

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII— PART 04 — APRIL 2023****

COMPENDIUM OF CASE LAWS



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SUPREME COURT –CIVIL CASES**Prem Kishore &Ors. Vs. Brahm Prakash &Ors. [C.A.No.1948 of 2013]****Date of Judgment: 29-03-2023****Code of Civil Procedure 1908 - Section 11 - Res Judicata - Guiding principles**

The Hon'ble Supreme Court, in a case related to eviction under the Delhi Rent Control Act, 1958, examined the principles of *res judicata*. The Apex Court explained that for *res judicata* to apply, the matter directly and substantially in issue in the subsequent suit must be the same as the one in the former suit, which was decided on merits and had attained finality. The Apex Court also listed several grounds on which a dismissal of the former suit would not be considered a decision on merits and, therefore, would not operate as *res judicata* in a subsequent suit.

The Apex Court opined that Rule 3 of Order VII of the Civil Procedure Code, which empowers the courts to decide a suit on merits in the absence of a party, should be used sparingly and only in exceptional cases. The Apex Court further held that physical presence of a party without preparedness to cooperate for the progress of the case serves no purpose and may be worse than absence. The Apex Court observed that there should be some materials for a decision on merits, even if the materials may not be considered as evidence in a technical sense.

Finally, the Apex Court held that an order closing the proceedings does not amount to a final decision of the suit under Order IX Rule 8 and Order XVII Rule 3 of the Civil Procedure Code, and hence, would not operate as *res judicata*.

Thus, the Apex Court allowed the civil appeal.



**SREI Multiple Asset Investment Trust Vision India Fund
Vs. Deccan Chronicle Marketeers &Ors. [C.A.No(S).1706 of 2023]**

Date of Judgment: 17-03-2023

Insolvency and Bankruptcy Code 2016

The present civil appeal is filed by the successful resolution applicant of the Deccan Chronical Holdings Ltd challenging the impugned order of the National Company Law Appellate Tribunal as to the modification/alteration of the approved resolution plan by the adjudicating authority.

The approved Resolution Plan, was supported by 81.39% of the Committee of Creditors voting, clearly indicates that the Corporate Debtor has an exclusive and perpetual right to use the brands "Deccan Chronicle" and "Andhra Bhoomi." However, it does not address the ownership rights over these trademarks/brands. Nonetheless, the adjudicating authority, while considering application I.A.No.155 of 2018, not only confirmed the exclusive right to use the trademarks "Deccan Chronicle" and "Andhra Bhoomi" but also declared that these trademarks belong to the Corporate Debtor/DCHL under its order dated 14th August 2019. This declaration, in our opinion, amounts to a modification or alteration of the approved Resolution Plan, which is clearly impermissible under the law. It is pertinent to note that the adjudicating authority's jurisdiction to review a resolution plan that is approved by a Committee of Creditors is based on their commercial wisdom. The Hon'ble Supreme Court, upon considering the matter, held that once the Resolution Plan is approved by the Committee of Creditors (CoC), no alterations or modifications are allowed. The approved plan must either be accepted or rejected, and any modifications made after the approval by the Committee of Creditors, based on its commercial judgment, cannot be subject to judicial review unless they are found to be non-compliant with the provisions of the Insolvency and Bankruptcy Code (IBC).

In result, the Supreme Court dismissed the appeal.

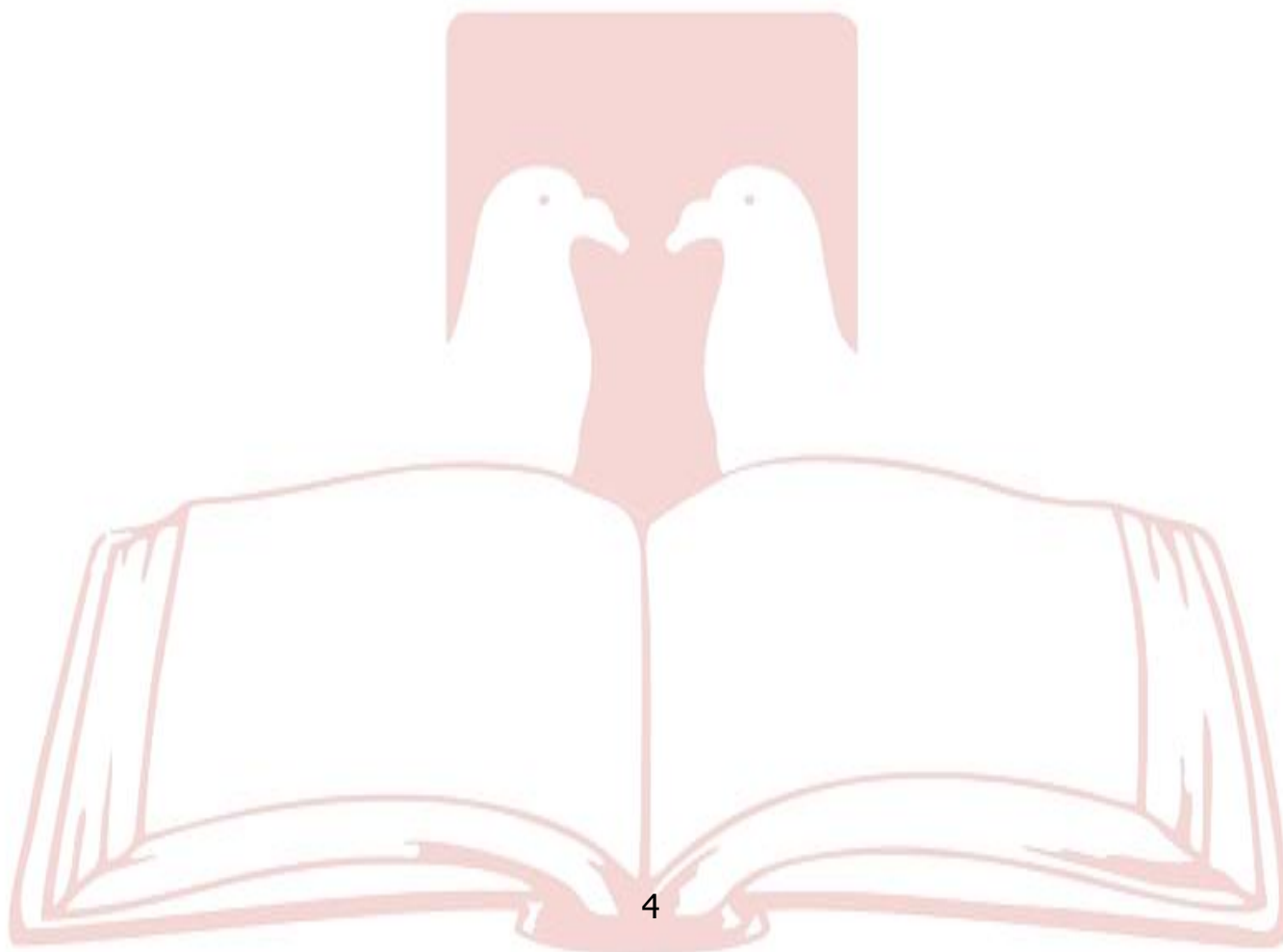
State Bank of India &Ors. Vs. Rajesh Agarwal &Ors. [C.A.No.7300 of 2022]**Date of Judgment: 27-03-2023****Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016**

The Hon'ble Supreme Court of India in State Bank of India & Ors. Vs. Rajesh Agarwal & Ors., has conclusively decided on the question of whether the principles of natural justice should be read into the provisions of the Reserve Bank of India ("RBI") (Fraud Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 ("Master Directions on Frauds"). The question, which has been pending before various High Courts and was raised before the Hon'ble Supreme Court in numerous appeals, has now been answered in the affirmative by the Hon'ble Supreme Court by holding that the principles of natural justice, particularly the rule of audi alteram partem, has to be necessarily read into the Master directions on Frauds to save it from vice of arbitrariness as classification of an account as fraud entails serious civil consequences for the borrowers. The Supreme Court upheld the judgment of the High Court, stating that borrowers must be given an opportunity to be heard before their accounts are classified as fraud under the Master Directions on Frauds. The present appeal leading to the consortium of lenders initiating a forensic audit of the borrower. Thereafter, based on the result of the forensic audit, the consortium of lenders of the borrower had declared the account of the borrower as fraud, without providing an opportunity of hearing to the borrower or intimating the borrower. Aggrieved by such fraud classification, without consultation, the borrowers moved various High Courts, challenging the constitutionality of the Master Directions on Frauds. The decision by the High Courts came to be challenged before the Hon'ble Supreme Court by way of the now decided appeals.

It was clear that the principles of natural justice are not applicable at the stage of reporting a criminal offense and the rule of audi alteram partem applies to administrative actions and under the Master directions on Frauds, the process of

forming an informed opinion is administrative in nature. It is an established position of law that any action that entails civil consequences must be in accordance with the principles of natural justice.

The Court held that the principles of natural justice must be read into the provisions of the Master directions on Frauds. The RBI and lender banks must provide an opportunity of a hearing to the borrowers before action to classify their account as frauds is initiated. In the result, the Court upheld the judgment and dismissed the civil appeals.



SUPREME COURT - CRIMINAL CASES**Anant Thanur Karmuse Vs. State of Maharashtra &Ors. [Crl.A.No.13 of 2023]****Date of Judgment: 24-02-2023****Criminal Procedure**

The Hon'ble Supreme Court considered the original writ petitioner's (victim) appeal seeking transfer of the investigation to Central Bureau of Investigation or to any other agency to investigate / re-investigate. The High Court had dismissed the Writ Petition.

The Apex Court observed that, the right to a fair investigation and trial is fundamental for the victim. Therefore, the mere submission of a charge sheet and framing of charges cannot prevent further investigation or a new investigation if the facts require it. The court is not interested in the position taken by the state authorities at that time or now. It is worth noting that at the time when the state police agency took a particular position, accused No. 13 was in power and was a sitting minister. The court's goal should be to ensure a fair investigation and trial.

The Apex Court held that, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge sheet and framing of the charges cannot be an impediment in ordering further investigation / re-investigation / de novo investigation, if the facts so warrant.

Thus, the Apex Court partly allowed the Criminal Appeal.

[Balu Sudam Khalde & Anr. Vs. State of Maharashtra \[Crl.A.No.1910 of 2010\]](#)

Date of Judgment: 29-03-2023

Evidence Law

The Hon'ble Supreme Court considered an appeal by two convicted persons against the judgment of the High Court of Judicature at Bombay. The appellants were found guilty of the offence under Section 302 of the Indian Penal Code, 1860, and were sentenced to life imprisonment and a fine.

The Apex Court observed that, the defense counsel's suggestions made to a witness and their reply can be relied upon by the court along with other evidence on record to determine the guilt of the accused. The defense counsel's incriminating suggestions and admissions would bind the accused, and their concession or admission of a fact would be binding, except for the point of law. The Apex court also noted that, the evidence of the injured witness has greater evidentiary value, and their statements should not be discarded lightly, particularly in cases where dangerous weapons were used on vital parts of the body.

The Apex Court, stated that the rule embodied in Section 6 is known as the rule of res gestae and explained its significance. The court clarified that if a specific question is put to a witness by way of a suggestion indicative of the exercise of the right of private defense, the court would well be justified in taking into consideration such suggestion. The court also highlighted that the primary object of cross-examination is to find out the truth on record and help the court in knowing the truth of the case. The Apex Court further explained the conditions that must be satisfied to bring a matter within Exception 4 to Section 300 of the IPC.

Finally, the Apex Court dismissing the Criminal Appeal held that, suggestions by themselves are not sufficient to hold the accused guilty, and they need to be supported by other reliable evidence.

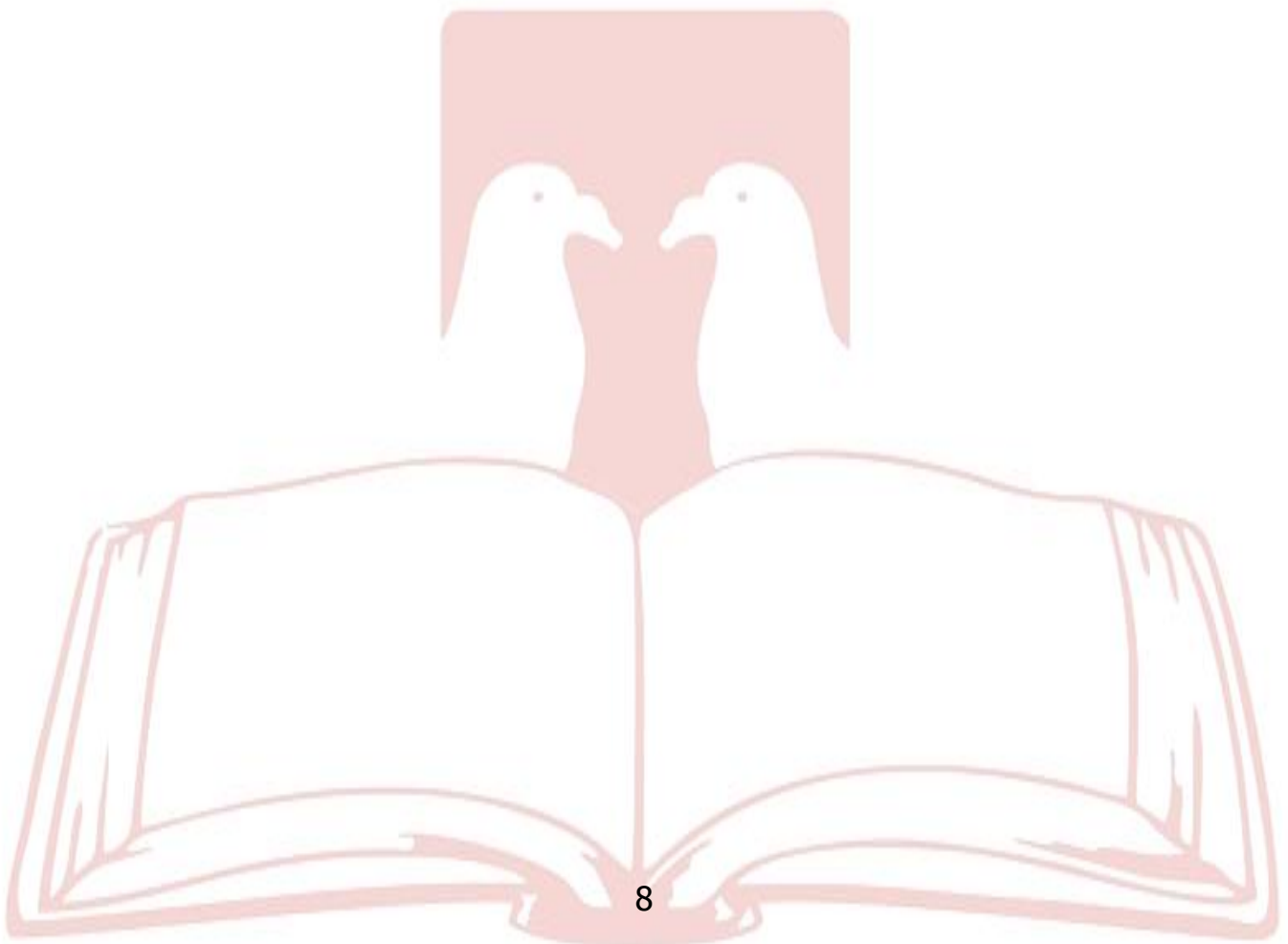
Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi) [Crl.A.No.1669 of 2009]**Date of Judgment: 17-03-2023****Prevention of Corruption Act, 1988 - Sections 7 and 13**

The Supreme Court, after considering the Constitution Bench ruling in the case of Neeraj Dutta Vs. State [...], emphasized that the requirement of proof beyond reasonable doubt for a conviction under the Act is not weakened by the fact that direct evidence of demand or acceptance of bribe is not necessary. The Court stated that the allegation of demand and acceptance of gratification by a public servant must be established with a high degree of certainty. The Constitution Bench's decision did not undermine this fundamental requirement of proof beyond reasonable doubt. The Constitution Bench specifically addressed the issue of how the demand can be proven, stating that it can be established not only through direct oral or documentary evidence but also through circumstantial evidence. However, when relying on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance that leads to the conclusion of guilt. These established facts must be consistent with the hypothesis that the accused made a demand for gratification. Additionally, when the allegation involves the demand and acceptance of gratification as a motive or reward for performing or refraining from an official act, the fact that such demand and acceptance were for a motive or reward can be proved by invoking the presumption under Section 20, provided that the basic allegations of the demand and acceptance are proven.

In the present case, the Supreme Court held that the testimony of PW-5 only mentioned that the appellant asked the complainant for papers regarding the electricity meter and Rs.10,000 while stating that she was in a hurry. However, there was no specific demand made by the appellant for gratification in exchange for providing the electricity meter, especially in the presence of the shadow witness. PW-5 did not state that there was any discussion between the appellant and the complainant in his presence that could lead to the inference of a demand made by the appellant. Furthermore, PW-5 had no knowledge of the events that occurred

between the complainant and the appellant prior to this incident. It was also acknowledged that PW-5 had no personal knowledge regarding the purpose for which the cash was allegedly handed over by the complainant to the appellant.

Based on these grounds, the Supreme Court allowed the appeal.



Shankar Vs. State of Maharashtra [Crl.A.No.954 & 955 of 2011]**Date of Judgment: 15-03-2023****Indian Penal Code, 1860 - Sections 302 r/w. 34**

The Hon'ble Supreme Court, upon consideration, made the following observation: In cases where circumstantial evidence is the basis, and the 'last seen' theory is relied upon as a crucial link in the chain of circumstances, it is imperative to establish conclusive evidence regarding the timing when the deceased was last observed with the accused. Particularly when this timing is in close proximity to the discovery of the dead body, the burden of proving innocence falls on the accused.

The Apex Court, based on a meticulous examination of the testimonies provided by PW-8 (Chintaman) and PW-10, was compelled to cast doubt on the accuracy of the version presented by PW-8, especially concerning the appellants in this case. Apex Court held that after careful scrutiny of the evidence presented by PW-8 and PW-10, it is concluded that both the Trial Court and the High Court failed to adequately fulfill their duty, taking into account the fact that the prosecution solely relies on circumstantial evidence to establish the guilt of the accused and the preceding discussion reveals that the evidence provided by PW-10 not only fails to support the testimony of PW-8 but also casts a shadow of doubt upon it and the Hon'ble High Court erred in affirming that the evidence of PW-8 receives corroboration from the testimony of PW-10 in relation to the circumstantial evidence of the 'last seen' theory and the High Court's agreement with the Trial Court's conclusion that the prosecution has definitively proven that the deceased was last observed with the accused is mistaken.

Apex Court allowed the appeal concluding that from the remaining circumstances upon which the prosecution relied and were deemed proven by the lower courts do not unequivocally indicate the guilt of the appellants.

**Sundar @ Sundarrajan Vs. State by Inspector of Police [Rev.Pet.(Crl.)
Nos.159-160 of 2013 in Crl.A.Nos.300-301 of 2011]**

Date of Judgment: 21-03.2023

Death Penalty

The Hon'ble Supreme Court, after careful consideration, made the following observation: Although the committed crime is severe and unforgivable, the application of the 'rarest of rare' doctrine necessitates that the death sentence should not be imposed solely based on the gravity of the offense, but rather only if there is no possibility of reforming the criminal.

The Apex Court held that the intentional killing of the only male child has profound consequences for the parents of the deceased. In such circumstances, it is irrelevant and should not matter for a constitutional court whether the child was male or female. The act of murder remains equally tragic, and courts should refrain from perpetuating the notion that only a male child contributes to the family lineage or is capable of supporting parents in old age. Making such remarks inadvertently reinforces patriarchal value judgments that courts should avoid regardless of the context.

The state has an equal responsibility to present all relevant materials and circumstances on the record that pertain to the likelihood of reform. Many such materials and aspects are within the knowledge of the state, which has had the custody of the accused both before and after the conviction. Moreover, the court cannot remain a passive bystander in this process. The court's process and powers may be utilized to ensure that such material is made available to form a fair sentencing decision regarding the probability of reform.

Consequently, the appeal is allowed.

HIGH COURT - CIVIL CASES**Arulmigu Kalasalingam College of Education Rep. by the Secretary
Dr.K.Sridharan Vs. The Appeal Committee, National Council For Teacher
Education, Rep. by its Chairperson [W.P(MD).No.21747 of 2022]****Date of Judgment: 12-04-2023**

The Madras High Court addressed a case concerning a college that admitted students without recognition, affiliation, or authority. The court expressed astonishment at how the college could collect fees from students without a clear conscience. The college was offering a B.Ed. course, which trains students to become teachers, emphasizing the importance of upholding moral ethics in such a profession. However, the petitioner had violated these ethics.

This Court referred to Section 17(4) of the National Council for Teacher Education Act, 1993, and pointed out that if a college grants a degree during a period when it lacks recognition or affiliation, that degree cannot be considered a valid qualification for employment in government institutions or educational bodies. The petitioner, therefore, should have been aware of these rules but still admitted 100 students in 2021.

The court held that the petitioner's primary objective was to collect money from unsuspecting students, as evidenced by the enrichment of their bank account through student fees. Thus, the petitioner was fighting for his or her own interests rather than the students' welfare. If they were genuinely concerned, they would not have admitted the students in the first place.

In result, the court dismissed the writ petition.

G. Lakshmi &Anr. Vs. U. Saraswathi [O.S.A.No.121 of 2017]**Date of Judgment: 13-04-2023**

The Hon'ble High Court decided an Original Side Appeal on the following issues:

[1] Whether the Will has been duly proved in the manner known to law, satisfying the requirements of Section 63(c), Indian Succession Act, 1925 r/w Section 68 of Indian Evidence Act, 1872?

[2] Whether the appellants can claim right to the property taking shelter under a benami transaction and whether the Will is hit by the provisions of Benami Transactions Prohibition Act, 1988?

[3] Whether there are any suspicious circumstances surrounding the execution of the Will, in order for the Court to come to a conclusion that the Will is not free and genuine?

The High Court referred to Order XXV Rule 4 and Rule 5, and observed that merely because the affidavit of attesting witness filed along with the application for probate at the first instance has not been exhibited during trial it cannot be a ground to deny relief to the Appellants.

The High Court observed that "normally, registration of a Will does not lend any extra credence and due execution of the Will has to be necessarily proved whether the Will is registered or not, whenever there is a contest. However, in a case where it is specifically alleged that signatures were obtained from the testatrix in blank papers and the same were used to bring about the Will, the factum of registration of the Will assumes relevance."

The High Court referred to Sec.114, Evidence Act, and found that the Will had indeed been executed by the testatrix in the presence of two attesting witnesses viz., the second appellant and the respondent, and later registered before the Joint Sub Registrar. The High Court found that it was unable to believe the version of the Respondent that signatures available in the blank papers were used to fabricate the Will.

The mere fact that the Will was executed on a particular date and registered subsequently on a different date would not give rise to a suspicion to invalidate the genuineness of the Will itself. Equally, it is not required that the same witnesses who attested the execution of the Will should alone go for registration of the Will and sign the document before the Sub Registrar concerned as identifying witnesses.

The evidence of the attesting witnesses cannot be expected to be given with arithmetical precision. The fact that evidence is being given before the Court after several years after the execution of the Will should also have to be remembered by the Court while assessing the evidence adduced by the parties.

The High Court applied the ratio of the decisions in *Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta &Anr. [AIR 1955 SC 363]* and *M.S. Thanigachalam Pillai Vs. Rukmani Ammal &Ors. [AIR 1989 Madras 99]*, and held that the evidence of P.W.1, one of the attestors, coupled with the evidence of R.W.1, the other attestor satisfies the requirement of Section 63 of the Indian Succession Act.

This Court finds and holds that Ex.P1- Will has been duly executed and attested and the proof required to be adduced U/s. 63(c) of the Indian Succession Act, 1925 r/w. Section 68 of the Indian Evidence Act, 1872 has been satisfactorily complied with.

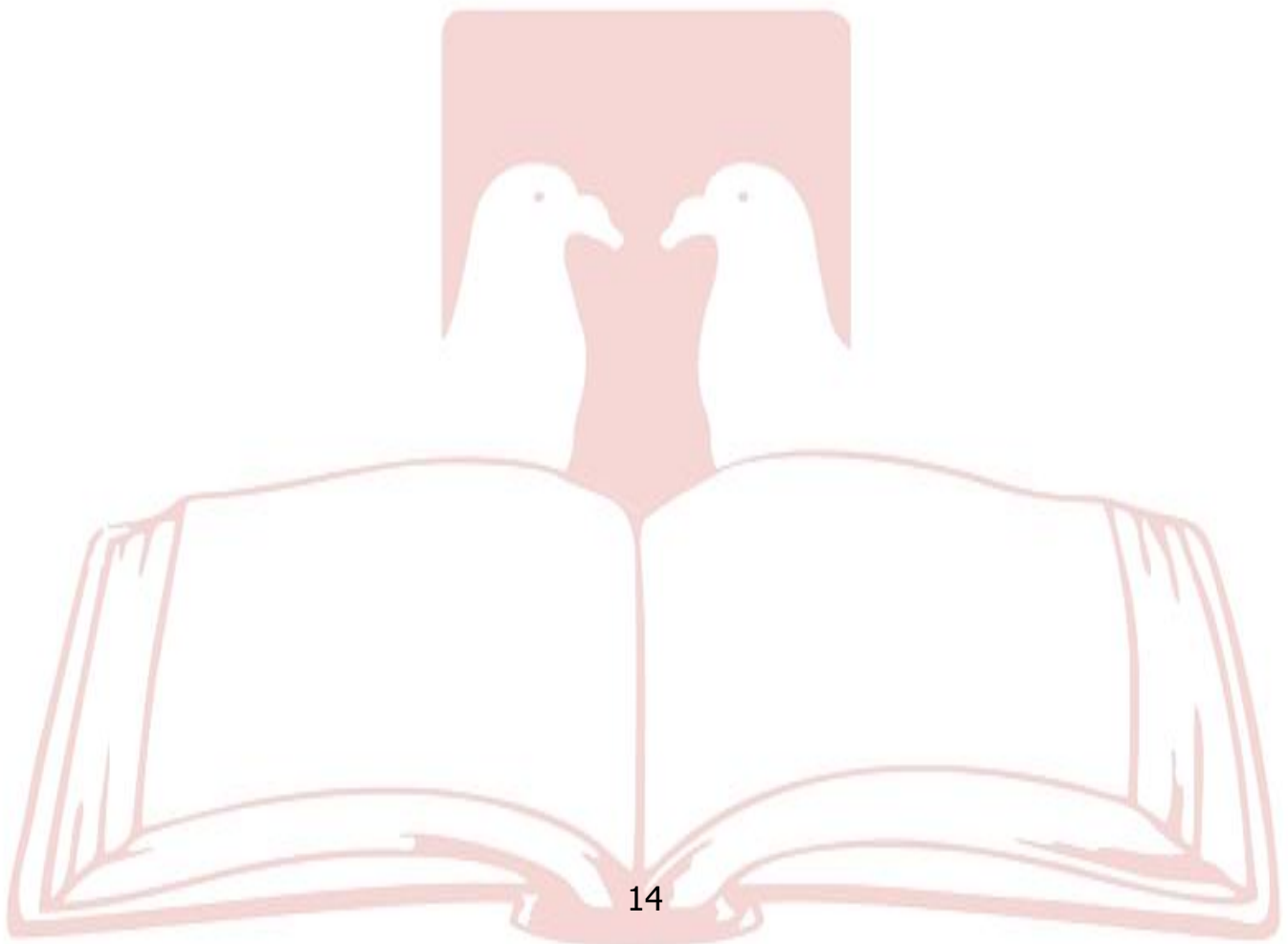
On the second issue, the High Court referred to Sections 3 and 4, Benami Transactions (Prohibition) Act, 1988, and reiterated that the Act would apply prospectively only, and not retrospectively. In the instant case, the purchase of the property by the father of the appellants in the name of the testatrix is admittedly well before the Benami Transactions Prohibition Act, 1988, came into force. Moreover, under the Will, the testatrix has only confirmed that the property was purchased by her brother and thereby bequeathed the same to him. In such circumstances, the prohibition to claim right of title under the provisions of Benami Transactions Prohibition Act, 1988, would not come into play at all.

On the third issue, the High Court observed that suspicious circumstances must be surrounding the execution of the Will, and not regarding something that happened

much later. The High Court referred to Sections 27 and 40, Registration Act, 1908, and emphasised that there is no time limit for registration of a Will.

“Suspicious circumstances” is not defined under the Indian Succession Act, 1925. There can be no straight jacket formula to say what the suspicious circumstances are. Courts have to be very cautious in dealing with the doubts cast by the Caveator on due execution of the Will.”

Thus, the High Court allowed the Original Side Appeal.



Jayaraman T.M Vs. The National Commission for Scheduled Castes and Ors. [W.P.No.2530 of 2023]

Date of Judgment: 23.03.2023

Petition challenging order passed by National Commission for Scheduled Castes

The Hon'ble Madras High Court in this present case dealt with a petition filed by the petitioner challenging an order passed by the National Commission for Scheduled Castes, which had injuncted the Hindu Religious and Charitable Endowment Department from taking any further action in respect to a land belonging to the Arulmigu Sakiyamman Temple.

The brief facts of this case is that, Respondent No.3 filed a complaint with the commission alleging that the department had cut the electricity supply to his land due to discrimination. The commission had made the impugned order in this matter. However, the petitioner informed the Court that the Respondent No.3 had encroached upon the temple property and that notices were issued to 11 persons, including Respondent 3.

The Court noted that the Commission had not followed due procedure and thus its order suffered from infirmity. Further, the High Court also reiterated that the National Commission for Scheduled Caste does not have the power to grant temporary or permanent injunction, even though it enjoys the powers of a civil court under Article 338(8) of the Constitution.

In result, the Court set aside the order passed by the commission and further directed Respondent No.3 to pay a cost of Rs 2000 to the Executing Officer of the temple for misusing the legal process.

K. Marimuthu Vs. The Secretary to Government, Government of India
[W.P.No.13832 of 2013]

Date of Judgment: 31-03-2023

Right to Be Considered For Empanelment In Nationalised Banks

The Hon'ble Madras High Court addressed the issue of whether the right of lawyers to be considered for empanelment in nationalized banks is a fundamental right. The court recognized that the right to be considered for bank appointment or empanelment is indeed a fundamental right of citizens. The existing procedures, however, are preventing deserving candidates from participating in the empanelment process, thus denying them their basic right. The court emphasized that granting authorities discretion without transparency and a defined procedure for equal opportunity would result in corruption, favoritism, and nepotism. Lawyers with influential connections are currently able to manipulate competent authorities, leaving others without the opportunity for bank empanelment. This situation not only violates the constitution but also infringes upon the fundamental rights of all legal practitioners who are citizens. As nationalized banks and public sector banks are considered public institutions falling under the definition of "State" in the Indian Constitution, they cannot evade their responsibility to comply with the mandatory principles of equal opportunity. Consequently, the court disposed of the writ petition.

**Neyatitus Vs. The Regional Passport Officer, Regional Passport Office,
Madurai [W.P(MD)No.2421 of 2023]**
Date of Judgment: 05-04-2023

Refuse to issue passport – Father Sri Lankan refugee – Mother Indian Citizen

The Madras High Court directed the Regional Passport Authority to process the application of a man who had applied for an Indian passport, even though his birth certificate identified him as a Sri Lankan refugee. The Court noted that although the petitioner's father was a Sri Lankan refugee, his mother was an Indian citizen, and therefore the petitioner was eligible for an Indian passport. The Court criticized the patriarchal assumption that the petitioner would take his father's nationality, and directed the authorities to process his application within three weeks.

The Court also explained the various International Frameworks that cover the treatment of refugees and cited Section 3(1)(b) of the Citizenship Act 1955, which states that any person born in India on or after July 1, 1987, and whose parent is an Indian citizen at the time of their birth is a citizen of India by birth. The petitioner was born before the cut-off date and his mother was an Indian citizen, fulfilling the statutory requirements.

The Court observed that the notice issued by the authorities was erroneous, but attributed the mistake to the petitioner's birth certificate identifying him as a Sri Lankan refugee. The Court emphasized the need for more comprehensive laws related to refugees, as Parliament had not yet enacted any such laws. The Court also cited various precedents in which the Apex Court and other High Courts have actively come forward to grant relief to refugees. In conclusion, the Madras High Court directed the authorities to issue an Indian passport to the petitioner.

**P. Cheran Vs. M/s. Gemini Industries & Imaging Limited [Arb.O.P
(Com.Div.) No.286 of 2022]**

Date of Judgment: 28.03.2023

The Hon'ble High Court dealt with Arbitration Petition filed by the petitioner who had availed a loan from the respondent, and after a dispute arose between them, the respondent invoked the arbitration clause and an *ex parte* arbitral award was passed in its favour. The petitioner challenged the award under Section 34 of the A&C Act before the Madras High Court, contending that the unilateral appointment of the arbitrator was null and void. The respondent argued that since the petitioner had not challenged the appointment before the arbitrator under Section 13, the petitioner was not entitled to challenge the award under Section 34 on the said ground.

The Madras High Court in this case held that if an arbitrator's appointment violates the provisions of the Arbitration and Conciliation Act, 1996 (A&C Act), a party is entitled to challenge it at any stage. The Court held that if the appointment of the arbitrator is improper and impermissible under Section 12(5), the arbitration proceedings would be vitiated from the stage of the arbitrator's appointment. The Court ruled that the appointment of an arbitrator unilaterally by one of the parties is ineligible by operation of law, according to the Supreme Court's decision in Perkins Eastman Architects DPC Vs. HSCC (India) Ltd, 2019 SCC OnLine SC 1517.

The Court further noted that if a person is ineligible to be an arbitrator, he is also ineligible to nominate an arbitrator. Section 12(5) of the A&C Act specifies that any person whose relationship with the parties or counsel or the subject-matter of the dispute falls under any of the categories mentioned in Schedule VII shall be ineligible to be appointed as an arbitrator. The Court concluded that even if there is any participation by the petitioner in the arbitral proceedings, they would still have the right to challenge the violation of the provisions of Section 12(5) of the Act under Section 34 of the Act.

Prema &Ors. Vs. Indrani Ammal &Ors. [A.S.No.771 of 2014]**Date of Judgment: 27-03-2023****Headnote —**

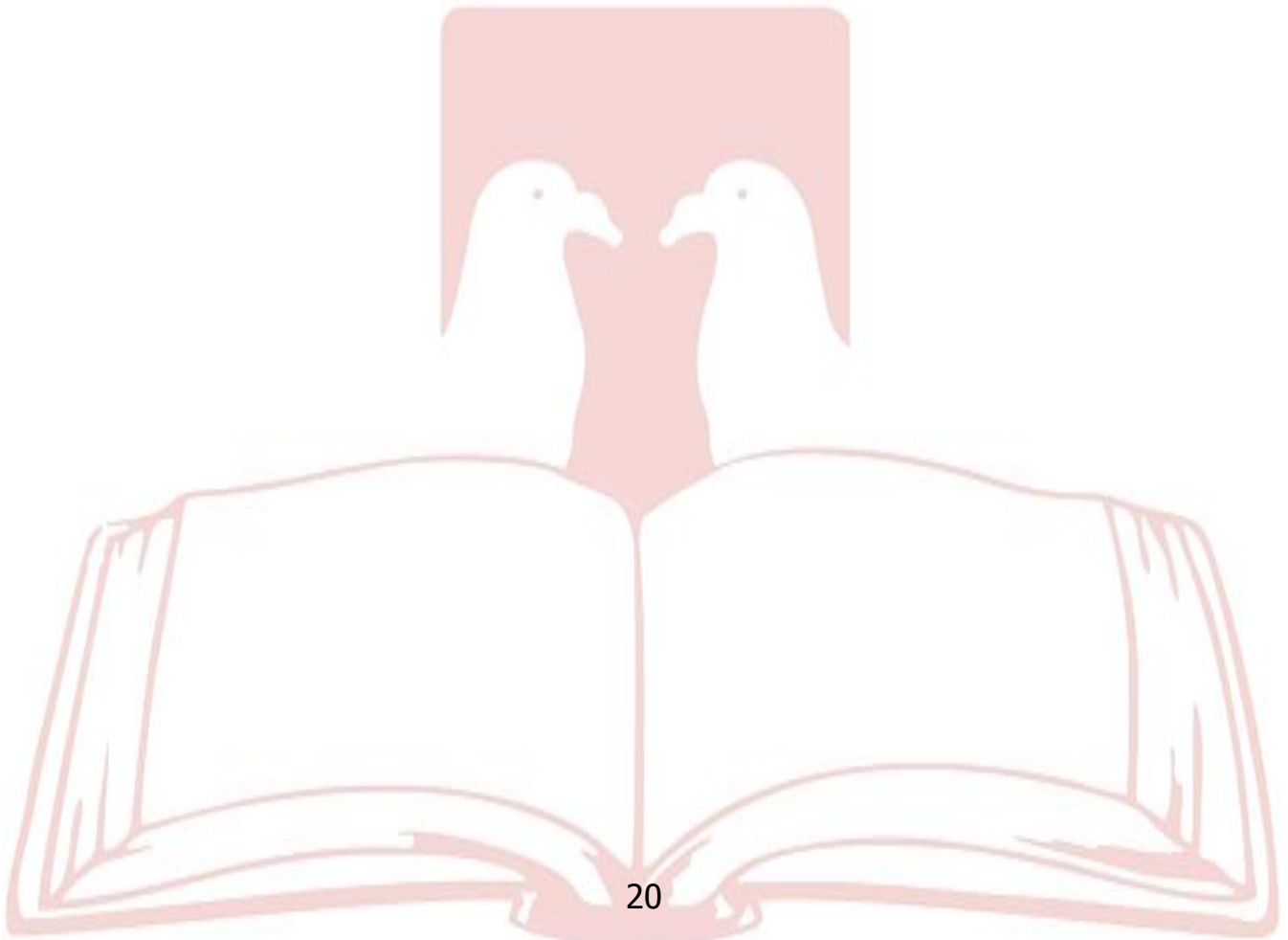
The Hon'ble High Court decided an Appeal Suit arising from a suit for partition. The High Court observed that the dismissal of the Application filed by the Plaintiffs in the previous suit filed for specific performance by 4th Defendant against Defendants 1 to 3 cannot be relied upon to contend that the plaintiff have no right over the suit properties.

The trial Court failed to see that this Court dismissed the Revision Petition filed by the Plaintiffs only on the ground that they are not parties to the Agreement of Sale and that the sale agreement is not binding on the plaintiffs. This Court also gave liberty to the Plaintiffs to file suit for partition to establish their right. In such circumstances, the order that was passed in the suit for specific performance, dismissing the petition filed by the Plaintiffs to implead them as necessary parties cannot be cited as reason to dismiss the suit for partition. Since the independent right of Plaintiffs has been recognised by this Court by holding that the Agreement of Sale is not binding on the Plaintiffs, the right of Plaintiffs to file suit for partition is preserved. The trial Court has committed a serious error in dismissing the suit relying upon the dismissal of previous application filed by the Plaintiffs to implead them as parties.

An Application under Section 47 of C.P.C. can be filed only by a person who is a party to the suit. Application under Section 47, C.P.C. can be filed questioning the execution, discharge or satisfaction of the decree either on the ground of want of jurisdiction or on any other ground and the Court on the application shall decide all questions arising between the parties to the suit in which the decree was passed, or their representatives. Section 47 of C.P.C. without any ambiguity indicate that an application can be filed only by the party to the suit or their representatives thereto relating to the execution, discharge or satisfaction of the decree. The application filed by the Petitioner was dismissed only by holding that the Appellants who are not

parties to the earlier suit for Specific Performance, cannot maintain a petition under Section 47 of C.P.C. Therefore, the dismissal of the appellants application filed to declare the nullity of the decree passed in O.S.No.41 of 2006 cannot stand in the way of plaintiffs establishing their right to equal share in the suit 1st Schedule property which is the absolute property of Plaintiffs' father. The finding of the trial Court rejecting the Plaintiffs right to equal share in the property of their father is arbitrary, patently illegal and perverse.

The High Court allowed the Appeal Suit and set aside the Decree of the lower court in the Original Suit and decreed the same on the file of the Additional District and Sessions Court.



Susila and Ors. Vs. S. Thirumalai and Ors. [C.M.A(MD)No.681 of 2019]**Date of Judgment: 10-04-2023****Motor Vehicles Act – Compensation to second wife**

The Madras High Court upheld the compensation awarded to the second wife of a man who died in a road accident, stating that for claiming compensation under Section 166(1) of the Motor Vehicles Act, the establishment of loss of dependency was enough. The present appeal was filed by the first wife of the deceased and children born through the first wife.

The Court emphasized that the entitlement to compensation is based on dependency, and a legal heir who was not dependent on the deceased would not be entitled for compensation. It was further noted that, the Motor Vehicles Act is a benevolent legislation aimed at providing monetary relief to victims, and thus calls for a liberal interpretation to serve its real purpose. The Hon'ble High Court observed that according to various judgments of the Supreme Court and high courts the right to file a claim petition is not restricted only to legal heirs but extends to any dependent who has suffered due to the death.

The Court in this case held that the second wife and her son were dependent upon the deceased at the time of his death and therefore are entitled to compensation, even though the second marriage took place during the subsistence of the first marriage. The court also modified the order to award compensation to the children born through the first wife. The Court also added that the present award would not confer any right on the second wife for claiming a share in the property of the deceased, and the same had to be independently established according to law.

The Idol of Sri Renganathaswamy, Srirengam Vs. J. Sriram &Ors.
[A.S(MD)No.140 of 2014]

Date of Judgment: 13.04.2023

The Hon'ble High Court decided an Appeal Suit challenging the judgment and consolidated decree comprising the dismissal of the suit filed by the temple for recovery of properties, and for declaring the alienation made by the first respondent in favour of the second and third respondents as illegal.

The High Court referred to *Dhaneshwarbuwa Guru Purshottambuwa Vs. Charity Commissioner reported in [(1976) 2 SCC 417]*, and observed that the 'Vyvasthathiram' was characterised with the deed of nomination.

To determine the intention of the executant, the document must be read as a whole; to ascertain his motivation for dedication of the charity; to ascertain the motivation of the executant, it must be the duty of the Court to sit in the armchair of executant. The Court must not only consider the meaning of words mentioned in the document in the natural sense but also take the circumstances under which it had been coined with help of the status of the party and his trained conveyance in drafting the deed in question.

The High Court observed that it is clear from the contents of the document and also from subsequent conduct and other material circumstance there was an absolute dedication with clear divestiture of property to the temple for the 'Dharmam'. The High Court found that the trial Court had erroneously held that there was no absolute dedication and the title was vested with the grandsons of the executant.

Regarding the aspect of income distribution, the High Court held that As per the march of law, the deed which provided for a charge on properties for payment of income amount to a divestment as held by the Hon'ble Supreme Court. The High Court referred to *M.R. Goda Rao Sahib Vs. State of Madras [AIR 1966 SC 653]*, *M.J. Thulasiraman Vs. Hindu Religious & Charitable Endowment Admn. [(2019) 8 SCC*

689] and Sri Renganathaswamy Vs. P.K. Thopulan Chettiar, Ramanuja KoodamAnnandhana Trust [2020 (17) SCC 96].

The High Court held that on scanning of the various parts of Ex.A6 VyvasthaPathram, it is clear that schedule of properties are given; various Poojas and charities (Dharmam) have mentioned; executant clearly obligated to utilize the whole income with complete dedication for religious purpose without any ambiguity of divestiture of title to a temple and complete denouncement of his title over the property. So, in all aspects, acceptance of the case of the first respondent by the court below that there was no divestiture of ownership with temple authority and the utilisation of money alone dedicated without divestment and grandsons got title through Ex.A6 and devolved on first respondent by inheritance is erroneous and the same was not in consonance with the principle laid down the Hon'ble Supreme Court stated above.

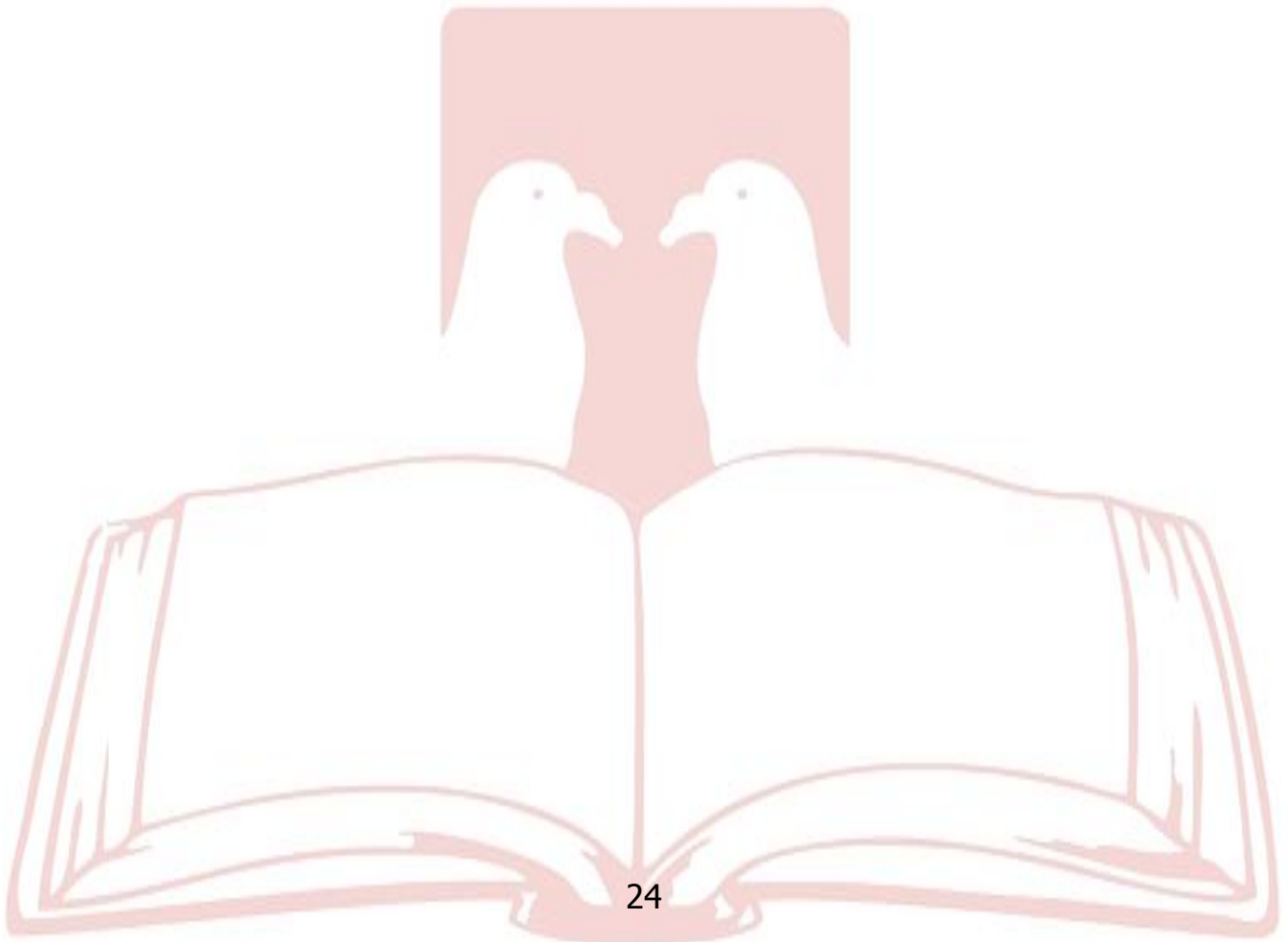
The High Court found that the finding of the court below that only charge has been created is liable to be set-aside and that as sequel, the 1st respondent is not entitled to encumber the property in any manner.

On the issue whether the compromise decree is valid and if so, whether it conferred any right upon the first respondent to deal the same, The High Court referred to S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs. &Ors. [1994 (1) LW 21], and found that the decree is null and void and the same was not binding on the temple authority and the sale deed executed on the basis of the invalid decree is also illegal and in result, both decree as well as sale deeds are liable to be cancelled as prayed by the temple authority.

The High Court found that since the 2nd and 3rd respondents are not bonafide purchasers and their purchase are fictitious one and their possession is illegal and they are enjoying the properties on the basis of the fraudulent sale deed, they are bound to account for their fruits of enjoyment over the suit property from the date of sale deed onwards. Further, the first respondent was also jointly and severally

liable to pay the mesne profit, for doing mischief in respect of the suit property without any authority.

Thus, the High Court allowed the Appeal Suit.



**The Management, Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd. Vs. The Presiding Officer, Labour Court, Cuddalore
[W.A. No. 1536 of 2022]**

Date of Judgment: 06-04-2023

Industrial Disputes Act, 1947 [ID Act] — dismissal of employee during pendency of industrial dispute

The Hon'ble High Court decided a Writ Appeal arising from an industrial dispute concerning the dismissal of an employee. The High Court observed that it is seen that prior to the date of dismissal of the employee, an industrial dispute between the workers of the Tamil Nadu State Transport Corporation and the Management was pending before the Commissioner of Labour Welfare.

The High Court observed that if no approval application is filed, the employer cannot be given a premium to allow the order of dismissal to stand when he has acted contrary to the provisions of ID Act. The High Court further observed that the employee, instead of filing an application claiming wages under Section 33(C)(2) of I.D. Act and also for recovery of the undisputed amount by filing an application under Section 33(C)(1) of ID Act, 1947 in the light of the judgment of the Hon'ble Apex Court in M/s. FabrilGasosa Vs. Labour Commissioner &Ors. [(1997) 3 SCC 150], raised an industrial dispute which was taken up by the Labour Court, and an award was passed directing the employee to be reinstated in service with backwages and continuity of service. The learned Single Judge has rightly confirmed the award of the Labour Court as pre-approval, which is a mandatory requirement has not been complied with by the Management.

The High Court referred to Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma &Ors. [(2002) 2 SCC 244], and observed that there is no need for an employee to raise an industrial dispute questioning the dismissal order when an application under Section 33(2)(b) of ID Act, 1947 is rejected or withdrawn by the employer and the employee is deemed to be in service.

The High Court found that once the Strike Notice under Section 22, ID Act, 1947 is received by the Conciliation Officer in terms of Section 20, ID Act, conciliation is deemed to have commenced.

The High Court referred to Section 2(n), First Schedule of Section 2(n), Sections 20 and 22 of the Industrial Disputes Act, 1947 and Rule 22 and Rule 23 of the Tamil Nadu Industrial Disputes Rules, 1958, and found that the Transport Corporation is a public utility service and is bound to comply with the mandatory provisions of Section 33(2)(b), ID Act, 1947, as the employee was dismissed from service during the pendency of the conciliation proceedings.

The High Court found that there is no infirmity in the Order confirming the award of the Labour Court, and thus dismissed the Writ Appeal. The High Court further directed that the award as confirmed by the learned Single Judge has to be implemented within four months, failing which it shall be open to the employee to make a complaint under Section 29 of I.D. Act to prosecute the officials under Section 32 of I.D. Act, 1947.

HIGH COURT – CRIMINAL CASES**A. Muthupandi Vs. The State rep.by the Inspector of Police, Tiruppur All Women Police Station [Crl.A.Nos.245 of 2016 & 154 of 2017]****Date of Judgment: 03-04-2023**Criminal Appeal under Sec. 374 Cr.P.C – Enhanced sentence by High Court

The Hon'ble Madras High Court dealt with a Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the conviction and sentence of the Sessions Court. The appellant in the case had been sentenced to three years rigorous imprisonment by the Sessions Court for committing penetrative sexual assault on his 5-year-old neighbour.

The accused had argued that there were doubts about the date of the incident, that the child was tutored, and that the case was made up due to previous enmity. However, the High Court rejected these claims, noting that the discrepancy in the date of incident did not matter and that a child victim of sexual assault cannot be tutored to give evidence. The Court observed that evidence of sexual assault victims should be dealt with more sensitivity.

The Court also noted that a child witness could be either a witness to the incident or the victim and that there were no precise rules with respect to the competency of the victim to give evidence. The Court reiterated that a child becomes incompetent only if the Court considers that the child was unable to understand the questions and answer them coherently. In this case, the Court found that the accused's claim of previous enmity between the parties was not established by the defence during cross-examination and hence was rejected. The Court dismissed the appeal and modified the sentence by enhancing the term of imprisonment to seven years rigorous imprisonment.

Arun Mammen &Ors. Vs. Kamal Gupta [Crl.O.P. No.6014 of 2021]**Date of Judgment: 13.04.2023**Sections 406, 418, 420 and 120(b), IPC — Cheating

A Criminal Original Petition was filed under Section 482, CrPC seeking to quash a private complaint for the alleged offences under Sections 406, 418, 420 and 120(b) of IPC. The High Court found that the 1st Accused and the complainant had bought the property jointly. The 1st Accused claiming to be the absolute owner of the property had executed lease in favour of A2 to A12.

The High Court observed that even if a sale is made by falsely claiming title, the said sale would not amount to cheating the rival claimant for the property. The High Court referred to *Mohammed Ibrahim &Ors. Vs.State of Bihar &Anr. [(2009) 8 SCC 751]*, and found that the cheating or deception is said to have been made only to A2 to A12. Even if A2 to A12 were aware of the alleged false statement made by the complainant, in the absence of any deception practiced on the complainant, the offence under Section 420, IPC is not made out. The High Court observed that the first ingredient for the offence of cheating under Section 415, IPC i.e., deception, had not been made out.

Further, with regard to Section 406, IPC, the High Court found that, besides the fact that admittedly the first petitioner and the complainant are the joint owners, it cannot be said that he had entrusted the property to the first accused within the meaning of Section 405, IPC. The High Court observed that the sale deed, though unregistered can be used for collateral purposes, viz., to show that the complainant had handed over possession after receiving sale consideration. The High Court referred to *Rashikumar Vs. Mahesh Kumar Bhada [(1997) 2 SCC 397]* and *VeljiRaghavji Patel Vs. State of Maharashtra [AIR 1965 SC 1433]*, and found that there was no entrustment in the instant case.

Thus, the High Court allowed the Criminal Original Petition and quashed the complaint.

**Asif Musthaheen Vs. The Deputy Superintendent of Police, Crime Branch –
Erode North District [Crl.A.No.44 of 2023]**

Date of Judgment: 03-04-2023

Extension of statutory period – default bail denied

The Hon'ble Madras High Court dealt with a Criminal Appeal filed under Section 21(4) of NIA Act, 2008 to set aside the impugned order of the Sessions Court which had rejected the appellant's bail application and further prayed to enlarge him on bail. The appellant's plea before the Sessions Court was that he had to be released on default bail. The High Court noted that, the appellant had approached the Apex Court seeking bail which was dismissed by the Apex Court stating that incriminating materials were recovered from the appellant during investigation.

The test before the Session Court was whether prosecution had filed final report, within the statutorily stipulated time or not. In this case on hand the statutory time was extended to 180 days which elapsed on 22.01.2023 and the final report was filed on the 177th day, i.e., on 19.01.2023.

The Hon'ble Court observed that, as the final report had been filed within the extended period of 180 days there was no fault with the order of the Trial Court dismissing the bail plea. In fine, the Criminal Appeal was dismissed.

Intelligence Officer, Narcotic Control Bureau Vs. M. Syed Ibrahim &Ors.
[CrI.A.No.105 of 2015]

Date of Judgment: 05-04-2023

Section 8(c) r/w 21(b), NDPS Act, 1985 — enhancement of punishment — Section 67, NDPS Act, 1985 — Section 25, Evidence Act, 1872 — confession statement

A Criminal Appeal was filed under Section 372(2), CrPC seeking for enhancement of sentence against A1 and A2 and for setting aside the acquittal of A3. The High Court observed that the view that had been taken by the Trial Court is a possible view and it cannot be held to be perverse. The High Court observed that it cannot interfere where it is found that the view taken by the Trial Court is a possible view.

The High Court noted that A3 had been roped in the case only based on the confession made before the concerned officer belonging to NCB. The High Court referred to *Tofan Singh Vs. State of Tamil Nadu [2021 4 SCC 1]*, and found that a statement recorded under Section 67 of the NDPS Act cannot be used as a confession statement and it will be barred under Section 25 of the Evidence Act and it cannot be made as the sole ground to convict an accused under the NDPS Act. The High Court found that therefore, the acquittal of A3 from all charges does not require interference.

Insofar as A1 and A2 are concerned, the High Court found that it had been established beyond reasonable doubts that they were in possession of the Narcotic Drug, the quantity of which is punishable under Section 8(c) r/w 21(b) of the NDPS Act. Considering the nature of the contraband involved, the High Court enhanced the punishment for A1 and A2 to rigorous imprisonment of five years, and a fine of Rs.25,000/-. Since A1 and A2 have already undergone this sentence including the default sentence, the same was taken into consideration and recorded.

Thus, the Criminal Appeal was partly allowed.

K. Udhayakumar Vs. The District Collector, Tiruchirappalli District and Anr.
[W.P (MD). No.2286 of 2023]

Date of Judgment: 31-03-2023

Misappropriation of funds – PMAY-G Scheme

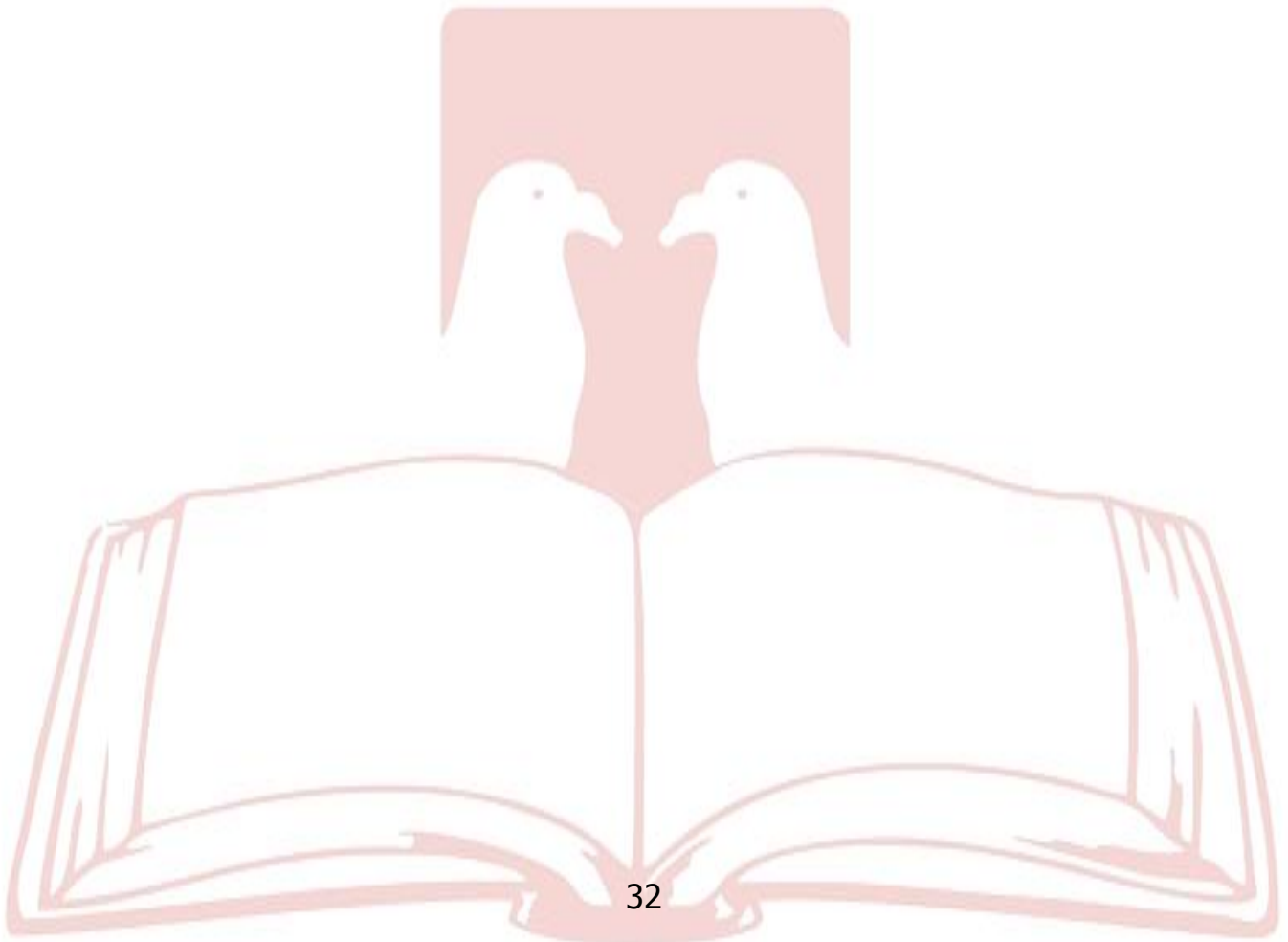
The Madras High Court in a writ filed as public interest litigation alleging illegal allotments were made under the scheme in Marathur Village by misusing the PMAY-G and Indira Awas Yojana (IAY) Scheme observed that strict action to be taken against government officials who misappropriated funds intended for providing houses to weaker sections of society under the Pradhan Mantri Awas Yojana – Gramin (PMAY-G) scheme. The petitioner alleged that the officials had created a fake approval with a deceased person's thumb impression to show that he received scheme money in July 2022. It is also said that despite representations made to the District Collector and the Director of the Directorate of Vigilance and Anti-Corruption (DVAC), no action was taken.

The Court instructed the Superintendent of Police, Tiruchirappalli, to take criminal action against the officials of Lalgudi Panchayat Union, Tiruchirappalli, who misappropriated funds for the allotment of houses under the PMAY-G scheme. The Court also ordered the government to appoint officials not below the rank of Revenue Divisional Officer to conduct detailed verification of the records and ascertain the genuineness of allotment of houses to beneficiaries under the scheme.

It was submitted by the Additional Advocate General that departmental action had been initiated against the officials and charges had been framed under Section 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. It was also submitted that the Principal Secretary had instructed the District Collector to appoint officials to verify the houses allotted to ineligible beneficiaries based on an earlier court order, and the same was under progress. The court, however, was not satisfied with the allotments and demanded a more detailed verification process.

In fine, the Madras High Court disposed the Writ with the observations and directions to ensure that officials are held accountable for misusing funds under the

PMAY-G scheme, and that proper verification is to be conducted to ensure that houses are allotted to eligible beneficiaries.



Prashant Umrao @ Prashant Kumar Umrao Vs. The Inspector of Police, Thoothukudi Central Police Station [CRL OP(MD). No.4717 of 2023]

Date of Judgment: 21-03-2023

Anticipatory bail – tweet on migrant workers

The Madras High Court dealt with an anticipatory bail petition by the petitioner, a BJP spokesperson. The crux is that an FIR was lodged by Tamil Nadu police against the petitioner for allegedly spreading false information about attacks on migrant workers from Bihar in Tamil Nadu.

The petitioner had claimed that false complaint was given against him on account of political vendetta and that the tweets were originally exhibited on private news channels, and he had simply re tweeted them. However, on knowing that the news was not confirmed, he deleted the tweets. The State countered the bail petition by stating that the tweets were intentional and meant to incite violence and enmity. The Court remarked that the petitioner, being an advocate and member of a nationwide political party, should have thought about the consequences of such tweets.

In fine, the Court granted bail on the condition that the petitioner will file an undertaking not to tweet or forward any messages that promote enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. The Court also directed the petitioner to execute a bond of one lakh rupees with two sureties and to report to the concerned police every day at 10.30 a.m. and 05.30 p.m. for 15 days.

**Sankar and Ors. Vs. The State rep. by, The Inspector of Police,
Thiruvannamalai Town Police Station and Anr. [Crl.O.P.Nos.7132 & 7185
of 2023]**

Date of Judgment: 06-04-2023

Bail Application -demolition of 400-year old temple – Appointment of advocate commissioner

The Hon'ble Madras High Court in this case was hearing bail applications of four men, who were accused of trespassing into a temple property and preventing revenue officials from removing illegal encroachments. During the hearing, the counsel for the petitioners contended that the officials had demolished a 400-year-old structure of the temple while evicting encroachers, and the Court could not be a silent spectator to the act of bulldozing.

The Court appointed an advocate commissioner to ascertain the facts of the case, who found that the state's version of the building collapse while trying to remove encroachers was not believable. Relying on this, the Court granted bail to the petitioners and ordered them to be released on executing a separate bond for a sum of Rs. 15,000 with two sureties each, and to appear before the Esplanade Police Station every day. The Court further refrained from deciding the rival claims of the parties as the same was already pending before other forums.

Susamma Baby Vs. The State rep., by The Principal Secretary to Government and Ors. [H.C.P.(MD)No.1389 of 2022]

Date of Judgment: 11-04-2023

Pastor detained for sexually assaulting a physically and mentally challenged minor girl

The Madras High Court dismissed a habeas corpus petition filed by the wife of a pastor who was detained under The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act for sexually assaulting a physically and mentally challenged minor girl.

The petitioner contended that the detention order was not legally valid as it was a solitary case of POCSO offence without any habituality. However, the Court clarified that the propensity of the act was more important than the habitual nature of the offence for invoking the Detention Act. The Court further observed that even in the solitary case, the detention order could be passed.

The detention order was challenged on the ground of delay in passing the detention order, delay in considering representation, and unclear Accident Register copy. The petitioner also contended that the detention order was passed without any application of mind. However, the High Court noted that delay in passing the detention order would not *ipso facto* lead to its quashing when there was a reasonable explanation. In this case, the delay was well explained. The Court further observed that the detention jurisdiction was a suspicion jurisdiction and a mere suspicion and reasonability was enough to invoke the same. In fine, the Court upheld the detention order and found no grounds to interfere with the order and dismissed the habeas corpus petition. The Court further noted that the Pastor, who was duty-bound to care for every member of the church, had committed the offence himself. Thus, the Court found it appropriate to invoke the Detention Act action against the detenu.

**XXX Vs. The State of Tamil Nadu Represented by the Home Secretary
Home Department and Ors. [W.P.(MD) No.2584 of 2016 and WMP(MD).
No.2295 of 2016]**

Date of Judgment: 29-03-2023

Compensation to woman – falsely accused under Immoral Traffic Prevention Act

The Madras High Court in this case dealt with a Writ of Mandamus to direct the respondent to pay her a compensation to the tune of Rs. 1 Crore. The petitioner was arrested based on a complaint by the 7th respondent under various provisions of the Immoral Traffic Prevention Act 1956 and detained for 13 days, and subsequently enlarged on bail. A detailed inquiry by the Deputy Superintendent of Police, District Crime Branch, Nagercoil, found that the case was foisted against her due to tenancy disputes and personal vengeance by private respondents. The charge sheet against her was quashed after she approached the High Court.

The State objected to the compensation and claimed that the petitioner could not claim compensation as she was exonerated only with the aid and assistance of the State. The concerned Inspector also objected to the compensation by claiming that he had no personal vengeance. He submitted that he had only performed his duty without any *malafide* or bias. However, the court opined that the State could not take advantage of the inquiry by the Deputy Superintendent when it had not initiated any action against the concerned officers for filing the false case.

The Hon'ble High Court in this case ordered the Tamil Nadu State Government to pay a compensation of Rs. 2 lakh to the woman. The state's defence was that the charge sheet was quashed on the basis of a detailed inquiry and thus was not liable to pay compensation, but the Court rejected the defence. The Court noted that the woman's arrest and detention had garnered much media attention which had affected her right to privacy, and thus, the State was liable to compensate the woman. The Court further directed the State to pay compensation within a period of 8 weeks and is at liberty to recover the same from the erring police officials if they are advised to do so.

**ZiyavudeenBagavi Vs. Union of India Rep. By The Inspector of Police
National Investigating Agency [Crl.A.No.401 of 2023 & Crl.M.P.No.5071 of
2023 in Crl.A.No.401 of 2023]**

Date of Judgment: 13-04-2023

Appeal under Sec. 21(4) NIA, Act – Order passed relying on Wikipedia by Trial Court

The Madras High Court dealt with a Criminal Appeal filed under Section 21(4) of National Investigation Agency Act, 2008 to set aside the order passed by the Trial Court. The brief of the case is that, a plea was filed by petitioner, who was arrested and charged by the NIA under relevant sections of the Indian Penal Code and the UAPA for allegedly browsing and sharing posts from the Facebook page of a "fundamentalist" Islamic organisation. Petitioner's counsel argued that the Court had ignored all evidence on record and relied solely on Wikipedia's definition of the said organisation to hold that an offence under the UAPA was made out in the case.

The High Court agreed with the petitioner's submissions, stating that the NIA court's sole reliance on Wikipedia was indisputable. The High Court observed that the Apex Court had already cautioned against Courts using user-generated resources such as Wikipedia to decide legal disputes. The High Court cited several judgments of the Hon'ble Supreme Court that found Wikipedia to be unreliable, stating that Courts could not use such sources for legal dispute resolution. The Court overturned a Special NIA Court's order which relied on Wikipedia to reject a Muslim preacher's discharge plea in a case under the Unlawful Activities Prevention Act (UAPA).

The High Court disposed the Criminal Appeal and further asked the Trial Court to consider the discharge plea afresh, based on witness statements and legal evidence.
