



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XVI

Part: 04

April, 2021

IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

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

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

Website: www.tnsja.tn.nic.in E-Mail: tnsja.tn@nic.in / tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.

Telephone No: 0422 - 2222610/710

E-Mail: tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

AlagarKoil Road, K.Pudur, Madurai - 625 002.

Telephone No: 0452 - 2560807/811

E-Mail: tnsja.rc.mdu@gmail.com

INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	II
2.	Supreme Court – Criminal Cases	IV
3.	High Court – Civil Cases	V
4.	High Court – Criminal Cases	VIII

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	A.Subramanian and another Vs. R.Panneerselvam	AIR 2021 SC 821	08.02.2021	<u>Specific Relief Act, 1963, Section 38:-</u> If the earlier suit for declaration and recovery of possession filed by the defendant was dismissed on merits, the plaintiff who is in possession of the said property is entitled to file a suit for bare permanent injunction against the defendant.	1
2.	Daddy's Builders Private Limited & another Vs. Manisha Bhargava and another	2021 (2) CTC 589	11.02.2021	<u>Consumer Protection Act, 1986, Section 13:-</u> Consumer fora has no jurisdiction or power to accept the written statement beyond the statutory period of 45 days.	1
3.	Kadupugotla Varalakshmi Vs. Vudagiri Venkata Rao & ors	2021 (2) CTC 596	16.02.2021	<u>Specific Relief Act, 1963, Section 16(c):-</u> In a suit for Specific Performance of sale agreement, the subsequent purchaser can challenge readiness and willingness of the plaintiff.	1
4.	V.N.Krishna Murthy & another Vs. Ravikumar & ors.	2021 (2) CTC 200	21.08.2020	<u>Civil Procedure Code, 1908, Sections 96 & 100:-</u> A Stranger/third party to the suit/proceeding can file appeal only if he satisfies the court that he is an aggrieved person and prejudicially affected by the judgment/decree.	1

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5.	Franklin Templeton Trustee Services Private Limited and another Vs. Amruta Garg and others	AIR 2021 SC 1078	12.02.2021	<p><u>Interpretation of Statutes – Principles of Statutory Interpretation:-</u> In case of choice between two, court should accept 'Construction' based on view that draftsmen would legislate only for purpose of bringing about an effective result – Court must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences.</p>	2
6.	U.P.Awas Evam Vikash Parishad Vs. Asha Ram (D) Thr. LRs & ors.	2021 (4) SCALE 605	23.03.2021	<p><u>Land Acquisition Act, 1894, Sections 4, 6, 23 & 24:-</u> Compensation claims – Determination of – Where a large area is the subject matter of acquisition, suitable deduction is required to be made when sale instances of a smaller area have to be considered.</p>	2

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	Skoda Auto Volkswagen India Private Ltd. Vs. State of Uttar Pradesh	AIR 2021 SC 931	26.11.2020	<u>Criminal Procedure Code, 1973, Section 482:-</u> Mere delay in lodging complaint, cannot by itself be a ground to quash the First Information Report.	3
2.	Khokan @ Khokan Vishwas Vs. State of Chattisgarh	AIR 2021 SC 939	11.02.2021	<u>Indian Penal Code, Section 300:-</u> As per exception 4 to Section 300 IPC, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.	3
3.	Sumeti Vij Vs. Paramount Tech Fab Industries	2021 (2) CTC 579	09.03.2021	<u>Negotiable Instruments Act, 1881, Sections 138 & 139, Code of Criminal Procedure, 1973, Section 313:-</u> The statement of accused recorded under section 313 of the Criminal Procedure Code is not a substantive evidence of defence, but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case. Therefore, the said statement is no evidence to rebut the presumption that the cheque was issued for consideration.	3

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4.	State of Rajasthan Vs. Ashok Kumar Kashyap	2021 (1) MWN (Cr) 569 (SC)	13.04.2021	<p><u>Code of Criminal Procedure, 1973, Sections 227 & 239, Prevention of Corruption Act, 1988, Section 7:-</u></p> <p>At the stage of framing of charge/discharge, the court has to consider whether or not prima facie case made out against the accused. Defence of the accused not to be taken into consideration at this stage.</p>	4
5.	In Re: Expeditious Trial of Cases under Section 138 of NI Act, 1881	2021 (1)MWN (Cr) DCC 177 (SC)	16.04.2021	<p><u>Code of Criminal Procedure, 1973, Section 202, Negotiable Instruments Act, 1881, Sec.138:-</u></p> <p>If the accused u/s.138 of NI Act is residing outside the Territorial jurisdiction of the court taking cognizance, the Magistrate is required to conduct inquiry u/s.202 of Cr.P.C. before issue of process to the accused. Evidence of witnesses of the complainant may be taken on affidavit u/s.202 of Cr.P.C. In suitable cases, Magistrate can restrict inquiry to examination of documents without insisting upon examination of witnesses.</p>	4

HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	A.Rajendran Vs. Arulanthasamy Nadar and ors	2021 (2) CTC 550	20.11.2020	<u>Advocates Act, 1961:-</u> Though advocate is entitled to professional fees, he cannot retain case records. When client wants to discharge the advocate.	5
2.	Chinnaponnu (Died) and others Vs. Mamundi and others	2021(1) MWN (Civil) 595	18.01.2021	<u>Indian Evidence Act, 1872, Sections 101 to 104:-</u> When close relatives like to take advantage of documents executed by an illiterate rustic villager, burden of proof and entire onus is on the said relatives to establish that documents were executed in good faith.	5
3.	P.Suresh Vs. R.Rangasamy and others	2021 (1)MWN (Civil) 522	30.11.2020	<u>Code of Civil Procedure, 1908, Order 32 Rules 3, 3A & 11:-</u> Failure to comply with procedural law, including mandatory provision, does not automatically vitiate Decree or Order passed by the Competent Court.	5
4.	T.Natarajan Vs. S.Tejraj and another	2021 (1) MWN (Civil) 544	28.10.2020	<u>Code of Civil Procedure, 1908, Order 9 Rule 6:-</u> Court is empowered to dispense with notice to ex parte respondent in subsequent stages of suit or proceeding, but, the said provision cannot be invoked when prayer in the main proceeding itself is sought to be altered.	6

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5.	V.S.Guruswamy Nadar (Died) and others Vs. S.Ananthammal and others	2021(2) LW 413	31.03.2021	<u>Civil Procedure Code, 1908, Section 11, Res Judicata:-</u> When the judgment contains exhaustive pleadings and decision is made on the basis of the pleadings, there is no bar in the eye of law to take the judgment for consideration to look into the plea of resjudicata.	6
6.	New India Assurance Company Limited Vs. R.Ramesh and others	2021 (1) TNMAC 481	01.02.2021	<u>Motor Vehicles Act, 1988, Section 166 - Permanent Disability:-</u> In the absence of loss of earning power, claimant is not entitled to claim compensation by adopting multiplier method. In such cases, compensation is to be awarded by adopting percentage method.	7
7.	Branch Manager, Reliance General Insurance Company Limited Vs. Elumalai and others	2021 (1) TNMAC 492	08.02.2021	<u>Tamil Nadu Motor Vehicles Rules, 1989, Rule 236:-</u> As per Rule 236 of Tamil Nadu Motor Vehicles Rules, 6 persons are permitted to travel in the back side of the goods vehicle along with goods. Deceased and injured travelled in the back side of the goods vehicle as coolies along with bricks to unload the same. Hence, Insurance Company is liable to pay compensation to the injured and the Legal Heirs of the deceased.	7
8.	T.Maheswari and others Vs. C.Venkatesan	2021 (1) TNMAC 535 (DB)	16.10.2020	<u>Motor Vehicles Act, 1988, Section 166 – Practice and Procedure:-</u> If two claims arise out of the same accident, both the claim petitions ought to have been taken up together and decided by the same Presiding Officer.	8

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9.	Jeyasudha Vs. Karpagam and others	2021 (1) MWN (Civil) 748	04.03.2021	<u>Hindu Law:-</u> Sale Deed executed by the Kartha of family is only voidable and not void.	8
10.	Shanthimalai Trust Rep. by its Managing Trustee Vs. Arunachala Education and Environment Development Trust	2021 (1) MWN (Civil) 781	28.10.2020	<u>Code of Civil Procedure, 1908, Order 5 Rule 1 and Order 9 Rule 6:-</u> Civil Court shall not proceed to pass ex parte judgment before the expiry of 30 days fixed for filing written statement as per Order 5 CPC.	8
11.	Enkay Visions (P) Ltd Vs. Doordharshan by its Director General	2021 (1) MWN (Civil) 805	25.09.2020	<u>Code of Civil Procedure, 1908, Section 34:-</u> Section 34 of C.P.C. provides for interest to be awarded from the date of institution of plaint and not from the date of decree.	9

HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	The Branch Head, IDBI Bank, Neelamangalam Branch Vs. P.Muthuschezhiyan	2021(1) TLNJ 305 (Crl)	22.03.2021	<u>Negotiable Instruments Act, 1881, Section 148:-</u> Accused who is convicted for the offence u/s.138 of NI Act has to deposit some amount for the purpose of contesting the appeal.	10
2.	S.Vasanthi Vs. The state rep. by the Inspector of Police(Land Grabbing), District Crime Branch, Namakkal District	2021 (1) TLNJ 329 (Crl)	16.03.2021	<u>Criminal Procedure Code, 1973, Sections 173(8) & 200:-</u> When the Police Officials investigating the serious offences such as land grabbing, have not properly discharged their statutory duty, the Magistrate shall exercise the power conferred under section 173(8) of Cr.P.C. and direct them to conduct further investigation instead of directing the defacto complainant to file private complaint.	10
3.	Maruthupandi Vs. The Inspector of Police	2021 (1) TLNJ 337 (Crl)	16.03.2021	<u>Protection of Children from Sexual Offences Act, 2012, Section 5(1) r/w.6:-</u> Once the victim child gives complaint that the accused has committed the offence under the POCSO Act and the case has been registered, it is offence against state. The subsequent compromise between the victim and the accused will not take away the offence, since it is a non compoundable offence.	11

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4.	V.Sulochana Vs. State rep. by The Inspector of Police, CBCID, Thiruvallur	2021 (2) MLJ (CrI) 9	11.02.2021	<u>Code of Criminal Procedure, 1973, Section 91:-</u> Even at the time of examination of prosecution witnesses, application could be filed by the accused u/s.91 of Cr.P.C. for furnishing or calling for documents to effectively defend the prosecution case.	11
5.	Sankar VS. State of Tamilnadu represented by Inspector of Police, All Women Police Station, Panruti	2021 (2) MLJ (CrI) 36	22.02.2021	<u>Protection of Children from Sexual Offences Act, 2012, Section 6:-</u> Consent is immaterial if the victim is below 18 years. Even if consent given it is not valid in the eyes of law. Offence is non compoundable and cannot be compromised. Non marking of statement recorded u/s 164 Cr.P.C. is not fatal and it is not substantive evidence and it can be used either for corroboration or contradiction.	11
6.	Sakthivel Vs. State rep. by The Inspector of Police, Tirunelveli	2021 CrI.LJ 1126	22.07.2020	<u>Indian Penal Code, 1860, Sections 302, 307, 506(ii) & 84:-</u> Defence plea of insanity is to be proved by the accused. In the absence of any record, it cannot be said that the accused was suffering from Paranoid Schizophrenia at the time of occurrence.	12
7.	K.Rajendran Babu and anr. Vs. The State rep. by The Inspector of Police, T-16, Nazarathpet Police Station	2021 (1) LW (CrI) 542	23.03.2021	<u>Indian Penal Code, 1860, Section 304 A:-</u> In order to bring a case within the ambit of Section 304 A IPC, there must be some material to show that it is the rash or negligent act of the accused that has resulted in the death of the victim. Simple lack of care, however bad the consequences are, will not constitute criminal negligence.	12

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8.	P.Pitchiyappan Vs. Karpagam and Another	2021 (1) LW (CrI) 565	09.02.2021	<u>Criminal Procedure Code, 1973, Section 156(3):-</u> Mere allegation about the commission of the cognizable offence without any material in support thereof especially when the main dispute is civil in nature would not justify the order for investigation u/s.156 (3) of Cr.P.C.	12
9.	Sekar Vs. The State rep. by its Inspector of Police, Kulithalai Police Station, Karur District	2021 (1)LW (CrI.) 557	16.03.2021	<u>Indian Penal Code, 1860, Sections 279 & 304 A, Criminal Procedure Code, 1973, Sections 468 & 473:-</u> In view of Section 473 of Cr.P.C., the court can take cognizance of an offence not only when it is satisfied on the facts and circumstances of the case that the delay has been properly explained, but, even in the absence of proper explanation, if the court is satisfied that it is necessary to do so in the interest of justice.	13

SUPREME COURT CIVIL CASES

AIR 2021 SC 821

A. Subramanian and another Vs R. Pannerselvam

Date of Judgment: 08.02.2021

Specific Relief Act, 1963, Section 38 – Suit for Injunction – Defendants are not in possession of suit property – Dismissal of earlier suit filed by defendant for declaration and recovery of possession – Possession of plaintiff is based on admission of defendant himself made in earlier suit – Principle that plaintiff cannot seek for bare permanent injunction without seeking prayer for declaration of title is not applicable – Injunction granted.

2021 (2) CTC 589

Daddy's Builders Pvt. Ltd. and another Vs Manisha Bhargava and another

Date of Judgment: 11.02.2021

As observed by the National Commission that despite sufficient time granted the Written Statement was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in the case of *J.J.Merchant* (supra) and the subsequent authoritative decision of the Constitution Bench of this Court in the case of *New India Assurance Co. Ltd v. Hilli Multipurpose Cold Storage Pvt. Ltd.*, 2021 (1) MWN (Civil) 199 SC : 2020 (5) SCC 757, Consumer fora has no jurisdiction and/or power to accept the Written Statement beyond the period of 45 days, we see no reason to interfere with the impugned Order passed by the learned National Commission.

2021 (2) CTC 596

Kadupugotla Varalakshmi Vs Vudagiri Venkata Rao and others

Date of Judgment: 16.02.2021

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Readiness and Willingness – Suit for Specific Performance of Sale Agreement – Subsequent Purchaser can challenge readiness and willingness of Plaintiff – Contrary principles laid down in *Jugraj Singh v. Labh Singh*, overruled by Larger Bench in *Ram Awadh (Dead) by LRs v. Achhaibar Dubey* – Decision of High Court set aside and matter remitted for fresh consideration on merits.

2021 (2) CTC 200

V.N.Krishna Murthy and another Vs Ravikumar and Others

Date of Judgment: 21.08.2020

Civil Procedure Code, 1908, Sections 96 & 100:- Sections 96 & 100 of the Code of Civil Procedure provide for preferring an Appeal from any original Decree or from Decree

in Appeal respectively. The aforesaid provisions do not enumerate the categories of persons, who can file an Appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an Appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a Judgment and Decree prejudicially affects a person, who is not party to the proceedings, he can prefer an Appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in *Jatan Kumar Golcha v. Golcha Properties Private Ltd.*, 1970(3) SCC 573:

“It is well settled that a person, who is not a party to the Suit may prefer an Appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment.”

AIR 2021 SC 1078

Franklin Templeton Trustee Services Private Limited and another Vs. Amruta Garg and others

Date of Judgment: 12.02.2021

The concept of ‘absurdity’ in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter mischief. Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society. Therefore, when there is choice between two interpretations, we would avoid a ‘construction’ which would reduce the legislation to futility, and should rather accept the ‘construction’ based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences.

2021 (4) SCALE 605

U.P. Awas Evam Vikash Parishad Vs Asha Ram (D) Thr. Lrs and Others

Date of Judgment: 23.03.2021

The sale instances of a smaller area have to be considered while keeping in view the principle that where a large area is the subject matter of acquisition, suitable deduction is required to be made as no prudent purchaser would purchase large extent of land on the basis of sale of a small extent in the open market. The Court thus has to consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation. This Court has even provided for 50% deduction for development charges on the price mentioned in the sale deed.

SUPREME COURT CRIMINAL CASES

AIR 2021 SC 931

Skoda Auto Volkswagen India Private Limited Vs State of Uttar Pradesh and Ors

Date of Judgment: 26.11.2020

The mere delay on the part of the 3rd Respondent-complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The law is too well settled on this aspect to warrant any reference to precedents. Therefore, the second ground on which the petitioner seeks to quash the FIR cannot be countenanced.

AIR 2021 SC 939

Khokan alias Khokhan Vishwas Vs State of Chhattisgarh

Date of Judgment: 11.02.2021

Section 300 of the IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be clause 4 to Section 300 and exception 4 to Section 300 IPC. As per clause 4 to Section 300 IPC, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per exception 4 to Section 300, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As per explanation to exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault.

2021 (2) CTC 579

Sumeti Vij Vs Paramount Tech Fab Industries

Date of Judgment: 09.03.2021

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 139 – Code of Criminal Procedure, 1973 (2 of 1974), Section 313 – Statement under Section 313 – Whether amounts to rebuttal of presumption under Section 139, NI Act – Proceedings under Section 138 – Stand of Accused that his Statement under Section 313 amounted to rebuttal of presumption under Section 139 NI Act – Held, presumption under Section 139 that holder of a Cheque received Cheque for discharge of debt/liability – Accused bound to establish preponderance of probability to reverse said presumption – In instant case, existence of debt established – Statement of Accused under Section 313, not substantive evidence of defence but only an explanation against incriminating circumstances – Said Statement, held, not evidence of rebuttal of presumption under Section 139 – In such circumstance, conviction of Accused under Section 138 by High Court, upheld – Appeal dismissed.

2021 (1) MWN (Cr.) 569 (SC)

State of Rajasthan Vs Ashok Kumar Kashyap

Date of Judgment: 13.04.2021

Code of Criminal Procedure, 1973 (2 of 1974), Sections 227 & 239 – Prevention of Corruption Act, 1988 (49 of 1988), Section 7 framing of charge/discharge – Considerations – Principles governing – Whether High Court justified in discharging Accused for offence under Section 7 – High Court gone into merits of case and considered whether on basis of material on record, Accused likely to be convicted or not – Transcript of conversation between Complainant and Accused considered in detail – Such an exercise at this stage not permissible – At this stage it has to be seen whether or not prima facie case made out – Defence of Accused not to be taken into consideration – Special Judge, having found that there is prima facie case of offence under Section 7, framed charge – High Court erred/exceeded in its jurisdiction in exercise of Revisional jurisdiction and acted beyond scope of Section 227/239 – High Court virtually held a mini trial at stage of Discharge Application – Defence on merits not to be considered at this stage – Impugned Order discharging Accused, held, unsustainable and liable to be quashed – Order of Special Judge framing charge, restored.

2021 (1) MWN (Cr.) DCC 177 (SC)

In Re: Expeditious Trial of Cases under Section 138 of N.I. Act 1881

Date of Judgment: 16.04.2021

Code of Criminal Procedure, 1973 (2 of 1974), Section 202 [as amended by Act 25 of 2005] – Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Accused residing outside Territorial jurisdiction of Court – Magistrate required to conduct inquiry before issue of Process – Magistrate should come to conclusion after inquiry as to sufficiency of grounds to proceed against Accused.

Code of Criminal Procedure, 1973 (2 of 1974), Section 202 – Negotiable Instruments Act, 1881 (26 of 1881), Section 145 – Conduct of Inquiry under Section 202 – Examination of Witness on Affidavit – Permissibility – Section 202(2) stipulates taking of evidence of Witness on oath in inquiry under Section 202(1) for purpose of issuance of Process – Section 145 permits evidence of Complainant on Affidavit in any inquiry, trial or other proceedings notwithstanding anything contained in Code – Section 145(2) enables Court to summon and examine any person giving evidence on Affidavit on Application of prosecution or Accused – No specific provision permitting examination of Witnesses on Affidavit – Section 145 inserted in Act with laudable object of speeding up trials in Complaint under Section 138 – When evidence of Complainant may be given on Affidavit, no reason for insisting on evidence of Witnesses on oath – On a holistic reading of Section 145 along with Section 202, held, Section 202(2) inapplicable to Complaints under Section 138 in respect of examination of Witnesses on oath – Evidence of Witnesses on behalf of Complainant permitted to be taken on Affidavit – In suitable case, Magistrate can restrict inquiry to examination of documents without insisting for examination of Witnesses.

HIGH COURT CIVIL CASES

2021 (2) CTC 550

A.Rajendran Vs Arulanthasamy Nadar and others

Date of Judgment: 20.11.2020

Advocates Act, 1961 (25 of 1961) – Bar Council of India Rules on Professional Standards – Advocate for Landowners cannot seek his Professional Fees to be paid in proceedings relating to Compensation awarded for Land Acquisition – Appropriate remedy is to file separate Suit for recovery of Professional Fees – Advocate, though entitled to fees, cannot retain Files, when client wants to discharge – Ratio laid down in *R.D.Saxena v. Balram Prasad Sharma and New India Assurance Co. Ltd. V. A.K.Saxena*, applied – Lower Court Order allowing Application under Order 3, Rule 4 of CPC for legal remuneration, set aside with liberty to initiate appropriate proceedings – Court below directed to issue Cheques for Compensation amount awarded.

2021 (1) MWN (Civil) 595

Chinnaponnu (died) and Others Vs Mamundi and Others

Date of Judgment 18.01.2021

When persons like close relatives wanted to take an advantage of the documents said to have been executed by such rustic and illiterate villager, the burden of proof is on the persons, who have taken the benefits of such documents to show that the transaction is out of good faith. The entire onus lies on the persons, who have taken advantage of such document executed by an illiterate women. Good faith of transaction has to be shown by the parties, who take the benefit of the document executed by the old, illiterate, ailing rustic villager. Similarly the persons, who are in active confidence are liable to show that the transaction is bona fide and genuine one. This aspect is considered by the Judgment of the Hon'ble Apex Court in the case of **Krishna Mohan Kul @ Nani Charan Kul and another v. Pratima Maity and others**, AIR SC 2003 4351.

2021 (1) MWN (Civil) 522

P.Suresh Vs R.Rangasamyand others

Date of Judgment 30.11.2020

CODE OF CIVIL PROCEDURE, 1908 (5 OF 1908), Order 32, Rules 3,3-A & 11 and Order 7 – INTERPRETATION OF STATUTES – Suit against Minor – Interest of Minor undefended – Effect – Whether vitiates Decree – Effect of Decree passed against Minor decided by prejudice caused to Minor – Consequence of procedural violation of Order 32, Rule 3 or Rule 11(2) may be as follows: (i) Suit solely against Minor having substantial

interest, non-appointment of Guardian likely to render Decree void; (ii) multiple Defendants having identical right with Minor and action effectively defended, Decree may not be void; (iii) Co-Defendants not defended action and minor's interest prejudiced, Decree may be vitiated; (iv) Minor's interest ably defended by Natural Guardian, Decree not void even if Guardian not formally appointed; and (v) Minor's interest not substantial, no prejudice caused and Decree valid – Prejudice established if substantial and independent interest of Minor not effectively defended – Held, Guardian appointed for Plaintiff not defended earlier Suit – Nature and extent of Plaintiff's right in earlier Suit not disclosed – In absence of such pleading or proof of substantial right/interest of minor, Guardian's failure to contest Suit not caused prejudice to minor – Appeal dismissed.

Procedural law merely regulates mode of exercise of such right – CPC is rule book of fairness intended to provide procedural uniformity – Fundamental strength of Procedural law is inherent flexibility for interpretation – Failure to comply with Procedural law, including mandatory provision, does not automatically vitiate Decree or Order passed – Implications of procedural non-compliance must necessarily be evaluated in context of facts of case – Procedural law is merely means to achieve end of justice.

2021 (1) MWN (Civil) 544

T.Natarajan Vs S.Tejraj and another

Date of Judgment 28.10.2020

The application in E.A. No.105 of 2017 which was allowed by the Trial Court on 14.07.2017, after dispensing with Notice to the Respondent. The said procedure is unknown to law. No doubt, the Court is empowered to dispense with Notice to the Respondent, who had remained ex parte, in the subsequent stages of the Suit or proceeding but the said provision cannot be invoked when the prayer in the main proceedings itself is sought to be altered from one for arrest to one for recovery of possession of immovable property.

2021 (2) LW 413

V.S.Guruswamy Nadar (Died) and others Vs S.Ananthammal and others

Date of Judgment: 31.03.2021

The earlier judgment arrived at by considering the materials cannot be ignored altogether, merely on the basis of the earlier pleadings have not been filed. When the judgment contains exhaustive pleadings and decision is made on the basis of the pleadings, there is no bar in the eye of law to take the above judgment to look into the plea of res judicata.

2021 (1) TN MAC 481

New India Assurance Co. Ltd., and another Vs. R. Ramesh and others

Date of Judgment: 01.02.2021

PERMANENT DISABILITY – LOSS OF EARNING CAPACITY – Compensation – Determination – Adopting Percentage method, if, proper – Whether Tribunal erred in not applying Multiplier method – 60% disability due to fracture of Right Knee and Ankle – Injured, a Medical Representative, earning ₹ 42,000 p.m., admittedly continuing his work without any Loss of Income or Loss of Earning Capacity – In absence of loss of earning power, Claimant not entitled to claim Compensation by adopting Multiplier method – Tribunal rightly adopted Percentage method to award Disability Compensation.

Determination – Percentage method – 60% disability – Tribunal, taking ₹ 3,000 per percentage of disability, awarded ₹ 1,80,000– If, proper – High Court in M. Chinnathambi, fixed ₹4,000 per percentage of disability for accidents occurring in the year 2014/2015 and ₹ 5,000 per percentage of disability for accidents occurring from year 2016 onwards due to rise in cost of living – In instant case, accident occurred in year 2018 – Therefore, taking ₹ 5,000 per percentage of disability, High Court awarded ₹ 3,00,000 [₹ 5,000 x 60(%)] as against ₹ 1,80,000 [₹ 3,000 x 60(%)] awarded by Tribunal.

2021 (1) TN MAC 492

Branch Manager, Reliance General Insurance Co. Ltd., Pondicherry

Vs Elumalai and others

Date of Judgment: 08.02.2021

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 147 – TAMIL NADU MOTOR VEHICLES RULES, 1989, Rule 236 – Goods Vehicle – Package Policy – Liability of Insurer in respect of Coolies travelling in Goods Vehicle to unload goods – Accident due to rash and negligent driving of Driver of Goods Vehicle – Vehicle loaded with hollow bricks and deceased persons and injured Claimant travelled as Coolies to unload same as per evidence of Driver/RW1 – No contra evidence adduced by Insurer to show that Goods Vehicle was empty at time of accident or that deceased and Claimant not travelled sitting on hollow bricks – As per Rule 236, six persons permitted to travel in backside of Goods Vehicle alongwith goods – As per Section 147, liability of Insurer under Statutory Policy restricted to claim of Third party, Owner of Goods or Authorized Representative of Owner of goods travelling in vehicle – However, Policy in instant case, being a Package Policy i.e. Contractual Policy, Insurer bound by terms of Contract – Deceased and injured Claimant not travelled as unauthorized passengers but travelled as Coolies along with bricks to unload same – Tribunal considering nature of Policy rightly held Insurer liable to pay Compensation – No error in Award passed by Tribunal warranting interference.

2021 (1) TN MAC 535 (DB)

T.Maheswari and others Vs C.Venkatesan and another

Date of Judgment: 16.10.2020

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 166 – PRACTICE AND PROCEDURE – Two claim arising out of same accident – Course to be resorted to – In one claim, ‘T’ said to be driving vehicle and in other claim, ‘B’ said to be driving vehicle – Claim Petitions filed by LR. of ‘T’ and ‘B’ decided by different Presiding Officer of Tribunal – Claim Petition filed by LR. of ‘B’ decided earlier – Not proper – Both Claim Petitions ought to have been taken up together and decided by same Presiding Officer, when both arise out of same accident – No explanation as why one Claim Petition decided earlier, when Respondents are common in both cases – If both cases taken up together, Tribunal would have viewed matter differently and come to a different conclusion.

2021 (1) MWN (Civil) 748

Jayasudha Vs Karpagam and others

Date of Judgment: 04.03.2021

HINDU LAW –Joint Family Property – Alienation by Karta – Whether Void – Joint Family property sold by Father/Karta in favour of D3 and her deceased husband –Stand of Plaintiff/Daughter of Karta that their signatures were obtained in Sale Deed without disclosing contents of same – However, Plaintiffs, after two months of execution of document, become aware that same were pucca Sale Deeds – No steps taken by Plaintiffs to set aside or annul Sale Deeds – Held, Sale transaction executed by Karta of Family only voidable and not void – Sale Deed, as not set aside, binding upon Plaintiff and other Members of Joint Family – Plaintiffs, held, not entitled to share in property alienated by father.

2021 (1) MWN (Civil) 781

Shanthimalai Trust, rep. by its Managing Trustee, Tiruvannamalai Vs Arunachala Education and Environment Development Trust (AEED) Trust, rep. by its Managing Trustee, Fr. Pancras, Tiruvannamalai and others

Date of Judgment: 28.10.2020

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 5, Rule 1 & Order 9, Rule 6 – Civil Court shall not proceed to pass ex parte Judgment within 30 days from the date of service of Summons in Suit – Amended Rule 1 to Order 5 makes it clear that Defendant would have a minimum 30 days to file Written Statement – Proviso enables Court to extend time till 90 days – Ex parte decree passed within 30 days of Summons would be in breach of mandatory requirement of Order 5, Rule1, C.P.C – Ex parte Decree, set aside.

2021 (1) MWN (Civil) 805

**Enkay Visions (P) Ltd., Chennai through its Managing Director Vs Doordarshan by its
Director General, New Delhi and another**

Date of Judgment: 25.09.2020

CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Section 34 – Section 34 provides for Interest to be awarded from date of institution of Plaint, and not from date of Decree – Rate of Interest awarded is Court’s discretion but Interest must be awarded only from date on which Plaint presented – Awarding Interest in money Suit from date of Decree restricts fruits of Decree and defeats interest of justice – Appellant entitled for payment of Interest from date of institution of Plaint.

HIGH COURT CRIMINAL CASES

2021(1) TLNJ 305 (Criminal)

**The Branch Head, IDBI Bank, Neelamangalam Branch, Kallakurichi Taluk,
Villupuram District Vs P. Muthuchezhiyan**

Date of Judgment: 22.03.2021

Negotiable Instrument Act, 1881, Section 148 – Offence under Section 138 of the Act – Appellant Court suspended the sentence but not directed accused to deposit any amount which is mandatory as per amendment in section 148 of the act – accused person who is convicted for the offence has to deposit some amount for the purpose of contesting the appeal – Supreme Court gone to the extent of holding that this provision will apply even to those complaints which were filed prior to the amendment – direction issued to accused to deposit 20% of the cheque amount with trial Court.

2021(1) TLNJ 329 (Criminal)

**S. Vasanthi Vs The State Represented by the Inspector of Police, (Land Grabbing),
District Crime Branch, Namakkal District**

Date of Judgment: 16.03.2021

Criminal Procedure Code 1973, Section 173(8) & 200 – Offence of land grabbing – a prima facie case was made out by the petitioner – It is not proper on the part of the investigating officer to delay the charge sheet and referred the same as ‘Mistake of Fact’ – When the officials have not discharged their duty cast upon them, Section 173(8) of Cr.P.C., confers power for appropriate direction for further investigation – unfortunately J.M. Court treated the case so simple and shifted the burden on the petitioner, when the complaint is a serious offence against the State – Further it failed to look into the fact that the complaint was given in the year 2011 and the referred Charge Sheet was filed in the year 2020 that too after given a direction by this Court – J.M. Court should have directed the Police to conduct fresh investigation and file charge sheet and should not have shifted the burden to the petitioner to establish the case by way of private complaint under Section 200 Cr.P.C. – order passed by the learned Judicial Magistrate to be set aside – Revision allowed.

2021(1) TLNJ 337 (Criminal)

Maruthupandi Vs The Inspector of Police

Date of Judgment: 16.03.2021

The date of birth of the victim girl is 24.06.1997 and the date of offence is 24.06.2014. So at the time of occurrence, she was only 17 years and she has deposed before the trial court and also prior to that she has given statement before Magistrate.

Even assuming that victim girl had fall in love with the appellant and admitted that they are living for four years, even on the date of commission of offence, provisions of POCSO Act attract. It is not a compoundable offence. Subsequently, she cannot turn it to compound the offence. Once the victim girl gave complaint that the appellant has committed the offence and the case has been registered, it is offence against State. Therefore subsequent compromise will not take away the offence.

(2021) 2 MLJ (CrI) 9

V.Sulochana Vs State Rep. by The Inspector of Police, CBCID, Thiruvallur

Date of Judgment: 11.02.2021

The Court below lost sight of the fact that an effective defense in fact starts even at the time when the witnesses are cross examined on the side of the accused. An accused can defend himself/herself effectively, both by cross-examining the prosecution witnesses as well as by independently examining witnesses on the side of the defence. Therefore, even at the time of examination of prosecution witnesses, an application can be filed under section 91 of Cr.P.C. for furnishing or calling for documents to effectively defend the prosecution case.

In view of the above, the petitioner will be entitled to seek for the GD extract even at the stage of cross examination of the prosecution witnesses. The only test to be applied while considering an application under Section 91 of Cr.P.C., is to see if the documents that are sought to be summoned has any relevance or it is necessary for the accused to defend himself effectively. In other words, the main ingredient of Section 91 of Cr.P.C. is necessity and desirability.

(2021) 2 MLJ (CrI) 36

**Sankar Vs State of Tamil Nadu, Rep. by Inspector of Police, All Women Police Station,
Panruti, Cuddalore District.**

Date of Judgment: 22.02.2021

Accused convicted u/s 6 of POCSO Act by sessions Judge. Appeal by the convict. Victim aged below 18 years. The plea of the appellant is that, victim was in a live-in

relationship with the appellant on her own consent. Held, the victim girl is below 18 years, therefore, her consent is immaterial. Even if the victim girl had given her consent, legally, it is not a valid consent, as she was below 18 years. Further, it is held that, the affidavit of compromise by victim cannot be accepted, since the offence was committed under POCSO Act and it is the offence against state and it is a non compoundable one. Furthermore it is held that, even non marking of the statement recorded u/s 164 Cr.P.C. is not fatal as it is not a substantive evidence. It can be used either for corroboration or contradiction. Sessions judge has rightly convicted the appellant. Appeal dismissed.

2021 CRI. L. J. 1126

Sakthivel Vs State Rep. By The Inspector of Police, Tirunelveli.

Date of Judgment: 22.07.2020

Penal Code (45 of 1860), Ss. 302, 307, 506(ii), 84 – Evidence Act (1 of 1872), S.3 – Murder – Plea of insanity – Appreciation of evidence – Accused allegedly caused fatal injury to his own son, aged 6 years, resulting into his death and assaulted his daughter by knife who prevented him from causing injury – Accused pleaded that he was of unsound mind as suffering from Paranoid Schizophrenia – Doctor stated that since accused attempted for committing suicide by inflicting injury, he referred him for Psychiatric opinion – But, psychiatric opinion neither collected nor placed before Court – Witnesses to incident, wife and children of accused, denied that accused taking any treatment for mental illness – Testimonies of witnesses corroborated with each other regarding manner of occurrence – Knife recovered from place of occurrence and blood found upon knife was of blood group of deceased – In absence of any record, it cannot be said that accused was suffering from Paranoid Schizophrenia at relevant point of time – Plea of insanity, not tenable – Accused not eligible to exemption u/s. 84 of IPC – Conviction, proper.

2021 (1) LW (Crl) 542

K.Rajendran Babu and another Vs The State rep. by The Inspector of Police, T-16, Nazarathpet Police Station, Nazarathpet, Thiruvallur District and another

Date of Judgment: 23.03.2021

In order to bring a case within the ambit of Section 304-A, IPC, there must be some material to show that it is the rash or negligent act of the Petitioners that has resulted in the death of the boy. In other words, the Petitioners, must have acted with such recklessness or total disregard for the possible consequences which must be the causa causans for the death. Simple lack of care, howsoever bad the consequences are, will not constitute criminal negligence.

In the present case, it is not even the case of the prosecution that the lack of care on the part of the Petitioners resulted in the death of the boy. Therefore, on the given facts, even an offence under Section 304-A, IPC has not been made out against the Petitioners.

2021 (1) LW (CrI) 565

P.Pitchiyappan Vs Karpagam and another

Date of Judgment: 09.02.2021

If a petition is filed under Section 156(3) Cr.P.C., the Magistrate can either forward the said petition to the Police for investigation or treat the said petition as a private complaint under Section 200 Cr.P.C. In cases of civil nature and in the cases, where the police do not entertain the complaint, the persons with vested interest and with some oblique motive, rushes to the criminal Court and files a petition under Section 156(3) Cr.P.C., making some allegations to constitute the cognizable offence and wants an order or direction to the Police for registering the FIR and for investigation and more petitions under Section 156(3) are being filed in all the Magistrate Courts and are attempting to achieve the desired results through the orders for registration of FIR and investigation.

In such a scenario, the Magistrates are duty bound to see as to whether the averments in the petition would constitute cognizable offences and the same is supported by any materials. More importantly, mere allegation about the commission of the offence without any material in support thereof would not justify the order for investigation under Section 156(3) Cr.P.C.

2021 (1) LW (CrI) 557

**Sekar Vs The State rep. by its Inspector of Police, Kulithalai Police Station,
Karur District**

Date of Judgment: 16.03.2021

In view of Section 473 Cr.P.C., the Court can take cognizance of an offence not only when it is satisfied on the facts and circumstances of the case, the delay has been properly explained, but, even in the absence of proper explanation, if the Court is satisfied that it is necessary to do so in the interest of justice. Moreover, Section 473 Cr.P.C., has a non-obstante clause and the same has an overriding effect on Section 468 Cr.P.C., if the Court is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice.

The revision petitioners by seeking the order allowing the petition filed under 468 Cr.P.C. has impliedly claimed the relief of discharge. In the case on hand, the learned magistrate had already taken cognizance of the case and issued seen to the accused to her no power or jurisdiction to recall over view earlier order or to discharge the accused.
