

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XIX— PART04— APRIL 2024****

IMPORTANT CASE LAWS



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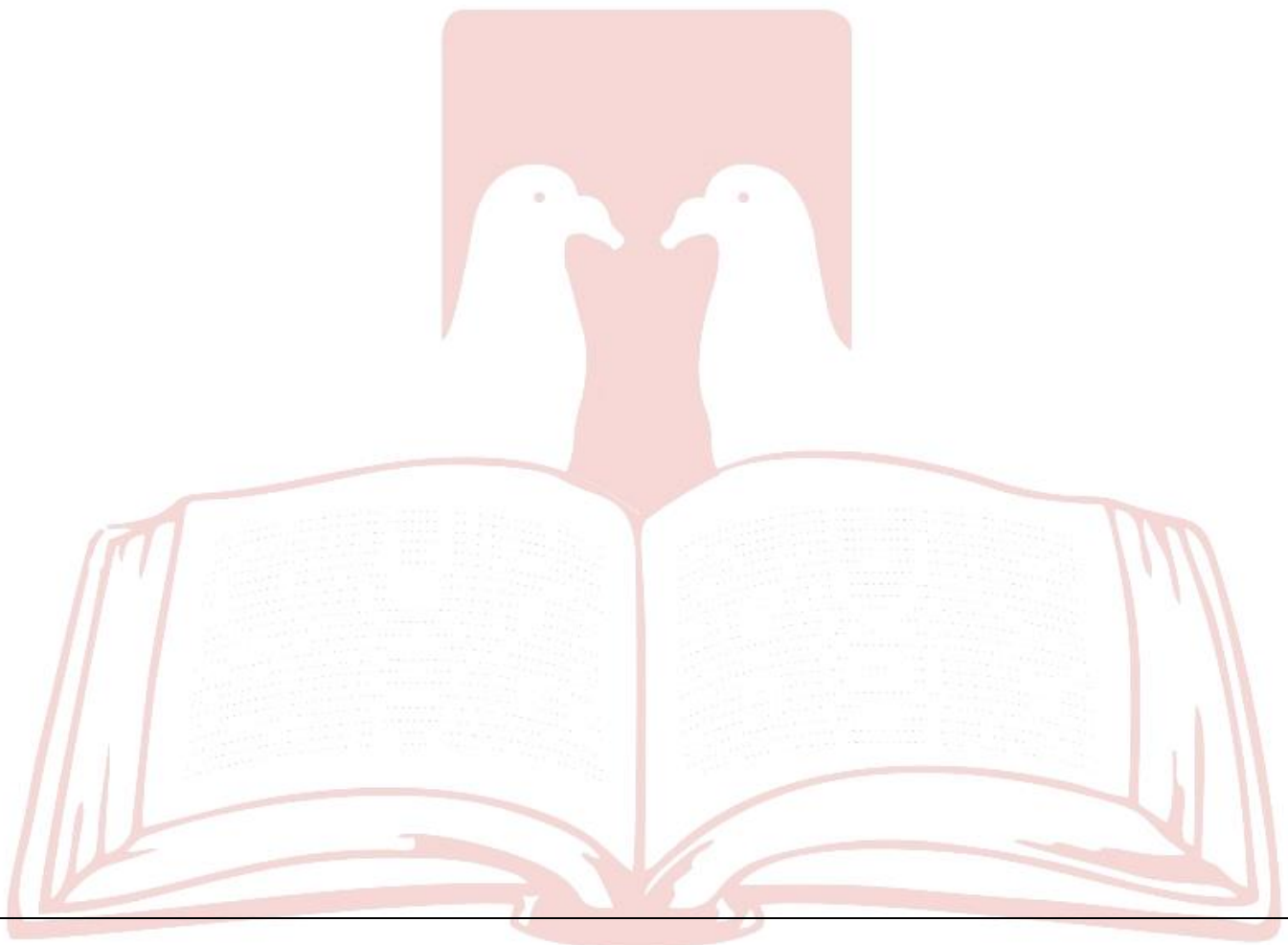
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SUPREME COURT – CIVIL CASES**M/S. Asian Avenues Pvt. Ltd. Vs. Sri Syed Shoukat Hussain [CIVIL APPEAL No.2927 OF 2023]****Date of Judgement: 28.04.2023**

Specific Relief Act, 1963; Section 31 - Action instituted under Section 31 for cancellation of an instrument is not an action in rem

The present appeal was preferred by the Defendant in the suit. The Respondent/Plaintiff had filed a suit for a Decree directing the Appellant to execute a Deed of cancellation in respect of a Development Agreement claiming to be the owner of the suit property and the terms of the Development Agreement, the appellant was granted permissive possession for the purposes of carrying out development work on the property, which is the subject matter of the Development Agreement. Thereafter, a dispute arose between the parties, which led the Respondent/Plaintiff to file a suit for cancellation of the Development Agreement. In the course of proceedings, the appellant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint. The application was filed on the ground that, in view of the arbitration clause in the Development Agreement, the dispute ought to be referred to arbitration. The Trial Court allowed the application and rejected the plaint and further directed the parties to refer their dispute to arbitration in exercise of its powers conferred under Section 8 of the Arbitration and Conciliation Act, 1996. In a revision application preferred by the respondent, the High Court had interfered and had set aside the order of the Trial Court.

The court observed that the dispute, whether the Development Agreement stands cancelled or whether the agreement can be lawfully cancelled, was a dispute arising out of or in connection with the Development Agreement. Therefore, as per the arbitration clause, if the issue concerning cancellation was not mutually resolved,

the same had to be referred to arbitration. The ground on which the High Court had interfered was that the adjudication pursuant to invocation of Section 31 of the Specific Relief Act was an adjudication in rem. However, in the case of *Deccan Paper Mills Company Limited vs. Regency Mahavir Properties and Ors*, the Hon'ble Apex Court had categorically held that it was impossible to hold that an action instituted under Section 31 of the Specific Relief Act for cancellation of an instrument is an action in rem. In view of the applicability of the arbitration clause to the disputed subject matter of the suit filed by the respondent, the learned Trial Judge was justified in passing an order under Section 8 of the Arbitration Act by directing that the dispute be referred to the arbitration. Hence, the Hon'ble Apex Court had allowed the Appeal.

Kizhakke Vattakandiyil Madhavan (Dead) Thr. Lrs. Vs. Thiyyurkunnath Meethal Janaki & Ors. [CIVIL APPEAL No. 8616 OF 2017]

Date of Judgement: 09.04.2024

If Deed Was Executed By Person Without Title, Successors Cannot Enforce Rights On Property Based On Such Deed.

The present case involves a dispute over the partition of property. The plaintiff (a son born out of the second marriage) had filed a suit for partition, which was allowed by the trial court. However, the First Appellate Court reversed the trial court's decision, observing that the wife one Mrs. Chiruthey would not derive title to her deceased husband's property when she contracted a second marriage, since her rights, if any, got extinguished as per Section 2 of the Hindu Widow's Remarriage Act, 1856. Furthermore, the First Appellate Court held that the wife had no authority to create a lease and that such a transaction, by which she sought to lease out the subject property, was not permissible in law. However, the Hon'ble High Court had reversed the First Appellate Court decision, following which the present appeal was preferred before the Hon'ble Apex Court by the successors of the son born out of the first marriage.

Before the Hon'ble Apex Court, it was contended by the Appellants/defendants (successors of wife's son born out of first marriage) that the respondents/plaintiff (successors of wife's son born out of a second marriage) could not claim partition over the property, as the wife had lost her right over the subject property upon contracting a second marriage. Thus, the court had examined whether the wife one Mrs. Chiruthey, after contracting a second marriage, could legally transfer property rights through a lease deed.

The Hon'ble court had held that if someone tried to transfer property rights to another person through a legal document but doesn't actually own those rights, the new owner or their successors won't have the legal right to claim those rights from

that document. Hence, the Hon'ble Apex Court had allowed the appeal, disentitling the Respondents/Plaintiff from claiming partition over the subject property owned by the wife Chiruthey's first husband, thereby setting aside the High Court's order in favour of them.

Manisha Mahendra Gala Vs. Shalini Bhagwan Avatramani & Ors. [CIVIL APPEAL No. 9642 and 9643 of 2010]

Date of Judgement: 10.04.2024

Power Of Attorney Holders Cannot Give Evidence about Facts Which Are Within Personal Knowledge of Persons They Represent

The present case relates to the claim of an easementary right by the appellants over the "rasta" that passes through the property owned by the respondents. The appellants' claim of an easementary right over the respondents' property was based on statements made by the power of attorney holder before the trial court. Objecting to the appellants' claim of an easementary right, the respondents contended that the deposition made by the power of attorney holder had no evidentiary value, as the appellants' power of attorney holder did not know about the transaction, and hence could not be examined as a witness.

The Hon'ble Apex Court had held that a Power of Attorney holder could only depose about the facts which are within his personal knowledge and not about those facts that were not within his knowledge or are within the personal knowledge of the person whom he represents. Further, the Hon'ble Apex Court had observed that a Power of Attorney holder can maintain a plaint on behalf of the person he represents provided, he has personal knowledge of the transaction in question. The Power of Attorney holder can depose and verify on oath before the court, but he must have witnessed the transaction as an agent and must have had due knowledge about it. The Power of Attorney holder who has no knowledge regarding the transaction cannot be examined as a witness.

The Hon'ble Apex Court also observed that there was lack of pleadings to establish the plea of acquisition of easementary right over the property by plaintiff and their predecessor-in-interest by prescription, as they failed to even plead specifically that they enjoyed the said right for more than 20 years continuously without any interruption.

Thus, the Hon'ble Apex Court had denied the easementary right over the 'rasta' claimed by the Appellant and dismissed the present appeal.

Thangam and Another Vs. Navamani Ammal [CIVIL APPEAL No. 8935 of 2011]

Date of Judgement: 04.03.2024

Written Statement Must Have Para-Wise Reply To Plaint; Allegations Deemed To Be Admitted Unless Specifically Denied

The plaintiff/respondent had filed a suit seeking a declaration and injunction before the Trial Court against the appellant/defendant. The plaintiff contended that the suit property had been bequeathed to her through a registered 'Will', and therefore, the defendant had no right to claim title over the property. However, the defendant had claimed that the testator of the 'Will' was not in good health and could not understand and comprehend the contents of the Will, and therefore, the plaintiff's claim over the suit property based on the said will could not survive. Furthermore, a written statement was filed by the appellant/defendant wherein, no specific denial was given to the claim made by the respondent/plaintiff, nor was a para-wise reply been provided by the appellant/defendant to the allegations levelled in the plaint. The Trial Court had decreed the suit in favour of the respondent/plaintiff. However, the first appellate court had decided in favour of the appellant/defendant. In the second appeal preferred by the respondent/plaintiff, the High Court had affirmed the Trial Court's finding. Thereafter, the appellant/defendant had preferred the Civil Appeal before this Hon'ble Court.

The Hon'ble Apex Court on appraisal of factual matrix had confirmed the findings of the High Court and dismissed the appeal. That apart, the Hon'ble Apex Court had discussed the importance of a specific para-wise reply to the allegations of the plaint by the defendant in a written statement, as the appellant/defendant had made no specific admission or denial with reference to the allegations made in the plaint. Further, the Court observed that Order VIII Rules 3 and 5 of CPC provides for specific admission and denial of the pleadings in the plaint, and therefore the

defendant must deal specifically with each allegation of fact which they did not admit to be true.

Further, the Hon'ble Apex Court had held that the failure of the defendant to give a para wise reply to the claim made by the plaintiff, would make the allegations made in the plaint as admitted against the defendant. Thus, the Hon'ble Court had dismissed the Appeal and upheld the order of the High Court.

**Srinivas Raghavendra Rao Desai (Dead) By Lrs. Vs.V. Kumar Vamanrao @
Alok & Ors. [CIVIL APPEAL NO(S). 7293-7294 OF 2010]**

Date of Judgement : 04.03.2024

Evidence which was not a part of the pleadings couldn't be led in the trial

A suit was filed by the Plaintiffs claiming 5/9th share in the suit schedule properties along with a claim for mesne profits. The Trial Court, in its Judgment and Decree, held that Plaintiffs No. 1 and 2 and Defendants No. 1 to 3 and 5 were entitled to 1/6th share in the suit schedule property, and no mesne profits were granted to the Plaintiffs. Aggrieved by the Judgment and Decree of the Trial Court, the Plaintiffs had preferred the appeal, raising a grievance about the rejection of part of their claim, while another appeal was filed by Defendants No. 1 to 3 and 5 against the grant of a 1/6th share each to the Plaintiffs, considering it excessive. The Hon'ble High Court had partly allowed the said appeals via a common Judgment. Aggrieved by the aforesaid judgment of the High Court, one of the Defendants had preferred an appeal before the Hon'ble Apex Court. In the said Appeal, the appellant had contended that the judgment of the High Court should be overturned because it relied on a partition made in the year 1965, which was not initially part of the case presented in the plaint. They further contended that evidence beyond the pleadings cannot be considered, and although an application was made to amend the plaint to include this partition, it was rejected by the Trial Court, and this decision was not challenged further by them.

The Hon'ble Apex Court observed that the High Court had erred in relying on an oral partition effected between the parties in the year 1965, in terms of which the suit schedule properties were allotted exclusively to the share of the 1st Defendant. Moreover, the Plaintiffs in their Plaint did not plead about any partition of the family properties in the year 1965. Further, the 1st Defendant who is the father of the Plaintiffs, also did not allege about the partition done in the year 1965 in his Written Statement. Quite late, the plaintiffs sought to amend the plaint to raise pleadings

regarding the 1965 partition. However, the Trial Court had rejected the said application, and the same had attained finality.

The Hon'ble Apex Court had held that no evidence could be led beyond pleadings. That, being the proposition of law, a specific amendment in the pleadings was sought by the plaintiffs with reference to the 1965 partition, but the same was rejected. In such a situation, the evidence with reference to the 1965 partition cannot be considered. Thus, the Hon'ble Apex Court had allowed the appeal and set aside the order of the Hon'ble High Court.

SUPREME COURT - CRIMINAL

Prem Raj Vs. Poonamma Menon & Anr. [SLP (CrI) 9778 of 2018]

Date of Judgment: 02.04.2024

Negotiable Instruments Act, 1881 Sec 138: The accused in the proceedings initiated under section 138 of Negotiable Instruments Act was the appellant before the Hon'ble Apex Court. He had sought to set aside the sentence of conviction passed against him by the Magistrate, which imposed a 1-year simple imprisonment and directed him to pay Rs.2 lakhs as compensation and in default he was to undergo further imprisonment of six-month period. This sentence was confirmed by the 1st appellate court and the High Court.

It is the appellant/accused case that he had initiated civil proceedings and obtained decree in his favour, declaring that the impugned cheque was issued only as a security cheque. Further, the civil court had restrained the respondents by a prohibitory order of injunction from taking steps to encash the said cheque. However, ignoring the said judgment and decree passed by the civil court, the Magistrate had passed the impugned order which was concurrently upheld by appellate courts and hence the Criminal appeal.

The court observed that the possibility of conflicting decisions between civil and criminal courts is not a decisive factor. The law doesn't mandate that one court's decision binds the other, except for limited purposes like sentence or damages. The primary concern was to avoid embarrassment or inconsistency. It clarified that civil and criminal cases have different burden of proof and operate independently. The findings in one proceeding cannot be final or binding on the other, as each case is decided based on its own evidence. But there's no restriction preventing a civil court from taking into account evidence presented in criminal proceedings. Further, the court had observed that the criminal court is obligated to adhere to the determination made by the civil court, wherein the cheque was conclusively deemed

to serve exclusively as a security measure. Thus, the appeal was allowed by the Hon'ble Court.

State of West Bengal Vs. Jayeeta Das [SLP (Crl) 7880 of 2023]**Date of Judgment:18.04.2024**

The State of West Bengal had preferred the appeal before the Hon'ble Apex Court, assailing the judgment passed by the High Court of Calcutta quashing the proceedings of a case registered against the respondent to the extent of the offences punishable under the provision of Unlawful Activities (Prevention) Act, 1967 holding that only a Special Court constituted by the Central or State Government as per National Investigation Agency Act, 2008 had the exclusive jurisdiction to try the offence under UAPA. Further, as per section 16 of NIA Act, the Sessions Court was precluded from taking cognizance of the offences under UAPA and hence all the proceedings taken thereafter were without jurisdiction.

The main issue for consideration in the appeal was as to whether Chief Judge, Calcutta had jurisdiction to pass the said order. The Hon'ble Apex Court had held that Section 2(1)(d) of the UAPA itself indicates that "court" referred therein includes normal criminal courts as well as Special Courts constituted under the Act and upheld the jurisdiction of the Chief Judge to issue the order dated 07.04.2022. The Hon'ble Apex Court also dealt with the power of the Metropolitan Magistrate, Calcutta to extend the remand of the accused beyond the period of 90 days. It held that since section 43D(2) of Unlawful Activities (Prevention) Act, 1967 required the express order of the Sessions Court or the Special Court authorizing the remand beyond the period of 90 days, the action of the Chief Metropolitan Magistrate extending the period of remand beyond 90 days was declared to be grossly illegal.

Manikandan Vs. State by the Inspector of Police [Criminal Appeal No. 1609 of 2011] [CRIMINAL APPEAL NO. 1609 OF 2011]

Date of Judgment:05.04.2024

Section 302 of IPC

The present Appeal has been filed challenging the conviction of life sentence for murder under Section 302 read with Section 34 of the Indian Penal Code. The contention of the appellant is that the Sessions Court and the High Court had erred in convicting them based on the testimonies of tutored and interested witnesses, which cast serious doubt on the prosecution's case and that there was a gross misuse of power by the police in tutoring the witnesses and that the evidence presented was not reliable. The court observed and held that, a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. This is a blatant act by the police to tutor the material prosecution witnesses. This manipulation of witnesses undermines the integrity of the judicial process and constitutes a severe abuse of power by law enforcement and the gravity of this interference and expressed astonishment that trial courts had overlooked such a crucial violation. Notably, the defense's contention that the accused were elsewhere at the time of the incident remained unchallenged due to the absence of independent witnesses presented by the prosecution. Consequently, the Court deemed the prosecution's case highly suspicious and that the benefit of this substantial doubt must be given to the accused, who had suffered over a decade of incarceration before being released on bail pending appeal. The court while allowing these appeals held that the impugned judgments and orders of the trial court and the High Court were liable to be set aside, and the appellants were acquitted of the offences alleged against them.

Subhash @ Subanna & Ors. Vs. State of Karnataka Ministry of Home Affairs [Criminal Appeal No. 328 of 2012]

Date of Judgment:10.04.2024

Section 300 of IPC

The criminal appeal has been filed challenging the judgment of the High Court, which upheld the conviction and sentences imposed by the Trial Court under Section 302 sentencing the appellants to life imprisonment along with other penalties. It is the appellant's case that the incident was a reaction to provocation by the deceased and his family members and that their actions were an exercise of the right to private defence, and that the prosecution failed to establish the intention necessary to convict the appellants under Section 302 for murder, and the evidence was misinterpreted by the trial courts, and that the circumstances warranted a lesser charge, such as culpable homicide not amounting to murder under Section 304, Part 2 of the IPC. The court discussed the criteria required for a case to be brought under thirdly of Section 300. Firstly, the prosecution must prove the presence of bodily injury. Secondly, the nature of the injury must be objectively established. Thirdly, it must be shown that there was an intention to inflict the specific bodily injury, ruling out accidents or unintended harm. Once these three elements are proven, the inquiry proceeds to establish whether the injury is of a type sufficient to cause death in the ordinary course of nature, regardless of the offender's intention. If all four elements are established, the offense is considered murder under thirdly of Section 300, irrespective of whether there was an intent to cause death or not. The Apex Court observed that the appellants could not claim the right of private defence, as the deceased, was unarmed when he approached the house of the accused to inquire about the blocked pathway. The Court rejected the appellants' argument of provocation, noting that the morning incident was merely a verbal exchange and did not justify the brutal and unprovoked assault that followed. The consistent and corroborated testimonies of the injured eyewitnesses, including the complainant, her brother, and her mother, confirmed that the appellants attacked

the unarmed victim with the intent to cause serious harm. Based on this assessment, the Court while dismissing the appeal held that the High Court was correct in upholding the Trial Court's conviction and sentences, finding the actions of the appellants intentional and sufficient to cause death, leading to their conviction under Section 302 of the IPC for murder.

Smt. Najmunisha, Abdul Hamid Chandmiya alias Ladoo Bapu Vs. State of Gujarat, Narcotics Control Bureau, [Criminal Appeal No. 2319/2009] with [Criminal Appeal No. 2320/2009] with [Criminal Appeal Nos. 2319-2320 of 2009]

Date of Judgment:09.04.2024

The Narcotics Drugs and Psychotropic Substances Act, 1985, section 67.

The criminal appeals were filed challenging the judgment and order of the High Court, which upheld the conviction and sentences imposed by the Trial Court, under the NDPS Act. It is the appellant's case that their statements under Section 67 of the NDPS Act were inadmissible as they were not confession statements but part of an enquiry, citing the case of Tofan Singh v. State of Tamil Nadu (2021) 4 SCC 1. The High Court held that the statements of the appellants were voluntary, without coercion, and corroborated by other evidence. It was presumed in favor of the prosecution under Section 114 of the Indian Evidence Act, of 1872. The Apex court while allowing the appeal observed and held that Section 67 of the NDPS Act 1985 emphasizes that the authority given to officers under Sections 41 and 42 is limited to tasks such as entry, search, seizure, and arrest without warrant, with accompanying safeguards. These officers cannot investigate or file police reports, as required by Section 25 of the IEA 1872. Section 67 precedes the investigation stage and does not constitute a confession statement, making it inadmissible as such in the trial. Therefore, it cannot be used to convict an accused person under the NDPS Act 1985. Thus, the appellants were acquitted of charges under the NDPS Act 1985 based on the inadmissibility of their statements under Section 67, receiving the benefit of the doubt.

HIGH COURT – CRIMINAL**Karthick Theodore Vs. The Registrar General & Ors.[W.A.(MD)No.1901 of 2021]****Date of Judgment: 27.02.2024**

Constitution of India, Article 21—Digital Personal Data Protection Act, 2023—Right to Information Act, 2005

The Writ Appeal has been filed as against the order of the writ court rejecting the Appellant's plea for Mandamus to the Court authorities and 4th respondent to redact his name and other identities from the judgment in CrI.A. (MD) No.321 of 2011.

The appellant had sought for the discretion of the Court for enforcement of his Fundamental Right of erasure. Subsequent to the decisions laid in K.S. Puttaswamy case, the Right to Privacy has been held to be an intrinsic part of the Right to Life and Personal Liberty under Art.21 of the Constitution and thus enforceable in Law. The court observed that 'Right to be Forgotten', or rather the 'Right to be Remembered well', cannot be denied to a person if the facts and circumstances so warrants it.

While discussing the 'concept of open justice' which has literally brought justice as well as the justice dispensation system to the doorsteps of citizens the Court held that there should be fine balance between the concept of open justice and the privacy of an individual. Further, the court stated a that being a service institution committed to the dispensation of justice, the Courts cannot close their eyes to the concerns of privacy and the right that ensure in the litigants to leave behind parts of their past which are no longer relevant. The Court had also invoked the 'Principle of Fresh Start' statutorily enshrined under Juvenile Justice (Care and Protection of Children) Act, 2015 and held that it cannot lead to the conclusion that adults are not entitled to same.

Thus the Court allowed the Writ Appeal by directing the Respondents to redact the name and other identifying details of the petitioner from the judgment and ensure that only the redacted version is available for publication or uploading and further held that the unredacted version of the Judgment, shall continue to be part of the record of the Court.

Suresh Kumar Vs. Shanmugapriya & Anr. [Crl.R.C(MD)No.752 of 2023 and Crl.M.P(MD)No.10241 of 2023]

Date of Judgment: 22.02.2024

Evidence Act Section 112 and Cr.P.C Section 125

The Criminal Revision Case has been filed against the order of the Judicial Magistrate Court wherein the petitioner's plea to subject the second respondent for a DNA test was dismissed by the learned trial Judge holding that the petitioner had not established the circumstances to order the DNA test. Aggrieved over the same, the petitioner filed this revision on the ground that he had no sexual intercourse with the first respondent and hence, the alleged birth of the second respondent was suspicious. Hence, the claim of maintenance, on behalf of the second respondent is not maintainable.

The Husband (Petitioner) had raised suspicion over the Child begotten by his Wife (Respondent) by stating that he had no 'access' to her during the time the child could have been conceived and thus prayed to subject the child for DNA test.

The Court used the following well settled principle of law- *Odiosa et inhonesta non sunt in lege praesumenda which means* – nothing odious or dishonourable will be presumed by law. In a civilized society, it is imperative to presume the legitimacy of a child born during continuation of a valid marriage and whose parents had 'access' to each other. It is undesirable to enquire into the paternity of a child whose parents have access to each other. Section 11 of the Evidence Act is based on presumption of public morality and public policy.

Even as per the pleaded case of the petitioner, the Court found that except for the Petitioner, nobody had any access to the Respondent. The petitioner had specifically pleaded that during sexual intercourse with respondent, he had sustained injury in his private part and had to undergo treatment. The Court observed that DNA Test would have been intrusive and it would have left a far-reaching stigma on the infant.

The future of the infant would be devastated forcing the child into a position of being fatherless causing stress and turning his world upside down. Thus, the Court prioritizing the right and best interest of the child and in confirmation of the conclusion of Trial Court dismissed this Petition.

**Kotak Mahindra Bank Ltd, Rep By Its Authorised Representative, P.
Thyagarajan Vs. R. Selvaraj & Ors. [W.A.No.1429 of 2023]**

Date of Judgement: 15.03.2024

Code of Criminal Procedure, 1973 Section 340—Letters Patent, 1865, Clause 15

The letter patent writ appeal is filed by the appellant as against the order of the single judge made in M.P.No.1 of 2014 in W.P.No.21836 of 2012, whereby the High Court had directed the registry to frame a complaint and file the same before the learned Chief Metropolitan Magistrate, Chennai on the ground that appellant herein had furnished false and incorrect statement in counter affidavit filed in the writ petition, when contrasted with statement made in the counter affidavit filed in Criminal Original Petition.

The maintainability of the letter patent appeal was questioned, and the High Court had held that the entire exercise of power is completely within the realm of Criminal jurisdiction. Therefore, an appeal under clause 15 of the letter patent was not maintainable.

It further held that the appeal being creature of statute, has to be specifically provided and in the absence of an express provision, when High Court is excluded from the operation of the provision, held that intra counter appeal is not maintainable even under section 341 of Cr.P.C and hence present appeal is not maintainable.

The Court further held that the Letters Patent of Bombay, Madras and Calcutta being *pari materia*, is also considered. Thus, it can be seen that while no hard and fast rule can be laid down, it is held that it is not the concerned jurisdiction in which the power is exercised while passing the Order that should be considered, but the nature of the rights violated and the outcome i.e., the relief granted which should be considered. The Court had relied on various Supreme Court judgments and held that while Appeal is provided to the higher court to which, the Court forwarding an Application under S.340 of Cr.P.C is subordinate, the application of the provision is

expressly excluded when the Complaint under S.340 of the Cr. P.C. is forwarded by the High Court.

MNS Enterprises, Rep. By Its Proprietor Vs. Mohana Priya Vs. District Collector, Office of the District Collector, Chengalpet [Writ Petition No.1048 of 2024 & WMP.No.1111 of 2024]

Date of Judgment: 09.2.2024

The writ petition was filed by the Petitioner against the fourth respondent who issued summons calling for enquiry based on the complaint given by the third respondent and the report submitted by the Tahsildar. An enquiry was conducted under Section 133 of the Code on the ground that the business conducted by the petitioner is causing public nuisance. The petitioner participated in the enquiry and also submitted her reply along with supporting documents. However, the fourth respondent, through the impugned proceedings, directed the petitioner to stop the trade activities since it was a residential area on the ground that the business conducted by the petitioner is causing nuisance in terms of health disorder and physical discomfort to the inhabitants living nearby and hence, had directed the Petitioner to cease the Trade Activities within a period of seven days.

The Court after examining the factual aspects, came to the conclusion that the impugned Order passed by the Fourth Respondent does not suffer from any error of law on the face of the Record. The Fourth Respondent had properly exercised its jurisdiction, and no illegality was found in the impugned Order. Considering the facts of the case, the court held that it does not find any ground to interfere with the impugned Order passed by the Fourth Respondent and thus, the Court had dismissed the Writ Petition.

Fathima N. @ Laila Vs State of Tamilnadu, Rep. By The Additional Chief Secretary to Govt, Chennai & Ors. [H.C.P.(MD) No.1121 of 2022 and Crl.M.P(MD)No.13660 of 2023]

Date of Judgment: 24.04.2024

Law of Preventive Detention—Constitution of India, Articles 22 & 226—Tamil Nadu Prevention of Dangerous Activities of Bootleggers,....., and Video Pirates Act, 1982

The mother of the detenu has filed this writ of Habeas Corpus challenging the detention of her son pursuant to the order of the second respondent / District Magistrate, Tuticorin under Tamil Nadu Act 14 of 1982. The main issue placed before the Court was whether non-intimation of arrest in the Ground Case would be fatal to the subsequent Detention Order passed under Act 14 of 1982?

The Court held that Non-Intimation of arrest to the relatives/friends in the Ground case shall not be a ground to test the subjective satisfaction of the Detaining Authority. It shall be a point for consideration to test whether the Detenu was anyway deprived of making effective representation against his detention. Failure to intimate the arrest in the Ground Case cannot be a *ipso facto* reason to hold the Detention Order illegal. In other words, non-intimation to relatives/friends about the arrest in Ground case is not fatal to the Detention Order.

HIGH COURT – CIVIL**Menaka S. Vs. K.S.K. Nepolian Socraties (DB)[C.M.P.No.18729 of 2023]****Date of Judgement: 21.03.2024**

Maintainability of statutory appeals under section 19 and section 28 of the Family Courts Act - Section 28 and 24 of Hindu Marriage Act, 1955

Appeal filed against the order of Interim Maintenance/Pendente lite Maintenance made under Section 24 of the Hindu Marriage Act.

The parties K. Somasundaram and S. Chitra were in marital discord. The husband K. Somasundaram had filed F.C.O.P. No. 425 of 2017 seeking divorce/dissolution of marriage between him and S. Chitra which was solemnized on 22.10.1997. Divorce has been sought on the grounds of cruelty and desertion under section 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, 1955. Further, an I.A. No. 02/2019 was filed by the wife S. Chitra under section 24 of H.M. Act seeking interim Maintenance of Rs 40,000/- per month and Rs 1,00,000 as litigation cost. Followed by, the court disposed of the I.A ordering Rs 20,000/- per month as interim maintenance. Aggrieved, both husband and wife have filed these appeals wherein the Husband filed appeal for assailing the order of interim maintenance and wife filed appeal for assailing the order seeking for Rs 40,000/- per month as maintenance and Rs 1,00,000 as litigation cost.

The question of law involved in the appeal is as to the maintainability of the statutory appeal as against the orders passed by family Courts and Subordinate Courts in the matrimonial proceedings. The Court observed, by referring to various judgements of the Hon'ble Supreme Court and High Court where it had been categorically settled holding that the orders of interim maintenance passed under Section 24 of the Hindu Marriage Act, an appeal will not lie either under section 28 of Hindu Marriage Act or under section 19 of Family Courts Act. However, a revision

under Article 227 of the Constitution of India will lie to this Court against an order of interim maintenance/Pendente lite Maintenance made under Section 24 of the Hindu Marriage Act irrespective of whether it was made by a regular Civil Court or a Family Court.

The Court held in this appeal, as an order of Interim Maintenance/Pendente lite Maintenance made under section 24 of the Hindu Marriage Act is only for a period of time, it can be reviewed/varied and it is an Interlocutory order. The Court further held that Appeal under section 28 of the Hindu Marriage Act will not lie as against an order of Interim Maintenance/Pendente lite Maintenance under section 24 of the Hindu Marriage Act but the same will be amendable for a revision to this Court under Article 227 of the Constitution of India, it will be open to appellants in pending Appeals to seek withdrawal of such appeals for filing a Revision and on such withdrawal plea being made, all rights for filing revision under Article 227 of the Constitution of India will stand preserved and the period spent in Appeal under section 28 of the Hindu Marriage Act or for that matter under section 19 of the Family Courts Act will stand excluded, if the question of delay is brought up in a Revision under Article 227. Thus, the interim maintenance order was interlocutory in nature and it can be only reviewed and not appealed.

**Netvantage Technologies Pvt Ltd., Vs Inspector General Of Registration
And Stamps & Ors. [WA No.3391 of 2023]**

Date of Judgement: 20.03.2024

Registering authority to cancel fraudulent registration cannot be applied retrospectively - Registration Act, 1908 (16 of 1908), Sections 68 & 77-A

The writ petition has been filed challenging the order passed by the District Registrar under Section 77-A and the appellate order passed under Section 77-B of the Act. An appeal was filed by the petitioner under Section 77-B of the Registration Act before the first respondent-Inspector General of Registration, who in turn, confirmed the order passed by the District Registrar.

The Petitioner purchased the subject property vide document No.4078 of 2007 dated 28.09.2007. The vendor to the petitioner purchased the said property on 21.12.2004. The respondents 4 to 7 claiming title over the subject property submitted an application before the District Registrar-third respondent, seeking cancellation of the documents registered in favour of the vendor to the petitioner in the year 2004 and the appellant in the year 2007. The District Registrar conducted summary proceedings and cancelled the said two Sale Deeds as fraudulent.

The court observed that, Section 77-A and Section 77-B of the Act was inserted by the TN Act No 41 of 2022 with effect from 16.08.2022. The sections can have prospective application for entertaining an application to cancel the documents, more specifically, documents registered after 16.08.2022. But, it cannot have retrospective application, as to cancellation of the documents. The Court allowing the appeal held that, the appeal filed seeking cancellation of document prior to introduction of section 77-A. The subject document cancelled by the competent authority was registered on 21.12.2004 and 28.09.2007. During the relevant point of time neither the District Registrar nor the Inspector General of Registration vested with powers to cancel the sale deed. The remedy for an aggrieved person is to

approach the competent Civil Court of Law, seeking cancellation of sale deeds or to declare the same as null and void.

V.A. Anand Vs. State Information Commissioner & Ors.
[W.P.(MD)No.15513 of 2020]

Date of Judgement: 04.01.2024

*Exemption from disclosure - Section 2(j) & 8 of the Right to Information Act, 2005
(22 of 2005)*

The writ petition was filed by the wife of the Petitioner seeking salary details of the husband from the employer under RTI to seek maintenance. Both the public information officer and the first Appellate authority had declined to grant information stating that the Information commission directed the employer to furnish the information by holding that the salary details of the petitioner cannot be treated as "Personal information".

The matrimonial proceedings are pending between the parties. The wife has sought relief of maintenance from the husband. For effectively pursuing her claim, she needed certain basic service details pertaining to her husband. She applied to the employer for furnishing the said information. Since the husband has raised an objection, the employer did not provide the information sought to the wife. The appellate authority also declined to interfere. Therefore, the wife filed a second appeal before the State Information Commission. By the impugned order, the State Information Commissioner directed the employer to furnish the information sought for by the wife. Challenging the same, this present writ petition was filed.

The Court observed that, the quantum of maintenance payable to the wife will depend upon the salary received by the husband. Unless the wife knows the quantum of salary received by the husband, she cannot make her rightful claim. Thus, the Court upheld the impugned order. The Court held that the wife is entitled to know the remuneration of her husband and the impugned order was sustained and the writ petition was dismissed.

K. Nambi and Ors. Vs. D. Kiruba and Ors.[S.A. Nos.613 and 614 of 2017]**Date of Judgement: 15.03.2024**

Claim of exclusive usage of Common area cannot be asserted in absence of express independent Contract - Tamil Nadu Apartments Ownership Act, 1994 (T.N. Act 7 of 1995), Sections 3(h), 3(o), 6 & 8 s

Suit instituted for permanent injunction and Mandatory injunction to remove the grill partition put up by the flat owner in reserved parking area. Trial court decreed the suit by granting decree for mandatory injunction. The first appeal preferred by the unsuccessful defendant was dismissed and hence second appeal filed by the defendant.

The Court observed that, the exclusive right has not been conferred on Apartment owner either in Agreement of sale or Construction Agreement or in Sale deed or any other independent contract. Thus appellant cannot seek to claim the benefit of an exclusive facility as under section 3(o). The appellant by putting on an Iron Grill partition had resulted in other owners not being able to open the water sump. As under section 8 of the Act prohibits any apartment owner from adding any material structure or excavate any additional basement or cellar without the previous and unanimous consent of all the other Apartment owners. The Court held that the construction of the grill partition is in violation of the provisions of the Act and thus, dismissed the second appeal.

V. Mani Vs. Babu and Ors.[S.A.No.53 of 2007]**Date of Judgement : 07.02.2024**

Additional evidence can be permitted in a second appeal only in exceptional circumstances

This second appeal has been preferred by the unsuccessful defendant as against the concurrent findings of the courts below, whereby the suit was decreed in favour of the plaintiffs by granting declaration and injunction, which was affirmed by the first appellate court. While deciding the validity of the certificate issued by the Registering authority qua Ex A1 sale deed, since the same was registered subsequent to the death of the executant, the Hon'ble High Court had held that the registrar conducted an enquiry under Rule 58 of the TN Registration rules 1949 and issued the certificate under sec 60 of the Registration Act. Therefore, the certificate issued by him as such was a proof that the document has been registered in a manner contemplated by law. Any defect in the procedure followed by the registrar in good faith will not invalidate the act of registration. The appeal was dismissed in absence of any evidence to dislodge the presumption. Challenge to the executed sale in favour of the Plaintiff was rejected.

The Court held that, the requirement provided under Order XLI Rule 27 (a),(aa) & (b) has to be met to provide additional evidence at the appellant stage. However, the appellant having slept over the matter till the stage of second appeal cannot be permitted to lead evidence at the appeal stage. Though the suit was filed in the year 2002, and an appeal was filed during 2006, the defendant filed the application to receive additional documents in the second appeal only during 2010 and dismissed the Second Appeal.
