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## IMPORTANT CASE LAW



### HEADQUARTERS, CHENNAI

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

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

Website: [www.tnsja.tn.nic.in](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,

AlagarKoil Road, Madurai – 625 002,

Telephone No: 0452 – 2560807 / 811

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

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4	Govindbhai Chhotabhai Patel & Ors. Vs Patel Ramanbhai Mathurbhai	2020 (4) LW 655 (SC)	23.09.2019	<b><u>Evidence Act, Sec.68:</u></b> If execution of Gift deed is not specifically denied, but alleged forgery and fabrication donee has no legal obligation to examine one of the attesting witnesses of the gift deed to prove its execution.	2
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6	Sir Sobha Singh & Sons Pvt. Ltd., Vs Shashi Mohan Kapur (D) Thr.L.R	2020 (4) LW 419	15.07.2019	<b><u>CPC Order 21 Rule 10, 11, (2&amp;3):</u></b> Execution petition filed by the decree holder without filing the certified copy of the decree is maintainable till the date of actual passing of the decree by the court.	3

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2	Dipakbhai Jagdishchandra Patel Vs State of Gujarat and Another	2020 (2) SCC (Cri) 361 : 2019 (16) SCC 547	24.04.2019	<b><u>Indian Evidence Act, Sec.25 &amp; Sec.30:</u></b> Confessions of the accused and the co-accused before the police officer alone are not sufficient to frame charge against the accused especially when the accused was not jointly tried with the co-accused.	4
3	Central Bureau of Investigation Vs Hari Singh Ranka and Others	2020 (2) SCC (Cri) 413 : 2019 (16) SCC 687	18.07.2017	<b><u>Indian Penal Code, Sec.420, 467, 468, 471 and 120(B):</u></b> Civil settlement of controversy would not suffice to wipe off criminal liability.	4
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6	Saravanan Vs State	CDJ 2020 (SC) 773	15.10.2020	<b><u>Sec.167 (2) of Cr.P.C.:</u></b> The Court should not impose any condition to deposit amount while ordering to release the accused on default bail u/s.167(2) of Cr.P.C.	6

## HIGH COURT - CIVIL CASES

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Sudalaimani Vs The Deputy Inspector General of Police, Ramanathapuram.	2020 (3) TLNJ 412 (Civil)	09.09.2020	<b><u>Departmental Proceedings – Bigamy:-</u></b> Customary Divorce is a valid defence in a Departmental Proceedings initiated for misconduct of Bigamy under Service Rules / Conduct Rules, but the said defence has to be proved up to the decree of preponderance of probability.	7
2	Sanjay Lalwani Vs M/s.Jyostar Enterprises	2020 (3) TLNJ 461 (Civil)	03.09.2020	<b><u>Arbitration and Conciliation Act, 1996, Sec.9:</u></b> Arbitration is not maintainable in respect of infringement of Copy Right matters.	7
3	Rajasekar Vs Govindammal	2020 (4) LW 481	02.09.2020	<b><u>Limitation Act, 1963, Article 137, CPC, Order 9 Rule 7:</u></b> Article 137 of Limitation Act, 1963, does not apply to an application filed under Order 9 Rule 7 of CPC.	7
4	E.Ramalingam Vs H.Sukumaran	2020 (5) CTC 662	05.12.2019	<b><u>Contract Act, 1872, Sec.10 and 23:</u></b> When the very agreement itself is invalid and void as the same is opposed public policy, the suit for recovery of money based on such illegal agreement is not maintainable.	8
5	M/s. National Insurance Company Limited, Divisional Office, Erode Vs R.Velusamy & Others	CDJ 2020 MHC 3134	09.10.2020	<b><u>Motor Vehicles Act, 1988, Contributory Negligence:</u></b> The two wheeler driven by the claimant/injured hit the backside of the bus, as the driver stopped the bus suddenly without any signal. The claimant also failed to maintain safe distance from the bus at the time of accident. Both the claimant and the driver of the bus are equally responsible for the accident. In such circumstances, the claimant is entitled to get 50% of the compensation only.	9
6	R. Vasantha Vs The Secretary to Government Revenue Department, Government of Tamil Nadu, Secretariat, Chennai & Others	CDJ 2020 MHC 3182	14.10.2020	<b><u>Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, Rule 17 (b) – Standard of Proof:</u></b> High standard of proof is not required for the purpose of establishing a Misconduct of Indiscipline under the Discipline and Appeal Rules as far as the Public Servants are concerned.	9

Sl. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
7	Srividya Vs Subramaniam	CDJ 2020 MHC 3045	24.09.2020	<b><u>Sec.12 (1) (c) of Hindu Marriage Act, 1955, Nullity of Marriage:</u></b> Doctor, without conducting any scientific tests to ascertain that the respondent was suffering from Schizophrenia, has simply opined on superficial observation, that it might be the case of Schizophrenia. The said evidence of the Doctor cannot be treated as a reliable evidence to prove the case of the petitioner that the respondent was suffering from Schizophrenia.	9
8	The Divisional Manager, United India Insurance Co. Ltd., Vellore Vs M. Suresh & Another	CDJ 2020 MHC 3076	01.10.2020	<b><u>Sec.149(2) of the Motor Vehicle Act, 1988 - Accident – Compensation – Principle of Pay and Recovery:</u></b> The Principle of pay and recovery will not apply to the case when the offender/tort feisor/Driver is the owner of the vehicle also.	10
9	The Superintending Engineer, Tamil Nadu Electricity Board, Villupuram Vs Pandurangan & Others	CDJ 2020 MHC 3063	30.09.2020	<b><u>Motor Vehicle Act, 1988 - Accident – Liability:</u></b> The vague allegation of poor maintenance of the vehicle will not exonerate the insurance company to pay the 3 <sup>rd</sup> party injured/deceased.	10
10	Gajarajan Vs S.Gandhimathi Selvam	2020 (3) MWN 28 (Civil)	28.02.2020	<b><u>Difference between Will and Settlement:</u></b> In Settlement deed, once right in property has been absolutely settled in favour of settlee, settlor's right ceases to exist. Any bequeath in favour of other heirs after demise of settlor would partake character of Will and such clause is not permissible in settlement deed.	11
11	Kogila Vs Murugan	2020 (3) MWN 47 (Civil)	21.10.2019	<b><u>Hindu Minority and Guardianship Act, 1956, Sec.8:</u></b> Sale of Minor's property without the permission of court is voidable as per sec.8 of the Hindu Minority and Guardianship Act.	12

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

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CITATION</b>	<b>DATE OF JUDGMENT</b>	<b>SHORT NOTES</b>	<b>Pg. No.</b>
1	K.Murali Rao, Managing Director, New Woodlands Hotel Pvt Ltd., Vs New Woodlands Hotel Employees' Union, Chennai	2020 (3) MWN (Cri) 27	31.07.2020	<b><u>Industrial Disputes Act, 1947, Sections 34, 25-T and 25-U- Unfair Labour Practice:</u></b> Trade Union is not a competent person to lodge complaint for the offence of unfair labour practice u/s.25-U of Industrial Disputes Act, 1947.	13
2	Sathiyamoorthy Vs State represented by the Inspector of Police, Karaiyur Police Station, Pudukottai	CDJ 2020 MHC 3174	09.10.2020	<b><u>Sec.21(1) of Mines and Minerals (Development and Regulation) Act, Sec.379 of IPC, Return of Motor Vehicle:</u></b> The Unregistered Motor Vehicle used for the commission of river sand theft cannot be returned to the petitioner/alleged owner of the vehicle for interim custody.	13
3	S.P.Raja Vs Inspector of Police, Tirunelveli Taluk Police Station	2020 (3) MWN (Cri) 79	08.09.2020	<b><u>Indian Penal Code, 1860, Sec.294 (b) and 506(i):</u></b> Ingredients to attract Sec.294 (b) and 506(i) IPC – Explained.	13
4	S.Maheswari Vs State	2020(3) MWN (Cri) 85	01.09.2020	<b><u>Cr. P.C., 1973, Sec.451 &amp; 457:</u></b> Landlord cannot be held vicariously liable for having Rented out premises to Food Business Operator. Act of Police and Food safety officer keeping godown under lock and key for 20 months without shifting the contraband is illegal.	14
5	D.Siluvai Venance Vs State	2020 (3) MLJ (Cri) 710	24.07.2020	<b><u>Sec. 12 of Tamil Nadu Gaming Act, 1930:</u></b> Gaming near a thorny bush would not attract the offence u/s. 12 of Tamil Nadu Gaming Act.	15
6	Satheeskumar Vs State	2020 (2) LW (Cri) 486	19.08.2020	<b><u>NDPS Act, 1985, Sec. 8 (c), 20 (b), 37, Cr.P.C., Sec.439:</u></b> As per section 37 of NDPS Act, the accused cannot be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence. Reasonable ground means something more than prima facie grounds.	15
7	Siva @ Sivakumar Vs State	2020 (2) LW (Cri) 491	09.07.2020	<b><u>IPC, Sec. 376, 506 (ii):</u></b> There is no presumption that the statement of victim girl is always correct. The testimony of the victim girl contrary to the DNA report cannot be accepted.	15

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	Palanivel Vs State	2020 (3) MLJ (Cri) 548:LNIND 2020 BMM 204	16.03.2020	<b><u>SC/ST (Prevention of Atrocities) Act, 1989, Sec. 3 (1) (x):</u></b> For attracting the offence U/s. 3(1) (x) of the SC/ST (Prevention of Atrocities) Act, 1989, member of schedule caste or scheduled tribe should be insulted in the presence of public view.	16
9	P. Kandasamy Vs Manikandan Finance Rep. by Its Managing Partner A. Chellapathi	CDJ 2020 MHC 3121	01.10.2020	<b><u>Cr.P.C., Sec. 311 – Recall of Witness for further Cross Examination:</u></b> The Petitioner changed his counsel alone is not a valid ground to recall the witness for further cross examination.	16
10	Jeyaraman Vs Jeyanthi	CDJ 2020 MHC 3047	23.09.2020	<b><u>Cr. P.C., Sec.125 – Maintenance:</u></b> Able bodied husband is bound to maintain his wife notwithstanding his financial status.	17



# **SUPREME COURT CIVIL CASES**

**(2020) 2 SCC (Cri) 636 : (2020) 4 SCC 702**

**Chief Information Commissioner Vs High Court of Gujarat & anr**

**Date of Judgment: 04.03.2020**

**Right To Information Act:**

Legal regime governing accessing of information on judicial side – Held, information held on judicial side of court cannot be accessed under RTI Act regime – Information held on the judicial side of court, held, is “personal information” of the litigants and court holds it as trustee for the litigants in order to adjudicate upon the matter and administer justice – Information under the abovesaid Categories (a), (b) and (c) and other information on the judicial side can be accessed by the parties to the proceedings only in terms of the High Court Rules and the parties to the proceedings are entitled to the same – So far as third parties are concerned, as of right, they are not entitled to access information on judicial side of court – Third parties can access information on the judicial side only as per the High Court Rules – Hence, if the High Court Rules require that third parties can access such information only by filing an affidavit and by stating the reason for which the information is required, the same cannot be said to be unjustified, the court holding such information as trustee of the litigants.

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**(2020) 5 CTC 456**

**Uttarakhand Purv Sainik Kalyan Nigam Limited Vs Northern Coal Field Limited**

**Date of Judgment: 27.11.2019**

**Arbitration and Conciliation Act, 1996 (26 of 1996), Section 16** – Doctrine of Kompetenz-Kompetenz – Doctrine of “Kompetenz-Kompetenz” implies that Arbitral Tribunal is empowered and has competence to rule on its own jurisdiction, including determining all Jurisdictional issues, and existence or validity of Arbitration Agreement – Intent of doctrine is to minimize judicial intervention so that Arbitral process is not thwarted at threshold by preliminary objections – Exception to doctrine is when Arbitration Agreement itself is impeached as being procured by fraud or deception – This exception applicable to cases, where parties entered into Draft Agreement containing proposal to Arbitrate – Such Draft Agreement not unequivocal acceptance of terms of Agreement and proposal to Arbitrate not binding Contract – If Arbitration Agreement not valid or non-existent, Arbitral Tribunal cannot assume jurisdiction to adjudicate upon disputes.

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**Bजारंग श्यामसुंदर आगरवाल वस Central Bank of India & another**

**Date of Judgment: 11.09.2019**

**Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) (2002), Sections 13(2), 14, 17, 25**

**Transfer of property Act, Sections 65A, 111**

The objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner:

(a) If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the risk undertaken by the bank while providing the loan, it is expected of Banks/Creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.

(b) If a tenancy under law comes into existence after the creation of a mortgage, but prior to the issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the T.P. Act.

(c) In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P Act.

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**2020 (4) LW 655 (SC)**

**Govindbhai Chhotabhai Patel & Ors Vs Patel Ramanbhai Mathurbhai**

**Date of Judgment: 23.09.2019**

**Transfer of Property Act, Section 122, gift deed, execution, proof  
CPC, Order 6 rule 4, fabrication of gift deed, pleadings, need for**

Held: Property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper.

Appellants have not denied the execution of the document but alleged forgery and fabrication – Plaintiff does not show specific denial of execution of the gift deed – Absence of any evidence – Donee was under no obligation to examine one of the attesting witnesses of the gift deed.

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**2020 (4) LW 668 (SC)**

**Desh Raj Vs Balkishan (D) Through Proposed LR Ms.Rohini**

**Date of Judgment: 20.01.2020**

**C.P.C., Order 8 Rule 1, Filing of written statement, delay, condonation**

**Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts**

**Act (2015), Section 2(c), Section 16, Written statement, filing of delay condonation** – Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure. Whereas commercial disputes [as defined under Section 2(c) of the Commercial Courts Act, 2015] are governed by the CPC as amended by Section 16 of the said Act; all other noncommercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd. AIR 2019 SC 2691, but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute qua the amended Order VIII Rule 1 CPC.

As regard the timeline for filing of written statement in a noncommercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A.Chunawala and co. (2018) 6 SCC 639, holds the field. Unamended Order VIII Rule I, CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.

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**2020 (4) LW 419**

**Sir Sobha Singh & Sons Pvt. Ltd., Vs Shashi Mohan Kapur (Deceased) Thr.L.R.**

**Date of Judgment: 15.07.2019**

**CPC, Order 21 Rule 10, 11 (2 & 3)**

Appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet execution application filed by the appellant was maintainable notwithstanding decree not passed – order had effect of a decree till the date of actual passing of decree by the Court for the purposes of execution or for any other purpose – Executing Court to entertain the execution application and decide the objections.

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# SUPREME COURT CRIMINAL CASES

**2020 (6) SCC 556**

**Sunita Bhati Vs State of Uttar Pradesh and Another**

**Date of Judgment: 21.06.2019**

**Criminal Procedure Code, 1973** – Under Section 439 – Rejection of bail – When warranted – Implication in large number of heinous crimes – Petitioner’s husband accused in murder case and 45 other cases of heinous crime pending against him - Hence, held, her bail was rightly rejected by High Court – Indian Penal Code, 1860, Under Section 302.

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**2020 (2) SCC (Cri) 361: 2019 (16) SCC 547**

**Dipakbhai Jagdishchandra Patel Vs State of Gujarat and Another**

**Date of Judgment: 24.04.2019**

**Indian Evidence Act, 1872 – Under Sections 25, 24 and 30** – Confession before police officer, and confession of co-accused not corroborated by any other material or evidence, being the only evidence against appellant A-4 – All the co-accused absconding and appellant alone being proceed against – No material on basis of which even a strong suspicion could be aroused against appellant –Held, in such circumstances, trial court erred in not discharging appellant and High Court erred in not quashing such proceedings – Proceedings against A-4 quashed, and he is discharged.

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**2020 (2) SCC (Cri) 413 : 2019 (16) SCC 687**

**Central Bureau of Investigation Vs Hari Singh Ranka and Others**

**Date of Judgment: 18.07.2017**

**Indian Penal Code, 1860 – Sections 420,467,468,471 and 120-B** – Concurrent civil and criminal liability - Maintainability of criminal action – Loan obtained from bank by fraud – Accused entering into one-time settlement with bank – Criminal proceedings after settlement– Continuance of – When warranted –Reiterated, when settlement is arrived at between creditors and debtor, offence, if committed, as such does not come to an end – Even a judgment rendered in civil proceedings, when it is rendered on basis of a settlement entered into between parties, would not be of much relevance in criminal proceedings, having regard to provisions contained in Section 43, Indian Evidence Act – Civil settlement of controversy would not suffice to wipe off criminal liability – In present case, given the nature of serious allegations of banking fraud and cheating involved, held, despite the one-time settlement, criminal proceedings deserved to be taken to their logical end.

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**2020 (2) SCC (Cri) 450 : 2019 (16) SCC 730**

**H.N. Jagadeesh Vs R.Rajeshwari**

**Date of Judgment: 12.09.2017**

**Debt, Financial and Monetary laws – Negotiable Instruments Act, 1881 – Section 138 –**

Filing and proof of statutory notice – Prerequisite for filing complaint under – When cannot be permitted to be filed later, to make up the deficiency - Held, service of statutory notice calling upon drawer of cheque (after it has been dishonoured) to pay amount of cheque is a necessary precondition for filing of complaint under Section 138 – It was incumbent upon respondent to produce such statutory notice on record to prove same as well – In present case, document evidencing said notice was not even filed by respondent along with complaint, and question of proving same was a far cry – Aforesaid omission of respondent in not prosecuting complaint properly, held, cannot be ignored – Another chance given to respondent to prove case by producing further evidence, in present case, held, amounted to giving an opportunity to respondent to fill up lacuna –Ratio of Zahira Habibulla H. Sheikh, 2004(4) SCC 158, cannot be extended to facts of present case, particularly, being a complaint case under Section 138 of NI Act and proceedings are also of quasi-criminal nature – Setting aside judgment of High Court, judgment\order of trial court restored – Criminal Procedure Code, 1973 – Section 391 – Additional evidence cannot be permitted when it would amount to filling up of glaring lacuna in the case.

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**2020(2) SCC (Cri) 470 : 2019(16) SCC 759**

**State of Himachal Pradesh Vs Manga Singh**

**Date of Judgment: 28.11.2018**

**Indian Penal Code, 1860 – Section 376** – Rape of nine year old by her cousin – Absence of medical evidence or injuries on prosecutrix, held, irrelevant in light of clear and cogent evidence of prosecutrix- Sole testimony of prosecutrix without corroboration – Reliability of, in such cases – Nine year old prosecutrix (PW4) has categorically stated that respondent - accused made her sleep with him and that respondent-accused used to take off her clothes and his own clothes and that he used to insert his private part inside her private part – No corroboration is required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement – Minor contradictions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix– Having regard to the circumstances of the case, medical evidence may not be available – In such cases, solitary testimony of prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court – Conviction under Section 376 and sentence of 10 yrs RI, restored.

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**CDJ 2020 (SC) 773**

**Saravanan Vs State**

**Date of Judgment: 15.10.2020**

**Sec.167 (2) of Cr.P.C.**

Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no charge sheet is filed by 60th or 90th day, accused gets an “indefeasible right” to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no charge sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.

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# **HIGH COURT CIVIL CASES**

**2020 (3) TLNJ 412 (Civil)**

**Sudalaimani Vs The Deputy Inspector General of Police, Ramanathapuram and Ors**

**Date of Judgment: 09.09.2020**

**Departmental Proceedings – Bigamy**

Disciplinary Proceedings can be initiated even if second marriage is contracted with the knowledge of the first wife so also even if the first wife does not prosecute the husband for the same and hence the complaint given by the third party alleging contract of second marriage, a departmental proceedings can still be maintainable. A plea of customary divorce is a valid defence in a departmental proceedings initiated for misconduct of bigamy under Service Rules/Conduct Rules. To substantiate the said plea of customary divorce a specific plea has to be raised in the statement of defence by the delinquent officer and has to be proved on up to the decree of preponderance of probability and execution of the customary divorce as projected by the delinquent.

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**2020 (3) TLNJ 461 (Civil)**

**Sanjay Lalwani Vs M/s.Jyostar Enterprises &Ors**

**Date of Judgment: 03.09.2020**

**Arbitration and Conciliation Act, 1996, Section 9**

Application to grant injunction from selling copy right of satellite rights and theatrical rights of a Film by respondents – Further Applicant stated as per deed of assignment the matter is referable to arbitration – Arbitration is not maintainable in respect of Copyright matters – In view of the ratio laid down by the Hon’ble Supreme Court and other High Courts Original Application under Section 9 of the Arbitration and Conciliation Act, 1996 is not maintainable – Original Application is dismissed.

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**2020 (4) LW 481**

**Rajasekar Vs Govindammal**

**Date of Judgment: 02.09.2020**

**Limitation Act, 1963, Article 137, CPC, Order 9 Rule 7:**

“Adverting to the decisions which take the view that Article 137 would apply, I can straight away point out that those decisions are against the spirit of the judgments of the Hon’ble Supreme Court in Sangram Singh v. Election Tribunal, Kotah and others, reported in (1956) 69 L.W.1 = AIR 1955 SC 425, and Arjun Singh v. Mohindra Kumar and Others, reported in AIR 1964 SC 993. Unfortunately, the two decisions of the Hon’ble Supreme Court which have a great bearing on the issue before us, viz., the judgment of the Hon’ble Supreme Court in Sangram Singh’s case and Arjun Singh’s case, cited supra, were not brought to the notice of the learned Judge, who decided Visalakshi v. Umaphathy, reported in 2015-3-L.W.332 = 2015(5) CTC 67. The learned Judge has referred to the decision of the Delhi High Court and concluded that Article 137 would apply to the case on hand. In G.Krishnasamy v. G.Seenivasan & another, referred to supra, the learned Judge has

merely followed the judgment in Visalakshi v. Umaphathy, to conclude that Article 137 of the Limitation Act would apply. The same is the case in Ramadoss v. Mohan & Others, made in CRP No.2412 of 2016 dated 23.08.2016, wherein we find no discussion, excepting that the decision in Visalakshi v. Umaphathy, is applied. As regards the decision of the Division Bench of the Kerala High Court in Y.Daniel and others v. Annamma, referred to by the learned counsel for the respondent, the Division Bench only accepted the view in Cleetus v. South Indian Bank, reported in 2007(3) KLT 868, but there are earlier decision of the Kerala High Court taking a different view. As I had already pointed out the judgment in Tarlochan Singh and Ors.v. Union Bank of India and Ors., does not touch upon the issue. I must also point out that the judgment in Gokarakonda Venkatasubbiah v. Daliparthi Lakshmiharasimham was approved by the Hon'ble Supreme Court in Sangram Singh's case. In Pilla Reddy v. Thimmaraya Reddy and Others, reported in 1997(1) MLJ 37, Hon'ble Mr. Justice S.S.Subramani had after referring to almost all the cases on the point concluded that there is no limitation for an application under Order 9 Rule 7 of the Code of Civil Procedure.

As I had already pointed out none of the decisions which conclude that Article 137 of the Limitation Act would apply to an application under Order 9 Rule 7 of the Code of Civil Procedure, have taken note of the earlier decisions of the Hon'ble Supreme Court in Sangram Singh v. Election Tribunal, Kotah and others, reported in AIR 1955 SC 425, and Arjun Singh v. Mohindra Kumar and Others, reported in AIR 1964 SC 993. I am sure that the learned Judges, who decided those cases, would not have taken a view as they had if only the judgments of the Hon'ble Supreme Court had been brought to their notice. I therefore find that those judgments, viz., the judgment in Visalakshi v. Umaphathy, reported in 2015-3-L.W. 332 = 2015(5) CTC 67, judgment in G.Krishnasamy v. G.Seenivasan & another, made in CRP(MD) No.2819 of 2018 (PD) dated 04.06.2019, judgment in Ramdoss v. Mohan and others, made in CRP (PD) No. 2412 of 2016 dated 23.08.2016, cannot be held to be good law, inasmuch as, they are in conflict with the decisions of the Hon'ble Supreme Court in Sangram Singh v. Election Tribunal, Kotah and others, case reported in (1956) 69 L.W.1 = AIR 1955 SC 425, and Arjun Singh v. Mohindra Kumar and Others, case reported in AIR 1964 SC 993. For the foregoing reasons, I conclude that Article 137 of the Limitation Act, does not apply to an application under Order 9 Rule 7 of the Code of Civil Procedure and the same can be filed at any time before the judgment is delivered in the suit or proceedings".

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**2020 (5) CTC 662**

**E.Ramalingam & Ors Vs H.Sukumaran and Another**

**Date of Judgment: 05.12.2019**

**Contract Act, 1872 (9 of 1872), Sections 10 & 23**

Suit for Recovery of Money – Offer / demand and acceptance of bribe for securing Public employment – Cheating alleged and recovery of money sought – Maintainability of Suit – Held, Public appointments made in accordance with Recruitment Rules in force – Very Agreement to offer bribe for Public appointment is invalid and void as same is opposed to Public policy – Agreement between parties must be valid and enforceable within provisions of Contract Act – If parties unable to establish genuinity and validity of Agreement, no question of granting relief – Validity and enforceability of Agreement is preliminary issue to be decided by Civil Court – Plaintiffs not entitled to any relief – Suit not maintainable as Contract is void and opposed to Public policy – First Appeal dismissed.

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**CDJ 2020 MHC 3134**

**M/s. National Insurance Company Limited, Divisional Office, Erode Vs R. Velusamy & Ors**

**Date of Judgment: 09.10.2020**

**Motor Vehicles Act, 1988, Contributory Negligence:**

As per the F.I.R and evidence, while the school bus proceeding from East to West, the claimant in the two wheeler was proceeding behind the school bus in his motorcycle. Since the school bus suddenly stopped, the claimant has attempted to avoid collision and has taken the extreme left but hit the bus from behind. This was due to not maintaining safe distance.

However, it will not totally exonerate the bus owner and his insurer. The accident has occurred on equal contribution. The damage to the vehicle indicates that the claimant has tried to avoid collision but failed. Therefore, contribution should be apportioned equally. Instead of 75% and 25% fixed by the Tribunal, the liability as against the appellant and the bus driver shall be 50% each.

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**CDJ 2020 MHC 3182**

**R. Vasantha Vs The Secretary to Government, Revenue Department, Government of Tamil Nadu, Secretariat, Chennai &Ors**

**Date of Judgment: 14.10.2020**

**Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, Rule 17 (b) – Standard of Proof:**

As far as the disciplinary authorities are concerned, the standard of proof required is not akin to that of the standard of proof required in a criminal case or in a civil trial. Preponderance of probabilities are sufficient to punish the public servants under the Discipline and Appeal Rules. Thus, it is not necessary that the high standard of proof is required for the purpose of establishing a misconduct of indiscipline under the Discipline and Appeal Rules as far as the public servants are concerned.

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**CDJ 2020 MHC 3045**

**Srividya Vs Subramaniam**

**Date of Judgment: 24.09.2020**

**Sec.12 (1) (c) of Hindu Marriage Act, 1955, Nullity of Marriage:**

P.W.2 – Dr.Sarada Menon, during cross examination, admitted that she had not conducted any clinical test nor done any scan or other special tests to come to the conclusion. At the time of consultation, she was under the opinion that the respondent was suffering from Schizophrenia. But in Ex.P11-Doctor's opinion filed by the petitioner, even though it is stated by her in her own writing, it is not a signed document. This evidence was elaborately discussed by the Trial Court and the Trial Court has rightly refused to admit the evidence of P.W.2.

In my opinion also, Dr.Sarada Menon, without conducting any scientific tests to ascertain that the respondent was suffering from Schizophrenia, has simply opined on superficial observation that it might be the case of Schizophrenia. That cannot be reliable evidence. There is a specific

denial by the respondent that for the purpose of getting divorce, the husband taken her to P.W.2 and obtained medical certificate, in that event, onus is on the petitioner to prove that the respondent was suffering from Schizophrenia. The evidence of P.W.2 does not establish that the respondent was suffering from the said mental illness.

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**CDJ 2020 MHC 3076**

**The Divisional Manager, United India Insurance Co. Ltd., Vellore Vs M. Suresh & Another**

**Date of Judgment: 01.10.2020**

**Sec.149(2) of the Motor Vehicle Act, 1988 - Accident – Compensation – Principle of Pay and Recovery:**

Depending upon the facts of the each case, the Courts have either exonerated the insurer or ordered ‘pay’ and ‘recovery.’ In the present case, the fact goes to show that the insured is the tortfeasor. The F.I.R has been registered against the vehicle owner-cum-driver Mr.Sivakumar. When he was called to produce his driving license by the Insurance Company, he failed to do so. He also remained ex parte before the Tribunal. By examining the Officer from R.T.O, Vellore, the insurer to the possible extend proved that, the offending vehicle driver had no driving license. The insured, without license had driven the vehicle and caused accident. The violation being fundamental and by the insured, the Tribunal ought to have exonerated the Insurance Company under Section 149(2) of the Motor Vehicle Act for the fundamental violation of policy condition.

The insured had evidently violated the policy condition by driving the vehicle without license. The case falls under the proposition (vii) laid down in National Insurance Company Limited vs. Swaran Singh case, 2004 ACJ 1 = (2004) 3 SCC 297. Hence, the award of the Tribunal is liable to be modified to the effect that, the liability to pay the compensation is on the owner of the vehicle and not on the insurer. The principle of “pay” and “recovery” will not apply to this case when the offender/tortfeasor is the owner of the vehicle. The judgments cited are all where the driver is not the owner/insured. Only in such cases, Courts have held that for the failure of the insured to take reasonable care in engaging a driver with valid license, third party injured not be penalised.

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**CDJ 2020 MHC 3063**

**The Superintending Engineer, Tamil Nadu Electricity Board, Villupuram**

**Vs Pandurangan & Ors**

**Date of Judgment: 30.09.2020**

**Motor Vehicle Act, 1988 - Accident – Liability:**

The next issue, whether improper maintenance of the vehicle will exonerate the Insurance Company. On reading through the policy terms and conditions, this Court finds no clause in the policy exempting the insurer in case of poor maintenance. Except a note that the insured has not indemnified, if, the vehicle is not used for driving otherwise thus, in accordance with the schedule. D.W.1, the Assistant working in National Insurance Company, Pondicherry has deposed that the

accident occurred due to poor maintenance of the vehicle. So the Insurance Company is not liable to indemnify. However, he has not placed any records to show that the Insurance Company enjoys such exemption. The vehicle had a valid permit and insurance coverage. The driver of the vehicle had proper Driving License in force. No specific clause in the Insurance agreement granting exemption to the insurer from liability in case of poor maintenance and no explanation for what poor maintenance meant. On the vague allegation of poor maintenance of the vehicle will not exonerate the insurance Company to pay the third party insured/deceased.

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**2020 (3) MWN 28 (CIVIL)**

**Gajarajan Vs S. Gandhimathi Selvam**

**Date of Judgment: 28.02.2020**

**Difference between Will and Settlement:**

The golden rule of construction laid down by the Constitution Bench of the Hon'ble Supreme Court of India is to be followed with reference to the facts and circumstances of the present case is concerned, because there is a substantial difference between a "Will" and a "Settlement". In the present case, admittedly, it is a settlement. Once the property is settled by the settlor in favour of the settlee, absolutely, then the settlor's right ceased to exist and thereafter the settlor cannot travel beyond and bequeath the property after the lifetime of the settlor in favour of the male heirs of the family. Then, such a settlement possesses the character of a will, which is impermissible. Therefore, the difference between a settlement and will is to be understood in the context and the language employed either in the settlement or in the will.

In the present case, the settlement unambiguously enumerates that the Suit mentioned property has been settled in favour of Chinnakannammal absolutely. Thus the title of the property stands transferred in favour of Chinnakannammal and on such transfer in the First Clause, the settlor loses his/her right to impose another clause for inheriting the property by the male Legal Heirs after the demise of the settlor. Such a clause acquires the character of a will, which is not permissible in a Settlement Deed. This exactly is the reason why, the Courts have held, when the Second Clause in a settlement trenches into the First Clause, then the Second Clause became null and void.

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**Kogila & Ors Vs Murugan and Another**

**Date of Judgment: 21.10.2019**

**Hindu Minority and Guardianship Act, 1956, Sec.8:**

It is not in dispute that the Plaintiff was a Minor both at the time when the Suit Schedule properties were purchased on 11.12.1991 and sold on 20.10.1997. The Sale Deed, dated 20.10.1997 (Ex.A2) in respect of the Plaintiff share in the Suit Schedule properties has been executed by the 1<sup>st</sup> Defendant, who is his step brother. A brother is not a natural guardian of a Minor. The father of the Plaintiff Palanisamy was very much alive at the time of execution of Sale Deed 20.10.1997 (Ex.A2) and he is the natural guardian for the Plaintiff. Though it is stated by the Defendants that he was a Vagabond and was incapacitated, no evidence to that effect has been let in by the Defendants in the Suit. Further, no Court permission has been obtained for sale of the Plaintiff's share, who was a Minor from the date of execution of Sale Deed dated 20.10.1997 (Ex.A2). A sale of Minor share, even by a natural guardian without Court permission is voidable at the instance of the Minor once he attains Majority. In the case on hand, the Plaintiff, who was a Minor when the Sale Deed dated 20.10.1997 (Ex.A2) was executed has chosen to invalidate the Sale Deed and hence, the Sale Deed dated 20.10.1997 has become void.

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# HIGH COURT CRIMINAL CASES

2020 (3) MWN (Cr.) 27

**K.Murali Rao, Managing Director, New Woodlands Hotel Pvt Ltd., Chennai**

**Vs New Woodlands Hotel Employees' Union, Chennai**

**Date of Judgment: 31.07.2020**

Industrial Disputes Act, 1947 (14 of 1947), Sections 34, 25-T & 25-U – Unfair Labour Practice – Offence of – Complaint – Person competent to file Complaint – Competency of Respondent – Trade Union to file Complaint – As per Section 34, offence Under Section 25-T can be taken cognizance only on Complaint filed by or under authority of Appropriate Government to competent Magistrate Court – Complainant, in instant case, a Union – Not a competent person to lodge Complaint for offence under Section 25-T as against Petitioner – Complaint, having not been filed by competent person, held, not maintainable and liable to be quashed – Complaint proceedings quashed.

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CDJ 2020 MHC 3174

**Sathiyamoorthy Vs State represented by the Inspector of Police, Karaiyur Police Station,**

**Pudukottai.**

**Date of Judgment: 09.10.2020**

Sec.21(1) of Mines and Minerals (Development and Regulation) Act, Sec.379 of IPC, Return of Motor Vehicle:

It is seen that the alleged vehicle is an unregistered one. Even without a temporary registration, the dealer permitted the petitioner to use the vehicle, which is illegal. Using the vehicle without registration number is illegal. The petitioner was allegedly using the unregistered vehicle. The alleged offence is also an offence against the entire society. There is no acceptable document to prove the ownership of the vehicle. In view of the same, this Court is not inclined to return the vehicle to the petitioner at the present stage. This Criminal Revision Case is dismissed.

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2020 (3) MWN (Cr.) 79

**S.P.Raja Vs Inspector of Police, Tirunelveli Taluk Police Station, Tirunelveli & Another**

**Date of Judgment: 08.09.2020**

Indian Penal Code, 1860 (45 of 1860), Sections 294(b) & 506(i) – Offence under Section 294(b) – Ingredients of – Utterance of obscene words must be to annoyance of others – K. Jayaramanujulu relied upon – And, to attract offence under Section 506(i), threat should be a real one and not just mere word – Decision in Noble Mohandass relied upon – FIR /Complaint not showing that on hearing obscene words uttered by Accused, Witnesses felt annoyed – Nothing in statements of Witnesses about presence of Accused at time of occurrence – Section 161(3) – Statements of Witnesses to effect that Petitioner/ Accused contacted De facto Complainant through Mobile Phone and made life threat – However, Complaint averments that Accused came to his house and abused him by using filthy language – No averments in Complaint that Witnesses present in occurrence place felt annoyed – Nothing in Complaint or in Section 161(3) – Statements of Witnesses that alleged occurrence happened in Public place – Incident as narrated by De facto Complainant

controverted with Statements given by Witnesses – Statements of Witnesses revealing that occurrence not happened in Public place and words used by Accused not causing any real life threat – Ingredients of offences alleged not made out – Proceedings quashed.

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**2020 (3) MWN (CrI.) 85**

**S.Maheswari Vs State, rep. by Sub-Inspector of Police, Poonamallee Police Station & Ors**

**Date of Judgment: 01.09.2020**

**Code of Criminal Procedure, 1973 (2 of 1974), Sections 451 & 457 – Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), Sections 7 & 9(2) – Food Safety and Standards Act, 2006 (34 of 2006), Section 38(1)(b) & (c) – Food Safety and Standards Rules, 2011, Rule 2.3.2.**

Circular, dated 13.5.2017 issued by Commissioner of Food Safety and Drug Administration – Gutkha stored in Godown seized by Police – Food Safety Officer after lifting samples ordered Accused/Food Business Operator to keep contraband in safe custody and sealed Godown – Sample containing Nicotine as per Analysis Report found to be unsafe and prohibited – Prosecution initiated against Accused – Petitioner, Owner of Godown, sought custody of Godown by filing Petition under Sections 451 & 457, Cr.P.C. – Petition dismissed by Magistrate holding that handing over Godown to Petitioner will affect Prosecution case – Legality – Accused taken Godown on rent as per Lease Agreement – Godown under seal since 9.11.2018 – No provision under FSSA or COTPA to seal or confiscate premises, where contraband stored – Circular, dated 13.05.2017 issued by Commissioner of Food Safety & Drug Administration, providing for destruction of seized products within 15 days after receipt of Analysis Report – Authorities neither destroyed Gutkha nor transported same to their Godown for safe custody by following said Circular – Premises sealed without payment of Rent or Damages to Owner – Constitutional right of Petitioner under Article 300-A cannot be infringed by State – No person can be deprived of his property save in accordance with law – Hari Krishna Mandir Trust (SC) relied upon – Food safety officials empowered to prosecute only offender – Landlord cannot be held vicariously liable for having rented out premises to Food Business Operator – Act of Police and Food Safety Officer keeping Godown under lock and key for 20 months without shifting or destructing contraband in accordance with Circular, dated 13.05.2017, condemned – Impugned Order set aside with directions and observations – Matter directed to be posted on 1.10.2020 for decision on payment of Damages and Compensation to Petitioner.

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**020 (3) MLJ (CrI) 710**

**D. Siluvai Venance Vs State Rep. by The Inspector of Police, Koodankulam Police Station,**

**Tirunelveli**

**Date of Judgment: 24.07.2020**

**Sec. 12 of Tamil Nadu Gaming Act, 1930:**

Quashing of FIR – Common gaming house – Code of Criminal Procedure, 1973, Section 482 – Tamil Nadu Gaming Act, 1930, Section 12 – First Information Report registered against Petitioner/5th Accused and four others for offence under Section 12 of Act on allegation that they

were playing cards near thorny bush, hence this quash petition – Whether proceedings pending against petitioner liable to be quashed – Held, place at which gaming had taken place, even according to Respondent Police, was near thorny bush, could not be termed as common gaming house – Continuation of investigation in this case would amount to abuse of process of law - Proceedings pending against Petitioner on file of Police Station quashed.

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**2020 (2) LW (CrI.) 486**

**Satheeskumar & Ors Vs The State Rep. by its, The Inspector of Police,  
Pattiveeranpatti Police Station, Dindigul District**

**Date of Judgment: 19.08.2020**

**NDPS Act, 1985, Sec. 8 (c), 20 (b), 37, Cr.P.C., Sec.439:**

The first condition prescribed under Section 37 is that, the Court should satisfy that there are reasonable grounds for believing that the accused is not guilty of the alleged offence. Even though the word “reasonable ground” has not been defined in the Act, it is now settled by a catena of judgments of the Hon’ble Supreme Court that, the reasonable grounds mean something more than prima facie grounds and it signifies a substantial probable cause for believing that the accused is not guilty of the offence. The existence of such facts and circumstances are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

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**2020 (2) LW (CrI.) 491**

**Siva @ Sivakumar Vs State represented by Inspector of Police, W-21, All Women Police  
Station, Guindy, Chennai.**

**Date of Judgment: 09.07.2020**

**IPC, Sec. 376, 506 (ii):**

A false allegation of rape can cause equal distress, humiliation and damage to the accused and the accused must also be protected against the possibility of false implication and when there is no material projected by the prosecution corroborating the evidence of the victim girl, in such view of the matter, as held by the Apex Court, no presumption could be raised for assuming that the statement of the victim girl is always correct or without any embellishment or exaggeration. The victim girl during the course of her evidence stated that she was threatened by the accused not to disclose the incident to others and the prosecution case is that the accused had threatened the victim girl not to disclose the incident to any one, or else, he would murder her and thus, committed the offence punishable under Section 506(ii) IPC. However, quite contrary to the above said version, the victim girl would depose that the accused had threatened her that he would kill her parents and maternal uncle in the event of her disclosing the incident to others and therefore, when it is found that the victim girl’s testimony cannot be solely relied upon as there is a possibility of embellishment or exaggeration and her assertion that she had no sexual intercourse with anyone other than the accused is belied by the DNA report.

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**Palanivel Vs State Rep. by Deputy Superintendent of Police, Alangudi, Pudukkottai & Anr**

**Date of Judgment: 16.03.2020**

**SC/ST (Prevention of Atrocities) Act, 1989, Sec. 3 (1) (x):**

An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult, the person insulted must be present in public view. In other words, the word “within public view” means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence alleged under this Section is attracted. In her evidence P.W.1 deposed that at that time of occurrence one Selvaraj (P.W.3) was present and he knew the incident. The said Selvaraj (P.W.3) turned hostile. Hence, there is no evidence to show that the accused insulted P.W.1 in any place within a public view.

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**CDJ 2020 MHC 3121**

**P. Kandasamy & Ors Vs Manikandan Finance Rep by Its Managing Partner**

**A. Chellapathi & Ors**

**Date of Judgment: 01.10.2020**

**Cr.P.C., Sec. 311 – Recall of Witness for further Cross Examination:**

On perusal of record, the counsel who crosses examined PW1 has elaborately cross examined in this aspect. It is also seen that the petitioners used to file petition after petition to drag the trial proceedings before the trial court. Therefore, the change of counsel is not a ground for further cross examination of PW1. Further there is absolutely no evidence to show that the earlier counsel who appeared on behalf of the petitioners was incompetent and also no findings could be recorded in that regard. Further the petitioners were already given enough and fair opportunity to cross examine PW1 and accordingly they also cross examined PW1. Therefore, the respondent cannot be unduly harassed for repeated cross examination. Mere fact that the petitioners changed their counsel, it cannot be the ground to recall witnesses. Further, there is absolutely no basis for holding that any prejudice will be caused to the petitioners unless PW1 is recalled. There is neither any patent error in approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not allowed. Therefore, this Court finds no irregularity or infirmity in the order passed by the trial court and all the criminal original petitions filed against the order dated 06.09.2010 are liable to be dismissed.

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**CDJ 2020 MHC 3047**

**Jeyaraman Vs Jeyanthi**

**Date of Judgment: 23.09.2020**

**Cr. P.C., Sec.125 – Maintenance:**

In respect of the income having either by the petitioner or by the respondent, the rule of best evidence is not applicable in maintenance proceedings, as it being an enquiry in real sense. This being quasi civil proceedings, probabilities are required to be brought on record. This enlarges the scope of drawing reasonable inference as it is being done in the case of an able-bodied man. In fact, the husband is an able bodied person, it has to be inferred that he has the means to pay the maintenance. Even the husband may be insolvent or a professional beggar, or a minor or a monk, but he must support his wife so long as he is able bodied and can eke out his livelihood. Where the husband is an able bodied person, direction to him to pay the maintenance allowance to his wife is a proper one. Accordingly, the petitioner is having the duty to pay the maintenance to his wife – respondent.

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