

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVII— PART 8— AUGUST 2022 \*\***

## COMPENDIUM OF CASE LAWS



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**SUPREME COURT - CIVIL CASES****M/s. R.D. Jain & Co. Vs. Capital First Ltd. & Ors.****C.A.No.175 of 2022****Date of Judgment: 27-07-2022**

Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002

The Hon'ble Supreme Court held that, (i) the District Magistrate, Chief Metropolitan Magistrate is not a *persona designate* for the purposes of Section 14 of the SARFAESI Act; (ii) the expression "District Magistrate" and the "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.

The Apex Court considered the issue whether, the Additional District Magistrate or Additional Chief Metropolitan Magistrate may exercise the powers under Section 14 of the SARFAESI Act and/or the issue whether the expression "District Magistrate" and the "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act, the powers exercisable by the District Magistrate (for short "DM") and the Chief Metropolitan Magistrate (for short "CMM") under Section 14 of the SARFAESI Act.

The Apex Court observed that, as mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM are a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The

Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets. Similarly, when the Additional District Magistrates are conferred with the powers to be exercised by the District Magistrates either by delegation and/or by special orders and the Additional District Magistrates are exercising the same powers which are being exercised by the District Magistrates, the same analogy can be applied, more particularly, when the powers exercisable under Section 14 of the SARFAESI Act, are ministerial steps.

The apex Court agreed with the view of the High Court that, (i) the District Magistrate, Chief Metropolitan Magistrate is not a *persona designate* for the purposes of Section 14 of the SARFAESI Act; (ii) the expression "District Magistrate" and the "Chief Metropolitan Magistrate" as appearing in Section 14 of the SARFAESI Act shall deem to mean and include Additional District Magistrate and Additional Chief Metropolitan Magistrate for the purposes of Section 14 of the SARFAESI Act.

Thus, the Court dismissed the Appeal.

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**M/s. Patil Automation Pvt. Ltd. & Ors. Vs. Rakheja Engineers Pvt. Ltd.****SLP (C) No. 14697 of 2021****Date of Judgment: 17-08-2022****Commercial Courts**

The Hon'ble Supreme Court considered the issue whether the statutory pre-litigation mediation contemplated under Section 12A of the Commercial Courts Act, 2015 as amended by the Amendment Act of 2018 is mandatory and whether the Courts below have erred in not allowing the applications filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 to reject the plaints filed by the Respondents in these appeals without complying with the procedure under Section 12A of the Act.

The Apex Court observed that, Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even *suo motu* by the court. The Apex Court directed that, in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.

Thus allowed the appeal.

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**S. Madhusudhan Reddy Vs. V. Narayana Reddy & Ors.****C.A.No.5503-04 of 2022****Date of Judgment: 18-08-2022****Civil Procedure**

The Hon'ble Supreme Court considered an issue that underlay on the ground under which a review application would be maintainable.

The Apex Court observed that, the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule".

Thus the Apex Court held that, under the garb of the liberty granted to them, the respondents have tried to fill in the glaring loopholes and introduce evidence in the review proceedings that was all along in their power and possession and ought to have

seen the light of the day much earlier. In fact, it appears that the Civil Revision Petitions were originally argued to the hilt on several other grounds, not limited just to the revenue record, which were all considered and turned down as meritless.

Thus allowed the appeal.

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**State Bank of India &Anr. Vs. Ajay Kumar Sood****C.A.No.5305 of 2022****Date of Judgment: 16-08-2022****Judgment Writing**

The Hon'ble Supreme Court through this decision shared a serious concern about writing judgments clearly and observed that, "Incoherent judgments have a serious impact upon the dignity of our institutions... A litigant for whom the judgment is primarily meant would be placed in an even more difficult position. Untrained in the law, the litigant is confronted with language which is not heard, written or spoken in contemporary expression. Language of the kind in a judgment defeats the purpose of judicial writing. Judgment writing of the genre before us in appeal detracts from the efficacy of the judicial process. The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language. The judge must write to provide an easy-to-understand analysis of the issues of law and fact which arise for decision. Judgments are primarily meant for those whose cases are decided by judges. Judgments of the High Courts and the Supreme Court also serve as precedents to guide future benches. A judgment must make sense to those whose lives and affairs are affected by the outcome of the case. While a judgment is read by those as well who have training in the law, they do not represent the entire universe of discourse. Confidence in the judicial process is predicated on the trust which its written word generates. If the meaning of the written word is lost in language, the ability of the adjudicator to retain the trust of the reader is severely eroded." The Apex Court held that "the expression of a judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles." Thus allowed the appeal.

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**Union of India Vs. Bharat Forge Ltd.****SLP(C) No. 4960 of 2021****Date of Judgment: 16-08-2022****Tender**

The Hon'ble Supreme Court considered the Writ Petition wherein a company submitted bids for a tender floated for a Diesel Locomotive Work. The Apex Court considered an issue relating to the Harmonized System of Nomenclature (HSN) code for GST rates in a tender document. The Apex Court discussed the doctrine of "level playing field" as laid down on *Reliance Energy Ltd. and another Vs. Maharashtra State Road Development Corpn. Ltd. and others* [(2007) 8 SCC 1].

The Court held that, the scope for judicial review in contractual matters are limited unless the State action is clearly arbitrary, illegal, malafide or contrary to the statute, court would be loathe to interfere. The Apex Court affirmed that, there is no public duty on the part of the State to indicate the Harmonized System of Nomenclature (HSN) code for GST rates in the tender document. The State, when it decides to award a contract, would be obliged to undertake the ordeal of finding out the correct HSN Code and the tax applicable for the product, which they wish to procure. This is, particularly so when the State is not burdened with the liability to pay the tax. The liability to pay tax, in the case before us, is squarely on the supplier.

Thus, the Court allowed the appeal.

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## **SUPREME COURT - CRIMINAL CASES**

### **Daxaben Vs. The State Of Gujarat & Ors.**

**SLP (Cri.) No.1132-1155 of 2022**

**Date of Judgment: 19-07-2022**

#### **Quashing Abetment of Suicide Case**

The Hon'ble Supreme Court considered in what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised.

The Apex Court found that, it would depend on the facts and circumstances of the case. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence.

Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

In criminal jurisprudence, the position of the complainant is only that of the informant. The State has a duty to ensure that law and order is maintained in society. It is for the state to prosecute offenders. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society social purpose.

In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.

The Apex Court was of the considered opinion that, criminal proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr. P.C. only

because there is a settlement. An FIR under Section 306 of the IPC cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified that it was not necessary for this Court to examine the question whether the FIR in this case discloses any offence under Section 306 of the IPC, since the High Court, in exercise of its power under Section 482 CrPC, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.

Thus allowed the appeal.

**See Also**

- State of Madhya Pradesh Vs. Laxmi Narayan & Ors. [(2019) 5 SCC 688]

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**Narcotics Control Bureau Vs. Mohit Aggarwal****Crl.A.Nos. 1001-1002 of 2022****Date of Judgment: 19-07-2022**Narcotic Drugs and Psychotropic Substances Act, 1985

The Hon'ble Supreme Court in this case considered an appeal against the order of grant of post arrest bail by the Hon'ble High Court of Delhi. The Hon'ble Supreme Court considered the *non-obstante* clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37.

The Apex Court observed that, there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. The limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 are to be born in mind. The restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

In summary the Court held that, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence.

At the stage of examining an application for bail in the context of Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for



believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

The Court opined that; the narrow parameters of bail available under Section 37 of the Act have not been satisfied in the facts of the instant case. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

Thus allowed the Appeal.

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**Satender Kumar Antil Vs. Central Bureau Of Investigation &Anr.****SLP (CrI) No. 5191/2021****Date of Judgment: 11-07-2022****Bail**

The Hon'ble Supreme Court taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure clarified that, if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter.

The Apex Court further clarified that, it is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a *parimateria* or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code. The Apex Court delved in detail to the definition of trial, definition of bail, the principle that bail is the rule and jail is the exception, presumption of innocence, etc. and gave a sequel of directions thus allowed the intervention application.

[1] All the State Governments and the Union Territories to facilitate standing orders while taking note of the standing order issued by the Delhi Police i.e., Standing Order No. 109 of 2020, to comply with the mandate of Section 41A.

[2] The courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41A. The discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance.

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**Sunita Palita & Ors. Vs. M/s. Panchami Stone Quarry****SLP (Crl.) No. 10396 of 2019****Date of Judgment: 01-08-2022****The Negotiable Instruments Act, 1881**

The Hon'ble Supreme Court considered the question whether the independent non-executive Directors of the Accused Company, who are in no way responsible for the day-to-day affairs of the Accused Company would fall within the ambit of Section 141 of the NI Act.

The Apex Court highlighted three categories of persons covered by Section 141 of the NI Act.

[1] The company which committed the offence as alleged;

[2] Everyone who was in-charge of or was responsible for the business of the company.

[3] The basis of a statement that a Director is in charge of and responsible for the conduct of the business of the company.

The Court held that, the provisions of Section 138/141 of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also on those persons in charge of or responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of Section 141 of the NI Act. Liability depends on the role one plays in the affairs of a company and not on designation or status alone. The Court thus allowed the appeal after opining that the High Court erred in law in not exercising its jurisdiction under Section 482 of the Cr.P.C in the facts and circumstances of this case to grant relief to the Appellants.

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**XYZ Vs. State of Madhya Pradesh & Ors.****SLP Cri. 1674/2022****Date of Judgment: 05.08.2022****Vulnerable Witness**

The Hon'ble Supreme Court considered an issue on trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault.

The Apex Court observed that, where the police fail to address the grievance of such complainants, the Courts have an important responsibility.

The Apex Court issued direction on the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:

[A] Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment /violence;

[B] Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;

[C] Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;

[D] Completing cross-examination in one sitting, as far as possible.

The apex Court thus allowed the appeal.

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**HIGH COURT - CIVIL CASES****A. Viswanathan Vs. State of Tamil Nadu & Ors.****W.P.No.15230 of 2022****Date of Judgement: 10-08-2022**Section 38H(1), Wildlife Protection Act, 1972 — Recognition of Zoo Rules, 2009

The Hon'ble High Court decided a Writ Petition challenging the permission granted by Respondents 1 and 2 for the transfer of 1000 crocodiles from the 4<sup>th</sup> Respondent's facility to the 3<sup>rd</sup> Respondent's facility, as well as the permission granted to the 3<sup>rd</sup> Respondent to operate a zoo.

The Court observed that "Rule 2(m) r/w Section 2(39) of the Wild Life Act would make it clear that the parliament did not intent to curtail the operation of zoo by the private firms/companies." The Court perused Section 2(39), Wildlife Protection Act and observed that even a rescue center is included in the definition of a Zoo. The Court reiterated the observation of the Apex Court in *Centre for Environmental Law, World Wide Fund-India Vs. Union of India [(2013) 8 SCC 234]* that the approach to such issues should be Eco-centric and not Anthropocentric. "The welfare of the animals should be the prime concern and the guiding light in matters concerning them."

In the present case the 4<sup>th</sup> Respondent had submitted that it does not have the funds to look after the surplus crocodiles and it has also vouched for the welfare of the crocodiles in the 3<sup>rd</sup> Respondent rescue center. The Court perused the photographs produced by the 4<sup>th</sup> Respondent to show how comfortably the crocodiles are housed in the 3<sup>rd</sup> Respondent's Rescue centre compared to the cramped way in which they were kept in the 4<sup>th</sup> Respondent Zoo. The Court held that when the experts in the field have expressed their satisfaction on the facilities provided by the 3<sup>rd</sup> Respondent rescue centre, there is no necessity to interfere with the same, more so when no materials to controvert the same are placed before the Court. The Court dismissed the Writ Petition.

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**Bhavani Municipality Vs. V.S.R. Arthanasamy (died) & Ors.****S.A.No.1341 of 2001****Date of Judgment: 21-07-2022****Adverse Possession**

The Hon'ble High Court decided a Second Appeal arising from a suit for declaration of title, which had been filed by the 1<sup>st</sup> Respondent.

The Court referred to *T. Anjanappa Vs. Somalingappa [(2006) 7 SCC 570]* observed that when the 1<sup>st</sup> Respondent/Plaintiff had come to Court asserting perfection of title by adverse possession, the burden is on him alone to prove the essentials to be granted a decree of declaration of title by adverse possession, and that the First Appellate Court had wrongly shifted the burden on the Appellant/Defendant.

The Court further referred to *Kurella Naga DruvaVudayaBhaskara Rao Vs. Galla Jani Kamma [(2008) 15 SCC 150]* and *Brijesh Kumar Vs. Shardabai [(2019) 9 SCC 369]*, and found that mere production of house tax receipts and mere possession is not sufficient to hold that title had been perfected. To ripen into possessory title, such possession must be hostile to the true owner. The Court held that the Respondents have not established adverse possession hostile to the true owner/appellant by producing convincing evidence in that regard.

The Court further observed that there was no condition reserved in the registered gift deed that it would be revoked if the purposes for which the property was gifted, namely, construction of road, putting up of ditches and constructing a park, were not effected within a certain period of time. The gift deed had still not been revoked, and is still in force. The respondents had not taken any steps to cancel the gift deed and cannot claim any right to possess the lands. The Court thus found their possession to be unlawful. Thus, the Court allowed the Second Appeal, set aside the Judgment and Decree of the First Appellate Court, and confirmed the Judgement and Decree of the Trial Court.

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**G. Anjali Vs. Union Territory of Puducherry & Ors.****W.P.No.3570 of 2018****Date of Judgment: 11-08-2022**

Registration — Sale Deed — Section 22, Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973

The Hon'ble High Court decided a Writ Petition with a prayer to issue guideline register value for the properties purchased by the Writ Petitioners under various sale deeds which were presented to the Registrars of Assurances for Registration.

The Court perused through Section 22(2) of the Pondicherry Act and observed that "the Authorities cannot refuse to register the sale on the ground that the proceedings under the Land Reforms Act are pending, when there is a specific provision which safeguards the interest of the Government barring the land owner from exercising his right to sell the property would be in violation of Article 300A which protects the right to property."

The Court affirmed that, "Under Section 22 it is open to the Government to proceed against the transferees in case recovery is not possible. If any assessee/land owner had sold the entirety of his or her holding then it will be open to the Government to take action against the transferees who have purchased later or proceed under Section 22(2)(b) to recover proportionate land from each of the transferees when there are several transferees. Therefore, the rights of the Government to recover the surplus land is very well protected under Section 22. The indirect restraint on alienation by not providing the guideline value cannot be sustained."

The Court referred to S. Vaitheeswaran Vs. Union of India [W.A.No.760 of 2013 (batch), dated 22.03.2016], and found that the refusal on the part of the Registering Authority to register the documents on the ground of non-availability of guideline register values is unjust and improper. Thus, the Court allowed the Writ Petition.

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**G. Pandian Vs. Nirmala**  
**C.M.A. No.488 of 2018**  
**Date of Judgment: 11-08-2022**

Petition for divorce — mental cruelty — desertion

The Hon'ble High Court decided a Civil Miscellaneous Appeal challenging the dismissal of a divorce petition on the grounds of cruelty and desertion.

The Court observed that, "It is settled law that admission is the best evidence. ... There is a continuous separation for sufficiently long period. There is evidence on record to show the attempt for re-union by one of the party and refusal for re-union by other party, namely the respondent. ... Further, there is no material available on record, even thereafter, nearly for eight years till the disposal of the original petition in December 2017, that there was any meaningful attempt by respondent for re-union."

The Court referred to in *Samar Ghosh Vs. Jaya Ghosh [(2007) 4 SCC 511]*, and observed that refusal to sever the marital tie will perpetuate the mental cruelty suffered by the parties due to long separation.

The Court found that the Respondent has committed mental cruelty to the Appellant and hence the Appellant is entitled to get decree for divorce, on the ground of cruelty.

The Court held that the Appellant had proved his plea of desertion and is entitled to get divorce on the ground of desertion also.

Thus, the Court allowed the Civil Miscellaneous Appeal and set aside the order of the Family Court.

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**M. Natarajan (Died) & Ors. Vs. SengodaGounder****S.A.No.139 of 1994****Date of Judgment:**

Section 54, Transfer of Property Act — establishing title

The Hon'ble High Court decided a Second Appeal arising from a suit for permanent injunction of vacant land, on the issue of whether the Plaintiff had established title over the land.

The Court referred to *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. & Ors. [(2008) 4 SCC 594]*, and observed that, in a suit filed for permanent injunction with respect to vacant land, if the plaintiff is able to establish title, then a reasonable presumption can be drawn that he is also in lawful possession. If that title is questioned, then the bonafide of the challenge to the title must be examined to determine whether such challenge is lawful or not. It must be examined whether that challenge actually raises a cloud over the title of the plaintiff.

The Court referred to the agreement for sale between the Defendant and Plaintiff's brother, and noted that the sale had never been completed. The Court further referred to Section 54, Transfer of Property Act and *NarandasKarsondas Vs. S.A. Kamtam&Anr. [AIR 1977 SC 774]*, and observed that that the defendant cannot claim any title over the suit lands, nor claim any interest in or charge on the property as he is only a mere agreement holder, and the time stipulated under the said agreement had long expired.

The Court held that the First Appellate Court had travelled beyond the framework of the issues and had adjudicated on the title and had also misdirected itself by placing undue reliance on the agreement for sale, which is not a document of title, over the sale deed showing the title belonging to the Plaintiff's father.

Thus, the Court allowed the Second Appeal and set aside the Judgment and Decree of the First Appellate Court, and restored the Judgment and Decree of the Trial Court.

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**Madurai Power Corporation Pvt. Ltd. Vs. Inspector General of Registration & Ors.**

**W.P.No.36458 of 2007**

**Date of Judgment: 10-08-2022**

**Indian Stamp Act — Article 62(c)(ii)**

The Hon'ble High Court decided a Writ Petition on the issue whether Article 62(c)(ii), Indian Stamp Act, will apply to the second deed of modification to indenture of mortgage.

The Court observed that, "A careful reading of Article 62(c) of the Stamp Act, shows that there must be a transfer, meaning there must be a transferor and a transferee. The next requirement is that the transferor mortgagee should transfer their interest secured under the mortgage deed to the transferee mortgagee. Such transfer can take place with or without consideration.

The Court further observed that "a security trustee is more in the nature of an agent upon whom a trust is vested by the lender and the domestic guarantor and such a security trustee will act whenever a default is committed and will exercise all powers given under the document to ensure the collection/recovery of the amounts due to the lender. Such a security trustee does not wear the cap of a lender or a mortgagee and what is paid as a consideration to the security trustee is only a commission for performance of his duty prescribed under the document."

In the present case, the senior lender viz., the ICICI Bank was only acting as a security trustee. The RBI came up with a Circular to the effect that the bank/lender cannot be a security trustee and there was a conflict of interest. Hence, the security trustee was substituted and WITCO Ltd., was made as the security trustee.

The Court held that there is no transferor and transferee relationship between the senior lender and the security trustee. There is also no transfer of interest in favour of the security trustee. In the present case, the lender/mortgagee continues to be the



same and they have not transferred that interest in favour of the security trustee. Article 62(c)(ii) of the Stamp Act, will come into play only where the document in question had created or extinguished a right in respect of the mortgagee. The real nature of the transaction only determines the levy of stamp duty.

The Court found that through the modification deed, there was no change in the mortgage debt, interest, mortgaged properties and the lenders and there was a mere substitution of the security trustee. The Court held that this cannot be construed as a transfer of interest secured by a mortgage within the meaning of Article 62(c) of the Indian Stamp Act. The Court further held that there is absolutely no justification to demand for the deficit registration fee from the petitioner.

The Court thus allowed the Writ Petition and quashed the impugned proceedings as well as the certificate issued under Section 80A of the Registration Act.

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**The Governor of Tamil Nadu, Rep. by the Secretary Vs. M/s. GMR Chennai  
Outer Ring Road Pvt. Ltd.**

**O.S.A.(CAD)Nos.75 and 76 of 2022**

**Date of Judgment: 11-08-2022**

**Section 37, Arbitration Act, 1996**

The Hon'ble High Court decided an Original Side Appeal on the issue concerning the maintainability of claims made for bearing additional cost incurred out of plant, machinery and overheads on account of delay in shifting utilities and removing encroachment.

The Court considered the Concession Agreement [CA] between the parties, Engineering, Procurement and Construction [EPC] Agreement, the Financing Agreements and the Financial Model fixed at 24 months, the award of the Arbitral Tribunal, and the Order of the learned Single Judge to observe and hold that,

“The scope of judicial scrutiny and interference by an Appellate Court under Section 37 of the Arbitration Act is even more restricted while deciding a petition under Section 34 of the Act. The Arbitration Act makes provision for the supervisory role of Courts for the review of the Arbitral Award only to ensure fairness. Intervention of the Court is envisaged in few circumstances only, like in case of fraud or bias by the Arbitrators, violation of natural justice, etc. The Court cannot correct errors of the Arbitrators. It can only quash the Award, leaving the parties free to begin the arbitration again if it is desired. Hence, the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as parties to the Agreement make a conscious decision to exclude the Court's jurisdiction by opting for Arbitration as they prefer the expediency and finality offered by it.

While entertaining appeals under Section 37 of the Act, the Court is not sitting as a Court of Appeal over the Award of the Arbitral Tribunal and the Court would not re-appreciate or re-assess the evidence. It is also a well settled position of law that the

terms and conditions of the Contract cannot be substituted by new terms and since it is in the nature of judicial review, the findings rendered by the Arbitral Tribunal unless vitiated on account of patent illegality, perversity or contravention of any of the provisions of the Act or against public policy, it cannot be interfered with. The scope of interference in the Award passed by the Arbitrator under Section 34 and more particularly, under Section 37 of the Arbitration Act is very limited. The reasonableness of the reasons given by the Arbitrator cannot be challenged.

Appraisalment of evidence by the Arbitrator is never a matter which the Court considers and questions. If the parties have selected their own form, the deciding forum must be conceded the power of appraisalment of the evidence. The Arbitrator is the sole Judge of the quality as well as the quantity of the evidence and it will not be for the Court to take upon itself the task of being a Judge on the evidence before the Arbitrator.”

The Court thus dismissed the Original Side Appeals.

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**The India Cements Ltd. Vs. The Government of Tamil Nadu Rep.by its Secretary & Ors.**

**W.P.Nos.29364 of 2005 (Batch)**

**Date of Judgment: 03-08-2022**

Stamp Act — Mineral Concession Rules — royalty — payment of stamp duty

The Hon'ble High Court decided a Writ Petition on the issue whether while determining the lease amount to calculate the stamp duty payable, it is right to add the annual royalty payable or whether it should only be based on the dead rent.

The Court referred to Clause 9 of Part IX of Form K under the Mineral Concession Rules, and observed that it is clear that anticipated royalty is taken as the basis for the determination of the stamp duty. This means that there is a statutory backing for including royalty in the rent while determining the stamp duty payable. The Court observed that that payment of royalty under Section 9 of the Act as per the rate fixed in the sanction order is the rule and payment of dead rent under Section 9A is an exception. Hence, an exception or a contingency provided under the Act, can never form the basis for determining the rent for the purposes of payment of stamp duty.

The Court relied on *Steel Authority of India Ltd. Bhilai Vs. Collector of Stamps, Bilaspur [1985 SCC OnLine MP 153]* and *Shri Bhogeshwara Cement & Mineral Industries Ltd. Vs. Govt. of A.P. [1987 SCC OnLine AP 369]*, and found that Articles 35(a) and 35(b) will be applicable to the stamp duty payable in the respective Writ Petitions, and that the amount determined by the District Collector in both the Writ Petitions was perfectly in order, in line with Proviso to Section 26 of the Stamp Act, and there was no ground to interfere with the same. The Court held that it is only the royalty that must be included in the rent amount and not the dead rent.

The Court held that it is open to the Respondents to insist for the payment of the stamp duty as determined in the impugned communications and the petitioner is bound

to pay the same. The lease deed shall be registered on payment of such stamp duty by the Petitioner. Thus, the Writ Petitions were dismissed.

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**V. Anusha Vs. B. Krishnan**  
**C.R.P(PD)No.1824 of 2022**  
**Date of Judgement: 11-08-2022**

Matrimonial dispute — protection orders

The Hon'ble High Court decided a Civil Revision Petition arising from a matrimonial dispute.

The Court referred to *Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj [(2017) 14 SCC 583]*, and observed that "If the removal of the husband from home alone is the only way to ensure domestic peace, the courts need to pass such orders irrespective of the fact whether the respondent has or has not another accommodation of his own. ... the learned Family Judge has arrived at a conclusion that the wife should be given with the protection order. In that case, the order given by the learned Family Judge should be a workable and practical one. Allowing the respondent to be at the same home, but directing him that he should not disturb the other inmates of the home is something impractical. A relief for a person who fears about an impending atom bomb, would be just to remove the bomb from his/her vicinity. ... Protection orders are normally given to ensure the peaceful movement of a woman within her domestic sphere. When a woman fears the presence of her husband and screams, the Courts cannot be indifferent by just directing the husband that he should not harass the wife, but by allowing him to reside in the same house.

The Court allowed the Civil Revision Petition and modified the order of the Family Court, and directed the Respondent husband to find alternate accommodation.

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**Vasmi Sudarshini Vs. Sub Registrar****W.P.(MD)No.15511 of 2022****Date of Judgment: 28-07-2022**

Sections 12 and 13, Special Marriage Act, 1954 — virtual solemnization of marriage — Right to marry

The Hon'ble High Court dealt with a Writ Petition seeking to direct the Respondent to solemnize the marriage of the Petitioner under the Special Marriage Act, 1954. The Court noted that the presence of the bridegroom will be virtual and not physical and observed that Section 12 of the Act does not exclude virtual presence."

The Court observed that "Right to marry is a fundamental human right. Sections 12 and 13 of the Special Marriage Act, 1954 should be so construed as to effectuate this right. Section 12(2) of the Act states that the marriage may be solemnized in any form which the parties may choose to adopt. In this case, the parties have chosen the online mode. Since law has to keep pace with the march of technology, the choice of the parties herein very much passes legal muster."

The Court directed the Respondent to facilitate the solemnization of the marriage of the writ petitioner with her fiancé in the presence of three witnesses through virtual mode. After the parties to the marriage make the declaration as set out in the proviso to sub-section (2) of Section 12 of the Act, the marriage shall be deemed to be complete and binding on the parties.

The Court noted that the Petitioner is having power of attorney from her husband, and directed that after the marriage is solemnized, the petitioner can affix her signature in the marriage certificate book both for herself and on behalf of her husband. Thereupon, the certificate of marriage shall be issued under Section 13 of the Act by the respondent. The Court held that there is no legal impediment in solemnizing the marriage and thus allowed the Writ Petition.

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## HIGH COURT – CRIMINAL CASES

**Arul Daniel & Ors. Vs. Suganya**

**CrI.O.P.SR. No. 31852 of 2022 (and other batch cases)**

**Date of Judgment: 12.08.2022**

Section 12 of the DV Act – Section 482 CrPC – referred to larger bench

The Hon'ble Madras High Court in this case had to decide on a series of Criminal Original Petitions seeking to quash the application filed under Section 12 of the DV Act by invoking the provision under Section 482 CrPC.

The Court observed that a recent division bench order held that proceedings under the Domestic Violence Act are civil in nature and also observed that Section 482 CrPC petition is maintainable in Domestic Violence Act proceedings. It was also noted by the Court that, pursuant to the order of the division bench, several petitions have been filed under Section 482 CrPC challenging the applications filed under Section 12 of the DV Act for various reliefs. Further, when the case was taken up, it was pointed out that there were conflicting findings recorded in the order of the division bench as that of the Apex Court and raised doubt about the very judgment.

It was observed by the Court that, a single judge cannot bypass the order of the division bench, though the order of the division bench was contrary to the decision of the Supreme Court, the court could go into the issue of maintainability.

The court pointed out the Hon'ble Supreme Court's judgment where it had laid down that inherent powers under Section 482 Cr.P.C can be exercised only when there are no alternative remedies available. The court observed as follows, "*Therefore, permitting a petition under Section 482 of Cr.P.C. to challenge the proceedings under Section 12 of the D.V. Act without exhausting the remedies available under the Statute before the learned Magistrate and the Court of Sessions, there would be parallel*

*remedies; one before the learned Magistrate and other before the Sessions Court or the High Court, which is clearly against the settled principles of law and it would only lead to flooding of petitions under Section 482 of Cr.P.C.”*

The High Court has directed the Registry place the following matter before the larger bench for authoritative pronouncement;

1. Whether a proceeding under Section 12 of the D.V.Act can be challenged under Article 227 of the Constitution or under Section 482 of Cr.P.C.?
2. Whether the aforesaid remedy is available to an aggrieved person before approaching the learned Magistrate and, if necessary, the Court of Sessions by way of an appeal under Section 29 of the D.V.Act?

See Also:

- State of Punjab Vs. Davinder Pal Singh Bhullar [(2011) 14 SCC 770]
- State of U.P. Vs. Neeraj Chaubey [(2010) 10 SCC 320]
- S. Subramaniam Vs. S. Janaki [2020 5 CTC SC 464]
- Padal Venkata Rama Reddy Vs. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437]
- MCD Vs. Ram KishanRohtagi [(1983) 1 SCC 1]
- M. Muruganandam Vs. M. Megala [(2011) 1 CTC 841 (MAD)]
- Kamatchi Vs. Lakshmi Narayanan [2022 SCC Online SC 446]
- Kunapareddy Vs. Kunapareddy Swarna Kumari [(2016) 11 SCC 774]
- Dr.P.Pathamnathan Vs. V.Monica [(2021) 2 CTC 570]

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**Dr. Lakshmi Vs. The State Rep. by the Inspector of Police D-6, Anna Square  
Police Station (Traffic Investigation Wing) Chennai City.**

**Crl.R.C.No.410 of 2022 and Crl.M.P.Nos.4177 & 4178 of 2022**

**Date of Judgment: 29.07.2022**

Co-passenger of motor vehicle accident caused by inebriated driver – prosecuted for instigation and culpable homicide not amounting to murder

The Madras High Court in this case had to decide whether, a co-passenger in a vehicle involved in motor accident caused by an inebriated driver be prosecuted for instigation and culpable homicide not amounting to murder under Section 304 (ii) of IPC.

The crux of the present case is that, the petitioner/ 3rd accused, was travelling in a car along with two others when the vehicle ran berserk and dashed against three pedestrians, killing them instantly and gravely injuring few others. The petitioner challenged the criminal proceedings against her on the grounds that, (i) at the time of accident she was not in an inebriated state and the same was confirmed through medical examination; (ii) there was no evidence to show that the petitioner had knowledge about the inebriated state of the driver.

The Hon'ble High Court noted that, the petitioner had committed a "positive act" in opening the door and sitting in the front seat of the car and thus, participating in the journey. Whether the positive act would amount to instigating the driver to drive in an inebriated state would depend on the facts of each case.

As far as the present case is concerned, the Hon'ble High Court observed that, *"In this case, the time was 3.30 AM., and the place of occurrence is near the beach and thus , it is clear that if any person joins the person, in an inebriated condition for a late night after the party stroll in the Car to the beach that by itself is a positive act of instigating the person to drive the vehicle in an inebriated condition and consequences that follow*



*on account of the inebriated driving, will also be fastened on the abetter under Section 111 and 113 of the Indian Penal Code.”*

The Hon'ble High Court on the contention that there was no evidence to show that the petitioner had knowledge of the inebriated state of the driver, held that, the same to be untenable and there was grave suspicion that the petitioner had knowledge.

In fine, the Hon'ble High Court rejected the plea of the petitioner and further upheld the order dismissing her discharge.

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**Kannan Vs. State represented by its The Deputy Superintendent of Police,  
Srivilliputtur, Virudhunagar District and Ors.**

**Crl.A.(MD)No.461 of 2022**  
**Date of Judgment: 02.08.2022**

SC & ST Act – Regular bail – final report not filed – expiration of 90days

The Hon'ble Madras High Court in this case dealt with a Criminal Appeal filed under Section 14A(2) SC & ST (Prevention of Atrocities) Amendment Act, 2015, to set aside the order of the Trial Court and pass an order to release the petitioner on bail under Section 167(2)(a)(i) Cr.P.C.

The appellant earlier filed a regular bail application under Section 439 Cr.P.C., which was dismissed by the trial court. Aggrieved by the dismissal of the bail application, the accused invoking Section 14A(2) of SC&ST (Prevention of Atrocities)Amendment Act 2015, had preferred an appeal for setting aside the trial court order and to enlarge him on bail, which was also dismissed. In the meantime, the accused had preferred statutory bail and the same was again dismissed by the trial court judge. This appeal is filed challenging the order of dismissal of statutory bail.

The Hon'ble High Court relying on the decisions of the Hon'ble Apex Court in *M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence* (2021)2 SCC 485, *Uday Mohanlal Acharya Vs. State Of Maharashtra* (2001)5 SCC 453 and further relying on the decision of Hon'ble Madras High Court in *Muthuirul Vs. The Inspector of Police, Samayanallur* (2022)1 MWN(CrI) 196, held that, the trial Court while considering the bail under Section 167(2) Cr.P.C., has no power or jurisdiction to go into the merits of the case and to see as to whether the ingredients necessary for granting regular bail are available or not.

The Hon'ble High Court in this case came to a conclusion that, since the final report had not been filed even after expiry of the statutory period of 90 days, the trial court

has no other option but to grant the statutory bail. Thus, the Hon'ble High Court allowed the Criminal Appeal and released the appellant/accused on statutory bail with certain conditions.

See Also:

- *Rakesh Kumar Paul Vs. State of Assam (2017)15 SCC 67*
- *P.K.Shaji Vs. State of Kerala [(2005)AIR SCW 5560]*

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**M/s Jain Housing & Constructions Ltd. & Ors. Vs. The Tamil Nadu Pollution Control Board**

**Cri.O.P.No.29928 of 2019**  
**Date of Judgement :02.08.2022**

Environmental (Protection) Act, 1986 - complaint loaded with materials sufficient to prosecute

The Hon'ble High Court decided a Criminal Original petition filed under section 482 of Cr.P.C to call for the records and to quash C.C.No.234 of 2019. The Hon'ble High Court held as follows:

The Court on reading the impugned complaint, which is subject matter of the prosecution and the facts in adjudication proceedings finds that there are overlapping facts regarding violation primarily on the location and capacity of the Sewage Treatment Plant constructed in common for both the Phases by the petitioners. The subject matter of complaint is on larger violation i.e., for not properly obtaining prior clearance for the project before the commencement of the project.

The court in referring to the decision of the Apex Court in *Pahwa Plastic case*, opined that, the Environmental (Protection) Act, 1986 does not prohibit Ex-post facto Environmental Clearance, if the establishment has complied the requirement of the applicable laws, Rules and Regulations.

The Hon'ble Madras High Court also noted that, in the present case reliance cannot be placed on the Hon'ble Supreme court Judgement by the petitioners because, firstly, the petitioners have not so far applied for Ex-post facto Environmental Clearance. Next, the criminal action initiated does not have anything to do with the economy of the country or protection of livelihood of employees. Therefore, the factors which has weighed the Hon'ble Supreme Court's decision in *Pahwa Plastic case* to consider grant of Ex-post facto environmental clearance are not present in this instant case.

The court observed that the complaint on petitioner is loaded with materials sufficient to prosecute the petitioners. On the face of the records relied, offences under The Water (Prevention and Control of Pollution) Act 1974, The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 are made out. Thus, the Hon'ble court dismissed the Criminal Original Petition to quash the complaint as devoid of merits.

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**N. Faritha Begam Vs. The Joint Registrar No.2 Office of the Joint Registrar  
Kallakurichi**

**W.P. No.34069 of 2014**  
**Date of Judgment: 17.06.2022**

**Juvenile Justice (Care & Protection of Children) Act – Adoption – Religion**

The Hon'ble High Court considered a writ petition on the rejection of an Adoption Deed. The Court noted Religion is a mask worn by humans to attain eternal peace by treading the path propounded in the sacred texts. Just as the saying goes "All the roads lead to Rome", likewise, "All the religions lead to eternal salvation". Professing of religion is a matter purely within the domain of an individual and there can be no law which can force any individual to profess only the religion in which he/she was born.

The Court stressed that, merely because the conjunction of two entities has brought a child to earth, the child cannot be forced to wear the cloak of its progenitors and the child should have its right to profess any religion it so desires. A child is not covered with any particular religion when it steps on to mother Earth. It is the humans, who give the colour of a particular religion to a child and put the child within a particular path. However, the right of a child to attain bliss in the way it deems fit in the later part of its life is a guarantee from the Creator and neither the personal law, nor any legal enactment, can take away such a right, which is vested on the child even at the time of its birth and the child cannot be robbed of the said rights citing such laws. Further, when a child in the womb is provided with certain unbridled rights, including property rights, robbing the child of a right to profess a particular religion, upon attaining intellectual emancipation would be nothing but deprivation of the child's right and would be against the international covenants to which our country is a signatory to.

The Court pointed out that, no mother would leave her child out for adoption, unless it is for the betterment and healthy upcoming of the child and only when she is totally unable to cater to the child. In the case on hand, the deplorable condition of the mother, viz., the petitioner herein, has resulted in giving the child on adoption for the betterment of the child and such being the position, the personal laws cannot stand in the way of the petitioner to give the child on adoption, when the special enactment paves the way for the said adoption. In the case on hand, the pleadings in the affidavit as also the materials in the adoption deed reveal the position of the mother in giving the child out for adoption.

In the resultant backdrop, the respondent cannot deny registration of the adoption deed citing personal laws, but can only enforce that necessary documents be filed so as to process the adoption deed for registration as per the JJ Act. The JJ Act provides the mechanism for adoption of the child and one of the provisions contained therein pertains to the procedure to be followed in case of adoption. Specific reference can be had to Sections 41 (5) (a) and (b) of the JJ Act, 2000, which provides the necessary safeguards in case of adoption. Therefore, the only requirement for the respondent is the necessary clearance as per the provisions of the JJ Act to grant the seal of approval for the adoption deed so that the laudable object of safeguarding and uplifting children socially and reintegrating them into the society is achieved.

The Court thus allowed the Writ Petition by holding that, the provisions of the JJ Act would have a march over the Hindu Adoption & Maintenance Act as also the Muslim Personal Law and, therefore, the adoption of the child of the petitioner by the said Ruckminiammal is permissible. The Court also directed to circulate a copy of this order to all the Principal District Judges within the State and the Principal District Judges are directed to take appropriate steps for early disposal of adoption cases pending on their file, keeping in mind the decision of the Hon'ble Supreme Court in *Shabnam Hashmi Vs.*

*Union of India [2014 (4) SCC 1]* and *R.R.George Christopher &Anr. [2010 (2) LW 881]*, so that the fruits of the benevolent legislation ensure to the benefit of the children so sought to be adopted.

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**Narayanan Vs. State rep. by The Inspector of Police, Thanjavur Taluk Police Station, Thanjavur.**

**Crl.A (MD)No.255 of 2019**  
**Date of Judgment: 10.08.2022**

POCSO offence – 5 children – children withstood the testimony of cross-examination

The Hon'ble High Court of Madras in this case dealt with Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order of trial Court. The appellant was convicted for the offences punishable under Sections 3 (a) r/w 5(m) r/w 6 (5 counts) of the Protection of Children from Sexual Offences Act, 2012, and was sentenced to life imprisonment. The case against the appellant is that, he has committed penetrative sexual assault on three girls and two boys, all of whom were aged below 12years.

The contention by the appellant's side is that all the children were tutored and the parents of these children had falsely implicated him as they had grudge on him. It was also contended that, there was undue delay in lodging police complaint and further, it was contended that, the doctors who examined the children were unanimous in their conclusion that there was no sign of any sexual assault on the victim children.

The Hon'ble High Court opined that, "It is to be understood that no parent would like their children to suffer even assuming it is to settle personal score with their common enemy appellant." It was also noted by the Hon'ble Court that, children had withstood the testimony of cross-examination and their spontaneous replies could not have come out of them had they been tutored. Further, while deciding as to the delay in lodging complaint, the Hon'ble High Court opined that, "Complaints in such sensitive cases especially in a village or a small town would not have the precision of a clock."

While deciding on doctors concluding that no injuries were found in the private parts of the children and no sign of sexual assault could be observed. The Hon'ble High Court

noted that, the mere absence of injuries on private parts does not rule out the “dirty stuff” the appellant had tried on them. Further, the Court also emphasised on making the society safe for children.

In fine, the Criminal Appeal was dismissed and the sentence passed by the trial court was upheld.

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**Praveen Rajesh Vs. Commissioner of Police and Ors.**  
**Crl.O.P.No.8708 of 2022 and Crl.M.P.No.5076 of 2022**  
**Date of Judgment: 07.07.2022**

Magistrate cannot act as post office – private complaint – abuse of process of law

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed challenging the order of the trial court made in Crl.M.P.No.333 of 2022 under Section 156(3) of Cr.P.C., directing the 2<sup>nd</sup> respondent police to register FIR against the petitioner on the basis of the private complaint filed by the 3<sup>rd</sup> respondent/*defacto* complainant.

The crux of the case was that the third respondent, the *de facto* complainant, a lawyer was travelling with her spouse during the Covid-19 pandemic and had violated the regulations by not wearing masks and were intercepted by the police. The *de facto* complainant's husband was charged with an offence under Section 75 of the Tamil Nadu City Police Act of 1888 in an altercation and was later released on station bail.

Later, a complaint was given at Virugambakkam Police Station claiming that the *de facto* complainant's husband was seriously injured due to the attack by the petitioners which was not taken on file. Then a complaint was then given to the Commissioner of Police who found that the complaint was motivated and exaggerated and hence, closed the same. A private complaint was then made to the Metropolitan Magistrate, Saidapet, who by order directed the Virugambakkam Police Station to register the FIR. It was contended that the entire complaint is motivated due to previous case filed against the husband of the *defacto* complainant.

The Hon'ble Court noted that, there is no iota of evidence to show that either the *defacto* complainant or her husband suffered any injury, abrasion or contusion as alleged in the petition. Further, it was also observed that, a Magistrate cannot act as a Post Office and direct for registration of FIR. The Hon'ble Court also found that the

criminal proceeding had been maliciously instituted by the *defacto* complainant and her husband to wreck vengeance against the officer who proceeded against them previously. This also Court noted that it can very well interfere by exercising its power under Section 482 Cr.P.C. which has also been held by the Hon'ble Apex Court in the case of *State of Haryana vs. Bhajan Lal*, 1992 Supp (1) SCC 335.

Relying on the above Judgment and considering the facts of the case, the Hon'ble Court opined that, the very filing of the private complaint itself was abuse of process of law. In fine, the Hon'ble High Court allowed the Criminal Original Petition and quashed the private complaint as an abuse of process of law.

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**Sathiya Vs. State rep. by The Inspector of Police, Ponnai Circle, Vellore District**

**Crl.A.No.718 of 2019**  
**Date of Judgment: 14.07.2022**

**Mother killing female children – unable to bear taunt of the society**

The Hon'ble Madras High Court in this case dealt with a Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment and sentence of the Trial Court. The crux of the case is that the appellant/accused had given birth to three girl children, unable to bear the taunt of the society that she was an unfortunate woman to bear only female children, she administered poison to her second and third daughters aged 3 years and 1 and 1/2 years respectively. There by guilty of the offence under Section 304 (ii) of the Indian Penal Code (2 counts) and was imposed sentence of Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- for each count by the trial court.

The Hon'ble Court expressed its grief, that even today, a mother was ashamed to bear a girl child. The Hon'ble High court was in agreement with the order of the trial court where the court convicted had convicted the appellant/accused under Section 304(ii) IPC instead of Section 302 IPC. The Court found this case to be of "Nalla Thangal syndrome" or "state of mind" as discussed in the case of *Suyambukani Vs. State of Tamil Nadu* was later reiterated by a division bench in *Poovammal Vs. State*.

The Hon'ble High Court upon learning that, the appellant had birthed another female child who is now 3 years and after due consideration along with an undertaking, found it appropriate to release the appellant/accused under Section 4 of the Probation of Offenders Act, 1958. Thus, partly allowed the appeal along with certain terms.

**See Also:**

- In Re Sreerangayee Vs. Unknown [(1973) 1 Mad LJ 231]

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**Siva Vs. State by Inspector of Police, Thiruvalem Police Station, Vellore District**

**Criminal Appeal No.642 of 2018**

**Date of Judgment: 22.7.2022**

**Independent witnesses – not supporting the case of the prosecution**

The Hon'ble High Court of Madras in this case dealt with a Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment of the Trial Court and acquit the appellate from the charges.

The crux of the case of prosecution is that, the appellant is alleged to have attacked the deceased with a wooden log with whom, he was living together for about twenty years, enraged by her action in lodging a complaint against him to the effect that he was torturing and demanding that the house property standing in her name has to be transferred in the name of his children born through his wife and the deceased had succumbed to the injuries she had sustained. The appellant was convicted by the trial court under Sections 302 and 352 of IPC.

In this case, almost all the independent prosecution witnesses including the witnesses to the arrest and seizure of the weapon of offence produced by the prosecution had turned hostile. Except the official witnesses, no independent witness has supported the case of the prosecution and the prosecution has not taken proper initiative to prove its case. However, the Trial Court has proceeded to rely upon the statements recorded from such witnesses under Section 164 Cr.P.C. viz., Exs.P11 to P14 to render the conviction against the appellant.

The Hon'ble High Court observed that, 'The law is well settled that a statement recorded under Section 164 of the Code of Criminal Procedure is not substantive evidence and it can be used to corroborate the statement of a witness and it can be used to contradict a witness' and further, relied on the decisions of the Apex Court in

*Ram Kishan Singh vs. Harmit Kaur and another* (1972) 3 SCC 280 and *Baij Nath Sah vs. State of Bihar* (2010) 6 SCC 736.

It was noted by the Hon'ble High Court that, the Trial Court, taking presumption available under Section 80 of the Indian Evidence Act, 1872, had proceeded to rely upon Exs.P11 to P14, the statements recorded from the witnesses under Section 164 Cr.P.C. to render conviction against the appellant.

The Hon'ble High Court held that, 'The principles laid down in the above decision make it clear that presumption under Section 80 of the Indian Evidence Act, 1872 cannot be drawn to rely upon the Statements of witnesses recorded under Section 164 Cr.P.C during investigation to render a conviction.'

Thus, from the reasonings and case laws cited above the Hon'ble High Court concluded that, the prosecution has not proved its case beyond all reasonable doubt and in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record and acquitted the appellant of all the charges.

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**Subburaj & Ors. Vs. State rep by Inspector of Police, W-27, All Women Police Station, Vadapalani, Chennai and Anr.**

**Crl.O.P.No.11836 of 2022 and Crl.M.P.No.66 98 of 2022**

**Date of Judgment:29.07.2022**

**Power under Sec. 482 Cr.P.C – not to venture into probative value of statement**

The Hon'ble High Court dealt with a Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the trial court and quash the same. It was observed by the Hon'ble High Court that, *"while exercising the power under Section 482 of Cr.P.C, the court will not venture in to the probative value of the statements and will not assume the role of a trial Court by conducting a mini trial. But, at the same time, if the Court finds that prosecution has been maliciously instituted with an ulterior motive and the accused being in-laws have been unnecessarily harassed and implicated in a matrimonial dispute, there is no bar on the powers of this Court to go into the materials and find out whether there are materials, which requires a trial"*

The court observed that allegation made by the Respondent No. 2 was with regard to jewels, having said that it was given by Respondent No. 2's parents to her husband. The husband had misused the jewels and sold them upon instigation of petitioners (in laws of complainant).

It was noted by the Hon'ble High Court that, *"in matrimonial dispute such statement alone is not sufficient to constitute the offence. Merely because the husband (A1) happens to be the son of the petitioners, the entire family members cannot be clothed with criminal liability, particularly when the husband and wife are residing separately"*.

Thus, the Hon'ble High Court held that, the entire allegation cannot be considered in its face value and constitute any offence as against the petitioners. In fine, the Hon'ble court quashed the criminal proceedings against the petitioners and allowed the criminal original petition.

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