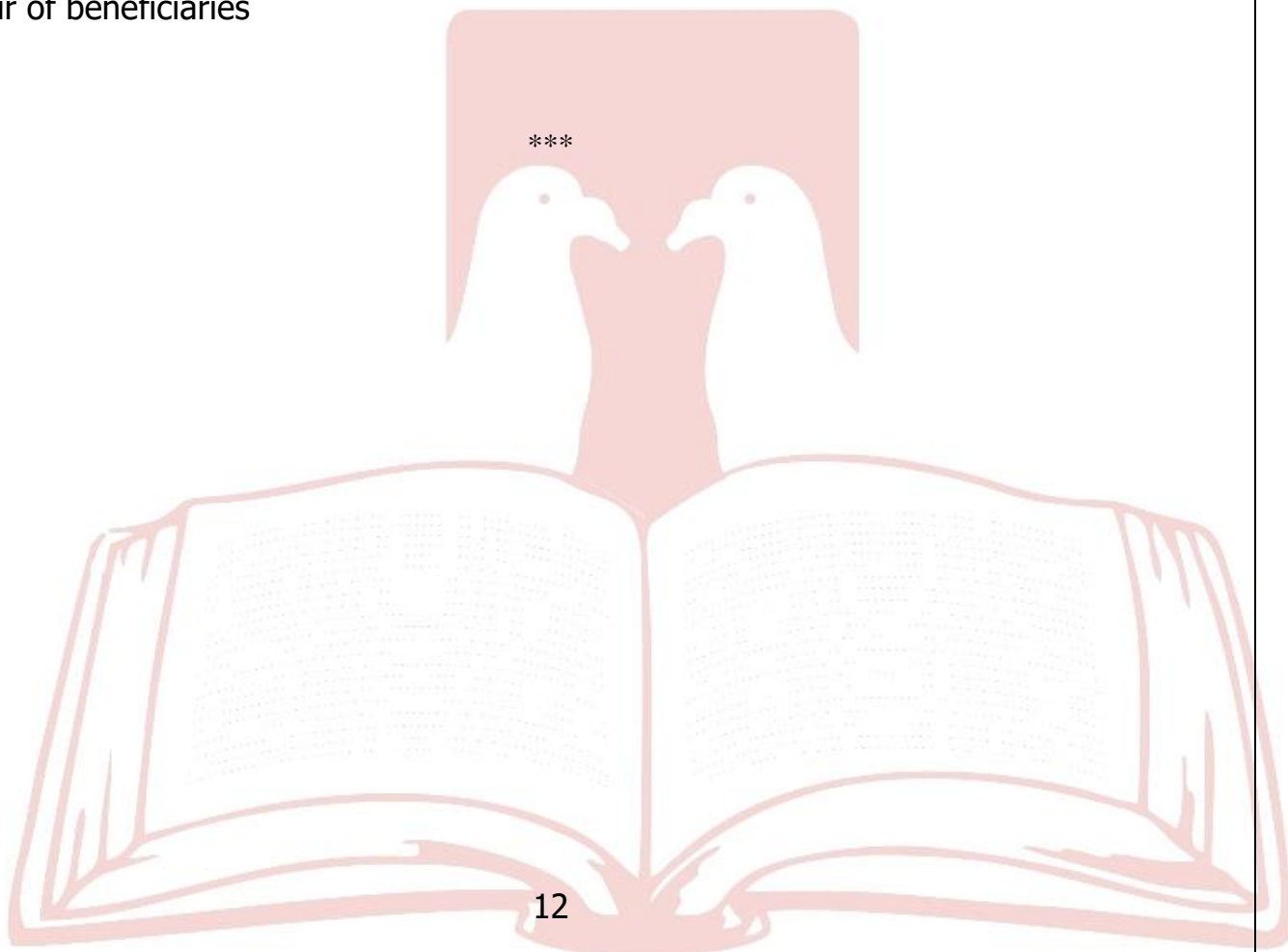
T. Interpretation of Statutes - Basic Rules - Interpretation consistent with constitutional scheme - When more than one construction possible, one that seeks to give effect to constitutionality of the provision should be favoured

U. Interpretation of Statutes - Basic Rules - Contextual/Holistic construction/meaning - Clauses, sub-clauses, part of a statutory provision - Should be read together as an integral whole

V. Administrative Law - Subordinate/Delegated Legislation - Interpretation of Subordinate/Delegated Legislation - Rules framed under statute - Should be in consonance with statutory scheme and give effect to the statute - Should be interpreted in a reasonable manner - Interpretation of Statutes - Interpretation of Subordinate/Delegated Legislation

W. Interpretation of Statutes - External Aids - International law, conventions, treaties and norms - International treaties, covenants and conventions, ratified by India - Interpretation of statutes should further India's obligations under these treaties and conventions - International Law - International Law vis-à-vis Municipal Law - Interpretation of Municipal Law

X. Interpretation of Statutes - Particular Statutes or Provisions - Beneficent or beneficial legislation - Progressive and beneficial legislation - Should be construed in favour of beneficiaries



SUPREME COURT – CRIMINAL CASES**Salib @ Shalu @ Salim Vs. State of U.P. & Others [2023 (4) MLJ(Cr) 225]****Date of Judgment: 08.08.2023**

(A) Quashing of FIR – Scope of High Court's powers – Code of Criminal Procedure, 1973, Section 482 – Constitution of India, 1950, Article 226 – When quashing is sought on ground that criminal proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments in the FIR and, if need be, with due care and circumspection try to read in between the lines – The Court need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

(B) Threatening any person to give false evidence – Must be before a Court of Law – Indian Penal Code, 1860, Section 195–A – To give threat to a person to withdraw a complaint or FIR or settle the dispute would not attract Section 195A of the IPC.

(C) Extortion – Forcibly taking property does not constitute extortion – Indian Penal Code, 1860, Section 363 – It has to be shown that the person was induced to part with the property by putting him in fear of injury.

(D) Procedure where witnesses are threatened – Code of Criminal Procedure 1973, Section 2(d) and 195 – Witness or person threatened can file a complaint under Section 2(d) Cr.P.C – Since offence is cognizable, police has the power to investigate – Question of whether the bar of Section 195 Cr.P.C would apply to Section 195–A IPC left open.

P. Sarangapani (Dead) Through Lr Paka Saroja Vs. State of Andhra Pradesh [AIR 2023 SC 4739]

Date of Judgment: 21.09.2023

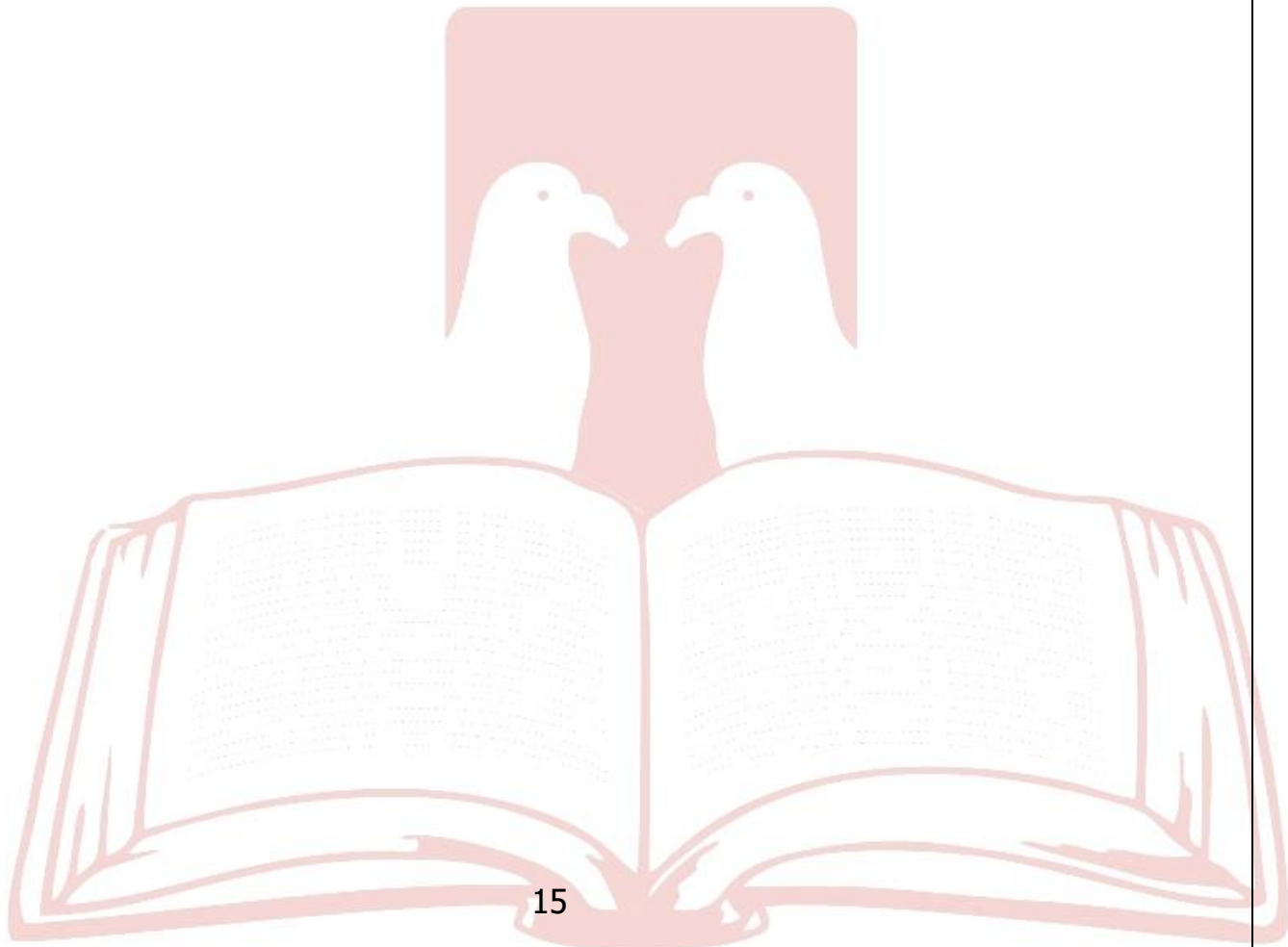
(A) Prevention of Corruption Act (49 of 1988), Ss.13(1)(d), (2), 20 – Illegal gratification – Demand and acceptance – Proof – Pre-trap and post-trap proceedings were duly proved by prosecution by examining concerned witnesses, who had duly supported prosecution case – Both Subordinate courts had recorded findings that prosecution had proved beyond reasonable doubt the conscious acceptance of tainted currency by accused and recovery of tainted currency from him – Burden had shifted on accused to dispel statutory presumption that he had not accepted money as a motive or reward for performance of his public duty, which he had failed to dispel – Conviction was proper.

Criminal Appeal No.54 of 2005, D/-21-3-2011(AP), Affirmed.

(B) Prevention of Corruption Act (49 of 1988), S. 13(1)(d), (2) – Illegal gratification – Non-availability of complainant – Effect – Complainant expired prior to commencement of trial and could not be examined by prosecution – It is always open for prosecution to prove contents of complaint and other facts in issue by leading other oral or documentary evidence, in case of death of or non-availability of complainant – Death of complainant or his non-availability at time of trial was neither fatal to prosecution nor could be said to be a ground to acquit accused.

Makkella Nagaiah Vs. State of Andhra Pradesh [AIR 2023 SC 4564]**Date of Judgment: 05.09.2023**

Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Ss. 7A(1), 15, 16 – Constitution of India, Art. 32 – Claim of juvenility – Verification of – Claim was based on petitioner's school documents – In report forwarded by Addl. Sessions Judge on issue of juvenility, date of birth of petitioner was categorically concluded – Said report was based on detailed examination of documents – As per the report, petitioner was aged about 16 years 7 months old on date of crime – Held, petitioner was juvenile in conflict with law – Considering that petitioner had already undergone more than 12 years of imprisonment, he should no longer be incarcerated – Direction was issued to release petitioner forthwith.



Phulel Singh Vs. State of Harayana [AIR 2023 SC 4653]**Date of Judgment: 27.09.2023**

Penal Code (45 of 1860), S. 304B – Evidence Act (1 of 1872), Ss. 32, 3 – Dowry death – Dying declaration – Accused allegedly harassed deceased due to insufficiency of dowry, poured kerosene on her and set her ablaze – Case mainly rested upon dying declaration – Dying declaration was recorded by Executive Magistrate who stated that he obtained certificate from doctor regarding fitness of deceased to make statement – Whether doctor really examined deceased with regard to her fitness prior to her statement being recorded was, however doubtful – Dying declaration was recorded after three days – Executive Magistrate admitted that boys who brought application with order of SDM told him that statement of deceased should be recorded – He further admitted that the boys told him that whatever they had to tell deceased, they had told her and that he should accompany them to record her statement – Boys were relatives of deceased and were also present in room in which statements were recorded – This created a doubt whether dying declaration was made voluntarily or was tutored – There was no evidence to prove that deceased was harassed for non-fulfilment of demand of dowry – Accused was entitled to acquittal.

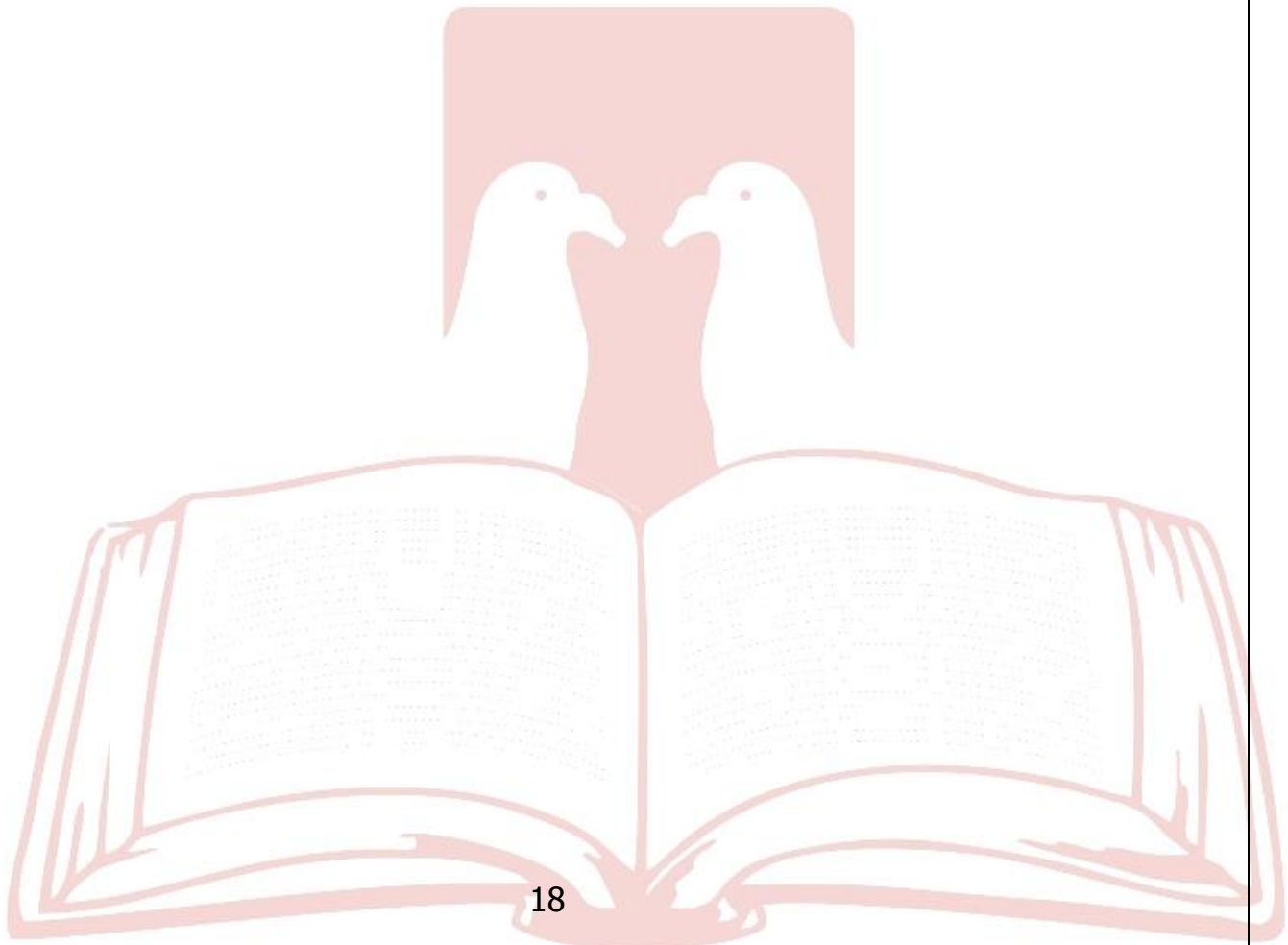
Sunil Vs. State of NCT of Delhi [AIR 2023 SC 4822]**Date of Judgment: 21.09.2023**

A) Penal Code (45 of 1860), Ss. 302, 34 – Evidence Act (1 of 1872), S. 3 – Murder – Common Intention – Proof – allegation that due to indiscriminate firing by accused on the instigation by co-accused persons, two persons died and 26 others received grievous injuries – Witnesses disclosed the presence of co-accused persons at the roof-top and that they were instigating accused not to spare the supporters of prosecution party – But they were not specific and consistent about the two deceased being targeted by accused at the instigation of co-accused person- Witnesses deposed that deceased had neither enmity with co-accused person nor they were the supporters of the rival faction with whom the accused party had animosity – General exhortation by co-accused persons was not sufficient to fasten vicarious liability on them for shots fired by accused – Only accused would be responsible for the death of two persons – Co-Accused persons had not shared common intention to commit murder of two persons – Conviction of co-accused for murder was set aside.

2016 Cri LJ 176 (SC), 2017 Cri LJ 756 (SC), Followed.

(B) Penal Code (45 of 1860), Ss. 307, 34 – Evidence Act (1 of 1872), s. 3 – Attempt to murder – Proof – Allegation that 26 persons were grievously injured due to indiscriminate firing by accused at the instigation of co-accused persons – Evidence was not specific as to who in particular was targeted at the behest of co-accused persons but the indiscriminate firing by accused was continued for 20-25 minutes and co-accused persons were found present and exhorting accused to fire – Co-accused persons had knowledge that the act which accused was exhorted to commit was so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death of a person – Considering nature of incident, number of persons injured and role attributed to co-accused persons, their conviction for offence under S. 307 read with S. 34 of IPC was upheld.

(C) Criminal P.C. (2 of 1974), S. 313 – Statement of accused – Failure to put incriminating circumstance to co-accused – Effect – Incriminating circumstance pertaining to co-accused persons exhorting the main accused was not specifically put to them – But they were aware that prosecution was launched against them as they had participated in the crime by sharing common intention with the main accused – Co-accused persons did not raise plea regarding non-compliance of S. 313 either before trial Court or High Court despite having ample opportunities – They did not suffer any prejudice more so, when their case was of complete denial i.e., that they were not present at the time of occurrence, which was disbelieved by the trial Court as well as the High Court – Conviction of co-accused persons cannot be vitiated for alleged non-compliance of S. 313 Cr.P.C



HIGH COURT – CIVIL CASES**G. Rani & Another Vs. M. Thiagarajan & Others [2023 (5) MLJ 735]****Date of Judgment: 07.09.2023**

(A) Civil Procedure – Abatement – Suit for injunction – Code of Civil Procedure, 1908, Sections 50, 146 & Order XXI Rule 32 – A decree for permanent injunction is executable against the legal representatives of the judgment debtor – Thus, even if the judgment debtor dies the decree would be enforceable against his legal representatives – Revision dismissed.

(B) Civil Procedure – Suit for injunction – Actio personalis moritur cum persona – Code of Civil Procedure, 1908, Sections 50 & 146 and Order XXI Rule 32 – Indian Succession Act, 1925, Section 306 – The application of the Latin maxim is limited to actions ex-delicto – The maxim applies only to actions for damages such as suits for defamation, assault or other personal injuries not causing the death of a person – In a suit for injunction the cause of action against the deceased survives since the right that is claimed in the suit is heritable and also since the decree is executable against not only the original judgment debtor but also the legal representatives in view of Sections 50 & 146 and Order XXI Rule 32 of Code.

(C) Civil Procedure – Rejection of Pleat – Lack of Pleadings – Lack of pleadings can never be a ground to reject a pleat – Rejection of pleat must fall within the four corners of Order VII Rule 11 of Code

Santha Sathiyanesan & Another Vs. R.C. Sathiyanesan (died) & Others
[2023 (6) CTC 9]

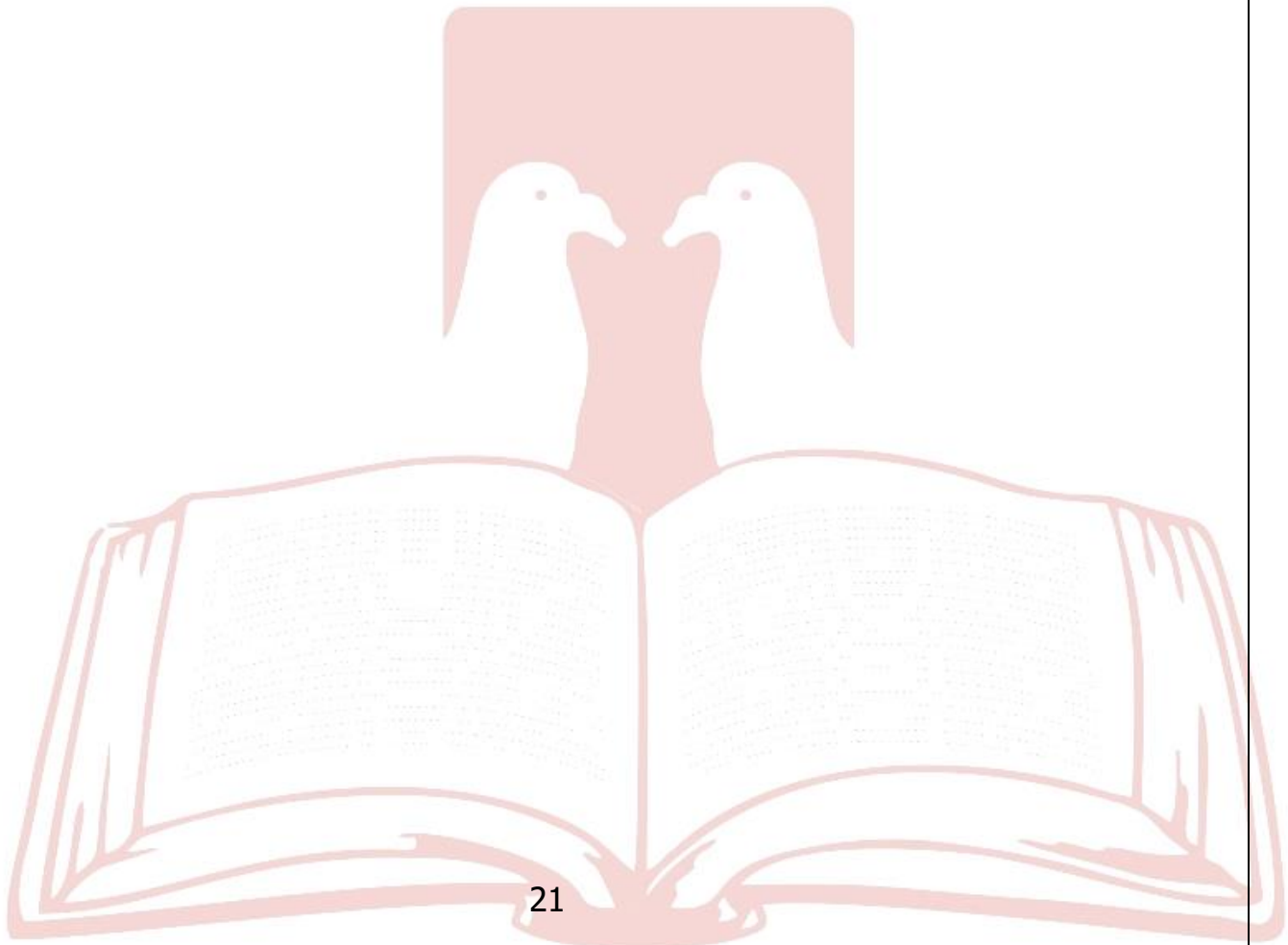
Date of Judgment: 18.10.2023

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rules 5, 9 & Section 2(11) – Application to set aside abatement or dismissal of Suit – Who can file – Suit filed to set aside Settlement Deed by Wife in favour of Son, based on Will that had not taken effect – Suit dismissed, on default or as abated – Fresh Will executed in favour of Daughters after institution of Suit – Whether Daughters entitled to step into shoes of their Father – Held, Daughters claiming as Legal Representatives having become entitled to estate of their Father, can maintain Application under Order 22, Rule 9 and prosecute Suit – Language employed in Order 22, Rule 9(2) entitles even person 'claiming to be Legal Representative' of deceased to apply for setting aside abatement or dismissal of Suit – Showing sufficient cause is only requirement – Daughters entitled to step into shoes of Father and challenge Settlement Deed executed by Mother in favour of their Brother – Genuineness of Will in favour of Daughters can be challenged in Trial Court – Interest of Defendants sufficiently protected by Order 22, Rule 5 of Code – C.R.Ps. dismissed.

Practice and Procedure – Rules and Procedures are only handmaid of justice and not intended to destroy or defeat Cause of Justice – Courts endeavour to do substantial justice by ignoring technical/hyper-technical objections – Impleading Respondents will avoid multiplicity of proceedings and give platform to all parties to work out their contentions and adjudicate same completely.

Code of Civil Procedure, 1908 (5 of 1908), Section 2(11) & Order 22 – Legal Heirs and Legal Representatives – Distinction – Terms “Legal Heirs” and “Legal Representatives” generally used loosely and interchangeably – Legal Heir is not defined under Code but generally used in relation to Laws of Succession – Legal Representative defined under Section 2(11) – Order 22 refers only to Legal

Representatives and not Legal Heirs – Held, terms “Legal Heirs” and “Legal Representatives” are distinct and not interchangeable.



Abdulla & Another Vs. Ismail Pathuma & Others [2023 (6) CTC 54]**Date of Judgment: 13.07.2023**

Mohammedan Law – Marriage - Nature and Scope - Marriage is a Contract, which has for its object procreation and legalizing of children - Muslim Marriage is in nature of Civil Contract, but not purely a Civil Contract - Ingredients of valid Contract like capacity to contract, proposal, acceptance and witness are necessary for valid marriage.

Mohammedan Law – Marriage - Irregular Marriage - Effects of Irregular marriage – Irregular marriage may be terminated either before or after consummation by either party – Irregular Marriage has no legal effect before consummation.

Mohammedan Law – Irregular Marriage – Presumption – Absence of direct proof of marriage – When presumption arises – (i) prolonged and continuing cohabitation as Man and Wife (ii) Acknowledgement of Paternity by Man subject to fulfilment of Condition of valid acknowledgement (iii) Acknowledgement by Man of Woman as his Wife.

Mohammedan Law – Marriage – Irregular Marriage – Presumption of Marriage by long cohabitation – Applicability – Non-availability of direct evidence to prove marriage – Evidence of Plaintiff exemplify drawn by applying rule of Long Cohabitation – Marriages may be established by direct proof or by presumption drawn from certain factors – Court can draw presumption by prolonged cohabitation combined with other circumstances or from acknowledgment of legitimacy in favour of child or fact of acknowledgment by Man of Woman as his Wife.

Mohammedan Law – Marriage – Irregular Marriage – Acknowledgment of Paternity – Plaintiff contended that offsprings of “Zina” (adultery, incest, fornication) could not be acknowledged – Plaintiff failed to plead absence of acknowledgement of marriage – Oral and Documentary evidence on record established that children were treated as legitimate by acknowledging Marital relationship of parties.

A. Arjun Vs. Balaji. B [2023 (6) CTC 75]**Date of Judgment: 20.09.2023**

Letters Patent, 1865, Clause 12 - Trade Marks Act, 1999 (47 of 1999), Section 134(2) - Copyright Act, 1957 (14 of 1957), Section 62(2) - Suit for Infringement of Copyright and for Passing off of Trade Mark - Territorial Jurisdiction - Leave of Court - Cause of action – Part cause of action - Plaintiff and Defendant are carrying on business at Madurai and does not have place of business at Chennai - Infringement alleged not only in Chennai but also at Madurai - Maintainability of Suit - Guiding Principles - (i) Where Plaintiff has only one place of business but the cause of action arises elsewhere, Suit can be instituted at place of business also invoking Section 134(2) of Trade Marks Act or Section 62(2) of Copyright Act; (ii) Plaintiff has Principal place of business and Branch Offices and cause of action arises at Principal place of business, Suit has to be filed at place of Principal office; (iii) Where Plaintiff has Principal place of business and a Subordinate Office and cause of action arises only at place of Subordinate Office, Suit can be filed at place of Subordinate Office; (iv) Where cause of action arises at some other place other than place, where Plaintiff has his Principal place of business or Subordinate Office, Suit can be filed at that place, where cause of action arose invoking provisions of Section 20, C.P.C.; (v) Plaintiff can also invoke provisions of Section 134(2) of Trade Marks Act or Section 62(2) of Copyright Act and file Suit at their Principal place of business; (vi) Where cause of action arises both at Principal place of business and also at place of Subordinate Offices, then Suit can be instituted only at place where Plaintiff has his Principal place of business - Leave declined.

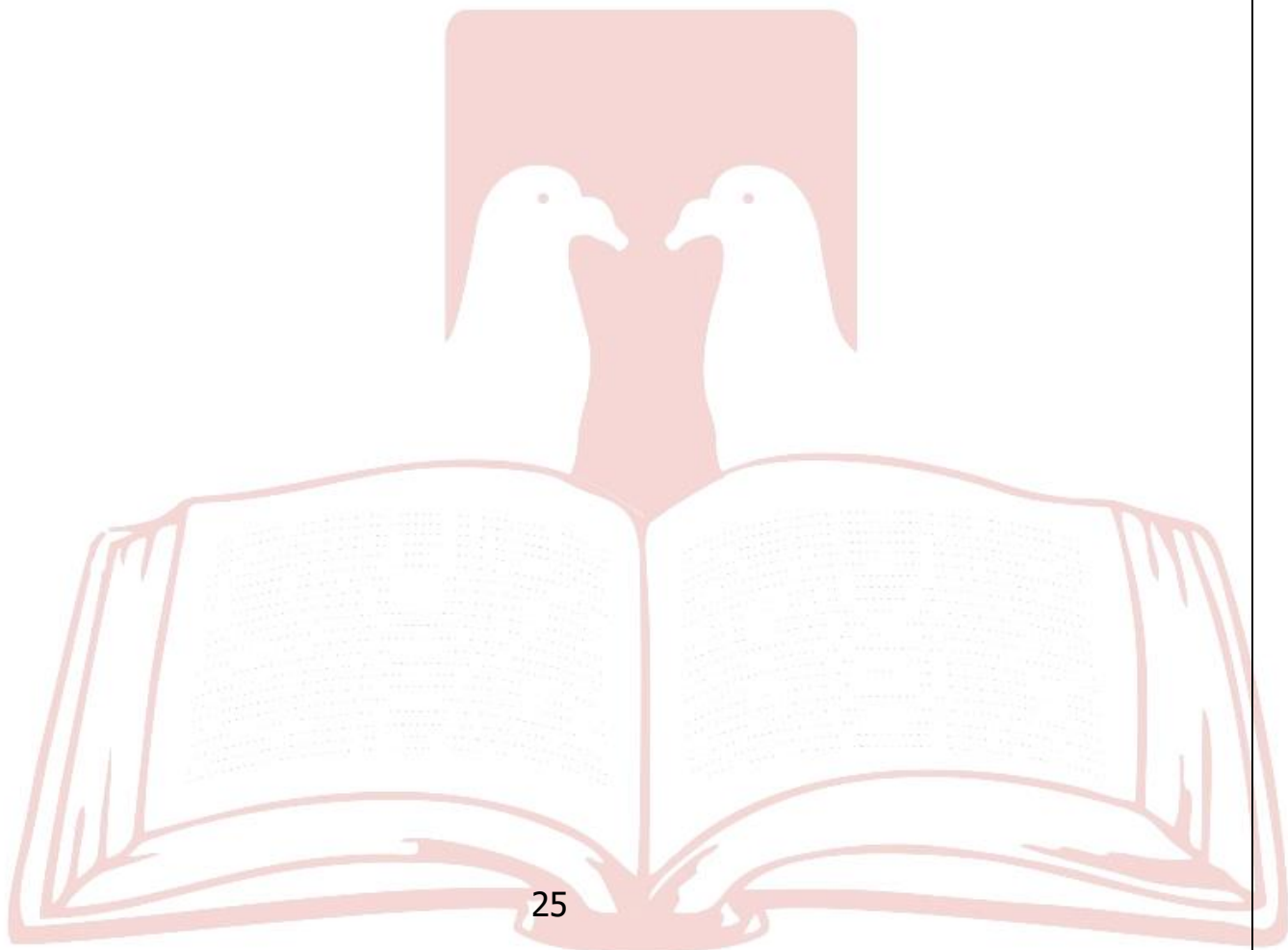
Paramasivam (Died) & Others Vs. Rajamanickam [2023 (4) TLNJ 279 (Civil)]

Date of Judgment: 30.10.2023

Specific Relief Act, 1963, Section 16 (C) – Sale agreement – Specific performance suit – allowed – confirmed in appeal – 2nd Appeal – Plaintiff to show his readiness i.e., his financial capacity, not produced any document – only sale agreement, suit notice and the reply were produced – None of these point out his financial capacity – When there is no proof of financial capacity, the Court could not have decreed the suit for specific performance – no explanation from the plaintiff as to what transpired for two long years between date of agreement and notice – No prudent person after paying Rs.1,75,000/- will take two year time for the purpose of paying the balance of Rs.5,000/- – trial court not framed the issue of readiness and willingness of plaintiff – plaintiff not proved his readiness and willingness – defendant agreed that he borrowed a sum of Rs.1,75,000/- from the plaintiff – second appeal allowed with costs.

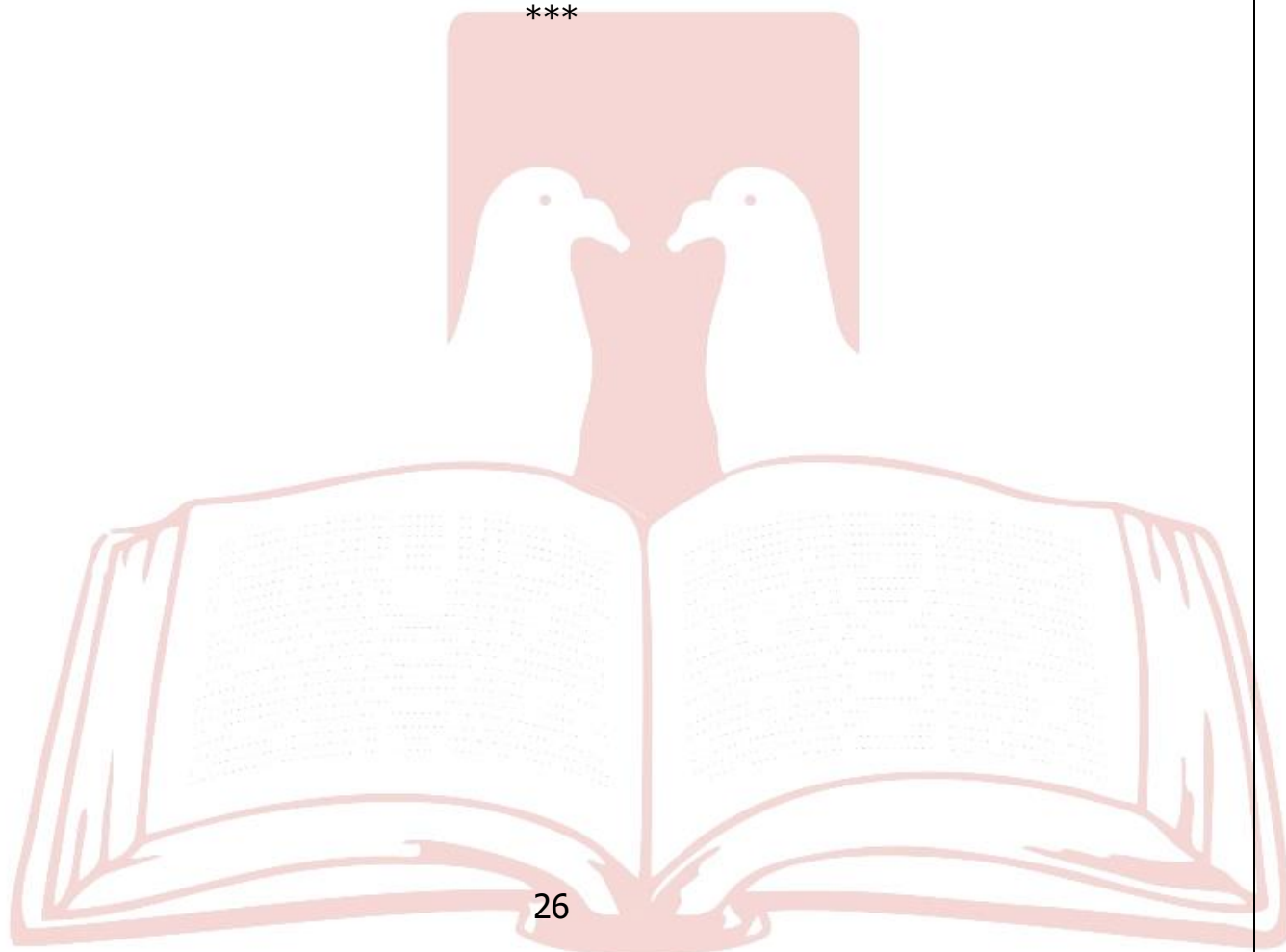
S. Rajasekar V. C. Sakthivel Raajhaa [AIR 2023 MAD 339]**Date of Judgment: 03.08.2023**

Civil P. C. (5 of 1908), O.38 R.5 – Attachment of property – Suit for recovery – Borrower had given affidavit of undertaking stating that he would not alienate property – Undertaking cannot be treated on par with furnishing security – Since borrower had not furnished security as undertaken by him, Trial Court was justified in passing order of attachment.



HIGH COURT – CRIMINAL CASES**R. Ravichandran Vs. The Inspector of Police, Karaikudi North Police Station, Karaikudi. [2023 (2) TLNJ 407(Cr)]****Date of Judgment: 11.10.2023**

Criminal Procedure Code, 1973, Section 451 - interim custody of stolen jewels and cash recovered by Police - Petition - dismissed as petitioner not disclosed the description of the articles and no documents found to prove ownership of petitioner - CMA - Also dismissed since petitioner without taking steps to set aside the earlier petition filed CMA & also not produced original receipts - It is settled principle that the pendency of the criminal case has not deprived the complainant/owner of the property, who has nothing to do with the alleged offence to deal with the property - Jewels are intended to sell - Petitioner entitled to get back the jewels by furnishing the bank guarantee to the value of the property - recovered amount shall be returned without any security since no dispute regarding same - Revision allowed.



Shanmugam, S/o. Velu & Others Vs. State rep. by its, The Inspector of Police, Kenikarai Police Station, Ramanathapuram District [2022 (2) TLNJ 451 (CrI)]

Date of Judgment: 08.11.2023

Indian Penal Code, 1860, Sections 302 & 201 - Murder of wife by A-1 with the help of A2/son and A-3 brother-in-law of A.2 - Conviction and sentence under appeal - Strangulation murder as per post-mortem - no evidence to say that A.1 and deceased were last seen together - As per prosecution, Accused brought the dead body to the graveyard and tried to burn it @ 2.40 p.m - but Medical Reports noted that the deceased was discharged against medical advice at 2.00 p.m - Also no evidence to state that A,2 & A,3 dropped deceased in the Brick Kiln Unit - extra-judicial confession is considered as a weak piece of evidence and corroboration is necessary - P.W.1/ VAO is complainant - no ordinary man would have appeared before defacto complainant and given confession - blood stains in M.O.1 & M.O.2 relates to 'B' Group as per FSL report - prosecution not collected sample blood from the deceased - No reason assigned - recovery of M.O.1 to M.O.4 based on the confession of A1 not been established - In a Criminal Case, motive is irrelevant if eye witnesses are available - prosecution did not prove the alleged motive - Appeal allowed.

**State Sub-Inspector of Police, Alangulam Police Station, Tenkasi District
Vs. R.S.Rajeesh [2022 (2) TLNJ 487 (CrI)]**

Date of Judgment: 15.11.2023

**Bio-medical Waste Management Rules, 2016, Plastic Waste Management
Rules, 2016, Rule 8 and Indian Penal Code, 1860, Sections 294(b), 353,
506(ii), 269 & 27**

- Questioned the dumping of bio medical waste by Health Inspector / complaint was criminally intimidated and caused obstruction to perform his duty - Vehicle sized - Petition for interim custody by respondent - allowed - Revision - In spite of that restriction, respondent transported the bio-medical waste with huge quantity - trial Court committed error in granting the custody of the vehicle to the respondent - Rule itself specifically prohibits transportation of the bio-medical waste beyond 75kms from the hospitals - respondent seriously violated the said Rule - This type of act should not be encouraged by releasing the vehicle involved - Order of trial Court set aside - in the interest of the environment and to prevent the health hazard, the Governments expected to take necessary steps to bring amendment to suitably deal with the person transporting the medical waste from the Kerala State to the Tamil Nadu State - it is right time to book the violators of the bio-medical waste under the Act 14 of 1982 by bringing proper amendment to the Act 14 of 1982 - Criminal Revision Petition is allowed with direction.

Vel Durai Vs. State by Inspector of Police, Royapettah [2022 (2) TLNJ 495 (CrI)]

Date of Judgment: 16.11.2023

Criminal Procedure Code, 1973, Section 311 – Recall witness Petition for cross examination after completion of examination of prosecution witnesses – declaimed as belated – Quash petition against – Section 311 does not give any right to the accused to recall a witness already examined, without assigning valid reasons – trial Court in exercise of its power under Section 311 (first part) summoned L.W-25 and examined him as P.W-16 and found that he is a material witness – same reasoning or parity cannot be drawn for recall of P.W-14 who was already examined 4 years ago – second part Section 311, mandatory, imposes an obligation on the Court, to summon and examine or to recall and re-examine any person if his evidence appears to be essential – trial Court while deciding the case will only go by the evidence on record and not the observations he made in the Miscellaneous Petition – CrI.O.P dismissed.

