

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII— PART08 — AUGUST 2023****

IMPORTANT CASE LAWS



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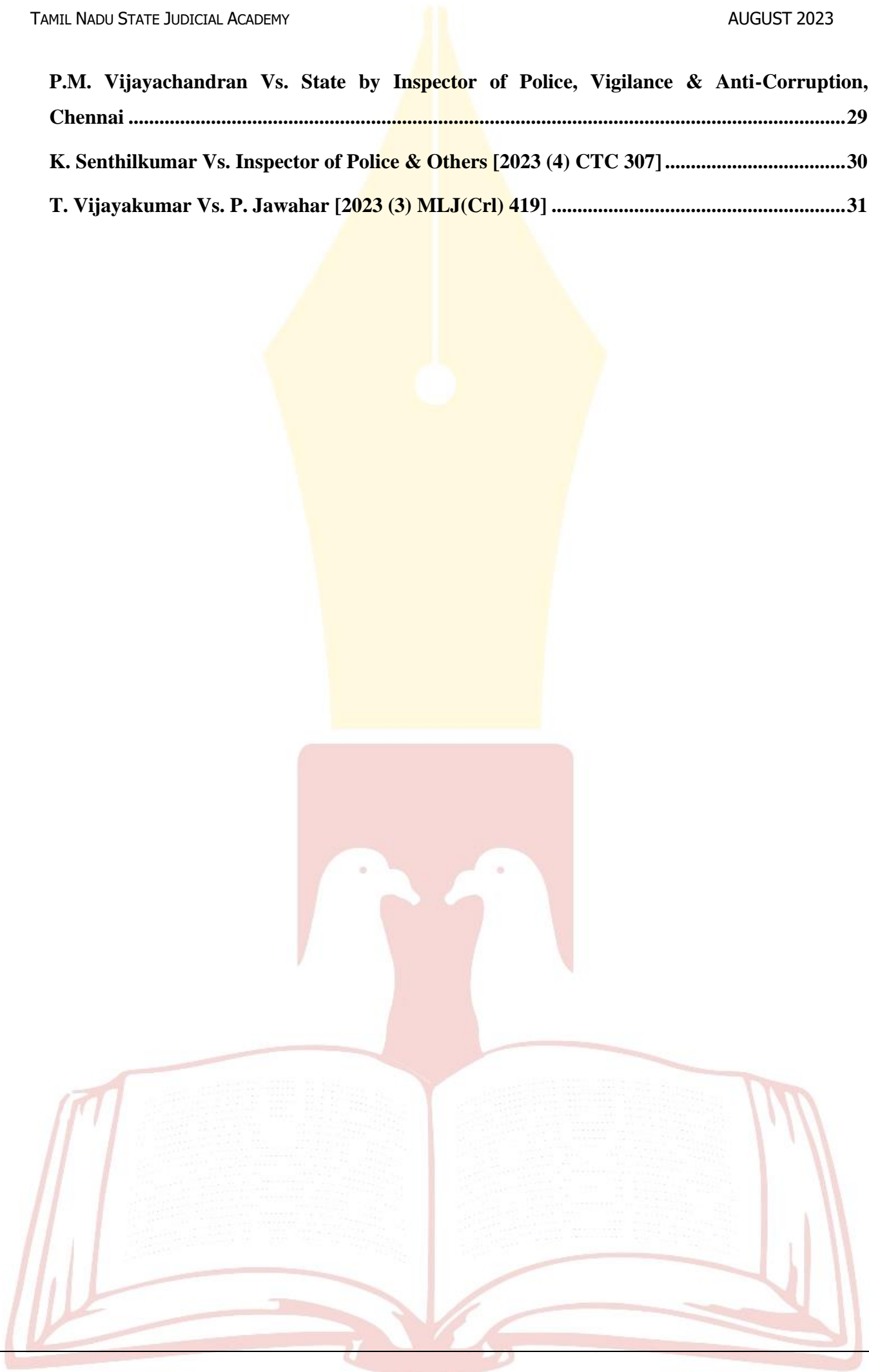
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SUPREME COURT – CIVIL CASES

[State Bank of India & Another Vs. Ajay Kumar Sood \[2023 \(7\) SCC 282\]](#)

Date of Judgment:16.08.2023

A. Courts, Tribunals and Judiciary – Judicial process – Judicial Decision/Judicial function/Judicial reasoning – Judgment – Necessity of structure and clarity in judgment – Emphasised – "Incomprehensible" High Court order set aside – Matter remitted to High Court for

consideration afresh – Held, incoherent judgments have serious impact on dignity of judicial institutions – Guidelines issued for judgment-writing while acknowledging that Judges may have their own style of judgment-writing – Judges to ensure lucidity in writing across these styles – Useful for all judgments to carry paragraph numbers as it allows ease for reference and enhances structure, improving readability and accessibility of judgments – Table of contents in longer version assists access to reader – Importance of making judgments reader accessible to persons from all sections of society, especially persons with disability, stressed – Courts advised to structure judgments in a manner such that "Issue, Rule, Application and Conclusion" are easily identifiable – Finally, always useful for court to summarise and lay out "conclusion" on basis of its determination of application of rule to issue along with decision vis-à-vis specific facts to allow stakeholders to concisely understand judgment

B. Practice and Procedure – Judgment/Decree/Order/Directions –

Judgment – Structuring of judgments – Guidelines issued – Held, it would be beneficial for courts to structure judgments in a manner such that "Issue, Rule, Application and Conclusion" are easily identifiable – Issue refers to question of law that court is deciding – "Rule" refer to portion of judgment which distils submissions of counsel on applicable law and doctrine for identified issue.

M/s. Trinity Infraventures Ltd. & Others Etc. Vs. M.S. Murthy & Others Etc
[AIR 2023 SC 3361]

Date of Judgment:15.06.2023

(A) Civil P.C. (5 of 1908), O.6, R.4 – Pleadings – Allegations of fraud – Allegations of fraud require special pleadings in terms of Order 6, R.4 – In the absence of specific pleadings and evidence, Court Could not hold that preliminary decree was vitiated by fraud.

(B) Civil P.C (5 of 1908), O. 20, R. 18, O. 21, Rr. 97, 99, 101 – Execution of decree – Resistance to delivery of possession – Decree passed in suit for partition – In an enquiry under O. 21, Rr. 97 to 101, executing court cannot decide questions of title set up by third parties (not claiming through or under parties to suit or their family members), who assert independent title in themselves – Executing court can only find out prima facie whether the obstructionists/claim petitioners have a bona fide claim to title, independent of the rights of the parties to the partition suit – If they are found to have an independent claim to title, then the holder of the decree for partition cannot be allowed to defeat the rights of third parties in these proceedings.

(C) Civil P.C. (5 of 1908), O. 21 Rr. 97, 99, 101 – Execution of decree – Resistance to delivery of possession – Question to be determined – Though by virtue of O. 21, R. 101, all questions including questions relating to right, title or interest in property arising between parties to proceedings on application under Rr. 97, 99 are to be determined by Executing Court and not by separate suit, any order passed under R. 101 is subject to result of suit where obstructionist seeks to establish a right.

(D) Civil P.C. (5 of 1908), O. 20, R. 18 – Partition suit – Question of title – In a suit for partition, the Civil Court cannot go into the question of title, unless the same is incidental to the fundamental premise of the claim.

(E) Civil P.C (5 of 1908), O. 20, R. 18 – Partition suit – In a simple suit for partition, parties cannot assert title against strangers, even by impleading them as proforma

respondents – Strangers who are impleaded in partition suit, may have nothing to say about claim to partition but may have a claim to title to the property – Such a claim cannot be decided in a partition suit.

(F) Civil P.C. (5 of 1908), O. 20, R. 18 – Specific Relief Act (47 of 1963), S. 34 – Partition suit or suit for declaration – Determination – In suit for declaration, court-fees are liable to be paid on whole value of property and not on share sought to be partitioned – All the suit properties were valued at a particular rate and court-fees were paid on value of share, of which plaintiff was seeking partition – Held, suit was only for partition and not for declaration.

(G) Civil P.C. (5 of 1908), O. 20, R. 18, O. 21, Rr. 97, 99, 101 – Preliminary decree in suit for partition – Finding regarding title – Preliminary decree could not have determined the claim to title made by the legal heirs seeking partition, as against third parties – Any finding rendered in the preliminary decree, that the properties were Mathruka properties liable to be partitioned, was only incidental to the claim of the legal heirs – Such a finding would not be determinative of their title to property as against third parties.

(H) Civil P.C. (5 of 1908), O. 20, R. 18 – Partition suit – Any finding relating to title of property, recorded in simple suit for partition would not be binding on third parties.

(I) Civil P.C. (5 of 1908), O. 20, R. 18 – Suit for partition – Claim that the properties were Mathruka properties – Order of Nazim Atiyat declaring property as Inam-al-Tamgha was not before trial Court – Trial Court Could not examine effect of such order – In any case, such examination had to be done independently and not in partition suit – Finding that the properties were not established to be Mathruka properties, proper.

Hyderabad Abolition of Inams and Cash Grants Act (8 of 1955), S. 2(1)(c).

(J) Civil P.C. (5 of 1908), O. 20, R. 18 – Decree passed in suit for partition – Execution of – when claim of decree holders that properties were Mathruka properties inheritable by legal heirs had failed, the question of executing decree on strength of plea that property was Mathruka property did not arise.

(K) Civil P.C. (5 of 1908), O. 20, R. 18 – Execution of decree – Objection as to – Obstructionists claimed independent title on basis of pattas granted to their predecessors, after abolition of Jagir – Faisal patti stood in name of obstructionists – Right of obstructionists, established – Decree cannot be executed.

OSA No. 54/56/57/58/59 of 2004, D/- 20-12-2019 (Tel), Affirmed.

(L) Civil P.C. (5 of 1908), O. 1, R. 10 – Application for impleadment – High Court declared that land did not vest in State Govt. after Hyderabad Jagir Abolition Regulations – Aggrieved by such finding, State filed application to implead itself as one of the parties – subsequently, State filed independent appeal – Therefore, application for impleadment was unnecessary.

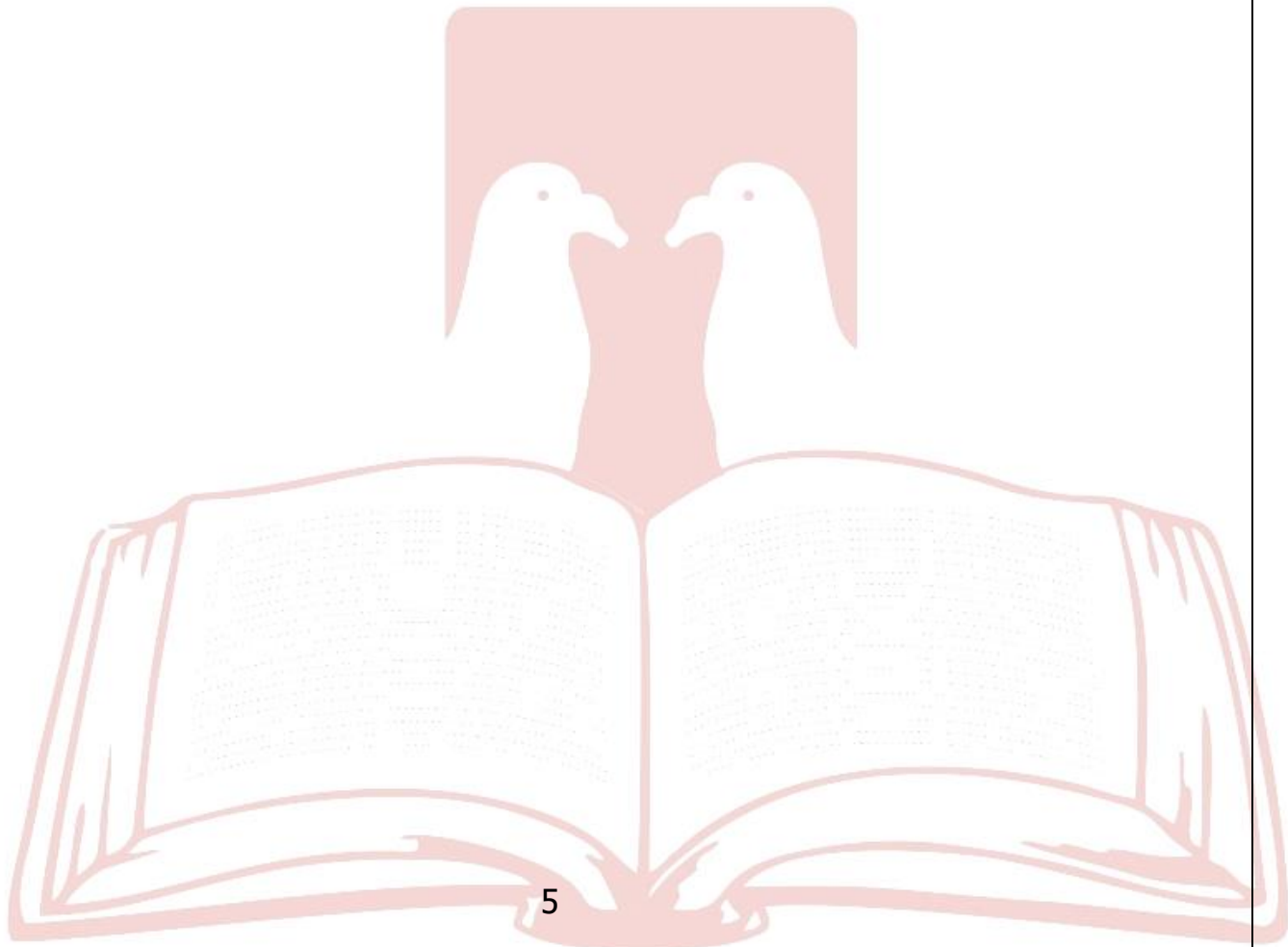
(M) Civil P.C. (5 of 1908), O. 1, R. 10 – Application for impleadment – No third party can apply for impleadment in claim petition filed by somebody else – Remedy of such party is to file separate claim petition.

(N) Civil P.C. (5 of 1908), O. 20, R. 18, S. 54 – Partition suit – Preliminary decree in suit for partition merely declares shares that parties are entitled to in any of the properties included in plaint schedule and liable to partition – On basis of mere declaration of rights that take place under preliminary decree, parties cannot trade in, on specific items of properties or specific portions of suit schedule properties.

Dhondubai Vs. Hanmantappa Bandappa Gandigude Through LRs [2023 ACJ 1979]

Date of Judgment: 28.08.2023

Motor Vehicles Act, 1988, Section 147 (1) – Motor insurance – Liability of insurance company – Pay and recover order – Injured travelling as labourer in the trailer attached to tractor suffered amputation of left leg in an accident – Tractor and trailer need to be insured separately – Trailer was not insured therefore insurance company of tractor cannot be fastened with liability – Apex Court considering the difficult circumstances in which injured, a lady aged 20, is placed and exercising power under Article 142 of the Constitution directed insurance company to pay compensation and then recover the amount from the owner.



K.L. Sunja & Another Vs. DR Manjeet Kaur Monga & Another [2023 (6) SCC 722]**Date of Judgment: 31.01.2023**

A. Debt, Financial and Monetary Laws – Debt/Debtor/Loan/Liability – Payment or refund or discharge of liability effected vide banker’s cheque, or pay order, or demand draft, or any instrument where payment is effected through the bank – When complete, and when liability to pay interest on the amount in question ceases – Applicability of principles contained in Or. 21 Rr. 1(4) & (5) CPC – Law clarified – Payment or refund or discharge of liability effected vide banker’s cheque, or pay order, or demand draft, or any instrument where payment is effected through the bank, held, is complete once such instrument is tendered to the payee – Further held, upon tendering of such instrument to the payee interest on any such payment due, ceases upon tendering of such instrument to the payee – This principle is enshrined in Or. 21 Rr. 1(4) & (5) CPC – That is, the debtor, or person required to pay or refund an amount, is under an obligation to ensure that the amount payable is placed at the disposal tendering a banker’s cheque, or pay order, or demand draft to the payee, or any instrument where payment is effected through the bank, as such modes of payment through the bank, require the account-holder/debtor to pay the bank, which would only then issue such instrument.

B. Civil Procedure Code, 1908 – Or. 21 Rr. 1(4) & (5) – Principles enshrined therein, as to when payment of a liability is complete, and when interest thereon ceases to run – General applicability of

C. Debt, Financial and Monetary Laws – Debt/Debtor/Loan/Liability – Payment or refund or discharge of liability effected vide banker’s cheque, or pay order, or demand draft, or any instrument where payment is effected through the bank – Payee challenging the basis of payment and the payment itself – Ultimately, payee retaining possession of the pay order in question/filing the same with complaint challenging the basis of the same – Duty of payee in such circumstances to take action/seek relief to ensure that instrument in question earned interest without

conceding its case or even accepting the amount – Courses of action open to payee in respect of the same – Instantiated

D. Equity – Maxims of equity – In aequali jure melior est conditio possidentis – Where the equities are equal, the law should prevail – In present case, that the loss would lie where it falls – In present case, payee who failed to act in a manner/seek relief to ensure that pay order duly tendered by the payer earned interest, for no fault of the payer, held, could not claim any right in equity that the payer be made liable to pay interest for the period that the pay order remained unencashed, for which the payee alone was responsible – See in detail Short-note A

E. Civil Procedure Code, 1908 – Or. 21 R. 1 – Amounts deposited in all courts and judicial forums – Mandatory deposit of the same in a bank or some financial institution, to ensure that no loss is caused in the future – Guidelines directed to be framed in respect of – Such guidelines should also cover situations where the litigant concerned merely files the instrument (pay order, demand draft, banker's cheque, etc.) without seeking any order, so as to avoid situations like the present case (see in detail Short-note a) – These guidelines should be embodied in the form of appropriate rules, or regulations of each court, tribunal, commission, authority, agency, etc. exercising adjudicatory power

N.N Global Mercantile Private Limited Vs. Indo Unique Flame Limited & Others [2023 (7) SCC 1]

Date of Judgment: 25.04.2023

A. Arbitration and Conciliation Act, 1996 – Ss. 8, 11 and 7 – Non-Payment or deficient payment of stamp duty on substantive contract comprising/containing arbitration clause, or on stand-alone arbitration agreement, in cases where payment of stamp duty is mandatory, held (per majority), renders such arbitration agreement as non-existent pending payment of (the balance) stamp duty – Appointment of arbitrator by Court or reference to arbitration – Impermissibility of, in such cases, until the deficiency in stamp duty is made good in accordance with law

B. Arbitration and Conciliation Act, 1996 – Ss. 11 and 8 – Receiving of original instrument or certified copy of substantive contract comprising/containing arbitration clause, or of stand-alone arbitration agreement, by court – Held (per Majority), amounts or receiving evidence – Effect thereof – Explained

C. Arbitration and Conciliation act, 1996 – Ss. 11 and 8 – Kind of secondary evidence of instrument comprising arbitration clause, or of standalone arbitration agreement, which may be adduced before Court – Whether certified copy thereof alone may be adduced – “Certified copy” – What is – “Certified copy” distinguished from “a copy certified to be true copy”

- Held (per majority), what is permissible to be produced as secondary evidence i.e. other than the original document, in terms of Para 2(a) of the 1996 Scheme framed under S. 11(10) of the 1996 Act, is only a “certified Copy” thereof as understood under S. 63(1) r/w S. 79 of the Evidence Act, 1872, and not any other form of secondary evidence thereof – See also Short-notes B and D

D. Arbitration and Conciliation Act, 1996 – Ss. 11 and 8 – Original instrument or certified copy of deficiently stamped or unstamped substantive agreement containing arbitration clause, or of standalone arbitration agreement, which is compulsorily stampable – How must be dealt with by Court

E. Arbitration and Conciliation Act, 1996 – Ss. 8, 11 and 7 – Unlikely event that arbitration clause is stamped but the substantive contract in which it is contained is unstamped/insufficiently stamped – Held (per majority), even in such a case, Court is not absolved of its duty under the Stamp Act, and hence cannot proceed further until the requisite stamp duty is paid both on the arbitration agreement and the substantive contract if both are exigible to stamp duty – Stamp Act, 1899, Ss. 33 and 35

F. Arbitration and Conciliation Act, 1996 – Ss. 16, 7, 8 and 11 – Issues relating to stamping of documents – When may be left to/adjudicated on by the arbitrator – Doctrine of kompetenz-kompetenz i.e. the Arbitral Tribunal is competent enough to rule on its own jurisdiction – Applicability of – Cases where on the face of it, claim of insufficient stamping appears wholly without foundation to the Court – Principles clarified.

G. Arbitration and Conciliation Act, 1996 – Ss. 16, 7, 8, and 11 – Issues relating to validity of contracts – When may be left to/adjudicated on by the arbitrator – Doctrine of kompetenz-kompetenz i.e. the Arbitral Tribunal is competent enough to rule on its own Jurisdiction – Void and voidable contract – Distinguished between

H. Arbitration and Conciliation Act, 1996 – Ss. 7 and 11(6-A) – “Arbitration agreement” – Consideration of, as contract, despite the use of the expression “agreement” – Satisfaction of requisites of a valid contract by an arbitration agreement – Necessity of – Agreement and Contract – Distinguished between

I. Stamp Act, 1899 – S. 35 r/w Sch. I Art. 5(c) - Residuary entry in Art. 5(c) of Sch. I to the Stamp Act – applicability of, to arbitration agreements

J. Arbitration and Conciliation Act, 1996 – Ss. 7, 8 and 11 – Arbitration agreement contained in letters or correspondence, held, can fall within umbrage of the Stamp Act – Stamp Act, 1899, S. 35 & proviso (c) and S. 33

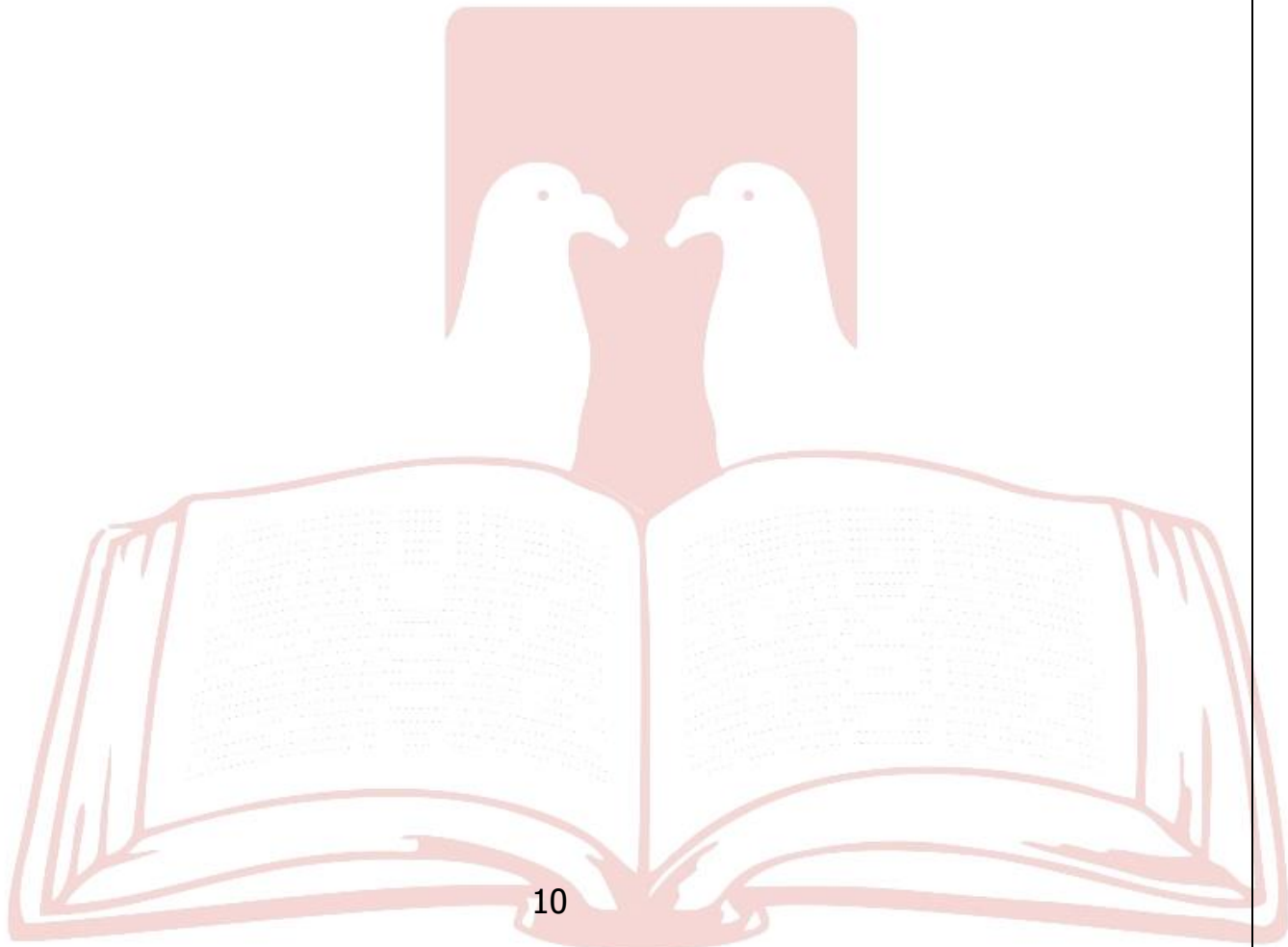
K. Stamp Act, 1899 – Generally – Consideration of, as substantive law – substantive law and procedural law – Distinguished between

L. Contract and Specific Relief – Contract Act, 1872 – Ss. 2(g), (h) and (j), 10, 11 and 14 to 22 – Requisites of a valid contract – Summarised

M. Stamp Act, 1899 – Ss. 33 and 35 – Applicability and effect of – Duties of Court and authorities concerned to ensure strict compliance with Stamp Act – Principles explained in detail

N. Stamp Act, 1899 – Ss. 33 and 35 – Interplay of Evidence Act, 1872, Stamp Act, 1899 and Registration Act, 1908 – Explained

O. Evidence Act, 1872 – Ss. 63, 74, 76 and 79 – Secondary evidence – Classes of – Distinguished – Presumption of genuineness only of duly certified copies – Principles clarified



SUPREME COURT – CRIMINAL CASES**Jitendra Nath Mishra Vs. State of Uttar Pradesh & Another [2023 (7) SCC 344]****Date of Judgment: 02.06.2023**

A. Criminal Procedure Code, 1973 – S. 319 – Summoning of additional accused – Exercise of power under S. 319 CrPC – When warranted – Principles clarified

B. Criminal Procedure Code, 1973 – S. 319 – Summoning of additional accused – Complainant and his wife assaulted and abused by accused persons – On evidence adduced by complainant and his wife in course of recording of their depositions, trial court exercising power under S. 319 CrPC, summoned appellant herein for trial along with D (appellant's brother already facing trial), which was upheld by High Court – Held, for purpose of passing order under S. 319 CrPC, it is sufficient to form satisfaction of nature indicated in para 106 of decision in Hardeep Singh, (2014) 3 SCC 92 – In facts and circumstances of instant case, trial court formed requisite satisfaction prior to summoning appellant to face trial with D (appellant's brother) – Hence, aforesaid order of trial court (Special Court under the SC/ST Act, 1989) and impugned order of High Court upholding it, cannot be faulted

Ramesh Kumar Vs. State of NCT of Delhi [2023 (7) SCC 461]**Date of Judgment: 04.07.2023**

A. Criminal Procedure Code, 1973 – S. 438(2) – Anticipatory bail – Condition(s) that may be imposed for grant of – Imposition of condition of deposit/payment of amount(s) allegedly cheated by accused (Ss. 420/406/34 IPC) – Legality of – Dispute whether predominantly civil in nature – Necessity of determination of – Cases in which money allegedly misappropriated should be directed to be deposited before the application for anticipatory bail/bail is taken up for final consideration, or as a condition for grant of anticipatory bail/bail – Principles clarified

B. Criminal Procedure Code, 1973 – S. 438(2) – Anticipatory bail – Conditions that may be imposed – Cases in which money allegedly misappropriated should be directed to be deposited before the application for anticipatory bail/bail is taken up for final consideration – Exceptional cases involving misappropriation of public money, when public interest demands imposition of such condition – Principles clarified – Prevention of Corruption Act, 1988, Ss. 7 to 13

C. Criminal Procedure Code, 1973 – S. 438 – Anticipatory bail – Application seeking – Appeal arising from – Intervention by the complainants – Whether permissible – Held, the complainants have no right of audience before the appellate court having regard to the nature of offence alleged to have been committed by the appellant in the present case (of cheating) unless, of course, a situation for compounding of the offence under S. 420 IPC, with the permission of the court, arises – Penal Code, 1860, S. 420

D. Criminal Procedure Code, 1973 – Ss. 437, 438 and 439 – Bail/anticipatory bail – Relevant factors to be taken into consideration reiterated

State of Uttar Pradesh Vs. Sonu Kushwaha [2023 (7) SCC 475]

Date of Judgment: 05.07.2023

A. Crimes Against Women and Children – Protection of Children from Sexual Offences Act, 2012 – S. 4 or S. 6 r/w Ss. 2(1)(a), 3(a) and 5(m) – Penetrative sexual assault or aggravated penetrative sexual assault – Determination – As per prosecution, accused came to complainant's house and took his son aged about 10 yrs to certain temple and gave him Rs 20 by asking him to suck his penis – Thereafter, the appellant put his penis into the mouth of the victim and he came to the house having that Rs 20

B. Crimes Against Women and Children – Protection of Children from Sexual Offences Act, 2012 – S. 6 (as it stood prior to amendment dt. 16-8-2023) – Sentence – Imposition of less than minimum prescribed thereunder (of 10 yrs' RI at the relevant time) – Held, impermissible, even when the accused had moved ahead in life

C. Crimes Against Women and Children – Protection of Children from Sexual Offences Act, 2012 – S. 6 – Sentence – Effect of phraseology "shall not be less than" – Held, when a penal provision uses the phraseology "shall not be less than", the courts cannot do offence to the section and impose a lesser sentence – Therefore, held, courts are powerless to do that unless there is a specific statutory provision enabling the court to impose a lesser sentence – Held, there is no provision in the POCSO Act permitting the imposition of a lesser sentence than that prescribed – Criminal Trial – Sentence – Minimum sentence/Minimum statutory sentence

V. Senthil Balaji Vs. State, rep by Deputy Director & Others [2023 (4) CTC 758]

Date of Judgment: 07.08.2023

Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – Prevention of Money Laundering Act, 2002 (15 of 2003), Section 19 – Power of Remand –

Power to grant Police Custody – Restriction – Contention of Arrestee that Police custody cannot be granted beyond first Fifteen days of remand – Expression "from time to time" – Words "time to time" clearly indicate that power to grant custody is not restricted to first Fifteen days of remand but during whole period of investigation – When investigation reveals new materials to be confronted with Accused, need for custody might arise – Reference to words "a term not exceeding Fifteen days in the whole" – Implication – Fifteen days of maximum custody has to be seen contextually from point of view of period of investigation as provided under Proviso – Period of Fifteen days being maximum period that can be granted in favour of Police would span from time to time with a total period of 60 or 90 days as case may be – Maximum period of 15 days of Police custody is meant to be applied to entire period of investigation as whole.

Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – Remand – Police custody – Restriction – Contention of Arrestee that Code restricts Police custody only to first Fifteen days of remand – Words "time to time", "such custody" and "in the whole" – Meaning of – Natural interpretation – Provision does fine balancing act between liberty of individual and proper investigation – Provision permits Police custody spanning over entire period of investigation 60 or 90 days as case may be – Ratio laid down in Anupam J. Kulkarni doubted and referred to Larger Bench.

Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – Prevention of Money Laundering Act, 2002 (15 of 2003), Section 19 – Remand – Police custody – Reckoning of Fifteen days of Police custody – Accused arrested on 14.06.2023 and remanded to Judicial Custody till 28.06.2023 – Writ of Habeas

Corpus filed assailing arrest – High Court issued direction on 15.6.2023 for shifting of Accused to Private Hospital to undergo surgery – Magistrate ordered Police custody from 16.06.2023 for eight days – Enforcement Directorate unable to interrogate with Accused in Hospital – Interdiction by extraneous circumstances – Computation of Fifteen days – Admission of Accused to Hospital of his choice cannot be termed as physical custody in favour of Investigation Agency – Custody could not be taken on basis of Interim Order of High Court – Such period shall not come in way of calculating period of 15 days – Curtailment of Fifteen days of Police custody by any extraneous circumstances, act of God or an Order of Court not being handy work of Investigation Agency would not act as a restriction.

Constitution of India, Article 226 – Law of Writs – Writ of Habeas Corpus – Maintainability of – Arrest – Illegal Detention – Distinction – Remand – Arrest made by Enforcement Directorate under PMLA Act – Competent Court authorized arrest by reasoned Judicial Order of Remand – Order of Remand depicts due application of mind – Writ of Habeas Corpus instituted alleging illegality in arrest – Order of Remand cannot be tested in Writ jurisdiction – Order of Remand should be challenged only before higher forum – Writ of Habeas Corpus not maintainable.

Constitution of India, Article 226 – Law of Writs – Writ of Habeas Corpus – Arrest made in violation of mandatory Statutory provisions – Arrestee not produced before Magistrate within 24 hours of arrest – Remand Court failed to consider non-compliance of Statutory mandate – Extraordinary Circumstances – Writ Petition maintainable.

Code of Criminal Procedure, 1973 (2 of 1974), Section 41-A – Prevention of Money Laundering Act, 2002 (15 of 2003), Section 19 – Arrest – Procedural safeguards of liberty of person – Arrest made under PMLA Act – Applicability of Section 41-A of Code – Arrest shall be made after due compliance of relevant provisions under PMLA Act – No need to follow procedure contemplated

under Section 41-A of Cr.P.C. – Section 41-A of Code has no application to arrest made under PMLA Act.

Prevention of Money Laundering Act, 2002 (15 of 2003), Sections 19 & 62

– Arrest – Mandatory procedures – Non-compliance of mandate of Act would vitiate arrest – Authorized Officer, immediately after arrest, should forward copy of Order together with material to Adjudicating Authority – Arrestee should be produced before Court within 24 hours of arrest – Time spent on journey to Court shall stand excluded – Failure to comply with mandate of Section 19 would lead to serious consequences – Act contains sufficient safeguard to facilitate an element of fairness and accountability – Non-compliance of provisions would enure to benefit of person arrested – Competent Court shall have power to initiate action against concerned Officer for non-compliance of mandatory provisions.

Code of Criminal Procedure, 1973 (2 of 1974), Sections 4 & 5 – Prevention of Money Laundering Act, 2002 (15 of 2003), Sections 19, 12 & 65

– Trial of offences under Special Law – Overriding Clause – Application of Criminal Procedure Code with respect to arrest, search and seizure – Provisions of Cr.P.C. are primarily procedural in nature – No inconsistency between Code and PMLA Act – PMLA Act shall have precedence in matter of investigation – Provisions of Cr.P.C. are supplementary to provisions of PMLA Act.

Prevention of Money Laundering Act, 2002 (15 of 2003), Sections 19 &

44(1)(b) – Role of Designated Authority – Power of arrest – Power of arrest is meant for investigation alone – Power of arrest can be exercised during investigation alone.

Code of Criminal Procedure, 1973 (2 of 1974), Section 167

– Arrest – Power of Remand – Discretion of Magistrate – Duty of Magistrate – Necessity to pass Speaking Order – Magistrate bound to ensure strict compliance of mandatory provisions – Power of remand is Judicial function – Reasoned Order should be passed indicating application of mind.

Words and Phrases – "Whole" – Meaning of – Word "whole" Means "total, not divided, lacking, no part, entire, full and complete"

Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – "Detention" – "Custody" – Distinction – Custody will be either to Court or an Investigation Agency – Detention is normally made only by Investigation Agency prior to production before Magistrate – Custody from being judicial may turn into Police through an Order of Court – Detention and Custody are not synonymous with each other.

Prevention of Money Laundering Act, 2002 (15 of 2003), Section 19 – Code of Criminal Procedure, 1973 (2 of 1974), Section 167 – Role of Magistrate – Remand – Interplay – PMLA Act provides adequate safeguards to an arrested person – Magistrate has bounden duty to ensure due compliance of Section 19 of Act – Non-compliance of mandatory provisions would entitle Arrestee to get released – Magistrate should record satisfaction in regard to compliance of safeguards as mandated under Act.

Prevention of Money Laundering Act, 2002 (15 of 2003), Section 19(1) – Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Power of Remand – Authorized Officer vis-a-vis Police Officer – "Custody" – Power of Authorized Officer to seek for custody – Plea of Arrestee that Authorized Officer is not entitled to seek for custody – Words "such custody" occurring in Code would include not only Police custody but also that of other Investigation Agencies – Authorized Officer under PMLA Act is entitled to seek custody.

Interpretation of Statutes – "Proviso" – Internal aids – Construction Proviso – of Statutes must be given interpretation limited to subject matter of enacting provision.

Vijay Madanlal Choudhary & Others Vs. Union of India & Others [2023 (3) MLJ 225 SC]

Date of Judgment: 27.07.2022

Money Laundering – Reverse Burden – Prevention of Money Laundering Act, 2002, Sections 3 and 24 – Validity upheld – Foundational Facts – Section 24(1)(a) and (b) explained – Special provision regarding burden of proof in any proceeding relating to proceeds of crime under this Act would apply to stated proceeding before Adjudicating Authority as well as Special Court – So long as accused was entitled to show that he had not violated provisions of Act, such legal provision could not be regarded as unconstitutional – Accused was then entitled to rebut presumption – Legal presumption in Section 24(1)(a) & (b) was about involvement of proceeds of crime in money-Laundering – This fact becomes relevant, only if, prosecution or authorities had succeeded in establishing at least three foundational facts – First, that criminal activity relating to scheduled offence had been committed – Second, that property in question had been derived or obtained, directly or indirectly, by any person as a result of that criminal activity – Third, person concerned was, directly or indirectly, involved in any process or activity connected with the said property being proceeds in crime – Once these were established Section 24 applies and legal presumption would arise that such proceeds of crime were involved in money-laundering – Presumption stands rebutted if person concerned had no causal connection with such proceeds of crime and he was able to disprove fact about his involvement in any process or activity connected therewith, by producing evidence in that regard – Presumption under Section 24(a) attracted when person was charged with offence of money-laundering and his direct or indirect involvement in any process or activity connected with proceeds of crime, was established – Existence of proceeds of crime was, therefore, foundational fact, to be established by prosecution, including involvement of person in any process or activity connected therewith – Once these foundational facts established by prosecution, onus must then shift on person facing charge of offence of money-

laundering to rebut legal presumption that proceeds of crime were not involved in money-laundering, by producing evidence which was within his personal knowledge – Expression “presume” was not conclusive – Section 24(b) concerns person other than person charged with offence of money-laundering under Section 3 – This Presumption need not be mandatorily drawn since expression used was “may Presume” – Legal Presumption in context of Section 24(b) attracted once foundational fact of existence of proceeds of crime and link of such person therewith in process or activity was established by prosecution

Bail – Considerations – Prevention of Money Laundering Act, 2002, Section 45(1)(ii) – Duty of Court at this state was not to weigh evidence meticulously but to arrive at finding on basis of broad probabilities – Court was required to record finding as to possibility of accused committing crime which was offence under the Act after grant of bail – Court while dealing with application for grant of bail need not delve deep into merits of the case and only view of Court based on available material on record was required – Court would not weigh evidence to find guilt of accused which was, of course, work of Trial Court – Court was only required to place its view based on probability on basis of reasonable material collected during investigation and said view would not be taken into consideration by Trial Court in recording its finding of guilt or acquittal during trial which was based on evidence adduced during trial

HIGH COURT – CIVIL CASES**G. Chitra Gunasekaran Vs. V. Natarajan (Died) & Others [2023 (2) TN MAC 2021]****Date of Judgment: 22.06.2022****MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 166 – CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 16, Rules 14, 15 & 16 – EVIDENCE**

ACT, 1872 (1 of 1872), Section 45 – Disability Certificate issued by Medical Board and marked before Tribunal – Re-examination of Disability Certificate as also Medical Expert – Permissibility – Legality of Orders dismissing Petitions to re-examine Disability Certificates – As per Guidelines/Directions issued by Division Bench in Prabhu, Experts can be re-examined in exceptional cases – Guidelines to be read in conjunction with substantial rights of litigant under Evidence Act – Medical Experts to be construed as Witness in terms of Section 45 – Court can summon Witness under Order 16, Rules 14, 15 & 16 – Tribunal directed to issue Summons to Medical Experts who issued Disability Certificates – Petitioners may subject such Experts to cross-examination – Tribunal thereafter may come to independent conclusion on Disability Certificate – Liberty also given to Petitioners to obtain independent Certificate from Expert to discredit Reports given by Medical Board.

C.S. Balakrishnan & Others Vs. T. Amudan Antony & Other [2023 (4) MLJ 305]

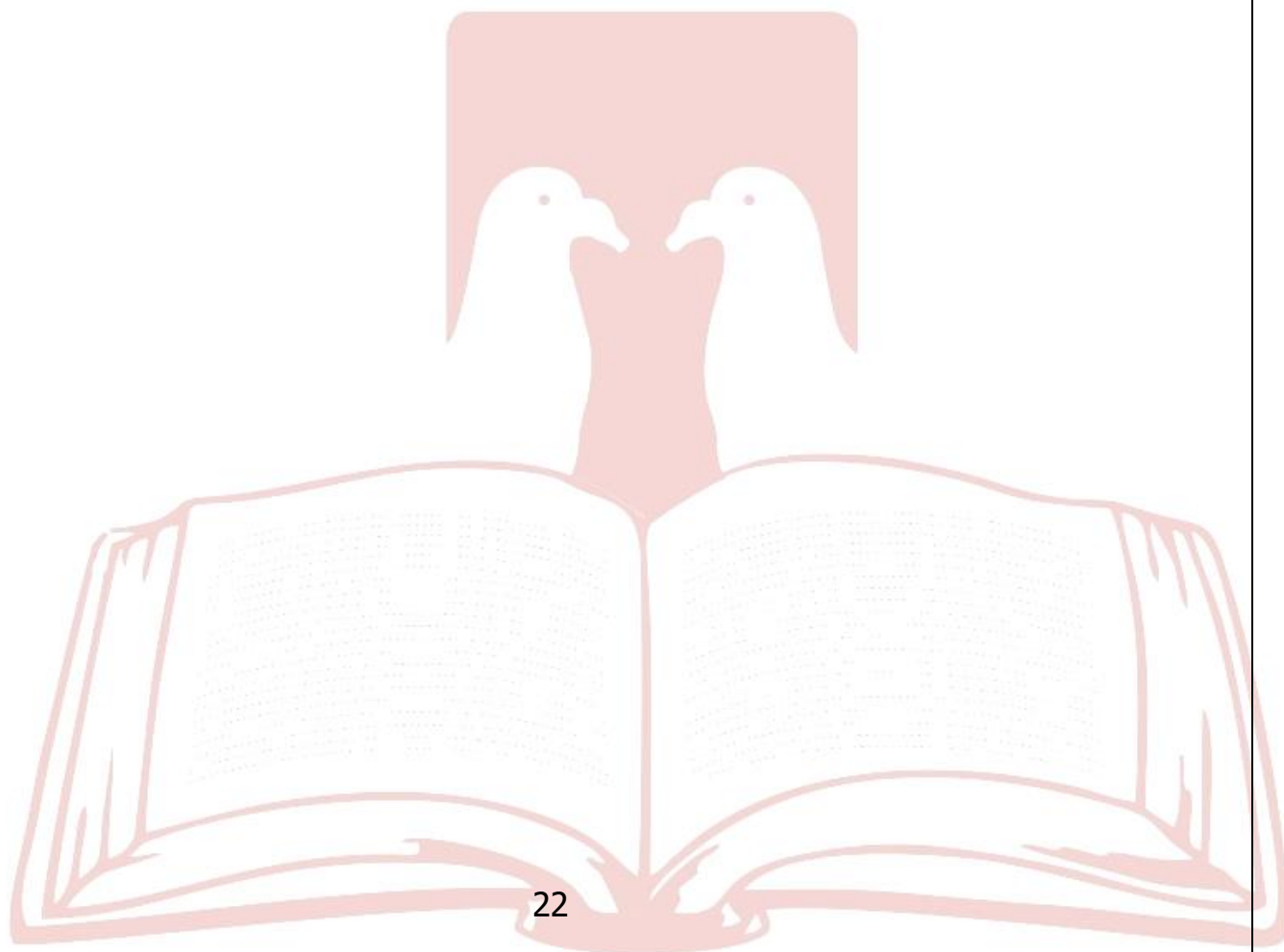
Date of Judgment: 10.07.2023

A) Civil Procedure – Disposal of suit – First hearing – Code of Civil Procedure, 1908, Order 15 Rule 3 – Plaintiffs filed suit for recovery of possession on ground that 1st Plaintiff was successful in establishing that 1st Defendant did not have title in various legal proceedings and was required to obtain vacant possession from 1st Defendant on strength of his vested title – Plaintiffs filed this application under Order 15 Rule 3 to decree suit without trial in view of fact that title of 1st Plaintiff over suit property had been conclusively decided against Defendants in earlier rounds of litigation – Whether Court could resort to Order 15 course after issues were framed, and if so, could it be on any day after framing of issues – Held, Wherever justice could be delivered expeditiously and without trial with uncompromising allegiance to fairness, it was obligatory for Court to do it – Expeditious dispensation of justice was not just part of Court's duty to litigants before it, but also aspect of its accountability to public – No rationale in restricting or confining operation of Order 15 to first hearing date, and not thereafter – Code did not limit disposal without trial to first hearing, and this was found in Rule (3)(2) of Order 15 – Application could not be entertained, not because it was not maintainable, but because there were at least three major triable issues in suit – Application dismissed.

B) Civil Procedure – Res Judicata – Re-litigation – Abuse of Process – Code of Civil Procedure, Section 151 – Trying a suit barred by res judicata amounts to re-litigation and may well constitute an abuse of judicial process besides wastage of courts time K.K. Modi v. K.N. Modi (1998) 3 SCC 573.

(C) Civil Procedure – Duty of Court to shorten litigation – Code of Civil Procedure, Section 151 – Court retains absolute control over entire procedure-driven proceedings at all stages of a litigation from its entry to and exit from the legal system, and from granting an adjournment to admitting an evidence during the

journey – Power which the Code has vested in the Court is a reflection of a well calibrated idea that the court and its process is not intended for patronising litigants and litigations, but for providing a solution to a problem before it, both factual and legal, as expeditiously as possible and within the framework of law.



Muthiah & Others Vs. Rajam & Others [2023 (4) MLJ 324]**Date of Judgment: 24.05.2023**

(A) Partnership and Joint Ventures – Dissolution of Firm – Property of firm – Limitation Act, 1963, Article 5, Section 10 – Indian Trust Act, Section 88 – 1st and 2nd Respondents/Plaintiffs, legal representatives of deceased partner filed suit for dissolution of firm and rendition of accounts – Trial Judge dismissed suit on ground of limitation, but Appellate Judge party reversed decree, hence this second appeal by 1st Defendant/other partner – Whether suit filed by 1st and 2nd Respondents claiming their share of profits of dissolved partnership as legal heirs of deceased partner was barred under Article 5 of Act 1963 – Held, by virtue of Section 88 of Trust Act, surviving partner was treated to be in fiduciary capacity to protect interest of another partner and former was to hold advantage that he gains out of such relationship for benefit of latter – Even after death of partner, 1st Defendant continued to give share of profits arising out of business to Plaintiffs in due discharge of his fiduciary capacity – On death of partner, duty cast upon other partner to finalize accounts and settle his dues to his legal representatives – As long as said duty had not been discharged, liability continues day to day and therefore, cause of action for suit was not death of partner – Other Partner had enjoyed benefits of partnership, leased out property to 2nd Defendant and also shared profits – Accounts never settled or finalized and other partner had not discharged his fiduciary duty towards legal representatives of deceased partner – Article 5 of Act 1963 would not apply – Suit was in time – Appeal dismissed.

(B) Partnership and Joint Ventures – Property of firm – Plea of Benami – Partnership Act, Section 14 – Benami Prohibition Act, 1988, Section 4 – Indian Trust Act, Section 88 – Whether suit barred by virtue of Benami Prohibition Act – Held, Partnership Deed read as bringing in immovable property as property of firm – If other partner wanted to exclude movable and immovable property from partnership business, he

would have expressly stated so as in terms of Section 14 of Partnership Act – On contra, clause show that both partners had agreed that property had been purchased on both their behalf in equal contribution in name of other partner – Clause 1 of deed show that immovable property brought in as stock of firm and hence, no exclusive right could be claimed by other partner in and over same – Relationship between other partner and legal representatives of deceased partner was one of fiduciary capacity, statutorily recognized under Section 88 of Trust Act – Section 4(2)(b) of Benami Prohibition Act makes a plea of benami unavailable where one person holds property in fiduciary capacity – Benami Prohibition Act would not apply, by virtue of Section 88 of Trust Act read with Section 14 of Partnership Act and Partnership Deed.

(C) Limitation – Partnership – Rendition of accounts – Limitation Act, 1963, Section 10, First Division Article 5 – Whether suit barred under Limitation Act, if person held property in trust – Held, Legislative mandate under Section 10 of Act 1963 was if person holds property in trust for specific purpose, there shall be no limitation for accounting of such property – Purpose of law of limitation is to extinguish legal remedy available for enforcement of a right – It does not extinguish right itself – Surviving partner on death of his partner owes fiduciary duty to his legal representatives – Limitation Act does not put an end to performance of these duties.

V. Rajarathinam Vs. V. Sivasubramanian & Anothers [2023 (4) CTC 531]**Date of Judgment: 19.06.2023****Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 52 – Tamil Court Fees and Suits Valuation Amendment)**

Act, 2017 (T.N. Act 6 of 2017) – Suit for Partition – Plaintiff paid fixed Court-fee before amendment of Act – Amended Act reduced Ad Valorem rate from 7.5% to 3% – Plaintiff paid Court-fee in terms of unamended provision in Second Appeal – Registry raised an objection and demanded Court-fee in terms of amended provision – Single Judge in Sivagami v. Nallathal, held that only enhanced Court-fee payable as per amended Act will apply for Appeals – Statute charging Court-fee is not only Fiscal legislation but one that will seriously affect citizens' Fundamental Right to access justice – Amended provisions of Court-fee would be inapplicable to Appeal arising out of Suit instituted prior to Amendment – Act 6 of 2017 would not apply to Appeal arising out of Suit instituted prior to Amendment – Court-fees payable on Appeal would be same as Court-fees paid on Plaint as per unamended provision – Ratio laid down in Sivagami v. Nallathal distinguished – Amended provisions of Act would not apply to an Appeal arising out of Suit instituted prior to amendment.

K. Chakrapani & Others Vs. N. Brindha & Others [2023 (4) CTC 841]**Date of Judgment: 25.05.2023****Code of Civil Procedure, 1908 (5 of 1908), Order 2, Rule 2 & Section 11 –**

Suit for Partition – Similar nature of Suits – Whether, present Suit barred by Principle of Res judicata – Earlier 1st Plaintiff filed Suit for Partition of immovable properties of deceased 'A' – Present Suit filed for Partition in respect of Fixed Deposits made in various Banks and Financial Institutions – Relief sought for in Suit is for first time – Present Suit is not barred by Principles of Res judicata – Object behind Order 2, Rule 2 is that Plaintiff cannot split claims – Burden is on Defendant to establish that subsequent Suit is founded on cause of action identical to earlier Suit – Defendant failed to file copy of Plaint of earlier Suit – Claim in earlier Suit and present Suit are totally different – Suit, held, not hit by Order 2, Rule 2.

Banking Law & Practice – Effect and scope of "Either or Survivor" Account – 'A' made Fixed Deposits with several Banks and Financial Institutions and added Defendants 1, 2 & 4 to 6 as Survivors/Nominees in deposits – 'A' died intestate and same was not admitted by 2nd Defendant and he claimed exclusive rights to deposit based on one Release Deed – Release Deed produced by 2nd Defendant pertains only to immovable properties and not Fixed Deposits – In absence of any Deed of Gift or any other disposition, Survivor can only receive amount as Trustee of other surviving Heirs of deceased Depositor – Legal Heirs are entitled to Equal Share in Fixed Deposits – A.S. dismissed.

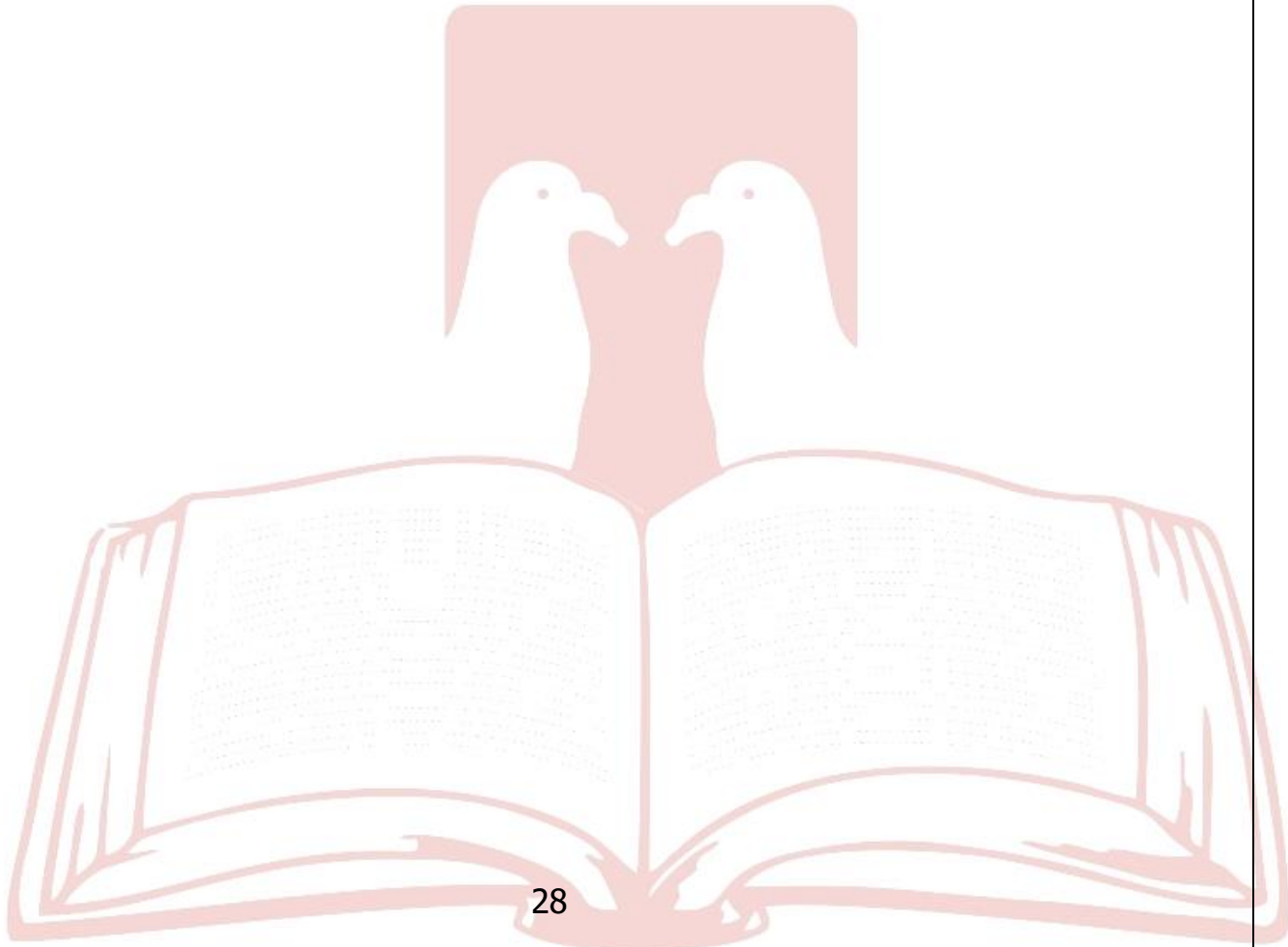
HIGH COURT – CRIMINAL CASES**S. Amalraj Vs. State, rep. by Inspector of Police, Town Police Station & Others [2023 (4) CTC 517]****Date of Judgment: 06.03.2023****Protection of Women from Domestic Violence Act, 2005 (43 of 2005),**

Section 31 – Penalty for breach of Protection Order – Maintenance – Non-payment of maintenance – Consequences – Registration of FIR – Jurisdiction of Police – Petition to quash Charge-sheet – Contention of Petitioner that arrears of Maintenance can be recovered by resorting to procedure contemplated under Section 125 or 128 of Code-Held, non-payment of Maintenance would amount to breach of Protection Order – Intention of legislature is to provide efficacious remedy for enforcement of Maintenance Order – Police has Jurisdiction to register FIR for non-compliance of Maintenance Order – Provisions of Domestic Violence Act should be interpreted to advance social justice to women and children – Ratio laid down by Kerala High Court in Suneesh v. State of Kerala, 2022 (7) KSC 577 distinguished – View taken by Division Bench of Madhya Pradesh, Surya Prakash followed and applied.

**Loyola Selva Kumar Vs. M. Sharon Nisha & Another [2023 (2) TLNJ 49
CIVIL]**

Date of Judgment: 26.06.2023

Code of Criminal Procedure, 1973 125 – Maintenance to 2nd wife and children – Appeal against divorce pending between petitioner and his 1st wife – Trial Court granted maintenance to 2nd wife and daughter – Revision – Petitioner and R.1 were living together as husband and wife and R.2 born to them – marriage between the petitioner and R.1 even if proved, cannot said to be valid – Trial Court rightly observed the respondent's deliberate cheating and fraudulent intention from the stand of the maintenance case and there was no relationship between him and the petitioners – R.1 can be very well considered as wife and R.2 as the son of respondent – They are entitled to get maintenance from the respondent – Revision dismissed.



P.M. Vijayachandran Vs. State by Inspector of Police, Vigilance & Anti-Corruption, Chennai

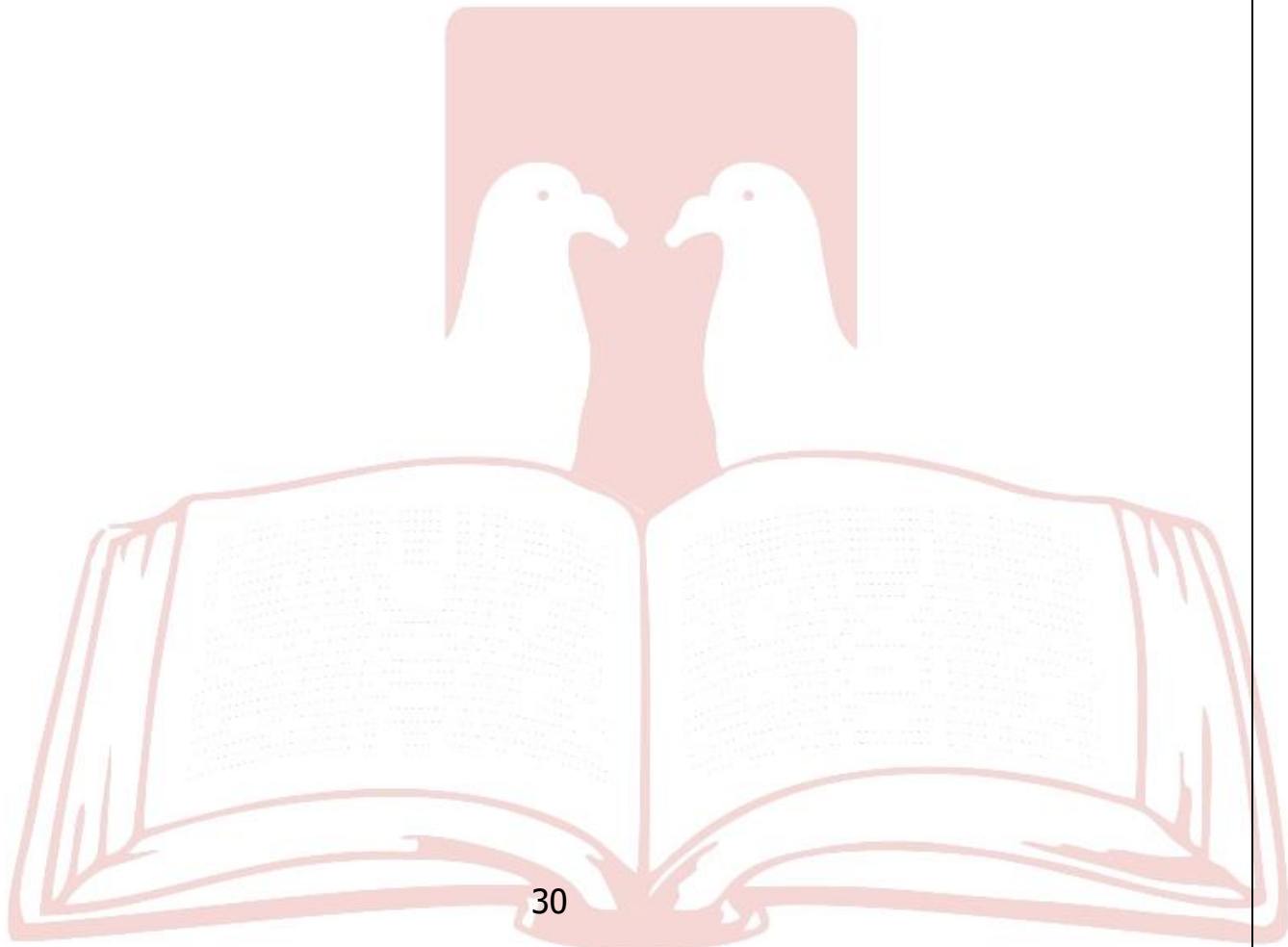
Date of Judgment: 01.06.2023

Prevention of Corruption Act, 1988, Sections 7 and 13(2) r/w 13(1)(d) –

Demanding bribe by worker of CMWSSB to rectify and regularize the permission to letting out the sewage waste by Complainant – Trap proceeding – Accused conviction – Appeal – Mere recovery of tainted money from a person is a proof for demand or acceptance or illegal gratification – prosecution is bound to prove the fundamental facts regarding the demand as well as acceptance and money recovered from the accused spoken by P.W.2 and gratification spoken by P.W.9 – same corroborated by the testimony of Scientific Officer – accused himself admits that, he received the money from P.W.2, alleged that it is not an illegal gratification but for other purpose – but failed to probalilise defence – In crossing P.W.4 suggested that this money was received by the accused as a loan from P.W.2, whereas, in a written explanation under Section 313 of Cr.P.C., the accused told that money received towards the sewage tax – neither of the defence supported by any material to probalilise such defence – Criminal Appeal dismissed.

K. Senthilkumar Vs. Inspector of Police & Others [2023 (4) CTC 307]**Date of Judgment: 11.01.2023**

Motor Vehicles Act, 1988 (59 of 1988), Sections 19 & 206 [as amended by Motor Vehicles (Amendment) Act, 2019 (32 of 2019)] – Power of Police to impound documents – Seizure of Driving License – Transport Corporation Driver met with an accident and FIR registered under Sections 279 & 304-A of IPC – Seizure of Driving License for involvement in Criminal Case – Jurisdiction of – "Reason to believe" – Phrase 'reason to believe' excludes mere suspicion or doubt – Seizure of License cannot be resorted in routine manner – Licence cannot be seized merely on basis of registration of FIR for IPC offences – License can be seized only on limited grounds as envisaged under Section 206 by recording reasons in writing – Order of Seizure without recording any reasons on satisfaction of contingencies under Act is bad in law – Order of seizure set aside.



T. Vijayakumar Vs. P. Jawahar [2023 (3) MLJ(Cr) 419]**Date of Judgment: 14.03.2023**

Dismissal of Complaint – Defamation – Code of Criminal Procedure, 1973, Section 2023 – Indian Penal Code, 1860, Section 500 – complaint of defamation filed against Respondent by Petitioner dismissed by Judicial Magistrate and confirmed by Sessions Judge, hence this petition – Whether, allegations made against Petitioner in reply sent in pursuance to complaint of Petitioner could constitute defamatory allegations entitling Petitioner to prosecute Respondent under Section 500 IPC – Held , Petitioner and Respondent trade allegations against each other – In light of mutual charges levelled against each other in communication addressed to Deputy Director, allegations could not be construed as defamatory allegations for reason that if allegations made against Petitioner were true, truth was a defence in defamation case and therefore, offence of defamation could not be made out – Allegations in Respondent’s reply were in nature of answer to allegations made against Respondent in Petitioner’s complaint – From materials produced, Petitioner had not made out case for prosecuting Respondent for offences of defamation under Section 500 IPC – Courts below have rightly decided issue and dismissed complaint – Petition dismissed.
