

TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAWS



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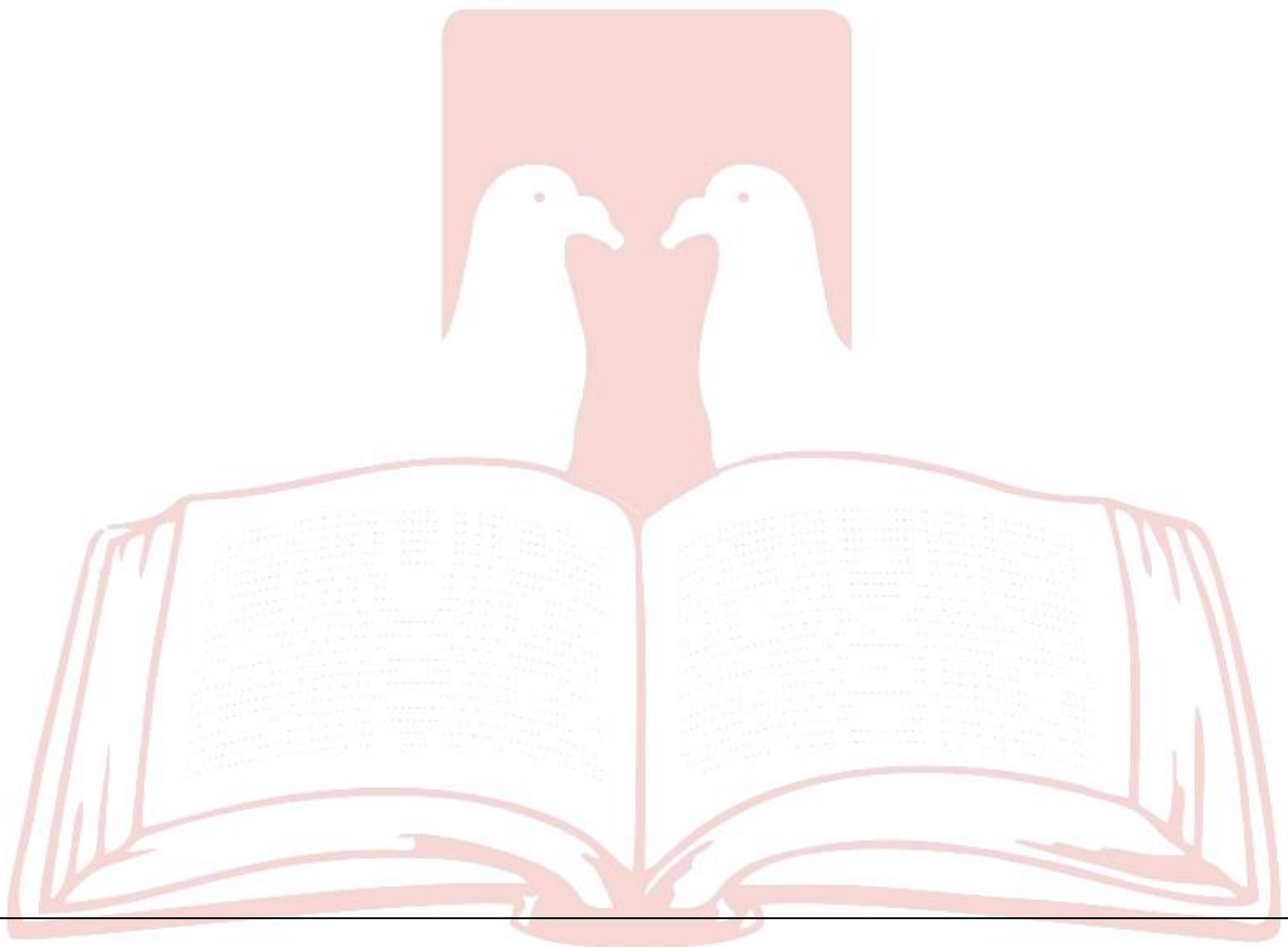
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SUPREME COURT – CIVIL CASES**Janardan Das & Ors. Vs. Durga Prasad Agarwalla & Ors. [Civil Appeal No. 613 of 2017]****Date of Judgment: 26.09.2024**

Section 16(c) of the Specific Relief Act - In Agreement to sell property under Joint Ownership, onus is on Plaintiff to secure consent of All Co-Owners, failure will amount to lack of readiness and willingness for Specific Performance.

The present Appeal has been preferred by the Defendant (Nos. 9-11) /Appellants against the Judgment of the High Court which had reversed the Judgment of the Trial Court in dismissing the suit for specific performance filed by the Plaintiffs/Respondents.

The brief facts of the case is that the Respondents / Plaintiffs claimed Specific Performance to enforce an agreement to sell against the owners of the suit property after discovering that they had executed a sale deed in favour of the Appellant. The property was jointly owned by five individuals (two brothers and three sisters). Despite knowing that the sisters (Defendants Nos. 6-8) who were co-owners, had not consented to the sale of the property, the plaintiff filed a suit for specific performance based on the oral assurances of the brothers (Defendant No.1) and late Mr. Soumendra (another co-owner) that they would secure the sisters' consent for executing the sale deed. The Trial Court ruled against the plaintiff; however, the Hon'ble High Court allowed the plaintiff's appeal and decreed specific performance of the agreement to sell. Following this, the appellants preferred an appeal before the Apex Court.

The Court observed that the agreement to sell, entered into between the plaintiff and the owners of the suit property, required the plaintiff to ensure that the sisters would appear within three months to execute the sale deed. However, the plaintiff

did not take any concrete steps to secure the sisters' consent or ensure their presence within the stipulated period. Instead, the plaintiff relied solely on the brothers to bring in the sisters, despite knowing that the sisters were not signatories to the agreement and held a significant share in the property. Further, the Court observed that the plaintiff's failure to contact the sisters, who collectively held a 3/5th share in the suit property as co-owners, would not absolve him from his obligation to perform the contract under Section 16(c) of the Specific Relief Act, 1963. Moreover, the Court stated that the plaintiffs' failure to comply with the essential terms of the agreement and to take necessary steps within the stipulated time demonstrates the lack of readiness and willingness, which was fatal to their claim for specific performance.

The Court, while allowing the Appeal, held that when the plaintiff seeks specific performance of the agreement to sell a property (being jointly owned by multiple persons), then the onus is on the plaintiff to ensure that all necessary consents and participations are secured to prove his readiness and willingness towards the performance of the contract.

N. Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board [Civil Appeal No. 6333 of 2013]

Date of Judgement: 24.10.2024

Section. 126 of Transfer of Property Act- Gift Deed Can't Be Revoked Ordinarily, More Particularly When No Right Of Revocation Is Reserved In Deed

Article 58 & 65 of Limitation Act - When Title Declaration Suit Seeks Recovery of Possession also, Limitation Period For Possession of 12 years is Applicable

The present Appeal has been preferred by the Defendant/ Appellant against the Judgment of the High Court which reversed the Judgment of the Trial Court in dismissing the suit for declaration of title along with recovery of possession filed by the Plaintiff/ Respondent.

In this case, the appellant/defendant executed a gift deed in the year 1983 transferring the suit property to the plaintiff/respondent to manufacture Khadi Lungi and Khadi Yarn, with a condition prohibiting the plaintiff from using the property for personal gain. The deed specified that neither the donor nor their heirs retain any rights to the property after the transfer, and the gift was made with the donor's full consent. The deed was absolute, with no conditions for revocation, and only stipulated the intended use of the property. However, in the year 1987, the appellant/defendant revoked the gift deed which was challenged by the plaintiff/respondent by filing a suit for recovery of possession on the ground that once the purpose set out in the gift deed was fulfilled by setting out a manufacturing unit of Khadi Lungi and Khadi Yarn, then, in absence of any conditions of revocation being present in the deed would not make the deed revocable. The trial court dismissed the plaintiff's suit. Aggrieved by it, the plaintiff filed an appeal before the First Appellate Court, which reversed the trial court's judgment and decreed in favour of the plaintiff. The appellant/defendant then filed a

second appeal before the High Court. The High Court dismissed the appeal, thereby upholding the decision of the First Appellate Court.

The Apex Court observed that the gift deed cannot be revoked when no such right is reserved under the gift deed. when the gift deed was executed by the donor in favour of the donee setting out a purpose of a gift, with no right reserved for its revocation in any contingency, then fulfilment of the purpose of the gift by the donee would make it a valid gift, rendering it irrevocable.

In this regard, the Court set out three conditions stating when a gift deed could be revoked and tested those conditions with the facts of the present case to ascertain whether the gift deed could be revoked:

The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand.

Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply.

Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded.

On the aspect of limitation, the Court stated that in a suit for declaration of title along with recovery of possession of an immovable property, a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The only limitation period that needs to be counted is for seeking recovery of possession.

The Court, while dismissing the Appeal, held that if in a suit for declaration of title, a further relief of recovery of possession is also sought, then the limitation period for filing the suit would be governed by the limitation period prescribed for filing a suit for recovery of possession (i.e., 12 years as per Article 65 of Limitation Act) and not the one prescribed for seeking declaration of title (i.e., 3 years as per Article 58 of the Limitation Act).

Renjith K.G. & Ors. Vs. Sheeba [Civil Appeal Nos. 8315 – 8316 of 2014]**Date of Judgement: 14.10.2024****Pendente Lite Transferee Being Stranger To Suit Can File Application Under Order XXI Rule 99 CPC Against Dispossession**

The present appeal has been preferred by the legal representatives of the Plaintiff/Decree-holder, who filed a suit for partition. The Trial court decreed the suit, and the Plaintiff filed an Execution Petition to enforce the decree. Consequently, a portion of the property was delivered to the Plaintiff in accordance with the decree. However, a third party who had acquired rights to the property even before the decree was passed, filed applications under Order XXI Rule 99 of the CPC, seeking re-delivery of the property, an injunction, and damages against the Plaintiff. These three applications were jointly heard and dismissed by the trial court. Upon appeal by the third party's legal representatives, the High Court allowed the applications.

The Apex Court observed that Order XXI Rule 97 of CPC allows a decree-holder to apply to the court if they encounter resistance or obstruction when trying to obtain possession of a property. Whereas, Order XXI Rule 99 CPC allows a stranger to the suit to approach the civil court against the dispossession from the suit pursuant to the execution of the decree. Moreover, Order XXI Rule 101 of CPC states that the Court while deciding an application under Order XXI Rules 97 or 99 of CPC must determine all relevant questions between the parties. This includes questions about the right, title, or interest in the property i.e., no separate suit ought to be filed under Rule 101 for determination of the rights, title, or interest in the suit property. Therefore, once an application under Order 21 Rule 99 is filed, it is incumbent upon the Trial Court to consider all the rival claims including the right, title and interest of the parties under Order 21 Rule 101 which bars a separate suit by mandating the execution court to decide the dispute. The Apex court stated that he who is purported to be a stranger to the decree, can very well adjudicate his claim of

independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.

The Court, while dismissing the Appeal, held that a pendente lite transferee, being a stranger to the suit, can file an application under Order 21 Rule 99 of Code of Civil Procedure, 1908 ("CPC") against dispossession from the suit property.

Neelam Gupta & Ors. Vs. Rajendra Kumar Gupta & Anr. [Civil Appeal Nos. 3159-3160 of 2019]

Date of Judgement: 14.10.2024

Limitation For Adverse Possession Starts From When Possession Becomes Adverse, Not From When the Plaintiff gets Ownership

Sale is Not A Contract; No Bar To Transfer Immovable Property To a Minor

The present Appeal has been preferred by the legal representatives of the Appellant /Defendants against the Judgment of the High Court which reversed the Judgment of the Trial Court in dismissing the suit filed by the Plaintiff for recovery of possession.

In this case, the respondent /Plaintiff filed a suit against the defendants (appellants) for recovery of possession of suit schedule property based on title besides claiming damages of Rs. 10,500/- and future damages at the rate of Rs. 1,000/- per acre and for costs. It was averred that he purchased the suit schedule property as per the registered sale deed from a person who was the common cousin of himself and the original defendants. Furthermore, he averred that since its registration he was enjoying peaceful possession of the property under Bhumiswami Rights till he was dispossessed by the defendants in July 1983. The defendants jointly filed a written statement contending that their father and the plaintiff's father purchased the property in the name of their nephew and also purchased another land. Upon the plaintiff's father's death, the property was transferred in the plaintiff's name in 1968 his name was recorded in the revenue records, albeit claimed that its possession still remained with them. In 1976, an oral partition took place between the defendant's father and plaintiff's family. The Trial Court held that the age of the vendor who was the common cousin of the plaintiff and the original defendants, was shown in the sale deed as 22 years and hence, at the time of purchase of the property, he must

have been aged only 17 years. It, therefore, held that it was a joint family property and there was no evidence to show that the said vendor was then the head of the family and hence, had no right to sell the land. The said suit was dismissed and being aggrieved, the plaintiff approached the First Appellate Court which confirmed the Judgment of the Trial Court. On Second Appeal by the Plaintiff, the High Court reversed the concurrent judgment and allowed the appeal.

The Apex court observed that the minor can become the transferee/owner by way of a sale deed and the conditions stipulated under Section 11 of the Indian Contract Act, 1872 (persons competent to contract) would not come in the way of challenging the minor's capacity to contract because a sale can't be termed as a contract. Further, as per Section 11 of the Contract Act, a minor person is not competent to contract. The Court said that since a sale cannot be said to be a contract, therefore, the requirement of Section 11 becomes redundant in cases where the sale is in favour of the minor. Accordingly, the Court held that once the property is transferred to a person being a minor, then on attaining majority, he would be competent to transfer the said property to any other person. On the aspect of limitation, the Court stated that once the plaintiff proves his title over suit property, it is for the defendant resisting the same claiming adverse possession that he perfected title through adverse possession and in that regard, in terms of Article 65 of the Limitation Act, 1963 the starting point of limitation would not commence from the date when the right of ownership arises to the plaintiff but would commence only from the date the defendant's possession becomes adverse.

The Court, while dismissing the Appeal, held that there was no bar to transfer immovable property in favour of a minor by way of a sale deed. The period of limitation to prove title by adverse possession would commence from the date of the defendant's possession becoming adverse and not from when the plaintiff acquires the right of ownership.

SUPREME COURT – CRIMINAL CASES**Asim Akhtar Vs. The State Of West Bengal & Anr. [Special Leave to Petition (Crl.) No.12292 of 2022****Date of Judgment: 18.10.2024****There is no mandate to decide the application under section 319 CrPC before cross- examination of other witnesses.**

The criminal appeal has been filed by the appellant/accused to challenge the High Court's judgment and order that reversed the trial court's acquittal of the accused and remanded the case back to the trial court.

The brief facts of the case is that the complainant/second respondent filed a First Information Report (FIR) alleging that the appellant had attempted to kidnap her. The FIR was registered under various sections of the Indian Penal Code and the Arms Act. During the trial, the complainant, her mother, and her father (PWs 1, 2, and 3, respectively) were examined. However, they refused to be cross-examined until the trial court decide an application, which had filed under Section 319 of the Criminal Procedure Code. This application sought to summon the appellant's father and mother also to face trial. The prosecution witnesses repeatedly failed to appear for cross-examination, despite summons and warnings from the trial court. They insisted to dispose of their application under Section 319 Cr.P.C before proceeding with cross-examination. The trial court, after multiple attempts to get the witnesses to appear for cross-examination, eventually closed the prosecution's evidence. It also rejected the application under Section 319 CrPC, reasoning that the evidence provided was inadmissible because the witnesses had not been cross-examined. Ultimately, the trial court acquitted the appellant under Section 232 CrPC on the grounds of insufficient evidence. The complainant subsequently appealed against the acquittal to the High Court. The High Court, relying on the Supreme Court's judgment in *Hardeep Singh vs. State of Punjab & Ors.,(2014) 3 SCC 92*, reversed the trial court's acquittal and remanded the case back to the trial court. The High

Court interpreted the ruling in *Hardeep Singh* as requiring the trial court to decide the Section 319 CrPC application before proceeding with cross-examination. The appellant then appealed to the Supreme Court, challenging the High Court's decision.

The key issue before the Supreme Court was the interpretation of Section 319 CrPC, which allows a court to summon additional individuals to face trial, if during the proceedings, it appears that they were also involved in the offense. The High Court, citing the Supreme Court's decision in *Hardeep Singh*, held that an application under Section 319 must be decided even before cross-examination of the witnesses. The Supreme Court clarified that while *Hardeep Singh* states that a trial court can consider an application under Section 319 CrPC based on the examination-in-chief, it does not mandate that such applications must be resolved before cross-examination. The Supreme Court highlighted the discretion vested in the trial court, stating that it is up to the trial court to decide the Section 319 CrPC application based on the specific facts of the case and the material on record.

While allowing the appeal, the Supreme Court held that there is no mandatory requirement to decide an application under Section 319 CrPC before the cross-examination of witnesses. The Court found that the trial court had acted properly in acquitting the appellant for lack of evidence due to the prosecution witnesses' refusal to be cross-examined. Additionally, the Supreme Court upheld the trial court's rejection of the Section 319 CrPC application.

**K. Bharthi Devi and Anr. Vs. State of Telangana & Anr. [Special Leave
Petition (Criminal) No.4353 of 2018]**

Date of Judgment: 03.10.2024

Section 482 CrPC- The criminal cases having overwhelmingly and predominantly civil character should be quashed when the parties have resolved their entire disputes among themselves.

The criminal appeal has been filed by the appellants challenging the High Court ruling that upheld criminal charges stemming from a loan default and alleged forgery.

The case originated when K. Suresh Kumar (accused No. 1), a sole proprietor, secured credit facilities from the Indian Bank for his business, with the appellants stood as guarantors for the loan. When the company defaulted in repayments, the bank initiated recovery proceedings and discovered that some of the title documents used as collateral were fraudulent. Consequently, the bank filed a criminal complaint, leading to charges against the borrowers and the appellants for offenses such as cheating, criminal conspiracy, and forgery under the Indian Penal Code.

While the criminal case was in progress, the borrowers reached a settlement with the bank, paying a total sum of Rs. 3.8 crores as part of a One Time Settlement (OTS). Based on this settlement, the bank's issuance of a No Dues Certificate, the appellants filed petition before the High Court to dismiss the criminal charges, arguing that the bank had fully recovered its dues. However, the High Court rejected their petition, asserting that the settlement, being a private arrangement, did not absolve the accused of their criminal liability for the alleged use of forged documents and embezzlement of public funds. The appellants, who were guarantors for the loan, contended that they had no active role in the alleged crimes. They asserted that the matter had been amicably settled between the borrowers and the bank through Debt Recovery Tribunal (DRT) proceedings. The borrowers had not only paid a substantial amount towards the loan but also an additional sum of Rs.

3.8 crores under the One Time Settlement (OTS). The appellants further contended that since the bank had closed the loan account after receiving the OTS amount, the continuation of criminal proceedings would be an exercise in futility. On the other hand, the respondents contended that the settlement between the bank and the borrowers did not absolve the accused persons of their criminal liability because the settlement was merely a private agreement between the parties and did not address the criminal aspects of the case.

The Apex Court noted that the bank had closed the loan account following the One Time Settlement (OTS), and observed that cases with overwhelming civil characteristics, particularly those arising from commercial or matrimonial relationships, should be dismissed if the parties have amicably resolved their disputes. Citing its decision in *B.S. Joshi v. State of Haryana, (2003) 4 SCC 675*, the Apex Court highlighted that allowing a technicality to impede the quashing of proceedings in light of a settlement is inappropriate. The Apex Court stated that the FIR and chargesheet related to a loan dispute between the accused and the bank had already been resolved. Furthermore, it found the possibility of conviction to be remote and emphasized that continuing the proceedings would cause unnecessary oppression and prejudice to the accused. The Apex Court, while allowing the appeal, quashed the High Court's decision and set aside the criminal proceedings against the appellants.

Rama Devi Vs. The State of Bihar and Others [Criminal Appeal Nos. 2623-2631 of 2014]

Date of Judgment: 03.10.2024

Section 157 CrPC- Mere delay in forwarding the FIR was not a substantial basis for discrediting the prosecution's case.

The criminal appeals have been filed by the appellant challenging the High Court's decision that reversed the trial court's judgment and acquitted nine accused individuals of charges related to the murders of two individuals.

The brief facts of the case is that Brij Bihari Prasad, a Member of the Legislative Assembly (MLA), was attacked on June 13, 1998, while taking a walk outside the hospital where he was receiving treatment. The attack was carried out by armed assailants who fatally shot both the MLA and his bodyguard. FIR was registered but was not forwarded to the jurisdictional magistrate until June 15, 1998, due to June 14 being a holiday. The trial court convicted nine accused based on witness testimonies, but the High Court reversed this decision, acquitting the accused on grounds that the FIR was ante-timed and that the testimonies of other witnesses were unreliable for various reasons, including inconsistencies and potential biases. In response, the MLA's wife, the appellant, appealed to the Apex Court against the acquittal.

The appellant contended that A-4 and A-8 were directly involved in the murder, as evidenced by eyewitness testimony placing them at the scene and identifying them as the assailants. The appellant further contended that political rivalry provided a motive for the murder, supported by her testimony regarding the history of animosity between her husband and some of the accused, including a previous murder case. The appellant also sought to uphold the charge of criminal conspiracy. On the other hand, the respondents highlighted inconsistencies and contradictions in the accounts provided by the eyewitnesses, specifically pointing out the relationships between the witnesses and the victims and questioning the credibility of those with

criminal records. The respondents also contended that the ante-timing of the FIR suggested potential manipulation of the investigation.

The Supreme Court observed that the FIR should have been sent to the magistrate on June 14, 1998, but because that day was a Sunday, it was instead forwarded on June 15, 1998. The Supreme Court explained that this delay was justified by Section 157 of the CrPC, which accounts for holidays. The Apex Court highlighted that a delay in forwarding the FIR to the magistrate does not, in itself, invalidate the prosecution's case. Citing its decision in the *State of Rajasthan vs. Daud Khan, (2016) 2 SCC 607*, the Apex Court stated that the accused must demonstrate how such a delay prejudiced their case for it to be considered detrimental. The Apex Court also noted that the purpose of promptly sending the FIR to the magistrate is to prevent manipulation or fabrication of the document. However, in this case, the Apex Court determined that the testimonies of witnesses, including statements recorded under Section 161 of the CrPC on the night of the incident, supported the legitimacy of the FIR and the initiation of the investigation. While acknowledging the questionable background of some witnesses, the Supreme Court noted that their testimonies couldn't be dismissed solely on those grounds if their presence at the crime scene was proven and their accounts were credible. The Court examined the testimonies of key witnesses, particularly PW-1 and PW-25, and found their accounts to be consistent and reliable, even with some contradictions.

While partly allowing the appeal, the Supreme Court held that the charge of murder against A-4 and A-8 was proven beyond reasonable doubt based on the testimonies of these witnesses and supporting evidence. Therefore, the Court confirmed their convictions and life sentences awarded by the trial court. However, the Court upheld the acquittal of the remaining accused, citing insufficient evidence to prove their involvement in the conspiracy.

**Shyam Narayan Ram Vs. State of U.P. & Anr. Etc. [Special Leave to
Petition (Crl.) Nos.16282-16284 of 2023]**

Date of Judgment: 21.10.2024

The endorsement of admission or denial made by the counsel, on the document filed by the other side or on the application/ report with which same is filed, is sufficient compliance of Section 294 CrPC.

The criminal appeal has been filed by the appellant challenging the High Court's decision that reversed the trial court's judgment, set aside the convictions, and ordered a retrial.

The Brief Facts of the Case is that on April 22, 1998, Shyam Narayan Ram filed an FIR stating that on the previous night, he (PW1) and Ram Dular (PW2) witnessed the brutal attack on his parents by the accused persons. The accused persons allegedly threw the victims' bodies into a well. The investigation revealed multiple severe injuries on body of the deceased, which results in their death. After completing the investigation, the police charged the accused under Section 302 IPC and other sections. The prosecution presented witnesses, including PW1 and PW2, and filed relevant documents. Due to the defense counsel's admission of the authenticity of the documents under Section 294 of CrPC, the trial court accepted them without formal proof, subsequently convicting the accused and sentencing them to life imprisonment. The accused appealed, and the High Court ordered retrial, highlighting that the defense counsel's admission of the prosecution documents, without formal proof, compromised the fairness of the trial. The High Court remanded the case to allow the defense to cross-examine PW2 and formal witnesses, with the trial to proceed afresh.

In the present appeal, the appellant contended that the High Court erred in ordering retrial and disregarded the provisions of Section 294 of CrPC, which permit admitting documents without formal proof if their genuineness is uncontested. Additionally, the appellant argued that the High Court should have considered the evidence on

record instead of remitting for a new trial. On the other hand, the respondent-State supported the appellant's stance.

The Supreme Court observed that Section 294 of CrPC allows documents to be admitted into evidence without formal proof if their genuineness is not disputed. The court noted that Section 294(3) of CrPC means that even if the authors of such documents do not appear in court to verify their signatures, the documents can still be admitted into evidence. The court recognized that it retains the discretion to require proof of the signatures if deemed necessary. The court cited *Shamsher Singh Verma v. State of Haryana, (2016) 15 SCC 485*, where it was determined that an admission of genuineness made by the defense counsel is sufficient to comply with Section 294 of CrPC, and *Akhtar v. State of Uttaranchal, (2009) 13 SCC 722*, which confirmed that undisputed documents can be read as substantive evidence to prove their contents without the need for the author to testify.

Based on these precedents and its interpretation of Section 294 of CrPC, the Supreme Court concluded that the High Court had erred in remanding the case back to the trial court. While allowing the appeal the Supreme Court held that the defense counsel's actions were a deliberate strategic decision and that the trial court had correctly applied the law. Thus, the Supreme Court set aside the High Court's order, restoring the trial court's convictions and directing the High Court to reconsider the appeals based on the original trial record.

**The State of Madhya Pradesh Vs. Ramjan Khan & Ors. [Criminal Appeal
No. 2129 of 2014]**

Date of Judgment: 25.10.2024

Sections 157 and 145 of the Indian Evidence Act- Even though the FIR does not contain all the intricate and minute details, it can be used to corroborate or contradict its maker or the informant in order to establish whether they are a trustworthy witness.

The criminal appeal has been filed by the appellant challenging a High Court judgment that acquitted the respondents of charges related to the murder of one Naseem Khan. The High Court had reversed the trial court's conviction, which had sentenced the accused to life imprisonment for the murder committed with weapons including a sickle, axe, and stick.

The brief Facts of the Case is that on October 1, 1996, at around 1:00 p.m., the respondents, allegedly attacked the victim near a village well, resulting in his death. The trial court convicted the respondents based on eyewitness testimony from the deceased's brothers (PWs 5 and 9) and mother (PW-8), along with the postmortem report. The High Court reversed the convictions, citing inconsistencies and omissions in the witness testimonies. Notably, the deceased's mother, the informant in the case, failed to mention a dying declaration made to her by the deceased son in her initial statements to the police. Additionally, her testimony regarding the attack was considered hearsay, as she was not present during the incident. Similarly, the deceased's brothers provided different accounts of the weapons used and omitted crucial details in their initial statements. The High Court held that the respondents were entitled to the benefit of the doubt due to these inconsistencies and acquitted them.

The appellant contended that the trial court had correctly assessed the evidence, particularly the credible testimonies of the deceased's brothers and mother, which were corroborated by medical findings. On the other hand, the respondents

maintained that the evidence presented was inconsistent, particularly the testimonies of the deceased's family members, who made significant omissions in their statements to the police.

The Supreme Court highlighted the principles guiding acquittals, noting that interference is warranted only when the acquittal lacks a reasonable basis or involves perversity in appreciation of evidence. The Supreme Court noted that First Information Reports (FIRs) are not intended to provide exhaustive details of a case, but rather to initiate the criminal justice process by alerting authorities to the alleged crime. Although FIRs are not substantive evidence, they can be used to corroborate or contradict a witness's testimony under Sections 157 and 145 of the Evidence Act, thus aiding in assessing the witness's credibility. The Court clarified that the omission of information in an FIR doesn't automatically discredit the informant's testimony. The significance of the omitted information and the informant's awareness of that information at the time of filing the FIR are crucial factors to consider. In this specific case, the Supreme Court upheld the High Court's decision to view the informant's (PW-8) testimony as unreliable due to inconsistencies, particularly the omission of the alleged oral dying declaration in her initial statement to the police. The Court examined the testimonies of other witnesses and found that those witnesses also had left material omissions in their statements to the police, only mentioning crucial details, such as the weapons used, for the first time during the trial.

The Supreme Court while dismissing the appeal, held that the High Court's decision to acquit the accused was a reasonably possible view on the appreciation of the evidence.

HIGH COURT – CIVIL CASES**Ashok Kumar Vs. Amsu & Anr. [C.M.S.A.(MD).No.4 of 2020]****Date of Judgment: 06.08.2024****Section 52 of Transfer Of Property Act, 1882 & Section 19(b) of Specific Relief Act, 1963 – Pendente Lite Purchaser Bound by Decree – Doctrine of Lis Pendens Prevails Over Bona Fide Purchaser Claim In Specific Performance Suit.**

The second appeal was filed by Ashok (appellant) to allow the appeal and set aside the order passed in C.M.A. No 7 of 2017 reversing the order passed in E.A. No. 23 of 2014.

The appellant, Ashok Kumar, had filed a suit (O.S. No. 508 of 2010) for specific performance of a sale agreement entered with the defendant, Pitchaimuthu, for the suit property. The agreement, dated 03.11.2009, was unregistered, and Pitchaimuthu had not executed the sale deed as per the agreement. Subsequently, the defendant executed a sale deed on 18.05.2011 in favor of a third party, Amsu (the respondent), during the pendency of the suit. The trial court passed a decree for specific performance in favor of Ashok Kumar on 12.11.2011. Subsequently, Ashok Kumar filed application for the execution of the decree, and the court executed the sale deed on 07.03.2013. However, during the delivery of possession in 2013, Amsu, claiming to be a bona fide purchaser, objected to the execution under Order 21 Rule 97 of the Code of Civil Procedure (CPC), arguing that she was an innocent purchaser for valuable consideration. The execution court dismissed her objection on the grounds that she was a pendente lite purchaser and bound by decree.

Aggrieved by this decision, Amsu appealed, and the First Appellate Court held in her favor, holding that, as a bona fide purchaser under Section 19(b) of the Specific Relief Act, she could not be affected by the suit for specific performance, even

though the sale occurred during the pendency of the suit. Aggrieved by this decision, Ashok filed the second appeal against this decision.

The Court observed that, Amsu, being a pendente lite purchaser, was aware of the pending suit when the sale was made, and the purchase occurred after the defendant had entered appearance in the suit. Therefore, Amsu's claim to the property was subject to the outcome of the suit, as per the principle of *lis pendens* under Section 52 of the Transfer of Property Act. When there is a conflict between section 52 of the Transfer of Property Act & Section 19(b) of Specific Relief Act, the doctrine of *lis pendens* prevails over the defence of bonafide purchaser in valuable consideration. The defence under section 19(b) of the Specific Relief Act can be invoked by a purchaser only if the purchase is subsequent to the first contract, but prior to the filing of the suit in Specific Performance. The Court further observed that, a pendente lite purchaser cannot independently challenge or obstruct execution proceedings under Order 21 Rule 97 of the CPC. Order 21 Rule 102 prohibits any person who acquires title to the property during the pendency of the suit from claiming independent title in the execution proceedings. Therefore, Amsu's objection to possession was not sustainable.

Thus, the Court allowed the second appeal by stating that the execution proceedings could not be obstructed by Amsu, as she purchased the property during the pendency of the suit, and her claim could not override the decree in favor of Ashok Kumar.

**D.Pratish Vs. M/S.Prerna Finance [C.R.P.(PD).No.2943 of 2024 and
C.M.P.No.15755 of 2024]**

Date of Judgment: 06.08.2024

Art 227 of Constitution of India – Revision against Leave to Defend is maintainable.

Commercial Courts Act, 2015 – A Private Transaction will not be covered by the Commercial Courts Act. It is “Transaction Centric” and not “Person Centric”

The Civil Revision Petition was filed under Article 227 of the Constitution of India to set aside the order passed by the trial Court and allow the civil revision petition.

The respondent (plaintiff) filed a suit (O.S.No.7786 of 2022) before the XXIII Additional City Civil Court in Chennai for the recovery of Rs.64,99,160/-, along with 24% annual interest, based on three promissory notes allegedly executed by the petitioner (defendant). The plaintiff claimed that the amounts owed were partially repaid on various dates from 09.02.2013 to 10.01.2018, and provided a schedule of payments made. The defendant entered appearance in the case, and the plaintiff filed a summons for judgment. The defendant, in response, applied for leave to defend the suit (I.A.No.3 of 2023). The defendant's defense included claims that:

- This was a commercial dispute and the Civil Court lacked jurisdiction.
- The plaintiff was acting as a money lender and charged interest exceeding the limit set by the Money Lenders Act.
- Payments were made to a third party, Chandra Kumar Bafna, and not the plaintiff, and a police complaint had been filed in January 2023 over non-accounting for those payments.

The plaintiff countered, arguing that this was a simple lending transaction and that the defendant had already acknowledged borrowing from the plaintiff in earlier

affidavits. The defendant's request for leave to defend was based on a flawed account reconciliation and did not provide a valid defense. The trial court dismissed the defendant's application for leave to defend on 29.01.2024, and the defendant filed this civil revision petition challenging the order.

The Court observed that, the defendant's defense was plausible, although not strong enough to absolve the defendant from liability entirely. As such, the leave to defend was granted conditionally. Therefore, by allowing the civil revision petition the Court held that the defendant shall deposit 50% of the claimed amount (Rs. 64,99,160) along with interest at 12% per annum from July 21, 2022, within four weeks and emphasized that failure to comply with this order would result in the dismissal of the revision petition without further notice.

Latin Catholic Fishermen's Educational Society, Represented by its President Rev.Fr.Sylvester Morais, St.Jude's College,Thoothoor, K.K.District Vs. Leenus (died) & Ors. [C.R.P.(MD)Nos.1951 & 1962 of 2021]

Date of Judgement: 04.09.2024

Dispute over Election of Office Bearers in Latin Catholic Fishermen's Educational Society: Court's Improper Procedure and Compromise Settlement Challenged

The Civil Revision Petitions were filed under Article 227 of the Constitution of India to set aside the order passed by the District Munsif Court, Eraniel.

The Latin Catholic Fishermen's Educational Society is a registered society under the Tamil Nadu Societies Registration Act, 1975. The plaintiffs, Leenus and A. Xavier, filed the suit O.S. No. 183 of 2011 before the Principal District Munsif Court, Eraniel. The suit sought a declaration that the election of office bearers of the society, held on 17.09.2021, was null and void, and a permanent injunction to restrain the official defendants from ratifying the said meeting. The trial court, in 2021, invoked Section 89 of the CPC and facilitated the election of new office bearers on 18.09.2021, with a conciliatory approach. The case was disposed of based on a compromise between parties, despite the fact that one plaintiff had died and the proper procedural steps, including notice to all members of the general body and approval of the relevant authorities, were not followed. Furthermore, the defendants in the case were not competent to represent the society as per the society's constitution, and the proceedings were flawed from a statutory perspective.

The Court observed that, the procedure adopted was in breach of the statutory provisions and noted that the suit should have been dismissed as infructuous. It also criticized the fact that a decree was passed in the name of a deceased person, and the court had acted beyond its jurisdiction in appointing an advocate commissioner for the election process. Thus, by allowing the civil revision petitions the judgment and decree were set aside. The court, in the interim, appointed an Administrator

(Hon'ble Justice N. Kirubakaran, retired Judge) to take over the management of the society and address the anomalies in the byelaws. The Administrator was tasked with convening a general body meeting, amending the byelaws, and conducting fresh elections. The court also ordered that the Administrator work expeditiously to resolve the power struggle and other management issues. Further, the Court emphasized the need for proper legal procedures and transparency in the management of the society.

HIGH COURT – CRIMINAL CASES

Sivamani Vs. State by Inspector of Police, Nellikkuppam Police Station, Cuddalore District [Crl.A.No.446 of 2018 and Crl.MP.No.651 of 2024]

Date of Judgment: 19.09.2024

Circumstantial Evidence must form an unbroken chain pointing to the guilt of the accused.

The criminal appeal was filed challenging the conviction under Sections 364, 302, and 201 of IPC, based on circumstantial evidence, including motive, last seen together, extra-judicial confession, and discovery of facts. The court held that all links in the chain of circumstances were proved beyond reasonable doubt.

Criminal appeal was filed by the appellant under Section 374(2) Cr.P.C. to challenge the conviction and sentence imposed by the Sessions Court, wherein the appellant was convicted under Sections 364, 302, and 201 of IPC and sentenced to life imprisonment.

The prosecution's case revolved around the accused borrowing Rs.45,000 from the deceased, leading to a strained relationship due to the accused's failure to repay. On 28.01.2016, the deceased visited the accused's house to demand repayment, which led the accused to take the deceased to his field, where he attacked him with a wooden log and later a spade, eventually burying the deceased.

The appellant raised the question of law, arguing that the prosecution had not proved the circumstances beyond reasonable doubt, especially the extra-judicial confession, last seen theory, and the absence of witnesses. Furthermore, the appellant contended that no link between the material objects recovered and the crime was established.

The court, relying on various precedents, reiterated the principle that circumstantial evidence must form an unbroken chain pointing to the guilt of the accused. In this

case, the court found that the prosecution had proved the circumstances, including motive, last seen together, and extra-judicial confession. The court also dismissed the appellant's argument regarding the absence of alcohol traces in the deceased's body, reasoning that the body was exhumed two weeks after the burial, making such traces unlikely.

Thus, the Court held that the conviction was valid, as the chain of circumstances unerringly pointed to the guilt of the appellant. The appeal was dismissed.

Ezhumalai Vs. State Rep by the Inspector of Police, Mangalam Police Station, Thiruvanamalai District & Ors. [Crl.A.No.166 of 2019]

Date of Judgment: 01.10.2024

Indian Evidence Act – When a witness becomes untrustworthy, corroborative evidence is necessary.

This criminal appeal was filed by the appellant against the acquittal of Respondents 2 and 3, previously charged under Sections 294(b), 323, and 307 IPC, later altered to Section 302 IPC, after the death of the appellant's father, allegedly resulting from an assault by the accused.

The prosecution's case highlighted a family dispute on July 25, 2010, leading to an altercation where the deceased, attempting to mediate, suffered fatal injuries allegedly inflicted by the accused with a wooden log. An FIR was filed, and investigations led to a charge sheet against both respondents.

The trial court, after evaluating 13 witnesses and 21 documents, acquitted the accused, noting insufficient corroborative evidence and credibility issues with P.W.1's solitary eyewitness testimony. The trial court ruled that the prosecution had failed to establish guilt beyond a reasonable doubt, thus extending the benefit of the doubt to the accused.

The appellant contended that P.W.1's testimony, as an injured witness in daylight, deserved due consideration and that the trial court's emphasis on doubt led to a perverse judgment. However, the appellate court, citing precedents from the Supreme Court on the standard for reviewing acquittals, upheld that the trial court's judgment was a legally plausible view that respected the presumption of innocence reinforced upon acquittal.

The key question of law addressed was whether an appellate court could overturn an acquittal by re-appreciating evidence, given the trial court's advantage in observing witness demeanor and the plausibility of its findings.

Thus, the court held that since the trial court's view was legally tenable, the acquittal should stand, and the appeal was dismissed.

Aravindan Vs. State rep. by the Inspector of Police, Dharmapuri Police Station, Dharmapuri District [Cri.A.No.232 of 2019]

Date of Judgment: 29.09.2024

Extra Judicial Confession is a weak piece of evidence, particularly in a case which rests upon the Circumstantial Evidence.

This criminal appeal was filed by the appellant challenging the conviction order under Section 302 IPC, by the Additional Sessions Judge, sentencing the appellant to life imprisonment for allegedly murdering the deceased due to longstanding enmity. The incident, as per the prosecution, involved the appellant attacking the deceased with a stone following a quarrel near Sawalur Bridge. Upon hearing of the death, P.W.1, the deceased's son, filed a complaint, leading to the registration of an FIR under Section 302 IPC. The investigation included preparation of the observation mahazar, sketching the scene, and gathering witness statements, leading to the identification of the appellant as the suspect based on circumstantial and extra-judicial confession evidence.

The prosecution attempted to establish guilt through three methods: ocular evidence, circumstantial evidence, and extra-judicial confession. In the ocular evidence, P.W.6 to P.W.8 claimed to be occurrence witnesses but failed to inform the family or the police promptly. Additionally, the delayed submission of their statements to the court (ten months after the event) cast doubt on their reliability. Thus, the trial court's reliance on these testimonies was questioned due to inconsistent conduct and unexplained delays.

Regarding circumstantial evidence, the prosecution cited the "last seen theory" and motive. However, P.W.3's statement about seeing the accused with blood-stained clothes lacked corroborative value as he failed to report it promptly. The alleged motive, based on familial discord, was weak, as evidence showed a recent amicable interaction between the accused and the deceased, undermining the motive theory.

The absence of reliable witnesses weakened the circumstantial chain, failing to meet the legal standard that all links must point to the guilt of the accused.

The extra-judicial confession (Ex.P4) was presented by P.W.12, who claimed the appellant voluntarily confessed. However, as per cross-examination, P.W.12 notified the police of the appellant's presence, which introduced doubts regarding the voluntariness of the confession. Furthermore, no concrete evidence, such as a blood-stained garment, was recovered to substantiate the confession, with the only recovered item—a stone—failing to establish a clear connection to the crime. In terms of legal principles, the court referenced precedents emphasizing the need for corroboration in cases of extra-judicial confessions, especially when other evidence is lacking.

The Hon'ble Supreme Court held that circumstantial evidence must be clear and uninterrupted to support a conviction, which was not achieved in this case.

Thus, the court held that the prosecution failed to establish the appellant's guilt through reliable evidence. Consequently, the appeal was allowed, and the conviction and sentence in were set aside, acquitting the appellant of all charges.

Binoiyakka Vs. State rep. By the Inspector of Police, Annur Police Station, Coimbatore District. [Crl.A.No.1060 of 2022]

Date of Judgment: 03.10.2024

Section 302 & 304(II) IPC – No intention to cause death but had knowledge that the injuries likely to cause death – Offence under section 302 IPC does not arise and it become Section 304 (II) IPC.

This criminal appeal concerns the applicability of Section 302 of the Indian Penal Code (IPC) for murder, questioning whether the appellant's actions constituted murder or culpable homicide under Section 304(II) IPC due to a lack of premeditation and the nature of the weapon used.

The Criminal Appeal was filed by the appellant, challenging the judgment passed by the Additional District and Sessions Judge, convicting and sentencing the appellant to life imprisonment under Section 302 IPC for the alleged murder of the deceased. The appellant was initially charged with murder under Section 302 IPC following an incident on 31.01.2019, where the appellant allegedly trespassed onto the deceased's property. A confrontation ensued, leading to the appellant striking the deceased with a coconut fiber, resulting in the deceased's death. The Trial Court convicted the appellant, sentencing them to life imprisonment and imposing a fine.

The central question of law is whether the appellant's actions fall within the definition of "murder" under Section 300 IPC or whether they should be classified as culpable homicide not amounting to murder under Section 304(II) IPC, based on the lack of intent and the use of a non-lethal weapon. Key witnesses, including PW1, PW2, and PW3, testified that they observed the appellant striking the deceased with a coconut fiber after a confrontation. Medical evidence corroborated these accounts, indicating that the injury inflicted was sufficient to cause death. PW5 conducted the post-mortem, which identified subarachnoid hemorrhage as the cause of death. However, the report revealed no use of a traditionally dangerous weapon, only a

blunt force injury caused by a coconut fiber. The appellant argued that there was no premeditation or intent to kill, asserting that the incident occurred spontaneously without any prior motive or enmity, and requested a reduction in the conviction from Section 302 IPC to Section 304(II) IPC. The prosecution supported the initial conviction, stating that the appellant's actions directly led to the deceased's death.

The Court concluded that, while the evidence confirmed the appellant's role in causing the death, the prosecution failed to establish a motive or any premeditated intent to kill. Considering the absence of a deadly weapon and the spontaneous nature of the incident, the Court found that the requirements for a murder conviction under Section 300 IPC were not met. Instead, the case fit under Section 304(II) IPC, recognizing the appellant's knowledge of potential harm without an intent to cause death.

Thus, the court held that the conviction should be modified from Section 302 IPC to Section 304(II) IPC, reducing the life sentence to 5½ years of rigorous imprisonment, with the fine imposed by the Trial Court remaining unchanged. The appeal was partly allowed with these modifications.
