



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XVI

Part: 01

January, 2021

IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

Website: www.tnsja.tn.nic.in E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE,

No.251, Scheme Road, Race Course, Coimbatore – 641 018,

Telephone No: 0422 – 2222610 / 710

E-Mail: tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI,

Alagar Koil Road, Madurai – 625 002,

Telephone No: 0452 – 2560807 / 811

E-Mail: tnsja.rc.mdu@gmail.com

INDEX

S. No.	IMPORTANT CASE LAW	PAGE No.
1.	Supreme Court – Civil Cases	II
2.	Supreme Court – Criminal Cases	IV
3.	High Court – Civil Cases	V
4.	High Court – Criminal Cases	VIII

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Smt.S.Vanitha Vs. The Deputy Commissioner, Bangaluru Urban District & Ors.	2020 (4) TLNJ 473 (Civil)	15.12.2020	<u>Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sections 3 & 4:-</u> Summary Procedure contemplated under the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the woman's right to claim 'shared house-hold' under the Protection of Woman from Domestic Violence Act, 2005.	1
2	Anita Sharma and others Vs. The New India Assurance Company Ltd. & Anr.	2020 (4) TLNJ 581 (Civil)	08.12.2020	<u>Evidence Act – Standard of Proof in Motor Accident Claim cases:-</u> Strict Principles of evidence and Standard of Proof are inapplicable in Motor Accident Claim cases. The Standard of Proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt.	1
3	Vidya Drolia Vs. Durga Trading Corporation	CDJ 2020 SC 890	14.12.2020	<u>Arbitration and Conciliation Act, 1996, Rent Control Legislation:-</u> Landlord – tenant disputes covered and governed by Rent Control Legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations.	2
4	M/s.N.N.Global Mercantile Private Limited Vs. M/s.Indo Unique Flame Limited and others	CDJ 2021 SC 019	11.01.2021	<u>Arbitration and Conciliation Act, 1996 – Stamp Duty:-</u> Arbitration Agreement between the parties is not chargeable to payment of stamp duty.	2
5	Deputy General Manager (Appellate Authority) and others Vs. Ajaikumar Srivastava	CDJ 2021 SC 004	05.01.2021	<u>Departmental Enquiry – Standard of Proof:-</u> Strict rules of evidence are not applicable to Departmental Enquiry Proceedings.	3

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
6	Kirti and others Vs. Oriental Insurance Company Limited	CDJ 2021 SC 008	05.01.2021	<u>Motor Accident Compensation:-</u> The death of a dependant of the deceased victim, during the pendency of legal proceedings, ought not to be a reason for reduction of Motor Accident Compensation.	3

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Hitesh Verma Vs. State of Uttarakhand and Another	2020 (4) MLJ (CrL.) 632 (SC)	05.11.2020	<u>Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec.3:-</u> Offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not established merely on the fact that the informant is a member of Scheduled Caste or Scheduled Tribe, unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.	4
2	Chaman Lal Vs. The State of Himachal Pradesh	2020 (13) SCALE 539	03.12.2020	<u>Indian Penal Code, Sections 375 & 376:-</u> A man is said to commit rape, if with her consent when, at the time of giving such consent by reason of unsoundness of mind, she is unable to understand the nature and consequence of that to which she gives consent.	4
3	Rahna Jalal Vs. State of Kerala and Another	2021 (1) TLNJ 38 (CrL)	17.12.2020	<u>Muslim Woman (Protection of Rights on Marriage) Act, 2019, Sections 3 and 4:-</u> The offence u/s.4 of Muslim Woman (Protection of Rights on Marriage) Act, 2019, can only be committed by a Muslim husband and not by his relatives.	5
4	Kamlesh Chaudhary Vs. State of Rajasthan	CDJ 2021 SC 009	05.01.2021	<u>Code of Criminal Procedure, Sec.167(2) :-</u> Filing of Charge Sheet in court can itself be no ground to rearrest an accused who was released on default bail under section 167 (2) of Cr.P.C.	5
5	Anversinh @ Kiransinh Fatesinh Zala Vs. State of Gujarat	CDJ 2021 SC 027	12.01.2021	<u>Indian Penal Code, Sections 361, 363:-</u> 'Consensual Affair' is not a defence against a charge of kidnapping a minor.	6

HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	S.Mohan Vs. Vadivel	2020 (3) MWN (Civil) 705	16.10.2020	Code of Civil Procedure, 1908, Order 34 Rule 5 and Order 21 Rule 34:- After payment of amount due on the mortgage, the defendant/Mortgager is entitled to file application under Order 34 Rule 5 of C.P.C., seeking final decree for discharge and delivery of and also file petition under Order 21 Rule 34 to execute the said final decree.	7
2	S.Nagapandi Vs. K.Palanisamy	2020 (3) MWN (Civil) 734	25.09.2020	Code of Civil Procedure, 1908, Order 7 Rule 7 and Section 151, Specific Relief Act, 1963, Section 22:- In a suit for Specific Performance of agreement of sale, if it is established from evidence that agreement intended only to operate as security for loan obtained from plaintiff, court can mould the relief and grant the lesser relief of return of the admitted loan amount.	7
3	P.Vairamuthu Vs. R.Karunanithi	2021 (1) TNMAC 48	09.12.2020	<u>Functional Disability – Compensation for loss of earning capacity:-</u> Functional Disability cannot be said to mean that it must be visible and obvious disability directly impacting earning capacity. Any sustained difficulty to sit or concentrate in an activity can be termed as functional disability.	8

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	Mohana Seshathri Vs. E.Anuja	2020 (3) MWN (Civil) 767	11.02.2020	<u>Code of Civil Procedure, 1908, Section 24:-</u> Even if proceeding under Protection of Woman from Domestic Violence Act 2005, pending before criminal court is civil in nature, Section 24 of Civil Procedure Code cannot be applied for transferring the said proceeding from Criminal Court to Civil Court.	8
5	Shenbagavalli and Another Vs. Kallaichelvi	2020 (8) MLJ 695	30.11.2020	<u>Indian Evidence Act, 1872, Section 120:-</u> When Section 120 of the Indian Evidence Act, with its unlimited qualification, had granted functional competency to a spouse to speak to hearsay, necessarily it takes within its folds all the facts that also fall within the exclusive knowledge of the other spouse.	9
6	Renuka and others Vs. A.Kamalam (died) and others	2020 (6) CTC 657	19.06.2020	<u>Code of Civil Procedure, 1908, Order 2, Rule 2:-</u> Suit for partition filed by co-owner though subsequently abandoned, would not be a ground for dismissal of suit filed by other co-owner for the same cause of action.	9
7	Sri Arunachala Mudaliar Charities, Kanchipuram , rep. By its Hereditary Managing Trustee, V.Kuppusamy Vs. Subburaya Mudaliar High School, Kanchipuram	2021 (1) CTC 77	28.10.2020	<u>Transfer of Property Act, 1882, Sections 111 and 116:-</u> Possession of Tenant cannot confer title by Adverse Possession unless tenancy was proved to be terminated by act of Landlord or that Tenant denied tenancy and claimed to be in possession adverse to interest of Landlord.	10

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	D.Santhanadurai Vs. A.Nishanth Joe Raj and another	2021 (1) MWN (Civil) 14	21.07.2020	<u>Transfer of Property Act, 1882, Section 117, Indian Stamp Act, 1889, Section 35, Registration Act, 1908, Sections 2(d), 17 & 19:-</u> An Agricultural Lease, if from year to year or for any term exceeding one year, is compulsorily registerable and has to be sufficiently stamped. Unregistered and unstamped Agricultural Lease Deed is inadmissible in evidence even for collateral purpose.	10
9	New India Assurance Co. Ltd. Vs. Srinivasan and others	2021 (1) TNMAC 73	18.11.2020	<u>Motor Vehicles Act, 1988, Section 2(34):-</u> If the public had access to the Agricultural Land, the said Agricultural Land is a public place within the definition of Section 2 (34) of the Motor Vehicles Act, 1988.	11
10	Managing Director, Tamil Nadu State Transport Corporation Vs. Ponnusami	2021 (1) TNMAC 32 (DB)	13.01.2020	<u>Motor Vehicles Act, 1988, Sections 168 and 173:-</u> If the victim got alternative employment for the same salary without discontinuity of service, the compensation for loss of income cannot be calculated by applying multiplier method.	11

HIGH COURT - CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Muthukumar and others Vs.The State rep by Inspector of Police	2020 (2) TLNJ 450 (Criminal)	02.11.2020	<u>Indian Penal Code, 1860, Sections 351 & 353:-</u> Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.	12
2	E.Samsudeen Vs. S.Jeenath Begam	CDJ 2020 MHC 4366	23.12.2020	<u>Protection of Woman from Domestic Violence Act, 2005:-</u> Withdrawal of petition claiming reliefs under the Domestic Violence Act is not a bar for the wife to file fresh petition for the same relief.	12
3	K.Selvaraj Vs. State rep. by Inspector of Police, Vigilance and Anti Corruption	CDJ 2020 MHC 4322	17.12.2020	<u>Prevention of Corruption Act, Sections 2(c)(viii) and 2(c)(ix):-</u> Office bearers of Agricultural Co-operative Credit Society can be prosecuted under the Prevention of Corruption Act as they are public servants falling under Section 2(c)(viii) and 2(c)(ix) of the Prevention of Corruption Act.	13
4	M.K.Stalin, M.L.A. Vs. City Public Prosecutor	CDJ 2020 MHC 4316	14.12.2020	<u>Criminal Procedure Code, 1973, Section 199(2):-</u> If the criticism or defamation has no nexus with discharge of his/her official function of the state, complaint under Section 199(2) of Cr.P.C. cannot be made by public prosecutor, merely on the basis of G.O.	14
5	Rajan Vs. State represented by the Deputy Superintendent of Police	2020 (2) TLNJ 419	19.11.2020	<u>Appreciation of Evidence in Criminal Case:-</u> The entire version of the prosecution case will not become unacceptable, merely because a stray statement has been culled out in the cross examination of the complainant that he saw the accused when he went to the Police Station to lodge the complaint.	14

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
6	K.Rajanarayanan alias Ki.Ra Vs. P.Kathiresan and another	2020 (2) TLNJ 437	16.10.2019	<u>Duty of the Magistrate at the stage of filing complaint:-</u> At the complaint stage, the Magistrate has the duty to see, if the allegations made in the complaint are so absurd on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused and if the proceeding has been maliciously instituted with an ulterior motive.	15
7	Dr.P.Pathmanathan and others Vs. V.Monica and another	CDJ 2021 MHC 077	18.01.2021	<u>Prevention of Woman from Domestic Violence Act, 2005, Section 12:-</u> The Application u/s.12 of the Domestic Violence Act is not a complaint u/s.2(d) of Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) and 200 to 204 of Cr.P.C. has no application to such cases. Hence, it would be open to the aggrieved respondent to approach the Magistrate and raise the issue of maintainability and other preliminary issues.	15
8	V.G.Srinivasan Vs. D.Srinivasalu	CDJ 2021 MHC 035	30.12.2020	<u>Negotiable Instruments Act, Section 138:-</u> As per clause (c) of proviso to Section 138 of Negotiable Instruments Act, no complaint can be filed for the offence under Section 138 of the N.I. Act unless the period of 15 days from the date on which the notice has been served on the drawer has elapsed. The Court is barred in law from taking cognizance of the said complaint.	16

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9	O.Ramachandran Vs. State rep. by the Inspector of Police, NIBCID, Chennai.	CDJ 2021 MHC 017	08.01.2021	<u>Narcotic Drugs and Psychotropic Substances Act, 1985:-</u> The delay of 45 days in producing the contraband in the court from the date of its recovery, without any acceptable explanation, is fatal to the prosecution case.	17
10	Saroja Vs. State through the Inspector of Police	CDJ 2021 MHC 036	30.12.2020	<u>Indian Penal Code, Section 366(A), 376, Immoral Traffic Prevention Act, 1956, Sections 4, 5 & 7, Appreciation of Evidence:-</u> The evidence of prosecutrix of a sex offence has to be treated like that of an injured witness.	18

SUPREME COURT CIVIL CASES

2020 (4) TLNJ 473 (Civil)

S. Vanitha Vs. The Deputy Commissioner, Bengaluru Urban District & Others

Date of Judgment : 15.12.2020

Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Sections 3 & 4:- The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizens Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act 2005.

2020 (4) TLNJ 581 (Civil)

Anita Sharma & Others Vs. The New India Assurance Company Limited & Another

Date of Judgment : 08.12.2020

Evidence Act – Standard of Proof in Motor Accident Claim cases:- Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such

like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

CDJ 2020 SC 890

Vidya Drolia & Others Vs. Durga Trading Corporation

Date of Judgment : 14.12.2020

Arbitration and Conciliation Act, 1996, Rent Control Legislation:- We hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

CDJ 2021 SC 019

M/s. N.N. Global Mercantile Private Limited Vs. M/s. Indo Unique Flame Limited & Others

Date of Judgment : 11.01.2021

Arbitration and Conciliation Act, 1996 – Stamp Duty:- We hold that since the arbitration agreement is an independent agreement between the parties, and is not chargeable to payment of stamp duty, the non-payment of stamp duty on the commercial contract, would not invalidate the arbitration clause, or render it un-enforceable, since it has an independent existence of its own.

CDJ 2021 SC 004

Deputy General Manager (Appellate Authority) & Others Vs. Ajai Kumar Srivastava

Date of Judgment : 05.01.2021

Departmental Enquiry – Standard of Proof:- Strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

CDJ 2021 SC 008

Kirti & Others Vs. Oriental Insurance Company Limited

Date of Judgment : 05.01.2021

Motor Accident Compensation:- It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings.

* * * * *

SUPREME COURT CRIMINAL CASES

2020 (4) MLJ (CrI) 632(SC)

Hitesh Verma Vs. The State of Uttarakhand & Another

Date of Judgment : 05.11.2020

Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec.3:- Offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.

2020 (13) SCALE 539

Chaman Lal Vs. The State of Himachal Pradesh

Date of Judgment : 03.12.2020

Indian Penal Code, Sections 375 & 376:- On re-appreciation of the entire evidence on record, more particularly the deposition of doctors examined as PW11 - Dr. Ramesh Kumar and PW22 - Dr. Rama Malhotra, the High Court has specifically found that the IQ of the victim was 62 which was based on the history and mental state examination of the victim. The High Court has also come to the conclusion that the victim was not in a position to understand the good and bad aspect of the sexual assault. Merely because the victim was in a position to do some household works cannot discard the medical evidence that the victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault. It appears that the accused had taken advantage of the mental illness of the victim. It is required to be appreciated coupled with the fact that the accused is found to be the biological father of the baby child delivered by the victim. Despite the above, in his 313 statement the case of the accused was of a total denial. It was never the case of the accused that it was a case of

consent. Therefore, considering the evidence on record, more particularly the deposition of PW11 and PW22 and even the deposition of the other prosecution witnesses, the High Court has rightly observed that case would fall under Section 375 IPC and has rightly convicted the accused for the offence under Section 376 IPC. Even as per clause fifthly of Section 375 IPC, "a man is said to commit rape", if with her consent when, at the time of giving such consent, by reason of unsoundness of mind, she is unable to understand the nature and consequences of that to which she gives consent.

2021 (1) TLNJ 38 (Criminal)

Rahna Jalal Vs. State of Kerala and Another

Date of Judgment : 17.12.2020

Muslim Woman (Protection of Rights on Marriage) Act, 2019, Sections 3 and 4:- Under Section 3, a pronouncement of talaq by a Muslim husband upon his wife has been rendered void and illegal. Under Section 4, a Muslim husband who pronounces talaq upon his wife, as referred to in Section 3, is punishable with imprisonment for a term, which may extend to three years. The prohibition in Sections 3 and 4 is evidently one which operates in relation to a Muslim husband alone. This is supported by the Statement of Objects and Reasons accompanying the Muslim Women (Protection of Rights on Marriage) Bill 2019, when it was introduced in the Parliament.

CDJ 2021 SC 009

Kamlesh Chaudhary Vs. The State of Rajasthan

Date of Judgment : 05.01.2021

Code of Criminal Procedure, Sec.167(2) :- On the ground that charge sheet was not filed within the prescribed period, an application for bail under Section 167(2) Cr.P.C. was filed by the appellant. The High Court ruled in his favour by holding that the appellant is entitled to bail under Section 167 as a complete charge sheet was not filed within the prescribed period. While granting bail, the High Court held that the appellant can be re-arrested after the charge sheet is filed.

Learned counsel appearing for the appellant, submitted that the direction for re-arrest of the appellant on filing of the charge sheet is contrary to the law laid down by this Court in Bashir v. State of Haryana [(1977) 4 SCC 410]. In the said judgment, this Court held that it is open to the prosecution to file an application for cancellation of bail on the grounds known to law and the receipt of the charge sheet in Court can by itself be no ground for cancellation of bail.

It is clear from the judgment that filing of charge sheet by itself cannot be a ground for cancellation of bail.

CDJ 2021 SC 027

Anversinh @ Kiransinh Fatesinh Zala Vs. State of Gujarat

Date of Judgment : 12.01.2021

Indian Penal Code, Sections 361, 363:- A bare perusal of the relevant legal provisions, as extracted above, show that consent of the minor is immaterial for purposes of Section 361 of IPC. Indeed, as borne out through various other provisions in the IPC and other laws like the Indian Contract Act, 1872, minors are deemed incapable of giving lawful consent. (Satish Kumar Jayanti Lal Dabgar vs. State of Gujarat, (2015) 7 SCC 359) Section 361 IPC, particularly, goes beyond this simple presumption. It bestows the ability to make crucial decisions regarding a minor's physical safety upon his/her guardians. Therefore, a minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping.

* * * * *

HIGH COURT CIVIL CASES

2020 (3) MWN (Civil) 705

S.Mohan Vs. Vadivel

Date of Judgment : 16.10.2020

Code of Civil Procedure, 1908, Order 34 Rule 5 and Order 21 Rule 34:- Application by Mortgagor under Order 21, Rule 34 – Whether maintainable – Suit for Sale based upon Mortgage – Defendant paid up Mortgage and filed Application under Order 34, Rule 5, seeking Final Decree – Application allowed – Application by Defendant under Order 21, Rule 34 seeking execution of Discharge Receipt as per Final Decree – Challenge to maintainability of – Held, after Order passed under Order 34, Rule 5 directing Mortgagee to execute documents in discharge of Mortgage and delivery of documents relating to property, Mortgagor becomes Decree-holder and Mortgagee becomes Judgment-debtor – Consequently, Application filed by Mortgagor seeking execution of Decree, maintainable – Order of Executing Court allowing Application, not interfered with – Civil Revision Petition dismissed.

2020 (3) MWN (Civil) 734

S.Nagapandi Vs. K.Palanisamy

Date of Judgment : 25.09.2020

Code of Civil Procedure, 1908, Order 7 Rule 7 and Section 151, Specific Relief Act, 1963,

Section 22:- Moulding of Relief vis-à-vis Alternate Relief for refund of amount – Difference between – Mandate of Section 22 that in Suit for Specific Performance decree for payment of Earnest money cannot be granted unless specifically prayed for – Said restriction applicable only in cases, where Defendant does not dispute character of document relied upon by Plaintiff – However, when character of document is different from its nomenclature, consideration paid thereunder also changes character – Refund of said consideration by moulding relief in Suit, to do complete justice between parties, upheld – Said relief, held, not similar to alternate relief of repayment under Section 22.

2021 (1) TN MAC 48

P.Vairamuthu Vs. R.Karunanithi

Date of Judgment : 09.12.2020

Functional Disability – Compensation for loss of earning capacity:- Functional Disability cannot be straight jacketed to mean that it must be a visible and an obvious disability which should directly impact the earning prospects of the Accident-victim. Even any sustained difficulty to sit or concentrate in an activity can be termed Functional Disability. It has to be decided on the basis of the extent of damage an Accident-victim's efficiency to earn has suffered due to the injuries. If his efficiency substantially remains the same as it was before the accident then there may not be any functional disability. On all other cases there will be functional disability, though its percentage may vary.

2020 (3) MWN (Civil) 767

Mohana Seshathri Vs. E.Anuja

Date of Judgment : 11.02.2020

Code of Civil Procedure, 1908, Section 24:- Section 24 C.P.C., may not, as such be applicable to transfer a case from a Criminal Court to a Civil Court, even though the dispute is of Civil in nature. The word 'proceeding' appearing in Section 24 C.P.C., can be construed as one pending before Civil forum and not before Criminal Court, even if the proceeding before the Criminal Court is of Civil in nature. However, by invoking Article 227 of the Constitution of India, the matter may be transferred from a Criminal Court to a Family Court or any other Court mentioned under 26 of the Domestic Violence Act.

2020 (8) MLJ 695

Shenbagavalli and Another Vs. Kallaichelvi

Date of Judgment : 30.11.2020

Indian Evidence Act, 1872, Section 120:- When Section 120, with its unlimited qualification, has granted functional competency to a spouse to speak to hearsay, necessarily it takes within its folds all the facts that also fall within the exclusive knowledge of the other spouse. When the other spouse who initially steps into the witness box on behalf of the litigant-spouse makes a specific statement as part of the testimony, that the former does not have any specific knowledge about any particular fact, and that the said fact is only within the knowledge of the litigant-spouse. It is in those circumstances, it will become obligatory for a litigant-spouse to testify, and if any abstinence is shown then adverse inference can well be drawn, since the best evidence rule is breached.

2020 (6) CTC 657

Renuka & Others Vs. A. Kamalam (died) & Others

Date of Judgment : 19.06.2020

Code of Civil Procedure Code, 1908 (5 of 1908), Order 2, Rule 2 - Partition Suit– Cause of action– Suit filed by one Co-owner – Abandonment of – Consequence of – Held, as long as relationship of Co-ownership subsists, right to seek Partition continues – Cause of action for filling Suit for Partition, a recurring one – Suit for Partition filed by Co-owner though subsequently abandoned, would not be a ground for dismissal of Suit filed by other Co-owner for same cause of action – Co-owner, who abandoned legal action, chooses to continue ownership in common without resorting to seek division of property – Right to seek for Partition, held, subsists as long as property remains undivided.

2021 (1) CTC 77

**Sri Arunachala Mudaliar Charities, Kanchipuram, Rep. by its Hereditary Managing Trustee
V.Kuppusamy Vs. Subburaya Mudaliar High School, Kanchipuram**

Date of Judgment : 28.10.2020

Transfer of Property Act, 1882 (4 of 1882), Sections 111 & 116 – Limitation Act, 1963 (36 of 1963), Articles 65 & 67 – Tenancy – Adverse Possession – Once a Tenant is always a Tenant – Possession of Tenant cannot confer title by Adverse Possession unless tenancy was proved to be terminated by act of Landlord or that Tenant denied tenancy and claimed to be in possession adverse to interest of Landlord – Animus to possess adverse to title holder, essential factor to be established by person claiming Adverse Possession – Pleadings and evidence establish Defendant/Tenant admitted title of Plaintiff/Landlord and had no intention to claim rights by Adverse Possession till Suit for Ejectment laid by Plaintiff – Failure of Landlord to claim Rent for several years would not amount to perfection of title by Adverse Possession – Defendant must plead and prove necessary requirements of Adverse Possession, including date on which possession became adverse to that of Title-holder.

2021 (1) MWN (Civil) 14

D.Santhanadurai Vs. A.Nishanth Joe Raj & Anr

Date of Judgment : 21.07.2020

Transfer of Property Act, 1882 (4 of 1882), Section 117 –Registration Act,1908 (16 of 1908), Sections 2(d),17 & 49 – STAMP Act,1889 (2 of 1889), Section 35 – Agricultural Lease – Unregistered and unstamped –Whether admissible in evidence – Lease as per Section 2(7) of Registration Act includes a counterpart, Kabuliyat, an undertaking to cultivate or occupy, and an Agreement to Lease – Agricultural Lease, exempted from provisions of 1882 Act by virtue of Section 117 – Said exemption, however, does not restrict applicability of Registration Act or Stamp Act – An Agricultural Lease, if from year to year or for any term exceeding one year, is compulsorily registrable and has to be sufficiently stamped in terms of 1889 enactment – Unregistered and unstamped Agricultural Lease not admissible in evidence even for collateral purpose.

2021 (1) TN MAC 73

New India Assurance Co. Ltd. Vs. Srinivasan and Others

Date of Judgment : 18.11.2020

MOTOR VEHICLES ACT, 1988 (59 of 1988), Section 2(34) – “Public place”, meaning of – Agricultural land, whether a Public place or Private place – Public place defined as a place to which Public have an access whether free or controlled – Case-law discussed – Accident occurred while deceased was working in Agricultural land – Deceased had access to work in land – Agricultural land, therefore, a Public place and not Private place.

2021 (1) TN MAC 32 (DB)

Managing Director, Tamil Nadu State Transport Corporation Vs. Ponnusami

Date of Judgment : 13.01.2020

Motor Vehicles Act, 1988, Sections 168 and 173:- The Tribunal by adopting Multiplier, fixed 80% Functional Disability. Even before the Tribunal, the Appellant has stated that the Respondent continues to work. The fact that the Respondent got the benefit of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is not in dispute. Even in the grounds of Appeal, such a plea has been taken. It appears that the Respondent/Claimant has attained the age of superannuation and got all the benefits apart from the Salary during the period of employment. There is no discontinuity of service also. Therefore, looking from any perspective, the Award of the Tribunal insofar as the payment of Rs.45,57,972 towards Loss of Income can never be sustained.

* * * * *

HIGH COURT CRIMINAL CASES

2020 (2) TLNJ 450 (Criminal)

Muthukumar and others Vs. The State rep. by Inspector of Police, Thiruthuraipoondi Police Station, Thiruthuraipoondi Post, Tiruvarur District.

Date of Judgment : 02.11.2020

Indian Penal Code, 1860, Section 353 & 506(i) – Causing trouble to public by using filthy language – also did the same to the lady constables (P.W.1 & 2) when they tried to control the accused – Complaint registered by P.W.3 – Conviction and sentence – Appeal – Dismissed – Revision – Mere words do not amount to an assault under Section 353 – But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault – There is categorical evidence of PW1 and PW2 that the accused abused them in filthy language and also threatened them with dire consequences if they inform the same to the police and thereby deterred them from discharging their official duty – It corroborates with evidence of P.W.3 – Threat of the accused was made with intend to cause alarm to PW1 and PW2, which is obvious from the words uttered by the accused and it amounts to criminal intimidation as per Section 506(i) IPC – Even there is some minor discrepancies, that does not create any shadow of doubt in the prosecution case – Conviction recorded by the Courts below is upheld.

CDJ 2020 MHC 4366

E. Samsudeen & Others Vs. S. Jeenath Begam

Date of Judgment : 23.12.2020

Domestic Violence Act, 2005:- The learned counsel for the petitioners submitted that Jeenath Begam has earlier filed M.C.No.4 of 2012 for the same relief, but, that petition was withdrawn upon compromise between the parties and therefore, there cannot be fresh petition for the same relief.

In the opinion of this Court, matrimonial offences can give fresh causes of action and therefore, the withdrawal of the earlier proceedings will not be a bar for the present one.

CDJ 2020 MHC 4322

**K. Selvaraj & Another Vs. State rep. by the Inspector of Police, Vigilance and Anti-Corruption,
Villupuram & Another**

Date of Judgment : 17.12.2020

Prevention of Corruption Act, Sections 2(c)(viii) and 2(c)(ix):- First petitioner was the President and the second petitioner was the Secretary of the Primary Agricultural Co-operative Credit Society Limited. The petitioners are farmers and the Co-operative Society in which they are office bearers, is catering to the loan requirements of farmers. Farmers constitute 60% of our country's population and they can be indubitably characterised as public at large. Section 2(c)(viii) and (ix) of Prevention of Corruption Act defines public servant as follows:

"2(c) PUBLIC SERVANT means

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty.

(ix) any person who is the President, Secretary or other office-bearer of registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provisional or State Act, or any authority or body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

The petitioners, as office bearers of the Agricultural Co-operative Society, are required to perform public duties, in as much as they are required to process the loan application of their farmer members, disburse loans, take steps to realise the loans, etc. Hence, the petitioners are public servants within the meaning of Section 2(c)(viii) and (ix) of Prevention of Corruption Act.

M.K. Stalin, M.L.A., Treasurer, Dravida Munnetra Kazhagam, Chennai Vs. City Public Prosecutor, City Civil Court Buildings, Chennai.

Date of Judgment : 14.12.2020

Criminal Procedure Code, 1973, Section 199(2):- To take cognizance of the complaint under Section 199(2) of Cr.P.C., the so called defamation should be directly attributed to a person in discharge of his/her public functions and only in such circumstances, Sub Section 2 of Section 199 of Code of Criminal Procedure will stand attracted. If the said imputation apparently made against the public functionaries, in discharge of his/her public function, have no reasonable nexus with the discharge of public duties, the remedy available under Section 199(6) of Cr.P.C. before the Magistrate by making private complaint, and remedy under Section 199(2) and 199(4) will not be available. Otherwise, if any criticism or defamation in the nature of personal capacity and such defamation has no nexus with discharge of his/her official function of the State, complaint cannot be made by a Public Prosecutor merely on the basis of G.O.

2020 (2) TLNJ 419 (Criminal)

Rajan Vs. State rep. by The Deputy Superintendent of Police, Tirupattur Sub-Division, Tirupattur Taluk Police Station, Vellore District.

Date of Judgment : 19.11.2020

Appreciation of Evidence in Criminal Case:- P.W.1 cannot be termed as an interested witness. An interested witness is one, who is interested in getting a conviction. P.W.1 has stated that there is no prior enmity either between the deceased and the appellant or between himself and the appellant. According to P.W.1., the occurrence took place in two different places. Upon stopping the vehicle of the deceased, the appellant attacked him and while he was running for his life, he was recaptured, dragged and again attacked. Ex-P30 sketch is in tune with the evidence of P.W.1. Merely because a stray statement has been culled out in the cross-examination of P.W.1 that he saw the accused when he

went to the Police Station to lodge the complaint, the entire version of the prosecution case will not become unacceptable, especially when there are other evidence available.

2020 (2) TLNJ 437 (Criminal)

K.Rajanarayanan alias Ki.Ra Vs. P.Kathiresan and another

Date of Judgment : 16.10.2019

Duty of the Magistrate at the stage of filing complaint:- It is true that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint. He has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. It is not his province to venture into a detailed discussion on the merits or demerits of the case. The Magistrate has to decide the question purely from the point of view of the complaint without at all advertent to any defence that the accused may have. He is not expected to embark upon a detailed discussion.

But the above said yardstick and standard cannot be so mechanically applied even in matters that have clear and direct implications on free speech. This is because taking offence has now become a fashion. The magistrate will see if the allegations made in the complaint are so absurd on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. He will also see if the proceeding has been maliciously instituted with an ulterior motive.

Neither the Magistrate nor the Police should exhibit alacrity to take cognizance or register a case in such matters. Every time they receive such complaints, they must dust their knowledge of the law relating to free speech.

CDJ 2021 MHC 077

Dr. P. Pathmanathan & Others Vs. V. Monica & Another

Date of Judgment : 18.01.2021

Prevention of Woman from Domestic Violence Act, 2005, Section 12:- An application under Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the

procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot, therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in *Adalat Prasad v Rooplal Jindal* (2004 7 SCC 338) that a process, under Section 204, Cr.P.C., once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress.

CDJ 2021 MHC 035

V.G. Srinivasan Vs. D. Srinivasalu

Date of Judgment: 30.12.2020

Negotiable Instruments Act, Section 138:- Clause (c) of proviso to section 138 of Negotiable Instruments Act makes it clear that no complaint can be filed for an offence under Section 138 of Negotiable Instruments Act, unless the period of 15 days has elapsed. Any complaint before the expiry of 15 days from the date on which the notice has been served on the drawer is no complaint at all in the eye of law. The court is barred in law from taking cognizance of the complaint. It is not open to the court to take cognizance of the said complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer has elapsed. If the period described in clause (c) of proviso to Section 138 has not expired, there is no commission of an offence or accrual of cause of action for filing the complaint under Section 138 of Negotiable Instruments Act.

O. Ramachandran Vs. State Rep. by the Inspector of Police, NIBCID, Chennai

Date of Judgment : 08.01.2021

Narcotic Drugs and Psychotropic Substances Act, 1985:- It is the duty vested upon the prosecution to show satisfactory explanation, that the contraband was kept in the safe custody. But here, it is a case, the property was handed over to the NDPS Court after 45 days, from the date of recovery. But in this regard, the prosecution has not produced the records, which shows the date on which the property was received and the date on which the property was taken from the safe custody. Delay of 45 days in producing the property is nothing but fatal to prosecution.

Further, no explanation was offered on the side of the prosecution for the delay in producing the contraband before the Court. The articles seized appears to have been not kept in the proper custody and proper form so that the Court can be sure that what was seized only, was sent to the Chemical Examiner. There is a big gap and an important missing link.

Moreover, in order to show the direction given by the remanding Magistrate, i.e., for producing the contraband before the NDPS Court, no document has been produced on the side of the prosecution that on the date of remand itself the property was produced before the Magistrate. Before the trial Court, the Form-95 through which the contraband was recovered by PW2, is marked as Ex.P10. In the said document, no entry has been made by the Remanding Magistrate, in respect to the production of the contraband, at the time of remanding the accused on 04.06.2007.

So, without any iota of the document, this Court cannot uphold the contention raised by the State that only upon the direction given by the Remanding Magistrate, the contraband was kept in the police custody for a period of 45 days. Therefore, that alone is sufficient to hold that the prosecution fails in their attempt to prove their case.

Saroja Vs. State through the Inspector of Police, All Women Police Station, Tirupattur

Date of Judgment : 30.12.2020

Indian Penal Code, Section 366(A), 376, Immoral Traffic Prevention Act, 1956, Sections 4, 5 & 7,

Appreciation of Evidence:- A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more.

* * * * *