TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XIX — PART 07 — JULY 2024**

IMPORTANT CASE LAWS

TAMIL NADU STATE JUDICIAL ACADEMY
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.gov.in**E-Mail:**tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE
No.251, Scheme Road, Race Course,
COIMBATORE,
Tamil Nadu, India. PIN: 641 018
*Telephone No:***(0422) 2222610, 710**
*E-Mail:***tnsja.rc.cbe@gmail.com**

REGIONAL CENTRE, MADURAI
Alagar Koil Road, K. Pudur,
MADURAI,
Tamil Nadu, India. PIN: 625 002
*Telephone No:***(0452) 2560807, 811**
*E-Mail:***tnsja.rc.mdu@gmail.com**

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SUPREME COURT – CIVIL CASES

The State of Punjab & Ors. Vs. Bhagwantpal Singh Alias, Bhagwant Singh (Deceased) Through Lrs. [Diary No.17885 of 2020]

Date of Judgment: 10.07.2024

The civil appeal has been filed by the appellant challenging the judgment passed by High Court in the second appeal filed by the respondent/plaintiff, setting aside the judgment and decree of the First Appellate Court, and restoring the judgment and decree of the Trial Court decreeing the suit for possession.

The facts of the case is that the subject land was donated by One Indar Singh, father of the respondent in 1958 for the construction of a Veterinary Hospital to the Appellant/the State. The Veterinary Hospital was constructed in 1958-1959 and has been operational since then. After the death of Indar Singh, the respondent filed a suit for possession of the land in 2001, 43 years after the donation. The Trial Court decreed the suit in favor of the respondent, ordering the appellant to hand over possession of the land, but the First Appellate Court reversed the Trial Court's judgment, dismissing the suit on the grounds of limitation and continuous possession by the appellant. In the second appeal, the High Court restored the Trial Court's judgment. It is the appellant's case that the suit for possession was barred by Article 65 of the Limitation Act, 1963, and it was filed 43 years after the alleged donation, making it time-barred. The appellant had been in uninterrupted continuous possession of the land since 1958, having constructed and operated the Veterinary Hospital on it, and the burden of proving ownership and entitlement to possession lay on the respondents as per section 110 of IEA. On the Other hand, the respondents contended that the suit for possession was in time and valid, and that the revenue records reflected their ownership rights contradicting the appellants' claim of adverse possession.

The issue that arose for consideration before the Apex Court was whether the suit filed by the respondent was barred by limitation as prescribed by Article 65 of the Limitation Act, 1963, which sets a 12-year limit for such actions, and whether the land was validly donated by Inder Singh to the appellant in 1958, despite the absence of a written or registered gift deed, and whether this alleged donation gave the State a rightful claim to the land.

The court observed that merely because the name of the respondent/plaintiff continued in the revenue records (Jama Bandis), it would not confer any title upon him. The appellant established that the land had been donated by Inder Singh through the resolution of the Municipal Council of the year 1958-59 and Utilization Certificates of funds utilized for construction of the hospital. The court noted that the relief claimed in the suit was an error and barred by limitation, and thus allowed the appeal.

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Mohd. Abdul Samad Vs. The State of Telangana & Anr. [Criminal Appeal No. 2842 of 2024]

Date of Judgment: 10.07.2024

The Criminal Appeal has been filed by the appellant challenging the High Court's decision to award maintenance under Section 125 of the CrPC. The Facts of the Case is that the appellant, Mohd. Abdul, and the respondent, his wife were married in 2012 and later their relationship deteriorated, leading to the respondent leave on April 9, 2016, and lodge an FIR against the appellant under Sections 498A and 406 of the IPC. The appellant pronounced triple talaq on September 25, 2017, and obtained a divorce certificate on September 28, 2017. The respondent filed a petition for interim maintenance under Section 125(1) of the CrPC, which the Family Court allowed and interim maintenance was fixed at Rs. 20,000 per month. This amount was later reduced by the High Court to Rs. 10,000 per month.

The appellant contented that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (the 1986 Act) provides a more beneficial remedy for divorced Muslim women, and thus, the respondent should seek relief under the said Act rather than under Section 125 of the CrPC.

Further, he had already attempted to pay maintenance for the iddat period, which the respondent refused. On the other hand, the respondent contended that Section 125 of the CrPC serves a social purpose to prevent destitution and vagrancy among women and should be applicable irrespective of 1986 Act, and the maintenance under Section 125 CrPC is meant to ensure that a woman is not left without financial support, which aligns with the constitutional intent of providing protection to women.

The Court observed that the 1986 Act does not dilute the purpose of Section 125 of the CrPC, which is meant to provide maintenance to prevent deprivation and destitution. The Court noted that the social purpose of Section 125, aligns with the

constitutional imperative to protect economically dependent women, including divorced women, ensuring they have access to basic necessities.

The Court while dismissing the appeal affirmed the High Court's decision, and held that Section 125 of the CrPC applies to all married women, including Muslim women, and for divorced Muslim women, it applies if they were married under the Special Marriage Act, 1954, or Muslim law, with the option to seek remedies under both laws. The 1986 Act supplements Section 125 CrPC, and for illegal divorces under the Muslim Women (Protection of Rights on Marriage) Act, 2019 (then the 2019 Act), relief can be sought under the 2019 Act or Section 125 CrPC, and the 2019 Act's provisions are in addition to and not in derogation of Section 125 CrPC.

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Amro Devi & Ors. Vs. Julfi Ram (Deceased) Thr. Lrs. & Ors. [SLP (C) No. 14690 of 2015]

Date of Judgment: 15.07.2024

Mere Statements of Parties Before Court About Compromise Cannot Satisfy Requirements of Order XXIII Rule 3 CPC

The Civil Appeal has been filed by the Defendant in the suit as against the judgment and decree of the High Court which had upheld the Trial Court's judgment in decreeing the suit filed by the Plaintiff.

The facts of the case is that the Plaintiff based on an earlier compromise recorded between the parties before the Court had filed a fresh suit for possession and temporary injunction against the Appellant/Defendant. The contention of the Plaintiff was that they were the owners in possession of half share in the suit land as per the compromise arrived between parties to the previous suit. However, the Appellant/Defendant countered the Plaintiff's contention and argued that the compromise made between the parties in an earlier suit cannot be recognized as there was no compromise decree passed by the Court because of non-compliance with Order 23 Rule 3 of CPC. The Trial court rejected the suit in the absence of the existence and production of a written compromise between the parties duly signed by them. On appeal by the Plaintiff, the First Appellate Court, reversed the findings of the Trial Court which was later upheld by the High Court.

The Court observed that under Order 23 Rule 3 of the Code of Civil Procedure, 1908, a compromise decree may be passed by the Court when the parties to the suit arrive at a lawful agreement or compromise in writing. The Rule specifies that such a compromise cannot be recognized unless it is signed by the parties involved in the suit. Therefore, if the mandatory conditions stipulated under Order 23 Rule 3 CPC were not followed, a compromise cannot be recorded by the Court. In the

present case, the Court observed that neither was the compromise reduced to writing, nor was it recorded by the court.

The Court, while allowing the Appeal, held that mere statements made by the parties in court about a compromise cannot satisfy the requirements of Order 23 Rule 3 of the CPC.

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Sajjan Singh Vs. Jasvir Kaur & Ors. [Civil Appeal No. 4221 of 2023]

Date of Judgment: 06.07.2023

Order VII Rule 11 CPC - Appropriateness Of Prayer Sought Is Not An Issue To Be Considered While Deciding Application Seeking Rejection Of Plaint

The Civil Appeal has been filed by the Plaintiff against the order of the Hon'ble High Court, allowing the revision petition filed by the Respondent/Defendant against the order of dismissal passed by the Trial Court in an application under Order VII Rule 11 of the CPC, seeking for rejection of the plaint on the ground that an appropriate prayer was not sought.

The Court observed that the appropriateness of the prayer sought is not an issue that should be considered while deciding an application seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. Further, the Court stated that the contentions raised by the defendants in the rejection of the plaint application could very well be put forth in their written statement, and the trial Court can frame appropriate issues in that regard.

Thus, the Court, while allowing the Appeal, held that whether an appropriate prayer should have been sought, is a matter ultimately to be decided in the suit and not an issue to be considered by the Courts while deciding the application under Order VII Rule 11 of CPC.

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Yogesh Goyanka Vs. Govind & Ors. [Civil Appeal No(S). 7305 of 2024]

Date of Judgment: 10.07.2023

The civil appeal has been filed challenging the High Court's order which upheld the trial court's order, dismissing the Appellant's application for impleadment in the suit filed by the respondents/plaintiffs.

The facts of the case is that the subject land was previously owned by Respondent Nos. 1-17 (Plaintiffs) and transferred to Respondent Nos. 18-20 (Defendants) and then to Respondent No. 21 and the Appellant had purchased the Subject Land from Respondent No. 21 through a registered sale deed. Subsequently, the Plaintiffs filed a suit for permanent injunction and a declaration that the transfer deeds were null and void.

It is the appellant's case that after paying the full consideration, he obtained a registered sale deed in his favor and there was no bar on the impleadment of a transferee pendente lite, even if the transferee had prior knowledge of the pending litigation and there was a possibility of collusion between the Plaintiffs and the Defendants due to their familial relationship and delayed suit filing. On the other hand, the Respondents contended that the Appellant was not a bona fide purchaser, as he was aware of the pending litigation but did not seek court's permission before executing the sale deed. Further, the Appellant had not paid the full consideration due to bounced cheques, making the sale incomplete, and the appellant's title was under question and he was not in possession of the land. A transferee pendente lite cannot seek impleadment as a matter of right.

The court observed that the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882 does not void transfers during litigation but subordinates their rights to ongoing court proceedings. Further, the sale deed should not automatically be deemed as null and void merely because it was executed during the pendency of the underlying suit and the trial court's reliance on *Bibi Zubaida Khatoon vs. Nabi*

Hassan Saheb was misplaced, as it does not universally prohibit impleadment of transferees pendente lite, differing due to the long-pending nature of the suit and the transferee's malicious intent to delay proceedings. The court allowed the appeal held and directed that the Appellant to be impleaded as a party-defendant in the underlying suit.

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SUPREME COURT - CRIMINAL CASES

Nikhil Vs. State of Maharashtra [SLP(Crl.) No.10302/2023]

Date of Judgment: 11.07.2024

Condition To Deposit 50% Of Compensation Ordered Under S.357 CrPC To Suspend Sentence Unjustified

The Criminal Appeal was filed by the Accused/Appellant challenging the order of the High Court, which had granted the suspension of sentence by imposing a condition of depositing 50% of the compensation amount.

The facts of the case is that the Appellant was convicted under Sections 409 and 201 of the Indian Penal Code by the Trial Court and was also directed to pay a substantial sum as compensation. Against the conviction and imposition of compensation, the appellant filed a criminal appeal and sought suspension of sentence before the Appellate Court, which was subsequently dismissed. Thereafter, the Appellant approached the Hon'ble High Court by way of a criminal application, which directed the Appellant to deposit 50% of the compensation amount to suspend the sentence.

The Court, while allowing the appeal, relied on the judgment of the Apex Court in the case of *Dilip S. Dahanukar vs. Mahindra Co. Ltd. [2007 (6) SCC 528],* and held that a condition cannot be imposed that the convict must deposit 50% of the compensation under Section 357 of the Code of Criminal Procedure to suspend the sentence.

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Naresh Kumar Vs. State of Delhi [Criminal Appeal No.1751 of 2017)]

Date of Judgment: 08.07.2024

The criminal appeal has been filed by the appellant challenging the judgment of the High Court, which affirmed the conviction and sentence of the trial court. The facts of the case is that the incident arose from a dispute over water spilled on the appellant's roof during cleaning by the deceased's sister, leading to verbal altercations. The appellant's wife and subsequently the appellant himself exchanged heated words with the deceased's sister. When the deceased intervened, the appellant incited his brother to attack, resulting in a fatal stabbing. After the trial, the appellant and his brother (accused No.1) were convicted of murder under section 302 r/w 34 of IPC, and sentenced to life imprisonment by the trial court and the High Court also upheld the convictions.

It is the appellant's case that the conviction of the appellant was vitiated due to procedural lapses during his examination under Section 313 CrPC, particularly in not questioning him about crucial incriminating circumstances relating to common intention.

The apex court determined the major point whether the non-examination or inadequate examination of the accused under Section 313 CrPC caused material prejudice or miscarriage of justice.

The court observed that culpability can only be attributed to the accused if conclusively proven by the prosecution, following procedural safeguards that respect the accused's rights. Non-compliance with these procedures could potentially invalidate the trial under certain conditions. One critical right is outlined in Section 313 of Cr.P.C. While questioning under sub-section (1)(a) of Section 313, Cr.P.C, is optional, it is mandatory under sub-section (1)(b). Failure to adhere to mandatory questioning under clause (b) of sub-section (1) could invalidate the trial if it materially prejudiced the convict in the criminal case concerned.

The court while allowing the appeal, held that the appellant had already served more than 12 years in incarceration, further examination under Section 313, Cr.P.C would prejudice him due to legal errors and clarified that this judgment would not disturb the conviction of the other accused.

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Lal Mohammad Manjur Ansari Vs. The State Of Gujrat [Criminal Appeal No. 3524 of 2023]

Date of Judgment: 08.07.2024

The criminal appeal has been filed by the appellant challenging the judgment of the High Court, which affirmed the conviction and sentence of the trial court for the offence punishable under Section 302 of IPC. The Facts of the Case is that the deceased, who was staying in the same room as the appellant rented by PW-3, had a dispute with the appellant over playing music, which escalated into an altercation during which the appellant attacked the deceased, resulting in fatal injuries. The prosecution relied on eyewitnesses PW-3 to PW-9, the appellant's extra-judicial confession to PW-19, and the deceased's dying declaration to PW-24. Despite PW-3 to PW-9 being declared hostile, the Trial and High Courts used parts of their testimony, with the High Court accepting the evidence of PW-19 and PW-24.

It is the appellant's case that the testimony of the hostile eyewitnesses, whose statements were used selectively by the prosecution, should not be relied upon, and that the extra-judicial confession claimed by PW-19, who was the appellant's employer, lacked credibility because there was no investigation into the phone call allegedly made by the appellant to PW-19. Additionally, PSI Mishra, who was supposedly informed of the second extra-judicial confession, was not examined as a witness and the inconsistencies and doubts in the testimony of PW-25, the Investigating Officer, suggest that the prosecution's case was unreliable overall. On the other hand, the respondent contended that hostile witnesses' testimonies cannot be entirely discarded, and PW-19's testimony about the extra-judicial confession and PW-24's account of the dying declaration were reliable.

The court observed that a person would confess a serious crime to someone they deeply trust. it's unnatural for the appellant, who worked briefly for PW-19 and was otherwise unknown to them, to confess a serious crime to PW-19. the prosecution failed to investigate the phone call allegedly made by the appellant to PW-19, where

he confessed to the murder, and statements of PW-19 & PW-24 were inconsistent and non-corroborative from other witnesses. The non-examination of PSI Mishra weakened the reliability of the extra-judicial confession.

The court while allowing the appeal, acquitted the appellant and held that the prosecution failed to provide sufficient reliable evidence linking the appellant to the murder, mainly due to the inconsistencies and unreliability of the testimonies provided by the hostile witnesses.

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Rajendra Bhagwanji Umraniya Vs. State of Gujarat [Criminal Appeal Nos 2481-2482 of 2024]

Date of Judgment: 09.05.2024

Section 357 Cr.P.C- Payment Of Compensation To Victim Not A Factor To Reduce Convict's Sentence

The criminal Appeal has been filed by the Complainant/Appellant challenging the order of the High Court which had reduced the sentence imposed on the accused/Respondents after the victim was compensated by the Respondents.

The facts of the case is that two accused were convicted under various sections of IPC by the Trial Court and were sentenced to five years imprisonment. Thereafter, both the accused preferred an appeal before the High Court, which reduced the sentence to four years and further held that if an amount of Rs 2.50 lakh was paid by each of the accused, then the accused need not undergo even the four years of sentence imposed on them. The aforesaid amount was deposited by the accused before the Trial Court and their sentence was suspended.

The contention of the appellant was that the amount of compensation awarded to the victim had nothing to do with the substantive order of sentence which the court imposes upon holding the accused guilty of the alleged offense. Further, the High Court, having reduced the sentence of five years imposed by the Trial Court to four years, could not have further modified the order of sentence on the premise that the respondents were ready and willing to pay an amount of Rs 5 Lakhs by way of compensation to the victim. On the other hand, the respondent contended that it had been twelve years since the incident occurred and that the amount of Rs 5 Lakhs had also been deposited before the Trial Court.

The Court observed that Section 357 of the Code of Criminal Procedure provides power to award compensation to victims of the offense out of the sentence of fine imposed on the accused. It empowers the court to award compensation to victims while passing a judgment of conviction. In addition to conviction, the court could

order the accused to pay some amount by way of compensation to the victim who had suffered due to the action of the accused. As such, when deciding the compensation to be paid to a victim, the only factor that the court might take into consideration was the convict's capacity to pay the compensation and not the sentence that had been imposed. In criminal proceedings, the courts should not conflate the sentence with compensation to victims. Sentences such as imprisonment and/or fines are imposed independently of any victim compensation, and thus, the two stand on a completely different footing, neither of which can vary the other. Where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the convict but rather as a step towards reparation to the victims who have suffered from the offense committed by the convict.

The Court, while disposing the criminal appeal, held that an order for the convict to pay compensation to the victim would not result in the reduction of the sentence imposed on the convict. Since twelve years had elapsed from the date of the incident and the respondents had already deposited the amount of Rs 5 lakhs before the Trial Court, the Court directed the respondents to deposit a further sum of Rs 5 lakhs each, totaling Rs 15 Lakhs, to be paid as compensation to the appellant.

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HIGH COURT - CIVIL CASES

Preethi Vs. Vinay Kumar [C.M.A.No. 306 of 2024]

Date of Judgment: 27.06.2024

Section 12(1)(a) of the Hindu Marriage Act, 1955 – Non consummation of marriage even at the beginning of the marital life by either party amounts to cruelty.

The Appeal was filed under section 19 of the Family Court Act, 1984 challenging the Order passed in the Original Petition and praying to set aside the decree in H.M.O.P. No. 2222 of 2023.

The appellant/wife filed the Original Petition seeking a decree of nullity of the marriage between the appellant/wife and the respondent/husband, solemnized on 16.06.2022, under section 12(1)(a) of the Hindu Marriage Act, 1955 on the ground that the respondent/husband was impotent. The trial Court dismissed the petition by pointing out that the petitioner/wife had not stated anywhere in the petition that the marriage was not consummated due to the allegations levelled against the respondent/husband. Aggrieved by this decision, the appellant/wife filed the present appeal, praying to set aside the decree on the ground that, the pleadings are clear that the respondent/husband had refused sexual intercourse, which imply non-consummation of marriage. However, the trial court dismissed the petition only on the ground that the prayer did not explicitly mention the word non-consummation.

The Court observed that the respondent/husband was set exparte before the trial court and the respondent/husband did not come forward to the court to say as to whether the marriage was consummated or not. The Court, further observed that, non-consummation of marriage even at the starting point of the marital life by one party clearly proves the unwillingness on the part of the respondent/husband to consummate the marriage which would amount to cruelty to the wife.

Therefore, the Court, by allowing the appeal, held that the marriage solemnized between the appellant/wife and the respondent/husband was declared null and void on the ground that the respondent/husband was impotent. Hence, the decree of the trial court was set aside.

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Ride Master Rims Private Limited Vs. Inspector General Of Registration And Chief Controlling Revenue Authority, Chennai & Ors. [C.M.A.No.2345 of 2023]

Date of Judgment: 07.06.2024

Section 47-A of the Stamp Act – There must be a prima facie statement to suspect the valuation of the subject matter of any deed of conveyance and the justification for the same must be recorded.

The Appeal was filed challenging the proceedings of the first respondent/Inspector General of Registration under section 47-A(10) of the Indian Stamp Act, 1899 praying to set aside the order passed by the first respondent/Inspector General of Registration.

The facts of the case is that Tube Investments was a listed company and they closed their business due to unviability. The Appellant had purchased a small portion of the larger extent of the property and tube investments decided to convert the remaining property into housing plots. During the sale of the property, the concerned SRO suspected undervaluation of property and made a reference to the DRO (Stamps) under section 47A of the Act. The Special Tahsildar issued Form-I notice and derived the guideline value of the property as Rs. 284/- per sq.ft. Followed by Form-II notice the DRO conducted enquiry and fixed the rate as Rs. 314/- per sq.ft. The Appellant contented that the actual market price for the housing plots was only Rs. 115/- per sq.ft and there is around 200% hike which is impermissible. Therefore, aggrieved by the said proceedings, the appellant had filed this appeal.

The Court observed that, there must be a prima facie statement to suspect the valuation of the subject matter of any deed of conveyance and there must be a justification for it too. When the market value was re-fixed under section 47-A, which was higher than the one stated, it should indicate how the value was fixed,

and the first respondent had failed to do the same. The Court further relied on the decision reported in ***V.N. Devadoss Vs Chief Revenue Control Officer-cum-Inspector and ors cited [(2009) 7 SCC 438]*** and observed that the power to determine the market value must conform to the standards set forth in Sec 47-A(5), but still it cannot be arbitrarily done.

Therefore, the Court while allowing the appeal, held that the first respondent/ Inspector General of Registration had failed to justify the reason for re-fixation of value.

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The Branch Manager, I.C.I.C.I. Lombard General Insurance Company, Madurai Vs. P. Anbuchithra & Ors. [C.M.A.(MD)Nos.1232 and 1233 of 2017]

Date of Judgment: 04.06.2024

Section 166(1) of the Motor Vehicles Act – Sec 2(11) of CPC

The Civil Miscellaneous Appeals were filed against the common order passed by the trial court, wherein a sum of Rs 16,87,500/- was awarded as compensation to the claimants, R3 and R4(Parents of the deceased).

The facts of the case were, one Balamurugan died in an accident occurred due to rash and negligent driving. Two Claim petitions were filed for claiming compensation for his death. Consequently, the tribunal conducted joint trial and recorded a finding that the claimant Gunasundhari was the legally wedded wife of the deceased Balamurugan, and the other claimant Anbuchithra was the second wife of the deceased Balamurugan.

The Tribunal passed a common order which directed the second respondent/insurer to pay compensation of Rs 16,87,500/- to the claimants in both the claim petitions and the respondents 3 and 4 (parents of the deceased). Aggrieved by this order, the second respondent/insurer had preferred the appeal challenging the grant of compensation to the claimant/ Anbuchithra on the ground that they cannot be considered as legal heirs nor legal representatives of the deceased Balamurugan.

The Court observed that, the first wife Gunasundhari was very much alive and in the absence of any divorce between the said Gunasundhari and the deceased Balamurugan, the said Anbuchithra cannot be considered as a legally wedded second wife and as such, she cannot be taken as a legal heir. But the court observed that, Anbuchithra along with her minor son were living with the deceased Balamurugan and they were solely dependent on the income of the deceased Balamurugan and thus they can be considered as a legal representative. Further, the Court relied on the case of ***N. Jayasree and others Vs. Cholamandalam MS***

General Insurance Co. Ltd., **[2021 (2) TN MAC 639 (SC)],** wherein the Supreme Court held that, under Section 166 of the Motor Vehicles Act every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation.

Therefore, the court dismissed the appeal and upheld the order of the trial court.

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A. Raja @ Moses Rajan Vs. R. Santhosham [CMA No.710 of 2014]

Date of Judgment: 30.04.2024

Wife Merely Filing Dowry Demand Complaint Against Husband Not Cruelty Unless Shown That It Is False

The Civil Miscellaneous Appeal has been filed under Section 55 of the Divorce Act, 1869 to set aside the order of the Trial Court which dismissed the original petition of Divorce filed by the appellant/husband.

The facts of the case is that the Husband/Appellant was originally a Hindu but got married as per Christian rites and customs and after the birth of their child, his wife/Respondent had deserted him and refused to live with him. In the meantime, his wife/Respondent had lodged a complaint before the All Women Police Station, and after an enquiry, the police mediated a compromise and suggested reunion and subsequently, the Appellant and the Respondent lived together for some time. Since the Respondent repeatedly insisted on setting up a separate house for their living, differences of opinion arose between them and the Appellant/husband had filed petition for divorce before the Trial Court, and the Court dismissed the original petition on the ground that the Appellant had not made out a case for divorce and that he had deserted the Respondent without any valid reason.

The Court observed that, in the absence of proof that the Respondent filed a false dowry demand complaint, merely filing a complaint before the All Women Police Station would not amount to cruelty. Moreover, the Court observed that the Respondent, in her evidence, deposed that she filed a complaint before the All Women Police Station only with the intention of living together with the petitioner, and there was no evidence on record to show that the wife had committed cruelty.

Thus, the court, while dismissing the Appeal, held that the husband had failed to establish "animus deserendi" of wife and confirmed the order of the Trial Court.

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N.M. Subramaniam Vs. Unnammal (died) & Ors. [Review Petition No.113 of 2019]

Date of Judgment: 28.06.2024

Order XXI Rule 95 of CPC - A separate suit for possession at the instance of the auction purchaser/decree holder was barred by section 47 of the CPC.

The second appeal was filed challenging the judgement of the trial court which dismissed the suit filed by the plaintiff for recovery of possession.

The facts of the case is that, the plaintiff was a successful bidder in a Court auction. After the confirmation of the auction sale the plaintiff received sale certificate. Thereafter, on 15.06.2010, the plaintiff who was the auction purchaser took out proceedings under Order XXI Rule 95 for delivery of possession. Since the Execution Petition was filed beyond one year period the Execution Petition was dismissed. Pursuant to this Order, the plaintiff had filed the suit for recovery of possession of the property. Both the trial Courts dismissed the suit on the ground that it was barred by the provision of Article 134 of the Limitation Act, which provides that any proceedings for recovery of possession by the auction purchaser should be made within a period of one year from the date of the confirmation of the sale. Aggrieved by the order, the plaintiff preferred the second appeal. The substantial question for discussion in this appeal was whether an auction purchaser could maintain a separate suit for possession after his application for possession under Order 21 Rule 95 was dismissed.

The Court observed that, the commencement of the period of limitation for filing a petition under the provisions of Order 21 Rule 95 C.P.C would be the date on which the sale certificate has been issued. Further the Court relied on the Hon'ble Supreme Court decision reported in ***K.R. Lakshminarayana Rao Vs New Premier Chemical Industries [(2005) 9 SCC 354***] wherein, it was held that the

remedy for an auction purchaser is only by way of a petition under Order 21 Rule 95 C.P.C and not by way of a separate suit.

Therefore, the Court while dismissing the appeal, held that a separate suit for possession at the instance of the auction purchaser/decree holder was barred by section 47 of the CPC.

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HIGH COURT – CRIMINAL CASES

Krishnaraj @ Thangaraj Vs. State represented by Inspector of Police, All Women Police Station, Tiruppatur [Crl.A.No.641 of 2021]

Date of Judgment: 19.06.2024

The Criminal Appeal was filed by the sole accused challenging his conviction imposed by the Special Court for Exclusive Trial of Cases under the POCSO Act. The prosecution's case was that the appellant, who was a relative of the victim aged about 17 years at the time of the occurrence, kidnapped her, committed penetrative sexual assault, and promised to marry her, resulting in her pregnancy. The step-father of the victim, lodged a complaint and the FIR was registered. Despite hostile witnesses, the trial court relied on the DNA report, convicting the Appellant under Section 417 IPC and Section 6 r/w 5(l) POCSO Act, sentencing him to life imprisonment and a fine, and one year RI, to run concurrently based on a DNA report which showed a 99.999999998% probability of paternity of the victim's child. The appellant argued that the conviction solely based on the DNA report was incorrect, referencing a similar case (Chandra Mohan Vs. The State). The prosecution maintained that there was no error in relying on the DNA evidence.

The Court observed that there was absolutely no evidence let in by the prosecution as to when the blood sample of the accused was taken and the blood sample of the victim's child was collected. Further, there is absolutely no evidence to establish as to how it was packed and preserved. The 'chain of custody' of the sample had not been established. In the absence of the same, the report based on the comparison of such a sample, was of no value. Therefore, in the absence of any other evidence, the conviction on the basis of the DNA test reports alone cannot sustain, in view of the infirmities that have been pointed out as regards the collection, packing and preservation of the blood samples.

Further, the Court was of the view that the prosecution had not proved the case against the appellant beyond reasonable doubt, and therefore, the judgment of

conviction passed by the Trial Court was set aside. Thus, the Court allowed the Criminal Appeal and set aside the conviction passed by the Trial Court.

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Madhu Gulrajani Vs. State represented by Inspector of Police, Thirumangalam, Chennai & Anr. [Crl.R.C.No.1476 of 2023]

Date of Judgment: 16.04.2024

The Criminal Revision Petition was filed by the second respondent/accused challenging the impugned order of Special Court for Exclusive Trial of Cases under POCSO Act, Chennai. The second respondent had filed a petition under Section 173(8) of Cr.P.C. seeking to order for further investigation. The trial Court, allowed the same, against which, the present revision was preferred. Based on the complaint of the petitioner, an FIR was registered against the 2nd respondent for an offense under section 6 of the Protection of Children from Sexual Offence Act, 2012. The complaint was detailed, providing all details of the victim girl subjected to sexual assault by the 2nd respondent in his house. During the investigation, u/s.164 Cr.P.C., the statements of the petitioner and the victim girl were recorded, both narrating the sequence of events.

However, the accused sought further investigation, citing discrepancies in the initial investigation, including changes in the alleged date of occurrence and non-examination of crucial witnesses. The decision of the trial court to allow further investigation was based on misinterpretation of legal precedents, particularly the judgment in ***Vinubhai Haribhai Malaviya vs. State of Gujarat***, which does not support the right of the accused to request further investigation post-cognizance. The Court was of the view that the purpose of further investigation is to find fresh facts that may lead to inculpating or exculpating certain persons. The Court emphasized that the investigating agency alone has the right to file a petition for further investigation after taking cognizance. Further, the court referred to several Apex Court judgments emphasizing fair and transparent investigations.

Thus the decision of the Trial Court to allow the petition of the accused for further investigation was deemed improper, as it contradicted established legal principles that stipulated that only the investigating agency can file for further investigation

post-cognizance. Therefore, the Court allowed the criminal revision case and set aside the impugned order passed by the Special Court for Exclusive Trial of Cases under POCSO.

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S. Deepalakshmi Vs. Arumugam [Crl.O.P.No.7681 of 2024 & Crl.M.P.Nos.5574 & 5575 of 2024]

Date of Judgment: 28.06.2024

The Criminal Original Petition was filed under Section 482 of Cr.P.C., to quash the private complaint filed under Section 138 of the N.I. Act. The complainant alleged that the cheque for Rs.4,53,151/- issued by the petitioner was returned unpaid due to the alteration found in the cheque. The petitioner/accused claims the cheque was issued for a different purpose and not for any discharge of liability.

The Apex Court, in catena of judgments, held that the offence under Section 138 N.I. Act completes upon (1) drawing the cheque, (2) presentation to the bank, (3) returning unpaid by drawee bank, (4) notice in writing demanding payment, and (5) failure to pay within 15 days. Thus, the Court held that the correction made in the subject cheque by the drawer herself is voluntary and does not attract Section 87 of the N.I. Act, making it a valid cheque. The return of the cheque unpaid by the Bank due to alteration and the failure of the accused to reply to the statutory notice infer insufficient funds. The accused must face trial to prove the cheque was not issued for discharge of any liability or had sufficient funds but was returned due to alteration.

Hence, the complaint cannot be quashed. Therefore, the court dismissed the petition and connected miscellaneous petitions were closed.

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T.Viswanathan Vs. Sumathi [Crl.A.No.807 of 2018]

Date of Judgment: 20.06.2024

The Criminal Appeal was filed u/s 378 Cr.P.C., to set aside the judgment passed by the Lower Appellate Court, which reversed the judgment of the Trial Court. The Trial Court had convicted the accused/respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, sentencing her to simple imprisonment for one year and a fine. The appellant challenged the acquittal by the lower appellate court by arguing that the presumption under Sections 118 and 139 of the Negotiable Instruments Act was not appropriately considered.

The Court found that the lower appellate court erred in acquitting the accused despite her signature on the cheque being undisputed. The appellant had issued a statutory notice after the cheque bounced due to insufficient funds, but the accused neither repaid the amount nor replied to the notice. During cross-examination, she claimed that the cheque was given to one Govindasamy as security for a loan, but, did not present any evidence or witnesses to support this claim. The complainant believed it was sufficient to get a cheque from the accused, who did not deny signing it. The Lower Appellate Court wrongly concluded that the absence of a pro-note disproved the complainant's case. The Trial Court had analyzed every aspect in detail, while the Lower Appellate Court erred in acquitting the accused. Therefore, the Court held that the accused was found guilty under Section 138 of the Negotiable Instruments Act and appeal was thus allowed, setting aside the acquittal, and the respondent/accused was ordered to surrender to undergo the sentence imposed.

The Trial Court had found this explanation unconvincing and the appellate court reinstated the conviction and sentence, emphasizing that the complainant's inability to recall the accused's door number or obtain a promissory note did not undermine the legitimacy of the debt evidenced by the cheque.