

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVII — PART 2 — FEBRUARY 2022 \*\***

## COMPENDIUM OF CASE LAWS



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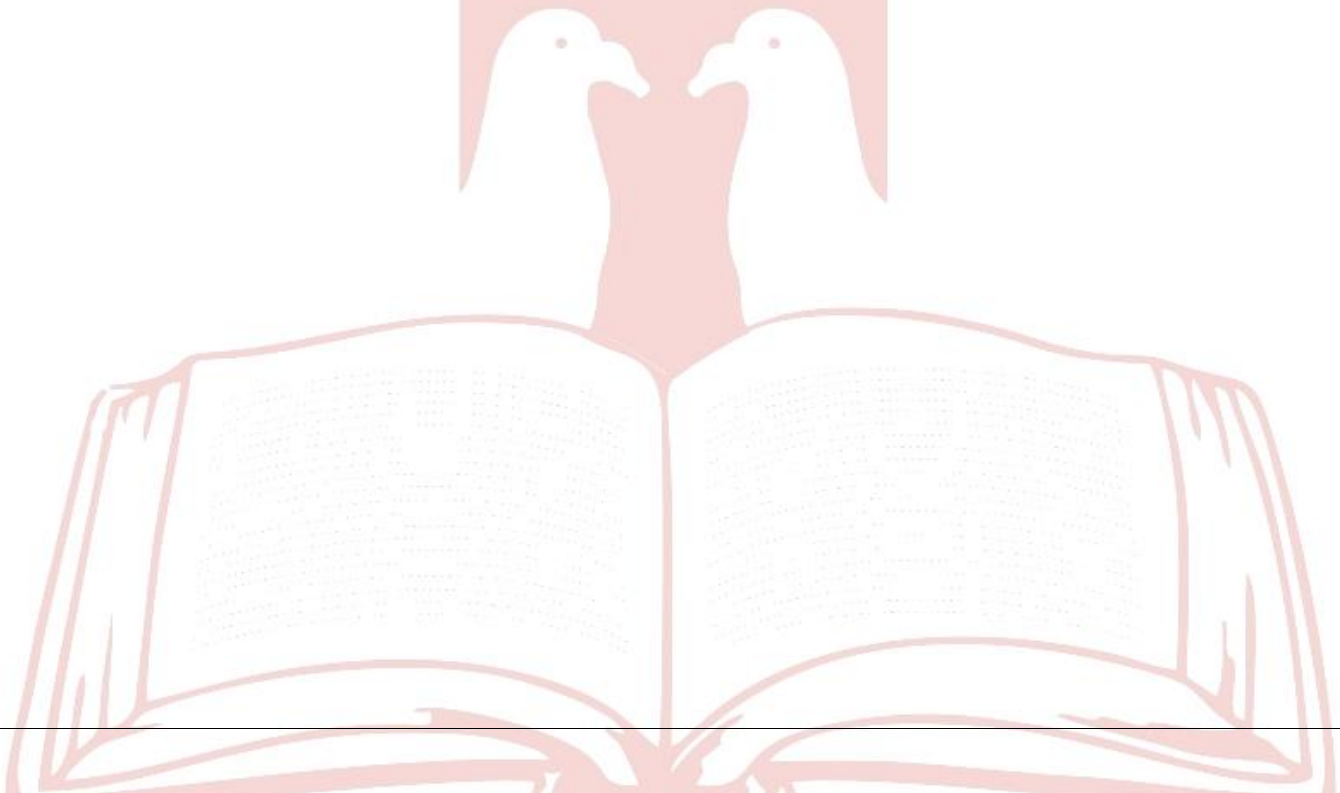
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## TABLE OF CONTENTS

<b>TABLE OF CASES .....</b>	<b>I</b>
<b>SUPREME COURT - CIVIL CASES .....</b>	<b>1</b>
Amar Nath Vs. Gian Chand & Anr. ....	1
Jogi Ram Vs. Suresh Kumar & Ors.....	2
M/s. Consolidated Construction Consortium Ltd. Vs. M/s Hitro Energy Solutions Private Ltd.....	3
Regional Transport Authority & Anr. Vs. Shaju Etc. ....	4
Southern Power Distribution Power Company Ltd. of Andhra Pradesh (Apspdd) & Anr. Vs. M/S Hinduja National Power Corporation Ltd. & Anr.....	5
<b>SUPREME COURT - CRIMINAL CASES .....</b>	<b>7</b>
Joseph Stephen & Ors. Vs. Santhanasamy & Ors.....	7
K. Shanthamma Vs. The State of Telangana.....	9
Nawabuddin Vs. State of Uttarakhand.....	10
State of Sikkim v. Jasbir Singh.....	12
Waheed-Ur-Rehman Parra Vs. Union Territory Of Jammu & Kashmir .....	13
<b>HIGH COURT - CIVIL CASES .....</b>	<b>14</b>
A. Radhakrishnan Vs. Secretary to Government & Ors.....	14
A. Thilakam Vs. The Joint Director/Appellate Authority, Elementary Education & Anr. ....	16
Dr. Ramu Manivannan Vs. The Chief Secretary, Government of Tamil Nadu & Anr.....	17
Gnanaloussany Valmy Vs. The Registrar of Marriages District Registrar, Mylapore, Chennai .....	18
Indic Collective Trust Rep. by its President T.R. Ramesh Vs. State of Tamil Nadu.....	19
K.K. Ramesh Vs. Union of India & Ors. ....	21
M. Somam Vs. Union of India & Ors. ....	22
P. Arumugam Vs. The Tamil Nadu State Election Commissioner & Ors.....	24

Susi Ganesan Vs. Leena Manimekalai & Anr.....	25
The Mylapore Club Vs. The Joint Commissioner/Executive Officer & Anr.....	26
<b>HIGH COURT – CRIMINAL CASES.....</b>	<b>28</b>
B. Vasudevan Vs. State rep by Inspector of Police.....	28
Gandhi @ Gandhivel Vs. State Rep. by The Inspector of Police, Saibaba Colony Police Station, Coimbatore District .....	29
Justin Vs. Thangavel & Anr. ....	30
Maridhas Vs. S.R.S. Umari Shankar.....	31
R. Henry Paul Vs. The State of Tamil Nadu Rep.by Inspector of Police.....	32
S.S. Lingaraja Vs. B. Selvakumar.....	33
S. Sushma & Anr. Vs. Commissioner of Police & Ors.....	34
Senthilkumar Vs. State Rep. by The Sub Inspector of Police, A. Pallipatty Police Station, Dharmapuri District.....	36
Senthilkumar Vs. The State by Assistant Commissioner of Police, Flower Bazaar Range, Chennai	37
V. Subramanian & Ors. Vs. State Rep. by Inspector of Police, Chozhatharam Police Station, Srimushnam, Cuddalore District.....	38



## TABLE OF CASES

### SUPREME COURT - CIVIL CASES

S. No.	CAUSE TITLE	CASE No.	DATE OF JUDGMENT
1	<a href="#"><u>Amar Nath Vs. Gian Chand &amp; Anr.</u></a>	Civil Appeal No. 5797 of 2009	28.02.2022
2	<a href="#"><u>Jogi Ram Vs. Suresh Kumar &amp; Ors.</u></a>	Civil Appeal Nos. 1543-1544 of 2019	01.02.2022
3	<a href="#"><u>M/s Consolidated Construction Consortium Ltd. Vs. M/s Hitro Energy Solutions Private Ltd.</u></a>	Civil Appeal No. 2839 of 2020	04.02.2022
4	<a href="#"><u>Regional Transport Authority &amp; Anr. Vs. Shaju Etc.</u></a>	Civil Appeal Nos. 1453-1454 of 2022 Arising out of SLP (Civil) Nos. 13834-13835 of 2018	17.02.2022
5	<a href="#"><u>Southern Power Distribution Power Company Ltd. of Andhra Pradesh (Apspdcl) &amp; Anr. Vs. M/s Hinduja National Power Corporation Ltd. &amp; Anr.</u></a>	Civil Appeal No. 1844 of 2020	02.02.2022

**SUPREME COURT - CRIMINAL CASES**

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CASE No.</b>	<b>DATE OF JUDGMENT</b>
1	<a href="#"><u>Joseph Stephen &amp; Ors. Vs. Santhanasamy &amp; Ors.</u></a>	Criminal Appeal Nos. 90-93 of 2022	25.01.2022
2	<a href="#"><u>K. Shanthamma Vs. The State of Telangana</u></a>	Criminal Appeal No. 261 of 2022 (Arising Out of SLP (Criminal) No. 7182 of 2019)	21.02.2022
3	<a href="#"><u>Nawabuddin Vs. State of Uttarakhand</u></a>	Criminal Appeal No. 144 of 2022	08.02.2022
4	<a href="#"><u>State of Sikkim v. Jasbir Singh</u></a>	Criminal Appeal No. 85 of 2022	01.03.2022
5	<a href="#"><u>Waheed-Ur-Rehman Parra Vs. Union Territory of Jammu &amp; Kashmir</u></a>	Criminal Appeal No.237 of 2022 (Arising Out of SLP (Crl.) No.9031/2021)	25.02.2022

**HIGH COURT - CIVIL CASES**

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CASE No.</b>	<b>DATE OF JUDGMENT</b>
1	<a href="#"><u>A. Radhakrishnan Vs. Secretary to Government &amp; Ors.</u></a>	W.P.No.27646 of 2021	01.02.2022
2	<a href="#"><u>A. Thilakam Vs. The Joint Director/Appellate Authority, Elementary Education and Anr.</u></a>	W.P.(MD).No.20302 of 2019	08.02.2022
3	<a href="#"><u>Dr. Ramu Manivannan Vs. The Chief Secretary, Government of Tamil Nadu &amp; Anr.</u></a>	W.P.No.1492 of 2022	31.01.2022
4	<a href="#"><u>Gnanaloussany Valmy Vs. The Registrar of Marriages District Registrar, Mylapore, Chennai</u></a>	W.P.No.22307 of 2013	24.01.2022
5	<a href="#"><u>Indic Collective Trust Rep. by its President T.R. Ramesh Vs. State of Tamil Nadu</u></a>	W.P.No.3371 of 2022	23.02.2022
6	<a href="#"><u>K.K. Ramesh Vs. Union of India and Ors.</u></a>	W.P.(MD).No.1523 of 2022	02.02.2022
7	<a href="#"><u>M. Sornam Vs. Union of India &amp; Ors.</u></a>	W.P.(MD)No.7215 of 2021	21.01.2022
8	<a href="#"><u>P. Arumugam Vs. The Tamil Nadu State Election Commissioner &amp; Ors.</u></a>	W.P.No.3223 of 2022	16.02.2022
9	<a href="#"><u>Susi Ganesan Vs. Leena Manimekalai and Anr.</u></a>	C.M.P.No.1492 of 2022 in W.A.No. SR 8869 of 2022	09.02.2022
10	<a href="#"><u>The Mylapore Club Vs. The Joint Commissioner/Executive Officer &amp; Anr.</u></a>	W.P.No.471 of 2022	22.12.2021

**HIGH COURT - CRIMINAL CASES**

<b>S. No.</b>	<b>CAUSE TITLE</b>	<b>CASE No.</b>	<b>DATE OF JUDGMENT</b>
1	<a href="#"><u>B. Vasudevan Vs. State Rep. by Inspector of Police</u></a>	Crl.A.No.512 of 2016	09.02.2022
2	<a href="#"><u>Gandhi @ Gandhivel Vs. State Rep. by The Inspector of Police, Saibaba Colony Police Station, Coimbatore District</u></a>	Crl.A.No.714 of 2018	19.01.2022
3	<a href="#"><u>Justin Vs. Thangavel &amp; Anr.</u></a>	Crl.O.P.(MD)No.8763 of 2019	20.01.2022
4	<a href="#"><u>Maridhas Vs. S.R.S. Umari Shankar</u></a>	Crl.O.P.(MD)No.20774 of 2021	10.02.2022
5	<a href="#"><u>R. Henry Paul Vs. The State of Tamil Nadu Rep.by Inspector of Police</u></a>	Crl.O.P.No.14316 of 2021	31.01.2022
6	<a href="#"><u>S.S. Lingaraja Vs. B. Selvakumar</u></a>	Crl.O.P.No.12752 of 2016	31.01.2022
7	<a href="#"><u>S. Sushma &amp; Anr. Vs. Commissioner of Police &amp; Ors.</u></a>	W.P.No.7284 of 2021	18.02.2022
8	<a href="#"><u>Senthilkumar Vs. State Rep. by The Sub Inspector of Police, A. Pallipatty Police Station, Dharmapuri District</u></a>	Crl.A.No.790 of 2018	25.01.2022
9	<a href="#"><u>Senthilkumar Vs. The State by Assistant Commissioner of Police, Flower Bazaar Range, Chennai</u></a>	Crl.A.No.710 of 2019	28.01.2022
10	<a href="#"><u>V. Subramanian &amp; Ors. Vs. State Rep. by Inspector of Police, Chozhatharam Police Station, Srimushnam, Cuddalore District</u></a>	Crl.A.No.4 of 2019	02.02.2022

## **SUPREME COURT - CIVIL CASES**

### **Amar Nath Vs. Gian Chand & Anr. [Civil Appeal No. 5797 of 2009]**

**Date of Judgment: 28.02.2022**

Sections 32, 32(a), 32(c) and 33, The Registration Act, 1908

The Hon'ble Supreme Court of India went into the Registration Act, 1908 in detail while deciding a civil appeal on the issues Whether Power of Attorney Holder who executed document had a valid power of attorney.

The apex court allowed the appeal by setting aside the judgment passed by the High Court after commenting and surveying in detail about those various provisions of the Registration Act, 1908 and certain important case laws.

It was held by the Apex court that, "the inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document."

#### **See Also**

- Rajni Tandon v. Dulal Ranjan Ghosh Dastidar & Anr. (2009) 14 SCC 782
- Jambu Prasad v. Muhammad Aftab Ali Khan & Ors. AIR 1914 PC 16

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**Jogi Ram Vs. Suresh Kumar & Ors. [Civil Appeal Nos. 1543-1544 OF 2019]**  
**Date of Judgment: 01.02.2022**

**Section 14, Hindu Succession Act, 1956**

The Hon'ble Supreme Court of India looked into S. 14 of the Hindu Succession Act, 1956 and discussed the objective of Sections 14(1) and 14(2) of Hindu Succession Act, 1956.

The apex court decided on the issue whether limited right over the suit property conferred through the Will had crystallized into an absolute right under Section 14(1) of the said Act.

Section 14(1) of the Act states that, any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Section 14(2) of the Act states that, the owner of a property is competent to confer a limited estate in favour of any Hindu female voluntarily and such limited estate would not mature into an absolute one.

The apex court found that, the essence of Section 14 cannot be that, a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a female if all other aspects including maintenance are taken care of.

The Apex court held that, "If we were to hold so it would imply that if the wife is disinherited under the Will, it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator."

The apex court allowed the appeal.

**See also**

- Shakuntla Devi v. Kamla & Ors. (2005) 5 SCC 390
- V. Tulasamma & Ors. v. Sessa Reddy (Dead) by LRs. (1977) 3 SCC 99
- Jupudy Pardha Sarathy v. Pentapati Rama Krishna & Ors. (2016) 2 SCC 56

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**M/s. Consolidated Construction Consortium Limited Vs. M/s Hitro Energy Solutions Private Limited [Civil Appeal No 2839 of 2020]**  
**Date of Judgment: 04.02.2022**

Sections 7, 9 and 62, Insolvency and Bankruptcy Code, 2016

The Hon'ble Supreme Court dealt with a Civil Appeal, wherein the issues pertained to the law of Insolvency and Bankruptcy Code, 2016, whether a 'purchaser' would fall under the ambit of the phrase 'operational creditor'.

The Hon'ble Supreme Court allowing the civil appeal found that, since an 'operational debt' will include a debt arising from a contract in relation to the supply of goods or services from the corporate debtor a purchaser would fall under the phrase operational creditor.

The apex court decided that, "A debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt and limitation does not commence when the debt becomes due but only when a default occurs".

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**Regional Transport Authority & Anr. Vs. Shaju Etc. [Civil Appeal Nos. 1453-1454 Of 2022 Arising Out of SLP (Civil) Nos. 13834-13835 Of 2018]**

**Date of Judgment: 17.02.2022**

Section 83, Motor Vehicles Act, 1988 — Rule 174(2)(c), Kerala Motor Vehicle Rules, 1989

The Hon'ble Supreme Court dealt in detail a set of issues that challenged Rule 174(2)(c) of Kerala Motor Vehicles Rules, 1989 and its consonance with Section 83 of the Motor Vehicles Act, 1988 in relation to issuance of transport permit by the transport authority.

The Apex Court found that, Section 83 is an enabling provision. It allows a permit holder to replace the vehicle covered under the transport permit. The right to replace the vehicle under a permit is subject to the permission of the Authority. The rights, as well as the power to grant permission, are subject to the condition that the vehicle to be replaced is 'of the same nature'. There is no prohibition for such a usage as the said vehicle may continue to be fit and within the age limit prescribed by the Central Government. The rigour of Rule 174(2)(c) is only in the context of a subsisting transport permit and not as a condition for transport vehicles as such.

The Apex Court observed that, when the subordinate authority i.e., State, makes rules in exercise of delegated authority, the rules have to be consistent with the Act. The Rules cannot override the Act or restrict its ambit. When the expression is 'vehicle of same nature', then if Rule, 174(2)(c) restricts that an older vehicle cannot be brought in, it would be restricting the right conferred to a person by the provisions of the Act.

The Apex Court held that, "discretion is to be exercised wherever necessary in order to render the exercise of power, reasonable, fair and non-arbitrary. ... The Authority will also bear in mind the circumstances in which the permit holder was chosen in cases of comparative merit under which the rival applicants would have offered their own vehicles." The apex court found the rule in consonance with the statute and thus allowed the appeal.

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**Southern Power Distribution Power Company Ltd. of Andhra Pradesh  
(Apspdcl) & Anr. Vs. M/S Hinduja National Power Corporation Ltd. & Anr.  
[Civil Appeal No. 1844 of 2020]  
Date of Judgment: 02.02.2022**

Andhra Pradesh Electricity Regulatory Commission — Power Purchase Agreement —  
Memorandum of Understanding — Central Electricity Regulatory Commission (CERC)

The Hon'ble Supreme Court while deciding a Civil Appeal on the issue of a power purchase agreement being sub-serve to public interest explained the phrase 'public interest'.

The Apex Court reiterated its decision in Kumari Shrilekha Vidyarthi and others v. State of U.P. and others [(1991) 1 SCC 212] at Para 27 and 28.

"27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14.

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14”

Thus, the Apex Court held that, “we have no hesitation to hold that the appellants – discoms, could not be permitted to change the decision at their whims and fancies and, particularly, when it is adversarial to the public interest and public good. The record would clearly show that the change in decision is arbitrary, irrational and unreasonable...We ask a question to ourselves, as to whether public interest, which is so vociferously pressed into service in the present matter by the appellants – discoms, lies in purchasing the power at the rate of Rs 3.82 per unit from HNPCL or by purchasing it at the rate of Rs 4.33 per unit from KSK Mahanadi...We strongly deprecate such a conduct of the appellants – discoms, which are instrumentalities of the state.” and dismissed the appeal with cost.

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## **SUPREME COURT - CRIMINAL CASES**

### **Joseph Stephen & Ors. Vs. Santhanasamy & Ors. [Criminal Appeal Nos. 90-93 of 2022]**

**Date of Judgment: 25.01.2022**

#### **Sections 401 and 372, Criminal Procedure Code**

The Hon'ble Supreme Court considered three important questions of law in a criminal appeal as follows:

[1] Whether the High Court in exercise of the revisional jurisdiction under Section 401 Cr.P.C. is justified in setting aside the order of acquittal and convicting the accused by converting the finding of acquittal into one of conviction?

[2] In a case where the victim has a right of appeal against the order of acquittal, as provided under Section 372 Cr.P.C and when the victim has not preferred the appeal, whether the revision application is required to be entertained at the instance of a party/victim instead of preferring an appeal? and

[3] While exercising the powers under sub-section (5) of Section 401 Cr.P.C. treating the revision application as petition of appeal whether the High Court is required to pass a judicial order?

The Apex Court allowed the appeal holding that,

[1] On a plain reading of sub-section (3) of Section 401 Cr.P.C., it has to be held that sub-section (3) of Section 401 Cr.P.C. prohibits/bars the High Court to convert a finding of acquittal into one of conviction. ...The High Court has revisional power to examine whether there is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court and/or the first appellate Court, as the case may be.

[2] Section 372 Cr.P.C. after 2009 and insertion of proviso to Section 372 Cr.P.C., a victim has a statutory right of appeal against the order of acquittal. Therefore, no revision shall be entertained at the instance of the victim against the order of acquittal in a case where no appeal is preferred and the victim is to be relegated to file an appeal. Even the same would be in the interest of the victim himself/herself as while exercising the revisional jurisdiction, the scope would be very limited, however, while exercising the appellate jurisdiction, the appellate Court would have a wider jurisdiction than the revisional jurisdiction. Similarly, in a case where an order of acquittal is passed in any case instituted upon complaint, the complainant (other than victim) can prefer an appeal against the order of acquittal as provided under sub-section (4) of Section 378 Cr.P.C., subject to the grant of special leave to appeal by the High Court.

[3] The power to be exercised by the High Court under sub-section (5) of Section 401, Cr.P.C., firstly the High Court has to pass a judicial order to treat the application for revision as petition of appeal. The High Court has to pass a judicial order because sub-section (5) of Section 401 Cr.P.C. provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do. While treating with the application for revision as petition of appeal and deal with the same accordingly, the High Court has to record the satisfaction as provided under sub-section (5) of Section 401 Cr.P.C.

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**K. Shanthamma Vs. The State of Telangana [Criminal Appeal No. 261 of 2022  
(Arising out of SLP (Criminal) No. 7182 of 2019)]**  
**Date of Judgment: 21.02.2022**

**Sections 7, 13 (1)(d) and 13(2), The Prevention of Corruption Act, 1988 — Appreciation of Evidence**

The Hon'ble Supreme Court reiterated its decision in *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh & Anr. [(2015) 10 SCC 152 Para 23]* that, "the proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

The Apex Court after appreciating the evidence allowed the appeal to hold that, "The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine qua non* for establishing the offence under Section 7 of the PC Act."

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**Nawabuddin Vs. State of Uttarakhand [Criminal Appeal No. 144 Of 2022]****Date of Judgment: 08.02.2022**

Sections 376(2)(i), IPC — Sections 5 and 6 POCSO Act, 2012 — Appreciation of Evidence — Criminal Procedure

The Hon'ble Supreme Court went back to the established principles of the Protection of Children from Sexual Offences Act, 2012 and reiterated its findings about the object and purpose behind the enactment of the said Act.

The Criminal Appeal arose from the impugned judgment and order passed by the High Court of Uttarakhand at Nainital which had dismissed the said appeal preferred by the accused/appellant and confirmed the conviction of the accused for the offences punishable.

The Apex Court considering the evidence placed on record before it and went into the question as to "what offence the accused had committed?"

After looking into the evidence on record the Apex court considered the prayer of the accused to have a lenient view on the punishment by considering mitigating circumstances of old age of the accused and to alter the life imprisonment to any other punishment.

The Apex Court also noted the relevance of Article 15 and 39 of the Constitution of India, and Article 19 of the Child rights Convention while appreciating the purpose behind the enactment of the POCSO Act, 2012.

The Apex Court held that, "the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law."

The Apex Court noted that "the accused was aged approximately 65 years of age at the time of commission of offence. He was a neighbour of the victim girl. He is found to have committed aggravated penetrative sexual assault on a girl child aged four years, which

demonstrates the mental state or mindset of the accused. However, the punishment provided for the offence under Section 6, as it stood prior to its amendment and at the time of commission of the offence in the instant case for aggravated penetrative sexual assault was rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. Now as per the amended Section 6 with effect from 16.08.2019, the minimum punishment provided is twenty years and which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. Therefore, at the relevant time the minimum punishment provided for the offence under Section 6 of the POCSO Act, 2012 was ten years RI and which may extend to imprisonment for life.”

The Apex Court took adherence of the fact that, the accused was presently 70-75 years of age and it was also reported that he is suffering from Tuberculosis (TB) and opined that, “Considering such mitigating circumstances we are of the opinion that if the life sentence is converted to fifteen years RI and the fine imposed by the Trial Court confirmed by the High Court to be maintained, it can be said to be an adequate punishment commensurate with the offence committed by the accused.”

The Apex Court allowing the appeal considered such mitigating circumstances to convert the life sentence of the Accused to fifteen years Rigorous Imprisonment with the fine imposed by the Trial Court.

**See Also**

- Eera Vs. State (NCT of Delhi), (2017) 15 SCC 133
- Alakh Alok Srivastava Vs. Union of India & Ors., (2018) 17 SCC 29
- State of Rajasthan Vs. Om Prakash, (2002) 5 SCC 745
- Nipun Saxena Vs. Union of India, (2019) 2 SCC 70

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**State of Sikkim v. Jasbir Singh [Criminal Appeal No. 85 of 2022]**  
**Date of Judgment: 01.03.2022**

Armed Forces — Army Act, 1950 — S. 69 — Jurisdiction of Criminal Court versus Court Martial — Lesser punishment — If disadvantageous to a person not tried by Court Martial but by a Criminal Court

The Hon'ble Supreme Court decided a Criminal Appeal on the issue of concurrent jurisdiction between the Court-martial and the ordinary criminal Court.

The Apex Court dismissed the criminal appeal holding that, a case involving charges of murder falls in the category where there is a concurrent jurisdiction between the Court-martial and the ordinary criminal Court, and that the Sessions Court was competent to exercise its jurisdiction under the Cr.P.C.

The Magistrate is to have regard to the rules and shall in proper cases deliver the person together with a statement of the offences of which he is accused to the Commanding Officer of the unit of the nearest military, naval or air force station, for the purpose of being tried by a court-martial.

The apex court reiterated that, there could be a variety of circumstances which may influence the decision as to whether the offender be tried by a Court Martial or by an ordinary criminal court, and therefore it becomes inevitable that the discretion to make the choice as to which Court should try the accused be left to responsible military officers under whom the accused be serving.

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**Waheed-Ur-Rehman Parra Vs. Union Territory Of Jammu & Kashmir**  
**[Criminal Appeal No.237 Of 2022 (Arising out of SLP (Crl.) No.9031/2021)]**  
**Date of Judgment: 25.02.2022**

Section 44, Unlawful Activities (Prevention) Act, 1967 — Sections 161, 173(6) and 207, Code of Criminal Procedure, 1973

The Hon'ble Supreme Court considered the moot point whether in the case of certain witnesses being declared as protected witnesses in the exercise of powers under Section 173(6) of the Code of Criminal Procedure, 1973, read with Section 44 of the Unlawful Activities (Prevention) Act, 1967 by the trial court, can the defence seek recourse to the remedy under Section 207 and Section 161 of the Cr.P.C. for obtaining copies of redacted statements of these protected witnesses.

The Apex Court after elaborately considering the position of the law in detail at the beginning opined that, the provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C. The Apex Court found that, the objective of Section 44, UAPA, Section 17, NIA Act, and Section 173(6) is to safeguard witnesses. They are in the nature of a statutory witness protection.

The Apex Court found that, the occasion for the appellant/accused to come in and seek redacted statements under Section 207 of the Cr.P.C. arose when the trial was to commence and the appellant was of the view that in order to plead an appropriate defence there should be full disclosure minus the redacted portion so that the testimonies of those witnesses could be utilized without disclosing their identities or their place of residence.

The Apex Court allowing the appeal held the impugned order passed by the trial Court to be fair and reasonable for the prosecution and defence while protecting the witnesses and not depriving the defence of a fair trial with the disclosure of the redacted portions of the testimony under Section 207 of the Cr.P.C.

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## HIGH COURT - CIVIL CASES

### **A. Radhakrishnan Vs. Secretary to Government & Ors. [W.P.No.27646 of 2021]**

**Date of Judgement: 01.02.2022**

#### **Safeguarding of Temple properties — Writ of Mandamus — directions to district collector and HR&CE Department**

The Hon'ble High court in this case dealt with a Writ of Mandamus under Article 226 of the Constitution to direct the respondents to secure and safeguard the properties of the temples. It is stated that the petitioner has been involved in securing and safeguarding properties that belong to the temples for over 25 years. The issue in this instant case is that, the properties of the temples in Krishnagiri district have been looted and large scale of illegal mining operations are permitted with the active and passive collusion of the public officials. It is stated that, the petitioner has made several representations and has approached the authorities in person, yet no actions have been taken by the competent authorities of the HR & CE Department. It is further stated that, though the District Collector has issued proceedings in the year 2018, no much progress has been made by the authorities with this regard.

The Hon'ble High Court observed that, "Undoubtedly, such large scale allegations and illegalities may not happen without the collusion of the Department Officials. No doubt, large scale properties belong to the temple have been dealt with an illegal manner and in violation of the provisions of the Act for several years, it may be difficult for the Authorities now to immediately restore all such properties...In this context, fixing personal liability on the officials are of paramount importance. The officials not functioning in the interest of the temple are to be identified and their work performance are to be monitored and the Head of the Department is bound to initiate all appropriate actions. If the Head of the Department itself is not functioning efficiently, then the Government has to initiate all appropriate actions." Further, it was noted that, the

allegations raised by the petitioner with documents and evidences are serious in nature and large scale allegations are shocking to the conscience of this Court.

Thus, the Hon'ble High Court in this case has issued several directions such as;

(a) The district Collector to convene a review meeting in the presence of all concerned Government Department Officials to check for illegalities, fraudulent activities, illegal mining etc., allegedly going on in respect of temple properties.

(b) To initiate swift actions to prevent all the illegal mining operations and consequential illegalities in respect of temple properties and further initiate all necessary actions, including criminal prosecution and civil actions for recovery against all concerned.

(c) To conduct enquiry wherever necessary in respect of the collusion or corrupt practices of the public officials in dealing with temple properties and initiate all appropriate actions under Criminal Law and departmental disciplinary proceedings as the case may be.

(d) To initiate all necessary steps to prevent any further illegalities, fraudulent execution of documents etc., in respect of temple properties and appropriate guidelines, instructions and directions are to be issued to all the Subordinates as expeditiously as possible.

(e) To monitor the actions initiated by the respective Subordinate Officials of the concerned Departments and issue appropriate guidelines, instructions or directions wherever required as the case may be and initiate actions if there are any lapses.

In fine with the above-mentioned directions the Hon'ble High court disposed the Writ Petition.

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**A. Thilakam Vs. The Joint Director/Appellate Authority, Elementary Education & Anr. [W.P.(MD) No.20302 of 2019]**

**Date of Judgment: 08.02.2022**

Aided School teacher — punishment imposed due to personal vengeance — Sec. 24 of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973

The Hon'ble High Court in this case dealt with a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the 1st respondent and read with order issued by the 2nd respondent and quash the same and consequently direct the respondents to pay all the consequential benefits payable to the petitioner. The writ on hand had been instituted questioning the punishment imposed on the petitioner, who was working as a Secondary Grade Teacher in the 2nd respondent School, which is a Government Aided School. The appointment of the petitioner was approved by the competent Educational Authority and the petitioner was working under the management of the 2nd respondent.

The petitioner was imposed with an order of punishment on certain personal vengeance and extraneous circumstances. The writ petition was filed seeking a relief in the form of direction to set aside the order of the respondent school followed by that of Joint Director's, the High Court opined that it cannot invoke a writ jurisdiction. Further the Hon'ble stated that, the power of judicial review is limited to the process through which a decision is taken by the competent authority in consonance with the provisions of the statute or rules, but not the decision itself. Therefore, the court refused to undermine the provision for appellate remedy and asked the teacher to redress the grievance through the remedy given in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. After recording the findings of the ambit of the appellate remedy under Section 24, the High Court instructed the petitioner to approach the tribunal constituted under Section 24 in appeal against the order passed by the first appellate authority under Section 23.

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**Dr. Ramu Manivannan Vs. The Chief Secretary, Government of Tamil Nadu & Anr. [W.P.No. 1492 of 2022]**  
**Date of Judgment: 31.01.2022**

**Pongal gift hampers to Srilankan refugees — non issuance of gift to those refugees residing outside of camps**

The Hon'ble Madras High Court in this case dealt with a Writ of Mandamus under Article 226 of the Constitution. The writ was filed to directing the respondents to extend the Pongal gift hampers announced by the Tamil Nadu Government to the non- camp Sri Lankan Tamil refugees residing in Tamil Nadu.

The Hon'ble Madras High Court in this case observed that, those staying outside the camps without ration cards won't be entitled to the benefits since those who opted to stay outside the camp were either involved in business or were having jobs and therefore do not require the benefit of Pongal gift hampers.

While discussing about the decision to extend the benefits to all, including those staying outside the camps, during Covid-19 second wave, the Hon'ble High Court observed that the second wave had a detrimental effect and many businesses were in turmoil during that time and hence the benefit of Pongal gift hampers were provided to all the refugees including those living outside the camps.

In fine the Writ Petition was dismissed and Hon'ble High Court held that, there was no illegality in the policy decision taken by the Government so as to accede to the prayer made in the writ petition.

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**Gnanaloussany Valmy Vs. The Registrar of Marriages District Registrar,  
Mylapore, Chennai [W.P.No.22307 of 2013]**

**Date of Judgment: 24.01.2022**

Writ of Mandamus — rectification of names in marriage certificate — French citizen not conversant in English

The Hon'ble High Court in this case dealt with a Writ of Mandamus to direct the respondents to issue the marriage certificate indicating the correct names of the petitioner and her parents. It was stated that, the petitioner is a French citizen who is not conversant in English and hence had not noticed the mistake. The petitioner approached the learned Additional Sub Judge, Pondicherry in this regard by filing E.C.O.P.No.23 of 2005 and sought for rectification. The petitioner states that the Court had verified the records and allowed the application and based on the above order the Oulgaret Municipality had issued a certificate on 14.05.2013 rectifying its records. On the strength of the certificate, the petitioner approached the respondent, who did not consider the claim of the petitioner to correct the errors in the marriage certificate.

It was observed by the Hon'ble High Court that, the procedures followed by the Additional Sub Judge, Pondicherry was directly in violation of the established Civil Court procedures and therefore such a procedure shall not be followed hereinafter and only by conducting appropriate enquiry and on verification of original records such reliefs are to be considered with reference to the applications filed under the relevant provisions of the French Code of Civil procedures. The Court held that the petitioner is at liberty to approach the Competent Civil Court of law or the authority for the purpose of adjudication of issues on merits.

Thus, it was held that, the Courts in Pondicherry are directed to entertain applications, consider the same and pass appropriate orders only after the verification of the original documents and after conducting an enquiry in the manner prescribed under law. In fine, with the above directions the writ was dismissed.

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**Indic Collective Trust Rep. by its President T.R. Ramesh Vs. State of Tamil Nadu [W.P.No.3371 of 2022]**  
**Date of Judgement: 23.02.2022**

Executive officers of HR&CE appointed without authority – recall all Executive Officers who are functioning without valid appointment orders

The Hon'ble High Court in this case dealt with a Writ of Mandamus to direct the respondents to recall all Executive Officers who are functioning without valid appointment orders. It was submitted that, in non-hereditary temples, the Commissioner, Hindu Religious and Charitable Endowment Department appointed Executive Officers without authority of law and even if such appointment is made, they continue to be in service beyond the period of five years, which is not permissible. The records also show that the appointment was made without disclosing the period and the Executive Officers so appointed were allowed to continue beyond the period of five years in violation of the relevant Rules. It was also stated by the petitioner that, such appointments are in violation of the decision of the Supreme Court in the case of Srila-Sri Subramania Desika Pandara Sannati Vs. State of Madras [AIR 1965 SC 1683] wherein the Apex Court held that the Deputy Commissioner, the Commissioner or the Court, as the case may be, is not bound, in framing a scheme, to appoint an Executive Officer in every case and a case must be made out for such appointment. The petitioner further relied upon the decision of the Hon'ble Supreme Court in Dr. Subramanian Swamy and others Vs. State of Tamil Nadu and others [(2014) 5 SCC 75], would submit that if only the administration of a temple is not proper, it can be superseded.

It was observed that not in one, but in more than 600 temples, the Executive Officers were appointed from time to time by the Commissioner, Hindu Religious and Charitable Endowments Department in the absence of appointment or nomination of Trustees but, in most of the non-hereditary temples in the State of Tamil Nadu, the trustees were also not appointed/nominated for the past 10 - 12 years. The Hon'ble court here referred Section 43 A and Section 45 of Tamil Nadu Hindu Religious and Charitable Endowments

Act, 1959 (Hereinafter 'Act') which discusses about the circumstances under which the Commissioner can exercise the powers for appointing executive officers.

The court observed that a coordinate bench of the High Court is seized of the matter pertaining to the appointment of trustees in temples immediately. The court, while addressing a similar issue, had remarked that the appointment of trustees will be at two levels: i) temples with less than 10 Lakhs earning, ii) temples with more than 10 lakhs earning. The Hon'ble High Court also observed that, "The process for appointment of trustees have already begun and it is nearing completion. In such a scenario, we don't find any reason to entertain this petition after the lapse of 10-12 years."

Invoking the Sections 43A and 45, the court stated it gives the Commissioner power to make appointments of Executive Officers. However, the HR & CE Commissioner also has the power to suspend/ dismiss the Executive Officers under the Act. In the present case, appointments were de hors the rules/ provisions of the Act, the court clarified. Referring to Rule 3 of the 2015 Rules, the court added that it has no application in the case at hand since Executive Officers were appointed not on grounds of mismanagement but in the absence of nomination of trustees. The Court opined that, Subramanianswamy's judgment which was in reference to the appointment of Executive Officers in temples afflicted by mismanagement is not relevant for the case at hand. In fine, the Hon'ble High Court dismissed the petition.

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**K.K. Ramesh Vs. Union of India & Ors. [WP(MD) No. 1523/2022]****Date of Judgment: 02.02.2022****Confiscation of movable and immovable properties of corrupt official — Installation of CCTV cameras in government offices — costs payable to SLSA**

The Hon'ble High Court in this case dealt with a Writ of Mandamus under Article 226 of Constitution of India to direct the respondents to confiscate the movable and immovable properties of corrupt officials. In addition, the writ also sought directions to set up notice boards in Government offices implying that corruption is a punishable offence. Another relief sought was installation of CCTV Cameras in all Government offices.

The Hon'ble High Court observed that, the petitioner had not relied on any legal provisions to substantiate their submissions. Further, it was noted that, all the allegations of corruption were subject to trial and action cannot be taken merely on receipt of information about corruption unless the preliminary investigation is completed.

It was also observed by the Hon'ble High Court that, the petitioner had been warned previously for indulging in filing frivolous petitions since the nature of this PIL was also frivolous, court-imposed costs payable to the State Legal Services Authority and also barred the petitioner to file PIL's for two years since the petitioner had filed public interest litigations for mere publicity, without proper research.

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**M. Sornam Vs. Union of India & Ors. [W.P.(MD)No.7215 of 2021]****Date of Judgment: 21.01.2022**

Widow of a freedom fighter denied the exclusive pension for Freedom Fighters — State Pension Scheme — Non-Availability of Records Certificate (NARC)

The Hon'ble Madras High Court in this case had to deal with a Writ of Certiorarified Mandamus under Article 226 of the Constitution to set aside the rejection order of the Freedom Fighter Revenue Division (F.F.R) and directed the processing of Petitioner's application under Swatantrata Sainik Samman Pension Scheme, 1980. The matter involved in this case is that, a widow of a freedom fighter was denied the exclusive pension for freedom fighters and their family.

According to the petition, the late husband of the petitioner was taken to detention in Burma between May 1945- July 1945 and incarcerated in Rangoon Central Jail from August 1945- July 1946 while he was retreating with the INA. Though the petitioner was a recipient of the State Pension Scheme for Freedom Fighters, her application under Swatantrata Sainik Samman Pension Scheme, 1980 was rejected by F.F.R on two grounds;

- 1) The co-prisoner of her late husband, S. Raju, has only certified that (Certificate of Co-Prisoner) Muthiya was incarcerated from May 1945 to the end of December 1945, a time frame less than one year, contrary to the claim made by the wife. On the basis of the above, the Certificate of Co-Prisoner was rejected.
- 2) Secondly, the Non-Availability of Records Certificate (NARC) had not been produced from the Tamil Nadu State Government by the petitioner.

The Court noted that the co-prisoner of the deceased freedom fighter was incarcerated only from May 1945 to the end of December 1945, and therefore, it is preposterous to imagine that the co-prisoner could certify about the deceased freedom fighter's (petitioner's husband) incarceration beyond that period. Since Raju was released from

Rangoon Central Prison in December, 1945, the court discarded the argument of the respondents including F.F.R.

Further, the Hon'ble High Court opined that the petitioner cannot be blamed for the non-production of Non-Availability of Records Certificate (NARC) and stated that the production of document, an issue between State and Central Governments and observed, "...anyone of the first to fourth respondents, if they had bestowed a little interest and understanding on the plight of widows of the freedom fighters who suffered during the Freedom Struggle could have sought a clarification directly from the State Government", the court further observed.

Relying on the decisions of the Apex Court\*, the High Court in fine held that, the F.F.R has to grant pension with arrears from the date of application (2004) till date which will be paid to the petitioner during her lifetime and further, the Court also directed that the processing of application and sanction of pension with arrears to be completed within 12 weeks.

**\*See Also**

- Gurdial Singh v. Union of India & Ors., (2001) 8 SCC 8
- Mukund Lal Bhandari & Ors. v. Union of India, AIR 1993 SC 2127
- Union of India v. K. Duraisamy & Ors., (2018) 8 MLJ 223

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**P. Arumugam Vs. The Tamil Nadu State Election Commissioner & Ors.****[W.P.No.3223 of 2022]****Date of Judgment: 16.02.2022**

Writ of Mandamus — fixation of posters for election — Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959

The Hon'ble Madras High Court in this case dealt with a Writ of Mandamus under Article 266 of the Constitution to direct the respondents to provide uninterrupted and additional reinforcement of police force and total coverage throughout the election process in Ward No. 117. The issue in this case was that the opponent party, who belongs to the ruling party affixed their election posters on the posters already affixed by the petitioner. It was observed by the Hon'ble first bench of the Madras High Court that, affixing posters on walls in public property or private property, without permission, is an offence and liable for prosecution under the provisions of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959 and is in breach of the circular issued by the Tamil Nadu State Election Commission on 30.11.2021.

Further, when the Court questioned the petitioner as to show the permission obtained by him for affixing the poster, the petitioner was unable to show any permission obtained by him in this regard. On clear perusal of records, submissions and the circular dated 31.11.2021, the Hon'ble Court directed all the candidates not to affix posters on the walls of public property and private property, without proper permission and to remove the posters pasted on the walls immediately. The cost incurred for removal of such posters be recovered from the candidate whose poster was pasted on the wall of private property or public property, without proper permission.

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**Susi Ganesan Vs. Leena Manimekalai & Anr. C.M.P.No.1492 of 2022 in  
W.A.No. SR 8869 of 2022]**

**Date of Judgement: 09.02.2022**

Defamation suit pending — Sec. 151 of CPC — passport impoundment

The Hon'ble Madras High Court in this case dealt with a CMP under Section 151 of Civil Procedure Code to grant leave for filing appeal. The petitioner in this case had lodged criminal case against the respondent and has obtained an order to impound the passport of the respondent/accused by the passport authority. The petitioner in this case is the complainant of the criminal case, who is affected by the outcome of the writ petition where respondent's passport has been released and he fears that the respondent/accused may travel out of the country leading to delay of the trial.

The Hon'ble High Court disagreed with the petitioner and elucidated that, the order of the Apex Court has made it clear that respondent/accused has to co-operate during trial of the criminal defamation case and has also clearly stated that she is not required to remain physically present during all the dates of the hearing. It was observed by the Hon'ble First Bench of the High Court that, when the Hon'ble Supreme Court has directed to complete the trial within four months and when the same is not complied with, only then the petitioner can seek for remedy. Thus, the Hon'ble Court dismissed the petition.

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**The Mylapore Club Vs. The Joint Commissioner/Executive Officer & Anr.**  
**[W.P.No.471 of 2022]**

**Date of Judgement: 03.02.2022**

Petitioner club operating in temple land — Sec. 34 of HR&CE Act — Issue of notice  
Infringement of trademark

The Hon'ble High Court in this case dealt with a Writ of Certiorarified Mandamus with a prayer to direct the Respondents their officers, sub-ordinates, etc., not to do any acts deeds and things and/or take any action in contravention of the G.O.3P No.4 dated 09.03.2007. It is submitted that, petitioner club is a society registered under the Societies Registration Act and has been in existence for over a century, and has aimed at augmenting a holistic growth of its members by providing an avenue for extracurricular and leisure activities. The petitioner claims that they are lessee in occupation of the temple premises and paying the rent and that fair rent has not been fixed in accordance with the provisions of the H.R.&C.E., Act.

Section 34 of the H.R.&C.E., Act states that, the maximum period of lease is five years and beyond the period of five years, the approval of the competent authority/Government is mandatory. A committee constituted under Section 34-A of the Act is duty bound to fix the rent based on the prevailing market rental value and the guidelines as may be prescribed. The re-fixation is to be done once in three years by the Committee. Such mandatory procedures are to be followed by the competent authority of the H.R.&C.E., Department and in the event of failure, the authorities competent who committed lapse, dereliction of duty and negligence and caused financial loss to the temple properties are liable to be prosecuted in accordance with law.

In the present case, the Hon'ble Madras High Court has observed that the writ jurisdiction cannot be invoked in a routine manner against a show-cause notice or demand notice issued by competent authorities. The court also added that a writ against demand notices or show cause notices are entertained only if the same has been issued by a non-

competent authority or if there are allegations of malafides. Even if such maybe the circumstances, the authority against whom such malafides has been attributed must be impleaded in his/ her/ their personal capacity.

Therefore, the Hon'ble High Court that, dismissed the writ petition as devoid of merits. The petitioner Club can either comply with the demand notice and pay the rent fixed under Section 34(A)1 or prefer an appeal before the competent authority in the manner prescribed under the Act.

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**HIGH COURT – CRIMINAL CASES****B. Vasudevan Vs. State rep by Inspector of Police [Crl.A.No.512 of 2016]****Date of Judgement: 09.02.2022**

Sections 7, 13(2), 20, Prevention of Corruption Act, 1988

The Hon'ble High Court decided on a Criminal Appeal challenging the conviction and sentence for offences under Sections 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988.

The Court referred to the decisions in *C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala [(2009) 3 SCC 779]* and *Mukhtiar Singh Vs. State of Punjab [(2017) 8 SCC 136]*, *N. Vijayakumar Vs. State of Tamil Nadu [2021 AIR SC 766]*, and observed that in the absence of any proof for demand, presumption under Section 20 of the Act cannot be drawn against the Appellant.

The Court found that mere possession and recovery of currency notes will not bring home the offence under Section 7 of the 1988 Act and consequently the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage also cannot be held to be proved.

The Court held that prosecution has failed to prove the demand for illegal gratification by the accused beyond reasonable doubt. The Court allowed the Criminal Appeal, set aside the conviction and sentence, and thus acquitted the Accused.

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**Gandhi @ Gandhivel Vs. State Rep. by The Inspector of Police, Saibaba Colony Police Station, Coimbatore District [Crl.A.No.714 of 2018]**  
**Date of Judgment: 19.01.2022**

Sections 145 and 157, Indian Evidence Act, 1872

The Hon'ble High Court decided on a Criminal Appeal challenging the conviction and sentence for offences under Sections 302 and 307 of the IPC.

The Court referred to the decisions in *P. Babu & Ors. Vs. State of Andhra Pradesh [(1994) 1 SCC 388]* and *B. Bhadriah & Ors. Vs. State of Andhrapradesh, [1995 Supp (1) SCC 262]*, and discussed the evidentiary value of the statement made to a doctor. The Court observed that the entry in the Accident Register is only a previous statement of the victim and such a previous statement is not a substantive piece of evidence. It could be only used to corroborate under Section 157 or contradict under Section 145 of the Indian Evidence Act. The victim was not confronted in the cross examination.

The Court found that non-examination of the contractor is not fatal to the case of the prosecution as he was not present in or near the scene of occurrence. The Court further found that it can be easily inferred that the death in the instant case was caused without any premeditation, in a sudden fight, without the appellant taking any undue advantage of acting in a cruel manner.

The Court observed that appropriate sentencing is a vital functioning of the Court and held that it is difficult to maintain the conviction of the Appellant under Section 302 IPC.

The Court partly allowed the Criminal Appeal and set aside the conviction under Section 302 IPC and convicted the Appellant under Section 304 Part I IPC.

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**Justin Vs. Thangavel & Anr. [Crl.O.P.(MD).No.8763 of 2019]**  
**Date of Judgement: 20.01.2022**

Section 138, Negotiable Instruments Act, 1881

The Hon'ble High Court decided on a Criminal Original Petition concerning dishonouring of a cheque.

The Court referred to the decision of the Supreme Court in *Alka Khandu Avhad Vs. Amar Syamprasad Mishra & Anr. [Crl.A.No.258 of 2021, dated 08.03.2021]*, and observed that the Apex Court specifically held that the drawer of the cheque alone can be prosecuted for the offence under Section 138, Negotiable Instruments Act.

The Court found the very complaint lodged by the Respondent for the offence under Section 138, Negotiable Instruments Act against the petitioner can only be considered as an abuse of the process of law and the same is liable to be quashed. Thus, the Criminal Original Petition was allowed.

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**Maridhas Vs. S.R.S. Umari Shankar [Crl.O.P.(MD)No.20774 of 2021]****Date of Judgment: 10.02.2022****Section 199, CrPC — defamation — aggrieved person**

The Hon'ble High Court decided on a Criminal Original Petition seeking to quash a complaint alleging defamation against a political party. The Court referred to the decision in *Ahmedali Adamali v. Emperor [AIR 1938 Sind 88]* and observed that "defamation must be shown to be of all the persons in the association or collection as such".

The Court considered the question "when the political party alone is defamed, whether any member can file a complaint for defamation". The Court referred to and observed that, "The offence of defamation is not like any other IPC offence. Section 199 of CrPC contains an embargo that no court shall take cognizance of the offence except upon a complaint made by some person aggrieved by the offence. But the expression "some person aggrieved" cannot be construed too expansively. This is because Section 198 of CrPC dealing with prosecution for offences against marriage also employs the very same expression "some person aggrieved". Only very proximate relatives like father, mother or brother of the affected woman can file a complaint and not any distant relative.

The Court found that "Where the Party alone in contra distinction with partymen has been defamed, others not at the helm of affairs cannot maintain a complaint as they would not be persons aggrieved."

The Court held that since the complainant is not a person aggrieved, continuation of the impugned proceedings will amount to an abuse of legal process. Thus, the Court allowed the Criminal Original Petition and quashed the impugned proceedings.

**See Also**

- John Thomas v. K. Jagadeesan (Dr) [(2001) 6 SCC 30]
- Subramanian Swamy v. Union of India (2016) 7 SCC 221
- M.S. Jayaraj v. Commissioner of Excise (2000) 7 SCC 552
- G. Narasimhan v. T.V. Chokkappa (1972) 2 SCC 680

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**R. Henry Paul Vs. The State of Tamil Nadu Rep.by Inspector of Police**  
**[Cr.O.P.No.14316 of 2021]**  
**Date of Judgement: 31.01.2022**

Section 167(2), CrPC — inclusion of date of remand for grant of default bail

The Hon'ble High Court dealt with a Criminal Original Petition wherein the Petitioner/Accused sought for bail in a case under the POCSO Act, 2012.

The Court found that "The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled."

Upon referring to the decision in *Enforcement Directorate, Government of India, Vs. Kapil Wadhawan & Anr. [Cr.A.Nos. 701-702 of 2020, dated 23<sup>d</sup> February 2021]*, the Court found that, "The Criminal Rules of Practice framed by this Court in Rule 6(8), mandates including the date of remand. As the facts placed herein clearly show that within 90 days, the charge sheet was not filed."

Thus, the Court ordered the Petitioner to be released on bail and allowed the Petition.

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**S.S. Lingaraja Vs. B. Selvakumar [Crl.O.P.No.12752 of 2016]****Date of Judgment: 31.01.2022****Section 197, CrPC — Section 60 of the Wild Life (Protection) Act, 1972**

The Hon'ble High Court dealt with a Criminal Original Petition filed by a Forest Conservator to quash a complaint of torture, vandalism and physical violence, filed against him by an agricultural labourer.

The Court observed that "The question whether a particular act is done by a public servant in discharge of his official duties is substantially one of fact and it has to be determined in the circumstances of each case." The Court further observed that, "The protection umbrella under Section 197 Cr.P.C. is available only to a public servant who discharged public duty. In case there is any excess or misuse of the said authority, no protection could be extended to the public servant under Section 197 Cr.P.C."

The Court referred to the decisions in *Bhagwan Prasad Srivastava Vs. N.P. Mishra [(1970) 2 SCC 56]* and *Choudhury Parveen Sultana Vs. State of West Bengal [(2009) 3 SCC 398]*, and found that allegations made in the complaint as well as the other materials available on record could not bring the case within the ambit of Section 197 Cr.P.C., and hence the petitioner cannot seek for protection under Section 197 Cr.P.C. The Court further found that, "the protection granted under Section 60 of the Wild Life (Protection) Act, is available only to officers or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under the Act. As already held, the allegations in the complaint prima facie shows that the petitioner did not act in good faith. Whether the petitioner acted in good faith or not is a matter for trial and the question whether the petitioner is protected under Section 60 of the Wild Life (Protection) Act, cannot be decided at this stage."

The Court held that there is no infirmity in the proceedings of the Judicial Magistrate, and thus dismissed the Petition.

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**S. Sushma & Anr. Vs. Commissioner of Police & Ors. [W.P.No.7284 of 2021]**  
**Date of Order: 18.02.2022**

LGBTQIA+ Community — Director of Tamil Etymological Dictionary Project — Glossary

The Hon'ble High Court in its Order dated 18.02.2022 in W.P. No. 7284 of 2021 moved a stepped forward in favour of the LGBTQIA+ Community by having a prescriptive glossary for press and media. The Court in its Order appreciated the efforts taken by the State Government for the efforts taken by it on the LGBTQIA+ Community and noted that, "The whole purpose of creating this glossary is to use the appropriate words, terms and expressions while addressing the persons belonging to the LGBTQ+ community and such usage should not continue to derogate them in any manner.

The Court further gave its directions to the press and media (in all forms) to henceforth use the words contained in the alternate glossary while addressing persons belonging to LGBTQIA+ community.

The amendment to the TN Subordinate Police Conduct Rules, 1964 – A was also considered as a milestone achieved in favour of the LGBTQIA+ Community. The Court observed that, "it is a decisive step taken by the State Government to inform persons belonging to the LGBTQIA+ community that the Government is making an earnest effort to create inclusive and safe spaces for the community and bring about a protective environment. Most of the complaints are against the police officers who allegedly involve in harassing/abusing persons belonging to the LGBTQIA+ community and also those who work towards the welfare of the community." The Court considering the LGBTQIA+ community have ensured that, NGOs are working towards the welfare, protection and upliftment of the LGBTQIA+ community in India, NCERT manual is customized to be trans-inclusive, safety of transgender person is ensured in prisons.

The Court in its Order has condemned "conversion therapy" deemed it to be "professional misconduct". The Court observed that, "...In the recommendations, the committee had

made it very clear that any attempt/interventions to change the sexual orientation and/or gender identity of a person, which is commonly referred to as “conversion therapy”, should be construed as a professional misconduct on the part of the medical professionals under Chapter VII of the Indian Medical Council, Professional Conduct, Etiquette and Ethics Regulation, 2002. The National Medical Council on the basis of the recommendations made by the expert committee, through their communication dated 15.02.2022, has specifically directed the National Medical Council- Ethics and Medical Registration Board to take action wherever such “conversion therapies” are undertaken by any medical professional. Section 27 of the National Medical Council Act, 2019 specifically provides that the compliance of the Code of Professional and Ethical Conduct shall be done through the State Medical Council wherever the concerned State Medical Council has been conferred with the power to take disciplinary action with respect to professional or ethical misconduct. In view of the same, there shall be a direction to the National Medical Council to immediately circulate the report of the expert committee and the recommendations made to all the State Medical Councils across the country. This will ensure that the State Medical Council, wherever it is conferred with the power of taking disciplinary action for professional misconduct, can take note of the recommendations of the expert committee, and proceed to take action against the concerned medical professional.

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**Senthilkumar Vs. State Rep. by The Sub Inspector of Police, A. Pallipatty  
Police Station, Dharmapuri District [Crl.A.No.790 of 2018]**

**Crl.R.C.No.333 of 2014**

**Date of Judgement: 25.01.2022**

**Contradiction in evidence — Sections 9 and 10, POCSO Act, 2012**

The Hon'ble High Court dealt with a Criminal Appeal challenging the conviction and sentence for an offence under Sections 9 and 10 of the POCSO Act, 2012.

The Court observed that although, the Courts need not look for any corroboration in the cases of sexual offence, when the victim herself has given clear evidence as to the occurrence, such reliance can be made only if the evidence is found to be consistent and cogent and it does not suffer from any major contradictions. While appreciating the evidence of the child witnesses the Court should be more cautious in order to rule out the possibility of tutoring the child.

The Court found that there are patent contradictions between the evidence of the complainant and his daughter, and observed that overlooking such material contradictions and lack of clarity are looked over, and not giving due weight as rebuttal proof, would defeat the ends of justice.

Thus, the Court allowed the Appeal and set aside the conviction and sentence of the trial Court.

**See Also**

- Digamber Vaishnav v. State of Chhattisgarh [2019 (4) SCC 522]

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**Senthilkumar Vs. The State by Assistant Commissioner of Police, Flower Bazaar Range, Chennai [Crl.A.No.710 of 2019]**  
**Date of Judgment: 28.01.2022**

Section 103, Indian Evidence Act, 1872

The Hon'ble High Court decided on a Criminal Appeal concerning a murder arising out of a marital dispute.

The Court observed that the concept of alibi is not an exception envisaged in the IPC or any other law, and that when the Accused has taken the plea of 'alibi', the burden of proof lies on him under Section 103, Indian Evidence Act. Moreover, the plea of alibi has to be taken at the earliest opportunity and it has to be proved by the Accused to the satisfaction of the Court.

The Court found that the deposition of the Appellant was not corroborated by other witnesses/colleagues, and that no witness was examined to prove his alibi, there was no explanation there was simmering tension between the Appellant/Accused and his wife.

The Court found that the present case satisfied all five golden principles of circumstantial evidence held in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra [AIR 1984 SC 1622]*.

The Court held that there is no reason to interfere with the conviction and sentence passed by the Mahila Court, and thus dismissed the Appeal.

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**V. Subramanian & Ors. Vs. State Rep. by Inspector of Police, Chozhatharam Police Station, Srimushnam, Cuddalore District [Crl.A.No.4 of 2019]**

**Date of Judgement: 02.02.2022**

Sections 304(i), 323 and 324 of IPC — Rule 588A, Police Standing Orders

The Hon'ble High Court dealt with a Criminal Appeal challenging the conviction and sentence for offences under Sections 304(i), 323 and 324 of IPC.

The Court referred to the various judicial precedents\* and found that there are material contradictions in the evidence of the prosecution witness, pertaining to the place of occurrence and the weapon allegedly used by the accused. The Court noted that the accused had also sustained injuries and had filed a complaint, which should have been investigated by the investigating officer as per Rule 588A of the Police Standing Orders, but was suppressed by the prosecution and investigation which shows bias.

The Court allowed the Criminal Appeal and set aside the judgement of conviction and sentence passed by the trial Court. Thus, the Appellants/Accused were acquitted. Consequently, the bail bonds executed by them was cancelled and the fine amount paid was directed to be refunded to them.

**\*See Also**

- Babu Ram & Ors. vs. State of Punjab, (2008) 3 SCC 709
- Chandiran vs. State Rep. by the Sub Inspector of Police, Crl.A.No.891 of 2012, dated 12.02.2016
- Kumar vs. State Represented by Inspector of Police (2018) 7 SCC 356
- Arvind Kumar @ Nemichand & Ors. Vs. State of Rajasthan, Crl.A.No.753 of 2017, dated 22 November, 2021

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