TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAWS

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TABLE OF CONTENTS

SUPREME COURT – CIVIL CASES 1

Jage Ram Vs. Ved Kaur & Ors. [Special Leave Petition (Civil) Nos. 723 of 2023] 1

Sukhdev Singh Vs. Sukhbir Kaur [Civil Appeal No. 2536 of 2019] 2

Prakash Chand Sharma Vs. Rambabu Saini & Anr. [SLP (C) No. 3066 of 2024] 4

Sunkari Tirumala Rao & Ors. Vs. Penki Aruna Kumari [Petition(s) for Special Leave to Appeal (C). No. 30442/2019 5

SUPREME COURT – CRIMINAL CASES.....7

Wahid Vs. State Govt. Of NCT of Delhi [Criminal Appeal No. 201 of 2020].....7

Vasant @ Girish Akbarasab Sanavale & Anr. Vs. The State of Karnataka [Criminal Appeal No. 593 of 2022] 10

Raja Khan Vs. State of Chattisgarh [Criminal Appeal No. 70 of 2025] 13

Ramu Appa Mahapatar Vs. The State of Maharashtra [Criminal Appeal No. 608 of 2013] .15

Subhelal @ Sushil Sahu Vs. The State Of Chhattisgarh [Criminal Appeal No. 818 of 2025]17

HIGH COURT – CIVIL CASES 19

Aburvakounder (Died) & Ors. Vs. Balamurugan & Anr. [CRP. No. 385 of 2024 and CMP. No.1822 of 2024] [2025 (1) LW 97] 19

Thirunavukkarasu & Anr. Vs. Gowri (Died) and Ors. [S.A.No. 495 of 2021] [2025 (1) CTC 40] 21

The Keela Eraal Kammavar Arakkattalai Vs. The State Government of Tamil Nadu and Ors. [A.S. No.618 of 2014 & M.P. No.1 of 2014] [2025 (1) CTC 183] 22

Padma Vs. Manickam [S.A. No.1275 of 2012 & M.P. No.1 of 2012] [2025 (1) CTC 363] 24

V.Ekambaram (Died) and Ors. Vs. S.Sekar and Anr. [S.A. No.1041 of 2010 & M.P. No.1 of 2010] [2025(1) MWN(Civil) 75].....26

K.Selvaraj Vs. V.Thangavelu [S.A. No.413 of 2020 & C.M.P. No.8523 of 2020] [2025(1) CTC 467].....28

HIGH COURT – CRIMINAL CASES 30

Anand Sathish Vs. The Superintendent of Police, Dindigul & Ors. [Crl. OP (MD) No.16013 of 2024 and Crl. M.P.(MD) No.10096 of 2024] [2025-1-L.W.(Crl.) 79] 30

G.Venkatanarayanan & Anr. Vs. Assistant Director, Directorate of Enforcement, Chennai [Crl. OP No.9663 of 2024 and Crl. MP No.9102 of 2023] [2025-1-MWN(Cr.) 16 (DB)] 32

State represented by the Public Prosecutor, High Court, Madras Vs. Ponnuvel [Crl. A. No.130 of 2019] [2025-1-MWN(Cr.) 72 (DB)].....34

K. Shiva Kumar Vs. State rep by its Inspector of Police & Anr. [Crl. O.P. No.16673 of 2024 and Crl. M.P. Nos.9775 & 10069 of 2024] [2025 (1) MLJ (Crl.) 145].....36

SUPREME COURT – CIVIL CASES

Jage Ram Vs. Ved Kaur & Ors. [Special Leave Petition (Civil) Nos. 723 of 2023]

Date of Judgment: 28.01.2025

Court fee can be refunded only if case is settled through ADR mechanisms referred through court and not for out of court settlement.

The present Petition has been filed challenging the Judgment of the High Court in dismissing the appeal filed by the Petitioner for refund of court fees paid by him in the Trial Court.

The main issue that arose for consideration was whether court fee can be refunded when the matter is settled out of court. The Hon'ble Apex Court observed that refund of court fees is permissible only if the matter is referred to Arbitration, Conciliation, judicial settlement, including through Lok Adalat or mediation for settlement and the case is decided in terms of such a settlement and not otherwise. However, in the present case, the Court observed that the settlement in terms of which the second appeal was decided by the High Court was not on reference to any of the ADR mechanisms but rather it was an amicable settlement out of court.

Thus, the Hon'ble Apex Court held that that the petitioner was not entitled to refund of the court fees and dismissed the Petition.

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Sukhdev Singh Vs. Sukhbir Kaur [Civil Appeal No. 2536 of 2019]

Date of Judgment: 12.02.2025

Section 24, 25 of Hindu Marriage Act - Spouse whose marriage has been declared void is entitled to seek permanent alimony or maintenance from the other spouse - Pending final disposal of the proceeding under Hindu Marriage Act, court can grant maintenance *pendente lite* if the conditions contemplated u/s 24 of Hindu Marriage Act are satisfied.

Due to conflicting Supreme Court decisions on the question of awarding permanent alimony or maintenance (u/s 24, 25 of the HMA) to a spouse even after a marriage has been declared void under Section 11 of HMA, the matter was referred by a two Judge Bench of the Apex Court to a Larger Bench.

The main question of law that fell for consideration before the larger bench of the Apex Court was (i) whether a spouse of a marriage declared as void by a competent Court under Section 11 of the 1955 Act is entitled to claim permanent alimony and maintenance under Section 25 of the 1955 Act? and (ii) Whether in a petition filed seeking a declaration under Section 11 of the 1955 Act, a spouse is entitled to seek maintenance pendent lite under Section 24 of the 1955 Act?

The Hon'ble Apex Court, after deliberating on Section 5, Section 11, Section 23, Section 24, and Section 25 of the HMA and referring to various judgments of the Apex Court, answered the reference by holding that (i) A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and (ii) Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24

are satisfied. While deciding the prayer for interim relief under Section 24, the Court will have to take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary.

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Prakash Chand Sharma Vs. Rambabu Saini & Anr. [SLP (C) No. 3066 of 2024]

Date of Judgment: 10.02.2025

Motor Accident Cases - Disability Certificate - If tribunal had reason to doubt the medical certificate it has to have the disability re-assessed but cannot go into the details of the determination of disability.

The Appeal has been preferred by the Claimant/Appellant challenging the Judgment of the High Court in modifying the compensation amount awarded by the Motor Accident Claim Tribunal.

The brief facts of the case is that the Appellant met with an accident and sustained injuries. He filed a claim Petition before the Tribunal. The Medical Board issued 100% permanent disability. The Tribunal found that the certificate of the Medical Board was not completely reliable and assessed the disability at 50%, awarding a certain sum as compensation. The Appellant preferred appeal before the Hon'ble High Court. In that appeal, the Hon'ble High Court held that the Tribunal had rightly assessed the disability at 50% and that the Appellant did not prove the medical certificate by not examining the neurosurgeon and treating doctor. However, it enhanced the award amount as compensation. Aggrieved by that, the appellant had filed the present appeal.

The Hon'ble Supreme Court observed that if the Tribunal had reason to doubt the medical certificate it has to have the disability re-assessed and cannot go into the details of the determination of disability. Further, by relying on the decision of the Apex Court in the case of *K.S Murlidhar v. R. Subbulakshmi* [*2024 SCC OnLine SC 3385*] and with regard to age, nature of disability and other relevant factors, the Hon'ble Apex Court allowed the Appeal by enhancing the compensation amount along with interest from the date of the claim petition.

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Sunkari Tirumala Rao & Ors. Vs. Penki Aruna Kumari [Petition(s) for Special Leave to Appeal (C). No. 30442/2019]

Date of Judgment: 17.01.2025

Section 69 of the Partnership Act is mandatory in character- Suit for recovery of money in the capacity of partners of an unregistered partnership firm is not maintainable.

The Petition has been preferred by the plaintiffs challenging the Judgment of the High Court, which allowed the revision filed by the Defendant/Respondent and set aside the order of the Trial Court allowing the suit for recovery of money in respect of an unregistered partnership firm.

The issue that arose for consideration before the Trial Court was whether a partner of an unregistered partnership firm can file a Suit for recovery of money, being hit by Section 69 of the Indian Partnership Act, 1932. The aforesaid issue was decided as a preliminary issue and the Trial Court held that the suit was maintainable. The Trial Court took the view that although there is a partnership deed on record yet as the partnership business had not commenced, the suit could be said to be maintainable. Aggrieved by it, the Defendant had filed a revision Petition before the High Court and the same was allowed. Hence, the present Appeal.

The Apex Court observed that the suit had not been instituted by or on behalf of the firm against any third persons so as to fall under the ambit of Section 69(2). The petitioners have also not filed the instant suit for enforcing any statutory right conferred under any other law or a common law right so as to exempt the application of Section 69. Hence, the rigours of Section 69(1) would apply on such a suit and the partnership firm being unregistered would prevent the petitioners from filing a bare suit for recovery of money from the Respondent. Further, it would have instead been appropriate for the petitioner/Plaintiff to have preferred a suit for dissolution of the partnership firm and rendition of accounts, especially considering that the factum of non-registration of the partnership firm would not have acted as bar in a suit for

dissolution in light of the exception carved out under Section 69(3). The defence that the partnership business had not yet commenced and thus, such a suit for dissolution could not have been preferred, would not be of any avail to the petitioners, particularly for overcoming the jurisdictional bar under Section 69(1).

Thus, the Apex Court held that the Hon'ble High Court was right in taking the view that a suit of such nature could not be said to be maintainable in the absence of the registration of the partnership firm and therefore, dismissed the Appeal.

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SUPREME COURT – CRIMINAL CASES

Wahid Vs. State Govt. Of NCT of Delhi [Criminal Appeal No. 201 of 2020]

Date of Judgment: 04.02.2025

Meticulous Examination Needed in Cases Where FIR Was Against Unknown Persons & Accused Are Not Known To Witnesses - when the manner in which the accused persons were arrested and recovery effected appears doubtful Court should proceed cautiously with other evidence and determine whether all other circumstances were proved beyond reasonable doubt- Dock Identification by few eye witnesses not reliable

The present appeal has been filed by the accused, challenging the judgment of the High Court in convicting them for various offences under the IPC and the Arms Act.

The appellants, along with others, were alleged to have boarded a bus in which the complainant was traveling with four other passengers. They were accused of threatening the passengers with knives, a screwdriver, and a country-made pistol before robbing them. The prosecution claimed that the investigating officer apprehended the appellants near a bus depot based on information provided by the complainant. At the time of arrest, knives, a country-made pistol, cash, and mobile phones were allegedly recovered from them.

The appellants argued that they were falsely implicated, asserting that their arrest was based on the unreliable testimony of a witness who claimed to have randomly spotted them at a bus depot two days after the crime cannot be sustained. They further contended that since they were unknown to the witnesses prior to the alleged crime, the prosecution's failure to conduct a Test Identification Parade (TIP) to confirm their identification cast doubt on the case.

The trial court acquitted the accused. However, upon appeal by the State, the High Court convicted them. Following this, the accused filed the present appeal

The Apex Court found the eyewitness identification unreliable. It observed that the robbery occurred at night, and although seven eyewitnesses were examined, only three identified the accused in court. Three other eyewitnesses explicitly stated that the accused were not the robbers, while a fourth stated that it was too dark to see clearly. The Court emphasized the weakness of dock identification, particularly since one witness identified the accused 16 months after the incident, and two others did so nearly four years later, without any prior Test Identification Parade.

Further, relying on *Manoj and Others v. State of Madhya Pradesh* [(2023) 2 SCC 353], the Apex Court stated that when the accused are unknown and unnamed in the FIR, and the prosecution's version of their arrest is disbelieved, courts must carefully assess the remaining evidence to determine whether the case is proved beyond reasonable doubt.

The Apex Court also questioned the appellants' night-time arrest, which was based solely on the lead witness's claim that he recognized them near the bus depot two days after the incident, still carrying similar weapons. The Court found the timing of the arrest suspicious, particularly considering the improbability of the lead witness—a robbery victim—being out at 10 PM in winter, supposedly on his way to the police station to deliver a mobile phone purchase receipt when he "spotted" the accused.

The Apex Court stated that in cases where the FIR is lodged against unknown persons, and the accused were not previously known to the witnesses, the material collected during the investigation plays a crucial role in determining the credibility of the case. Courts must meticulously examine:

(a) how the investigating agency identified the accused,
(b) the manner in which they were arrested, and
(c) how they were identified.

Moreover, the Apex Court noted the lack of corroborative evidence regarding the recovery of looted items from the accused. Concluding that the appellants were

entitled to the benefit of doubt, the Hon'ble Supreme Court allowed the appeal and acquitted them.

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Vasant @ Girish Akbarasab Sanavale & Anr. Vs. The State of Karnataka [Criminal Appeal No. 593 of 2022]

Date of Judgment: 11.02.2025

S. 34 IPC - Mere Presence at Crime Scene As Spectator Doesn't Establish Common Intention Unless Active Participation Proven

Section 34 and 149 of IPC - Criminal liability u/s 149 IPC is determined not by the intention of the various individual members constituting it but by the common object of the assembly - Intention to be common, it should be attributable to every member of the group and that the same intention jointly existed in the mind of every individual member and that every member shared it along with others – To attract section 34 IPC every individual offender ought to have associated with the criminal act both physically and mentally - If a person is present on the scene for the purpose of participating in the offence, he would be guilty as a participator - Presence on the spot for the purpose of facilitating the offence amounts to actual participation in the criminal act - He is present there merely as a spectator, he would not be guilty - Twin aspects of section 34 IPC i.e. he must be a sharer of 'criminal act' and also the common intention.

The present appeal has been preferred by the husband and mother-in-law/accused, challenging the judgment of the High Court, which set aside the trial court's judgment acquitting both the accused under various provisions of the IPC and the Dowry Prohibition Act, 1961.

The case of the prosecution is that the deceased who was the wife of the Appellant was harassed for dowry and in connection with the domestic house hold work. On the date of the incident at around 8.00 p.m. while the deceased was at her matrimonial home, her mother-in-law i.e. the appellant no.2 herein is alleged to have poured kerosene on her body and set her on fire. The deceased latter succumbed to the burn injuries. The Investigating officer arrested both the mother-in-law and the husband

and booked them under various provisions of IPC and Dowry Prohibition Act, 1961. The High Court had convicted the husband on the ground that he was present at the crime scene and shared common intention with his mother.

The Court observed that it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others. Further, by placing reliance in [*Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116*], the Apex Court observed that if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre-supposes prior concert therefore there must be meeting of mind.

Moreover, the Court had stated that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects. A person present on the scene might or might not be guilty by the application of Section 34, IPC. If he is present on the scene for the purpose of participating in the offence, he would certainly be guilty as a participator in the offence. On the other hand, if he is present there merely as a spectator, he would not be guilty. The Court stated that every person charged with the aid of Section 34, must in some form or the other participate in the offence in order to make him liable thereunder. Because the husband was merely present at the crime scene and didn't commit an overt act to establish the common intention, the Court held that the husband cannot be held guilty as the prosecution failed to bring direct evidence proving that the husband actively participated or shared his mother's intention.

Finding that the husband (appellant no.1) did not participate in the offence and finding no cogent and reliable evidence to press section 34 of IPC against him, the Hon'ble Apex Court held that he was not liable and not guilty of the offence of murder with the aid of section 34 of IPC. However, the Hon'ble Apex Court confirmed the conviction of the 2nd appellant (i.e. the mother in law). Thus, the appeal was partly allowed.

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Raja Khan Vs. State of Chattisgarh [Criminal Appeal No. 70 of 2025]

Date of Judgment: 07.02.2025

Evidence Act, 1872 – Section 27 – Where the case rests entirely on circumstantial evidence, the chain of evidence must be so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the accused within all human probability

The present Appeal has been filed by the accused challenging the Judgment of the High Court in dismissing the Appeal and confirming the conviction and sentence imposed on him by the Trial Court. The Appellant was convicted under section 302 and 201 of IPC.

The brief facts of the case is that two days after the deceased victim was reported missing, his body was found floating in a quarry pond. The post-mortem report concluded that the death was homicidal in nature. The police investigation pointed to the Appellant as the primary suspect as there was a financial dispute between him and the deceased. The prosecution alleged that the Appellant, along with a co-accused (who was later acquitted), lured the deceased to the crime scene, assaulted him with an iron pipe and battle axe (Gandasa), and disposed of his body in the quarry to destroy evidence.

The Court observed that the entire case of the prosecution rested on circumstantial evidence, as there was neither any eye-witness nor any judicially admissible confession. The Court pointed out that the prosecution had claimed that weapons and stolen gold chains were recovered based on the Appellant's disclosure. However, witness testimonies suggested that these items were found by the police without the Appellant's involvement, rendering the evidence unreliable. Further, the Court observed that the Courts below were not justified in disregarding the glaring inconsistencies with respect to the recoveries made by the police pursuant to the alleged disclosure made by the Appellant-accused. Consequently, the manner of

recovery and preparation of seizure memos raises grave doubts about the version of disclosure and recovery put forth by the prosecution. Also, the testimony of Prosecution Witness was not corroborated by the testimonies of other Prosecution Witness, thus there was doubt with respect to the 'last seen' circumstance too. Further, the Court observed that a bare perusal of the testimonies of the said witnesses raises serious doubts regarding the version of the prosecution with respect to the alleged disclosure made by the Appellant accused herein and the recoveries pursuant to such alleged disclosure.

Hence, the prosecution failed to prove the chain of circumstances leading to the guilt of the accused, beyond reasonable doubt. Thus, the appellant was given benefit of doubt and was acquitted by the Apex Court.

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Ramu Appa Mahapatar Vs. The State of Maharashtra [Criminal Appeal No. 608 of 2013]

Date of Judgment: 04.02.2025

Extra-judicial confession - Weak piece of circumstantial evidence - Testimony of the witnesses clearly shows that no credence could be given to the theory of extra-judicial confession - Such confession does not inspire any confidence.

The Appeal has been preferred by the Accused challenging the Judgment of the High Court in confirming the conviction and sentence imposed on him by the Trial Court.

The appellant was convicted for the murder of his partner. As per the prosecution's case, the appellant lived with the deceased in a live-in relationship. A quarrel took place between them and he assaulted her, leading to her death. Subsequently, the appellant informed about this incident to his landlord and the deceased's relatives. The Trial Court convicted him based on circumstantial evidence including the extra-judicial confession made by the appellant. The High Court affirmed this conviction; thus, the present appeal.

The issue that arose for consideration was whether reliance can be placed on extra judicial confession.

The Court observed that it is a well settled law that circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. The chain must be complete and each fact forming part of the chain must be proved. In a case which rests squarely on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. All these circumstances should be complete and there should be no gap left in the chain of evidence. While there is no doubt that conviction can be based solely on

circumstantial evidence great care must be taken in evaluating circumstantial evidence. If the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted.

Citing *State of Rajasthan Vs. Raja Ram [(2003) 8 SCC 180]*, the Apex Court stressed that the confession must made by the accused voluntarily and in a fit state of mind. Apart from this, after placing its reliance on *Sahadevan Vs. State of Tamil Nadu [(2012) 6 SCC 403]*, the Court reiterated that extra-judicial confession is a weak piece of evidence. Further, the courts must ensure that such confession inspires confidence and is corroborated by other evidence. Building on this, the Court analysed the evidence placed on record. After examining the witnesses' testimonies, it noted that before the Trial Court, the deceased's brother had stated that he found the accused to be in a confused state of mind. Thus, the Court concluded that the accused was not in a fit state of mind. The Court also noted several material omissions in the witnesses' statements before the police and the one deposed before the Court.

Thus, while granting the benefit of the doubt to the accused, the Court held that extrajudicial confession is one of the other instances of circumstantial evidence, including the accused's guilt after the incident, recovery of evidence, and others. The Court reiterated that in cases where reliance is placed solely on circumstantial evidence, a conviction can only occur when all circumstances point towards the accused's guilt and thus, the Court allowed the Appeal.

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Subhelal @ Sushil Sahu Vs. The State Of Chhattisgarh [Criminal Appeal No. 818 of 2025]

Date of Judgment: 18.02.2025

S.437(6) CrPC /S.480 (6) BNSS - Be Liberal While Deciding Bail When Magistrate Trial Hasn't Concluded In 60 Days

In an appeal arising from the High Court relating to cryptocurrency, an economic offence denying bail to the appellant/accused for criminal offences including cheating.

The Apex Court observed the following factors relevant for considering Section 437(6) application:

1. Whether the reasons for being unable to conclude trial within sixty days from the first date fixed of taking evidence, are attributable to the accused?

2. Whether there are any chances of the accused tampering with evidence or causing prejudice to the case of the prosecution in any other manner?

3. Whether there are any chances of abscondence of the accused on being bailed out?

4. Whether accused was not in custody during the whole of the said period?

The Court observed that if the answer to any one of the above referred fact situations or similar fact situations is in affirmative then that would work as a fetter on the right that accrues to the accused under first part of sub-section (6) of Section 437 of the Code. The right accrues to him only if he is in custody during the whole of the said period as can be seen from the language employed in sub-section (6) of Section 437 of the Code. Apart from this, other things like the prescribed offence, time that the trial is like to take, volume of evidence, number of witnesses, workload on the Court and the number of accused being tried with the accused should also be taken into account. The Court also clarified that these facts are not exhaustive in nature.

Further, the Court observed that an applications under Section 437 (6) have to be given a liberal approach and it would be a sound and judicious exercise of discretion in favour of the accused by the Court concerned, more particularly where there is no chance of tampering of evidence e.g. where the case depends on documentary evidence which is already collected; where there is no fault on part of the accused in causing of delay; where there are no chances of any abscondence by the accused; where there is little scope for conclusion of trial in near future; where the period for which accused has been in jail is substantial in comparison to the sentence prescribed for the offence for which he is tried. Normal parameters for deciding bail application would also be relevant while deciding application under Section 437(6) of the Code, but not with that rigour as they might have been at the time of application for regular bail.

Moreover, in the present case, the Apex Court observed that upto date only one witness has been examined and in toto the prosecution is to examine 189 witnesses. Further, the accused has been in custody since December 2023.

Thus, the Apex Court while allowing the appeal, held that the courts should adopt a liberal approach while dealing with applications under Section 437(6) of CrPC in cases where there is no chance of evidence tampering, absconding, or accused delaying the trial.

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HIGH COURT – CIVIL CASES

Aburvakounder (Died) & Ors. Vs. Balamurugan & Anr. [CRP. No. 385 of 2024 and CMP. No.1822 of 2024] [2025 (1) LW 97]

Date of Judgment: 03.01.2025

Civil Procedure Code, Section 152 – Amendment of decree, Order 20 Rule 18, decree in partition suit. Revision against order dismissing an application filed to amend preliminary decree. Final decree passed before the judgment in Vineeta Sharma vs. Rakesh Sharma (2020 5 LW 300). Petitioners cannot get the benefits of the judgment, as the final decree has been drawn up, signed and engrossed in stamp paper of requisite value, the suit will come to an end.

The Civil Revision Petition has been filed by the Defendants/Petitioners challenging the order of the Trial Court in rejecting the applications filed under section 152 of CPC to amend the preliminary Decree.

The facts of the case is that the first plaintiff was a minor represented by his mother, second plaintiff filed a suit for partition claiming ½ share in the suit properties stating the suit properties are ancestral properties of one Rama Kounder, S/o.Perumal Kounder. The said Rama Kounder got four sons, viz., Srinivasan, Aburvakounder, Arumugam and Balakrishna. The plaintiffs have claimed oral partition in the year 1987 in which the suit properties have been allotted to the first petitioner. The respondents/Plaintiffs have also stated that the properties items 1 to 9 had fallen to the share of the first petitioner. Therefore, the 1st plaintiff as a co-parcener claimed ½ share and first defendant got ½ share obtained preliminary decree for partition of ½ share in the suit properties. Based on the preliminary decree, the respondents have filed application for passing of final decree. Accordingly, final decree was passed. Thereafter, the plaintiffs have filed a petition for delivery of the properties.

According to the revision petitioners, plaintiffs are not entitled to ½ share in the suit properties as per the judgment of the Hon'ble Supreme Court in the case of Vineeta

Sharma vs. Rakesh Sharma and others, wherein, the daughters are recognised as co-parceners along with sons and the said law is retrospective viz., from 1956 when the Hindu Succession Act came into force. Therefore, as per the above judgment, the petitioners are equally entitled to a share along with their brother/first plaintiff. Therefore, the first plaintiff is entitled to only ¼ share in the suit properties, as the defendants 2 to 4 are each entitled to ¼ share. Thus, the application was filed seeking to amend the preliminary decree to hold that the first plaintiff/first respondent is entitled to 1/4th share in the suit properties and the defendants 2 to 4/petitioners 2 to 4 are jointly entitled to 1/4th share. The said application was dismissed and challenging the said order, the present revision petition.

The Hon'ble High Court observed that the question of delivery of properties is a matter to be considered at the stage of execution and is not a matter falling for contemplation in the final decree stage. The same view was taken by Blakewell, J in the case of *Thiruvengadathamiah vs. Mungiah, [ILR (1912) 35 Mad 26]* which was upheld by the Supreme Court in *Renu Devi vs Mahendra Singh [(2003) 10 SCC 200]*

Further, the Hon'ble High Court stated that when a final decree has been drawn up, signed and engrossed in stamp paper of requisite value, the suit will come to an end for all practical purpose. Therefore, once the decree has been passed by fixing metes and bounds and the same is engrossed on the stamp paper on the requisite value, the petitioners cannot seek enlargement of shares on the ground of change of law and therefore, the Court dismissed the revision Petition.

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Thirunavukkarasu & Anr. Vs. Gowri (Died) and Ors. [S.A.No. 495 of 2021] [2025 (1) CTC 40]

Date of Judgment: 28.11.2024

Evidence Act, 1872 (1 of 1872), Section 101: Burden of Proof in Suit for bare Injunction. Plaintiff must *prima facie* establish Title to or possession of the Suit property to obtain Injunction and cannot pick loopholes in Defendant's case. No evidence to establish Plaintiff's Title, possession or enjoyment of Suit property. When the Defendant denies Plaintiff's Titles, Plaintiff to amend Plaint to include prayer for declaration of Title, without which mere Suit for bare Injunction would not survive.

A Suit was filed for bare Injunction restraining the Defendants from entering the Suit property. The Defendants resisted the Suit stating that they have title over the property. However, the Trial Court decreed the Suit on the basis that the Defendants had failed to prove its title over the property. On Appeal, the First Appellate Court also upheld the same. Hence, the present Second Appeal has been filed by the Defendants.

The Hon'ble High Court observed that both the Trial Court as well as the First Appellate Court wrongly casted the burden of proof upon the Defendants to prove their title and possession of the Suit property. Further, there was not even a single document to show that the Plaintiff was in possession and enjoyment of the Suit property. Also, there was no clinching evidence to conclude that the Plaintiff was the Sole Legal Heir of one (late) Mrs. Saradambal who was the owner of the suit property.

Further, in view of law laid down in *Anathula Sudhakar vs. P. Buchi Reddy,* reported in *[(2008) 4 SCC 594]*, and the Defendants having denied the title of the Plaintiff vide Ex.B1 and Ex.B2 (Certified copies of Sale Deeds), the Plaintiff ought to have amended the Plaint so as to include the prayer for declaration of his Title as well. The Plaintiff failed to do so. Therefore, in these circumstances, the Court held that the Suit for bare Injunction would not survive and thus, allowed the second Appeal.

The Keela Eraal Kammavar Arakkattalai Vs. The State Government of Tamil Nadu and Ors. [A.S. No.618 of 2014 & M.P. No.1 of 2014] [2025 (1) CTC 183]

Date of Judgment: 10.11.2022

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 8; Title to property earmarked for public property in Layout. Plaintiff produced documents to substantiate Title. The Revenue records show no rival claim. It is Settled law that the local body does not become the owner of a property, which is reserved for public purpose in a lay out. The Trial Court misled by approved Layout Plan. Appellant not impleading promoter of Layout. Though an irregularity, defendants did not raise objection. Court not inclined to dismiss the Suit.

The Appellant/Plaintiff had filed a Suit for Declaration of Title of Suit property along with consequential Injunction restraining Respondents/Defendants from interfering in their peaceful possession. The Municipality / 3rd Defendant contested the Suit stating that if a property is reserved for Public purpose in any approved Layout, the property belongs to the Local body. The Trial Court dismissed the Suit. Against the dismissal, the present Appeal Suit has been filed by the Plaintiff.

The Hon'ble High Court by placing reliance on the Judgment of the Apex Court in *Chet Ram Vashist (dead) vs. Municipal Corporation of Delhi* reported in [*AIR 1995 SC 430*] observed that if the promoter shows a particular piece of land in a lay out for the public purpose, he holds that property only as a trustee for the benefit of the owners of the plots. However, to apply the said principle, it is to be established that the land belongs to the promoter at the time when the lay out was formed. The third defendant claimed title only through the lay out formed by the promoter, but it is unable to produce any record to show that the promoter had title and the property lawfully came under the control of the third defendant/local body. Further, it is also settled law that the local body does not become the owner of a property, which is reserved for public purpose in a lay out. The position of the local body/third defendant in this

case cannot be better than the promoter himself who had no title. Even assuming that the promoter executed a gift deed does not alter the situation. In the present case, no gift deed was executed by the promoter of the lay out in favour of the local body.

Hence, the Court allowed the First Appeal, holding that the appellant/plaintiff has established its title and lawful ownership. Consequently, the order of the third defendant canceling the planning permission on the grounds of title cannot survive.

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Padma Vs. Manickam [S.A. No.1275 of 2012 & M.P. No.1 of 2012] [2025 (1) CTC 363]

Date of Judgment: 19.10.2024

Easements Act, 1882 (5 of 1882), Sections 9 and 13: Defendant cannot deny existing easement; once easement created, Servient Owner cannot withdraw easement without consent of Dominant Owner.

The Second appeal has been filed by the Plaintiff challenging the decree of the Trial Court and the lower appellate court for rejecting the suit for relief of declaration and injunction. The Plaintiff obtained an Easementary right to use a Cart Track in terms of a Sale Deed entered into with her Vendor. The 1st Defendant purchased the land containing the Cart Track and obstructed Plaintiff from accessing the Cart Track. The Plaintiff filed a Suit for Declaration declaring his right to use the Cart Tract. The Trial Court and First Appellate Court dismissed the Suit on the basis that Plaintiff is claiming Easement by Necessity and has not adduced evidence in support of the same. Aggrieved by the same, the Second Appeal has been filed by the Plaintiff.

The Hon'ble High Court observed that both the Courts ought to have moulded the relief, since there is categorical Easement by Grant in Sale Deed and there was no denial of the fact that the Vendors of the First Defendant even prior to selling his land in favour of the First Defendant has granted right of using the customary Cart Track, which is running in the then unsold portion. The First Advocate Commissioner Report has clearly indicated that the existing Cart Track was damaged by the Defendants with a view to prevent the Plaintiff from using the same. It is also an admitted case that the Contempt proceedings were initiated against him and there is a categorical evidence that on the Western corner of the First Defendant's land, the Cart Track is running on the North South direction at the end of Plaintiff's land. That being so, both the Courts have failed to consider this material evidence regarding destruction of the existing customary Cart Track.

Further, the Hon'ble High Court observed that the Lower Appellate Court had rejected the Commissioner Report No.2, based on the fact that, it contains measurements of Cart Track. However, the Court has not rejected the Report of the Advocate Commissioner regarding the existence of Cart Track. In view of the discussions made above, the Plaintiff was entitled for declaration that she was entitled to use the Cart Track as stated in Commissioner Report No.1 and the Report shall form part of the Decree and Judgment. Accordingly, the Substantial Questions of Law were answered in favour of the Plaintiff.

Thus, the Hon'ble High Court partly allowed the second Appeal. The relief claimed by the Plaintiff was granted to the extent that the Plaintiff was entitled for declaration that she was entitled to use the Cart Track as described in the Advocate Commissioner's Report and Rough Sketch. Consequently, the Plaintiff was also entitled for Permanent Injunction as prayed in the suit for the Suit Cart Track shown in the Advocate Commissioners' Report.

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V.Ekambaram (Died) and Ors. Vs. S.Sekar and Anr. [S.A. No.1041 of 2010 & M.P. No.1 of 2010] [2025(1) MWN(Civil) 75]

Date of Judgment: 13.02.2024

Code of Civil Procedure, 1908 (5 of 1908), Section 96 r/w Order 41, Rule 31: A valuable right available to parties. Lower Appellate Court must independently analyse documents and evidence on record by following procedure under Order 41, Rule 31.

The second appeal has been filed as against the judgment and decree of the Trial Court. The Plaintiff was the absolute owner of the vacant land and building. Suit property originally belonged to the Plaintiff's brother which was registered as Sale Deed by his brother to the Plaintiff. The Defendants are neighbours and tried to trespass into the suit property. Therefore, the plaintiff had filed a Suit for bare Injunction.

The Trial Court found that the Plaintiff has not proved his possession over the disputed area, but whereas the Defendants have filed documents and established that they have better title to the disputed portion and are in possession of the property. The Lower Appellate Court, after reappraising the evidences and documents, by Judgment and Decree dismissed the Appeal confirming the Decree of the Trial Court. Aggrieved by the same, the Plaintiff had filed the Second Appeal.

The Hon'ble High Court by placing reliance of the Judgment of the Apex Court in ***Somakka (Dead) by Legal Representatives vs K.P. Basavaraj (Dead) by Legal Representatives***, [*(2022) 8 SCC 261*] observed that when the requirements as contemplated under Order 41, Rule 31, C.P.C., is not followed and the Lower Appellate Court has passed the Judgment in contravention to the procedures, the Judgment and Decree passed by the Lower Appellate Court are not in consonance with procedure set out under Order 41, Rule C.P.C., the Judgment and Decree of the Lower Appellate Court was perverse and was liable to be interfered.

The Hon'ble High Court by allowing the second appeal held that the Judgment and Decree of the Lower Appellate Court were set aside and the matter was remanded back to the Lower Appellate Court to decide the First Appeal afresh by following the procedure as set out under Order 41, Rule 31, C.P.C. Since the Suit is of the year 1999 and almost the parties have been litigating in Court for the past 25 years and since the Appeal was remanded to the Lower Appellate Court, in the interest of justice, the Lower Appellate Court was directed to dispose of the Appeal within the time stipulated.

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K.Selvaraj Vs. V.Thangavelu [S.A. No.413 of 2020 & C.M.P. No.8523 of 2020] [2025(1) CTC 467]

Date of Judgment: 18.10.2024

Negotiable Instruments Act, 1881 (26 of 1881), Section 118: When neither execution of Promissory Note nor passing of consideration proved by Plaintiff, presumption under Section 118 cannot be invoked.

The Second appeal was filed by the defendant against the judgment of the Trial Court. The Plaintiff alleged that the Defendant had borrowed a sum of Rs.1,50,000/- from the Plaintiff by executing a Promissory Note, and that despite repeated demands, the Defendant failed to repay the Principal and the Interest. It is the case of the Defendant that he never borrowed such amount from the Plaintiff as alleged by him, and that the alleged Promissory Note is a forged one. The Plaintiff, thus, filed a Suit for Recovery of money along with Interest. The Trial Court decreed the Suit by holding that the Defendant admitted the signature on the alleged Promissory Note and hence, the onus is upon him to prove his defence. However, he failed to do so. Aggrieved with the Judgment and Decree of the Trial Court, the Defendant preferred an Appeal before the First Appellate Court. The First Appellate Court also concurred with the aforesaid finding of the Trial Court and dismissed the Appeal. Hence, the Second Appeal has been filed by the Defendants.

The Hon'ble High Court had observed that the plaintiff has not proved the execution of Ex-A.1- Promissory Note and pursuant passing of consideration. The defendant's admission that the signature in Ex-A.1 is his, has to be seen along with his defense. When neither the execution of the Promissory Note nor the passing of consideration has been proved, given the defence taken by the defendant, the mere fact that the defendant admitted his signature in Ex-A.1 was not sufficient to invoke the presumption under Section 118 of the Negotiable Instruments Act, 1881.The Hon'ble High Court by allowing the second appeal, held that both the Trial Court as well as the First Appellate Court had failed to consider the relationship between the plaintiff

and the defendant, other facts and circumstances of the case as well as the evidence available on record in the right perspective.

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HIGH COURT – CRIMINAL CASES

Anand Sathish Vs. The Superintendent of Police, Dindigul & Ors. [Crl. OP (MD) No.16013 of 2024 and Crl. M.P.(MD) No.10096 of 2024] [2025-1-L.W.(Crl.) 79]

Date of Judgment: 06.11.2024

Bharatiya Nagarik Suraksha Sanhita (BNSS), Sections 173(1), 528, Concept of zero FIR, Jurisdiction, transfer of investigation – Zero FIR transferred.

The Criminal Original Petition has been filed by the accused under Section 528 BNSS, to withdraw the investigation pending on the file of third respondent police (Inspector of Police, Dindigul) and entrust the same to the fourth respondent (Inspector of Police CCB-Madurai) with a direction to investigate the matter in accordance with law and consequently to direct the second respondent (Commissioner of Police, Madurai) to monitor the same.

The brief facts of the case is that the cause of action falls under the jurisdiction of the fourth respondent, that all the companies mentioned in the FIR are having registered office at Madurai, fifth respondent is a resident of Madurai, but chose to prefer a complaint before the DCB, Dindigul / the third respondent. The Fifth respondent has not shown any material to infer that the third respondent is having territorial jurisdiction to register the case and proceed with the investigation and the Fourth respondent alone is having jurisdiction to conduct the investigation.

The Hon'ble High Court has observed that Zero FIR has been given a statutory basis under BNSS, 2023 by including the same in Section 173(1) which pertains to the registration of FIR in cognizable cases. Considering the scope of Zero FIR, it is clear that an Officer in charge of a Police Station, irrespective of his jurisdictional competence, shall record every information received orally or in writing, relating to the commission of a cognizable offence and that the power of an Officer in charge of a Police Station to investigate into a cognizable offence is coextensive with that of the

Court having jurisdiction over the local area within the limits of such Station, having power to enquire into or try that offence.

The Hon'ble High Court also noted that the power of the Court to interfere with an investigation is limited. Once an investigation has commenced, the Court cannot question it solely on the ground that the police officer lacked territorial jurisdiction, provided that the officer initiated the investigation in good faith without realizing the lack of territorial jurisdiction. In the present case, the petitioner specifically alleged that the fifth respondent had deliberately lodged a false complaint with the third respondent and that there was collusion between the third respondent and the fifth respondent. The petitioner further argued that this collusion led to the arrest of two accused persons on the very same day the complaint was filed.

In such a scenario, the Court held that the third respondent could not be allowed to continue with the investigation. Consequently, the third respondent was directed to treat the FIR registered in the present case as a Zero FIR and transfer it to the jurisdictional police, i.e., the fourth respondent. The fourth respondent was then directed to register the case, proceed with the investigation, and file the final report within the time stipulated by the Court. Thus, the Hon'ble High Court allowed the Criminal Original Petition.

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G.Venkatanarayanan & Anr. Vs. Assistant Director, Directorate of Enforcement, Chennai [Crl. OP No.9663 of 2024 and Crl. MP No.9102 of 2023] [2025-1-MWN(Cr.) 16 (DB)]

Date of Judgment: 27.11.2024

Prevention of Money Laundering Act, 2002 (15 of 2003), Section 44(1)(d) : Trial of offence under Act. Complaint filed under Section 45 cannot be equated with Final Report in Predicate offence. the Prevention of Money Laundering Act, as a distinct code with its own procedures under Sections 65 and 71, prevails over general penal laws.

The Criminal Original Petition has been filed by the petitioners, A1 and A2, under Section 482 of Cr.P.C to set aside a trial court order that dismissed their petition to postpone the commencement of a PMLA trial (Spl. CC No. 2 of 2023) until the predicate offence case (CC No. 22 of 2014) reaches finality.

The brief facts of the case are that the petitioners/accused, A1 and A2, are involved in both the predicate offence and the Prevention of Money Laundering Act, 2002 (PMLA) cases. The proceedings before the adjudicating authority were closed in view of the orders passed by the High Court, based on the undertaking given by the accused that they would not alienate the properties provisionally attached under Section 5(1) of the PMLA. At that point, the petitioners filed a petition under Section 309 of Cr.P.C to stay all further proceedings in the PMLA case. The trial court considered the issues raised between the parties and dismissed the petition, resulting in the filing of the present Criminal Original Petition.

The petitioners contended that the PMLA case should be put on hold until the predicate offense is disposed of, referencing the Supreme Court's ruling in *Vijay Madanlal Choudhry's* case, which states that discharge or acquittal in the predicate offence can be grounds for exoneration from PMLA proceedings. On the other hand, the respondent contended that the offence under the PMLA is independent of the investigation and trial of the predicate offense. The respondent further submitted that

the commission of the predicate offense is merely a trigger for investigation under PMLA, since it is a distinct offence.

The Hon'ble High Court observed that the Prevention of Money Laundering Act is a code in itself, and the procedures contemplated under it are distinct and different from those under general penal laws. Sections 65 and 71 of the PMLA clarify this position. Since the procedures under the PMLA are distinct from those of general penal laws, the special enactment will prevail over the general law. The court noted that the ground raised that the PMLA trial should be kept in abeyance until the completion of the trial of the predicate offence is untenable and without merit. The seriousness of economic offences and their implications at the national and international levels were considered under the special enactments, namely, the PMLA. The court while dismissing the Criminal Original Petition, held that the offences of money laundering are to be dealt with under the provisions of PMLA in *stricto sensu*. Any attempt to increase the longevity of PMLA trial at no circumstances be encouraged by the Courts. The trial must go on, as it is clarified in explanation (i) to Section 44(1) of PMLA.

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State represented by the Public Prosecutor, High Court, Madras Vs. Ponnuvel [Crl. A. No.130 of 2019] [2025-1-MWN(Cr.) 72 (DB)]

Date of Judgment: 17.10.2024

The Code of Criminal Procedure, 1973 (2 of 1974), Sections 378 & 386: Appeal Against Acquittal. The High Court possesses full authority to review the entire body of evidence. There exists a fine distinction between an appeal against conviction and an appeal against acquittal. In an appeal against acquittal, the presumption of innocence is reaffirmed. Unless there is a compelling reason or an error apparent on the face of the record, no interference is warranted.

The Criminal Appeal has been filed by the State under Section 378 of Cr.P.C against the Order of Acquittal passed by the Trial Court.

A longstanding property dispute existed between the parties. The accused allegedly attacked both the deceased and his wife (PW2). PW2, who sustained injuries, was treated at the hospital; however, the Accident Register was not produced. PW1, the son of the deceased, admittedly did not react at all to the gruesome incident at the scene. The Trial Court raised reasonable doubt regarding PW1's presence at the scene. The conduct of PWs 1 and 2 was deemed unnatural, as they left the deceased unattended despite him remaining alive for two hours after the alleged attack. Additionally, there was a discrepancy between the testimonies of PWs 1 and 2 regarding the mode of conveyance used to travel to the hospital. The Trial Court's view was found to be plausible and reasonable. The mere omission of the scene of occurrence in the rough sketch did not weaken the case, considering the other reasonable doubts raised by the Trial Court. A reasonable doubt is not a minor inconsistency but a serious concern that renders the prosecution's case highly questionable.

The Hon'ble High Court observed that although the non-mention of the deceased's body at the scene of occurrence and the absence of the cattle shed in the rough sketch might appear to be perverse findings, they did not undermine the case in light

of the other substantial doubts raised by the Trial Court. It is pertinent to note that a reasonable doubt must be a significant concern rather than a minor inconsistency. Such a doubt is one that renders the possibility of guilt highly uncertain. The Court referred to the judgment of the Hon'ble Supreme Court in Kalinga Alias Kushal v. State of Karnataka, reported in [(2024) 4 SCC 735]. In the present case, the doubts raised by the Trial Court fell within the parameters of reasonable doubt. Thus, the Trial Court's findings were deemed plausible. Furthermore, the Court reiterated that, in line with settled legal principles, even if an alternative view was possible, it could not serve as a ground to interfere with the plausible findings of the Trial Court. Since views favoring the accused must be preferred, the Court dismissed the appeal.

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K. Shiva Kumar Vs. State rep by its Inspector of Police & Anr. [Crl. O.P. No.16673 of 2024 and Crl. M.P. Nos.9775 & 10069 of 2024] [2025 (1) MLJ (Crl.) 145]

Date of Judgment: 06.01.2025

The Criminal Original Petition has been filed by the accused under Section 482 of the Cr.P.C. (now Section 528 of the BNSS) seeking to call for records and quash the FIR registered by the first respondent police.

The petitioner previously served as the Commissioner of Pallavaram Municipality. Based on a complaint filed by one Mr. Anbalagan, now deceased, the first respondent initiated a preliminary inquiry and subsequently obtained approval as mandated under Section 17A of the Prevention of Corruption Act. Following this, an FIR was registered against five individuals, including the petitioner, for offenses under Sections 120-B, 406, and 409 of the IPC, as well as Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988. The FIR contained specific allegations against the petitioner along with other accused individuals.

The Hon'ble High Court noted that when an FIR involving offenses under Section 17A of the Prevention of Corruption Act is challenged, the Court must assess the quality of the application of mind involved in granting approval. The approval process under Section 17A serves as a statutory safeguard to protect honest public servants from vexatious and frivolous complaints arising from bona fide decisions they have taken.

After reviewing various judgments of the Hon'ble Supreme Court and High Courts, the Court summarized the legal position as follows:

a) Approval under Section 17A is mandatory, and the approving authority must primarily ensure that a public servant accused of criminality for an administrative decision or recommendation is not wrongly prosecuted or victimized.

b) Before granting or refusing approval under Section 17A, the authority must apply its mind not only to the complaint but also to any other relevant materials that could shed light on the allegations and the necessity of prosecution.

c) The authority granting approval is not required to examine all the materials as a Court would evaluate evidence, but must still apply its expertise, familiarity, and knowledge in the field to assess whether the decision or recommendation made by the public servant warrants a bona fide suspicion about their integrity.

d) An order granting approval under Section 17A is administrative in nature and merely sets the prosecution process in motion. While it is not justiciable, it may be subject to collateral challenge when an FIR is questioned.

e) When an FIR is challenged, the Court is entitled to assess the quality of the approval granted under Section 17A.

f) If the Court, while considering a petition to quash an FIR, finds that the FIR appears to be vexatious, motivated, or driven by malafide intent, or that the public servant's decision or recommendation was bona fide, then the approval granted under Section 17A without due application of mind becomes a critical factor in the outcome of the case.

g) However, if during the proceedings, the Court determines that the approval suffers from inadequate application of mind, but the investigating agency has gathered incriminating material during the investigation, then the deficiency in approval may not affect the FIR's sustainability.

Additionally, the Hon'ble High Court referred to *Achin Gupta v. State of Haryana* [2024 SCC Online SC 759], wherein it was held that when the High Court is approached to quash an FIR on grounds of frivolity, vexation, or ulterior motive, it must examine the FIR with care and closer scrutiny. The Court must not merely rely on the averments in the FIR or complaint to determine whether the essential ingredients of the alleged offense are met. In cases of frivolous or vexatious proceedings, the Court has a duty to consider attendant circumstances emerging from the case record and, if necessary, to carefully and circumspectly read between the lines.

Applying these principles, the present case falls within clause (f) mentioned above. Consequently, the FIR as registered could not be sustained, and the Court allowed the Criminal Original Petition.

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