



# TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XVI

Part: 02

February, 2021

## IMPORTANT CASE LAW



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# **SUPREME COURT – CIVIL CASES**

**2021(1)MWN (Civil) 220**

**Mallikarjunaiah vs. Nanjaiah & others**

**Date of Judgment:26.04.2019**

**Adverse Possession** – Whether one co-owner can claim adverse possession over the other co-owner? The Respondents (Defendants), in our view, failed to discharge this burden. There was no element of wither adversity or/and hostility between two co-owners/brothers because in a dispute of this nature where both the parties are related to each other, the possession of one is regarded to be the possession of other unless the facts show otherwise.

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**2021(1) MWN(Civil) 105**

**Bansidhar Sharma (Since Deceased), Rep by his Legal Representative vs. State  
of Rajasthan & others**

**Date of Judgment: 05.11.2019**

**Code of Civil Procedure, 1908(5 of 1908), Section 144** – Doctrine of Restitution – Principles, discussed.

It clearly transpires that Section 144 applies to a situation where as decree or order is varied or reversed in Appeal, Revision or any other proceeding or is set aside or modified in any Suit instituted for the purpose. The principle of doctrine of restitution is that on the reversal of a decree, the law imposed an obligation on the party to the Suit, who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they were in at time when the Court by its action had displaced them.

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**2020(2) TN MAC 590(SC)**

**Sri. Anthony Alias Anthony Swamy Vs. The Managing Director, K.S.R.T.C.**

**Date of Judgment: 10.06.2020**

**Road Accident Claims** - Award of – Injured/Claimant, aged 45 yrs. – Amputation of left leg due to injuries suffered in accident – No alternative to fixation of artificial leg – criteria for award of future medical expenses.

The treating Doctor, deposed that the Appellant had suffered Type III 'B' commuted fracture of Tibia and Fibula of the left leg with an active infection of Chronic Osteomyelitis emanating foul smell which prevented him from mixing and socializing in public. There was no alternative to amputation and fixation of an Artificial Leg. The High Court also erred in granting a sum of Rs. 50,000/ only towards Future Medical Expenses. PW.3 deposed that the Appellant would require three more replacements of the Artificial LEFT LEG during his lifetime. We consider it proper to enhance the same by Rs.2,50,000/ in addition to that granted by the High Court. The Compensation granted towards Loss of Amenities is also enhanced to Rs.50,000/ considering that the Appellant was deprived of social mixing as deposed by PW.3.

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**(2021) 1 MLJ 243 (SC)**

**Padia Timber Company (P) Ltd Vs. Board of Trustees of Visakhaptnam, Port Trust  
Through its Secretary**

**Date of Judgment: 05.01.2021**

**Contract – Acceptance of conditional offer – Concluded contract – Indian Contract Act, 1872, Section 4 and 7** – The High Court also overlooked Section 7 of the Contract Act. Both the Trial Court and the High Court over-looked the main point that, in the response to the tender floated by the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to inspection being held at the Depot of the Appellant. This condition was not accepted by the Respondent-Port Trust unconditionally. The Respondent-Port Trust agreed to inspection at the Depot of the Appellant, but imposed a further condition that the goods would be finally inspected at the showroom of the Respondent-Port Trust. This condition was not accepted by the Appellant. It could not, therefore, be said that there was concluded contract. There being no concluded contract, there could be no question of any breach on the part of the Appellant or damages or any risk purchase at the cost of the Appellant. The earnest deposit of the Appellant is liable to be refunded.

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**(2021) 1 MLJ 254 (SC)**

**Kirti and Another Vs. Oriental Insurance Company Ltd**

**Date of Judgment: 05.01.2021**

**Motor Vehicle Compensation – Notional income – Housewife** – Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows.

- a) Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.
- b) Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.
- c) Various methods can be employed by the Court to fix the notional income of a homemakers, depending on the facts and circumstances of the case.
- d) The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.
- e) The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.

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## **SUPREME COURT – CRIMINAL CASES**

**2020(3) MWN(Cr.) 456 (SC)**

**Satya Deo @ Bhoorey Vs State of Uttar Pradesh**

**Date of Judgment: 07.10. 2020**

**Juvenile Justice Act, 1986(53 Of 1986) – Juvenile Justice (Care And Protection Of Children Act, 2000(56 Of 2000) – Distinction between 1986 Act and 2000 Act in connection with the determination of age.**

The conundrum is in light of the definition of ‘Juvenile’ under the 1986 Act, which was below sixteen years in case of a boy and below eighteen years in case of a girl on the date the boy or girl is brought for first appearance before the Court or the Competent Authority, whereas the 2000 Act, as noticed below, does not distinguish between a boy or girl and a person under the age of eighteen years is a Juvenile. Further, under the 2000 Act, the age on the date of commission of the offence is the determining factor.

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**2020(3) MWN(Cr.) 470(SC)**

**Hindustan Unilever Limited Vs The State of Madhya Pradesh**

**Date of Judgment: 05.11.2020**

**Prevention of Food Adulteration Act, 1954(37 Of 1954), Section 17 – Offence by Company – Prosecution of Nominated Person of Company in absence of Company – Whether conviction of Nominated Person alone is sustainable?**

Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under Clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the Company as well as the Nominated Person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) & (b) are not in the alternative but conjoint. Therefore, in the absence of the Company, the Nominated Person cannot be convicted or vice versa. Since the Company was not convicted by the trial court, the Hon’ble Supreme Court find that the finding of the High Court to revisit the Judgment will be unfair to the Appellant/Nominated Person who has been facing trial for more than last 30 years. Therefore, the Order of Remand to the Trial Court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the Trial Court to convict the Company renders the entire conviction of the Nominated Person as unsustainable.

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**CDJ 2021 SC 98**

**M/s Kalaimani Tex & Another Vs. P. Balasubramanian**

**Date of Judgment: 10.02.2021**

**Negotiable Instrument Act, 1881, Section 138** – Considering the fact that there has been an admitted business relationship between the parties, court of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of ‘preponderance of probability. In the absence of any other relevant material, it appears that the High Court did not err in discarding the appellants’ defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the N.I. Act. As regard to the claim of

compensation raised on behalf of the respondent are conscious of the settled principles that the object chapter XVII of the NJA is not only punitive but also compensatory and restitutive

The respondent, nevertheless, cannot take advantage of the above cited principles so as to seek compensation. The record indicates that neither did the respondent ask for compensation before the High Court nor has he chosen to challenge the High court's judgment. Since, he has accepted the High Court's verdict, his claim for compensation stands impliedly overturned. The respondent, any case, is entitled to receive the cheque amount of Rs.11.20 lakhs which the appellant has already deposited with the Registry of this Court.

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**CDJ 2021 SC 066**

**OPTO Circuit India Limited Vs. Axis Bank & Others**

**Date of Judgment: 03.02.2021**

**Prevention of Corruption Act, 1988 – Section 13(2) and 13(1)(d) – Prevention of Money Laundering Act, 2002 – Section 2(1) (x) and (y) and 17 – Indian Penal Code, 1860 – Section 120(B), 420, 468 and 471** – If a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Held action taken by authorized officers found fault and bad in law so far as not following legal requirements before and after freezing the account. Power is circumscribed by a procedure laid down in the statute and powers to be exercised by authorized in this manner alone failing which it would fall and requirement of complain due under process under law impugned communication is quashed.

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**2020 (1) TLNJ 135**

**Anversinh @ Kirasinh Fatesinh Zala Vs. State of Gujarat**

**Date of Judgment : 12.01.2021**

**Indian Penal Code, 1860, Section 363, 266 & 376**

Complaint of kidnap & rape of a Minor girl Conviction & Sentence High Court held on appeal that love of prosecutrix with accused established hence set-aside the sentence under Section 376 but upheld the sentence under Section 363, & 366. No force used in kidnapping and no pre-planning. No ingredients under Section 359 & 361 found. Appellant was at the precipice of majority himself, was not older than about eighteen or nineteen years at the time of the offence. A case of a love affair his actions at such a young and impressionable age, therefore, ought to be treated with hope for reform, and not punitively. Appellant has been rehabilitated and now leading a normal life. Prosecution established the appellant's guilt beyond reasonable doubt. No case of acquittal under Section 363 & 366 made out. Quantum of sentence reduced to the period of imprisonment already undergone. Appeal partly allowed.

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## MADRAS HIGH COURT – CIVIL CASES

### 2020(3) MWN (Civil) 481

**Shantilal Kothari Vs. Sathrasala Venkatram (since deceased) & Another**

**Date of Judgment: 06.01.2020**

**Code Of Civil Procedure, 1908(5 Of 1908), Order 47** – Scope and powers of Executing Court – Whether the Executing Court can go beyond ex-parte Decree? It is settled proposition of law that the Executing Court cannot go beyond the Decree and the Executing Court cannot be a Court of Appeal to reverse the Decree. The Executing Court cannot find fault with the Judgment or any question of law or fact. The Executing Court cannot sit in Appeal over the *ex-parte* Judgment.

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### 2020(3) MWN(Civil) 540

**S.Rajeshwari Vs. A.Ramasamy & Another**

**Date of Judgment: 10.02.2020**

**Specific Relief Act, 1963(47 Of 1963), Section 20** – Whether the Court is bound to grant relief of Specific Performance merely because Plaintiff is legally right?

The Hon'ble High Court of Madras is of the considered opinion that grant of relief of Specific Performance is a discretionary one and the Courts are bound to consider all the factual circumstances as well as the conduct of the parties so as to ensure that the Plaintiff is entitled for the relief of Specific Performance. The relief being discretionary, the Courts are bound to ascertain, whether the parties have intended to proceed with the sale or not. It is not sufficient for the Plaintiff to prove that the Sale Agreement is the registered document and the contract is not voidable. Even in such circumstances, the relief of Specific Performance can be declined by the Courts if any inequality or prejudice is likely to be caused, then the Courts are empowered to decline the relief of Specific Performance. Thus, it is not sufficient for the Plaintiff to establish that the Contract is not voidable, but it is to be established that the intention and conduct of the parties and related factors with reference to their transaction as well as they have intended to execute the sale. If there is some doubt with reference to the transaction and the manner in which the documents are registered as well as the manner in which the Sale consideration is fixed, then the Courts are well within their powers to decline the relief of Specific Performance.

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### 2020(3) MWN (Civil) 525

**Rasayammal (died) & Another Vs. T.K. Muthusamy & Others**

**Date of Judgment: 28.08.2020**

**Code Of Civil Procedure, 1908(5 Of 1908), Order 18, Rule 17**– Re-opening of evidence – When warranted?

The 2nd Plaintiff in O.S.No.209 of 2004 whose application for reopening the evidence of PW1, recall PW1 and to condone the delay in production of a Sale Deed dated 29.04.1965 were dismissed by the Trial Court has come up with these three revisions. In the case on hand, the question as to whether the discretion should be exercised in favour of a party, who seeks recalling or reopening of the evidence have to be decided on the facts and circumstances. The power to recall or reopen being discretionary cannot be put in a straight Jacket formula. The Plaint has undergone at least two amendments. The Petitioner herein has been brought on record only in the year 2012 and after the impleading of the 2nd Plaintiff, the Plaint was again amended in 2013 and Paragraph 9(b) was added. It is in this Paragraph 9(b), a reference to a Sale Deed dated 29.04.1965 was made. Therefore, there is no possibility of this document having been produced even at the time of filing of the Suit. On going through the Affidavit filed in support of these applications I am satisfied that the 2nd Plaintiff has made out a sufficient cause for non production of the documents along with the Plaint or at the time when the Plaint was amended, it is clear that the Defendants were also aware of the basis on which the

Plaintiff was claiming a right and therefore there would be no prejudice caused to the Defendants because the Plaintiff is allowed to produce the document namely the Sale Deed dated 29.04.1965.

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**2020(3) MWN(Civil) 506**

**S.Andiappa Pillai (Died) & Others Vs. Jeyaraman**

**Date of Judgment: 04.09.2020**

**Code Of Civil Procedure, 1908(5 Of 1908), Order 6, Rule 17** – Application for Amendment – When to be allowed?

The present Petition for amendment is not for introducing new facts or new case. The Petitioner has explained that the amendment is only for restricting the Suit claim to 28 cents instead of 35 cents. As the amendment is necessary and proper having regard to the alienations, which are referred to in the Petition filed by the Petitioner, the learned Sub ordinate Judge has observed that the Plaintiff knows that the Suit Second Schedule is not properly described and that the Sale Deed referred to by the Revision Petitioner in the Affidavit is not mentioned in the Original Plaint. It is not in dispute by amending the Plaint, the Petitioner has only restricted Claim by abandoning his claim in respect of a portion of the property that was alienated by him. If this amendment is not allowed, the relief would be improper and it will result in unnecessary complication affecting the fair disposal of Appeal. If by alienation, some portion of the Suit property had already been disposed of by the Revision Petitioner, the Plaint has to be suitably amended. Amendment is permissible at any stage of the proceedings.

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**2020(3) MWN (civil) 509**

**Panneerselvam Vs. Shanmugasundaram & Others**

**Date of Judgment: 08.09.2020**

**Deeds And Documents – Cancellation Deed** – Whether cancellation deed executed for cancellation for Settlement Deed is valid?

When the Courts below had failed to consider the oral and documentary evidence adduced in the matter in the right perspective and on the other hand when it is seen that the approach of the Courts below to the issues involved in the matter had been assessed in the wrong perspective and consequently the reasonings and conclusions of the Courts below by way of the same are found to be perverse, irrational and illogical and thereby they have misdirected themselves in non-suiting the plaintiff. In this connection, a useful reference may be made to the decisions of the Apex Court rendered in *Ravi Setia Vs. Madan Lal and others*, C.A. No.2837 of 2011 dated 04.10.2019, and *RenganAmbalam and Another Vs. Sheik Dawood and others*, 2019 (5) CTC 359 SC, [C.A. No.8103 of 2011, dated 09.05.2019], In such view of the matter, as rightly contended by the Plaintiff's Counsel, the Second Appeal involves the Substantial Questions of Law mooted by the Plaintiff and in the light of the above said discussions, it has to be held that the Third Defendant is not entitled to cancel the Settlement Deed Ex.A2 by virtue of the Cancellation Deed Ex.B2 particularly, when Ex.A2 Settlement Deed is irrevocable and no reservation had been made for the cancellation of the same, particularly when the Defendants have failed to establish their case of fraud, mistake, misrepresentation, undue influence and coercion in the obtainment of Ex.A2 Settlement Deed. In such view of the matter, it has to be held that the Third Defendant would not be entitled to cancel the Ex.A2 Settlement Deed and thereafter settle the Suit properties in favour of the First Defendant vide Ex.B3 Settlement Deed and therefore by virtue of Ex.B3 Settlement Deed, the First Defendant would not derive any valid title to the Suit properties. In such view of the matter, as rightly contended by the Plaintiff's Counsel, the Courts below had erred in law and misdirected themselves in non-suiting the Plaintiff by erroneously assessing the oral and documentary evidence adduced in the matter both factually and legally and accordingly when the reasoning and conclusions of the Courts below based on the same are found to be perverse, irrational and illogical, in such view of the matter, the Judgment and Decree of the Courts below are liable to be set aside.

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**2020(2) TN MAC 597**

**G. Prakasam (Died) & Others Vs. G. Ramesh & Others**

**Date of Judgment: 10.09.2020**

**Motor Accident Claims** - Non-possession of valid Driving License – Whether the Tribunal can exonerate Insurer from its liability completely ?

The Tribunal has exonerated the liability of the Third Respondent only on the ground that the Driver of the insured vehicle was not possessing a valid Driving License at the time of the accident. Admittedly, in the case on hand, the Driver of the insured vehicle was possessing a LMV Driving License but the insured vehicle is a Heavy Vehicle for which a separate HMV license is required. It is now settled law that if a Driver of the insured vehicle was not possessing a valid Driving License, the Insurer will have to compensate the Claimant and recover the same from the Owner of the vehicle (insured). Therefore, the Tribunal under the impugned Award has not followed the settled position of law by granting Pay and Recovery rights to the Third Respondent but instead has erroneously exonerated the liability on the Third Respondent Insurance Company absolutely. Therefore, this Court in accordance with the settled position of law, directs the Third Respondent Insurance Company to pay the assessed Compensation to the Appellants/Claimants and recover the same from the Second Respondent by filing an Execution Application before the same Tribunal.

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**2020(2) TN MAC 572(DB)**

**S. Santhiya Vs. T. Shanmugam & Others**

**Date of Judgment: 25.09.2020**

**MOTOR ACCIDENT CLAIMS-** Assessment of loss of income of the deceased who is aged 27 years and running a Construction Company.

So far as the quantum of Compensation is concerned, it is the case of the Claimant that the deceased completed Civil Engineering and started his own Construction Company. He engaged in the business of designing and constructing buildings either by himself or under joint venture or by doing a Contract Work and earned a monthly income of Rs.2,00,000/-. In the recent Judgments of the Supreme Court in the cases of *Sangita Aria and others vs. Oriental Insurance Co. Ltd. and others, 2020 SCC Online SC 513 and Malarvizhi and others vs. United India Insurance Co. Ltd. and another, 2020(1) TN MAC 216 (SC) : 2020 (4) SCC 228*, has taken only the average of three years of Income Tax Returns. Hence, the Hon'ble High Court of the opinion that based on the average income of the three years, the amount under the head "Loss of Income" has to be re-calculated.

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**2020(2) TN MAC 578(DB)**

**Pradeepkumar @ Saravanan Vs. P.Subbu & Others**

**Date of Judgment: 25.09.2020**

**MOTOR ACCIDENT CLAIMS** - The Appellant suffered erectile dysfunction which resulted in loss of marital bliss. Whether the claimant is entitled for award towards loss of amenities and loss of marital life?

The urinal tract or bladder of the Claimant had been damaged, due to which, he was dribbling urine or he could not naturally pass out urine. For the purpose of arresting the dribbling of urine, a clip was artificially clamped to his penis, which has resulted in erectile dysfunction. The Tribunal did not award any amount towards Loss of Amenities and Loss of Marital Life. The Appellant suffered erectile dysfunction which resulted in loss of marital bliss. Therefore, we award a sum of Rs.1,00,000/- towards Loss of Amenities and Rs.2,00,000/- towards Loss of Marital Life, which would meet the ends of justice.

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**2020(2) TN MAC 637**

**The Branch Manager, The Oriental Insurance Company Ltd., Kumbakonam Vs. G.Santhi & Others**

**Date of Judgment: 12.10.2020**

**MOTOR VEHICLES ACT, 1988, (59 of 1988) Section 163A** -Deceased driving Motorcycle owned by his wife – Accident due to negligence of deceased himself and no vehicle involved – Whether the Claimant is entitled to Compensation under Section 163-A?

The undisputed facts in this case are that the accident occurred, when the rider of the Two-wheeler hit a pig which suddenly crossed the road. The Vehicle stands in the name of the deceased wife, who is the 1st Claimant. The Claim Petition is filed under section 163-A of Motor Vehicle Act. In the instant case, the deceased is the husband of the Vehicle Owner. In the Claim Petition, the Owner of the Vehicle is the 1st Claimant and her children are 2nd and 3rd Claimant, the mother of the deceased is the 4th Claimant. So, there can be no doubt that the deceased, who is the borrower of the vehicle, has entered into the shoes of the Vehicle Owner. If the principle laid in SadanandMukhi case is applied, Section 163-A of the Motor Vehicles Act, 1988, which provides for special provision as to payment of Compensation on Structured Formula basis, in respect of Third parties insured or deceased is not applicable to the Claimants. Therefore, the Hon'ble High Court holds that the Tribunal has erred in awarding Compensation for the Claimants under Section 163-A of Motor Vehicle Act, when the deceased who borrowed the Vehicle, has entered into the shoes of the Vehicle Owner and no other Vehicle involved in the accident.

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**2020(3) MWN(Civil) 522**

**Janaki Ammal & Others Vs. Khaderkhan**

**Date of Judgment: 29.10.2020**

**Specific Relief Act, 1963(47 of 1963), Sections 38 & 39** – In a Suit for bare Injunction, the possession is the prime point for determination – Whether Suit for Injunction simpliciter is maintainable?

In a Suit for bare Injunction, the possession is the prime point for determination. The Defendants, who claim title over the property ought to have produced documents and evidence in their support. The Appellants herein have miserably failed to do so. Only if there is a cloud over the title, the question of failure to seek declaration of title will stand in the way of the Plaintiff seeking bare injunction. In this case, there is no cloud over the title. Therefore, this Court finds that no Substantial Questions of Law is involved in this matter for consideration.

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## **MADRAS HIGH COURT – CRIMINAL CASES**

**2020(3) MWN (Cr.) 401**

**Karuppasamy Vs. State by Inspector of Police, NIB-CID, Thoothukudi District**

**Date of Judgment: 28.02.2020**

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (61 of 1985), Section 50 – Code of Criminal Procedure, 1973(2 of 1974), Section 100(8) – Indian Penal Code, 1860(45 of 1860), Section 187) -** An independent Witness whom they have called to stand as Witness but refused – Proof of.

As per Section 50 of NDPS Act, the person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate before a search is being made. The provision is in clear language, making it obligatory on the Authorised Officer to inform the person to be searched of his right, which was not done in this case. According to the prosecution, the arrest and seizure was made in a Public place (Bus Stand) and though attempt was made by them to procure an independent Witness from the Public, they have refused to stand as Witness. This part of the evidence by the Prosecution is not acceptable, for the reason that the prosecution has not given the details as to whom they have called to stand as Witness but refused. Section 100(8) of Cr.P.C. enables the Police to take action for the offence under Section 187, IPC against such person who refuses to stand as Witness and it is not the case of the prosecution that they have taken any such action.

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**2020(3) MWN(Cr.) DCC 106 (Mad.)**

**Arvind Sivakumaran Vs. Rajkumar Jain**

**Date of Judgment: 24.08.2020**

**Negotiable Instruments Act, 1881, Sections 138,141-** Whether son of the deceased Managing Director is to be punished instead of his deceased father?

It is seen that time and again, it has been asserted by the Hon'ble High Court and the Hon'ble Supreme Court of India that only the person, who was in the helm of the affairs of the Company and in charge of and responsible for the conduct of business at the time of commission of offence, will be liable for Criminal action. Further, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. Admittedly, in the case on hand, the Loan was borrowed by the erstwhile Managing Director on 16.04.2019, and post-dated Cheques, dated 29.08.2019 were issued to the Respondent. Thereafter, both the Cheques were revalidated as 18.07.2019. On the instruction of the erstwhile Managing Director cum Authorised Signatory of the First Accused-Company, the Cheques were presented for collection on 29.08.2019 and both were returned dishonoured for the reason "Exceeds Arrangements". Again, on the instruction given by the erstwhile Managing Director of the First Accused-Company, the Cheques were re-presented for collection on 14.10.2019. In the meanwhile on 03.09.2019, the Managing Director cum Authorised Signatory, who instructed to re-present the Cheques, died. Thereafter, the Petitioner being the son of the erstwhile Managing Director has been inducted as a Director of the First Accused-Company on 17.09.2019. Therefore, the Petitioner never had any knowledge about the business transaction and also issuance of Cheques, which were presented by the Respondent for collection. Therefore, the Petitioner is not at all liable for the offence committed by the First Accused-Company for the offences punishable under Section 141 of NI Act.

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**2020(2) TLNJ 485 (Criminal)**  
**Rajesh Kanna Vs. The Inspector of Police, East Police Station, Kovilpatti, Tuticorin  
District & Another**  
**Date of Judgment: 02.11.2020**

**Indian Penal Code, 1860, Section 294(b)** - Whether mere utterance of obscene word are not sufficient to attract the offence under Section 294(b) of IPC?

To attract the offence under Section 294(b) of IPC mere utterance of obscene word are not sufficient. There must be a further proof to establish that it was to the annoyance of others which is lacking in this case.

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**2020(2) TLNJ 424 (Criminal)**  
**M.Ajay Kumar v. M.Nataraj**  
**Date of Judgment: 06.11.2020**

**Criminal Procedure Code, 1973, Section 216(1)** – Requirements to add and try the charges under Section 406 & 420 IPC along with Section 138 of Negotiable Instruments Act.

The petitioner herein, is the complainant in C.C.No.1008 of 2017, pending on the file of the learned Judicial Magistrate, Sulur. He has preferred the above referred case against the petitioner under Section 138 of the Negotiable Instruments Act. After the completion of trial, when the case is reserved for pronouncing judgment, the petitioner herein filed a petition under Section 216(1) of Cr.P.C., before the learned Judicial Magistrate, Sulur and prayed to alter the charge under Sections 406 and 420 of IPC along with Section 138 of Negotiable Instruments Act. It is clear that Section 216 Cr.P.C., provides the Court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in Sub-Section (1) empowers the Court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the Court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence.

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**2021 (1) TLNJ 83**  
**Govindaraj .S Vs. The Commissioner of Police, Chennai**  
**Date of Judgment: 01.12.2020**

**Criminal Procedure Code, 1973, Section 482 & 156 (3)** – It is necessary to decide whether this petition filed by the petitioner under Section 482 Cr.P.C. is entertainable at this stage. In this regard, in the case of G. Prabhakaran vs. Superintendent of Police, Thanjavur District and another reported in 2018 (5) CTC 623, the Division Bench of this Court held as follows:

- i “Section 482 Cr.P.C. cannot be invoked in all circumstances.
- ii It is not an alternative remedy to Section 156 (3) Cr.P.C. but repository of inherent power.
- iii The normal course of remedy on a failure or refusal to record the information is Section 156 (3) of the Code of Criminal Procedure after due compliance of Section 154 (3) Cr.P.C.

- iv A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.
- v No petition shall be entertained without exhausting the remedy under Section 154 (3) Cr.P.C.
- vi An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station Hose Officer's decision in either registering the compliant or closing it will have to be intimated to the informant immediately and in any case not later than 7 days.

Further the said view taken by this court was affirmed by our Hon'ble Apex Court in the case of M. Subramanian and others Vs. S. Janaki and others reported in 2020 (5) CTC 464. Therefore, after closing the enquiry by the police officer, the remedy available to the complainant is to file a complaint before the jurisdictional Magistrate under Section 156(3) of Cr.P.C. In otherwise, the petition filed for the relief of direction to direct the respondent police to register the FIR is against the ratio laid down in the above referred judgments.

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**2021 (1) TLNJ 97**

**Vijayalakshmi & Another Vs. State by Inspector of Police, Erode & Another**

**Date of Judgment : 27.01.2021**

**Indian Penal Code, 1860, Section 366, prevention of Child from Sexual Offences, 2012, Section 6 and Prohibition of the Child Marriage Act, 2006, Section 9** – Petition to Quash proceedings against victim Girl and complainant – Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act.

The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving non-compoundable offences pending against the second respondent.

In the present case, the offences in question are purely individual/personal in nature. It involves the 2<sup>nd</sup> Petitioner and the 2<sup>nd</sup> Respondent and their respective families only. It involves the future of two young persons who are still in their early twenties. The second respondent is working as an Auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the 2<sup>nd</sup> Petitioner and the 2<sup>nd</sup> Respondent to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the victim girl and her mother not to forget the 2<sup>nd</sup> respondent as well.

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**Negotiable Instrument Act, 1991, Section 138** – The learned counsel for the appellant tried to impress the Court by stating that the respondent has not produced his Income Tax Return to show the loan transaction and therefore, there is suspicion with regard to the alleged loan transaction and issuance of cheque.

It is true that the respondent has not produced his Income Tax Return to show the loan transaction and Exs.D1 and D2 sale transactions. Merely because the respondent has not produced the Income Tax Return, we cannot draw adverse inference against the respondent. The non-filing of Income Tax Return may be a ground for prosecuting the respondent under the relevant provisions of Income Tax Act and not for throwing this case out of consideration, especially when the appellant admitted Ex.P2 cheque as his cheque and the signature in the cheque as that of him. How is the deposition of Kathirvelu relevant. Nothing is said during the course of argument. Unless the relevancy of the deposition of Kathirvelu is brought out, the denial of permission to mark this deposition cannot be faulted. It is seen from the Ex.P2 that when the cheque was presented for collection, there was no sufficient fund and the cheque was returned for the reason that there was no sufficient fund. Pw.2 had also supported the case of the respondent with regard to the borrowal of loan and issuance of cheque. Thus the evidence produced in this case clearly establishes the case of the respondent that the appellant borrowed a sum of Rs.7,00,000/- from the respondent on 06.08.2012 and issued Ex.P2 cheque for discharging that loan without sufficient fund in his account. The Courts below properly appreciated the evidence and rightly convicted the appellant under Section 138 of Negotiable Instruments Act and imposed suitable punishments. This Court finds no reason to interfere with the judgments of Courts below.

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