

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVII — PART 04 — APRIL 2022 ****

COMPENDIUM OF CASE LAWS



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9	Saradha Ammal & Anr Vs. J. Sridhar	[S. A. No. 302 of 2019]	08.04.2022
10	Smt. Nagarathinam & Ors. Vs. Mr. K.R. Srinivasan (Died) & Ors.	[A.S.No.1 of 2011]	09.03.2022

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6	<u>Mangaiyarkarasi Vs. Inspector of Police, A.Pallipatti Police Station, Dharmapuri District</u>	[Crl.A.No.495 of 2019]	21-03-2022
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SUPREME COURT - CIVIL CASES

Anar Devi (D) Through L.R. Vs. Vasudev Mangal Etc. Etc. [Civil Appeal Nos. 1852-1859 of 2022]

Date of Judgment: 10-03-2022

Civil Procedure — Order XLI Rule 5 — Mesne Profits on termination of license

The Hon'ble Supreme Court decided a Civil Appeal challenging the judgment of the High Court of Rajasthan, seeking to enhance the amount of mesne profit.

The case concerned the possession of four different portions of a residential house, as the licensee was entitled for restoration of possession as well as mesne profits on termination of their license.

The Apex Court emphasized on awarding just mesne profits and found that, the impugned judgment of the High Court of Rajasthan had considered the Valuer's Report about the use of the property (commercial/residential), District Level Committee Rates (DLC), but had omitted to consider the market rate as per the current potential of the suit property and reduced mesne profits mechanically to 50%.

The Apex Court held that, it is important to consider the market rate as per the current potential of the suit property also. A mechanical reduction of the mesne profits to 50% solely on the basis of the Valuer's report is not a plausible inference.

Thus, the Apex Court allowed the Civil Appeal and enhanced the mesne profits.

Indian Ex Servicemen Movement & Ors. Vs. Union of India & Ors.**[W.P.(Civil) No. 419 of 2016]****Date of Judgment: 16-03-2022**

One Rank One Pension (OROP) policy — Modified Assured Career Progression — Articles 14 and 21, Constitution of India

The Hon'ble Supreme Court found the OROP principle devoid of constitutional infirmities while dealing with an issue on the generational difference in pensions received by defence personnel. The Apex Court observed that, "adjudication cannot serve as a substitute for policy."

The Apex Court illustratively reiterated the principles governing pensions and cut-off dates and applied it to the present factual matrix and held that,

[1] The definition of OROP is uniformly applicable to all the pensioners irrespective of the date of retirement.

[2] The cut-off date is used only for the purpose of determining the base salary for the calculation of pension.

[3] No legal or constitutional mandate of OROP can be read into the decisions in *D.S. Nakara Vs. Union of India [1983 AIR 130]* and *Union of India Vs. SPS Vains [(2008) 9 SCC 125]*

The Apex Court disposed the Writ Petition noting that, "The canvass which is sought to be traversed in these proceedings under Article 32 of the Constitution trenches upon a domain which is reserved for the executive policy".

Ratan Lal Patel Vs. Hari Singh Gour Vishwavidyalaya
[Civil Appeal No. 2057 of 2022]
Date of Judgment: 22.03.2022

Practice and Procedure — Review Jurisdiction — Error Apparent on the face of record — To be clearly stated in the order

The Hon'ble Supreme Court while discussing on review jurisdiction held that, the order allowing the review application should not be a cryptic, non-reasoned and non-speaking order.

The Apex Court observed that, nothing has been mentioned and/or observed as to what was that error apparent on the face of the record which called for interference. It cannot be disputed that the review jurisdiction can be exercised only in a case where it is found that there is an error apparent on the face of the record and not otherwise. Therefore, while exercising the review jurisdiction, the Court has to first satisfy itself on any error apparent on the face of the record which calls for exercise of the review jurisdiction.

The Apex Court further observed that, merely stating that there is an error apparent on the face of the record is not sufficient. It must be demonstrated that in fact there was an error apparent on the face of the record. There must be a speaking and reasoned order as to what was that error apparent on the face of the record, which called for interference and therefore a reasoned order is required to be passed.

Unless such reasons are given and unless what was that error apparent on the face of the record is stated and mentioned in the order, the higher forum would not be in a position to know what has weighed with the Court while exercising the review jurisdiction and what was that error apparent on the face of the record.

The Apex Court held that, in the present case, except stating that "it is noticed that there is apparent error on the face of record which calls for interference", nothing has been mentioned on what was that error apparent on the face of the record. Thus, the Apex Court allowed the Civil Appeal.

Sanjay Kumar Singh Vs. The State of Jharkhand**[Civil Appeal No. 1760 of 2022]****Date of Judgment: 10.03.2022**

Land Acquisition — Order XLVII Rule 27, Civil Procedure Code — Additional Evidence — Admissibility

The Hon'ble Supreme Court in deciding a Civil Appeal, discussed that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.

The true test therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

The Apex Court found that while considering the application for additional evidence, the High Court had not adverted to the aforesaid relevant consideration, i.e., whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. The Apex Court observed that after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law.

The Apex Court allowed the Civil Appeal, holding that, the documents which are permitted to be brought on record as additional evidence have to be proved by the appellant before the Reference Court, in accordance with law and only after proving the existence, authenticity and genuineness of the said documents including contents thereof, the same can be taken into consideration by the Reference Court.

****See Also***

- *Andisamy Chettiar Vs. A. Subburaj Chettiar, [(2015) 17 SCC 713]*
- *Uttaradi Mutt Vs. Raghavendra Swamy Mutt, [(2018) 10 SCC 484]*

Sunil Kumar Jain & Ors. Vs. Sundaresh Bhatt & Ors.
[Civil Appeal No. 5910 of 2019]
Date of Judgment: 19-04-2022

Section 53(1)(a), Insolvency and Bankruptcy Code 2016

The Hon'ble Supreme Court dealt with an issue regarding wages/salaries of the workmen/employees during the Corporate Insolvency Resolution Process (CIRP) period and the amount due and payable to them towards Pension, Gratuity and Provident Fund.

While considering the claims of the concerned workmen/employees towards the wages/salaries payable during CIRP, the Apex Court observed that, it has to be first established and proved that during CIRP, the Corporate Debtor (CD) was a going concern and that the concerned workmen/employees actually worked during such period.

The Apex Court observed that,

[1] When the CD is being managed as a going concern during the CIRP period, the wages/salaries of such workmen/employees who actually worked during that period shall be included in the CIRP costs.

[2] In case of liquidation of the CD, dues towards the wages and salaries of such workmen/employees who actually worked when the CD was a going concern, are entitled to have the first priority and must be paid in full as per Section 53(1)(a) of the Code.

[3] The wages and salaries of all other workmen/employees of the CD during the CIRP who actually have not worked and/or performed their duties when the CD was a going concern, shall not be included automatically in the CIRP costs and shall have to be governed by Section 53(1)(b) and Section 53(1)(c) of the Code.

[4] The wages and salaries of the workmen/employees of pre-CIRP period will have to be governed as per the priorities mentioned in Section 53(1) of the Code.

The dues of the workmen/employees on account of provident fund, gratuity and pension are governed by Section 36(4) of the Code and are not to be treated as liquidation estate. Section 53(1) of the Code shall not be applicable to such dues, which are to be treated outside the liquidation process and liquidation estate assets and the Liquidator shall have no claim over such dues.

As the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds.

The Apex Court allowed the Appeal and held that, the wages/salaries of the workmen/employees of the CD for the period during CIRP can be included in the CIRP costs provided it is established and proved that the IRP/RP managed the operations of the CD as a going concern during the CIRP and that the concerned workmen/employees of the CD actually worked during the CIRP period.

SUPREME COURT - CRIMINAL CASES**Kamatchi Vs. Lakshmi Narayanan [Cri.A.No.627 of 2022]****Date of Judgment: 13-04-2022**

Section 12, Protection of Women from Domestic Violence Act, 2005 [PWDVA] — Sections 468 and 482, CrPC — time of taking cognizance

The Hon'ble Supreme Court decided a Criminal Appeal arising from an Application under Section 12, PWDVA, seeking relief under Sections 17 and 18 of PWDVA. The High Court had taken the view that the application ought to have been filed within one year of the incident and since the appellant had left the matrimonial home in the year 2008, the application was abuse of process of the court.

The Apex Court observed that*, "a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. ... if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over. ... The High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution."

The Apex Court referred to the decision in *Adalat Prasad Vs. Rooplal Jindal [(2004) 7 SCC 338]* and observed that, "The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in *Adalat Prasad* would not get attracted at a stage when a notice is issued under Section 12 of the Act.

Thus, the Apex Court allowed the Criminal Appeal and set aside the judgment of High Court's view.

***See Also**

- *Dr. P. Padmanathan & Ors. Vs. Tmt. V. Monica & Anr. [2021 SCC Online Mad 8731]*
- *Sarah Mathew Vs. Institute of Cardio Vascular Diseases [(2014) 2 SCC 62]*

Mallada K. Sri Ram Vs. State of Telangana & Ors. [Crl.A.No.561 of 2022]**Date of Judgment: 04-04-2022**

Preventive detention — Article 22, Constitution of India — disturbance to public order

The Hon'ble Supreme Court decided a Criminal Appeal arising from an order of detention passed against the detenu noting him as a 'white collar offender'.

The Apex Court found that the order of detention is based on stale material and non-application of mind on part of the detaining authority, and that the High Court has failed to probe the existence of a live and proximate link between the past cases and the need to detain the detenu.

The Apex Court referred to various decisions* on the distinction between 'a disturbance to law and order' and 'a disturbance to public order', and found that, "A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". ... the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding."

The Apex Court expressed concern over the number of detention orders quashed for incorrect application of the standard for maintenance of public order, and directed the Respondents to take stock of pending challenges to detention orders.

Thus, the Apex Court allowed the Criminal Appeal, set aside the impugned judgment of the High Court and quashed the order of detention passed against the detenu.

***See Also**

- *Ram Manohar Lohia Vs. State of Bihar [AIR 1966 SC 740]*
- *Banka Sneha Sheela Vs. State of Telangana [(2021) 9 SCC 415]*
- *Sama Aruna Vs. State of Telangana [(2018) 12 SCC 150]*

Nahar Singh Vs. State of Uttar Pradesh & Anr. [Crl.A.No.443 of 2022]**Date of Judgment: 16-03-2022****Cognizance — Section 190(1)(b), CrPC**

The Hon'ble Supreme Court decided a Criminal Appeal on the issue whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of Section 190(1)(b), CrPC, can issue summons to any person not arraigned as an accused in the police report and whose name also does not feature in column (2) of such report.

The Apex Court reiterated the principle of criminal jurisprudence that cognizance taken by the Magistrate is of an offence and not of an offender. The Apex Court referred to the decision in *Dharam Pal & Ors. vs. State of Haryana & Anr. [(2014) 3 SCC 306]*, which had settled the divergent views on this point, *Hardeep Singh vs. State of Punjab & Ors. [(2014) 3 SCC 92]*, and observed that inclusion in column (2) was not held to be the determinant factor for summoning persons other than those named as accused in the police report or chargesheet.

The Apex Court observed that, "in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. ... For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police, some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose." The Apex Court held that there is no error in the order of the Magistrate.

The Apex Court dismissed the Appeal and affirmed the impugned judgment of the High Court affirming the order of the Trial Court.

State of Rajasthan Vs. Banwari Lal & Anr. [Crl.A.No. of 2022]**Date of Judgment: 08-04-2022****Section 307, IPC — principles of sentencing**

The Hon'ble Supreme Court decided a Criminal Appeal challenging the judgment reducing the sentence for an offence under Section 307 of IPC, from three years rigorous imprisonment to the 44 days already undergone by him in confinement.

The Apex Court observed that the reduction of sentence had been without adverting to the relevant facts and without considering the gravity and nature of offence. The Apex Court referred to various judicial precedents* and reiterated the factors to be considered at the stage of sentencing, such as proportionality, social and economic background of the offender, deterrence and rehabilitation.

The Apex Court observed that the consideration that the accused were facing trial since last 26 years; and when the occurrence took place 26 years ago, they were young and now they are aged persons, cannot be the sole consideration while awarding an appropriate sentence.

The Apex Court held that the discretion has to be exercised judiciously and the sentence has to be imposed proportionately.

Thus, the Apex Court partly allowed the Criminal Appeal, set aside the impugned judgment of the High Court, and restored the judgment of the Trial Court sentencing the Accused to undergo three years rigorous imprisonment.

**** See Also***

- *State of Rajasthan Vs. Mohan Lal, [(2018) 18 SCC 535]*
- *State of Madhya Pradesh Vs. Udham, [(2019) 10 SCC 300]*
- *Satish Kumar Jayanti Lal Dabgar Vs. State of Gujarat, [(2015) 7 SCC 359]*

Vijay Kumar Ghai Vs. The State of West Bengal [Crl.A.No.463 of 2022]**Date of Judgment: 22-03-2022****Cheating — Section 420, IPC**

The Hon'ble Supreme Court decided a Criminal Appeal challenging the judgment and order which had held that continuation of criminal proceedings against the Accused would not be an abuse of process of the Court.

The Apex Court referred to the decision in *Union of India & Ors. Vs. Cipla Ltd. & Anr.* [(2017) 5 SCC 262] which had identified factors which contribute to the practice of forum shopping, along with *Krishna Lal Chawla & Ors. Vs. State of U.P. & Anr.* [(2021) 5 SCC 435] which had held that permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings.

The Apex Court found that the impugned judgment of the High Court, overlooked the Appellant's contention that two complaints were filed on the same cause of action at different places, and had not given any finding on this issue.

The Apex Court referred to several judicial precedents* on the extent of Court's inherent powers under Section 482, CrPC, and expressed caution over converting purely civil disputes into criminal cases. The Apex Court analysed the ingredients of Sections 405, 415, 420 of IPC, and referred to the decision in *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.*, [(2000) 4 SCC 168], observing that, "a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, ... the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants."

The Apex Court found that in the absence of the elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. The Apex Court further found that the complaint was lodged at a belated stage i.e., 4 years after the transaction, with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.

The Apex Court allowed the Criminal Appeal and set aside the impugned judgment of the High Court, and quashed the impugned FIRs.

***See Also**

- *T.T. Antony Vs. State of Kerala & Ors.*, [(2001) 6 SCC 181]
- *K. Jayaram and Ors. Vs. Bangalore Development Authority & Ors.*, [2021 SCC OnLine SC 1194]

Section 482, CrPC

- *R.P. Kapur Vs. State of Punjab*, [(1960) 3 SCR 388]
- *Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.*, [(2007) 12 SCC 1]
- *Indian Oil Corpn. Vs. NEPC India Ltd. & Ors.*, [(2006) 6 SCC 736]
- *State of Madhya Pradesh Vs. Awadh Kishore Gupta & Ors.*, [(2004) 1 SCC 691]
- *G. Sagar Suri & Anr. Vs. State of UP & Ors.*, [(2000) 2 SCC 636]

Criminal Breach of Trust

- *R K Dalmia Vs Delhi Administration*, [(1963) 1 SCR 253]
- *Sudhir Shantilal Mehta Vs. CBI*, [(2009) 8 SCC 1]

Cheating

- *Prof. R.K. Vijayasathy & Anr. Vs. Sudha Seetharam & Anr.*, [(2019) 16 SCC 739]
- *Uma Shankar Gopalika Vs. State of Bihar & Anr.*, [(2005) 10 SCC 336]
- *Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors.*, [(2015) 8 SCC 293]

HIGH COURT - CIVIL CASES**G. Ravi Vs. Mrs. G. Saroja & Ors. [C.R.P(PD).No.331 of 2022]****Date of Judgment: 15-02-2022****Order XVIII Rule 4 and 5 CPC — Rule 40 Civil Rules of Practice**

The Hon'ble High Court decided a Civil Revision Petition seeking to set aside the Docket Order passed in proof affidavit of PW1 by the trial court. The original proof affidavit of the Petitioner had been returned stating that it had to be in Tamil.

It had been contended that the affidavit in question has complied with the procedure prescribed in Rule 40 of the Civil Rules of Practice, as the contents of the proof affidavit had been explained in Tamil to the deponent who understood the same and had affixed his signature in English.

The Court observed that Order XVIII Rule 4 provides that recording of the examination in chief is by way of an affidavit. This is in contradistinction to the provision of Rule 5, which provides that in all the cases where an appeal is allowed, the evidence of witnesses shall be taken down in the language of the Court by or in the presence/under the control of the Presiding Officer.

The Court relied on the decision of the Supreme Court in *Ameer Trading Corporation Vs. Shapoorji Data Processing Ltd*, [AIR 2004 SC 355], wherein it had been held that Rule 4 does not draw a distinction between an appealable case and a non-appealable case however, Rule 5 deals with appealable cases.

The Court considering the provisions of Order XVIII Rules 4 and 5 CPC r/w Rule 40 of the Civil Rules of Practice, held that, an examination-in-chief is permissible by way of an affidavit, which should conform to Rule 40 of the Civil Rules of Practice with reference to the deponent being aware of the contents of the affidavit.

In fine, the CRP was allowed with a direction to the Additional District and Sessions Judge to take on file, the proof affidavit as examination in chief of PW1 in the suit.

G. Thirumurugan @ Theeran Thirumurugan Vs. Union of India & Ors.**[W.P.(MD) Nos.23290 of 2021]****Date of Judgment: 28.3.2022****Constitution of India — Territorial Waters — Sovereignty Over The Historic Quarters And Territorial Sea**

The Hon'ble High Court in this case dealt with several writs of Mandamus to direct the respondents to take appropriate action for the release of 68 Tamil Nadu Fishermen and their boats from the custody of Sri Lankan Navy and Coast Guard.

A reference was made to Article 5 and 6 of Agreement between Sri Lanka and India on the boundary in Historic Quarters between the two countries and related matters dated 26th and 28th June 1974.

The Court held that, “..efforts were made by the Government of India through the diplomatic channels with the assistance of the Government of Tamil Nadu, yet some more efforts are required to be made so that 68 fishermen may get released at the earliest and for that purpose if there exists an agreement, it can be invoked.”

Further the Court said, “the arrest of 68 fishermen is affecting their respective families, we trust that the Government of India would make all the efforts for the release of 68 fishermen, who were taken into custody by the Sri Lankan Navy and Coast Guard”. With the above assurance and observation, the Court in fine disposed the writ petitions and all the connected miscellaneous petitions.

Lakshmana Pillai (Died) & Ors. Vs. Alankaravel & Ors.**[S.A. No. 306 of 1995]****Date of Judgment 08-04-2022**

Section 13, 19, 20, Transfer of Property Act – Section 47, Civil Procedure Code 1908

The Hon'ble High Court decided a Second Appeal arising from a suit for declaration of title. An Appeal Suit had been filed against the disallowed portion.

The Court observed that the phrase “எங்களுக்கு ஏற்படுகிற வாரிசுகள்” shall refer only to the children and not the grandchildren, and further observed that such an interpretation will be in violation of Section 13, Transfer of Property Act. “Any interpretation which would ultimately result in voidness of the document, especially when there is no scope for interpretation, cannot be accepted.”

The Court referred to the decision in *Gopal Prasad Sinha Vs. State of Bihar [(1970) 2 SCC 905]*, and observed that, where the ultimate beneficiary is an unborn person, immediately on his birth, he acquires right, unless a contrary intention appears from the terms of the transfer. Unborn person acquires a vested interest, although he/she may not be entitled to the enjoyment thereof immediately on birth. The vested interest is transferable and also heritable. The Court further rejected the contention that only those who are alive after the death of life estate holder will be entitled to vested interest.

The Court further observed that a challenge with regard to the executability of the decree, has to be made only by way of an application under Section 47 of C.P.C and not by a separate suit. The Court held that the present suit filed by the Plaintiffs who are Defendants in the Original Suit is barred under Section 47 of C.P.C, and that the Plaintiffs were eo-nominee parties to the mortgage deed and sale deed, hence, the present suit for declaration of title is not maintainable without seeking a prayer to set aside these documents.

Thus, the Court answered the substantial question of law in favour of the Appellants and allowed the Second Appeal.

M.G. Annadurai Vs. The Government of Tamil Nadu**[W.P.Nos.33684 of 2018]****Date of Judgment: 07-04-2022****Section 7, Tamil Nadu Land Encroachment Act, 1905**

On the issue of unchecked encroachment of Government land being vastly reduced and such ancillary concerns that have arisen from areas reserved in the interest of ecological balance, the Hon'ble High Court reiterated that, only on receipt of specific orders from the Government, eligible persons could be given pattas.

The Court observed that in case of Gouchar land, a user contrary to the permissible user, whether by the State or by any third party, cannot be permitted to go on, whether the encroachers have made permanent structures or kuchha construction for keeping cattle.

The Court observed that persons in illegal occupation of Government Land/Panchayat Land cannot claim regularization as a matter of right. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularization have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization.

The Court dismissed the Writ Petition, holding that, regularizing such illegalities cannot be permitted because it is Gram Sabha land kept for the common use of villagers. The scheme in question provides for speedy eviction of such illegal occupants, after giving a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession.

****See Also***

- *Joginder Vs. State of Haryana, [(2021) 3 SCC 300]*
- *Rameshbhai Virabhai Chaudhari Vs. State of Gujarat, [Civil Appeal No.5135/2021, dated 6.9.2021]*

M/s. BIC Logistics Ltd. Vs. M/s. Rane (Madras) Ltd., Rep. by Power Agent /Subrogee United India Insurance Company Ltd. [S.A. Nos. 249 and 250 of 2014]

Date of Judgment: 06-04-2022

Sections 8 and 9, Carriers Act 1865 – Section 96, 100, Order XLI Rule 31 - Civil Procedure Code, 1908 – Appreciation of Evidence

The Hon'ble High Court considered the aspect of appreciation of evidence in an issue relating to the liability to compensate for the consignment lost in transit.

The Court observed that, the carrier has a duty to take care of the consignment, as they would take care for their own goods. If any loss or damage is suffered, the carrier has been mulcted with strict liability, and they have to compensate for the loss or damage, unless the carrier is able to prove that the loss or damage was not caused due to their negligence or criminal act of the carrier or their agent or servants. However, the burden of proof has been imposed on the carrier under Section 9 of the Act and the carrier is expected to discharge this burden. Till then, it is enough for the plaintiff to make the claim for the loss or damage suffered by them.

The Court held that, the trial Court, on appreciating the oral and documentary evidence, had given a categorical finding that the loss of consignment did not take place due to the criminal act or negligence on the part of the carrier. When this finding is sought to be reversed, the Appellate Court should have once again re-appreciated the oral and documentary evidence and assigned specific reasons as to why it is disagreeing with the findings of the trial Court. The Court found that the lower Appellate Court had not assigned any reasons for disagreeing with the findings of the trial Court, and observed that the duty that has been assigned to the lower Appellate Court under Section 96 r/w Order XLI Rule 31 CPC, cannot be performed by the High Court while exercising its jurisdiction under Section 100 CPC.

Thus, the Court allowed the Second Appeal, and remanded the matter back to the file of the lower Appellate Court.

N. Dhara (deceased) & Ors. Vs. G. Srinivasan [S.A.No.1281 of 2005]**Date of Judgment: 12.04.2022****Injunction/unregistered partition deed — reliance for collateral purpose**

The Hon'ble High Court considered the correctness in deciding the title of the suit property when the suit itself was filed for an injunction simpliciter and when the appellants were defending their case on possession.

The Court held that, a co-sharer can validly make a transfer of his interest or right in a joint family property. The Court observed that Section 44, Transfer of Property Act provides for the rights of the transferee of an undivided share from a co-sharer, and thus, the transferee steps into the shoes of his transferor.

It is settled law that a person who purchases an undivided share of a co-parcener of joint Hindu family cannot claim to be put in possession of any definite piece of family property. He does not even acquire any interest in the property sold. He does not become a tenant in common with the members of the family. He has only equity to work out his rights by means of a partition standing in his vendors' shoes. The alinee's suit for partition must be one for partition of the entire property and not for the partition of any specific item of, or interest in the family property.

The Court accepted the observation of the First Appellate Court that the plaintiff is entitled for a permanent injunction, and thus dismissed the Second Appeal.

P. Ramesh Vs. The State Government of Tamil Nadu Rep. by its Principal Secretary Highways and Minor Ports (HW1) Department [W. A. No.4 of 2022]

Date of Judgment: 22.03.2022

Section 15, Tamil Nadu Highways Act 2001 — Rule 5, Tamil Nadu Highways Rules 2003 — Subordinate rules in-conflict with statutory provisions

The Hon'ble High Court in deciding Writ Petitions challenging the acquisition proceedings under the Tamil Nadu Highways Act, 2001 and the Rules, considered the issues whether the subordinate legislation can go beyond the statutory provisions.

The Court referred to the decision in *National Highways Authority of India Vs. Pandarinathan Govindarajulu [(2021) 6 SCC 693]* and observed that, "a statutory rule or notification is to be treated as a part of the statute and the Rules made under a statute must be treated for the purpose of construction or obligation exactly as if they were in the Act. ... subordinate legislation cannot be taken as statute despite being in conflict. ... The Rules would have mandatory effect if it is not in conflict with the statute. Rather, it is brought for the purpose of construction or obligation given under the Act. But, when there is a conflict between the statute and the subordinate legislation, to the extent there is a conflict in the subordinate legislation, it has to be ignored."

The Court found that, Section 15(2) of the Act of 2001 is not in *pari materia* to Section 5A of the Act of 1894. The Court observed that "Section 15(2) requires a show cause notice to the owner or the person interested as to why the land should not be acquired. It does not provide for an enquiry after a copy of objection to Highways Department." The Court held that "Rule 5 provides the manner of hearing of the notice which is not provided under Section 15(2). Hence, Rule 5(2) and (3) is to be ignored, as it is not in conformity with Section 15(2) of the Act of 2001."

Thus, the Court dismissed the appeals.

S. V. Ramamurthy Vs. The Secretary, Government of Tamil Nadu [W.P.No. 5142 of 2022]

Date of Judgment: 06.04.2022

Article 226, Constitution of India — Installation of GPS — electric meters

The Hon'ble High Court dealt with a Writ of Mandamus seeking to direct the respondent to implement the G.O.Ms.No.611, Home (Transport.III) Department, dated 25.08.2013, with regard to the installation of the meter in the auto-rickshaws.

It was contended by the petitioner that, even though the electronic meters have been installed on the auto-rickshaws, they do not operate the same, rather, they demand charges as per their will.

The Court observed that, "...almost all the auto- rickshaws are having electronic meters, though the Government is in the process to finding out the ways to even install the GPS system in the auto- rickshaws to the benefit of the public/passengers. The complaint is that, despite existence of the meters, the auto-rickshaw holders are not operating it. Whenever an auto-rickshaw holder is caught for not using the meter, the action is taken. In any case, the efforts should be to check the auto-rickshaw holders to find out as to whether they are operating it with the meters or not."

Further, the Court stated that, "So far as the process of installing the GPS in the auto-rickshaws in a composite manner is concerned, the respondent shall take further steps for the aforesaid act, so that with the application of GPS, even the passengers would be benefited."

In fine, the Court disposed the petition.

Saradha Ammal & Anr Vs. J. Sridhar [S. A. No. 302 of 2019]**Date of Judgment: 08.04.2022****Adverse Possession — Suit for Declaration of Title — Recovery of Possession**

The Hon'ble High Court while considering an issue of adverse possession held that, the claim of adverse possession requires all the three classic requirements to co-exists at the same time namely,

1. nec vi i.e., adequate in continuity;
2. nec clam i.e., adequate in publicity; and
3. nec pricario i.e., adverse to a competitor, in denial of title and his knowledge.

If the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that, but for due diligence he would have known it.

A person, who sets up a plea of adverse possession, must establish both possessions, which is peaceful, open and continuous.

A plea of adverse possession is founded on the acceptance that ownership of the property vests in another, against whom the claimant asserts a possession adverse to the title of the other.

The settled possession of trespasser is protected only till the time when he is dispossessed by the true owner, by having recourse to due process of law for re-acquiring possession over his property.

In fine, the Court allowed the Second Appeal.

Smt. Nagarathinam & Ors. Vs. Mr. K.R. Srinivasan (Died) & Ors.**[A.S.No.1 of 2011]****Date of Judgment: 09.03.2022****Section 6, Hindu Succession (Amendment) Act — Notional Partition — Ancestral Coparcenary — Division**

The Hon'ble High Court observed that, with the advent of the new enactment, the provisions of the substituted Section 6 of Hindu Succession Act, confers equal right to the daughters along with the son even in case of coparcenary ancestral property which has not been subjected to any disposition, division and alienation or partition effected by a decree of the Court.

The Court observed that, the division had come into effect prior to the Amendment of Section 6, Hindu Succession Act, 1956, and therefore, the property had lost the character of coparcenary property. Hence Section 6 of the Hindu Succession Act, 1956 has no application and the property ought to be divided as per Section 8 of Hindu Succession Act, 1956.

The plaintiff and the defendant being Class I heirs of the deceased who died intestate will be entitled to share the property equally among them and no advantage or additional share can be claimed by the plaintiff merely because of being a male heir.

The Court partly allowed the appeal suit holding that, the plea of notional partition on death is only a statutory fiction of partition created by proviso of Section 6, Hindu Succession Act, 1956 as originally enacted.

HIGH COURT – CRIMINAL CASES**Annamalai @ Prakash Vs. State rep. by Inspector of Police, Ariyankuppam
Police Station, Puducherry [Crl.A.No.689 of 2018]****Date of Judgment: 16-03-2022****Evidence of Injured witness**

The Hon'ble High Court decided a Criminal Appeal challenging the judgment and order of acquittal for an offence under Sections 302 and 324 of IPC. The Court delved into whether the Appellant was the perpetrator of the offence, and observed that, "when the witnesses know a person well, and identifies him as the person, who had mounted the attack, the name of that person does not assume much significance because it is common in our country for a person to assume a name at home and another name in his work place."

The Court observed that the legal maxim *Falsus in uno falsus in omnibus* would not apply in India, and that the trial Court had rightly applied the principle of "removal of the chaff from the grain" for appreciation of evidence. The Court observed that the evidence of injured witness deserved a higher pedestal, and cannot be disbelieved *in toto* just because their clothes did not have the deceased's bloodstain. The Court referred to the decision in *Bhajan Singh @ Harbhajan Singh & Ors. Vs. State of Haryana [(2011) 7 SCC 421]*, and observed that, "witnesses cannot be expected to work with a Swiss watch precision and remember the timing of the various events and tell them correctly six years later when they are examined as witnesses in the trial. There are bound to be inter se discrepancies in the testimony of witnesses, especially, injured witnesses because they would be in a state of trauma after the attack. Only if the witnesses were to speak like parrots, it will arouse the suspicion of the Court."

The Court found that there are no serious contradictions in the testimonies of PW1 and PW2. The Court held that there is no infirmity in the impugned judgment warranting interference, and thus dismissed the Appeal.

Ashraff Ali Vs. State Rep. by The Inspector of Police, All Women Police Station, Alangudi, Pudukkottai District [Cri.A.(MD)No.618 of 2019]

Date of Judgment: 13-04-2022

POCSO Act — Section 6 — Sentencing — Concealing identity of child

The Hon'ble High Court decided a Criminal Appeal challenging the sentence for life imprisonment imposed by the trial Court for an offence under Section 6, POCSO Act.

The Court found that the offence under Section 7, POCSO Act, had clearly been established. The Court observed that, "when the Court found that the child competent to depose to the facts and such evidence does not suffer from any tutoring, ... merely because there are some inconsistencies in the statements of the child before the Medical Officer, 164 Cr.P.C. statement and her substantive evidence, her evidence cannot be ignored. The fact remains that the child has consistently spoken about the sexual abuse committed by the accused."

The Court observed that presence or absence of injury cannot be a detrimental factor of sexual abuse. The Court observed that in the absence of rebuttal evidence, the presumption under Section 29 of the POCSO Act is mandated upon the Court. The Court further emphasised on Section 33(7), POCSO Act, which mandates the Special Court to conceal the identity of the child during trial, as the child's name has been typed in the deposition form without adhering to the mandatory provisions.

The Court laid emphasis on the social background of the survivor and observed that, "The mother of the child was under the apparent control of her mother-in-law and other family members, since her husband was working abroad. All these facts cannot be ignored all together. The study of child abuse also reveals that child abuse and sexual assault on the minor child are more by near relatives."

The Court partly allowed the Criminal Appeal, confirmed the conviction, and considering the advanced age of the Accused, and the fact that the offence had taken place prior to the 2018 amendment to the POCSO Act, modified the sentence, to 10 years rigorous imprisonment and a fine of Rs.1000/-.

**Devaraj Vs. The State Rep. By Sub-Inspector of Police, K-5, Peravallur
Police Station, Chennai [Cri.A.No.14 of 2021]**

Date of Judgment: 12-04-2022

Interested witness — Sections 498A and 306, IPC

The Hon'ble High Court decided on a Criminal Appeal challenging the judgment of conviction and sentence for an offence under Sections 498A and 306 of IPC.

The Court referred to the decision in *Ganapathi & Anr. Vs. State of Tamilnadu [2018 (5) SCC 549]*, and observed that merely because the witnesses are related to the deceased, their evidence cannot be discarded as of an interested witness. Though the prosecution witnesses are family members of the deceased, they are the only available witnesses to speak about the occurrence, since the occurrence took place inside the matrimonial home.

The Court found that the evidence given by the prosecution witnesses did not connect the accused with the offence under Section 498A, IPC, and that the document relied on by the prosecution shows that there is no question of abetment committed by the accused towards the deceased. The Court observed that the difference between cruelty under Section 498A, IPC and abetting suicide under Section 306, IPC is 'intention'. "Under Section 498-A IPC, cruelty committed by the husband or his relations drag the woman to commit suicide, while under Section 306 IPC, suicide is abetted and intended." The Court found that the evidence put forth by the prosecution witnesses did not show that the Appellant/Accused had any such intention.

The Court further found that the prosecution has not provided any reason for non-marking of the inquest report without which the cause of death cannot be determined.

The Court held that the prosecution has not proved the case, set aside the conviction and sentence imposed by the Trial Court, and set the accused at liberty. Thus, the Criminal Appeal was allowed.

I. Nisha Vs. State of Tamil Nadu and Ors. [H.C.P.(MD) No.1498 of 2021]**Date of Judgment: 11.04.2022**

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 - Rule 25, Criminal Rules of Practice, 2019

The Hon'ble High Court dealt with a Writ of Habeas Corpus wherein the detenu, aged about 52 years, who was detained at the Central Prison, Palayamkottai.

The detenu was detained by the respondent, holding him to be a "Goonda", under Section 2(f) of Tamil Nadu Act 14 of 1982. It was observed that several grounds were raised in this petition but, the main focus was on the ground that there was gross violation of procedural safeguards, which vitiated the detention. The Habeas Corpus petitions was opposed by the Additional Public Prosecutor contending that, there was delay in considering the representation and further contended that, no prejudice was caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

The Court allowed the Habeas Corpus Petition and observed that, the final report had been filed beyond the statutory period of 90 days, and that the delay is attributed to the non-taking on file the final reports by the respective Judicial Magistrate/Courts, leading to the accused in several heinous crimes to be enlarged on statutory bail. The Court also directed the police in future, to file all final reports On-line and in compliance with Rule 25 of the Criminal Rules of Practice, 2019. The Court further made it clear that, "the requirement of filing of charge sheet within the mandatory period will apply even in cases, where the accused have been detained under the Act 14 of 1982. ... Sub Rule 7 of Rule 25 of the Criminal Rules of Practice, 2019, makes it clear that the Magistrate of the Courts shall not return the final report on the ground that the above reports are not enclosed along with the final report." Further, the registry was directed to place this order before the Hon'ble Chief Justice to enable the Registry to issue appropriate Circulars to the Criminal Courts.

M. Bhaskaran Vs. The Chief Educational Officer & Ors.**[CrI.OP(MD).No.19063 of 2019]****Date of Judgment: 21-03-2022****Order of maintenance — Attachment of Salary**

The Hon'ble High Court decided a Criminal Appeal challenging an Order in a case for maintenance claim, directing attachment of salary.

The Court accepted the contention of the Respondent and observed that "mere pendency of revision cannot be considered as barring or preventing from passing orders executing the maintenance award. In the absence of any order staying the execution of the award of maintenance, proceeding of the petition filed under Section 128 Cr.P.C by the learned Magistrate cannot be found fault with."

The Court found that since the petition has been filed under Section 128, CrPC, the question of Order XXI Rule 48 of CPC does not arise.

The Court referred to the decision in *Mani Vs. Jaykumari [1998 (2) LW CrI. 498]* and *A. Gopalakrishnan Vs. G. Kalaiselvi & Ors. [CrI.R.C(MD)No.257 of 2018, dated 12.10.2018]* observed that when a person, who is ordered to pay maintenance, fails to comply with the order, he can either be arrested for non-compliance or his properties both movable and immovable including salary can be attached.

The Court held that the impugned order for attachment of salary is very much valid. Thus dismissed the petition as devoid of merits, and issued directions for expeditious disposal of the revision.

**Mangaiyarkarasi Vs. Inspector of Police, A. Pallipatti Police Station,
Dharmapuri District [Crl.A.No.495 of 2019]**

Date of Judgment: 21-03-2022

Section 306 CrPC — Abetment of Suicide — Section 107 – Indian Penal Code

The Hon'ble High Court decided a Criminal Appeal challenging the judgment of acquittal for an offence under Sections 306 and 323 of IPC.

The Court observed that, "in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. ... The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act. But, in this case, after such occurrence, the whereabouts of the deceased were not known to others for a period of 5 days. The evidence let in by the prosecution did not say about the whereabouts of the deceased and therefore, it cannot be said that the consumption of poison, is the direct result of the attack made by the accused."

The Court found that the contradictions available in the prosecution witnesses raise a doubt whether all the Accused attacked the deceased or not. The Court observed that, before setting aside a judgment of acquittal, it is necessary to see whether the judgment rendered by the Court below may result in grave miscarriage of justice or if it is patently illegal. The Court found that the necessary ingredients for abetment as per Section 107, IPC are not available at the case in hand. The Court applied the dictum of the Supreme Court in *Union of India Vs. Sepoy Pravat Kumar Behuria [(2019) 10 SCC 220]* and held that there is no patent illegality in the judgment of the trial Court.

Thus, the Court dismissed the Criminal Appeal.

Murugan @ Panni Murugan Vs. The State represented by The Sub Inspector of Police, Kombai Police Station, Theni District and Anr.

[CrI.O.P.(MD) No.4142 of 2022]

Date of Judgment: 06.04.2022

Section 482, CrPC — sentences passed on same offender in different case

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 Cr.P.C. praying this Hon'ble Court to direct the sentences passed by the trial court to run concurrently along with the sentence passed in another case.

The brief of the present case is that, the petitioner was involved in two different cases on two different occasions for both of which he was convicted by the trial court.

The Court relying on the decision in *Selvakumar Vs. The Inspector of Police, Seidhunganallur Police Station & Ors. [208-2-LW (CrI) 773]*, found that the sentences to undergo imprisonment passed on subsequent cases for the offence of same nature, shall run concurrently.

In fine, the petition was allowed and the sentences imposed on the petitioner in both the cases shall be run concurrently.

Raja & Ors. Vs. State rep. by The Inspector of Police, Erwadi Dargah Police Station, Ramanathapuram District [Cri.A.(MD)Nos.41 and 326 of 2020]

Date of Judgment: 06-04-2022

Framing of charges — Extra Judicial Confession

The Hon'ble High Court decided a Criminal Appeal challenging the conviction and sentence for offences involving murder and theft of jewels from the deceased. The Court observed that the alleged extra-judicial confession is highly doubtful, as P.W.1, the Village Administrative Officer had conducted preliminary enquiry by taking the first accused to the house of the deceased for ascertaining the alleged crime, thereafter, handed over the accused to the police by giving a complaint. The Court found that, "Such conduct of P.W.1 is against the normal human conduct. It is not domain of P.W.1, to conduct investigation to ascertain the facts."

The Court observed that, "presumption under Section 114(a) of Indian Evidence Act, 1872 cannot be applied in this case. To apply the presumption, it must be established that there was a theft, then the Court can presume that the accused, who is in possession of the stolen goods, soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

The Court found that there is no material to convict the accused persons, as the Prosecution had not explained the four-hour delay in the alleged extra judicial confession and FIR reaching the Court. The Court further found that the charges were not framed by the trial Court in accordance with the provisions under Chapter XVII, Section 212 of CrPC, and that the trial Court has framed the charges without putting the accused to notice of the particulars as to the time and place etc. "We, therefore, find that the trial Court was simply carried away by the alleged extra judicial confession without even proper appreciation." The Court stressed on the importance of a participative Sessions judge in a criminal trial. Thus, the Court allowed the Criminal Appeals, acquitted the Accused of the charges levelled against him, and set aside the conviction and sentence of the Sessions Court.

S.M.D. Mohamed Abdul Khader Vs. Muniswari [Crl.R.C(MD)No.954 of 2021]**Date of Judgment: 13.04.2022****Section 138, Negotiable Instruments Act**

The Hon'ble High Court decided a Criminal Revision Case pertaining to a case under Section 138 of the Negotiable Instruments Act.

The petitioner had contended that, on receipt of the statutory notice issued under Section 138, NI Act, the petitioner had sent reply notice and to rebut the evidence of the respondent, the petitioner necessarily has to examine the witnesses to disprove the case of the respondent. It was further submitted that the petitioner has right to lead his defence evidence by examining witnesses and the respondent has no right to object it except on the ground of vexatiousness.

The respondent had filed a counter-affidavit stating that the list of witnesses on the petitioner's side is the Auditor and family members of the accused to provide evidence relating to the income, assets and financial status of the accused and his family members.

The Court referred to the decision of the Supreme Court in *Tedhi Singh Vs. Narayan Dass Mahant [Crl.A.No.362 of 2022, dated 07.03.2022]* and observed that, "for the offence under Section 138 of the Negotiable Instruments Act, the accused can rebut the evidence of the respondent by cross-examination, by examining witnesses on the side of the petitioner and produce materials and documents to disprove the case of the respondent. In the case on hand, the petitioner had taken a specific stand that the respondent had no source of income to lend such a huge sum of Rs.8,00,000/- to the petitioner."

In fine, the Court held that, the petitioner can very well examine witnesses on his side to disprove the case of the respondent, and thus allowed the Criminal Revision Case.

Shivasankar Baba @ C.N. Sivasankaran Vs. State rep. by The Inspector of Police, CBCID, OCU-II, Egmore, Chennai [CrI.O.P.No.8582 of 2022]

Date of Judgment: 20.04.2022

Section 5, 6 - POSCO Act – 164 Statement

The Hon'ble High Court dealt with a Criminal Original Petition filed under Section 439 of CrPC seeking to enlarge the bail of the petitioner, who had been arrested and remanded in judicial custody for the offences punishable under Sections 376, 366-A, 506(I) IPC and Section 6, 10 and 17 of POCSO Act.

The brief of this case is that, the defacto complainant was subjected to aggravated penetrative sexual assault alleged to have occurred between the years 2013-2015 when she was a minor and a resident student in the hostel of the school run by the petitioner. The reason for the delay as stated in the FIR is that she feared the influence of the first petitioner and also the disgrace and hence did not disclose the matter to the outer world. Later when the defacto complainant learnt about the arrest of the first petitioner, she gained courage to narrate the sexual harassment and assault incidents that occurred 7 to 8 years ago.

The Court opined that the statement recorded under Section 164(5), Cr.P.C, can be considered both for corroboration and contradiction. The Court held that the petitioner is entitled for bail on the same condition imposed by the Supreme Court. Considering the apprehension of prosecution that the petitioner may flee from the country, the Court directed the petitioner to surrender his passport before the POCSO Court where the case against him is likely to be tried.

Further, the Court imposed the condition that, the Petitioner shall not leave the state of Tamil Nadu without prior intimation about his place of visit and dates to the Investigating Officer, and added that if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.
