

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII— PART 07 — JULY 2023****

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

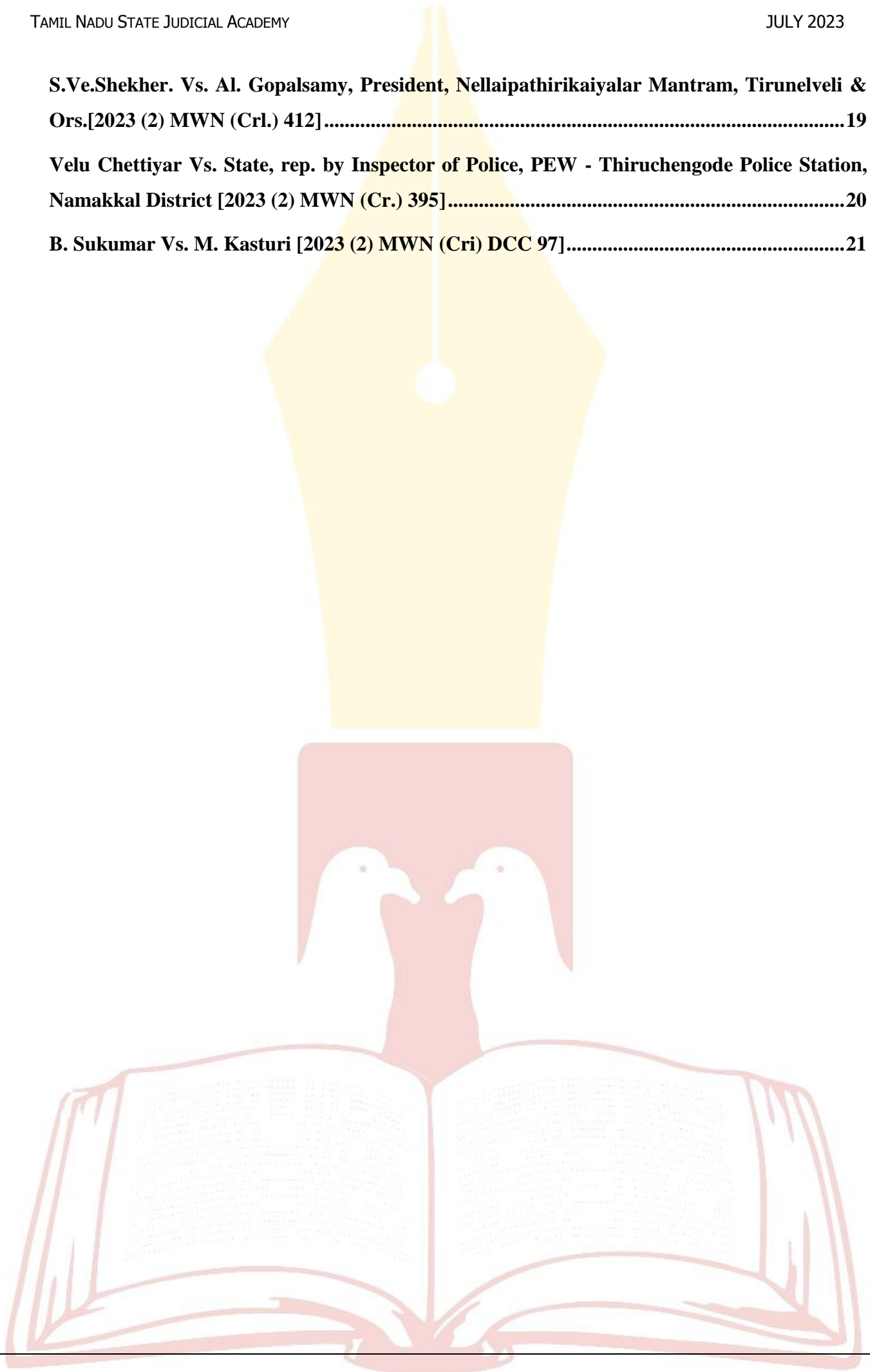
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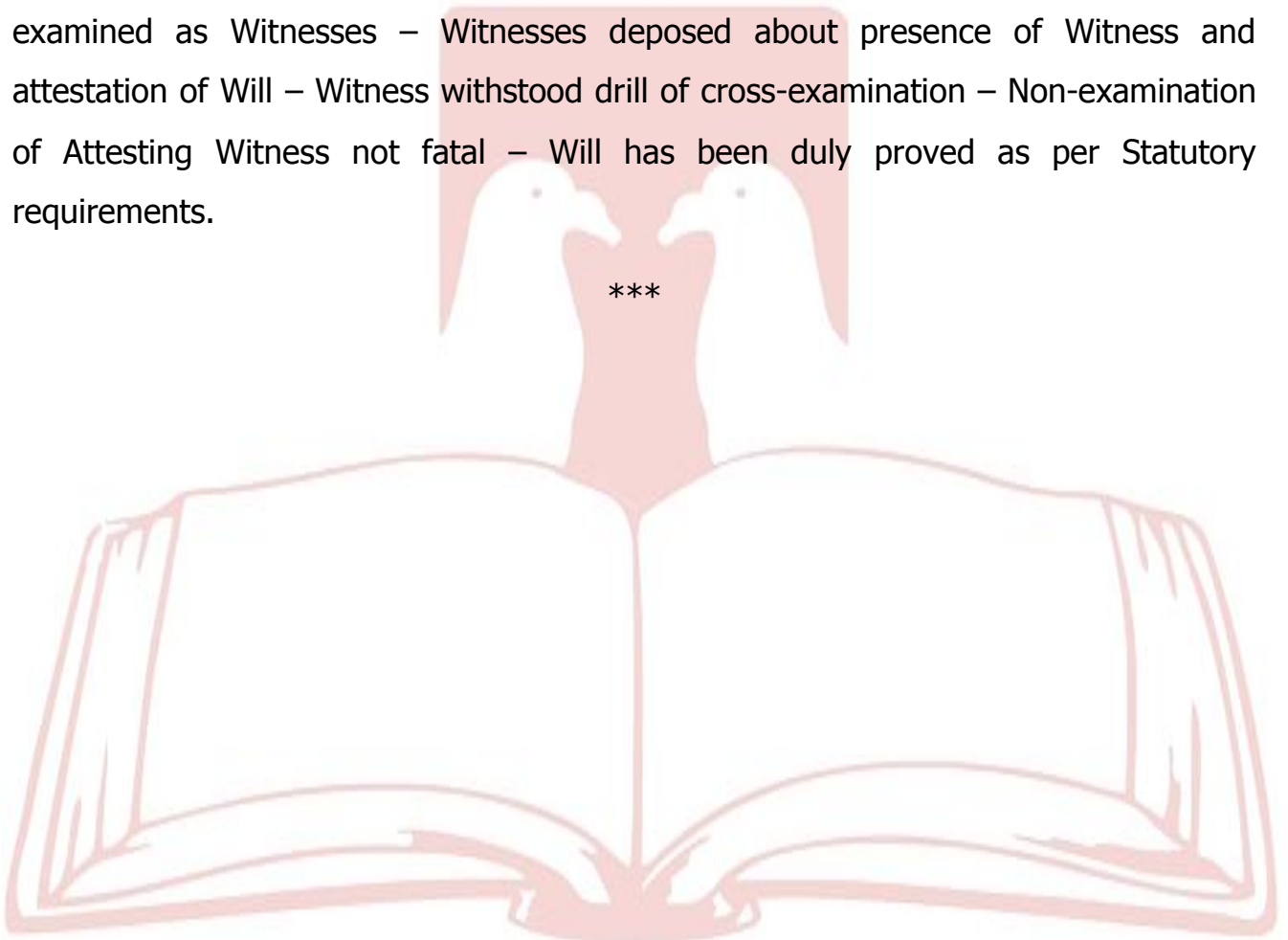
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SUPREME COURT –CIVIL CASES**[Ashutosh Samanta \(D\) by L.Rs. Vs. SM. Ranjan Bala Dasi & Ors. \[2023 \(4\) CTC 244 \(SC\)\]](#)****Date of Judgment: 14.03.2023**

Evidence Act, 1872 (1 of 1872), Section 90– Presumption as to document 30 years old – Will – Applicability of presumption – Presumption as to regularity of documents more than thirty years of age inapplicable, when it comes to proof of Will – Will requires to be proved in terms of Indian Succession Act and Evidence Act – Wills cannot be proved only on basis of their age.

Indian Succession Act, 1925 (39 of 1925), Section 63(c) – Evidence Act, 1872 (1 of 1872), Sections 69 & 71– Will – Proof of Will – Mode of proving Will – Suspicious circumstances – Death of Attesting Witnesses – Will can be proved in a manner provided under Section 69 of Evidence Act – Sons of Testator were examined as Witnesses – Witnesses deposed about presence of Witness and attestation of Will – Witness withstood drill of cross-examination – Non-examination of Attesting Witness not fatal – Will has been duly proved as per Statutory requirements.



**Elumalai @ Venkatesan and Anr. Vs. M. Kamala and Ors. [2023 (4) CTC
100]**

Date of Judgment: 25.01.2023

**Evidence Act, 1872, Section 115 - Transfer of Property Act, 1882 -
Section 6 - Hindu Minority and Guardianship Act, 1956, Section 8 -
Release Deed - Transfer of share of Heir apparent:-** Estoppel - Whether applies – to Son, during lifetime of Father, executed Release Deed with respect to specified share in Father's Self-acquired property - Held, a living man has no heir; son only a Heir apparent in Father's Self-acquired property during Father's lifetime - Section 6 of 1882 Act prohibits transfer of share of a Heir apparent - Release Deed, in instant case, on its own, would not lead to transfer of share of Son to his Father or to Minor Sons of his Father from Second Marriage - However, conduct of Son, in accepting valuable consideration in releasing his share in property, would act as an Equitable Estoppel and Son not entitled to claim share in property so released.

Jini Dhanrajgir and Anr. Vs. Shibu Mathew & Anr. Etc. [2023 (4) CTC 354]**Date of Judgment: 16.05.2023****Code of Civil Procedure, 1908, Section 47 & Order 21, Rules 97 & 102 -****Questions to be determined by Court executing Decree - Resistance or**

obstruction to possession of immovable property:- Applicability of Rules to Transferee *pendente lite* - Decree for recovery of possession - Decree for recovery of immovable property confirmed by Supreme Court - Decree holder filed Application for delivery of property - Objectors claimed to have purchased Suit property filed Application obstructing delivery of property - Maintainability of Obstruction Application - Objection filed for execution of Decree by Transferee *pendente lite* Purchasers is maintainable or not - Execution Court entertained Objection filed by Obstructors and ordered for recording of evidence - Appeal directly filed to Supreme Court - *Held*, claim regarding right, title or interest in respect of Suit property cannot be thrown out at threshold - Objectors are entitled to maintain Application under Order 21, Rule 97 - Order of Execution Court deciding to hold enquiry on objections was not improper - Execution Court bound to determine questions referred to in Rule 101 and other issues - Application filed by Objectors resisting delivery of property is maintainable - Direction issued to Execution Court to dispose of Execution Petition expeditiously.

Baini Prasad (Dead) through Legal Representatives Vs. Durga Devi [2023 (6) SCC 708]

Date of Judgment: 02.02.2023

Evidence Act, 1872, Section 115 - Limitation Act, 1963, Section 3:- Mere delay in instituting suit, when filed within the period of limitation prescribed, held, cannot be held as amounting to acquiescence or a ground to claim estoppels.

**Sarnam Singh Vs. Shriram General Insurance Co. Ltd. & ors. [2023 (2) TN
MAC 1 (SC)]**

Date of Judgment : 04.07.2023

PERMANENT DISABILITY - Loss of Earning Capacity – Assessment:-

Physical disability affecting Functional Disability - To be assessed with reference to nature of work being performed by injured – Same injury suffered by two different persons may affect them differently - In instant case, injured Claimant, aged 50 yrs., working as a Gunman suffered amputation of right leg above knee - Person with right leg amputated cannot perform duty of a Gunman - Claimant was terminated from service - Considering age of Claimant and Functional Disability, Tribunal rightly assessed Loss of Earning Capacity at 100% - High Court erred in reducing same to 80% - Setting aside Order of High Court, Award as passed by Tribunal restored.

SUPREME COURT - CRIMINAL CASES**A. Srinivasulu Vs. State, rep. by the Inspector of Police [2023 (2) MWN (Cr.) 3371****Date of Judgment: 15.06.2023****Evidence Act, 1872, Sections 133 & 114, III.(b) - Approver - Evidence of –**

Reliability:- Test to be satisfied: (i) whether Approver is a reliable Witness; (ii) whether his statement corroborated with sufficient evidence - Approver must prove his worthiness for credibility in Court - Section 133 declares accomplice to be a competent Witness - Conviction not illegal merely because it proceeds upon uncorroborated testimony of Accomplice - However, Court bound to take note of precautionary provision contained in Ill.(b) to Section 114, which provides that Accomplice is unworthy of credit unless corroborated in material particulars.

State through Deputy Superintendent Of Police Vs. R.Soundirarasu Etc.
[2023 (6) SCC 768]

Date of Judgment: 05.09.2023

Criminal Procedure Code, 1973, Sections 227, 228, 239, 240, 245(1) and 245(2) - Discharge, or, framing of charge: - Extent of enquiry by court and matters to be considered - Law summarized - Held, at the stage of consideration of discharge only a prima facie case is to be seen - Further, the court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions and inconsistencies in the statement of witnesses - Similarly, primary consideration at the stage of framing of charge held to be the test of existence of a prima facie case, and at this stage, the probative value of materials on record is not to be gone into - Further held, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

State of Rajasthan and ors. Vs. Heem Singh [2023 (2) SCC (Cri) 591]**Date of Judgment: 29.10.2020**

Service Law – Departmental Enquiry:- Criminal Proceedings - Disciplinary proceedings and criminal trial - Distinction regarding standard of proof and effect of acquittal in criminal trial - Held, while the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities - Therefore, acquittal in the criminal case shall have no bearing or relevance to the facts in the departmental proceedings.

**Haryana State Industrial & Infrastructure Development Cor. Ltd. Vs.
Deepak Aggarwal [2023 (6) SCC 512]**

Date of Judgment:28.07.2022

Words and Phrases - Non obstante Clause – Effect of :- Held: A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act, or in any law for the time being in force, or any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of that section in case of a conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that inspite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for operation of the enactment.

Abhilasha Vs. Parkash and Ors. [2023 (2) SCC (Cri) 645]

Date of Judgment: 15.09.2020

Family and Personal Laws - Hindu Adoptions and Maintenance Act, 1956,

Section 20(3):- Right to claim maintenance by unmarried daughter from her father even upon attaining majority - Such right, held, is absolute and rightly granted under Personal law and can very well be enforced by unmarried daughter against her father even upon attaining majority, in accordance with law.

HIGH COURT - CIVIL CASES**[Sankaran Vs. Girija & Ors. \[2023 \(4\) CTC 203\]](#)****Date of Judgment:22.02.2023**

Code Of Civil Procedure, 1908, Order 20, Rule 18(2) - Final Decree in piecemeal - Whether permissible:- Preliminary Decree only a declaration of rights of parties and same enforceable against all parties in Partition Suit - Court empowered to pass more than one Final Decree - Final Decree passed only with respect to one of the Schedule mentioned properties, maintainable and does not lead to crystallization of rights of parties with respect to other Schedule mentioned properties.

D. Harish & Anr. Vs. Champalatha & Anr. [2023 (4) CTC 190]**Date of Judgment: 28.04.2023**

Practice and Procedure - Fairness in proceedings, discussed:- Fairness sheaths rule of law and ensures its abidance – Fairness is corner stone of rule of law - It is the fountain head of justice – It is dark matter in cosmos of Jurisprudence that holds justice and Judicial process together - Inherently fragile, it displays immense susceptibility for easy manipulation in boundless ocean of human greed and temptations - Courts coerce themselves to optimise their vigilance.

Shanthi & Ors. Vs. K. Senthil Kumar [2023 (4) CTC 9]

Date of Judgment: 31.10.2022

Benami Transactions (Prohibition) Act, 1988, as amended by 2016 Act:-

Suit for Partition filed in the year 2012 - Benami Transaction Amendment Act (43 of 2016) came into force in 2016 - Amendment only prospective in nature - Suit has to be decided based on law that was in operation on date of presentation of Suit.

Kannaian Naidu (Died) & Ors. Vs. Kamsala Ammal @ Banumathi & Ors.
[2023 (4) CTC 76]

Date of Judgment: 21.06.2023

Marital Law - Properties purchased by one spouse - Right of both:-

Contribution of Wife to family - Value and Significance of, discussed - Husband worked abroad and earned money - Plea of Husband that properties bought by Wife in her name during subsistence of marriage were bought only by funds sent by Husband - Held, Wife who takes care of children and household gives invaluable contribution to family - Husband able to save and earn peacefully because Wife taking care of family at home - Contribution of Wife though not financial, she sacrifices her dreams and entire life for family and children - Wife by her multi-tasking skills plays multiple vital roles and makes home a comfortable environment - Job of Wife for 24 hours without holidays cannot be compared with 8 hour job of Husband - Wife, held, entitled to fruits for her hard work and cannot be left at lurch - Properties purchased during marriage, purchased by joint effort of both parties, irrespective of whose name they are purchased in - Acquisition so made is joint acquisition for welfare of family - Husband, held, cannot claim absolute Title over said properties - Said properties though purchased in name of Wife from and out of funds provided by Husband, held, said properties belong to both and both have equal share in the same.

Haja Mydeen (Died) & Ors. Vs. K.S. Sanjayan & Ors. [2023 (2) MWN (Civil) 555]

Specific Relief Act, 1963, Section 15, Contract Act, 1872, Sections 37 & 40

– Assignee:- Suit for Specific Performance - Rights under Agreement to Sell assigned by Buyer in favour of Third party - No prohibition in Agreement for Assignment to transfer rights in favour of another - Said Assignee also a Plaintiff in Suit - Held, as per Section 15, even Representatives in interest can seek for Specific Performance - No permission of Vendor warranted for Assignment - Suit filed by original Purchasers along with Assignee held, maintainable.

HIGH COURT – CRIMINAL CASES

S. Kumar Vs. District Collector, Kokkirakulam, Tirunelveli District & Ors.

[2023 (4) CTC 113]

Date of Judgment: 13.06.2023

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957),

Sections 21(4), 22 & 23-A– Power of Seizure – Power of Police – Power of Revenue official – Distinction – Contention of Petitioners that Division Bench in Muthu case has held that Revenue officials alone are competent to exercise power of seizure – Question referred to Full Bench – Definition of "Authorized Officer" takes within its fold Police personnel and other officials authorized by Government – No embargo in bringing Police personnel within ambit of "Authorized Officer empowered" under Section 21(4) – Government Orders authorizing Police to exercise power of seizure are well within powers and jurisdiction of Government.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957),

Sections 22 & 23-A – Compounding of Offence – Power of Compounding – Jurisdiction of Police – FIR registered for offences under IPC as also MMRD Act – Police have no jurisdiction to compound offences under IPC – Authorization given to Police to file Complaint under Section 22 would automatically invest power to compound offence under MMDR Act – Merely because offence under MMDR Act is compounded, that would not in anyway put fetters on continuance of prosecution qua IPC offences – Compounding of offence under MMDR Act relates only insofar as offender is concerned and not with regard to Mineral seized – Prosecution under IPC and prosecution under MMDR Act are wholly isolated and distinct and not Act connected with each other – Compounding of offence under MMDR Act cannot have any bearing on prosecution initiated under IPC – Police personnel has jurisdiction to compound offences under MMDR Act – Suggestion made to State Government to amend rules in order to obtain Expert Opinion of Director of Geology & Mines for levy of Penalty to compound offences under MMDR Act.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957),

Section 21(4) & 22 – Power to file Private Complaint – Government Order empowers both Revenue Official and Police personnel to file Private Complaint – Overlapping – Whether Authority, who has conferred power to exercise seizure alone should initiate prosecution or different officer can be appointed – Held, Officer empowered under Section 21(4) would be best Authority to file Private Complaint under Section 22 – Suggestion made to State that persons, who have been authorized under Section 21(4), also be authorized under Section 22 to ensure speedy trial of offences.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957),

Section 23-A – Compounding of Offences – Jurisdiction of Special Court – Power of Special Court would be only in relation to confiscation and release of vehicle – Power of compounding is within domain of person authorized by State – Special Court does not have jurisdiction to compound offences under MMDR Act – Direction issued to Special Courts to jointly try offences under IPC and MMDR Act to avoid any possible conflict in decision.

Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957),**Sections 22 & 21 – Indian Penal Code, 1860 (45 of 1860), Section 379 –****Code of Criminal Procedure, 1973 (2 of 1974), Section 220** – Offence of

Illicit Mining and Transportation – Offences under IPC and MMDR stands attracted – FIR registered for IPC offences and Special Act – Police empowered to investigate IPC offence and file Final Report before competent Magistrate Court – Authorised Officer bound to file Private Complaint under Section 22 of Act before Special court for offence under MMDR Act – Magistrates directed to commit case to special Court after filing of final Report by Police – Special Court directed to jointly try Private Complaint for offence under Act and IPC offence after committal by Magistrate to ensure Speedy trial and to avoid conflicting decisions.

George Lawrence Vs. E. Venkadesan [2023 (2) MWN(Cri) 390]**Date of Judgment: 07.07.2023****Code of Criminal Procedure, 1973, Section 190 – Order taking**

Cognizance:- Must reflect whether Magistrate applied his mind and satisfied from materials available on record that a Cognizable offence made out – Order should also reflect that Magistrate carefully considered materials on record and examined nature of allegations in Complaint.

Code of Criminal Procedure, 1973, Sections 482, 190 & 197 – Indian Penal

Code, 1860, Sections 323 & 341 – Quashing of proceedings against Petitioner, Inspector of Police – Complainant / Respondent, found quarreling with a drunken man, taken to Police Station, where Petitioner allegedly ill-treated, beaten, handcuffed and detained him for more than 6 hours and thereafter foisted case under section 75, City Police Act – Complainant directly approached Magistrate Court – Magistrate after recording Sworn Statement, taken cognizance of offence under Sections 323 & 341 – Petitioner contending that act committed inside Police Station can at most be excess in discharge of official duty, for which Sanction under section 197 necessary – Order taking cognizance found to be unreasoned Order – Act allegedly committed by Petitioner having a reasonable relationship with official duty – Criminal proceedings apparently prompted by *mala fides* and instituted with ulterior motive – Criminal law cannot be set into motion as a matter of course – Impugned Order warranted interference in order to prevent abuse of process of act – Proceedings quashed.

**S.Ve.Shekher. Vs. Al. Gopalsamy, President, Nellaipathirikaiyalar
Mantram, Tirunelveli & Ors.[2023 (2) MWN (Cri.) 412]**

Date of Judgment: 14.07.2023

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Penal Code, 1860 (45 of 1860), Sections 504 Indian & 505– Publication or Circulation of Vulgar Comments in Social Media – Quash Petition – Intentional Insult with intent to provoke breach of Peace – Former MLA published Derogatory and Vulgar Comment in his Facebook account about Women Journalists in Tamil Nadu – Petitioner pleaded that he has tendered unconditional apology and inadvertently forwarded Message without reading its content – Contents of comments are highly derogatory against Press as whole in Tamil Nadu – Stature of a person is directly proportional to what he communicates to society and its consequences – Person must exercise Social responsibility, while creating or forwarding Message –Every user of Social Media must be more cautious before forwarding a Message to others – Tendering of apology and removal of Message from Facebook account would not wipe out alleged offences.

Indian Penal Code, 1860 (45 of 1860), Section 504– Derogatory and Vulgar Comment shared in Facebook – Essential ingredients: (a) Accused insulted some person, (b) he did so intentionally, (c) he thereby caused provocation to some other person, and (d) he intended or knew it to be likely that provocation will cause him to break Public peace or commit any other offence – Derogatory message forwarded in Facebook account has caused insult to Women Journalists in State and provoked Public peace – Comment circulated in Facebook likely to incite any class or communities of persons to commit any offence – Message forwarded by Petitioner attracts offence under Sections 504 & 505 of IPC – Quash Petition dismissed.

**Velu Chettiyar Vs. State, rep. by Inspector of Police, PEW - Thiruchengode
Police Station, Namakkal District [2023 (2) MWN (Cr.) 395]**

Date of Judgment: 13.09.2023

**Tamil Nadu Prohibition Act, 1937, Section 32(c), Third Proviso to –
Mandatory Provisions of – Non-compliance of – Effect:-** Seizure of Illicit
Arrack - Proviso mandates drawal of Sample and destruction of remaining
contraband in the presence of Prohibition Officer or Police Officer not below the rank
of Inspector of Police - And, requires Prohibition Officer/Police Officer, in whose
presence destruction done, to give Certificate in respect of quantity seized, quantity
taken as Samples and quantity seized, quantity taken as Samples and quantity
destroyed - And, requires Certificate to be forwarded to jurisdictional Magistrate - In
the instant case, seizure conducted in the presence of Special Sub-Inspector of
Police (PEW) - Violation of Third Proviso to Section 32(c) - Destruction also not done
in presence of Prohibition Officer or Police Officer not below the rank of Inspector -
Violation of mandatory provisions - Impugned proceedings liable to be quashed -
Decision in Selvi Vs. State, 2011 (2) MWN (Cr.) 623 squarely applicable.

B. Sukumar Vs. M. Kasturi [2023 (2) MWN (Cri) DCC 97]**Date of Judgment: 26.04.2023**

Negotiable Instruments Act, 1881, Sections 138 & 139 - Presumption as to issuance of Cheque in discharge of any debt or liability:— Rebuttal of - Sufficient evidence let in by Accused that Cheque in question not given in discharge of repayment of any liability - Cheque given only as Security for Loan obtained based on Mortgage Deed - Civil Suit filed by Complainant on basis of Mortgage Deed and same decreed - Presumption rightly held as rebutted - Trial Court justified in its conclusion that Complainant failed to make a case against Accused - Acquittal upheld.

Negotiable Instruments Act, 1881, Sections 138 & 139 – Presumption as to issuance of Cheque in discharge of any debt or liability – Rebuttal of – Sufficient evidence let in by Accused that Cheque in question not given in discharge of repayment of any liability – Cheque given only as Security for Loan obtained based on Mortgage Deed – Civil Suit filed by Complainant on basis of Mortgage Deed and same decreed – Presumption rightly held as rebutted – Trial Court justified in its conclusion that Complainant failed to make a case against Accused – Acquittal upheld.
