TAMIL NADU STATE JUDICIAL ACADEMY

Vol:XVI **Part: 06** **June, 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 F**ax**: (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

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5.	K.Akbar Ali Vs. K.Umar Khan & others	2021 (3) CTC 717	12.02.2021	**C.P.C., 1908, Order VII, Rule 11:-** When a claim in suit based on averments in Power of Attorney, Court is empowered to consider recitals of Power of Attorney for consideration under Order VII Rule 11 of C.P.C. In the instant case, limited power with respect to Court proceedings in a particular Suit. In such circumstances, D1 not bound by acts of her son which were beyond the scope of Power of Attorney. Suit filed by Plaintiff, not maintainable. Rejection of Plaint by High Court, upheld.	3

SUPREME COURT - CRIMINAL CASES

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	Rahna Jalal Vs. State of Kerala and anr.	2021 (1) SCC (Cri) 492	17.12.2020	**The SC & ST (Prevention of Atrocities) Act, 1989 – Sections 18, 18-A – Criminal Procedure Code, Section 438:** The bar created by Sections 18 and 18-A(i) of the SC & ST Act to exclude the application of Anticipatory Bail u/s.438 Cr.P.C., shall not apply, if the complaint does not make out a prima facie case.	4
2.	Shatrughna Baban Meshram Vs. State of Maharashtra	2021 (1) SCC (Cri) 555	02.11.2020	**Article 20(1) of Constitution of India; Indian Penal Code, Section 376, 376-A :** Amendment to Sections 376 and 376-A, IPC through Amendment Act, 2013, giving retrospective effect from the date of Ordinance which was in force. Ex-post facto effect given are not inconsistent with the Article 20(1) Of Constitution of India.	4
3.	Satish Chander Ahuja Vs. Sneha Ahuja	2021 (1) SCC (Cri.) 667	15.10.2020	**Interpretation of Statutes Protection of Women from Domestic Violence Act, 2005, Section 2(s)**:- Shared household – Use of words "means" and "includes" indicates that definition is exhaustive in nature.	5
4.	Amish Devgan Vs. Union of India and others	2021 (1) SCC (Cri) 247	07.12.2020	**Indian Penal Code, Section 95:-** Scope of Section 95, IPC - explained	5
5.	Anwar Ali and anr Vs. State of Himachal Pradesh	2021 (1) SCC (Cri) 395	25.09.2020	**Circumstantial Evidence:**– When can conviction be solely based on circumstantial evidence? – Summary of the principles	6

HIGH COURT - CIVIL CASES

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	Syed Mathani and Others Vs. N.M.Shahul Hameed and Another	(2021) 3 MLJ 326	24.02.2021	**Muslim Law – Mutavalli – Hereditary Succession** – Whether there could be hereditary succession to office of Mutavalli – Held, Sections 3, 37 and 63 of Wakf Act, 1995 recognize hereditary succession, if wakf deed provides for such hereditary succession – In view of introduction of Wakf Act, 1995, judgment in Syed Ansamddin case reported in 1992 (2) L.W. 685 is overruled.	7
2	J.Babu Vs. Tahsildar, Nagapattinam District.	2021(3) CTC 79	27.07.2020	**Hindu Succession Act, 1956, Sections 8 and 15 :-** Issuance of Legal Heirship Certificate for indirect/Class II Heirs. Certain directions and guidelines issued to Commissioner of Revenue Administration to reissue revised guidelines.	7
3	Annakkili Vs. Murugan and Another	2021 (2) L.W. 837	26.04.2021	**Transfer of Property Act, 1882, section 52 and 53 :-** 'Lis pendens' under Section 52 and Section 53 of the Act also applies to the Money Suit. Transfer of an immovable property pending application for 'Attachment before Judgment' in a Money Suit is hit by lis pendens. Judgments in *Chellappa* and *Ammavasai* cases *per incuriam* in law.	7
4	Lakshminarayanan and others Vs. Family Manager, V.Suriya narayanan	2021(2) MWN (Civil) 24	21.11.2020	**Evidence Act, 1872, Section 63 :-** Secondary evidence - Held, when there is no objection at time of marking document, secondary evidence may be permitted by Court without granting formal permission for the same.	8

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5.	K.Kumar Vs. Anthonysamy and others	2021 (3) CTC 170	30.11.2020	**Tamil Nadu Court Fees and Suits Valuation Act, 1955, Sections 25(d) & 40 :-** Power agent executing sale deed after cancellation of power of attorney. When sale deed was executed after cancellation of power of attorney, plaintiff need not seek cancellation of the same and to value the same under section 40 of Tamil Nadu Court Fees and Suits Valuation Act, 1955. Instead, he has to seek relief to declare the said document as null and void and to value the same under section 25(d) of the said Act.	9
6.	New India Assurance Co. Ltd., rep by its Manager Vs. Rafi and another	2021 (1) TNMAC 706	01.04.2021	**Motor Vehicles Act, 1988, Section 163-A:**- Claim petition under section 163-A is not maintainable, if annual income is more than Rs.40,000/- per annum - Structured formula under second schedule to be complied with.	9
7.	National Insurance Co. Ltd. Vs. Munusamy	2021 (1) TNMAC 644	22.10.2020	**Motor Vehicles Act, 1988, Sections 166, 147 & 140 :-** Hit and run case- Maintainability of claim in respect of Owner. Claimant/Owner riding motorcycle, which was hit by unknown car. No additional premium paid for Personal Accident coverage. Premium collected for own damages does not cover cases of hit and run. Compensation under section 140 can be claimed only by filing Application before District Collector.	9

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8.	Branch Manager, New India Assurance Co. Ltd. Vs. G.Sumathi and others	2021 (1) TNMAC 620 (DB)	16.10.2020	**Motor Vehicles Act, 1988, Sections 147 & 145:-** Act only Policy. Liability of Insurer in respect of occupant of car. Whether occupant can be treated as third party Accident due to negligence of car Driver, when car hits centre median and is capsized. No other vehicle involved. Occupant cannot be termed as third party as defined in Policy of Insurance. Therefore, when deceased is not a third party, Insurance Policy cannot get extended to cover risk of Occupant.	10
9.	Pannerselvam Vs. Sivagami	2021 (1) CTC 19	25.09.2020	**Hindu Marriage Act , 1955 (25 OF 1955) Section 13:-** Irretrievable breakdown of marriage - Not a ground for Divorce under Section 13 - In absence of amendment to Statute, Divorce cannot be granted on such ground - Supreme Court may grant Decree of Divorce on finding irretrievable breakdown of marriage in exercise of powers under Article 142 to do complete justice - Such power cannot be exercised by High Court under Section 19 of Family Courts Act.	10
10.	P.Suresh Vs. R.Rangasamy and others	2021 (1) CTC 320	30.11.2020	**Specific Relief Act, 1963, Section 34:-** Plaintiff sought only declaration that Decree passed against him in earlier Suit is void. Declaration of his right in Suit property not sought. Decree declaring earlier Decree as void is mere enabling Decree, which enables Court to declare right of plaintiff. *Held,* Suit, where only enabling relief sought but substantial relief omitted, not maintainable.	11

HIGH COURT - CRIMINAL CASES

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1.	Dhandapani Vs. The Vigilance Commissioner, Tamil Nadu Vigilance Commission, Secretariat, St.George Fort, Chennai and Others	2021 (2) L.W. 638	09.03.2021	**Prevention of Corruption Act, 1988- Amended Section 17(A):-** Previous approval u/s.17(A) not applicable to the disproportionate assets cases.	12
2.	Harishankar Vs. State through the Inspector of Police Anamalai Police Station	2021 (1) TLNJ 421 (Crl)	28.04.2021	**Criminal Jurisprudence :-** When the entire testimony of the witness is found undependable and unreliable in all aspects, evidence cannot be split up for grant of benefit to some co-accused while maintaining conviction of another.	12
3.	Suresh Khatri, M. Vs. Directorate of Enforcement, rep. by the Deputy Director, Government of India, Ministry of Finance, Chennai	2021 (3) CTC 91 (DB)	23.02.2021	**Criminal Procedure Code, Section 482 :-**Failure of Magistrate to pass detailed cognizance Order will not vitiate act of taking cognizance. Magistrate presumed to have applied his mind to the Police Report and materials filed.	12
4	M.Velmurugan vs. S.Ramesh & another	2021 (2) L.W. 647	17.12.2020	**Negotiable Instruments Act, 1881, Sections 138 and 141 :-** Cheque drawn on the account maintained by partnership firm and the firm is not impleaded as one of the accused – Failure to implead the firm as an accused fatal to maintainability of complaint.	13

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	K.Subramanian Vs. State through the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli and another	2021(2) LW 779	29.04.2021	**Prevention of Corruption Act, 1988, Sections 2(b), 2(c)(viii) and 2(c)(ix) :** Question for reference before the Full Bench is whether a Secretary of a Co-operative Society is a 'Public Servant' under Section 2(c)(ix) and performs public duty under Section 2(b) of P.C.Act? - Held, Yes.	13
6	State by the Inspector of Police, All Women Police Station, Thudialur Vs. Santhoshkumar	2021(1) LW (Crl.) 713	26.04.2021	**Circumstantial Evidence:-** Circumstantial Evidence – While marshalling facts in a case of circumstantial evidence, the Court must consider the cumulative effect of the evidence as a whole. The chain of circumstances cannot be viewed and weighed in isolation.	14
7	P.S.Kirubakaran and anr Vs. Azizul Karim	2021(3) CTC 409	01.10.2020	**Code of Criminal Procedure, 1973, Sections 340 & 195 (1) (b) (ii):-** Perjury – Forgery is committed outside precincts of Court before production of document into Court. Bar under Section 195(1)(b)(ii) is not applicable. Perjury is an obstruction of justice and the plaintiff has consciously and deliberately played fraud on Court and caused obstruction for administration of justice. Direction issued to Registrar General to file complaint of Perjury before competent Court of Law.	14

S. No.	NOMINAL INDEX	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
8	M.Karthiga Priyadarshini Vs. State rep by its Assistant Commissioner of Police, Tiruppur and others	2021(2) MWN (Cr.) 135	30.03.2021	**The SC & ST (Prevention of Atrocities) Act, 1989, Section 3(2)(v):-** Ingredients necessary to attract the offence explained – Victim belonging to SC/ST not sufficient. Intention on part of accused to commit offence for reason that victim belongs to SC/ST should also be established.	15
9	Ms.S.Sushma, and anr Vs. Commissioner of Police, Greater Chennai Police, and others	2021 (1) LW (Crl.) 833	07.06.2021	**Constitution of India, Article 14, 15, 21:-** Constitutional rights of the LGBTQIA + community – The Scope of Same-sex relationship.	15
10	M/s.Abirami Polypacks, rep. by its Partners Vs. M.Dwarakanath Member Secretary Puducherry Pollution Control Committee	2021(1) LW (Crl) 894	25.03.2021	**Environment (Protection) Act (1986), Section 5, 19, Plastic waste (management and handling) Rules (2011), Rules 3, 5:-** Illegal search and seizure by any person other than an authorized officer and based on inadmissible material, the proceedings lack sanction of law. On the date of samples and analysis, Lab was not recognized. Inspection, seizure and further analysis vitiated. Proceedings vitiated.	16

SUPREME COURT CIVIL CASES

2021 (2) MWN (Civil) 104

H.S.Goutham Vs. Rama Murthy and another

Date of Judgment: 12.02.2021

Code of Civil Procedure, 1908, Order XXIII, Rules 3 & 3-A; Order XLIII, Rule 1-A; Section 96(3):- Suit for Money. Consent decree has been passed in terms of compromise by the Trial Court. Execution Petition was filed by the plaintiff. After 5 years of consent decree, the defendant filed an Appeal before High Court. The maintainability of the Appeal was challenged by the plaintiff citing the provisions of Section 96 and Order XXIII, Rule 3-A of CPC. Hon'ble High Court has held that the Appeal is maintainable under Order XLIII, Rule 1-A of CPC. Challenging the same before the Hon'ble Supreme Court, Supreme Court has confirmed the findings of the High Court regarding the maintainability of the Appeal and held that, though suit is barred under Order XXIII, Rule 3-A for setting aside Decree on ground of Compromise is not lawful and Appeal is also barred under Section 96(3) against the Decree passed with consent of parties, Appeal under Order 43, Rule 1-A is maintainable on the ground that compromise should or should not have been recorded in Suit. Judgment in **Banwari Lal v. Chando Devi**, AIR 1993 SC 1139 referred.

*****

2021 (3) CTC 326

Magma Fincorp Ltd. Vs. Rajesh Kumar Tiwari

Date of Judgment:- 01.10.2020

Contract Act, 1872:- Hon'ble Supreme Court, has held that, the financier continues to remain the owner of a vehicle, covered by a Hire Purchase Agreement until all the hire installments are paid and the Hirer exercises the option to purchase. Thus, when the financier takes re-possession of a vehicle under hire, upon default by the Hirer in payment of hire installments, the financier takes re-possession of the financier's own vehicle.

When the Agreement between the financier and the Hirer permits the financier to take possession of a vehicle financed by the Financier, there is no legal impediment upon the Financier taking possession of the vehicle. When possession of the vehicle is taken, the financier cannot be said to have committed theft. Even a loan transaction, secured by right of seizure of a financed vehicle, confers License to the financier to seize the vehicle.

However, such re-possession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and muscle men as so-called Recovery Agents. If the Hire Purchase Agreement provides for Notice to the Hirer before repossession, such Notice would be mandatory. Notice may also be necessary, if a requirement to give Notice is implicit in the Agreement from the course of conduct of the parties. Non service of proper Notice would tantamount to deficiency of service for breach of the Hire Purchase Agreement giving rise to a claim in damages.

*****

2021 (3) CTC 605

Madhavendra L Bhatnagar Vs. Bhavna Lall

Date of Judgment: 19.01.2021

Advocate – Professional Misconduct :- Proceedings for Divorce and Custody of child filed by Husband in Bhopal. Wife, on the other hand, commenced proceedings with respect to matrimonial dispute before Superior Court of Arizona, USA. Application seeking Anti-Suit injunction preferred by husband and the same was dismissed by Trial Court and dismissal was confirmed by the High Court. Aggrieved by this, instant Appeal was preferred before The Hon'ble Supreme Court.

Hon'ble Supreme Court held that, "During the hearing, a disconcerting aspect has been brought to our notice by the counsel for the Appellant. In the communication or response given by the Respondent in reference to the service of notice issued by this Court in the present Appeal, it has been asserted by the Respondent that her Attorney in India had advised her that the Appeal pending before this Court will not succeed at all. We fail to understand as to how an Advocate appearing in the matter or instructing the litigant, who is party before the Supreme Court of India would be in a position to prejudge the outcome of the proceedings or if we may say so speculate about the outcome thereof. Prima facie, this, in our opinion, is bordering on professional misconduct and needs to be proceeded with.

To take this issue to its logical end, we direct the Respondent to file an Affidavit and disclose the name of the Advocate from India, who had so advised the Respondent and on the basis of which she was advised to take a stand before the Superior Court of Arizona, as noted in Annexure P2 to the I.A. No.6177 of 2021. This proceeding will be treated as Suo moto action initiated by this Court."

*****

2021(3) CTC 681

Sesh Nath Singh & another Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. and another.

Date of Judgment: 22.03.2021

Limitation Act, 1963 (36 of 1963), Sections 5 & 14:- Section 5 of the Limitation Act, 1963, does not speak of any Application. The Section enables the Court to admit an Application or Appeal if the Applicant or the Appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the Application and/or preferring the Appeal, within the time prescribed. Although, it is the general practice to make a formal Application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the Appellant/Applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal Application.

A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an Application in writing before relief can be granted under the said Section. Had such an Application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an Application or Appeal, if on

consideration of the Application of the Appellant or the Applicant, as the case may be, for condonation of delay, the Court is satisfied that the Appellant/Applicant had sufficient cause for not preferring the Appeal or making the Application within such period. Alternatively, a Proviso or an Explanation would have been added to Section 5, requiring the Appellant or the Applicant, as the case may be, to make an Application for condonation of delay. However, the Court can always insist that an Application or an Affidavit showing cause for the delay be filed. No Applicant or Appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an Application.

In any case, Sections 5 & 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an Applicant under Section 5 of the Limitation Act be purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct Section of a Statute does not vitiate an Order. At the cost of repetition, it is reiterated that delay can be condoned irrespective of whether there is any formal Application, if there are sufficient materials on record disclosing sufficient cause for the delay.

2021 (3) CTC 717

K.Akbar Ali Vs. K.Umar Khan & others

Date of Judgment: 12.02.2021

C.P.C., 1908, Order VII, Rule 11:- Plaintiff filed suit challenging Sale Deed executed by D1 in favour of other Defendants. Application for rejection of Plaint filed by Defendants. Application dismissed by the Trial Court. The High Court, in the Appeal allowed the Application and rejected the plaint. Aggrieved by this, the original Plaintiff has preferred instant SLP.

Held: In this case, a meaningful reading of the Plaint as a whole makes it abundantly clear that the relief claimed in the Suit is barred in view of the restricted scope of the Power of Attorney given by the First Defendant to Mr.Zahir Ali.

Where on the face of the averments in the Plaint, the claim in a suit is based on an Agreement executed through a Power of Attorney holder, the Court is not debarred from looking into the Power of Attorney. It is open to the Court to read the terms of the Power of Attorney along with the Plaint in the same manner as documents appended to the Plaint, which form part of the Plaint.

The argument of the learned Counsel for the Petitioner/Plaintiff that the expression 'to do all lawful acts' in clause 6 of the Power of Attorney will include an act of sale of the property is not tenable. The acts mentioned in the Power of Attorney are in respect of Court Proceedings and that too with reference to Civil Suit No.72 of 1979. There is no clause permitting the attorney to sell the property or to enter into any Agreement to Sell. In the absence of any such clause in the Power of Attorney, the Defendant No.1 cannot be bound by the acts of her son. Therefore, the purported Pre-emption Agreement does not give any right to the Plaintiff to file the Suit. The Suit is thus not maintainable.

*****

2021 (1) SCC (Cri) 492

Rahna Jalal Vs. State of Kerala and anr.

Date of Judgment: 17.12.2020

The SC & ST (Prevention of Atrocities) Act, 1989 – Sections 18, 18-A – Criminal Procedure Code, Section 438:-The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 contains Section 18 and 18-A, which exclude the application of Section 438 Cr.P.C for Anticipatory Bail. The Hon'ble Supreme Court in the instant case has held that,

"The provisions of Sections 18 and 18-A of the SC & ST Act have been interpreted by a three Judge Bench of the Supreme Court that concerning the applicability of the provisions of Section 438 Cr.P.C., it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) of the SC & ST Act shall not apply.

Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where a bar is interposed by the provisions of Section 18 and sub-section (2) of Section 18-A on the application of Section 438 Cr.P.C., the Supreme Court has held that the bar will not apply where the complaint does not make out "a prima facie case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose, excluding access to bail as a remedy, impinges upon human liberty. Therefore, the exclusion will not be attracted where the complaint does not prima facie indicate a case attracting the applicability of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989."

*****

2021 (1) SCC (Cri) 555

Shatrughna Baban Meshram Vs. State of Maharashtra

Date of Judgment: 02.11.2020

Article 20(1) of Constitution of India; Indian Penal Code, Section 376, 376-A : On 03.02.2013, the Criminal Law (Amendment) Ordinance, 2013 (3 of 2013), was promulgated by the President of India. Section 8 of the Ordinance, inter alia, substituted Sections 375, 376 and 376-A IPC. The Criminal Law (Amendment) Act, 2013 (13 of 2013), received the assent of the President and was published on 02.04.2013 but was given retrospective effect from 03.02.2013. Section 9 of the Amendment Act, inter alia, substituted Sections 375, 376 and 376-A IPC.

In the instant case, the offence was committed on 11.02.2013 when the provisions of the Ordinance were in force. However, the Amendment Act having been given retrospective effect from 03.02.2013, the question arises whether imposition of life sentence for the offence under Section 376(2) could "mean imprisonment for the remainder of that person's natural life."

However, insofar as the situation covered by Section 376-A IPC as amended by the Amendment Act is concerned, substantively identical situation was dealt with by section 376-A as amended by the Ordinance and the prescription of sentence in Section 376-A by the Amendment Act is identical to that prescribed by Section 376-A as amended by the Ordinance. Section 376-A as amended by the Ordinance being gender neutral so far as victim was concerned, naturally covered cases where a victim was a woman. Thus, the ex-post facto effect given to Section 376-A by the Amendment Act from the day the Ordinance was promulgated, would not in any way be inconsistent with the provision of clause (1) of Article 20 of the Constitution.

*****

2021 (1) SCC (Cri.) 667

Satish Chander Ahuja Vs. Sneha Ahuja

Date of Judgment: 15.10.2020

Interpretation of Statutes, Protection of Women from Domestic Violence Act, 2005, Section 2(s):- The definition of "shared household" given under Section 2(s) of Protection of Women from Domestic Violence Act, 2005, beginning with the expression "Shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes…" The section uses both the expressions "means and includes."

Hon'ble Supreme Court after referring the Judgments in *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union, (2007) 4 SCC 685; Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416; South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat, (1976) 4 SCC 601; Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd, (2009) 3 SCC 240*, has held that, "After noticing the ratio of the above judgments, Section 2(s), which uses both the expressions "means and includes" and looking to the context, we are of the view that the definition of shared household" in Section 2(s) is an exhaustive definition. The first part of definition begins with the expression "means" which is undoubtedly an exhaustive definition and second part of definition, which begins with word "includes" is explanatory of what was meant by the definition. ……...The use of both the expressions "means and includes" in Section 2(s) of the 2005 Act, thus, clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview of definition and no other."

*****

2021 (1) SCC (Cri) 247

Amish Devgan Vs. Union of India and others

Date of Judgment: 07.12.2020

Indian Penal Code, Section 95:- Section 95 IPC is intended to prevent penalisation of negligible wrongs or offences of trivial character. Whether an act, which amounts to an offence, is trivial would undoubtedly depend upon the evidence collated in relation to the injury or harm suffered, the knowledge or intention with which the offending act was done, and other related circumstances. These aspects would be examined and considered at the

appropriate stage by the police during investigation, after investigation by the competent authority while granting or rejecting sanction or by the court, if charge-sheet is filed.

*****

2021 (1) SCC (Cri) 395

Anwar Ali and anr Vs. State of Himachal Pradesh

Date of Judgment: 25.09.2020

Circumstantial Evidence – Hon'ble Supreme Court has held that, in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

*****

HIGH COURT CIVIL CASES

(2021) 3 MLJ 326

Syed Mathani and Others Vs. N.M.Shahul Hameed and Another

Date of Judgment: 24.02.2021

Muslim Law – Mutavalli – Hereditary Succession:- The question as to whether succession to the office of mutavalli could be hereditary or not is no longer dis integra. The provisions of Wakf Act, 1995, particularly, Sections 3, 37 and 63 recognize hereditary succession, if the Wakf deed provides for such hereditary succession. Law is now fairly well settled that the Wakf Board will have to go by the directions in the Wakf deed or the customs and practice of the Wakf in appointing mutavallis. After noticing the change in law introduced by the Wakf Act, 1995, I have concluded that the judgment in 1992 (2) LW 685 is no longer good law in view of the introduction of the Wakf act, 1995.

*****

2021 (3) CTC 79

J.Babu Vs. Tahsildar, Tharangampadi Taluk, Nagapattinam District

Date of Judgment: 27.07.2020

Hindu Succession Act, 1956, Sections 8 and 15 :-

For the issuance of Legal Heir Certificate, the Commissioner of Revenue Administration (CRA) issued revised guidelines and instructions through Circular No. 9/2019/Rc.No.RS.5(3)/180/2019 dated 24.09.2019, in which the CRA proceeded to explain who are all direct Legal Heir and who are all indirect Legal Heir, i.e. Class I and Class II Legal Heirs in terms of Section 8 of the Hindu Succession Act, 1956. Hon'ble High Court in this case has held that, the CRA has not mentioned about Section 15 of the Hindu Succession Act in the said Circular dated 24.09.2019 and it only proceeds with Section 8 of the said Act. Also there is no mention about other Personal Laws. It is further held that, the CRA has failed to place reliance on various Orders passed by the High Court regarding issuance of legal heirs' certificate. Thus Hon'ble High Court has directed the CRA to consider the above aspects and shall reissue revised guidelines and instructions.

*****

2021 (2) L.W. 837

Annakkili Vs. Murugan and Another

Date of Judgment: 26.04.2021

Transfer of Property Act, 1882, Sections 52 and 53 :- Suit for Money. Application filed to attach immovable property before judgment. Pending such application, defendant transferred the suit schedule property to his brother's wife. The purchaser has contented before the High Court that, no attachment Order was passed on the date of her purchase and further the doctrine of lis pendens by virtue of Section 52 and 53 of Transfer of Property Act

cannot be pressed into service in a Money suit since the provision is applicable in a case where the right to immovable property is directly and specifically in question. The purchaser in support of his contention has relied on the Judgments in *Chellappa v. J.Jagadeesa Chettiar* and Others, CDJ 2007 MHC 011 and *Ammavasai v. Tulasikannu* and another, CDJ 2017 MHC 4321, wherein it has been held that, Section 52 of T.P. Act will not apply to a simple money suit in which the right to immovable property was not directly and specifically in question.

It has been held that, Section 52 does not say that the doctrine of lis pendens will not apply to any money suit. Further the Explanation given in Section 52 is conspicuous and explicit that for the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained. Therefore, the true intent of Section 52 with Explanation is vividly clear that the defendant or Judgment Debtor cannot transfer the suit property from the date of initiation of proceeding for attachment before judgment in a pending money suit and moreover, till the execution proceeding of decree or order obtained is completely satisfied or discharged. In these facts and circumstances, as the judgments cited, Chellappa and Ammavasai cases ignored Section 52 and its Explanation, they are *per incuriam* in law.

*****

2021 (2) MWN (Civil) 24

Lakshminarayanan and others Vs. Family Manager, V.Suriyanarayanan

Date of Judgment: 21.11.2020

Evidence Act, 1872, Section 63:-In the present case, the Ex.A2-Settlement deed and Ex.B1-Will are secondary evidence admitted by the Trial Court based on the reasons given by the parties for not producing the original documents. Hon'ble High Court while considering the same has held that, admission of a document in evidence and proof of that document are entirely different. Courts are supposed to weight the case based on best evidence available. For the said purpose, the Trial Court has admitted and relied on the documents without granting any formal permission. There is no error in admitting the secondary evidence when there is no objection at the time of marking. Explicit formal permission to admit Secondary evidence is not a mandatory requirement. Hon'ble High Court also discussed the rulings of the Hon'ble Supreme Court in ***J.Yashoda v. K.Shobha Rani,*** 2007 (3) CTC 781(SC) : 2007 (5) SCC 730 and ***M.Chandra V. M.Thangamuthu and another,*** 2010 (9) SCC 712 regarding admissibility of Secondary Evidence.

*****

2021 (3) CTC 170

K.Kumar Vs. Anthonysamy and others

Date of Judgment: 30.11.2020

Tamil Nadu Court Fees and Suits Valuation Act, 1955, Sections 25(d) & 40 :- In this case, the Plaintiff, had cancelled the Power Deed through a registered cancellation deed dated 17.09.2008. But the Power Agent, the first defendant, after cancellation, had executed sale deed dated 01.10.2009 in favour of the Second Defendant. The Plaintiff has filed the suit seeking to declare the sale deed dated 01.10.2009 as null and void and for consequential injunction. It is held that since the said sale deed has been executed after cancellation of the power deed, it cannot be said that the said sale deed was executed by the first Defendant as Power Agent of the Plaintiff and in such a case, he need not seek to cancel the said Sale Deed by valuing the relief under Section 40 of the Tamil Nadu Court Fees Act and it is sufficient to declare the said document as null and void and for that he has to value the said relief under section 25(d) of Tamil Nadu Court Fees Act.

*****

2021 (1) TNMAC 706

New India Assurance Co. Ltd., rep by its Manager Vs. Rafi and another

Date of Judgment:- 01.04.2021

Motor Vehicles Act, 1988, Section 163-A :- The petition under section 163-A of the Motor Vehicles Act is maintainable, only if the claimant's income is less than Rs. 40,000/- per annum as per the dictum laid by the Hon'ble Supreme Court in the *Deepak Girishbhai Soni and others Vs. United India Insurance Company Limited, 2004 (1) TNMAC 193 (SC).* Further, claim by tortfeasor against its own Insurer is not maintainable under section 163-A of the Motor Vehicles Act. The law on this point is no more *res integra* after the Judgment of the Hon'ble Supreme Court in *Ningamma and others v. United India Insurance Co. Ltd., 2009 (2) TNMAC 169 (SC).* Further, when Compensation sought under section 163-A of the Act, it shall be only in tune with the structured formula given under Schedule II of the MV Act and Compensation shall be only in accordance with the Schedule.

*****

2021 (1) TNMAC 644

National Insurance Co. Ltd. Vs. Munusamy

Date of Judgment:- 22.10.2020

Motor Vehicles Act, 1988, Sections 166, 147 & 140 :- It has been held that, "Under the Motor Vehicles Act, the Motor Vehicles are mandatorily insured for the third party liability coverage, which is called as Act Only Policy. For Own Damages and Personal Accident Cover for the Owner-cum-Driver, and passengers, if any, additional premium has to be paid and the liability of the Insurer, whose indemnity depends on the limit mentioned in the Policy. The Statutory coverage to compensate in terms of section 147 of the Motor Vehicles Act will arise whenever the vehicle is insured under any of the above three categories. As

far as the Third-party liability cover, it is now a mandatory requirement. Own Damage Cover and Personal Accident Cover is optional. If the Owner of the vehicle has paid additional premium, then alone, the insured will be entitled to get indemnity claim. The Insurance Company will have legal duty to indemnify the insured under the contract. If the vehicle owner had not paid any additional premium for Personal Accident cover, the Owner/Driver have no contractual right to claim compensation from the Insurer. In a case of hit and run, section 140 of the Motor Vehicles Act provides remedy for the victims. In alternate, under section 163-A of the Motor Vehicles Act, the insured without proving negligence of the third party vehicle can lay claim on the Principles of no fault. In such cases, the compensation is payable when death or total permanent disability occurs to the Claimant. In case of hit and run the statutory liability to compensate is upon the Government/District Collector under section 140 of the Motor Vehicles Act.

*****

2021 (1) TNMAC 620 (DB)

Branch Manager, New India Assurance Co. Ltd. Vs. G.Sumathi and others

Date of Judgment:- 16.10.2020

Motor Vehicles Act, 1988, Sections 147 & 145:- The deceased and others travelled in a car and the same was capsized after hitting the centre median divider on the road. No other motor vehicle was involved in the accident. Due to capsizing of the car and its impact, the deceased sustained grievous bleeding injuries and he died as a result of such injuries. It has been held that, it is an undisputed fact that the deceased was one of the occupants of the car and he is not a third party as defined in the terms and conditions of the Insurance policy. When the deceased is not a third party, the Insurance Policy cannot get extended to cover the risk of such Occupants of the car. Furthermore, the Policy is only an "Act Policy" which will cover only the risk that may be confronted by a third party to the vehicle and not to the occupant of the vehicle. The coverage for an Occupant of the vehicle can be extended upon payment of Additional Premium by the Owner of the car. The claimants, in this case, is not entitled for compensation against the insurance company.

*****

2021 (1) CTC 19

Pannerselvam Vs. Sivagami

Date of Judgment: 25.09.2020

Hindu Marriage Act , 1955 (25 OF 1955) - Section 13: – Hon'ble High Court has held that, "In the case of (i) A.Jayachandra v. Anilkumar, 2005 (1) CTC 215 (SC) : 2005 (2) SCC 22; and (ii) Vinitha Saxena v. Pankaj Pandi, 2006 (2) CTC 328 (SC) : 2006 (3) SCC 778, the Supreme Court has granted a Decree of Divorce by finding that there is an irretrievable breakdown of marriage between the parties. Such an order has been passed by the Supreme Court in exercise of the powers conferred under Article 142 of the Constitution of India to do complete justice. The same power cannot be exercised by this court in this Appeal under Section 19 of the Family Courts Act to hold that the Matrimonial relationship between the Appellant-Husband and the Respondent-Wife had irretrievably broken down. There is no

amendment brought in the statute to hold that irretrievable breakdown of marriage is also one of the grounds on which we can grant a Decree of Divorce in favour of a spouse. Unless suitable amendments are made to the relevant Statute, the power that was exercised by the Honorable Supreme Court cannot be exercised by this court."

*****

2021 (1) CTC 320

P.Suresh Vs. R.Rangasamy and others

Date of Judgment:- 30.11.2020

Specific Relief Act, 1963, Section 34: - It has been held that simple relief for declaring that the Decree passed in the earlier suit, without a corresponding prayer for declaration of his right in the suit property achieves nothing. A Decree declaring an earlier Decree as void is a mere enabling Decree, passing which the Court would be in a position to declare the right of the Plaintiff. A suit where the plaintiff seeks only an enabling relief but omits to seek a substantial relief is plainly not maintainable.

*****

2021 (2) L.W. 638

Dhandapani Vs. The Vigilance Commissioner, Tamil Nadu Vigilance Commission, Secretariat, St.George Fort, Chennai and Others

Date of Judgment: 09.03.2021

Prevention of Corruption Act, 1988 - Amended Section 17(A):- Amended Section 17(A) of the Prevention of Corruption Act, 1988 deals with the prior approval from the Government for initiation of proceedings against the public servant. The said provision was inserted vide Amendment Act 16/2018. It has been held that, on cursory perusal of the above provision would only suggest that the prior approval is necessary for conducting any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant, which is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. Regarding disproportionate assets case, the said provision is not applicable and thus prior approval under Section 17(A) of Prevention of Corruption Act is not at all necessary.

*****

2021 (1) T.N.L.J. 421 (Crl)

Harishankar vs. State through the Inspector of Police Anamalai Police Station

Date of Judgment: 28.04.2021

Criminal Jurisprudence :-

The Hon'ble High Court while setting aside a conviction, after discussing all the available evidence, has held that, the maxim "Falsus in uno, falsus in omnibus" stands disapproved in our country in the context of character of the witness if the court finds some falsehood in their testimony. In such cases, the Court can split up and grant benefit to some co-accused while maintaining conviction of another. However, when the entire testimony of the witness is found undependable and unreliable in all aspects, evidence cannot be split up for grant of benefit to some co-accused while maintaining conviction of another.

*****

2021 (3) CTC 91 (DB)

Suresh Khatri, M. v. Directorate of Enforcement, rep. by the Deputy Director, Government of India, Ministry of Finance, Chennai

Date of Judgment: 23.02.2021

Criminal Procedure Code, 1973 , Section 482 :-

The Hon'ble High Court by citing catena of decisions of the Hon'ble Supreme Court has held that, in case of a Report filed by Police, failure of Magistrate to pass a detailed Cognizance Order, will not vitiate the act of taking cognizance. The summoning Order under Section 204, Cr.P.C. requires no explicit reasons to be stated because, it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the Police Report and materials filed therewith.

Illustration (e) to Section 114 of the Evidence Act says, "The Court may presume that judicial and official acts have been regularly performed."

*****

2021 (2) L.W. 647

M.Velmurugan vs. S.Ramesh & another

Date of Judgment : 17.12.2020

Negotiable Instruments Act, 1881, Sections 138 and 141 :- Cheque drawn on the account maintained by the Partnership firm. But the firm has not been impleaded as one of the accused. The proposition is well settled and after the authoritative pronouncement by the Hon'ble Apex Court in the decision in Aneeta Hada Vs. Godfather Travels and Tours Private Limited, (2012) 5 SCC and the issue is no longer *res integra*. The Hon'ble Supreme Court has held that, for maintaining the prosecution under Section 141 of the N.I.Act, arraigning of a company as an accused is imperative. The said proposition, which is for the company, has been applied to the Partnership firm also by the Hon'ble Supreme Court in **Rangabashyam and another vs. Ramesh, 2019 (3) L.W. 929**. Thus, arraigning the partnership firm is imperative for maintaining prosecution under section 141 of N.I. Act.

*****

2021 (2) LW 779

K.Subramanian Vs. State through the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli and another

Date of Judgment: 29.04.2021

Prevention of Corruption Act, 1988, Sections 2(b), 2(c)(viii) and 2(c)(ix) :- Question for reference before the Full Bench is whether a Secretary of a Co-operative Society is a 'Public Servant' under Section 2(c)(ix) and performs public duty under Section 2(b) of P.C.Act?

Hon'ble Full Bench of the Madras High Court has answered the reference that, For a person to be regarded as a public servant within the meaning of section 2(c)(ix) of the Act, 1988, three conditions have to be fulfilled : the first is the status of the person in the registered co-operative society; the second is the nature of the business that the relevant registered cooperative society is engaged in; and the third is as to whether the society receives or had received during the relevant period any financial aid from the Central Government or a State Government or from any Corporation established by or under a Central, Provincial or State Act, or authority or body owned or controlled or aided by Government or a Government company as defined in Section 617 of the Companies Act, 1956. All three limbs have to be satisfied for the person to be reckoned as a public servant within the meaning of Section 2(c)(ix) of the said Act.

If the definition of "Public duty" is imported into clause 2(c)(viii) of the Act, it would imply a person ought to be regarded as a public servant within the meaning of the definition of the said Act if such person holds an office by virtue of which he is authorised or required to perform any duty in discharge of which the State, the public or the community at large has an interest. In the present case, the petitioner's capacity as the

Secretary of the Co-operative Society has satisfied all the three limbs and thus, he is a 'public servant' and his dealing with the complainant must be seen to be in course of the public duty. Accordingly, reference answered.

*****

2021 (1) LW (Crl.) 713

State by the Inspector of Police, All Women Police Station,

Thudialur Vs. Santhoshkumar

Date of Judgment: 26.04.2021

Circumstantial Evidence:- In a case of circumstantial evidence under POCSO Act, Hon'ble High Court has elaborated the principles of circumstantial evidence as follows:

"It is settled law that while marshalling facts in a case of circumstantial evidence, the Court must consider the cumulative effect of the evidence as a whole. The chain of circumstances cannot be viewed and weighed in isolation. In other words, it is not open to the Court to cut up the various links in the chain and then assess them independently. That would be completely contrary to the settled principles governing the appreciation of evidence in cases of circumstantial evidence. [See Ram Avtar vs. State (Delhi Administration) 1985 L.W. (Crl.) 42 S.N. = 1985 Supp SCC 410]. What the Court is required to do is to carefully scrutinize the various circumstances alleged and then examine, on a cumulative reading of the evidence before it, whether the circumstances so established are consistent with the hypothesis of the guilt of the accused. (See Sharad Birdhichand Sarda vs. State of Maharastra, (1984) 4 SCC 116."

*****

2021 (3) CTC 409

P.S.Kirubakaran and anr Vs. Azizul Karim

Date of Judgment: 01.10.2020

Code of Criminal Procedure, 1973, Sections 340 & 195 (1) (b) (ii):- Plaintiff/Tenant of a Suit Property has instituted a Suit for Specific Performance of Agreement of Sale. Plaintiff has created forged Sale Agreement purported to have been executed by the deceased Owners of the Suit property. Some of the Landowners had died even before the creation of the forged Sale Agreement. The Plaintiff has provided "TASMAC" Liquor Shop address as address of Defendants for service of Summons and manipulated service of Summons and obtained ex-parte Judgment. Surviving Landowners have filed Application to prosecute the Plaintiff for offence of Perjury.

After considering the various judgments on the subject, the Bench observed that in view of the language of Section 340 of the Criminal Procedure Code, the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) except in the interest of justice. Therefore, a holding of a Preliminary Enquiry is contemplated to record a finding to the effect that in the interests of justice, an Enquiry should be made into any of the offences referred to in Section 195(1)(b).

The dicta laid down in these cases are that where the fabrication has been done prior to it being filed before the court, then the bar under Section 195(1)(b)(ii) of the Code will not be a fetter and a Private Complaint can be entertained. The bar will operate only if the tampering is done after the filing of the document into Court and when the document

is *custodia legis* then it is only the Court that can set the Criminal Proceedings in motion by directing a Complaint to be filed or by initiating the Complaint by itself.

*****

2021(2) MWN (Cr.) 135

M. Karthiga Priyadarshini Vs. State rep by its Assistant Commissioner of Police, Tiruppur and others

Date of Judgment: 30.03.2021

The SC & ST (Prevention of Atrocities) Act, 1989, Section 3(2)(v):- committed under I.P.C., punishable with imprisonment for a period of 10 years or more against the person or property. Such offence should have been committed against a person or property knowing that such person is a member of a Scheduled Castes or Scheduled Tribes or such property belongs to such member. It should also be established that the offence was committed on the ground that the victim was a member of a Scheduled Caste. It is not enough to establish that the victim belongs to the Scheduled Caste and it should also be established that there is an intention on the part of the Accused to commit the offence for the reason that the victim belongs to the Scheduled Castes or Scheduled Tribes community. Judgments of Hon'ble Supreme Court in *Dinesh alias Buddha vs. State of Rajasthan, 2006 (3) SCC 771; Khuman Singh v. State of Madhya Pradesh, 2019 (3) MWN(Cr.) 155 (SC); Hitesh Verma v. State of Uttarakhand, 2020 (3) MWN (Cr.) 381 (SC)* referred and relied on.

*****

2021 (1) LW (Crl.) 833

Ms.S.Sushma, and anr Vs. Commissioner of Police, Greater Chennai Police, and others

Date of Judgment: 07.06.2021

Constitution of India, Article 14, 15, 21:- Hon'ble High Court has analysed the constitutional rights of the LGBTQIA + Community and issued the following direction:

"This Court proceeds to issue the following interim guidelines/directions:

A. The police, on receipt of any complaint regarding girl/woman/man missing cases which upon enquiry/investigation is found to involve consenting adults belonging to the LGBTQIA + community, shall upon receipt of their statements, close the complaint without subjecting them to any harassment.

B. The Ministry of Social Justice & Empowerment (MSJE), has to enlist Non-Governmental Organizations (NGOs) including community-based groups which have sufficient expertise in handling the issues faced by the LGBTQIA + community. The list of such NGOs along with the address, contact details and services provided shall be published and revised periodically on the official website. Such details shall be published within 8 weeks from the date of receipt of copy of this order.

C. Any person who faces an issue for the reason of their belongingness to the LGBTQIA + community may approach any of the enlisted NGOs for safeguarding and protecting their rights.

D. …..

E. ……

F. …….

G. Such other measures that are needed for eliminating prejudices against the LGBTQIA + community, and channelizing them back into the mainstream shall also be taken up. The Union and State Governments respectively, in consultation with such other Ministries and/or Departments shall endeavour to device such measures and policies.

H. For the sake of creating awareness, this Court is suggesting the following sensitization programs to be conducted by the concerned Ministry of the Union/State Government(s)."

2021 (1) LW (Crl) 894

M/s.Abirami Polypacks, rep. by its Partners Vs. M.Dwarakanath Member Secretary

Puducherry Pollution Control Committee

Date of Judgment: 25.03.2021

Environment (Protection) Act (1986), Section 5, 19, Plastic waste (management and handling) Rules (2011), Rules 3, 5:- As per Section 10 of the Environment (Protection) Act, 1986, the inspection has to be conducted by any of the person empowered by the Central Government on its behalf and as per the notification of the Ministry of Environment and Forests in S.O.83 (E) dated 16.02.1987, in respect of Puducherry Union Territory the Member Secretary of the Committee is the person empowered and competent to conduct inspection.

Further, as per Section 11(2) of the Environment (Protection) Act, 1986, the analysis report of a sample taken under sub section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub sections (3) and (4) are complied with. In this case, on the date of inspection and on the date of analysis of the sample M/s.CVR Labs Pvt. Ltd., was not having due recognition and approval as per Section 12 of the Act and as per Section 11(2), the result of any analysis of sample would not be admissible in evidence unless the provisions of sub Section 3 & 4 of Section 11 are complied with. Since on the date of sample and on the date of analysis M/s. CVR Labs Pvt. Ltd., was not recognized under section 12 of Environment (Protection) Act,1986 and thereby the report of analysis is inadmissible in evidence.

Further, in this case the inspection was carried on by the Junior Engineer as admitted by the learned counsel for the respondent. The inspection has been conducted only on oral instructions of the Member Secretary of the Puducherry Pollution Control Committee. Admittedly no legal delegation of powers had been given to the Junior Engineer to conduct the inspection thereby making the inspection, seizure and further analysis vitiated. The judgment of the Hon'ble Apex Court in *Roy V.S. Vs. State of Kerala* reported in (2008) 8 SCC 590 is relied upon.

*****