

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVII — PART 12 — DECEMBER 2022 \*\***

## COMPENDIUM OF CASE LAWS



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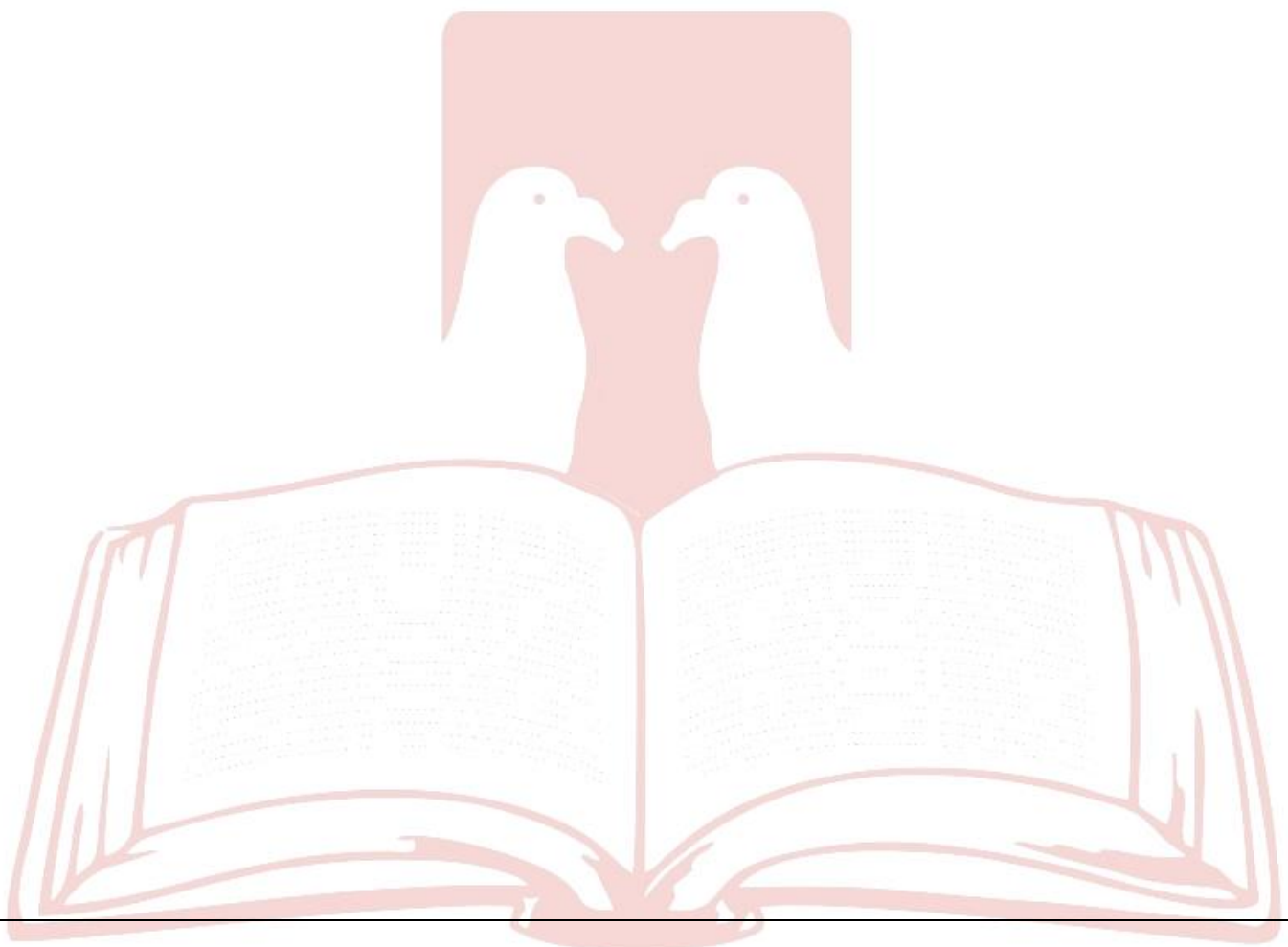
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**SUPREME COURT – CIVIL CASES****Bhagyoday Cooperative Bank Ltd Vs. Ravindra Balkrishna Patel****[C.A.Nos.8531-8532 of 2022]****Date of Judgment: 16-11-2022****Civil Procedure - Order XXI Rule 46A**

The Hon'ble Supreme court decided a Civil Appeal challenging the order of High Court, which had set aside the execution order of Trial Court. The matter arose when the Appellant filed an execution petition for performance of a decree.

The Apex Court observed that, it is clear from Order XXI Rule 46A that the debt must have been attached, except debt secured by a mortgage or a charge. Once these conditions are fulfilled, then upon an application being made by the 'attaching creditor', a notice may be issued to the garnishee calling upon him either to pay the debt, or so much of it as would be sufficient to satisfy the decree and the cost of execution, or show cause as to why he should not do so. Under Order XXI Rule 46B, if the garnishee does not pay the amount forthwith or he does not appear in the case of a show cause, the Court is empowered to order the garnishee to comply with the terms of the notice.

The Apex Court noted that, there is a definite scheme which is clear from the perusal of Order XXI Rule 46 and by the subsequent additions to the law by the amendment of the year 1976 which is contained in Order XXI Rule 46A to Order XXI Rule 46I. It would unerringly point to the provisions being mandatory.

The Apex Court upheld the finding of the High Court, that the Execution Court should have first attached the debt under Order XXI Rule 46 before proceeding to pass the order under Order XXI Rule 46A of CPC.

Thus, the Apex Court allowed the Appeal holding that, the order passed by the Execution Court must be treated as an order by which the attachment has been made under Order XXI Rule 52 of CPC.

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**Desh Raj & Ors. Vs. Rohtash Singh [C.A.No.921 of 2022]****Date of Judgment: 14-12-2022****Indian Contract Act 1872 – Specific Performance**

The Hon'ble Supreme Court considered the present appeal directed against the judgment passed by the High Court of Punjab and Haryana whereby a second Appeal preferred by the Appellants was dismissed.

The Apex Court observed that, the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court is vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks refund of earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money. In the absence of such a prayer, it is difficult to accept that the courts would *suo-moto* grant refund of earnest money irrespective of whether Section 22(2) of Specific Relief Act, 1963 is construed directory or mandatory.

The Apex Court allowed the Appeal holding that, all pre-estimated amounts which are specified to be paid on account of breach by any party under a contract are covered by Section 74 of Contract Act. In a scenario where the contractual terms clearly provide the factum of the pre-estimate amount being in the nature of 'earnest money', the onus to prove that the same was '*penal*' in nature squarely lies on the party seeking refund of the same. Failure to discharge such burden would treat any pre-estimated amount stipulated in the contract as 'genuine pre-estimate of loss'.

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**Leelamma Mathew Vs. Indian Overseas Bank & Ors.**  
**[C.A.No. 7128 of 2022]**

**Date of Judgement: 17-11-2022**

**Section 34 - Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**

The Hon'ble Supreme Court considered this civil appeal preferred by the original plaintiff against the impugned judgment and order passed by High Court of Kerala quashing the judgment and decree passed by the Trial Court directing the Bank to pay to the plaintiff a sum of Rs. 58,10,000/- with interest at the rate of 12% per annum from the date of suit till realization.

The Apex Court observed that, Section 34 of the SARFAESI Act shall be applicable only in a case where the Debt Recovery Tribunal and/or Appellate Tribunal is empowered to decide the matter under the SARFAESI Act. The plaintiff was not challenging the sale certificate. The plaintiff claimed the damages/compensation with respect to the less area.

The Apex Court further observed that, Rule 8 of the 2002 Rules cast a duty on the authorized officer to take all precautions before putting the secured asset to sell. Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover.

The trial Court had held the Bank liable and directed to pay Rs. 58,10,000/- with the interest at 12% per annum from the date of suit till realization to the bank. The High Court quashed the judgement and held the Bank not liable. Noting that the High Court committed an error, The Apex Court allowed the appeal.

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**MP Power Management Company Limited Jabalpur Vs. M/s. Sky Power Southeast Solar India Private Limited & Others [C.A.Nos. of 2022]**

**Date of Judgment: 16-11-2022**

**Judicial Review in Contractual matters**

The Hon'ble Supreme Court considered a Power Purchase Agreement (PPA) between Madhya Pradesh Power Management Company Limited and Sky Power Southeast Solar India Private Limited called into question in an Order passed by Madhya Pradesh High Court.

The Apex Court noted that, there is no absolute bar in dealing with a cause of action based on acts or omission by the State or its instrumentalities even during the course of the working of a contract. A writ applicant might successfully urge a monetary claim arising from a contract, but the premise would not be a mere breach of contract. A matter, which lies entirely within a private realm of affairs of a public body, may not lend itself for being dealt with under the writ jurisdiction of the Apex Court.

The Apex Court held that, there could be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition. It may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can be called upon to honour its obligations of making payment, unless it is that there is a serious and genuine dispute relating to the liability of the State to make the payment.

Thus, the Apex Court dismissed the appeal.

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**The Employees Provident Fund Organisation & Anr Etc Vs. Sunil Kumar B. & Ors. etc. [C.A.Nos. ... of 2022]**

**Date of Judgment: 04-11-2022**

**Employees' Pension Scheme, 1995**

The Hon'ble Supreme Court considered the legality of certain amendments and modifications made by the Central Government to the Employees' Pension Scheme, 1995 ("1995 Scheme"). Such scheme has been made in pursuance of, inter alia, Section 6A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Apex Court observed that, classification of the employees made by the authorities based on the salary drawn in the 2014 amendment meets the test of reasonable classification contemplated in Article 14 of the Constitution of India.

The Apex Court noted that, there is a reasonable basis for effecting change in the computation methodology for determining pensionable salary.

The Apex Court held that, the provisions contained in the notification no. G.S.R. 609(E) dated 22<sup>nd</sup> August 2014 are legal and valid. The employees who had exercised option under the provision to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme. Their right to exercise option before 1<sup>st</sup> September 2014 stands crystalized in the judgment of this Court in the case of R.C. Gupta and Others vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and Other [(2018) 14 SCC 809]

Thus, the Apex Court allowed the appeals.

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## SUPREME COURT - CRIMINAL CASES

### [B.R.K. Athithan Vs. Sun Group and Another \[Cr.A.Nos.2080-2083 of 2022\]](#)

**Date of Judgment: 29-11-2022**

#### Criminal Procedure - Second Complaint

The Hon'ble Supreme Court considered Judgment and Order passed by the High Court of Judicature at Madras, Madurai Bench, whereby the High Court allowed the petition under Section 482 of the Code of Criminal Procedure, 1973 filed by the respondents and quashed the Criminal Complaint, which the appellant had filed against the respondents.

The Apex Court observed that, the second complaint could be maintainable in exceptional circumstances, depending upon the manner in which the first complaint is dismissed. An exception could be made to entertain the second complaint if the first complaint was dismissed without venturing into the merits of the case.

The Apex Court also observed that, the Court even after due application of mind may reach to an erroneous conclusion and such an order is always justiciable before a superior Court. The application of judicial mind and arriving at an erroneous conclusion are two distinct things.

In the Apex court's opinion, the Judicial Magistrate was completely within his jurisdictional authority to determine whether a *prima facie* case for summoning the accused was made forth when the initial complaint was filed primarily under Sections 499 and 500 IPC.

The Apex Court held that, even though the learned Judicial Magistrate's decision to dismiss the first complaint was incorrect in law, this does not equate to the trial court failing to use its judgment.

Thus, the Apex Court dismissed the Appeal.

#### **See Also**

Pramantha Nath Talukdar Vs. Saroj Ranjan Sarkar [AIR 1962 SC 876]

Shivshankar Singh Vs. State of Bihar and Another [(2012) 1 SCC 130]

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**CBI Vs. P.S. Jayaprakash [Cri.A.No. ... of 2022]****Date of Judgment: 02-12-2022****Criminal Procedure Code – Section 438 – Section 173(2) – Anticipatory bail**

The Hon'ble Supreme Court considered FIR filed by CBI against the accused-respondent, who was officials of State Police and Intelligence Bureau (IB) at relevant time, for conducting initial investigations in crime registered by State Police and IB officials on allegations of espionage against scientist of ISRO.

The Apex Court observed that, the High Court has made some observations without considering the individual role played by the respective accused when they were working in Kerala Police/IB and without considering the nature of allegations against them and opined that, the matter need to be remanded back to the High Court.

The Apex Court observed that, the High Court has not appreciated the FIR was lodged pursuant to the liberty reserved by the Apex Court in the judgment and order passed in the year 2021 and on the basis of the recommendations made by the Committee headed by Hon'ble Mr. Justice D.K. Jain.

While granting anticipatory bail to accused-respondent, High Court made observations without considering individual role played by respective accused-respondents herein during initial investigation of crime registered by State Police and IB officials on allegations of espionage against scientist of ISRO, when accused-respondent herein were working in State Police/IB, and without considering nature of allegations against them.

The Apex Court therefore allowed the appeal and made all anticipatory bail applications stand remitted to High Court for decision afresh in accordance with law and on their own merits and taking into consideration observations made by the Apex Court.

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**State of Maharashtra & Anr. Vs. Dr. Maroti [Cri.A.No. 1874 of 2022]****Date of Judgement: 02-11-2022****POCSO Act, 2012 - Section 19(1) & 21**

The Hon'ble Supreme Court decided a Criminal Appeal challenging the judgment to quash the FIR and chargesheet qua the Respondent.

The Apex Court stated that, exercise of power under section 482 Cr.P.C is an exception and not the rule and it is to be exercised '*ex debito justitiae*' (As an obligation arising out of the justice of the matter) to do real and substantial justice for the administration of which alone courts exist.

The Apex Court referred to the decisions in *R.P. Kapur Vs. State of Punjab [1992 Supp (1) SCC 335]*, *State of M.P Vs. Awadh Kishore Gupta & Ors [(2004) 1 SCC 691]* and observed that, truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C. The Apex Court noted that, undoubtedly they are matters to be done by the Trial Court at the time of trial.

The Apex Court observed that, a prompt reporting of the commission of an offence under section 19 of the POCSO Act would enable immediate examination of the victim.

The Apex Court held that, prompt, proper reporting of the commission of offence under the POCSO Act is of utmost importance, and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act.

Thus, the Apex Court allowed the Appeal, set aside the impugned judgment of the High Court of Bombay.

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**Sukhpal Singh Khaira Vs. State of Punjab [Cri.A.No. 885 of 2019]****Date of Judgment: 05-12-2022****Criminal Procedure – Summoning of Additional Accused – Conclusion of trial**

The Hon'ble Supreme Court assailed the order dated 17.11.2017 passed by the High Court of Punjab and Haryana in Criminal Revision No.4070 of 2017 and Criminal Revision No.4113 of 2017.

The Apex Court observed that, the power to summon the additional accused and try such a person with the already charged accused, should be exercised before the conclusion of trial.

The Apex Court noted that, the connotation "conclusion of trial" cannot be reckoned as the stage until the evidence is record, but is to be understood as the stage before pronouncement of the judgment since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the court. At the stage of conclusion of trial, if there is no evidence to hold the accused for having committed the offence, the judge is required to record an order of acquittal and in such situation, the trial concludes at that stage.

The Apex Court further noted that, if conclusion of the trial in a criminal prosecution ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of probation as provided in Section 360. In a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence.

Thus, the Apex Court disposed the matter.

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**T.P. Gopalakrishnan Vs. State of Kerala [Cri.A.Nos. 187-188 of 2017]****Date of Judgment: 08-12-2022****Double Jeopardy – Article 20-Double Punishment – Same Offence**

The Hon'ble Supreme Court decided a Criminal appeal wherein an Agricultural Officer, who abused his official position as a public servant, charged for breach of trust was the accused.

The Apex Court observed that, the term 'same offence' in simple language means, where the offences are not distinct and the ingredients of the offences are identical. Where there are two distinct offences made up of different ingredients, the embargo under Article 20 of the Constitution of India, has no application, though the offences may have some overlapping features.

The Apex Court noted that, double jeopardy is often confused with double punishment. Double punishment may arise when a person is convicted for two or more offences charged in one indictment however, the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence.

The Apex Court held that, the protection against double jeopardy is supplemented by statutory provisions contained in Section 300, CrPC, Section 40, Indian Evidence Act, 1872, Section 71, IPC and Section 26, General Clauses Act, 1897. Section 300 CrPC, places a bar wherein, a person already tried by a Court of competent jurisdiction for an offence arising out of the same facts, and has either been acquitted or convicted of such offence cannot be tried again for the same offence as well as on the same facts for any other offence as long as such acquittal or conviction remains in force.

Thus, the Apex Court allowed the appeal.

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## HIGH COURT - CIVIL CASES

### Arvind Gupta Vs. Punjab National Bank & Anr. [C.S. (Comm.Div.) No. 216 of 2022]

**Date of Judgment: 10-11-2022**

#### Section 12A - Commercial Courts Act, 2015

The Hon'ble Commercial Division decided this civil suit on the issue whether the captioned suit will qualify as one where there is 'contemplation of urgent interim relief'.

The Commercial Division observed that, the Apex Court has made it clear that Section 12A is mandatory, it is in the nature of a jurisdictional fact. A jurisdictional fact should precede the suit and there can be no ex post facto jurisdictional fact. The plaintiff cannot be heard to contend that this Commercial Division should look at the matter as it stands today. The test is as it stood on the date of institution of suit.

The Commercial Division found that, the parameter of prompt action and promptitude of such a nature that exhausting the remedy of pre-institution mediation would create an irreversible situation that could require any prompt action. The Commercial Division also found that, a high standard is required to establish requirement of prompt action urgency and the plaintiff, in the light of narrative thus far.

The Commercial Division observed that, actual apprehended wrong or injury and the same being so imminent that a plaintiff should be able to satisfy the Court that he should not stand and suffer the same was made. However, this is hardly of any relevance as 'urgent interim relief' and 'contemplation' should be tested as on the date of institution of suit.

According to the Commercial Division testing compliance qua Section 12A of CCA is a test qua suo motu rejection of plaint drill in the light of Patil Automation Private Limited and Others Vs. Rakheja Engineers Private Limited [2022 SCC OnLine SC 1028]. The Commercial division found that, there can be suo motu rejection of plaint

in cases where Commercial Division finds that there is no adherence qua Section 12A of CCA which has been held to be mandatory.

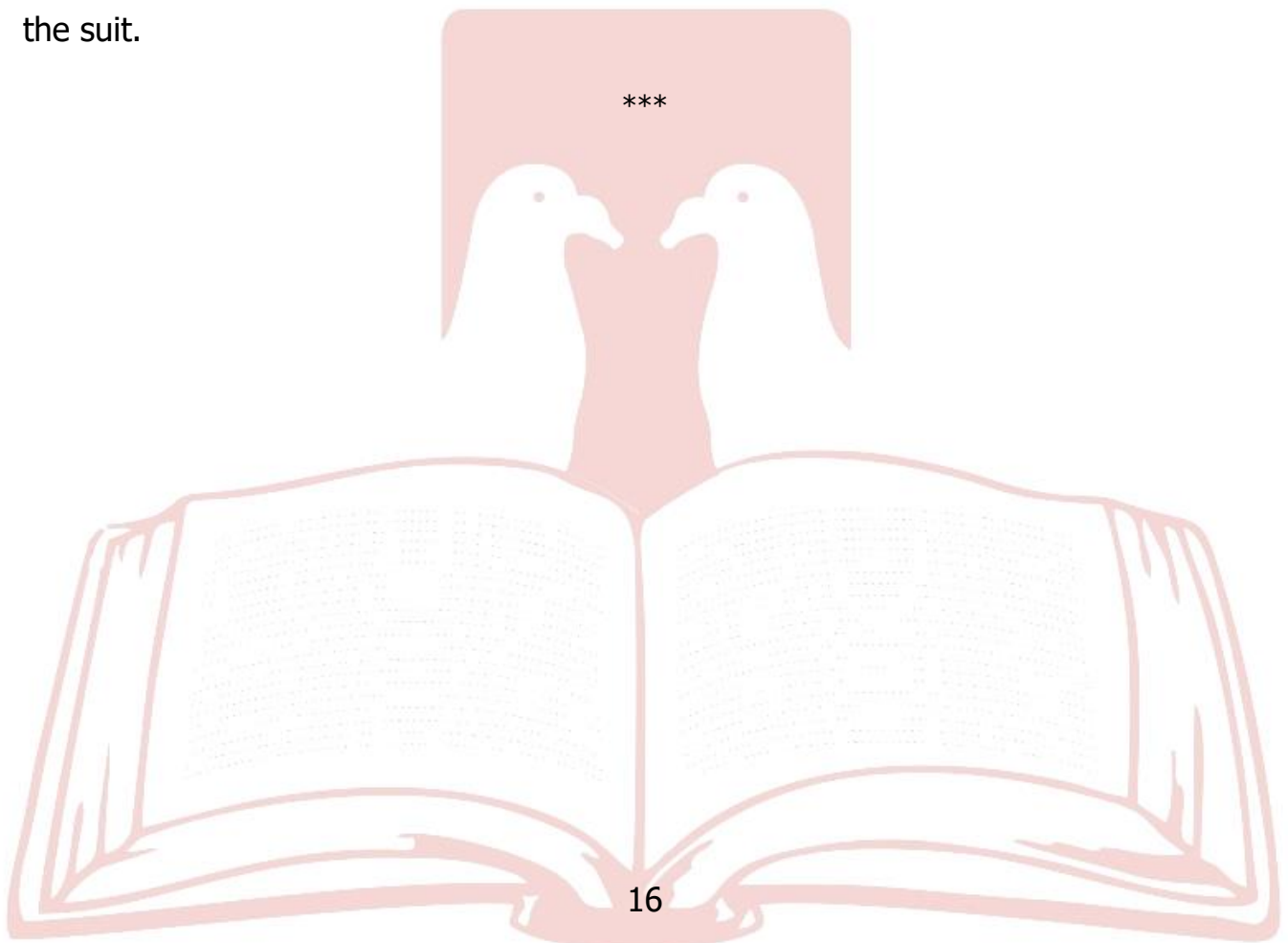
The Commercial Division observed that Patil case (supra) is both elucidative and instructive.

The Commercial Division reminded itself about the decision of *Padma Sundara Rao Vs. State of Tamil Nadu reported in [(2002) 3 SCC 533]* wherein the Apex Court had ...There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case...

Section 12A is mandatory, it is in the nature of a jurisdictional fact. A jurisdictional fact should precede the suit and there can be no ex post facto jurisdictional fact.

Thus, the Commercial Division rejected the suit holding that, circumstances to seek “urgent interim relief” under Section 12A of the Commercial Courts Act, 2015 and to bypass mandatory pre-institution mediation must exist at the time of institution of the suit.

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**D.T. Raj Kapoor Sah Vs. Kamakshi Bai [A.S. No. 429 of 2016]****Date of Judgment: 30-11-2022****Succession – Estoppel – Joint family nucleus – Doctrine of Blending**

The Hon'ble High Court considered an Appeal Suit from an original suit filed for partitioning the suit property. The Court explained the legal position as on date in detail. The Court reiterated the principles regarding the Doctrine of Blending as follows:

- The separate property once thrown into the coparcenary stock, then by virtue of Doctrine of Blending, it also becomes the coparcenary property.
- Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment, a clear intention to waive separate rights must be established.
- If self-acquired property was made available for partition along with joint family property, that itself is proof of blending.
- When a coparcener throws separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act.
- The one who asserts has to prove that the property is a joint family property. However, if the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

Thus, the Court dismissed the Appeal Suit.

**See Also**

- Rajanikanta Pal Vs. Jagmohan Pal [AIR 1923 PC 57]
- S. Subramanian Vs. S. Ramasamy [(2019) 6 SCC 46]
- Goli Eswariah Vs. CGT [(1970) 2 SCC 390]
- D.S. Lakshmaiah Vs. L. Balasubramanyam [(2003) 10 SCC 310]

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**Leelavathi Vs. Kamala [A.S. No. 61 of 2016]****Date of Judgment: 24-11-2022****Hindu Succession**

The Hon'ble High Court considered an Appeal Suit filed under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, seeking to set aside the Judgment and Decree dated 30.06.2015 made in O.S. No. 79 of 2013. The suit filed for a declaration of Partition Deed, dated 22.01.1999 as *null and void*.

The Court noted the decision of Rajanikanta Pal Vs. Jagmohan Pal [AIR 1923 PC 57] and observed that, even if there is any self-acquired property, by virtue of doctrine of blending if the parties jointly sell the same as joint family properties, it has to be construed that the properties which are sold are only joint family property.

The Court partly allowing the appeal held that,

[A] The plaintiffs in this case have discharged their onus and the nature of the properties are categorically proved as ancestral properties.

[B] The plaintiffs will be entitled to 19/25<sup>th</sup> shares in the suit schedule properties and the second defendant would be entitled to 6/25<sup>th</sup> shares of the suit schedule property.

The Court also expressed its deep anguish that, the purpose of the cross-examination is not to create indelible scars in the minds of the litigants or to humiliate them. It is time that we are a little more empathetic to the litigants who approach us.

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**M Hemalatha Vs. The National Medical Commission & Ors. [W.P.Nos. 32941 & 33391 of 2022]**

**Date of Judgment: 14-12-2022**

**Reservation Policy**

The Hon'ble High Court decided a Writ Petition seeking to allot the unfilled Scheduled Tribe seat to the Petitioners. The community to which the Petitioners belonged was categorized as "Backward Tribe", which was sub-classified from the category of Most Backward Classes and fitted in with the reservation quota earmarked for Scheduled Tribes, by the Union Territory of Puducherry. A subsequent notification issued by the Government of Puducherry, reconsidered one of the Backward Tribe communities to be categorized as Scheduled Tribe, which left the other Backward Tribes 'high and dry'. The Petitioners were rendered ineligible for reservation in either of the categories.

The Court observed that the justification for the Scheduled Tribe vacancy to be moved over to Scheduled Caste and later to the Unreserved Category, will necessarily have to fail because they have omitted to consider one entire class, namely, those belonging to "Backward Tribe".

The Court further observed that "when a Scheduled Tribe seat falls vacant, it is only logical and lawful that the vacancies are filled by the Backward Tribe Community."

The Court referred to the decision of the Supreme Court in, *State of Tamil Nadu Vs. Union of India & Ors. [C.A.No.3518 of 2020, dated 26.10.2020]*, and held that the two seats under the Scheduled Tribe category which have been filled up by Scheduled Caste candidates can be moved over to the two vacant Scheduled Category candidates and directed the Union Territory of Puducherry to fill up the vacancies by including the Petitioners as candidates under the category of Backward Tribes in the two vacancies under the Scheduled Tribe category for the M.B.B.S undergraduate course.

Thus, the Writ Petition was allowed.

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**M. Durai Ammal Vs. State [S.A. No. 254 of 2017]****Date of Judgment: 14-12-2022****Family Pension - Legal Status To Receive Family Pension From The Government**

The Hon'ble High Court decided a second appeal from a suit seeking declaration of an order passed by the Secretary to Government (Transport TBC) Department and the Financial Adviser and Chief Accounts Officer, Metropolitan Transport Corporation (Chennai), Ltd., and the Accountant General (Accounts-Entitlement), Chennai against payment of pension of Mr. C.Muniyandi.

The Court observed that, pension is payable to a lawful married widow on the death of public servant. After the introduction of the Hindu Marriage Act, 1955, if a person contracts second marriage while the first marriage is subsisting, then the second marriage becomes null and void. The Court found that, the first wife had died only on 19.06.1989 and at the time of the marriage of the first appellant herein on 14.09.1969, the marriage with the first wife was subsisting.

The Court held that, the words in the provision are "payable to more than one widow". If it is payable to a widow then the marriage should be lawful. If the marriage is unlawful and not recognised in law, the concept of a widow would never arise on the death of a Government Servant. The word "payable" has to be distinguished from the word "sanctioned". The rule does not say that the pension can be sanctioned to a lady, who claims to have married the Government Servant as his second wife. There can be recognition of plurality of widows only if the marriage with both is lawful and legally permissible.

Thus, the Court dismissed the second appeal.

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**M. Palanisamy Vs. S. Mohan Sankar [A.S. No. 187 of 2017]****Date of Judgment: 24-11-2022****Specific Performance – Readiness and Willingness to perform**

The Hon'ble High Court considered this First Appeal filed under Section 96 of the C.P.C., 1908, against the judgment and decree. The issue revolved around a sale deed and sale consideration of the suit property.

The Court observed that, unless the plaintiff/purchaser avers and proves his readiness and willingness, he is not entitled to the decree of specific performance. The issue of readiness and willingness is no longer *res integra*. There is difference between readiness and willingness. Readiness is the capacity to pay the balance sale consideration from the date the balance sale consideration became payable until the disposal of suit. The willingness is intention of plaintiff/purchaser to pay the balance sale consideration.

The Court held that, while considering willingness, the time fixed in the agreement of sale is important. The terms "limitation" and "delay and latches" is very different to each other. Filing the suit on last date of limitation is deprecated. Even if no time limit is fixed or time is not essence of contract, the purchaser must approach the Court within a reasonable time.

Thus, the Court dismissed the appeal noting that, the purchaser is not entitled to equitable relief of specific relief due to delay and latches on his part in approaching the Court for relief of specific performance.

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**Nadar Uravinmurai Rep. By its President Pechimuthu Vs. Paulraj (Died) & Ors. [S.A(MD).Nos. 872 and 873 of 2014]**

**Date of the Judgment: 25-11-2022**

**Recovery of possession of the suit property and for mesne profits**

The Hon'ble High Court decided the Second Appeals on the issue whether the finding that the sale agreement is a fabrication, as held in the former suit, will bind the defendants in this suit, merely because the first defendant in this suit was not a party to that suit. The Court reiterated the conditions required for the application of res judicata, as follows:

- a) that there should be a finding on a fact which is directly and substantially in issue in an earlier suit;
- b) that it should have been decided by a Court of competent jurisdiction and must have attained finality;
- c) that the subsequent suit in which the issue arises should be between the same parties or between those who claim under them; and
- d) that the parties in the second suit must litigate on the same title.

It is imperative that all the criteria listed are present simultaneously and not in the alternative for the doctrine of res judicata to injunct the Court from trying the same issue twice over.

The Court observed that the character of the first defendant and the inter se relationship between the defendants 2 to 3 (the defendants in the former suit) and the first defendant, which is an unregistered body or association of persons. The Court further observed that the participation of the defendants 2 to 4 in the earlier suit cannot but as the members of the first defendant, which would mean that they had defended that suit with the sale agreement only on the basis of the interest they have as the members of the first defendant.

The Court referred to Kumaravelu Chettiar & Ors. Vs. T.P. Ramaswami Ayyar & Ors. [AIR 1933 PC 183], and R.K. Chandramohan Vs. Elephant G. Rajendran [2011 (5) MLJ 401], and observed that "Order I Rule 8 CPC is merely an enabling rule of procedural convenience which the CPC prescribes for binding the non-parties to the

suit who share the 'same interest' in the subject matter which either constitutes the cause of action for the suit, or the defence, along with the interest of those who they represent with a finding of the Court. But for it, it may provide occasions and opportunities for inviting conflicting decisions on the 'same' interest involved in multiple proceedings."

The Court observed that, "the Doctrine of Substantial Representation enables a finding in a former suit to bind the non-parties to it, if the estate is substantially represented in the former suits. ... The doctrine of substantial representation is the ideal antidote for neutralizing any perceived ill effects which a breach of procedural requirement of Order I Rule 8 CPC is believed to produce."

The Court found that in the absence of any collusion between the parties, a procedural error in not complying with Order I Rule 8 CPC need not always alter the equation in the subsequent suit, nor should it necessarily render otiose any finding on an issue directly and substantially in issue in both the former case and the subsequent case. The Court may not refuse to apply res judicata merely by counting the heads and spotting the omission. Its effect may have to be tested on the principle behind it. The court found that res judicata will apply to this suit, and held that the document produced by the defendant is fabricated.

The Court referred to Syed Mohammed Salie Labbai (dead) by Lrs. Vs. Mohammed Hanifa (dead) by Lrs. & Ors. [AIR 1976 SC1569] and stated that in the present case pleadings of the former suit are not produced. The Court found that since the application of res judicata is resisted only on the ground of noncompliance of Order I Rule 8 CPC in the earlier suit, failure to produce the pleadings in the earlier case may not affect the application of res judicata in this case.

The court dismissed the Second Appeals with exemplary costs and confirmed the impugned judgments and decrees.

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**Ranga Pillai Vs. Mannar Pillai (Deceased) & Ors. [S.A.Nos.1420 of 1997]****Date of Judgment: 12-12-2023****Indian Evidence Act, 1860 – Section 68**

The Hon'ble Madras High Court considered this Second Appeal on the issue recovery of the share of the income from the execution of a Will.

The Court observed that, the examination of the attesting witness\* could not be dispensed with, as Section 68 of the Evidence Act is mandatory for proving the Will. Section 68 of the Indian Evidence Act, 1872 provides the manner in which a Will has to be proved. The proof of the Will is irrespective of a defense being taken against it.

The Court in the instant case held that, the plaintiff has not chosen to examine the attesting witness. Therefore, the findings of both the Courts below in both the suits have to necessarily be upheld and the Substantial Questions of law in both the Second Appeals answered against the plaintiff.

Thus, the Court dismissed the Second Appeals.

**\*See Also**

- Ramesh Verma (Dead) through Legal Representatives Vs. Lajesh Saxena (Dead) by Legal Representatives and another [2017 (1) SCC 257]
- Malliga Vs. P.Kumaran [2022 (2) LW 393]
- Thayyullathil Kunhikannan and others Vs. Thayyullathil Kalliani and others [AIR 1990 KHC 226]

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**S. Muthumalai Rani Vs. Department of Health & Family Welfare [W.P. No. 34112 of 2016]**

**Date of Judgment: 16-11-2022**

**Rule 9 - Tamil Nadu Pension Rules, 1978**

The Hon'ble High Court considered a Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records. The petitioner prayed to direct the 5<sup>th</sup> respondent to release the retirement benefits such as Gratuity, Special Provident Fund and Earn Leave Salary to the petitioner with 24% interest till the date of disbursement.

The Court observed on right to health as a fundamental right quoted the decision of *State of Maharashtra Vs. Chandrabhan [(1983) 3 SCC 387]*, wherein the Hon'ble Supreme Court of India had held that, right to life, enshrined in Article 21 means something more than survival or animal existence.

The Court held that, in the absence of any elaborate enquiry, the competent authority cannot take unilateral decision. Rule 9, Tamil Nadu Pension Rules, 1978, contemplates that disciplinary actions are permissible against the retired Government servants up to 4 years from the date of retirement. Pendency of the writ petition before the High Court cannot be a ground to plead limitation for the purpose of exonerating an employee from departmental disciplinary proceedings. Due to the interim stay granted in the present writ petition, the petitioner had not cooperated for an enquiry, which was already initiated by the respondents, within a period of limitation under the Rules.

Thus, the Court allowed the appeal.

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**T. Parthasarathy Vs. K. Sarala [C.R.P.(PD). No. 2408 of 2022]****Date of Judgment: 12-12-2022**

Natural Justice - The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 – Civil Procedure – Adjournment

The Hon'ble High Court considered a Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed. The Revision Petitioner is the tenant and respondent in RLTOP. No. 348 of 2021. The respondent/Landlord filed an application for eviction and for delivery of possession.

The Court observed that, any attempt by any party to the litigation to prolong and protract the litigation are to be thwarted by the Rent Courts and Rent Tribunals, since the procedures under the Code of Civil Procedure are dispensed with under Section 36 of the Act. The rules of natural justice is to be adopted for the purpose of providing opportunity to all the parties to establish and defend their respective cases. Under the guise of the principles of natural justice, no one be allowed to frustrate the proceedings or to increase the longevity. Time limit for disposal has been contemplated under the provisions of the Act. Courts are expected to be conscious about the limitation prescribed under the Act. Prolonging the litigation for long years is impermissible. If it is allowed, the purpose and object of the Act would be defeated.

The Court held that, the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 is enacted for the purpose of regulating the contracts between the Landlord and the tenants and to ensure that no party is deprived of their right, and more specifically for speedy reliefs. The new Act and its spirit to protect the Constitutional right of a citizen must be scrupulously implemented by the Rent Authority, Rent Court and the Rent Tribunals. Any lapses, inefficient implementation or otherwise would result in infringement of the Constitutional right of a person under Article 300-A of the Indian Constitution. Thus, the Court dismissed the Civil Revision Petition.

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**HIGH COURT – CRIMINAL CASES****Ananthan Vs. The State represented by The Inspector of Police,  
Pallipalayam Police Station [Criminal Appeal No.1149 of 2022 And  
Crl.M.P.No.16334 of 2022]****Date of Judgment: 01.12.2022**

Attacked for feeding puppies by the owner – succumbed to injuries – sentenced to life imprisonment by trial court – Modification of life sentence

The Hon'ble High Court in this case dealt with a Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment of conviction and sentence passed by the Sessions Court.

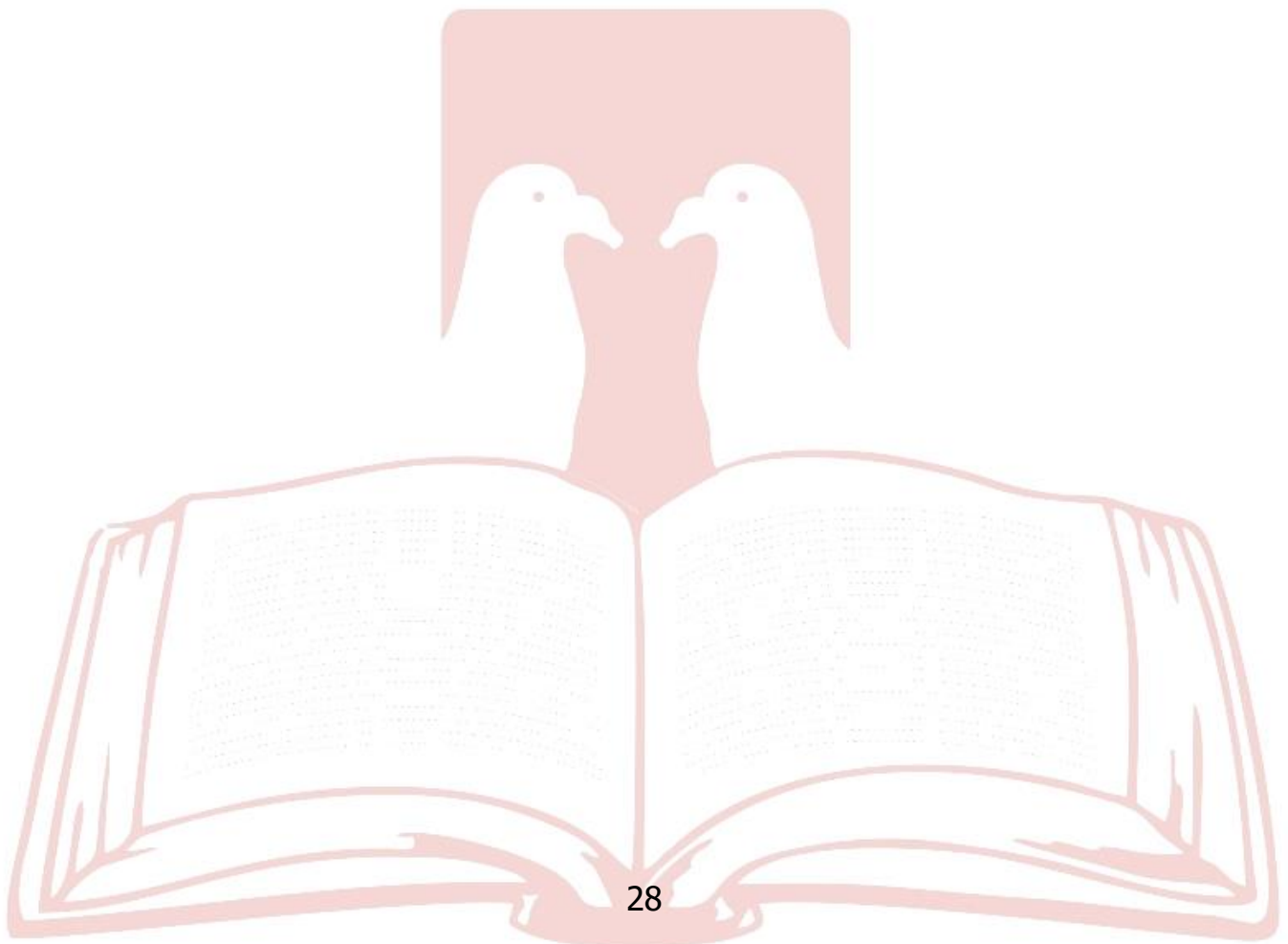
The cursory of the facts in this case is that, the appellant and the Raju (deceased) are known to each other and are from the same village. It is said that the appellant was having a pet dog, which littered puppies and appellant found Raju coming to his house and feeding the puppies, to which the appellant had objected. On 11.03.2018, around 02.00 in the afternoon, when the appellant was not at home, Raju went to the house of the appellant and took a puppy from there and brought it to his house. On coming to know of this, the appellant quarrelled with Raju and is said to have attacked Raju with an iron pipe, on account of which, Raju sustained injuries and later on succumbed it.

Subsequently, a case was registered against the appellant and was tried by a Sessions Court. Upon perusing the evidence and after hearing both the parties, the Judge of the Sessions Court convicted the appellant for the offence u/s.302 IPC and sentenced him to Life imprisonment and fine of Rs.1,000/-, in default, to undergo four years simple imprisonment.

Challenging the conviction and sentence, the appellant has filed the present appeal. On a careful consideration of the evidence on record, the Hon'ble High Court opined that, the conviction and sentence u/s.302 IPC cannot be sustained, instead, the appellant is convicted of the offence u/s.304(II) IPC and sentenced to undergo 5

years rigorous imprisonment. The fine imposed by the trial Court was confirmed, but, the default sentence was reduced to one month simple imprisonment. Thus, the Criminal Appeal was disposed.

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**Arul Daniel and Ors. Vs. Suganya and Ors. [Crl.O.P. SR. Nos.31852 of 2022, etc (32 cases)]**

**Date of Judgment: 17.11.2022**

Full Bench Judgment – D. V. Act – decision of the Division Bench was not in consonance with the decisions of the Apex Court

The Full Bench of the Hon'ble High Court of Madras in this case was by a single judge to decide on the following two points;

- 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.?
- 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 ?

Previously, a division bench of the Hon'ble High Court had opined that proceedings under the Domestic Violence Act are civil in nature and further opined that Section 482 CrPC petition is maintainable in Domestic Violence Act proceedings. As the decision of the Division Bench was not in consonance with the decisions of the Apex Court, a single judge of the Hon'ble High Court referred the above two questions to be decided by the larger bench.

It was observed by the Full Bench that, the High Court did not have the powers to quash proceedings under the Domestic Violence Act through Section 482 of CrPC. The larger bench also upheld the case of single judge in Dr. P. Pathamathan vs. V. Monica which held that proceedings under the DV Act are civil in nature.

It was also observed that, the proceedings under the Domestic Violence Act cannot be transferred to Family Court as the Family Courts have only additional jurisdiction over such matters. It was also noted that an aggrieved person could file an appeal in the Sessions Court and then approach the High Court in further appeal under Article 227 but not under Section 482 of CrPC.

It was also clarified by the Hon'ble Court in this case that, the present order shall be applicable only prospectively and those cases where the matter was already

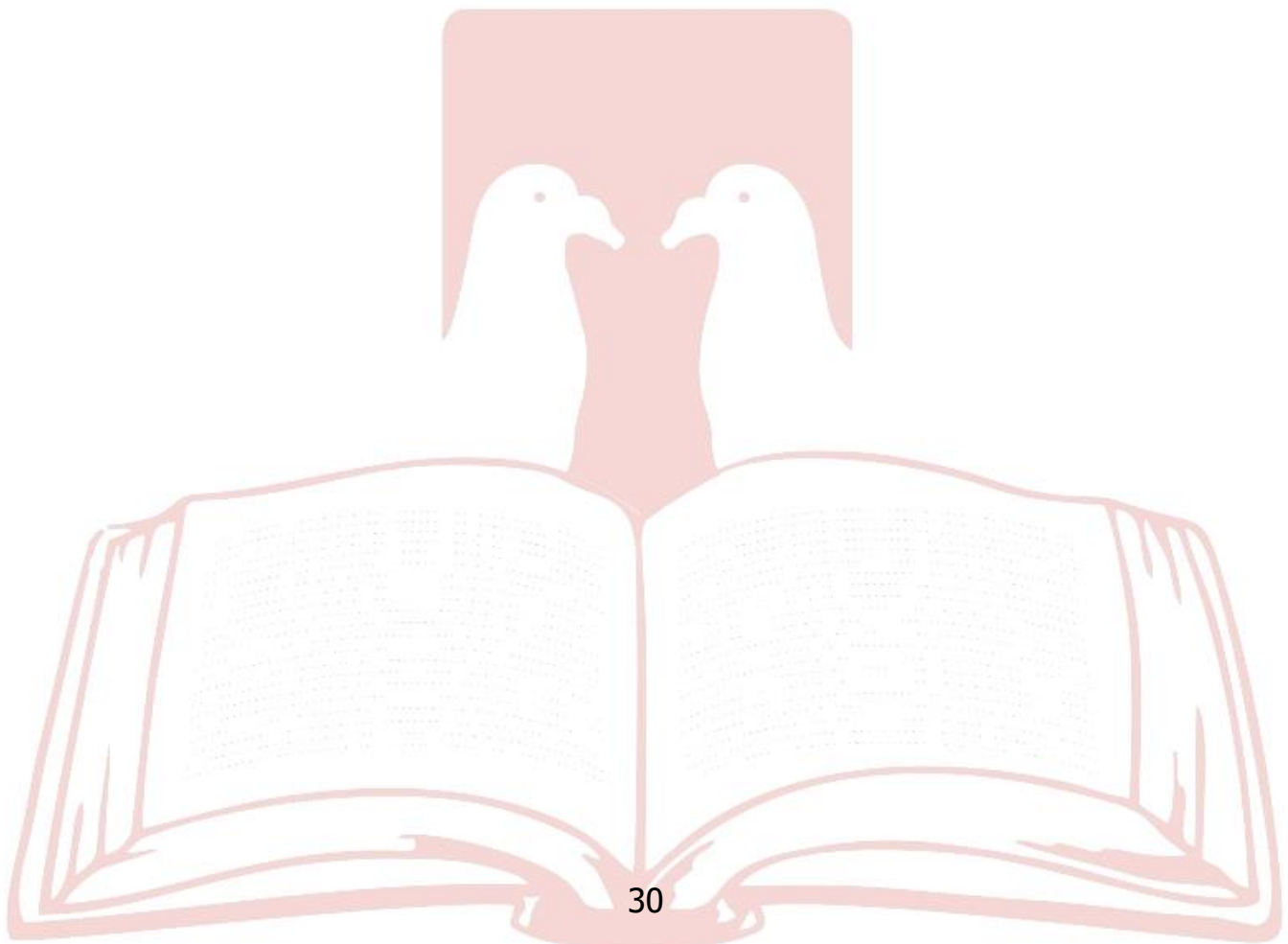
transferred to the Family Court need not be interfered with at this point and also noted that, *"...What has already happened, let it be. Why should we open a Pandora's Box. Since these disputes are matrimonial in nature, it will further prolong the agony of the parties if it is transferred from one court to another,.."*

In fine, the Hon'ble High Court held that proceedings under Section 12 of the Domestic Violence Act can be challenged in the High Court only under Article 227 of the Constitution and not by invoking the court's power under Section 482 CrPC, thus answering the questions referred by the single judge.

**See Also:**

- M. Muruganandam Vs. M. Megala (2011 (1) CTC 841)
- Kunapareddy Vs. Kunapareddy Swarna Kumari ((2016) 11 SCC 774)
- State of W.B. Vs. Sujit Kumar Rana ((2004) 4 SCC 129)
- Rajamanickam Vs. State of Tamil Nadu (2015 (3) MWN (Cri) 379)
- Arun Prakash Vs. Sudhamary (2021-2- LW-518)

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**L. Muruganandam Vs. The State represented by its, Additional Chief Secretary to Government and Ors. [Writ Petition Nos.22431 and 22527 of 2021 And W.M.P.No.23750 of 2021]**

**Date of Judgment: 29.11.2022**

**Arrest - exercise more diligence while dealing with Disabled Person**

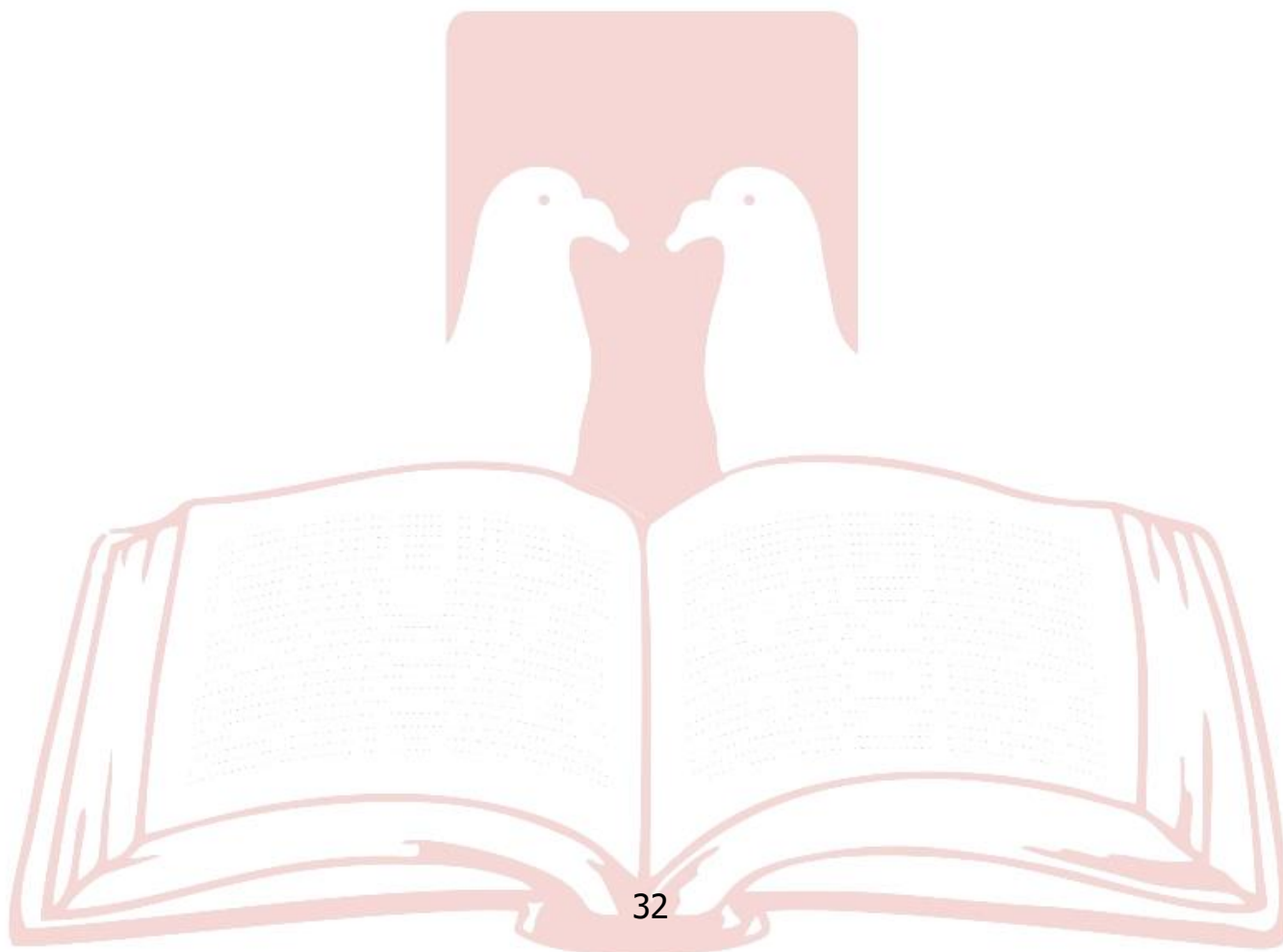
The Hon'ble High Court decided a Writ Petition seeking to provide compensation to Petitioner with Disability for all the violations on Human Rights inflicted on Petitioner. The Court has time and again reiterated that arrest is an extreme step and the Police Officers should exercise the discretion and examine whether arrest is required or not, since it brings humiliation, curtails freedom and casts scars forever. While the Hon'ble Supreme Court laid down various guidelines to be followed while arresting an individual in *D.K.Basu's* case, it came down heavily on casual arrest by the Police without really examining as to whether an arrest is inevitable in *Arnesh Kumar v. State of Bihar and another [(2014) 8SCC 273]*. The Court further held that while dealing with Disabled Person the Police Officer should exercise more diligence.

The Court observed that Police Inspector replies in negative to the query by the Court, as to whether, he had read the judgment in *Arnesh Kumar v. State of Bihar and another*, shows that nothing beyond issuance of circulars has been done by the Department in the direction of implementing the orders of the Hon'ble Supreme Court. When the Hon'ble Supreme Court had come down heavily upon the Police force for indiscriminate arrest, the Chiefs of the State Police Force are required to ensure that the message reaches every Constable of the Police Force. An ignorant Police Force is as good as one not existing.

The Court held that it is necessary to issue directions to the State Government to effectively implement the provisions of the Rights of Persons with Disabilities Act, 2016. There will be a direction to the Additional Chief Secretary to Government of Tamil Nadu, Home Department to ensure that the district wise Sensitization programmes are conducted for Police Officers including Constables regarding the Rights of Persons with Disabilities.

The Court noted that Human rights of the Petitioner has been violated at the time of arrest. Thus, the compensation of one lakh rupees awarded by the SHRC was insufficient, the court enhanced the same to five lakh rupees of which four lakhs were to be paid by the state.

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**M. Kala & Anr. Vs. The State of Tamil Nadu, Rep.by the Principal Secretary to Government Home Department, Secretariat & Ors. [W.P.No.26630 of 2017]**

**Date of Judgment: 18.11.2022**

Writ to conduct disciplinary enquiry against police personnels – plea of petitioner rejected by State Human Rights Commission as there was no violation

The Hon'ble High Court dealt with a Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 2nd Respondent to take appropriate action by conducting disciplinary enquiry against the Respondents 4 to 9.

The brief of this case is that, the petitioners had previously filed 2 such writs which were subsequently withdrawn by them. The prayer in the said writ petitions were to direct the respondents 1 to 3 to consider and decide the representation of the petitioner. Thereafter in about 3 months, the petitioner filed the present writ petition. The writ petitions are filed against the Police Officials frequently for initiation of disciplinary action against the Police authorities. Keeping those writ petitions pending unnecessarily for long years, undoubtedly, would cause mental agony to such Police authorities and it would cause hindrance for peaceful performance of their lawful duties.

However, the respondents argued that the petitioners were operating an orphanage home illegally. On the basis of an allegation involving the disappearance of a minor child, actions were taken against the petitioners. Later, the child was secured and handed over to the mother. The petitioner's son had contacted the State Human Rights Commission, but the commission rejected the plea as there were no violation of human rights, according to the respondents. Thus, the Hon'ble High Court opined that that, the present writ petition without justification. Therefore, the writ was dismissed and a cost of ₹35 thousand was imposed.

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**Narendra Kumar Gupta Vs. State rep by Assistant Director, Directorate Of Enforcement [Cri.O.P.No.25190 of 2022]**

**Date of Judgment: 29.11.2022**

Personal Liberty cannot be curtailed on mere suspicion and half – baked investigation

The Hon'ble High Court decided a Criminal Original Petition filed under Section 439 of Cr.P.C. to enlarge the Petitioner on bail challenging that Personal Liberty cannot be arbitrarily taken away unless in accordance with law.

The Court observed that the Respondent has not made out prima facie case to link the petitioner with the predicate offence beyond reasonable doubt. On the perusal of documents, it was found that the whole process of layering of transactions has been orchestrated in such a manner that the accounts from which the transfers have been made are either not traceable or the account holders are unaware of such transactions using their names.

The Court also held that, the medical reports produced by the petitioner shows the severity of the ailment the petitioner has been suffering for years together, the treatment he had been undergoing and the medical intervention he requires at once and the requirement of his personal liberty on health grounds too, which cannot be curtailed on the basis of mere suspicion of his role in the predicate offence and half-baked investigation.

Thus, there was no concrete ground for denial of Personal Liberty, the Court allowed the Petition on the ground that the Petitioner shall deposit title deeds of immovable property and execute a bond for a sum of Rs.10,000.

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**Prabakaran Vs. The State represented by The Sub Inspector of Police  
Kovilpatti West Police Station [CRL.O.P(MD)No.21906 of 2022]**

**Date of Judgment: 12.12.2022**

**Conditions of bail imposed by different court – conditions ran concurrently**

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 439(1b) r/w Section 482 of Cr.P.C, praying to modify the condition to appear and sign before the respondent Police station daily at 10.30 am for a period of 30 days, imposed by a magistrate court in Kovilpatti.

The brief of the case is that, the petitioner in this case was arrayed as an accused in Cr.No.276 of 2022 registered on the file of the Ramanathapuram Bazar Police Station for the offence punishable under Sections 392 and 414 of IPC and was granted bail by a magistrate court in Ramanathapuram on a condition to report before the Court concerned for a period of 15 days daily at 10.00 am.

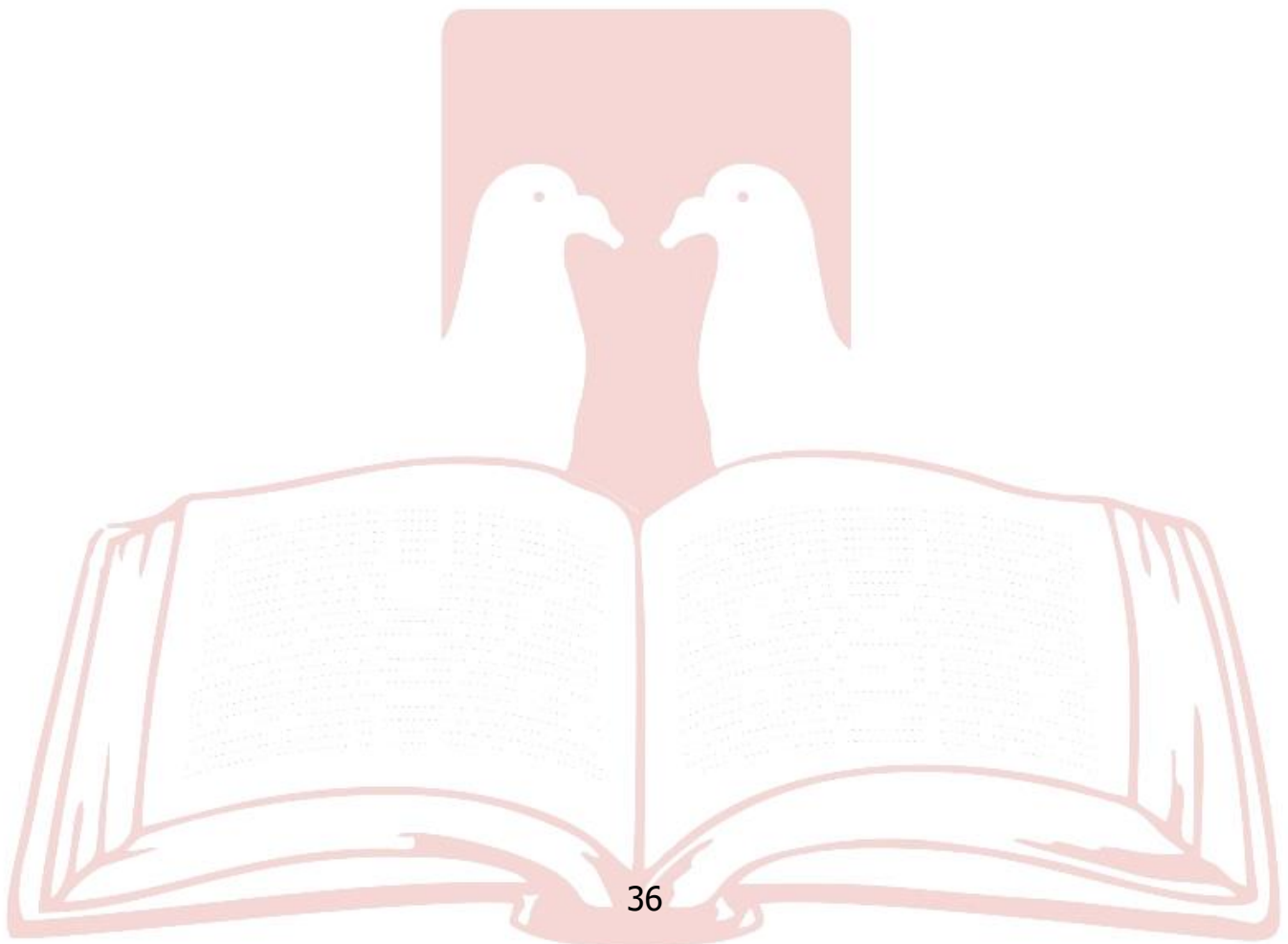
It is also pertinent to note that the petitioner was also arrayed as an accused in Cr.No.448 of 2022 on the file of the Kovilpatti West Police Station for the offence punishable under Section 394 of IPC and was granted bail by a magistrate court in Kovilpatti with a condition that the petitioner shall appear before the respondent Police daily at 10.30 am for a period 30 days. Further, the petitioner was also an accused in Cr.No.113 of 2022 on the file of the Appanthirupathy Police Station, for the offence punishable under Sections 392 @ 392, 414 and 34 of IPC and was granted bail by a magistrate court in Madurai with a condition that the petitioner shall appear before the Police Station concerned daily at 10.00 am for a period of one week.

It was submitted by the counsel for petitioner that the petitioner has complied with the condition imposed on him insofar as Cr.No.113 of 2022 on the file of the Appanthirupathy Police Station, concerned. Now, the petitioner has to comply with the conditions to appear before the Kovilpatti West Police Station as well as have to

appear before the Judicial Magistrate Court Ramanathapuram, and thereby, seeks modification.

In this case, the Hon'ble High Court relaxed the condition imposed by the learned Judicial Magistrate, Ramanathapuram, and directed the petitioner to comply with the condition imposed by the learned Judicial Magistrate Kovilpatti to appear before the Kovilpatti West Police Station everyday at 10.30 am for a period of 15 days. Thus, the Hon'ble High Court disposed the Criminal Original Petition.

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**Ravi @ Virumandi Vs. State represented by: The Assistant Commissioner of Police, North Range, Tiruppur [CRL.A.No.627 of 2021]**

**Date of Judgment: 18.11.2022**

**POCSO – adolescent relationship**

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 judgement and order passed by trial court. The appeal was based on the claim that legislature must take into consideration the cases of adolescents involved in relationship and should bring in necessary amendments under POCSO Act.

The fact of the case is that, the Victim was a minor and the appellant took the custody of the minor without the knowledge or consent of her natural guardians and had committed penetrative sexual assault on her and hence, the offence committed by the appellant falls under Section 5(I) which is punishable under Section 6 of the POCSO Act.

The Court referred to Section 5(I) which is punishable under Section 6 of the POCSO Act is concerned, as already held, at the time of occurrence, the age of the victim was 17 years and she was subjected to penetrative sexual assault by the appellant. The Court held that, the law defines that the person who has not completed the age of 18 years, is a child. This Court, being an Appellate Court, is a final fact-finding Court cannot traverse beyond the statute.

The Court observed that appellant has committed the offences under Section 366 IPC, Section 5(I) which is punishable under Section 6 of the POCSO Act and Section 3(1)(w)(i) r/w 3(2) (Va) of SC/ST Act and the trial Court has rightly convicted and sentenced the Appellant.

The Court does not find any merit in the appeal and Criminal Appeal stands to be dismissed.

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**Shakil Ahamed Vs. The Superintendent of Customs, Air Intelligence Unit (Aiu), Madurai [Crl.RC(MD)No.907 of 2022]**

**Date of Judgment: 25.11.2022**

**NDPS – Statutory bail**

The Hon'ble High Court of Madras in this case dealt with a Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C., to set aside the impugned order passed by Principal Special Court for EC and NDPS Act Cases, Madurai and to enlarge the petitioner on statutory bail, by allowing this revision.

The brief of the case is that, investigation was pending by the Superintendent of Customs seeking extension of time. The petitioner in the meantime filed a Crl. MP under Section 167(2) Cr.P.C, seeking statutory bail. Both the petition for extension of time and statutory bail were heard together. A common order extending time for investigation and dismissing the statutory bail was passed by the Trial Court.

The counsel for the petitioner relied on the recent decision of the Apex Court in *Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat* wherein the court highlighted the importance of informing the accused about the application seeking an extension of time as the same would otherwise violate his fundamental right under Article 21 of the constitution.

It is also pertinent to note that, the Superintendent of Customs had filed an application seeking extension of time for completing the investigation and only a counter-signature was obtained from the Special Public Prosecutor. It was also submitted by the petitioner that the same did not fulfil the requirements of law under the Narcotic Drugs and Psychotropic Substances Act.

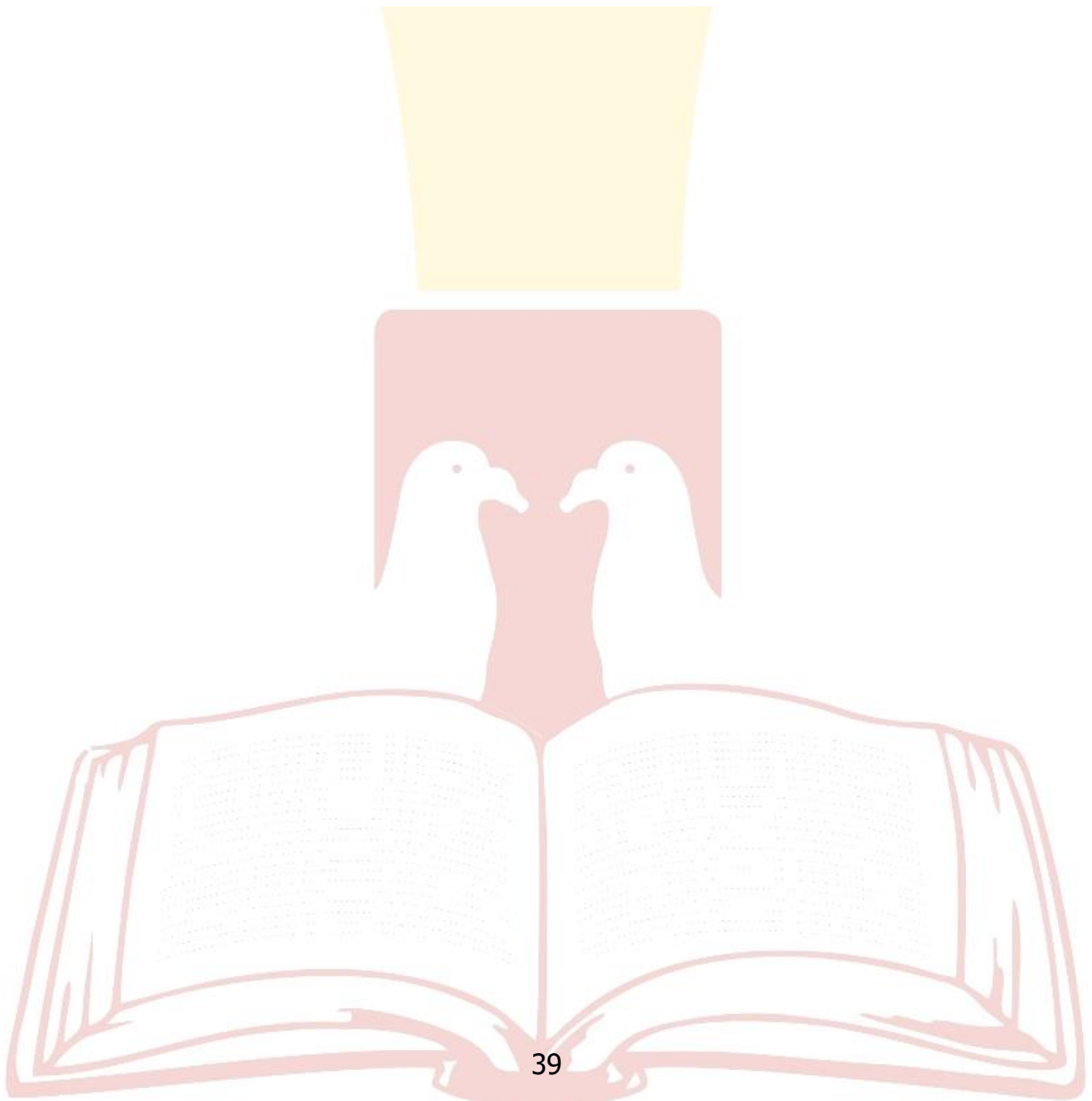
The petitioner also relied on the decision of the Apex Court in *Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer* in which the court had discussed extensively the importance of application by the Public Prosecutor. The Hon'ble High Court observed that, "Even if the application is routed through the Public Prosecutor that

*will not be sufficient, he is expected to apply his mind independently, while seeking extension of time by the investigating agency."*

The Hon'ble High court disagreed with the claim of respondent, that the Public Prosecutor handled the investigating agency's request after his independent application of mind was adequate to satisfy the requirements of law.

In fine, the Hon'ble High Court set aside extension of time for investigation and granted statutory bail for the petitioner.

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**V. Annadurai Vs. The Additional Chief Secretary to Government & Ors.**  
**[W.P.No.21625 of 2019 and W.M.P.No.20848 of 2019]**

**Date of Judgment: 21.11.2022**

**Prevention of Corruption charges – retired without prejudice to pendency of Corruption case**

The Hon'ble High Court decided a Writ Petition challenging the order of respondents to settle the terminal benefits by fixing annual increments, review, weightage and settlement benefits.

The fact of the case is that Petitioner during course of his service as Senior Driver was charged under Prevention of Corruption act, but the Petitioner was allowed to retire from service without any prejudice to the pendency of criminal case against him. Post retirement, the Petitioner was not settled with Terminal and Pensionary benefits.

The Court observed that the corruption cases are not dealt with by the Competent Authorities within a reasonable period of time. It's been pending for long term even without framing charges.

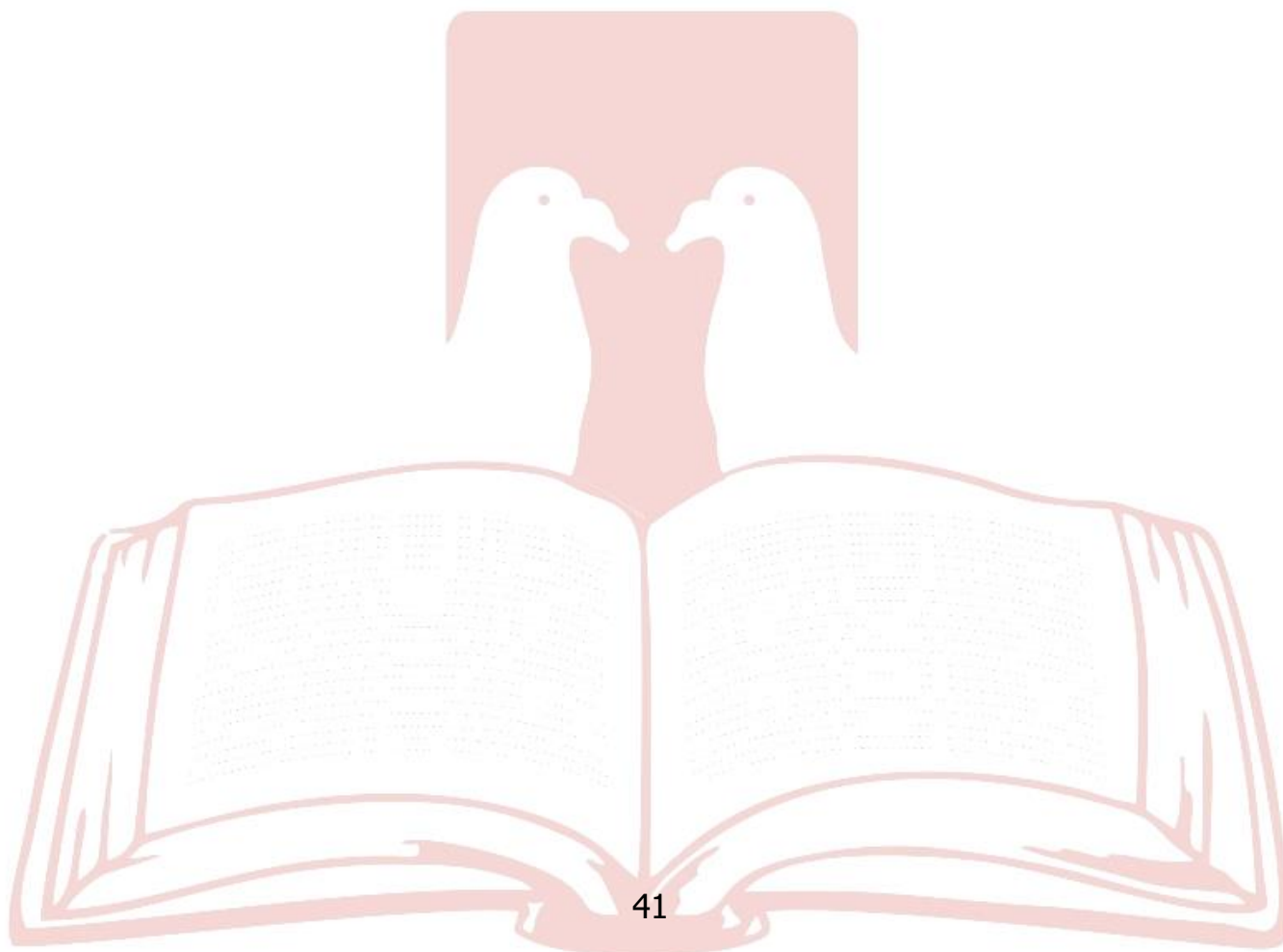
The Court held that once the trial commences, it must be continued without any long adjournments and it is to be concluded at the earliest possible. Keeping the trial pending for a long period would also end with dilution of proceedings and therefore, the corruption cases are to be dealt with on priority basis both by the Special Courts and regular Courts.

The Court held that, practical and pragmatic approach is required for the purpose of solving these problems and if the corruption cases are kept pending for years together, then, there is no possibility of controlling the corrupt practices among the Public Servants. In the event of keeping the corruption cases pending for such a long period, the offenders will get an encouragement that they can escape from the clutches of proceedings.



Thus, the petitioner was allowed to retire from service without prejudice to the criminal case. The eligible benefits, as per the Rules, are to be settled in favour of the petitioner during the pendency of the criminal proceedings. Balance retirement benefits are to be settled after the disposal of the criminal case and subject to the judgment in the criminal case.

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**V. Lakshmi Vs. Directorate of Enforcement represented by its Assistant Director, Government of India [Crl.R.C.No.1513 of 2022 and Crl.M.P.Nos.17665 & 17666 of 2022]**

**Date of Judgment: 23.11.2022**

PMLA – entity to nominate a person to represent it in Court

The Hon'ble High Court in this case dealt with a Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the order of the Trial Court. The gist of this case is that, the Directorate of Enforcement had filed complaint with the Special Court for the Cases under the Prevention of Money Laundering Act, Chennai for the offences under Section 3 r/w 4 of the PMLA against 6 persons including Adhiparasakthi Dental College & Hospital (for brevity "ADCH"), Melmaruvathur, Kancheepuram District – 603 319, represented by V. Lakshmi, Chief Executive Officer in this instant case.

The petitioner filed a petition in Crl.M.P.No.15870 of 2022 in n C.C.No.1 of 2019 under Section 305 Cr.P.C. in the trial Court, for deleting her name and permitting ADCH to nominate a person to represent the said entity in the trial. The said petition of the petitioner was dismissed by the trial court aggrieved by which this present case is filed.

The point that falls for consideration the Hon'ble High Court was, 'when a juristic person has been arrayed as an accused in a prosecution, who should have to represent it?' This question was answered by the Hon'ble High Court in *V. Umamaheswari Vs. State represented by the Inspector of Police, Economic Offence Wing – II, Virudhunagar District and Another*, wherein, the law governing Section 305 Cr.P.C. was discussed in detail.

The Hon'ble High Court observed that, *"it is for the juristic entity to nominate a person to represent it in the prosecution and on failure to do so, the said entity cannot claim prejudice at a later point of time, especially, when it is shown that summons on the said entity has been served."*

It was also observed that, the petitioner herein, in support of the petition in CrI.M.P.No.15870 of 2022, had not stated that Dr. V. Sudhakar would represent the sixth accused and only after the orders were reserved, a memo was filed to the said effect, which was rejected by the trial Court. It was submitted by the counsel for petitioner that ADCH (sixth accused) has nominated Dr. V. Sudhakar to represent it in the trial Court.

In fine, the Hon'ble High Court allowed the Criminal Revision Petition thus setting aside the order passed in CrI.M.P.No.15870 of 2022 in C.C.No.1 of 2019 and the petitioner was set at liberty to file fresh petition under Section 305 Cr.P.C. with an affidavit stating that Dr. V. Sudhakar would represent the sixth accused along with the supporting affidavit of Dr. V. Sudhakar.

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