

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVI — PART 08 — AUGUST 2021 ****

COMPENDIUM OF CASE LAWS



TAMIL NADU STATE JUDICIAL ACADEMY HEADQUARTERS, CHENNAI

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

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

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

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course,
COIMBATORE,

Tamil Nadu, India. PIN: 641 018

Telephone No: (0422) 2222610, 710

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

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K. Pudur,
MADURAI,

Tamil Nadu, India. PIN: 625 002

Telephone No: (0452) 2560807, 811

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

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2	<u>Kay Bouvet Engineering Ltd Vs. Overseas Infrastructure Alliance (India) Pvt. Ltd.</u>	2021 SCC Online SC 570	10-08-2021
3	<u>Shri Saurav Jain Vs. M/s. A.B.P. Design</u>	2021 SCC Online SC 552	05-08-2021
4	<u>South Eastern Coalfields Ltd. Vs. S. Kumar's Associates AKM (JV)</u>	2021 SCC Online SC 486	23-07-2021
5	<u>Srihari Hanumandas Totala Vs. Hemant Vithal Kamat</u>	2021 SCC Online SC 565	09-08-2021

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1	<u>Cheminova India Ltd.</u> <u>Vs.</u> <u>State of Punjab</u>	2021 SCC Online SC 541	04-08-2021
2	<u>Lakshman Singh</u> <u>Vs.</u> <u>State of Bihar (now Jharkhand)</u>	2019 SCC OnLine SC 2042	23-07-2021
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S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT
1	<u>Commissioner of Income Tax, Chennai.</u> <u>Vs.</u> <u>M/s. Ayshwarya Sea Food Pvt. Ltd.</u>	T.C.A. No. 438 of 2010	02-08-2021
2	<u>D. Krishnamoorthy & Anr.</u> <u>Vs.</u> <u>The Registrar of Co-operative Society</u> <u>(Housing)</u>	W.P. Nos.12476 and 12894 of 2021 & WMP Nos.13701, 13257 and 14245 of 2021	10-08-2021
3	<u>G.E. Govindaraj</u> <u>Vs.</u> <u>The Assistant Commissioner (CT),</u> <u>Arisipalayam Assessment Circle, Salem</u> <u>& Ors.</u>	WP No.28927 of 2012	20-07-2021
4	<u>M. Kavin Thamizh</u> <u>Vs.</u> <u>The Inspector of Police, Kadaladi</u> <u>Police Station & Ors.</u>	H.C.P. (MD) No. 1082 of 2021	13-08-2021
5	<u>N. Vasudevan & Ors.</u> <u>Vs.</u> <u>The Registrar General, High Court of</u> <u>Judicature at Madras</u>	2021 SCC Online Mad 2630	20-07-2021
6	<u>S. Sridharan</u> <u>Vs.</u> <u>M.K. Stalin</u>	W.P.No.16431 of 2021	09-08-2021

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8	<u>Selvaraj & Ors.</u> <u>Vs.</u> <u>Koodankulam Nuclear Power Plant</u> <u>India Limited & Ors.</u>	(2021) MLJ 467	16-07-2021
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10	<u>The Management of ICICI Bank Ltd.</u> <u>Vs.</u> <u>The Presiding Officer, Central</u> <u>Government Industrial Tribunal cum</u> <u>Labour Court</u>	W.A.No .431 of 2020 & C.M.P.No.6634 of 2020	27-07-2021

HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT
1	<u>Alagumani</u> <u>Vs.</u> <u>State Rep. by The Sub-Inspector of Police,</u> <u>Kallal Police Station</u>	CrI. RC (MD) No. 780 of 2016	11-08-2021
2	<u>B. Krishnan</u> <u>Vs.</u> <u>State, by its Inspector of Police, CBCID</u> <u>Nilgiris District</u>	CrI. Appeal No. 799 of 2016	04-08-2021
3	<u>C.N. Siva Shankaran</u> <u>Vs.</u> <u>State Rep. by DSP, CB-CID, OCU-II</u> <u>Chennai</u>	CrI. O.P. Nos.13396 & 13404 of 2021	17-08-2021
4	<u>Nehru</u> <u>Vs.</u> <u>State Rep. by The Inspector of Police,</u> <u>Ariyalur Police Station, Ariyalur District</u>	2021 (2) L.W. (CrI.) 177	16-07-2021
5	<u>Prabhu & Ors.</u> <u>Vs.</u> <u>State Rep. by The Inspector of Police,</u> <u>Madukkur Police Station, Thanjavur District</u>	CrI. OP (MD) Nos. 10401 of 2021, etc., batch	11-08-2021
6	<u>R. Munirathinam</u> <u>Vs.</u> <u>M. Gajendran</u>	2021 (2) L.W. (CrI.) 203	22-07-2021
7	<u>R. Ravindran</u> <u>Vs.</u> <u>Superintendent of Police, Ramanathapuram</u>	CrI. O.P. (MD) No.10056 of 2021	10-08-2021

8	<u>S. Salman & Ors.</u> <u>Vs.</u> <u>Mukanchand Bothra (deceased)</u>	Crl. O.P. No. 12830 of 2020	09-08-2021
9	<u>Sait @ Rajendran</u> <u>Vs.</u> <u>State Rep. by The Inspector of Police,</u> <u>B-14, Kuniyamuthur Police Station,</u> <u>Coimbatore</u>	Crl. A. No. 206 of 2018 and Crl. M. P. No.4952 of 2018	28-07-2021
10	<u>State</u> <u>Vs.</u> <u>Sundar & Ors.</u>	2021 (2) L.W. (Crl.) 209	16-07-2021

SUPREME COURT - CIVIL CASES**Amazon.com NV Investment Holdings LLC Vs. Future Retail Ltd. & Ors. [2021 SCC OnLine SC 557]****Date of Judgment: 06-08-2021**

Arbitration and Conciliation Act, 1996 — Foreign Exchange Management Act, 1999 — Code of Civil Procedure — Emergency Arbitrator

The Hon'ble Supreme Court decided a Civil Appeal on the following issues:

[1] Whether an "award" delivered by an Emergency Arbitrator under the Arbitration Rules of the Singapore International Arbitration Centre can be said to be an Order under Section 17(1) of the Arbitration and Conciliation Act, 1996?

[2] Whether an Order of the High Court passed under Section 17(2), Arbitration Act in enforcement of the award of an Emergency Arbitrator was appealable?

The Supreme Court held that, "full party autonomy is given by the Arbitration Act to have a dispute decided in accordance with institutional rules which can include Emergency Arbitrators delivering interim orders, described as "awards". Such orders are an important step in aid of decongesting the civil courts and affording expeditious interim relief to the parties. Such orders are referable to and are made under Section 17(1) of the Arbitration Act". The Supreme Court further held that "No appeal lies under Section 37 of the Arbitration Act against an order of enforcement of an Emergency Arbitrator's order made under Section 17(2) of the Act.", and thus, set aside the impugned Judgment of the Division Bench.

*** See Also**

- Chintels (India) Ltd. Vs. Bhayana Builders (P) Ltd., (2021) 4 SCC 602;
- BGS SGS SOMA JV Vs. NHPC, (2020) 4 SCC 234;
- Deep Industries Ltd. Vs. ONGC, (2020) 15 SCC 706;
- Kandla Export Corporation Vs. OCI Corporation, (2018) 14 SCC 715; (Arbitration Act is a self-contained code on matters pertaining to arbitration, which is exhaustive in nature)



Kay Bouvet Engineering Ltd Vs. Overseas Infrastructure Alliance (India) Pvt. Ltd. [2021 SCC Online SC 570]
Date of Judgment: 10-08-2021

Insolvency and Bankruptcy Code, 2016 [IBC] — Section 9 — Line of Credit — Operational Debt — Bank Guarantee — Bank Guarantee Performance

The Supreme Court while deciding a Civil Appeal observed that, “an Operational Creditor, on the occurrence of default, is required to deliver a Demand Notice of unpaid Operational Debt or a copy of invoice, demanding payment of amount involved in the default to the Corporate Debtor in such form and manner as may be prescribed. Within 10 days of the receipt of such Demand Notice or copy of invoice, the Corporate Debtor is required to either bring to the notice of the Operational Creditor, the existence of a dispute, or to make the payment of unpaid Operational Debt in the manner as may be prescribed and as per the provisions of Section 9 of the IBC. ... after the expiry of a period of 10 days from the date of delivery of notice or invoice demanding payment under subsection (1) of Section 8 of the IBC, the Operational Creditor is entitled to file an application before the adjudicating authority (National Company Law Tribunal) for initiating the Corporate Insolvency Resolution Process.”

The Supreme Court held that, “...such debts, which is usually smaller than that of financial debts, does not enable Operational Creditors to put the Corporate Debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations ... Once the Operational Creditor has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by Operational Creditor or if there is a record of dispute in the information utility. What is required is that the notice by the Corporate Debtor must bring to the notice of Operational Creditor the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required to see at this stage is

whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is a mere bluster. The Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. If a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”, and thus allowed the Appeal.



Shri Saurav Jain Vs. M/s. A.B.P. Design [2021 SCC Online SC 552]
Date of Judgment: 05-08-2021

Order XLI Rule 22, Civil Procedure Code, 1908 — Sections 5(3), 6 and 10(1), Urban Land (Ceiling and Regulation) Act, 1976

The Supreme Court while dealing with a Civil Appeal regarding a dispute in restraining interference from possession of land, discussed the Urban Land (Ceiling and Regulation) Act 1976, and reiterated the principle under Section 5(3) and the dual test that needs to be satisfied in the case of transfer of land. The Supreme Court emphasized that, “a statement from the person holding vacant land in excess of ceiling limit under Section 6 of the Act and the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit under Section 10 of the Act is the essence of the dual test under Section 5(3). The deviation from Section 5(3) was to be considered null and void. The Supreme Court referred to the decision in *Jamshed Hormusji Wadia Vs. Port of Mumbai, (2004) 3 SCC 314*, wherein it was held “that the principle stipulated in Order XLI Rule 22 of CPC can be applied to petitions under Article 136 of the Constitution to meet the ends of justice. ...it is not essential that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection.”, and categorically affirmed to hold that, “when cross objection under Order XLI Rule 22 could be made, and when the trial court had the power to entertain the suit initially as the law dictates that the question of jurisdiction can be raised at any stage of the proceedings”. Thus, the Supreme Court set aside the impugned judgment of the High Court.

*** See Also**

- Canara Bank Vs. P. Selathal & Ors. (2020) 13 SCC 143
- Chandrika Misir Vs. Bhaiya Lal (1973) 2 SCC 474.
- Dhulabhai Vs. State of M.P AIR 1969 SC 78
- Madanuri Sri Rama Chandra Murthy Vs. Syed Jala (2017) 13 SCC 174.
- Masalti Vs. State of Uttar Pradesh AIR 1965 SC 202
- Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs AIR 2019 SC 1430
- Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner (2004) 3 SCC 137
- T. Arivandandam Vs. T.V Satyapal (1977) 4 SCC 467

South Eastern Coalfields Ltd. Vs. S. Kumar's Associates AKM (JV) [2021 SCC Online SC 486]

Date of Judgment: 23-07-2021

Contract Act, 1872 — Letter of Intent [LoI] — Contract — Intention of Parties to enter into a contract — Security Deposit — Condition Precedent / Subsequent

While exercising its Civil Appellate Jurisdiction, the Hon'ble Supreme Court found that, "a Letter of Intent (LoI) merely indicates a party's intention to enter into a contract with the other party in future... No binding relationship between the parties at this stage emerges and the totality of the circumstances has to be considered in each case. ... It is no doubt possible to construe a LoI as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood.... The Supreme Court referred to the decision in *Dresser Rand S.A. Vs. Bindal Agro Chem Ltd. & Anr., (2006) 1 SCC 751*, wherein it was held that, "contract will come into force upon receipt of letter by the supplier, and yet on a holistic analysis – the LoI could not be interpreted as a work order", and the decision in *Jawahar Lal Burman Vs. Union of India, (1962) 3 SCR 769*, wherein it is unequivocally mentioned that, "contract is concluded by this acceptance and formal acceptance of tender will follow immediately on receipt of treasury receipt."

The Supreme Court held that, "it has been stipulated as to at what time a contract would stand concluded even though it was later subject to deposit of the security amount. ... It was in these circumstances that the requirement of security deposit was treated not as a condition precedent but as a condition subsequent.", and thus, dismissed the Appeal.

**Srihari Hanumandas Totala Vs. Hemant Vithal Kamat [2021 SCC Online SC
565]**

Date of Judgment: 09-08-2021

Civil Procedure Code — Res judicata — Order VII Rule 11

While deciding a Civil Appeal arising out of a Special Leave Petition on the issue of a mortgaged suit property as security for repayment of loan, auction of such mortgaged suit property for non-payment of the loan, and the subsequent suit to hand over vacant and peaceful possession of the suit property, the Hon'ble Supreme Court summarized the guiding principles for deciding an application for Rejection of Plaint under Order VII Rule 11, the principles of res judicata, to hold that, " ... to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. ... Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. ...to decide on the arguments raised by the Appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings and judgment and decree.... An application under Order 7 Rule 11 must be decided within the four corners of the plaint." The Supreme Court dismissed the petition, thus upholding the decision the Trial Court and the High Court.

*** See Also**

- Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706;
- Saleem Bhai Vs. State of Maharashtra, Church of Christ Charitable Trust (2003) 1 SCC 557;
- Shakti Bhog Food Industries Ltd. Vs. Central Bank of India and Another 2020 SCC OnLine SC 482
- V. Rajeshwari Vs. T.C. Saravanabava (2004) 1 SCC 551



SUPREME COURT - CRIMINAL CASES

Cheminova India Ltd. Vs. State of Punjab [2021 SCC Online SC 541]

Date of Judgment: 04-08-2021

Sections 33 and 29, Insecticides Act, 1968 — Sections 202 and 469, Cr.P.C — period of limitation — Misbranding of insecticide

The Hon'ble Supreme Court deciding on an Appeal concerning a case of misbranding of insecticides found that, "as per Section 33 of the Insecticides Act, only the responsible person of the Company, and the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law". The Supreme Court found that, "owing to Section 33 of the Insecticides Act and the undertaking filed by the Appellants, allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law ... the procedure under Section 202, Cr.P.C is to be followed keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty, and that by virtue of *Proviso* to Section 200, Cr.P.C, the public servant is exempted from examination by the Magistrate." The Supreme Court held that, "the complaint is barred by limitation, since the offence was made out in the first laboratory report itself which indicates misbranding, and that as per Section 469, Cr.P.C, period of limitation is calculated from the date of commission of offence." The Supreme Court thus partly allowed the Appeal and set aside the impugned Order of the High Court qua the 2nd Appellant.

Lakshman Singh Vs. State of Bihar (now Jharkhand) [2019 SCC OnLine SC 2042]

Date of Judgment: 23-07-2021

Sections 323 and 147, I.P.C — evidence of injured witness

The Hon'ble Supreme Court relying on the precedents* pertaining to evidence of injured witnesses, found that, there is no reason to doubt the credibility and trustworthiness of the injured witnesses as "all the witnesses are consistent in their statements and they have fully supported the case of the prosecution". The Supreme Court observed that "production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC", as according to Section 319, Cr.P.C, even causing bodily pain can be said to be causing 'hurt'. Regarding the conviction under Section 147, I.P.C, the Supreme Court reiterated the observation in *Abdul Sayeed Vs. State of MP (2010) 10 SCC 259*, that where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him, and found that "every member of the unlawful assembly is guilty of the offence of rioting even though he may not have himself used force or violence".

Thus, the Supreme Court upholding the conviction under Sections 323 and 147, I.P.C, dismissed the Appeals and directed the Accused-Appellants to surrender and serve their sentence.

***See Also**

- State of Madhya Pradesh Vs. Mansingh, (2003) 10 SCC 414
- Abdul Sayeed Vs. State of MP (2010) 10 SCC 259
- Ramvilas Vs. State of Madhya Pradesh, (2016) 16 SCC 316

S. Nandiesha Reddy Vs. Kavitha Mahesh [2021 SCC Online SC 538]
Date of Judgment: 03-08-2021

Section 193, I.P.C – perjury – inconsistent statements

The Hon'ble Supreme Court decided on the issue whether the statements made by the Appellant, which were considered to be inconsistent by the High Court, amounted to perjury. The inconsistency pertained to statements made on the allegation over rejection of nomination papers of the Respondent-Election Petitioner by the Appellant-Returning Officer. The Supreme Court relying on the decisions in *KTMS Mohammad & Anr. Vs. Union of India, 1992 3 SCC 178* and *Amarsang Nathaji Vs. Hardik Harshadbhai Patel & Ors., 2017 1 SCC 113*, observed that "Mere reference to inconsistent statements alone is not sufficient to take action unless a definite finding is given that they are irreconcilable; one is opposed to the other so as to make one of them deliberately false ... The learned Judge has no doubt accepted the version put forth by the election petitioner. That by itself does not indicate that appellant had uttered falsehood intentionally and deliberately before the court so as to initiate action under Section 193 Indian Penal Code."

The Supreme Court held that, "even in a case where the Court comes to the conclusion on the aspect of intentional false evidence, still the Court has to form an opinion whether it is expedient in the interest of justice to initiate an inquiry into the offences of false evidence, having regard to the overall factual matrix as well as the probable consequences of such prosecution". The Supreme Court thus set aside the direction of the High Court to initiate perjury action against the Appellant.

State of Haryana Vs. Rajkumar @ Bittu [2021 SCC Online SC 539]
Date of Judgment: 03-08-2021

Power to grant Remission — Article 161, Constitution of India — Sections 432 and 433, Cr.P.C

The Hon'ble Supreme Court made a distinction between the 'power to grant remission' as exercised by the Governor and by the State Government, and observed that the decision in *State of Haryana & Ors. Vs. Jagdish*, has to be analysed in this light. Relying on the decisions in *Maru Ram Vs. Union of India & Ors, (1981) 1 SCC 107* and *Union of India Vs. V. Sriharan, (2016) 7 SCC 1*, the Supreme Court found that, "the power under Article 161 of the Constitution can be exclusively exercised by the State Governments ... the policies of the State Government are composite policies encompassing both situations under Article 161 of the Constitution and Sections 432, 433 and 433-A of the Code. The remission under Article 161 of the Constitution will override Section 433-A of the Code, if the State Government decides to be governed of its constitutional power".

Following this finding, the Supreme Court held that, the directions of the High Court were "not sustainable for the reason that the policies have to be read keeping in view the period of imprisonment undergone by a prisoner. The power of remission is to be exercised by the State Government, as an appropriate Government, if the prisoner has undergone 14 years of actual imprisonment in the cases falling within the scope of Section 433-A of the Code and in case the imprisonment is less than 14 years, the power of premature release can be exercised by the Hon'ble Governor though on the aid and advice of the State Government". The Supreme Court thus set aside the directions issued by the High Court on the grant of remission.

Surajdeo Mahto & Anr. Vs. State of Bihar [Criminal Appeal No. 1677 of 2011]
Date of Judgment: 04-08-2021

Sections 302 and 34 IPC read with Section 120-B IPC — circumstantial evidence — claim of juvenility

In a Criminal Appeal, the Hon'ble Supreme Court decided on the following issues:

- [1] Whether the circumstantial evidence establishes the guilt of the Appellants beyond any reasonable doubt?
- [2] Whether Appellant No.1 was a juvenile on the date of the occurrence?

On the first issue, the Supreme Court referred to the decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, and examined the case based on the five cardinal principles laid down for recording a conviction based on circumstantial evidence. Relying on *Satpal Vs. State of Haryana, (2018) 6 SCC 610*, the Supreme Court observed that the last seen theory should not be weighed in isolation but "should rather be applied taking into account the case of the prosecution in its entirety". The Supreme Court further observed that, "in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, it was withheld by the prosecution". On the ground of motive, the Supreme Court observed that, "in cases of overwhelming circumstantial evidence, proof of motive will be an important piece of corroborative evidence, as well as, form a vital link in the chain of evidence", and found that, considering the ground realities of the social situation at the time of occurrence of offence, the Trial Court, had correctly recorded motive had been sufficiently proved by the prosecution. With regard to Appellant No.2, the Supreme Court found that, "until and unless the last seen theory is substantiated by other circumstantial evidence to constitute an unbreakable chain of events, the conviction cannot rest solely on the basis that the Appellant No.2 was also present along with Appellant No.1 in the company of the deceased".

On the second issue, the Supreme Court observed that though the claim of juvenility can be raised at any stage, some form of cogent evidence needs to be adduced to *prima facie* establish juvenility on the date of offence. The Supreme Court found that the name of Appellant No.1 did not appear on the School Certificate produced, and there was no cogent material to show that the documents pertain to Appellant No.1. Thus, the Supreme Court upheld the conviction and sentence of Appellant No.1 and acquitted Appellant No.2.

***See Also**

- Mohd. Younus Ali Tarafdar Vs. State of West Bengal, (2020) 3 SCC 747
- R. Damodaran Vs. State Represented by the Inspector of Police, 2021 SCC OnLine SC 134

HIGH COURT - CIVIL CASES**Commissioner of Income Tax, Chennai. Vs. M/s. Ayshwarya Sea Food Pvt. Ltd. [T.C.A. No. 438 of 2010]****Date of Judgment: 02-08-2021**

Income Tax Act, 1961 — Disallowance u/S. 40-A(3) — Deduction u/S. 80HHC

The Hon'ble High Court decided on the following issues in a Tax Case Appeal:

- [1] Whether the assessee is entitled for deduction under Section 80HHC where separate books of account are maintained with respect to export and other units?
- [2] Whether the assessee is entitled for deduction under Section 80HHC by reckoning with the profit of the export unit alone and ignoring the losses of the other units
- [3] Whether the disallowance under Section 40-A(3) can be made on the assessee with respect to the cash payments made towards the purchase of shrimp feed?

The Court referred to the decision of the Apex court in *Ipca Laboratories Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, (2004) 12 SCC 742*, wherein it was held that, disclaimer by the exporter-assessee in favour of supporting manufacturer in terms of the proviso to Section 80HHC(1) would not have such effect as to entitle the exporter to deduction, and found that the decision in *Ipca Laboratories* would not apply to the present case and thus held that, "...there were no separate accounts maintained and the fact that the assessee was maintaining separate Books of Accounts for the export unit and the trading division, was not been disputed by the Assessing Officer."

On the third issue the Court held that, "no ground to take a presumption or adverse inference with respect to the cash payments made towards the purchase of shrimp feed was made out as undoubtedly a fish or fish product, which will fall within the scope of Rule 6DD(f)(iii) and if it is so, no disallowance under Clause (a) of Sub-Section (3) of Section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under Clause (b) of Sub-Section (3) of Section 40A.", and thus dismissed the Appeal filed by the Revenue.

**D. Krishnamoorthy & Anr. Vs. The Registrar of Co-operative Society
(Housing) [W.P. Nos.12476 and 12894 of 2021 & WMP Nos.13701, 13257
and 14245 of 2021]**

Date of Judgment: 10-08-2021

Suspension of elected office bearers — Section 76A and 81, Tamil Nadu Cooperative Societies Act, 1983

In a Writ of Certiorari, the Hon'ble High Court dealt with the issue whether the suspension of elected officer bearers as per Section 76A of the Tamil Nadu Cooperative Societies Act, 1983 is warranted pending an inquiry under Section 81 of the said Act.

The Court delineated the scope of Section 76A of the Act, and observed that the exercise of power under the Section 76A is a two-step process, namely placing of information indicating commission of offence involving criminal misconduct or moral turpitude before the Registrar, and forming of opinion by the Registrar on the availability of *prima facie* evidence against the office bearers and the necessity of suspension of the office bearers in the interest of the Society or public interest. Based on this observation, the Court found that the mere availability of *prima facie* material would not trigger Section 76A of the Act. "The Registrar is required to travel further and evaluate whether, based on such material, the suspension of the President or Vice President is necessary in public interest or in the larger interests of the society."

The Court, relying on the decisions of the Apex Court in *Ravi Yashwant Bhoir Vs. Collector, 2012 4 SCC 407* and *State of M.P. Vs. Sanjay Nagayach, (2013 7 SCC 25)*, held that "Section 76-A is a drastic power which interferes with the rights of the elected members who have been voted to office, and must, therefore, be exercised very sparingly and only in the clearest cases where there is objective material to show that the continuation of office would interfere and impede a free and fair inquiry under Section 81". Thus, the Court allowed the Writ Petitions and quashed the impugned proceedings, with a direction to proceed with the inquiry under Section 81 of the Act.

G.E. Govindaraj Vs. The Assistant Commissioner (CT), Arisipalayam
Assessment Circle, Salem & Ors. [WP No.28927 of 2012]
Date of Judgment: 20-07-2021

Tamil Nadu General Sales Tax Act 1959 – Tax Arrears – Commercial Tax Department

In a Writ of Certiorari filed questioning the validity of an impugned notice, to pay the sales tax arrears and for recovery of the above arrears of sales tax due, actions were taken under the Revenue Recovery Act. The Hon'ble High Court gave a considered opinion that, "The sales tax defaulter has to pay the arrears of sales tax within a period of 30 days, as contemplated under the provisions of the Act. If the arrears of sales tax is not paid by the defaulter and if no appeal was filed against the order passed by the Original Authority, then the Authority Competent is empowered to initiate action against the defaulter to recover the arrears of sales tax by following the procedures contemplated under the TNGST Act"

The Hon'ble High Court held that, "...Contrarily, the arrears of sales tax for the years 2000-2001 and 2001-2002, is sought to be recovered by issuing notice to the third party purchaser of the property in the year 2012....Revenue to the State is to be protected. If there is a loss of revenue to the State on account of the lapses, negligence and dereliction on the part of the Competent Authorities, then the Government is duty bound to initiate action against all those erring officials, who all are responsible and accountable for such revenue loss and recover the loss of revenue from those officials after instituting an appropriate action under the Discipline and Appeal Rules and for recovery of loss of revenue...", thus allowed the Writ Petition.

M. Kavin Thamizh Vs. The Inspector of Police, Kadaladi Police Station & Ors.
[H.C.P. (MD) No. 1082 of 2021]
Date of Judgment: 13-08-2021

Article 21 – Right to Life and Liberty - Constitution of India

While deciding a Habeas Corpus Petition filed by a trans man seeking to produce the person of his partner who was detained by her parents, the Hon'ble High Court considering the fact that the detinue is a major and that she is willing to go with the Petitioner, on her own volition, held that the detinue is set at liberty and is permitted to go along with the Petitioner.

N. Vasudevan & Ors. Vs. The Registrar General, High Court of Judicature at Madras [2021 SCC Online Mad 2630]
Date of Judgment: 20-07-2021

Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules 2007 — Seniority — Roster — Promotion

The Hon'ble High Court while deciding on a writ of certiorarified mandamus relating the issue whether the determination of inter se seniority at the Civil Judge (Junior Division) entry level at the time of recruitment would be on the basis of the roster positions of the recruits or otherwise. The High Court held that, "...the seniority of the persons inducted to the post of Civil Judge (Junior Division) specific year onwards has to be determined in accordance with the marks obtained by the successful candidate in the recruitment examination such that the appointee with the highest marks will be placed in the first position and the appointee with the lowest marks among the successful candidates will be placed in the last position in the list prepared according to seniority, irrespective of, and completely without reference to, the positions such appointees may have occupied on the 200-point roster. ...wherever promotions have been granted from among appointees in the entry cadre, the revised seniority list will not result in a judicial officer previously promoted being brought down to a lower position. The rights of all judicial officers, who are placed in higher positions in the seniority list by reason of the revision pursuant to this order, to be promoted to the next higher post will be subject to the vacancy at such level..." and disposed of the writ petitions with directions.



S. Sridharan Vs. M.K. Stalin [W.P.No.16431 of 2021]**Date of Judgment: 09-08-2021****Section 7, Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959**

The prayer in the writ petition is for directing the Chief Minister of the State to not chair any Advisory Committee formed under Section 7 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, until he takes a pledge in front of a Hindu God in a nearby Hindu temple in the presence of two witnesses. The Hon'ble High Court held that, "There can be no element of public interest in the matter. Discord, disharmony and suspicion in the name of religion has to stop. This is a secular country and secularism implies tolerance for the other religion. This country also provides for freedom of expression to its citizens, which, in turn, implies lending an ear to the other point of view. Even the Constitution permits the oath of office to be taken either in the name of God or in the name of the Constitution", and thus dismissed the petition.

Saminathan Vs. Sukumar [C.R.P. (PD) No. 578 of 2021 & C.M.P. No. 4898 of 2021]

Date of Judgment: 30-07-2021

Section 35, Indian Stamp Act, 1899 — Sections 17 and 49, Registration Act, 1908

The Hon'ble High Court dealt with a Civil Revision Petition seeking partition and separation of possession, and decided on the issue whether an unstamped, unregistered partition deed can be relied on in a judicial proceeding, in the teeth of Sections 35 of the Indian Stamp Act, 1899 and in the teeth of Sections 17 and 49, Registration Act, 1908.

The Court observed that, "A partition deed creates and limits the rights of the parties to the document. It has to be compulsorily registered. It has to be therefore stamped ... A small leverage of the words "for any purpose" in Section 35 of the Stamp Act has been given by the further words "unless such instrument is duly stamped". If an unstamped or inadequately stamped partition deed is filed as a document and is sought to be marked as an exhibit, it has to pass the test of admissibility. To be even considered whether it is admissible, even ostensibly for collateral purposes, it has to be first impounded and the duty and penalty as stipulated in clause (a) of Section 35 of The Indian Stamp Act, 1899 will have to be determined and collected. An unregistered document has to suffer the fate of non-registration. An exception is, if it is introduced to evidence a "collateral transaction". A collateral transaction is often wrongly termed as collateral purpose. The said collateral transaction for evidence which an unregistered partition deed is produced should also be compulsorily registrable. Possession of a property claimed through a document indicates transfer of a right in immovable property. Thus an unregistered document cannot be an evidence to prove possession, since the document which grants that right of possession has not been registered."

The Court held that, "a process of partition contemplates severance of status, division of the joint family property by metes and bounds, and possession of the divided and allotted shares. When status is severed, then each coparcener is a co-tenant of the other. That

is the first stage. Then comes actual division of the property by metes and bounds. Then comes possession of the shares divided and allotted. Division by metes and bounds and handing over of possession are clauses inherent to any partition deed.

If such a partition deed is neither stamped nor registered, curing the document by payment of duty and penalty will still not make the document admissible to prove actual partition and putting or taking possession of the shares divided and allotted. The only purpose for which an unstamped and unregistered partition deed can be looked into is to evidence severance of status among or between the coparceners. Each coparcener then becomes co-tenants of each other. Nobody gets an independent right over any particular portion of the joint family property. That right is created by actual division by metes and bounds. ...

A decree cannot be passed on the allotment of shares in accordance with the inadmissible partition deed. A suit for partition has to be decided independently of the allotment of shares as given in the inadmissible partition deed. Still, a co-parcener has to "bring a suit for partition of all the properties owned in common or, according to some decisions, for joint possession with his co-owners." ... thus affirming to the order of the learned Judge to take on file the unstamped, unregistered partition deed dated 05.03.1957 is however upheld, but a direction is given that as a necessary pre-condition, the document must be impounded and necessary duty and penalty as stipulated in the provisions of the Stamp Act, 1935 must first be collected. The document can be looked into only for the purpose of establishing 'severance of status' among the parties...The suit for partition will have to proceed in manner known to law and in accordance with established procedure by passing a preliminary decree determining the shares, then passing a final decree. The preliminary decree determining shares will have to be based on the evidence let in and not based on the covenants of the unstamped, unregistered partition deed." Thus, the Court disposed the Petition.

Selvaraj & Ors. Vs. Koodankulam Nuclear Power Plant India Limited & Ors.**[(2021) MLJ 467]****Date of Judgment: 16-07-2021****Civil Procedure Code — Order VII Rule 11**

The Hon'ble High Court while deciding a Civil Revision Petition held that, "...the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint-averments even prior to its institution...In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in *S. Parameswari Vs. Denis Lourdusamy, (2011) 5 CTC 742* and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised. ...Where the plaint is sought to be rejected on any of the grounds provided under Order VII Rule 11 even during the pre- registration stage, the matter must be posted before the open court, and the plaintiff or his/her counsel must be heard in the matter....For curing any of the permissible defects, no court shall return the plaint more than once.... In all cases where the plaint is presented, a decision as to numbering in the manner indicated in the tabulation provided in paragraph 31 shall be taken not later than three working days (excluding the date of presentation and any intervening holidays)." thus closed the civil revision petition.



Federation of Association of Private Schools in Tamil Nadu (FAPSIT) Vs. The Chief Secretary to Government & Ors. [W.P.Nos.8490 of 2020 etc., batch]
Date of Judgment: 30-07-2021

Right to Education — Fee determination

In a batch of Writ Petitions seeking directions to permit the collection of school fees for the lockdown period during the pandemic, the Hon'ble High Court relying on the decision of the Apex Court in *Indian School, Jodhpur & Anr. Vs. State of Rajasthan & Ors., 2021 SCC Online SC 359*, issued sixteen Directions, in order to protect the interest of students as well as the School Management during the extraordinary situation of the pandemic. The Directions provided that: [1] Schools, including the unaided private institutions can collect 85% or 75% of the annual school fees in instalments, depending on the financial situation of the parents, and also provided for further concession in fees. [2] Refund cannot be claimed for fees already paid, and the school Management shall not debar any student or withhold their examination results on account of non-payment of fees, and shall face suitable action from educational authorities if done so. [3] The District Educational Officer shall resolve the disputes concerning fee concession between the parents and school management, within a 30-day time frame, and the disputes concerning fee determination will be redressed by the Fee Determination Committee. [4] Educational Authorities shall make necessary arrangements to accommodate students who face difficulty in continuing in a particular school, in nearby Government or Panchayat schools, and that schools cannot insist on production of Transfer Certificate. [5] As a special measure, the State Government may sanction the fee amount, for unfilled seats under 25% quota under the Right of Children to Free and Compulsory Education Act, 2009, subject to eligibility criteria. [6] The management of CBSE Schools shall publish the fee details in their websites. [7] The State Government shall take necessary steps to ensure effective functioning of the Fee Determination Committee, and issue a revised Circular in view of the above Directions.

The Management of ICICI Bank Ltd. Vs. The Presiding Officer, Central Government Industrial Tribunal cum Labour Court [W.A.No .431 of 2020 & C.M.P.No.6634 of 2020]

Date of Judgment: 27-07-2021

Social Security — Industrial Disputes Act, 1947 — beneficial interpretation

While deciding an Appeal filed under Clause 15 of the Letters Patent, arising out of an industrial dispute concerning the modification of compulsory retirement to voluntary retirement, the Hon'ble High Court appreciated the provisions governing the Industrial Disputes Act, 1947 as the object of resolving the disputes between the workmen and the Management to create an atmosphere of industrial peace and harmony. The Hon'ble High Court held that, "...Fairness is expected to be in built in an action initiated by the employer. When such fairness is found to be inadequate or non-existent, the Labour Court is well within its jurisdiction to pass an award to an extent. While doing so, it might even create a right which may have the trappings of a contract. What is relevant is to see the fairness in the award but not the creation of the contract though it is expected that such a decision may not infringe upon the rules and regulations governing. It suffices to state that the power of the Labour Court is exhaustive in passing the just award. ... An interpretation in favour of the labour is required to be given. Therefore, when an action is found to be not fair, a Court of Law can hold that it involves 'victimisation' and therefore, a workman is entitled for a relief. Similarly, the word 'arbitrariness' has to be understood in the labour parlance to mean an unjustified action. An action becomes unfair where there are two options, of which, one is beneficial to the workman when he is not found guilty but the management renders the other one, one can call it as arbitrary. Such arbitrariness is attributable to the final result of the action of the management." and thus dismissed the Writ Appeal and confirmed the impugned order.

HIGH COURT – CRIMINAL CASES**Alagumani Vs. State Rep. by The Sub-Inspector of Police, Kallal Police Station [Crl. RC (MD) No. 780 of 2016]****Date of Judgment: 11-08-2021**

Section 304A, I.P.C — Failure of the prosecution to prove beyond reasonable doubt — Doctrine of *res ipsa loquitur*

The Hon'ble High Court while deciding a Criminal Revision Case against the conviction and sentence under Section 304A, I.P.C, found that "there is no evidence for whether the accident occurred due to rash and negligent driving of the Petitioner". The Court further found that, there were only two eye witnesses on the prosecution's side and the evidences against the Petitioner were not corroborated; the material object i.e., the cycle involved in the accident was not recovered, and thus the method of accident could not be determined from the nature of damage to the cycle. The Court referred to the decisions in *2017 (1) LW Cri. 160, M. Subramani Vs. State, rep. By Inspector of Police, Edapadi Police Station, Salem District* and *1998 (8) SCC 493* of Hon'ble Apex Court, and observed that the Courts in these cases pressed into service the doctrine of *res ipsa loquitur* to hold the respondent guilty, after recording that the Respondent was driving the Truck at high speed. The Court held that, "The prosecution failed to prove the charges against the Accused beyond reasonable doubt. Both the Courts below convicted the Petitioner solely based on the fact of accident.", and thus set aside the conviction and sentence.



B. Krishnan Vs. State, Rep. by its Inspector of Police, CBCID Nilgiris District
[Crl. Appeal No. 799 of 2016]
Date of Judgment: 04-08-2021

Sections 447 and 379 IPC — Section 3(1), Tamil Nadu Property (Prevention of Damage and Loss) Act, 1984

While deciding a Criminal Appeal, against the conviction and sentence under Sections 447, 379 IPC read with Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1984, The Hon'ble High Court held that, "The witnesses produced by the prosecution have not directly implicated the appellant in the offence. The implication of the appellant comes only in the form of the circumstantial evidence. It is settled law that, every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. In a case where the statute does not provide for burden of proof on the accused, it always lies on the prosecution...In the case of circumstantial evidence, the burden on the prosecution is always greater... The law does not insist the accused to prove his innocence, but it is for the prosecution to prove its case beyond all reasonable doubt". Thus, the Court allowed the Criminal Appeal and set aside the Judgement of conviction.

**C.N. Siva Shankaran Vs. State Rep. by DSP, CB-CID, OCU-II Chennai [Crl.
O.P. Nos.13396 & 13404 of 2021]**
Date of Judgment: 17-08-2021

Tamil Nadu Prohibition of Harassment of Women Act, 2002 — Protection of Child from Sexual Offences Act, 2012

The Hon'ble High Court while deciding a Criminal Original Petition seeking bail, where the Petitioner was charged under offences under Sections 354, 363, 365, 366 read with Section 109 I.P.C, Section 4, Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Sections 8, 10, 12 read with 17 of the POCSO Act, 2012, observed that "Yet, the said godman and teachers, unmindful of their position and the pedestal in which they are placed by the public, to satisfy their lust, prey on their devotees/students, thereby tarnishing the image of the genuine noble-minded souls, who have invested their lives for the spiritual and intellectual upliftment of the common man." The Court found that, "the mere fact that the complaint was a delayed one and that the medical complications of the Petitioner are of such a nature that the allegations raised against the Petitioner lacks bona fide, is too large an ask to be acceded to at this stage, when there are materials, which points to the complicity of the Petitioner in the offence... mere period of punishment cannot be the yardstick to determine the gravity of the offence. The gravity of the offence should be viewed on the basis of the effect that the offence would have on the society at large and the mere fact that the punishment codified is within seven years cannot be the basis to assess the gravity." Thus, the Court dismissed the bail application.



**Mohammed Sulthan @ Shafeek Vs. The State Rep. by The Inspector of Police,
All Women Police Station, Tiruppur – South, Tiruppur [Crl. A. No.772 of
2019]**

Date of Judgment: 30-07-2021

Protection of Child from Sexual Offences Act, 2012 — Appreciation of Evidence —
Criminal Procedure Code

The Hon'ble High Court decided a Criminal Appeal preferred by the Accused convicted for offences under Sections 6 and 12 of the POCSO Act, 2012. Relying on the decision of the Apex Court in *Phool Chand Vs. State of Rajasthan, AIR 1977 SC 315*, the Court found that, the evidence of P.W.1 was neither wholly reliable nor wholly unreliable and as such required corroboration. The court found that the witnesses examined to corroborate the evidence of P.W.1 did not support the case of the prosecution. Thus, the Court held that the Trial Court had erroneously convicted the Accused and set aside the impugned conviction and sentence.

Prabhu & Ors. Vs. State Rep. by The Inspector of Police, Madukkur Police Station, Thanjavur District [Crl. OP (MD) Nos. 10401 of 2021, etc., batch]
Date of Judgment: 11-08-2021

Section 439, CrPC — Appreciation of Evidence — Fair and Impartial Investigation

While deciding a Petition filed under Section 439, Cr.P.C, seeking bail, The Hon'ble High Court held as follows, "The investigation is the prerogative of the investigation agency. ...even the Courts cannot interfere with the investigation. The sole object of the investigation is to find out the truth and to place it before the Court of law for necessary prosecution. The process of finding out the truth must be fair and impartial. The Courts can take a decision only on the materials placed by either side before it and therefore, it is the duty of all concerned to place the correct facts before the Court.", and thus granted the relief sought by the Petitioner.

R. Munirathinam Vs. M. Gajendran [2021 (2) L.W. (Crl.) 203]
Date of Judgment: 22-07-2021

Simultaneous Criminal Proceedings

The Hon'ble High Court while deciding a Criminal Original Petition praying for initiation of a preliminary enquiry under Section 340, Cr.P.C, followed the principle laid down in *Iqbal Singh Marwa Vs. Meenakshi Marwah, (2005) 4 SCC 370*, and observed that, Section 195(1)(b)(ii) of Cr.P.C would be attracted only when the offences enumerated in the said provision are committed with respect to a document after it has been produced or given in evidence in any proceedings in any court, i.e., during the time when the document was *custodia legis* qua Court. Following this observation, the Court held as follows- "on an extreme demurrer, even if all the averments pertaining to said partnership deed in Crl.O.P are true and correct at the highest, even according to Petitioner, the alleged offences under I.P.C. (making a document using blank signed stamp papers) was committed much before the aforementioned arbitration OP was filed in this court, this stated position of the petitioner by itself takes the matter outside the purview of Section 195(1)(b) Cr.P.C... The principle that criminal proceedings can go on simultaneously is indisputable as the degree of proof required in two proceedings are different, i.e., preponderance of probability and proof beyond doubt respectively". Thus, the Court rejected the Petition as not maintainable.



**R. Ravindran Vs. Superintendent of Police, Ramanathapuram [Crl. O.P. (MD)
No.10056 of 2021]**

Date of Judgment: 10-08-2021

First Information Report — Criminal Procedure — Investigating Officer — Alteration Report

The Hon'ble High Court while deciding a Criminal Original Petition praying to direct the Respondent police to alter the FIR for suitable offence, considered whether any such direction, can be issued to the Respondent, to alter the First Information Report, under Section 307 IPC, as requested by the Petitioner. The Court referred to the decision in *State of Haryana Vs. Bajanlal, 1992 SCC CrI 426*, and found that the Court can interfere in the investigation only in exceptional circumstances and that in the present case, the perusal of the entire CD file does not show improper investigation. Thus, the Criminal Original Petition was disposed of with a direction to the Investigating Officer to record the further statement of the Petitioner.

S. Salman & Ors. Vs. Mukanchand Bothra (deceased) [Crl. O.P. No. 12830 of 2020]

Date of Judgment: 09-08-2021

Sections 499 and 500 IPC — Reputation — Defamation — Frivolous Complaint — Cognizance

While deciding a Criminal Original Petition pertaining to an offence under Section 499 read with 500 I.P.C, the Hon'ble High Court reiterating the decision in *S. Khusboo Vs. Kanniammal & Anr., 2010 AIR SCW 2494* and held that, "the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm ... limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. ...it is the reputation of an individual person which must be in question and only such a person can claim to have a legal peg for a justifiable claim to hang on", and thus quashed the proceedings pending before the Magistrate Court.

**Sait @ Rajendran Vs. State Rep. by The Inspector of Police, B-14,
Kuniyamuthur Police Station, Coimbatore [Crl. A. No. 206 of 2018 & Crl. M. P.
No.4952 of 2018]**

Date of Judgment: 28-07-2021

**Culpable Homicide not amounting to murder — no intention to cause death of deceased
— Ocular evidence corroborated through the evidence of experts**

The Hon'ble High Court deciding a Criminal Appeal against the Judgment of conviction for offence under Section 302, I.P.C, found that the evidence given by the eyewitnesses are corroborated by the evidence given by the doctor who conducted the post-mortem examination. The Court observed that the non-detection of the blood group in the weapon used for the commission of offence, is not a significant one to assail the entire case of prosecution. The Court further observed that, in criminal cases, if the ocular evidence, if accepted, is sufficient to warrant conviction, though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. Following this observation, the Court held that in the present case, the ocular evidence, is corroborated by the evidence of medical officer as well as by the experts. The Court further held that, the Accused had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased. In conclusion, the Court partly allowed the Criminal Appeal and modified the conviction under Section 302, I.P.C to that of Section 304(II), I.P.C and reduced the sentence imposed on the Accused.

State Vs. Sundar & Ors. [2021 (2) L.W. (Crl.) 209]**Date of Judgment: 16-07-2021**

Indian Penal Code — Explosive Substances Act 1908 — Criminal Procedure Code —
Appreciation of Evidence

The Hon'ble High Court while deciding a Criminal Appeal seeking enhancement of punishment, observed that, "additional evidence under Section 391 Cr.P.C. can be adduced in a case, in which, a piece of evidence, which were not available during trial, surfaced thereafter and which is capable of tilting the outcome of the case". The Court referred to the decision in *Topandas Vs. State of Bombay, AIR 1956 SC 33*, and found that "if two persons were charged for conspiracy and if one of them is acquitted the other cannot be convicted of the charge of conspiracy... it is normally presumed that a man committing an imminently dangerous act like hurling a bomb, would have the knowledge that his act could cause death or such bodily injuries as are likely to cause death".

The Court held that, "Section 107, I.P.C contemplates three species of abetment viz. instigation, conspiracy, and intentional aiding... for instigation or for conspiracy, the presence of the abettor in the place of the offence is not always necessary... if abettor is present in place of offence, Section 114 I.P.C will be added as an additional charge". Thus, the Court denied the enhancement of sentence, and issued a deterrent warning stating that, "Lord Macaulay pointed out that, it is not the enormity of sentences imposed by the trial Court, in as much as, a stern message that the Courts will not treat such crimes that affect public tranquility and peace with kid glove. Tamil Nadu which is otherwise a peaceful State should not suffer bomb culture."


