# TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XIX— PART 11 — NOVEMBER 2024**

# IMPORTANT CASE LAWS

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## Sheikh Noorul Hasan Vs. Nahakpam Indrajit Singh and Ors. [Civil Appeal No. 1389 of 2024]

**Date of Judgment: 08.05.2024**

**Order 6 R.1 and Order 8 Rule 9- difference between "Rejoinder" and "Replication"**

The first respondent filed an election petition seeking a relief of declaration that the election of the returned candidate is null and void. The main contention raised by the appellant is that the returned candidate had failed to make necessary disclosures in the nomination paper which has a material bearing on the election result. In addition to that a prayer was made to declare the petitioner as duly elected member from the legislative constituency concerned of the 12th Manipur Legislative Assembly.

The point that arises for consideration is that whether the word "Rejoinder" and "Replication" connotes the same meaning and when it can be filed.

The Hon'ble Supreme Court held that a reply or replication is purely a defensive pleading. Replication and Rejoinder have well defined meanings. No reply or replication is necessary where the issues are completed, and no new matter is set up in the plea or answer. Replication is a pleading by plaintiff in answer to defendant's plea. Rejoinder is a second pleading by defendant in answer to plaintiff's reply. It has been laid down that, a replication can be filed only in three situations, namely (1) when required by law (2) when a counter claim is raised by the defendant. (3)when the court directs or permits a replication being filed. Replication though not a pleading as contemplated under Order 6 Rule 1, it is permissible with the leave of the Court under Order 8 Rule 9 of the Civil Procedure Code which gives a right to file a reply in defence to set-off or counterclaim set up in the written statement.

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## Vinayak Purshottam Dube (Deceased), Through Legal Representatives Vs. Jayashree Padamkar Bhat And Others [Civil Appeal Nos.7768-7769 of 2023]

**Date of Judgment: 01.03.2024**

**Section 306 of Indian Succession Act – Section 37 and 40 of the Indian Contract Act – Section 2(11), 50 of the Civil Procedure Code - obligation of the deceased to be carried out by him personally and the personal obligation of a person under a contract comes to an end and on demise of such person and his estate does not become liable - legal representatives who represent estate of the deceased would not be liable and cannot be directed to discharge the contractual obligation of the deceased:-**

Complainants entered into a development agreement with the Respondent in respect of their property. As per the agreement the complainants are entitled to 8 Flats and Rs. 6,50,000/-. Claiming that the respondent failed to fulfil payment obligation, caused deviations and made unauthorized constructions, not provided for electricity meters, and the quality of the construction being poor, complainant lodged a complaint before the District Consumer Forum seeking payment of dues, rectification of defects, removal of unauthorized construction and to complete pending works. The Respondent contended that the petitioner is not a consumer and there was no breaches and that the dispute is to be resolved through Civil Court. The complaint was allowed directing the respondent to pay Rs. 1,65,000/- and Rs 1,85,000/- and the complaint regarding defect in construction, amenities and facilities was disallowed. Both parties preferred appeal before the Maharastra State Commission. The order of the Consumer Forum was modified by the High Court by setting aside the order to pay Rs. 1,65,000/- and Rs. 1,85,000/- as time barred and directed the respondent to pay the sum of Rs. 1,50,000/- obtain and handover the completion certificate to the complainants, to execute sale deed and obtain electricity connection. Both parties filed Revision before the National Commission. During the pendency of the revision the Respondent died and his legal heirs were

impleaded. The National Commission modified the order of the State Commission by upholding payment of Rs.1,85,000/- and Rs. 1,65,000/- and the other directions of the State Commission. The order was confirmed in the Review Application. Hence the present appeal.

The Question which arose in the appeal is what would happen to the personal obligations imposed on the original respondent on his demise and whether the legal heirs are liable to comply the obligation under the development agreement such as construction, approval, etc.,

Deliberating about Proprietorship Firms, inheritable and uninheritable rights, section 306 of the Indian Succession Act, and the definition of Legal representatives under section 2(11), 50 of the Civil Procedure Code, the Hon'ble Apex Court held that obligation of the deceased respondent were to be carried out by him personally and the personal obligation of a person under a contract came to an end on demise of such person and his estate is not liable and hence the legal representatives, who represent estate of the deceased would not be liable and cannot be directed to discharge the contractual obligation of the deceased. Accordingly, the Hon'ble Supreme Court concluded that the present appellants / legal heirs of the deceased respondent are not liable to discharge the deceased person's obligations. The Hon'ble Supreme Court set aside such portion of the order of National Commission, State Commission and District Forum and directed payments to be made by legal representatives from the estate of the deceased respondent.

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## Janardan Das and Ors. Vs. Durga Prasad Agarwalla and Ors. [Civil Appeal No. 613 of 2017]

**Date of Judgment: 26.09.2024**

**Section 16(c) Specific Relief Act – Taking no steps to execute sale deed and running petrol pump without taking steps to complete sale and failure to show evidence for arrangement for balance consideration amount and failure to take legal action after expiry of the agreed time for sale demonstrate plaintiffs lack of continuous readiness and willingness:-**

The Defendants 1 to 8 (co-owners) orally agreed to sell the suit property to the defendants 9 to 11 on 14.04.1993. Meanwhile, on 06.06.1993, the plaintiffs who are dealers operating a petrol pump on the suit land under a dealership agreement with Defendant No. 12 entered into an agreement to sell with Defendant No. 1 and with one late Soumendral for the purchase of the suit property. As per the terms of the agreement the sisters (Defendant Nos. 6 to 8) would come to Baripada within three months to execute the sale deed, as they were unable to do so at the time of the agreement.

The defendants contended that the 1st defendant did not have the authority to sell the property based on the General Power of Attorney dated 30.12.1982 as the samewas revoked by the partition deed dated 17.02.1988 restricting it only to collect rent amount by the 1st defendant. There was no mention of power to sell in that power deed. In fulfilment of the prior oral agreement dated 14.04.1993 the first defendant, late Soumendra, and Defandant Nos. 6 to 8 executed a registered sale deed on 27.09.1993 in favour of the Defendant Nos. 9 to 11. According to the plaintiff the Defendant No. 1 was authorized to act on behalf of Defendant Nos. 6 to 8 by virtue of the General Power of Attorney dated 30.12.1982 and the subsequent sale deed dated 27.09.1993 was invalid, hence he prayed for specific performance of sale agreement.

The trial Court dismissed the suit. The Plaintiffs preferred appeal before the Hon'ble High Court of Orissa, which was allowed holding that the General Power of Attorney dated 30.12.1982 was valid. Aggrieved by the judgment, the Defendants 9 to 11 filed the present appeal.

The Hon'ble Apex Court held that the plaintiffs have failed to prove readiness and willingness as they did not take any steps to bring 6 to 8 defendants to execute sale as per the agreement and failed to take legal action after expiry of the 3 months from the date of agreement. The Hon'ble Apex Court further held that without proper authority an agent cannot bind the principal to the contract of sale. Finding that Power of Attorney was not mentioned in the agreement and there was no mention of the 1st defendant acting as agent of the defendants no. 6 to 8 and that the 1st defendant had signed the agreement in personal capacity, and that 1st defendant had no valid authority and that partition deed explicitly revoked earlier power of attorney and it authorized the 1st defendant only to collect the rent, the Hon'ble Apex Court allowed the appeal.

Finally, the Hon'ble Apex Court concluded that the 1st defendant lacked authority to bind 6 to 8 defendants and the agreement cannot be enforced against them. The Hon'ble Apex Court further held that the agreement is incomplete and cannot be enforced against majority shareholders hence enforcing it would be inequitable and there is no evidence to suggest monetary compensation. Accordingly, the Hon'ble Apex Court allowed the appeal directing refund of the earnest money to the plaintiffs.

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## Arcadia Shipping Ltd. Vs. Tata Steel Limited & Ors. [Special Leave Petition (Civil) No. 8488 of 2024)

**Date of Judgment: 16.04.2024**

**Section 20 Civil Procedure Code – Question of territorial jurisdiction should ordinarily be decided at the outset rather than being deferred till all matters are resolved:-**

The 1st defendant is a company based in Ethiopia. The 4th defendant is agent of 1st defendant. The 1st Defendant instructed 4th defendant to place order with the plaintiff for supply of steel. The 1st defendant opened Letter of Credit in favour of 4th defendant and then it was transferred to the plaintiff. The Plaintiff shipped the steel to the 1st defendant through the 3rd defendant vide two bill of lading. The Plaintiff bank send documents to the 2nd defendant (Bank at Ethiopia) for making payment to the plaintiff. The 2nd defendant refused to encash the Letter of Credit on the ground of discrepancies. Suit filed before the Hon'ble High Court of Delhi claiming that the order was placed at Delhi and payment to be released at Delhi. The Hon'ble High Court of Delhi vide a Single Judge Judgment held that the 3rd defendant is liable for the loss incurred by the plaintiff as they had unauthorisedly released the goods. Further the Hon'ble High Court directed to return the plaint on question of territorial jurisdiction as the 3rd defendant's place of business is at Mumbai and no cause of action arose against the 3rd defendant at Delhi. The Appeal filed by the Tata Steel before the Hon'ble Division Bench of the Delhi High Court was allowed. Hence the present appeal had been filed by the 3rd defendant. The 3rd defendant contended that the supply order was placed at Delhi for sale of goods and Shipment of goods from Mumbai and they are part of the 2nd transaction only and hence suit cannot be brought against them at Delhi.

The Hon'ble Apex court observed that the Sale and Shipment of goods and all transactions are interconnected and the cause of action arose in part at Delhi, in terms of Section 20(c) of Civil Procedure Code and that as per Order I Rules 3 and 7

of Civil Procedure Code, it was permissible for plaintiff to join in a single suit all the defendants. Further the Hon'ble Apex Court held that in terms of Order I Rule 3 CPC, the relief claimed by the Plaintiff lies against all the defendants to different extents and was 'in respect of and arises out of a series of transactions' and all the defendants can be joined under a single suit as per Order I Rule 7 of Civil Procedure Code. The Hon'ble Apex Court recorded that question of territorial jurisdiction should ordinarily be decided at the outset rather than being deferred till all matters are resolved and upheld the judgment of the Division Bench and dismissed the present Appeal.

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**Beena and Ors. Vs. Charan Das (D) thr. L.Rs. and Ors. [Civil Appeal No. 3190 of 2014]**

**Date of Judgment: 11.09.2024**

**Section 17 of Registration Act – Section 54 of Transfer of Property Act – Settlement recorded or consent order doesnot confer right of ownership - in absence of registered instrument no transfer of title can pass from one person to another:-**

Landlord sought for eviction of tenant on the ground of dilapidation and for demolition and reconstruction of the property. Both Parties reached a settlement and the Tenant deposited an amount of Rs.12,500/- towards value of the building and the eviction proceeding was dismissed based on consent order. The Landlord preferred revision against the said dismissal order, which was dismissed holding that the proper remedy is to prefer an appeal. SLP against the same was also dismissed and Tenant filed application for execution of consent order to enter his name as the owner of the property. It was allowed by the Rent Controller, as against which, Landlord preferred revision, which was allowed. Thereafter, the tenant filed suit for possession and recovery of Rs.2,000/- against the landlord and the suit was dismissed. Appeal thereof was also dismissed. Second appeal filed by the tenant before the High Court of Himachal Pradesh was allowed and the suit was decreed holding that the tenant had become the owner of the suit property vide the consent order. It was also admitted by the parties that after the tenant vacated, the building collapsed and a new building was constructed by the landlord. Hence, the landlord preferred the present appeal.

The question which arose for consideration is whether the tenant can claim himself to be owner as he had deposited the amount as per the consent order.

The Hon'ble Apex Court observed that there was no settlement or transfer of property and there is no document witnessing transfer of property based on the consent order. There was no document or registered instrument, executed between

the parties transferring the title of suit premises and the Hon'ble Apex Court held that there is no transfer of title from landlord to tenant and reversed the High Court order as erroneous and allowed the appeal.

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# SUPREME COURT – CRIMINAL CASES

## Dharmendra Kumar @ Dhamma Vs. State of Madhya Pradesh [Criminal Appeal No.2806 of 2024]

**Date of Judgment: 08.07.2024**

**Statement of deceased recorded under Sec.161 Cr.P.C. can be treated as dying declaration**

Two persons were physically assaulted over a dispute with regard to building a wall. One of the injured person succumbed to the injuries and the other one was critically injured and he was admitted in the hospital. At that point of time, the Investigating Officer documented the statement of the critically injured person under Section 161 Cr.P.C. and the injured person had recounted the events to the Police officer. The critically injured person too died after 5 days. The contention raised was whether a statement given to a police officer, by a deceased, as to the cause of his death or the circumstances of the transaction, which resulted in his death can be relevant or admissible in evidence and treated as a dying declaration.

The point that arises for consideration is that whether a statement of a deceased recorded by a Police Officer under Sec.161 Cr.P.C.in the absence of a doctor to assess the mental fitness of a person making such a dying declaration, can be considered as a dying declaration.

The Hon'ble Apex Court held that a statement given by a deceased to a Police Officer, which is related to the cause of his death or the circumstances, which resulted in his death, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such a circumstance, the statement recorded under Section 161 Cr.P.C. assumes the character of a dying declaration. As the statement is vital and significant, Court has to be extremely careful and cautious in placing reliance thereupon. In so far as the assessment of mental fitness of the person making a dying declaration is concerned, it is the responsibility of the Court to ensure that the declarant was in a fit state of

mind.Further, the requirement for a dying declaration to be recorded in the presence of a doctor following certification of declarant's mental fitness, is merely a matter of prudence. Mere non-obtainment of a medical fitness certificate would not deter the court from considering a properly recorded statement under section 161 to be a dying declaration.

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## Prabir Purkayastha Vs. State (NCT of DELHI) [Criminal Appeal No.2577 of 2024]

**Date of Judgment: 15.05.2024**

**Communication of grounds of arrest in writing to the accused in any case even if it involves special statutes like Prevention of Money laundering Act or Unlawful Activities (Prevention) Act is mandatory-A copy of the grounds of arrest in respect of a person arrested under UAPA will have to be furnished at the earliest:-**

The office of the appellant was raided by PS Special cell, New Delhi and during the course of search various documents were seized and the appellant was arrested under UAPA Act. The contention raised by the Appellant is that the grounds of arrest was not furnished or informed to the appellant either orally or in writing at the time of his arrest and before remanding him to police custody which is a gross violation under Article 22(1) of the constitution and Section 50 of Cr.P.C.

The question arises for consideration is that whether informing the grounds of arrest and furnishing a copy of the grounds of arrest to a person arrested under a special statute like UAPA or under any other statute is mandatory?

The Hon'ble Supreme Court has held that, the purpose of informing to the arrested person about the grounds of arrest is salutary and sacrosanct act as it would be the only effective means for the arrested person to seek legal aid. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of this fundamental right which would vitiate the process of arrest and remand. Any person arrested under the provision of UAPA or under any other law has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of the written communication will have to be furnished to the arrested person at the earliest. The Hon'ble Apex Court held that the non-compliance of communication regarding grounds of arrest to an arrested person under any law for the time being in force would lead to the custody or the detention to be illegal.

## Joy Devaraj Vs. State of Kerala [Criminal Appeal No.32 of 2013]

**Date of Judgment: 08.07.2024**

**Under Sec. 300 IPC fulfilment of anyone condition enumerated therein is enough to convict the accused under Sec.302 IPC – Section134 of the Evidence Act, contemplates that no particular number of witnesses is required in any case to prove a fact-if the evidence of a solitary witness is found to be wholly reliable it can form the foundation for conviction:-**

The deceased and the appellant/accused had enmity regarding liquor trade. On the day of occurrence, the appellant/accused was armed with a dagger and had grabbed the victim and pulled him to the ground and stabbed him with the dagger. The contention raised by the appellant is that the testimonies of the eye witnesses are wholly unreliable as there are material contradictions. Further, the appellant has contended that the prosecution has not established that a single stab wound on the lower chest is a life threatening injury and the act of the appellant cannot be placed within the confines of Section 300 I.P.C. as the injury caused to the victim was not sufficient in the ordinary course of nature to cause death.

The question that arises for consideration is that whether the nature of offence committed by the appellant/accused falls within the purview of section 300 IPC and how far the evidence of witnesses is credible.

The Hon'ble Supreme Court has held that the appellant/accused had carried the dagger accompanied by other co-accused which proves that the appellant/accused had carried the weapon with premeditated intention to cause hurt to the victim. A single stab wound can be considered as fulfilling anyone condition of Section.300 IPC. The intention to cause death can be discerned from the conduct of the appellant and the nature of fatal injury inflicted in the ordinary course is sufficient to cause death, which fulfils the condition under Sec 300 IPC. In so far as, the quality of witness is concerned, under the purview of Section 134 of Evidence Act, no particular number of witnesses is required in any case to prove a fact. It is

the quality of evidence and not the quantity. If the evidence of a solitary witness appears to the court to be wholly reliable, it can form the foundation for recording a conviction.

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## Ram Kishor Arora Vs. Directorate of Enforcement [Criminal Appeal No.3865 of 2023]

**Date of Judgment: 15.12.2023**

**Meaning and connotation of "as soon as may be" in S.19(1) of Prevention of money laundering Act, 2002 - Informing grounds of arrest to the arrestee - Time limit within which the duty to communicate grounds of arrest must be discharged:-**

The appellant was the founder of a real estate company. A show cause notice regarding attachment of his property was sent to the appellant and before he could reply, he was arrested by the Enforcement Directorate (ED) without serving notice containing the grounds of arrest as contemplated under Section 19 of the Prevention of Money Laundering Act (Hereinafter referred as "PMLA"). The appellant was handed over the document containing grounds of arrest at the juncture of his arrest and he had also put his signature below the said grounds of arrest. The only contention raised by the appellant is that he was not furnished a copy of the document containing the grounds of arrest.

The question that arises for consideration is that whether the ED has complied the conditions envisaged under Sec. 19 of the PMLA Act with regard to furnishing a copy of the document containing grounds of arrest?

The Hon'ble Supreme Court held that if an arrested person is informed or made aware orally about the grounds of arrest as soon as possible and within reasonably convenient time of twenty-four hours that would be sufficient compliance of not only Section 19 PMLA but also of Article 22(1) of the Constitution of India. In the present case, the arrested person was handed over the grounds of arrest after making endorsement that he has been informed about the grounds of arrest. As the appellant has been indisputably informed about the grounds of his arrest and has endorsed about the same on the document containing the grounds of arrest, the Hon'ble Supreme Court has held that there has been due compliance of Section 19

PMLA and thereby the arrest made could neither be said to be in violation of Section 19 PMLA nor of Article 22(1) of the Constitution.

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## Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka [Criminal Appeal No. 985 of 2010]

**Date of Judgment: 19.04.2024**

**Under section 27 of the Evidence Act 1872, the statement recorded must be in the presence of two independent witnesses and recovery should also be made in the presence of two independent witnesses**

In a dispute regarding agricultural land, the appellant and co-accused threatened the complainant and criminally intimidated him. The complainant gave a written complaint, based on which, a First Information Report was registered. The contention raised by the appellant is that neither the disclosure statements nor the recovery memos bear the signatures/thumb impressions of the accused and the recoveries of the weapons was done based upon the identification of the weapons by the complainant to the police on the same day of occurrence.

The question that arises for consideration is that what are the requirements to prove a disclosure statement recorded under Section 27 of the Evidence Act and the discoveries based on such a statement.

The Hon'ble Supreme Court held that, the statement of an accused recorded under Section 27 of the Evidence Act is basically a memorandum of confession recorded by the Investigating Officer, taken down in writing. The confessional part of such statement is inadmissible and only the part, which leads to discovery of fact is admissible in evidence. If the accused, out of his own free will and volition makes a statement, it is the duty of the Investigating Officer to call for two independent witnesses at the police station itself and in their presence, the accused should be asked to make a statement and to point the place, where he is said to have hidden the weapon. As the investigating officer nowhere has stated in his deposition that the disclosure statement of the accused resulted in the discovery of weapon, it cannot be read in evidence and it is *non est* in law.

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## HIGH COURT - CIVIL CASES

**Fathima Bee Alias Mumtaz Vs. A.Khairunnissa Jajimunissa (deceased) and others [CRP (PD) No.1995 of 2024 & CMP No.10857 of 2024] [2024 (6) CTC 234]**

**Date of Judgment: 22.08.2024**

**Section 2 and 3 of Partition Act, 1893 – Application under section 3 is maintainable at any stage prior to the confirmation of auction sale – Order XX1 Rule 66 CPC empowers Court to direct an Advocate Commissioner to value property but fixation of upset price is duty of court.**

Suit for Partition decreed. The Preliminary Decree for Partition was affirmed by High Court in Second Appeal. The Plaintiff filed Application for passing of Final Decree. The Advocate Commissioner submitted a Report stating that the Suit property is incapable of division. The Plaintiff filed an Application invoking Section 2 of the Partition Act. The Trial Court permitted the Advocate Commissioner to sell the Suit property in Public Auction by fixing the Upset Price of the property subject to right of pre-emption of other Sharers. The property was sold in Public Auction and it was purchased by Third Party / Auction Purchaser. The Second Defendant filed an Application to permit him to purchase the Suit property and to deposit money which corresponds to the value of the share. The Trial Court dismissed the Application by holding that the procedure under Order 21, Rule 89 of CPC has not been followed and the Applicant / Defendant has not deposited the entire Purchase Money fixed in the Public Auction. Hence, the Civil Revision Petition.

It was held by Hon'ble High Court that since the property is a dwelling house and when one of the sharers had approached the Court even before the sale had been conducted under Section 2, the Court should have come to her rescue and should have given her an opportunity to purchase the property at the agreed valuation but instead it had ordered Public Auction and even in the matter of sale, though the Rules require the Court to fix the Upset Price, the learned Trial Judge

delegated that power to the Advocate Commissioner and it is a settled position of law that equity must be adopted in all partition cases when it is inconvenient to divide a property and a person, who does not get actual possession of the property is entitled to be compensated.

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## P.Marimuthu & another Vs. A.Paramasivam & another [AS No.433 of 2018] [2024 (6) CTC 257]

**Date of Judgment: 29.04.2024**

A Suit for Partition was filed contending that Suit property was jointly purchased by the Plaintiffs and Defendants by means of a Sale Deed, which stated that 25% share in the Suit property would vest with Plaintiffs. The Trial Court accepted the recitals in the Sale Deed and granted a Preliminary Decree for Partition. Hence, the present Appeal by the Defendants.

The Hon'ble High Court held that as per the section 45 of Transfer of Property Act, 1882 in the absence of evidence on proportion of consideration paid by each one of them, it is to be presumed that they paid in equal proportion amount and discussing section 92 of Indian Evidence Act, 1872 being the effect of Oral Evidence contrary to document is inadmissible and held that when document clearly states share of property in respect of purchasers, Oral Evidence contrary to such document cannot be admitted and had dismissed the First Appeal.

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## Charles (died) & Others Vs. Leela & Others [SA(MD) No.274 of 2009] [2024 (6) CTC 266]

**Date of Judgment: 01.08.2024**

Plaintiff filed Suit for Recovery of Possession, Mesne Profits and for putting up fence on the southern portion of the Suit property. Suit was decreed by the Trial Court and the First Appellate Court confirmed the findings of the Trial Court as against which the Second Appeal had been filed by the Defendants.

The Hon'ble High Court held that it is settled law that the co-owners are entitled to maintain a Suit for recovery of possession against Third party and in such Suits, the Third party defendant, by pointing out the non-joinder of other co-owners, cannot successfully resist the Suit and any Decree for possession passed in the Suit is not only for the benefit of the Plaintiffs but it is also for the benefit of other Co-Owners. The point raised by the Appellants on the ground of non-joinder of other Co-Owners is accordingly negatived and also held that the relief of possession granted in favour of the Plaintiff will also beneficially accrues in favour of the other Co-Owners and upheld the findings of the Court below.

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## R..... Vs B..... & Another [CRP(MD) No.2362 of 2024 & CMP(MD) No.13409 of 2024 [2024(6) CTC 293]

**Date of Judgment: 30.10.2024**

Section 65B Indian Evidence Act – CDR cannot be admitted without obtaining Certificate from Telecom Service provider – Privacy as a Fundamental right includes Spousal Privacy – Evidence obtained by violating Privacy – It is not admissible.

The fact of the case is "B" filed a Divorce Petition against "R" alleging cruelty, adultery and desertion. The husband examined himself as PW1 and had marked the Call Data Record of the Wife. The Call Data Record of the Wife was procured in violation of right of privacy. The Petition filed by the Wife seeking rejection of this electronic document of Call Data Record was dismissed as premature. Challenging the same, the Civil Revision Petition had been filed.

The question that had been decided is whether an evidence produced in violation of right to privacy is admissible in evidence?

The mobile phone belonged to the wife and the husband had access to the same. When the mobile phone with the sim card was in the custody of the husband, he had reached out to the Telecom Service Provider (Jio) and obtained the Call Data. The Call History was downloaded from Jio Website. Only a person occupying a responsible official position in Telecom Company could have issued the Certificate. The Husband / Respondent herein could not have issued a self-serving Certificate

This is a clear invasion of the privacy right of the wife. The husband had stealthily obtained the information pertaining to the call history of his wife. He was not the owner of the mobile device / the registered user of the sim card. There has been clear breach of the privacy of the wife.

The Hon'ble High Court held that obtaining of information pertaining to the privacy of the wife without her knowledge and consent cannot be viewed benignly. Law cannot proceed on the premise that Marital misconduct is the norm. It cannot

permit or encourage snooping by one spouse on the other. Privacy as a Fundamental right includes Spousal Privacy also and evidence obtained by invading this right is inadmissible. In this case the certificate filed by the husband is no certificate at all and fell outside the Caveat laid down in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal [2020 (7) SCC 1]** by the Hon'ble Supreme Court of India. Finally, the Civil Revision petition was allowed, holding that the evidence procured in breach of the privacy rights is not admissible.

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## Manashwini Balasundaram Vs. Ashwinkumar Baburaj [Tr. CMP No.1010 of 2024 [2024-5-LW-437]

**Date of Judgment: 29.10.2024**

**Section 24 of CPC – The High Court has jurisdiction to transfer a proceeding pending before it to a court subordinate to it.**

The petitioner is the wife and the husband is the respondent. Their marriage was solemnized on 11.03.2016. The wife was residing in Coimbatore along with her twin children and the husband was residing in Chennai. The wife sought dissolution of marriage before the Family Court at Coimbatore. Thereafter, the husband sought for custody of the children, before the original side of the Hon'ble High Court.

The wife filed Transfer Petition under Section 24 of the Code of Civil Procedure to transfer the GWOP to the Family Court at Coimbatore, considering the convenience of the wife and children. The respondent contended that the transfer petition under section 24 of CPC is not maintainable and it should have been filed only on the original side of the High Court.

The question to be considered is 'whether this court has the jurisdiction under section 24 CPC to transfer a proceeding pending before it, to a court subordinate to it?

Under section 16 of the Chennai City Civil Courts Act, 1892, the High Court has the power to transfer a proceeding before it to the City Civil Court. Section 13 of City Civil Courts Act, 1873, enables the High Court to receive appeals on account of vacations. Only provision available to move an application for transfer of a suit pending on the file of the High court to any other court competent to try it is under section 24 of CPC.

Section 24 CPC empowers the High Court to transfer any proceedings (including suits / appeals) pending before it to a court subordinate to it and for this it relied upon the judgment in Srirangam Municipality Represented By ... Vs. R.V. Palaniswami Pillai [AIR 1951 MADRAS 807].

Finally, the transfer petition was allowed holding that by virtue of the powers vested under section 24(1)(a) CPC, a suit, appeal or other proceeding that is pending before the High Court can be withdrawn and transferred to a competent court subordinate to the court.

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## S.Manimaran Vs. S.Murali & others [SA (MD) No.158 of 2018] [2024 (3) MWN(Civil) 449]

**Date of Judgment: 07.08.2024**

The Appellant is the Plaintiff and the Respondents are the Defendants in O.S. No.136 of 2015 on the file of the Additional Sub Court, Kumbakonam. The Appellant / Plaintiff filed the Suit for Partition and Permanent Injunction in respect of the Suit property. Trial Court decided the dispute without framing issues.

The Hon'ble High Court held that the plaintiff having knowledge about the Will in the 1st week of August 2009, but had not challenged the Will within a period of 3 years inspite of denial of his right. In such circumstances, the Court below correctly held that the plaint is barred by limitation. It is a settled proposition of law that "while the parties are aware of the dispute and let in evidence in support of the contention, mere omission to frame issue on the matter in controversy between the parties cannot be regarded as fatal. The Will has been proved by acceptable evidence as contemplated under the law and the plaintiff cannot seek any relief of partition against the absolute property of the 1st defendant. The Courts below have properly appreciated the evidences taking into consideration of the settled legal principles in this regard. Hence, all the questions of law raised in the Second Appeal are answered against the Appellant / Defendant and thus appeal was dismissed.

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## V.Ramesh Vs. V.Nagaraj [CRP PD No.4305 of 2022 & CMP No.22626 of 2022] [2024 (3) MWN (Civil) 509]

**Date of Judgment: 04.06.2024**

The Petitioner is the Defendant in the Suit and the main Suit was filed by the Respondent, who is brother of the Petitioner for relief of Permanent Injunction. The Petitioner / Defendant filed Written Statement on 22.10.2018. The Respondent / Plaintiff, along with the Plaint has filed two documents as Document Nos.3 & 4, namely the Cancellation of Mortgage Deed dated 11.09.1998 and unregistered Sale Deed, dated 08.02.1999. The above said documents are inadmissible in the eye of law. At the time of trial, the Respondent / Plaintiff wanted to mark the said unregistered Sale Deed and the same was objected, since it was unregistered document and cannot be looked into even for collateral purpose. Therefore, defendant filed a Petition under order XIII Rule 3 of C.P.C., for rejection of inadmissible document and the same was allowed by the trial court. Being aggrieved by the said order, the plaintiff has filed the revision petition.

The Hon'ble High Court held that the Trial Court failed to consider that even the inadmissible document can be looked into for collateral purpose provided the party who wants to rely on it, should pay the stamp duty together with penalty and get the document impounded as per law laid down by the Hon'ble Supreme Court in Yellapu Uma Maheswari Vs. Buddha Jagadheeswara Rao reported in 2015 (16) SCC 787. Therefore the order passed by the Trial Court is unsustainable and the petitioner/plaintiff is at liberty to file the document for collateral purpose subject to proof and relevancy and it is for the Trial Court to decide whether the said document has been proved in accordance with law, since case is only at the stage of receipt of documents as evidence and therefore, the order passed by the Trial Court is unsustainable and allowed the Civil Revision Petition.

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## G.Shrilakshmi Vs. Anirudh Ramkumar [CRP Nos.1994 & 89 of 2024 and CMP No.12451 of 2024 in CRP No.1800 of 2024] [(2024) 6 MLJ 153]

**Date of Judgment: 18.10.2024**

**Family Court – Physical presence of the parties / spouses at the time of presentation of the petition and subsequent hearing is not mandatory other than criminal cases coordinator in remote site is also not mandatory.**

The petitioner/ estranged wife of the respondent filed the revision seeking a direction to the Principal Family Court, Chennai to number the unnumbered petition which was filed under Section 13-B of the Hindu Marriage Act seeking divorce by mutual consent without insisting upon the physical presence of the parties, permitting their power of attorneys to present the petition and to permit them to appear through virtual mode as the time lag between USA and India is around 12 ½ hours, it is impossible to insist the petitioners to appear from the Consulate/Embassy in the presence of officials of Embassy as per Rule 3 and 4 of Madras High Court Video Conferencing in Court Rules, 2020. The presence of coordinator at the remote site is mandatory, required only when a person accused of an offence is to be examined in criminal cases but it is not a mandatory requirement for other cases, particularly in cases of divorce by mutual consent. Virtual Proceedings provide an opportunity to modernize the system by making it more affordable and citizen friendly, enabling the aggrieved to access justice from any part of the court in the world without insisting upon the presence of petitioner even from the time of first presentation till the conclusion of proceedings.

Family Courts shall not insist on physical presence of parties for the presentation of the petition and future hearings. The Court should resort to conducting proceedings through virtual mode to conduct hearings, record evidence and passing appropriate orders.

The Hon'ble High Court held and issued the following guidelines

*The Family Courts henceforth not to insist physical presence of the petitioners / spouses at the time of presenting the petition at the first instance and for future hearings;*

*(i) Petitions can be filed either by the parties directly or by the Power of Attorney of the parties, provided, the Power of Attorney to be a registered one or properly adjudicated;*

*(ii) On behalf of the parties, Power of Attorneys can appear and prosecute. The only embargo is that the recognized agent should not be a legal practitioner;*

*(iii) The Power of Attorney representing the parties shall present the petition with relevant documents annexed, materials and proof affidavit required for the case in physical form;*

*(iv) The parties can be present through virtual mode from their respective places and the place of location, identity of the person to be confirmed with relevant documents;*

*(v) The Court can verify with the parties appearing through virtual mode as to the petition, proof affidavit, documents produced and record the same as evidence on satisfaction and to pass appropriate orders.*

and allowed the revision petition.

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## Kapali & others Vs G.Neelakandan (died) & others [CRP (NPD) No.417 of 2021 & CMP No.3540 of 2021] [2024 (4) TLNJ 252 (Civil)]

**Date of Judgment: 25.10.2024**

**Section 5 Limitation Act - Length of delay is not a material factor for deciding delay application and the ends of justice would not be defeated on delay.**

The Suit is for recovery of possession and permanent injunction**.** The defendants 1 and 2 have filed a written statement, objecting documents marked in trial, they preferred revision, which was dismissed. Later, the suit was decreed exparte. The Defendants sought condonation of 706 days in filing the application to set aside the exparte decree, which was dismissed holding that each and every day delay had not been explained and hence the revision. The Case of the petitioners is that they were never informed about the dismissal of the civil revision petition and had come to know of the ex-parte order only when they received notice in the execution proceedings.

The question to be considered is whether the delay in filing the set aside application is to be condoned?

The Hon'ble High Court allowed the revision holding that no serious prejudice would be caused to the parties if the suit is directed to be disposed of on merits and length of delay is not a material factor for deciding an application under Section 5 of the Limitation Act and permitting a party to participate in the main proceedings and to decide the issue on merits would ensure that ends of justice would not be defeated.

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## C.Mani Vs. C.Rajan & others [SA No.101 of 2021 and CMP No.2153 of 2021] [ 2024(4) TLNJ 260 (Civil)]

**Date of Judgment: 28.10.2024**

**No bar to claim partition of poromboke property if it is in joint possession of a family.**

Suit for partition filed by Plaintiff / Respondents. The 1st Defendant / Appellant contended that the suit property is natham poromboke, a family arrangement entered in 1972 wherein plaintiff relinquished his share since the defendants alone is residing in it and the plaintiffs were never in joint and constructive possession of the suit property. The trial court dismissed the suit property by holding that it is a natham poromboke land and the plaintiff is not in joint possession and hence the suit is barred by limitation. The 1st appellate court reversed it by holding that the oral relinquishment is not proved and the plaintiff is in constructive possession of the suit property. Hence the second appeal.

The question to be decided in the appeal whether the plaintiff is in joint possession and partition regarding Natham poromboke land is maintainable.

The Hon'ble High Court held that there is no bar to partition the property even if it is a Poramboke land, if a family is in possession and enjoyment of the said property, relying upon the judgment in Packiyam Ammal and Ors. Vs. Pattu Ammal and Ors.[(1999) 2 MAD LJ 757].

As per Transfer of Property Act, 1882, relinquishment need not be in writing. Hench, oral relinquishment is valid, if it is proved. The burden is upon D1 to prove the alleged family arrangement as well as relinquishment but it was not proved and hence the second appeal was dismissed by holding that the possession of the joint property by one co-owner in the eye of law, is possession of all.

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## HIGH COURT – CRIMINAL CASES

**Martin Montrique Mansoor Vs The Inspector of Police, Thirunagar Police Station, Madurai District, Cr.No.173/2012 [Crl. A(MD) No.312 of 2020] [ 2024-2-LW (Crl.) 674]**

**Date of Judgment: 30.10.2024**

**Except sub-section 4 of section 300 IPC – Quarrel over custody of the child leading to an act of violence and absence of preplanning – Fall under section 304 (part II) IPC.**

The accused in S.C. No.109 of 2013 on the file of Sessions Court, Mahalir Neethimandram, Madurai, was convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and fined Rs.5,000/- in default to undergo simple imprisonment for six months and also convicted for offence punishable under Section 201 IPC and was sentenced to undergo 5 years rigorous imprisonment and fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months as against which the present criminal appeal has been filed.

The accused Martin Montrique Mansoor and the deceased Cecile Denise Acosta Reynaud had a live-in relationship and a child Adela Berenise Manricque Acosta was born to them. It was stated that there was a strained relationship on account of the custody of child. It was alleged that there was a wordy quarrel at the house, where the accused resided namely, Staff Quarters, Kalasalingam University at Krishnankovil. The accused was charged with commission of offence of murder. It was further alleged that with the intention to screen the evidence of the dead body, the accused had taken the body in his Ford Fusion Car at Thoppur Kanmai, within the jurisdiction of Thirunagar Police Station. Therefore, it had been charged that the accused had committed the offence punishable under Sections 302 and 201 IPC.

The Hon'ble High Court held that the accused is the only person responsible for the homicide, but intention is a fact to be presumed and therefore it is justified in falling back to Exception 4 of Section 300 IPC. The occurrence did not happen

immediately on deceased entering the house of the accused but after nearly 5 days. The quarrels over custody could have escalated to violence. It is an inference which any person would arrive at. There must have been sustained quarrel over the custody of the child leading to an act of violence on the spur of the moment. There was no preplanning. The death must have been a shock to the accused also. Therefore, considering the said circumstances, the High Court set aside the conviction under Section 302 IPC and convicted the accused for the offence punishable under Section 304(Part II) of IPC.

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**M/s. Panacea Biotec Ltd, New Delhi, represented by its authorized representative, Mr. Balakrishnan Prabhu and others Vs. The State of Tamil Nadu, represented by P.Nithin Kumar, Drugs Inspector, Saidapet Range, Chennai [Crl. RC No.397 of 2024 and Crl. MP No.3650 of 2024] [2024-2-LW (Crl.) 704]**

**Date of Judgment: 28.10.2024**

The petitioners / A1, A3, A5, A7, A8 & A9 have filed a petition for re-hearing the petition filed under Section 36(A) of The Drugs and Cosmetics Act, 1940 r/w 260(2) and 259 of Cr.P.C. in Crl.M.P. No.11949 of 2023 in C.C. No.6686 of 2013 before the learned IV Metropolitan Magistrate, Saidapet, Chennai and the same was dismissed vide impugned order, dated 22.12.2023. Trial court found there are sufficient ground for proceedings against the petitioners and issued summons under section 204. The Petitioners were prosecuted and were facing trial as per Chapter XX section 251 of Cr.P.C. It is not required in summons cases to frame formal charges. In usual course, it is to be tried as summons case and the Magistrate at the time of commencement of trial made it clear that the case is tried as summons case.

The complaint had been filed under Section 200(a) Cr.P.C since the complainant is a public servant. The Trial Court finding that there are sufficient grounds for proceeding against the petitioners, issued summons under Section 204 Cr.P.C. The accused on receipt of summons appeared before the Trial Court knowing fully well that no application for dismissal of the complaint or filing of discharge petition is available and permissible. The petitioners are facing trial for offence punishable under Section 27(d) of the Act for which the punishment prescribed is that it shall not be less than one year but may extend to two years and with fine. In usual course, it is to be tried as summons case. In view of Section 36-A of the Act which is a non obstante provision, all offences punishable for a term not exceeding three years other than offence under clause(b) of Sub-Section (1) of Section 33-I shall be tried in a summary manner.

The Hon'ble High Court held that it is settled position that ignorance of law is not a defence, more so when the petitioners are defended by able Advocates throughout. In view of the above, the impugned order passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai is a well reasoned one which needs no interference. Accordingly dismissed the Criminal Revision.

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## R.Pandiyarajan Vs Union, rep. by Intelligence Officer, NCB, Chennai [Crl. OP Nos.13636, 13637, 13641 & 13643 of 2024] [2024 (3) MWN (Cr.) 237]

**Date of Judgment: 05.08.2024**

Prosecution case is based on specific information that ganja had been transported from Vizag to Chennai for onward transport to Srilanka through Rameshwaram, and surveillance was mounted near Karanodai Toll gate by the NCB officials. At midnight a TATA truck was intercepted and from the vehicle, 432.700 Kg of ganja was seized and One Mr.KadarBasha (Driver-A-1) and co-passenger Mr.Senthil Kumar (A-2) were interrogated. On their information, V.Velu, Pandiayarajan and Jahir Hussain were summoned to NCB office and their statements were recorded. All these accused persons admitted their respective role in procuring ganja from Vizag and its transport to Chennai in TATA Truck. The arrested accused persons disclosed the name of Allah Pitchai who played a pivotal role in arranging finance for procuring the ganja and also his involvement in organising the illegal transportation of ganja outside India through Rameswaram. The said Allah Pitchai was also arrested.

The Hon’ble High Court held that on the date of filing the petition for statutory bail, the ground for seeking bail on default was not in existence. Because, the prosecution had filed petition well in advance taking note of caution given by the Hon'ble Supreme Court in Judgebir Singh case and obtained order of extension of time well before expiry of 180 days. The petitioners consciously and deliberately refused to receive notice in the extension petition. Thereafter, to get statutory bail, suppressing the fact that they attended the Court through VC and filed petition for bail. The Learned Special Judge has diligently perused the records and had passed the well-reasoned order assigning reasons. Hence these Criminal Original Petitions are dismissed as devoid of merit.

## Jacob Vs State, rep. by Inspector of Police, ACB/CBI, Chennai [Crl. OP No.23933 of 2024] [2024(3) MWN (Cr.) 251]

**Date of Judgment: 04.10.2024**

**Section 355 BNSS Act, 2023 – Accused appearance through video conference to be accepted.**

C.B.I. registered a case against five accused persons in 2007 and laid a charge sheet in 2016. Now, based on certain statement, the trial Court suo motu included the petitioner U/s.319 Cr.P.C. but charges have not been framed. The Petitioner is an octogenarian and according to him, he suffers from multiple ailments associated with his age. However, at this ripe age, he is facing the possibility of being charged by the Special Court. He now approaches the Court seeking the leave of the Court to frame charges, if at all there is any, through Video Conferencing through the Video Link disclosed in the Petition.

The Hon'ble High Court held that framing of charges is the responsibility of the Court, and the litigant is willing to submit him to it. It is imperative, life is made least inconvenient to litigants, and merely because someone faces criminal accusation and is required to defend the charge, it does not necessarily imply, he has to surrender all his comforts and convenience to participate in trial. Therefore, wherever possible, the Court may have to resort to technology to make life less cumbersome and most convenient for all concerned.

For the above reasons, the petition stands allowed holding eventhough trial court has taken cognizance prior to the advent of BNSS, 2023, in as much as explanation to section 355 BNSS, 2023 only shows the need to incorporate and integrate technology into procedure.

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## C.Ve.Shanmugam Vs State, rep. by Inspector of Police, Villupuram West Police Station & another [Crl. OP Nos.16043, 16230 of 2023 & Crl. OP Nos.1270 of 2024 & Crl.MP Nos.10061, 10245 of 2023 & Crl. MP Nos.922 & 926 of 2024] [2024 (3) MWN (Cr.) 273]

**Date of Judgment: 13.08.2024**

**Section 154 Cr.P.C – Second complaint against the same accused for the same incident or transaction is not maintainable, except Counter Complaint.**

On 28.02.2022 at about 10.00 a.m., near Thiruvallur Statue, Villupuram Old Bus Stand, agitation was organised by AIADMK party condemning the arrest of Mr. D.Jayakumar, Former Minister. In the said agitation, the Petitioner and others spoke. Nearly 1500 men and 200 women participated in the agitation. The Second Respondent, Karthikeyan, the Village Administrative Officer of Villupuram Town, gave a Written Complaint on the same day i.e. 28.02.2022 to the Sub-Inspector of Police, Villupuram West Police Station stating that without obtaining permission from the Police, the agitation condemning the arrest of Mr. D.Jayakumar, was conducted under the leadership of the Petitioner C.Ve.Shanmugam. The agitation caused disturbance to the flow of traffic in Villupuram – Pondicherry National Highways. Without following the Corona Protocol, the agitators gathered between 10.00 am and 12.00 noon facilitating the spread of infectious virus. It was registered for the offences under Sections 143, 341, 269, 270, 290 of IPC, against the agitators led by Petitioner Mr. C.Ve.Shanmugam along with 14 Office bearers of AIADMK party and 1500 men and 200 women. For the very same incident, on 07.10.2022(i.e.) after 7 months, one Mr.Shanmugha Sundaram, an Office-bearer of DMK party gave a Complaint and the same was registered by the very same Police on 07.10.2022 for the offences under Sections 153-A, 294(b), 504 & 505 (1) (b) of IPC, wherein final report was filed and taken on cognizance as STC. Challenging both these cases Crl.O.P has been filed for quashing the proceedings on the ground that of two complaints for same incident or transaction is not maintainable.

The question for consideration is whether the second FIR for the same incident is legally sustainable?

The Hon'ble High Court held that the legal position is clear that for one transaction and same version, there can be only one FIR. If there are rival versions about the same transaction one in contradiction to another then more than one FIR is permitted. If the subsequent complaint is about the same transaction but put it differently or for different offence, the said complaint must be taken as a statement of witnesses under Section 161 Cr.P.C. The investigation on the further information provided under the subsequent complaint has to be done and reported to the Court about the course of investigation. The IO after registering the second complaint proceed with the investigation and complete it, ignoring the former complaint for the same transaction. The said omission is grave and illegal.

Therefore, it is held that when no material was placed by the prosecution in its final report to test the speech, whether it attracts offences under Sections 294(b) or 153 or 504 IPC, there is no scope to frame any charge against this petitioner and prosecuting the petitioner without evidence is a futile exercise. Therefore, in the instant case, from the records, this court has no doubt, that the State Police machinery has been mis-used as a tool by the ruling party member to crush the voice of opposition. Hence, it is a fit case for the Court to interfere in the investigation by applying the principle laid in "Bajanlal's case" and quashed the complaints.

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## Prabakaran Vs State rep. by The Inspector of Police, Pasupathipalayam PS, Karur District [Crl. A (MD) No.103 of 2021 & Crl. A (MD) No.449 of 2023] [2024 (2) TLNJ 472 (Crl.)]

**Date of Judgment: 14.11.2024**

The deceased Jayanthi was residing at Jeeva Nagar, Thanthondrimalai, Karur. She was constructing a new house opposite to the house of the first accused at Ashok Nagar. The deceased used to go to the house of the first accused. The deceased was a retired government servant. The husband of the deceased was residing at Kanyakumari. The son of the deceased was residing in a different part of Thanthondrimalai. The deceased was wearing gold chain, gold bangles and gold ear studs. The accused intended to murder her and rob the jewels. When Jayanthi came to the house of the first accused, the first accused gagged her mouth with a piece of cloth while the second accused caught hold of her hands. Jayanthi died due to suffocation. After removing the jewellery, the dead body was stuffed into a gunny bag and taken in a two wheeler by the accused. The VAO lodged Ex.P1 / complaint before the Sub Inspector of Police, Pasupathipalayam Police Station.

The husband of the deceased, developed suspicion, when the mobile phone of his wife could not be reached. He came down to Karur. The house at Jeeva Nagar, where his wife was residing, was broken open with the aid of the building contractor and then he went to the Inspector of Police, Pasupathipalayam Police Station and complained that his wife was missing. The police after investigation concluded that an unidentified body noticed was that of Jayanthi. The investigation conducted by the Inspector of Police pointed to the involvement of the appellants. Based on their confession, the jewels worn by the deceased were also recovered. The husband of the deceased duly identified the said jewellery as those belonging to his wife. The accused were found guilty for the offences under section 302, 392, and 201 IPC. Against the conviction, they preferred appeal.

The Hon'ble High Court held that it is well settled law that motive assumes great significance where a conviction is sought to be predicated on circumstantial

evidence alone. The involvement of the second accused is confirmed not only by PW.16 and 17 but also PW.19. All the three of them are independent witnesses and therefore, the trial court rightly came to the conclusion that the charge under Section 201 of IPC levelled against both the accused was proved beyond reasonable doubt. The Hon'ble High Court uphold the finding of the trial court in this regard and in the result confirmed the conviction and sentence imposed on the first accused and set aside the conviction and sentence imposed on the second accused for the offences under Sections 302 and 392 of IPC and confirmed the conviction and sentence imposed on the second accused under Section 201 of IPC is confirmed.

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