

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVII — PART 06 — JUNE 2022 \*\***

## COMPENDIUM OF CASE LAWS



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## SUPREME COURT - CIVIL CASES

### Canara Bank Vs. G.S. Jayarama [C.A.No.3872 of 2022]

**Date of Judgment: 19-05-2022**

Section 22C, Legal Services Authorities Act, 1987 [LSA Act] - Permanent Lok Adalat - Mandatory Adjudication

The Hon'ble Supreme Court decided a Civil Appeal on [1] whether conciliation proceedings were mandatory under Section 22C, LSA Act, and [2] whether Permanent Lok Adalats [PLAs] have adjudicatory functions under the LSA Act.

The Apex Court highlighted the similarities and differences between Lok Adalats and PLAs, and observed that the entrustment of wider powers to PLAs are supported by its membership, comprising of a District Judge/Additional District Judge or someone who has held judicial office higher in rank than that of a District Judge (as compared to only judicial officers in Lok Adalats).

On the first issue, the Apex Court referred to Bar Council of India Vs. Union of India [(2012) 8 SCC 243], and observed that PLAs are bound to perform the step-by-step procedure under Section 22C, LSA Act, even if the opposite party does not appear. PLAs can adjudicate the dispute on merits as per Section 22C(8), LSA Act, only if the agreement under Section 22C(7), LSA Act, fails. Thus, the Apex Court held that conciliatory proceedings under Section 22C, LSA Act, are mandatory in nature.

On the second issue, the Apex Court referred to various judicial precedents\* and interpreted the jurisdiction of Lok Adalats. The Apex Court held that Lok Adalats cannot perform any adjudicatory function in terms of Section 20, LSA Act.

The Apex Court found that the PLA failed to follow the mandatory conciliation proceedings in the present case, and upheld the observations of the Division Bench of the Karnataka High Court to the extent that it set aside the award of the PLA.

**\*See Also**

- Life Insurance Corporation of India Vs. Suresh Kumar [(2011) 7 SCC 491]
- State of Punjab Vs. Jalour Singh & Ors. [(2008) 2 SCC 660]
- Estate Officer Vs. Colonel HV Mankotia [(2021) SCC OnLine SC 898]
- New Okhla Industrial Development Authority Vs. Yunus and Ors. [(2022) SCC OnLine SC 138]

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**Harnek Singh & Ors. Vs. Gurmit Singh & Ors. [C.A.No.4126 of 2022]****Date of Judgment: 18-05-2022****Medical Negligence - Doctrine of Due Care - Oral and Documentary Evidence**

The Hon'ble Supreme Court decided a Civil Appeal challenging the decision of the National Consumer Disputes Redressal Commission [NCDRC], involving a case of medical negligence causing the death of a patient.

The Apex Court considered that whether the Complainant had established professional negligence on the part of the Respondents as per the standards governing the 'duty to care' of a medical practitioner.

The Apex Court observed that in proceedings for damages due to professional negligence, the question of intention does not arise.

The Apex Court referred to the findings of the MCI on the conduct of the Respondent and opined that the NCDRC had applied the general principles of law as laid down in the judgments of this Court but has not attempted to draw its conclusion from the oral and documentary evidence available on record.

The Apex Court found that NCDRC had committed an error in setting aside the findings of the SCDRC, and held that the complainants have made out a case of medical negligence against Respondents 1 and 2 and are entitled to seek compensation on the ground of deficiency of service.

The Apex Court allowed the appeal and set aside the Judgment of the NCDRC.

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**Kattukandi Edathil Krishnan & Anr. Vs. Kattukandi Edathil Valsan & Ors.**  
**[C.A.No. 6406-6407 of 2010]**

**Date of Judgment: 13-06-2022**

Rebuttal of Presumption of Marriage in respect of long co-habitation must be proved by the one objecting it – Order XX Rule 18 of the CPC, 1908 – Delay in initiating final decree proceedings

The Hon'ble Supreme Court decided on a Civil Appeal arising from a suit for partition and challenging the presumption of marriage as to co-habitation of the mother and father, the legal status of the child and delay in initiating the final decree proceedings.

The Apex Court referred to the decisions in Badri Prasad Vs. Dy. Director of Consolidation and Others [(1978) 3 SCC 527], S.P.S. Balasubramanyam Vs. Suruttayan alias Andali Padayachi and Others [(1994) 1 SCC 460] and several other cases observed that “when a man and woman have lived together for long years then the presumption of the legality of their wedlock arises, but this presumption is rebuttable and the burden of proof lies on the person who seeks to deprive that relationship of Legal Origin”

The Apex court observed and directed that “there is no need for separate proceedings for drawing the final decree. Once the preliminary decree is passed, the court can list the matter for taking steps under Order XX Rule 18 for partition, separate possession of the property, *sine quo non* without adjourning the matter and any further separate proceedings because the suit comes to an end only when the final decree is drawn”

The Apex court found that the defendants failed to rebut the presumption of the marriage as to the matter in dispute. Hence the Apex Court restored the decree passed by the Trial Court.

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**Munni Devi Alias Nathi Devi (Dead) Vs. Rajendra Alias Lallu Lal (Dead)**  
**[C.A.No.5894 of 2019]**

**Date of Judgment: 18-05-2022**

The Hindu Succession Act, 1956 - Property of a female Hindu to be her absolute property

The Hon'ble Supreme Court decided on a Civil Appeal arising from a suit for pre-existing right to maintenance of the ancestral property.

The Apex Court referred to the decisions of the cases, *V.Tulasamma and other Vs. Sesha Reddy(Dead) [(1977) 3 SCC 99]* and *Raghubar Singh & Ors Vs. Gulab Singh & Ors [(1998) 6 SCC 314]* and observed that, "the words "*possessed by*" used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same."

The Apex Court observed that, when the Hindu widow owns such property in lieu of her right to maintenance, whether it was purchased before or after the commencement of Act of 1956, her limited interest automatically expands into an absolute right under Section 14(1) of that Act.

The Apex Court found that, the respondent's pre-existing right to maintenance, coupled with her settled legal possession of the property, would be sufficient to create a presumption that she had a vestige of right or claim in the property, though no document was executed or specific charge was created in her favour recognizing her right to maintenance in the property.

The Apex Court held that a Hindu widow when has exclusive legal possession of the HUF property, it shall be presumed that such property is her pre-existing right of maintenance.

Thus, the Apex Court dismissed the appeal as it is devoid of merits.

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**Union of India & Anr. Vs. M/s Mohit Minerals Pvt. Ltd. [C.A. NO. 1390 of 2022]**

**Date of Judgment: 19-05-2022**

**Levy of Integrated Goods and Services Tax – Binding value of Recommendation given by GST Council on Government – Supply of Service – Supply of Good**

The Hon'ble Supreme Court considered two independent transactions and IGST can be levied on both the transactions, one for the supply of goods and other for the supply of services. The Apex Court relied on the decision of the Constitution Bench in Mathuram Agrawal Vs. State of M.P., [(1999) 8 SCC 667] which has identified three essential elements of taxation: (i) The subject of the tax; (ii) The person who is liable to pay the tax; and (iii) The rate at which the tax is to be paid and The measure or the value to which the rate will be applied. In Union of India Vs. Tulsiram Patel [(1985) 3 SCC 398], the bench held that non-reference of source of power may not vitiate its exercise and application in given facts and circumstances of the case.

The Apex Court affirmed that, the Council under Article 279A has wide recommendatory powers on matters related to GST where it has the power to make recommendations on subject matters that fall outside the purview of the rule-making power under the provisions of the IGST and CGST Act.

The Apex Court held that, the recommendation of the GST Council is not binding on the Union and the State based on the following reasons:

- (a) The Parliament intended for the recommendations of the GST council to only have a persuasive value.
- (b) The recommendations of GST council are the product of collaborative dialogue involving Union and States and are recommendatory in nature.
- (c) The recommendations of the GST council made by virtue of power under Article 279A (4) are binding on legislature's power to enact legislations.

Thus the Apex Court dismissed the appeal.

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## SUPREME COURT - CRIMINAL CASES

### Deepak Yadav Vs. State of U.P. & Anr. [Cri.A.No. 861 of 2022]

**Date of Judgment: 20-05-2022**

#### Section 439, CrPC — bail — criminal procedure

The Hon'ble Supreme Court decided a Criminal Appeal challenging the grant of bail by the Allahabad High Court to the Respondent who had been charged for offences under Sections 34 and 302 of I.P.C and Sections 3 and 25 of Arms Act, 1959.

The apex court dealt with principles governing grant of bail, and referred to the various judicial precedents\* and observed that there is a *prima facie* need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence, and the sound reasoning in a particular case is a reassurance that discretion has been exercised by the court after considering all the relevant grounds and by disregarding extraneous considerations and these were already decided in the case of Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana & Anr, [(2021) 6 SCC 230].

The Apex Court then decided on the matter of cancellation of bail and said that once bail has been granted then it should not be cancelled in a mechanical manner without considering any supervening circumstances that have made it no longer fair to retain his freedom by enjoying concession of bail during trial.

The Apex court held that the High Court was incorrect to have granted bail without taking into considerations the facts and circumstances and reason for bail wasn't provided. Thus, the apex court allowed the Criminal Appeal and set aside the impugned judgment of High court.

#### **\* See Also**

- Dolat Ram & Ors. Vs. State of Haryana [(1995) 1 SCC 349]
- Prahlad Singh Bhati Vs. NCT of Delhi & Anr. [(2001) 4 SCC 280]
- Prasanta Kumar Sarkar Vs. Ashish Chatterjee & Anr. [(2010) 14 SCC 496]

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**Jaswinder Singh (Dead) Vs. Navjot Singh Sidhu & Ors. [Rev.Petition  
Crl.No.477/2018 in Crl.A.No.60/2007]**

**Date of Judgment: 19-05-2022**

**Sentencing Philosophy - Victimology**

The Hon'ble Supreme Court decided this criminal review petition on the issue of expanding the scope of the review petition for the offences under section 324 of the Indian Penal Code (I.P.C) and on enhancement of sentence of the respondent. The respondent, an international cricketer was charged under Section 304 of I.P.C. for fist fighting with the appellant (deceased) who was more than forty years older than the respondent. The Trial Court acquitted both the accused. The High Court found that it was the haemorrhage which caused the death of the deceased and not the cardiac arrest. The Supreme Court opined that it did not agree with the observations of the High Court that the death was caused by subdural haemorrhage and not cardiac arrest. While analysing the scope for expansion of the review petition, the court disinclined to enlarge the notice to something more than the aspect of sentencing due to lack of enmity and lack of any weapon except bare hands in committing the crime.

The Apex Court looked into the provision of section 323 of I.P.C. as well as the precedent set out in Sunil Dutt Sharma Vs. State, [(2014) 4 SCC 375]. It said that there cannot be leniency in sentencing when the hurt/injury has resulted in death, nor can the delay in trial be taken into account. In Gopal Singh Vs. State of Uttarakhand, [(2013) 7 SCC 545], it held that punishment is the collective cry of the society and while collective cry has to be kept uppermost in mind the principle of just punishment is the bedrock of sentencing in respect of a criminal offence. The Court looked into USA Judgments, Dharma Shastra and held that in addition to the fine imposed, the court also imposed a sentence of imprisonment for a period of one-year rigorous imprisonment to be undergone by the first respondent.

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**M/s Knit Pro International Vs. State of NCT of Delhi & Anr. [CrI.A.No. 807 of 2022]**

**Date of Judgment: 20-05-2022**

**Section 63 Copyright Act – Criminal Procedure**

The Hon'ble Supreme Court decided a Criminal Appeal challenging the judgement and order of the High court which allowed the writ petition and quashed the FIR bearing filed against the respondents for the offences under Sections 63 and 65 of the Copyright Act, 1957.

The court decided on the issue, whether, the offence under Section 63 of the Copyright Act is a cognizable offence as considered by the Trial Court or a non-cognizable offence as observed and held by the High Court. For answering this issue, the Court referred Section 63 of the Copyright Act and Part II First Schedule of the Cr.P.C together. The Court held that the maximum punishment which can be imposed for offence under Section 63 of the Copyright Act is 3 years, which according to Part II First Schedule of the Cr.P.C is cognizable and non-bailable offence. The Court held "The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever".

The court held that "the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence", hence the judgment and order passed by the High Court was quashed. The appeal was allowed.

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**Satish Kumar Jatav Vs. State of U.P. & Ors. [Crl.A.No. 770 of 2022]****Date of Judgment: 17-05-2022**

Sections 307, 504, 506 - Indian Penal Code - Section 3(10)(15) - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

The Hon'ble Supreme Court decided a Criminal Appeal challenging the judgement of the High Court allowing the petition by the respondent to quash the criminal proceedings against them under Sections 307, 504, 506 of the Indian Penal Code and Section 3(10)(15) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The Court held that "the impugned judgment and order passed by the High Court is a cryptic, nonspeaking order." The court also observed that the High Court has not at all observed on how the order passed by the learned Magistrate summoning the accused was wrong and/or erroneous. The Court held that "when serious allegations for the offences under Sections like 307, 504, 506 of the IPC and Section 3(10)(15) of the Act are made, the High Court ought to be more cautious and circumspect while considering the application under Section 482 Cr.P.C. and quashing the criminal proceedings for the aforesaid offences."

The Court quashed and set aside the impugned judgment and order passed by the High Court and restored the order passed by the learned Magistrate summoning the accused. The appeal was allowed.

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**Uttam Vs. State of Maharashtra [Cri.A.No.485 of 2012]****Date of Judgment: 02-06-2022****Dying Declaration - Section 32, Indian Evidence Act 1872 - Section 302, IPC**

The Hon'ble Supreme Court decided a Criminal Appeal challenging the Judgment of the High court confirming the conviction for an offence under Section 302, IPC.

The Apex Court looked into the issue of admissibility and evidentiary value of the dying declaration and testimony of two witnesses. The Court referred to Kundula Bala Subrahmanyam & Anr. Vs. State of Andhra Pradesh [(1993) 2 SCC 684] and observed that, when there is more than one dying declaration, each one of them must be examined with care and caution and only after satisfying itself as to which of the dying declarations appears to be free from suspicious circumstances and has been made voluntarily should it be accepted and it is not necessary that in every case, a dying declaration ought to be corroborated with material evidence, ocular or otherwise. and same was observed in the case of Lakhan Vs. State of Madhya Pradesh [(2010) 8 SCC 514].

The Apex court then examined the credibility of other two witnesses. The Apex Court referred to the case of Arun Bhandudas Pawar Vs. State of Maharashtra [(2008) 11 SCC 232], and observed that, the evidence of both the interested witness and the dying declaration recorded are in contradiction to each other. There was serious doubt about the mental and physical health of the deceased when making the dying declaration, and further there was lack of any corroborative evidence to back the testimonies. The Apex Court held that considering principles governing appreciation of the evidence with multiple dying declarations, the Accused was granted benefit of doubt.

Thus, the Apex Court allowed the Criminal Appeal, set aside the impugned judgment of High court and acquitted the Appellant.

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**HIGH COURT - CIVIL CASES****C. Shamilakumari Vs. P. Chandrasekar [O.S.A. No. 142 of 2022]****Date of Judgment: 19-05-2022****The Guardians and Wards Act – Child Custody**

The Hon'ble High Court decided an Original Side Appeal on child custody under The Guardians and Wards Act.

The Court observed that, while deciding a petition filed under Section 25, The Guardians and Wards Act, the interest of the minor children has to be ascertained by enquiry. Courts are not expected to grant custody of minor children in a routine manner, merely based on allegations and counter allegations set out in the petition and counter affidavit. Beyond such pleadings, the psychological aspect of the children, the real interest involved and what would be better for their future have to be necessarily considered.

The Court observed that, in custody petitions, if the minor children are made to suffer for 6 years and if these petitions are prolonged for another 2 years, by which time the minors would attain majority, there is no point in deciding such original petitions under the provisions of Guardians and Wards Act. The custody of the minor children should be decided as expeditiously as possible by the Courts. The delay in deciding such petitions may probably prolong the harassment or trouble, which the minor children are subjected to. The rights of the children have to be protected under all circumstances and the Courts are expected to act swiftly in such cases.

The Court ascertained the willingness of the children and granted the custody of the two minor children to the Appellant mother with immediate effect. The Court declared that the Respondent father has no visitation rights, and directed him not to interfere in the lives of the children.

The Court set aside the Order and Decretal Order and allowed the Original Side Appeal.

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**Fenner India Ltd. Vs. Assistant Commissioner of Income Tax****[T.C.A.No.184 of 2012]****Date of Judgment: 08-06-2022****Section 260A - Income Tax Act, 1961 - Section 80 HHC - Calculation of Deduction**

In a Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal the Hon'ble High Court held that, guarantee commission as well as royalty must be excluded from the business profit for the purpose of calculation of deduction under Section 80 HHC of the Income Tax Act, 1961.

The facts of the case were that, the Appellants were engaged in the business of manufacture and sale of V & Fan Belts, Oil Seals etc. For the assessment year 2004-2005, they filed its return admitting a total income of Rs.14,02,65,870/-, which was subsequently, revised by them. Upon scrutiny of the same, the respondent issued notice under section 143(2) of the Income Tax Act, 1961 and thereafter, completed the assessment under section 143(3) determining the total income which excludes long term capital gains. While doing so, the assessing officer, among others, restricted the claim of deduction under Section 80HHC by excluding 90% of the royalty receipts from the profits of the business under clause (baa) to explanation to section 80HHC (4).

The Court relied on CIT Vs. Bangalore Clothing Co. [(2003) 260 ITR 371], wherein it was categorically held that "guarantee commission as well as royalty viz., a payment for using a right, must be excluded from the business profit for the purpose of calculation of deduction under section 80HHC of the Act. The court held the "Tribunal has rightly directed the assessing officer to exclude the royalty income from the business profits for the purpose of calculation of deduction under section 80HHC of the Act, which warrants no interference." The Court dismissed the tax appeal.

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**M/s. Starshine Logistics (Regd.Firm) Vs. Tamil Nadu Civil Supplies Corporation [W.P.Nos.8522 of 2022 (Batch)]**

**Date of Judgment: 01-06-2022**

Section 56, Indian Contract Act, 1872

The Hon'ble High Court considered a batch of Writ Petitions wherein the Tamil Nadu Civil Supplies Corporation had issued tender notification for the supply of oil pouches. The petitioners had submitted their tenders in response to the said notification and emerged as successful tenderers. The offers made by the firm were accepted by the respondent Corporation on 13.01.2022. As per the terms of the contract, the tenderers were to supply the following quantities in two spells.

The Court referred to *U.P. Power Transmission Corporation Ltd. Vs. C.G. Power & Industrial Solutions Ltd. [(2021) 6 SCC 15]* and reiterated that existence of an arbitration clause does not debar the court from entertaining a writ petition and that relief under Article 226 of the Constitution of India may be granted in a case arising out of a contract.

The Court referred to *Energy Watchdog Vs. CERC [(2017) 14 SCC 80]*, and found that, doctrine of frustration cannot apply to these cases as the fundamental basis of the contract remains unaltered. The escalation of the price of the commodity in the market cannot be a ground to plead frustration. Price fluctuation cannot be construed as a force majeure event warranting invocation of Section 56, Indian Contract Act. The petitioners cannot be said to have been "hindered or prevented" from making the additional supplies.

The Court observed that disruption in the profit calculation originally made by the Petitioners is no reason to permit them to wriggle out of the consequences that flow logically from the contractual arrangements knowingly entered into by them.

Thus, the Court held that there is no ground for interference with the impugned communications issued by the Respondent Corporation and dismissed the petitions.

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**Northern Arc Capital Ltd. Vs. Sambandh Finserv Pvt Ltd. [A.No.4248 of 2021 in C.S.(Comm. Div.) No.318 of 2020]**

**Date of Judgment: 08-06-2022**

**Civil Procedure**

The Hon'ble High Court considered an application under Order XIV Rule 8 of the Madras High Court Original Side Rules, 1956 r/w Order XIII A of CPC.

The Court observed that Order XIII A is introduced in the CPC by amendment and made applicable only to commercial disputes. Order XIII A enables either the plaintiff(s) or the defendant(s) to apply for summary judgment at any time after the summons has been served on the defendant(s) but before issues are framed in the suit. Thus, in contrast to Order XII Rule 6, an application for summary judgment cannot be filed once issues are framed.

An application under Order XII Rule 6 of CPC can only be filed on the basis of admissions, whether in the pleadings or otherwise, and whether made orally or in writing, whereas, an admission is not a necessary pre-condition for an application for summary judgment, although such application is also maintainable on the basis of admissions by the counter party.

The Court may act on its own motion to pronounce a judgment on admission, whereas an application by one of the parties is mandatory under Order XIII A.

Two requirements should be satisfied for the grant of a summary judgment. [1] The applicant should establish that the counter party has no real prospect of successfully defending the claim, if the applicant is the plaintiff, or, if the applicant is the defendant, of succeeding on the claim. [2] There is no other compelling reason why the claim should not be disposed of before recording oral evidence.

Since the conjunction "and" is used between the first and second requirements, the two requirements should be construed as cumulative.

Rules 4 & 5 of Order XIII A deal with the procedure and evidence with reference to an application for summary judgment.

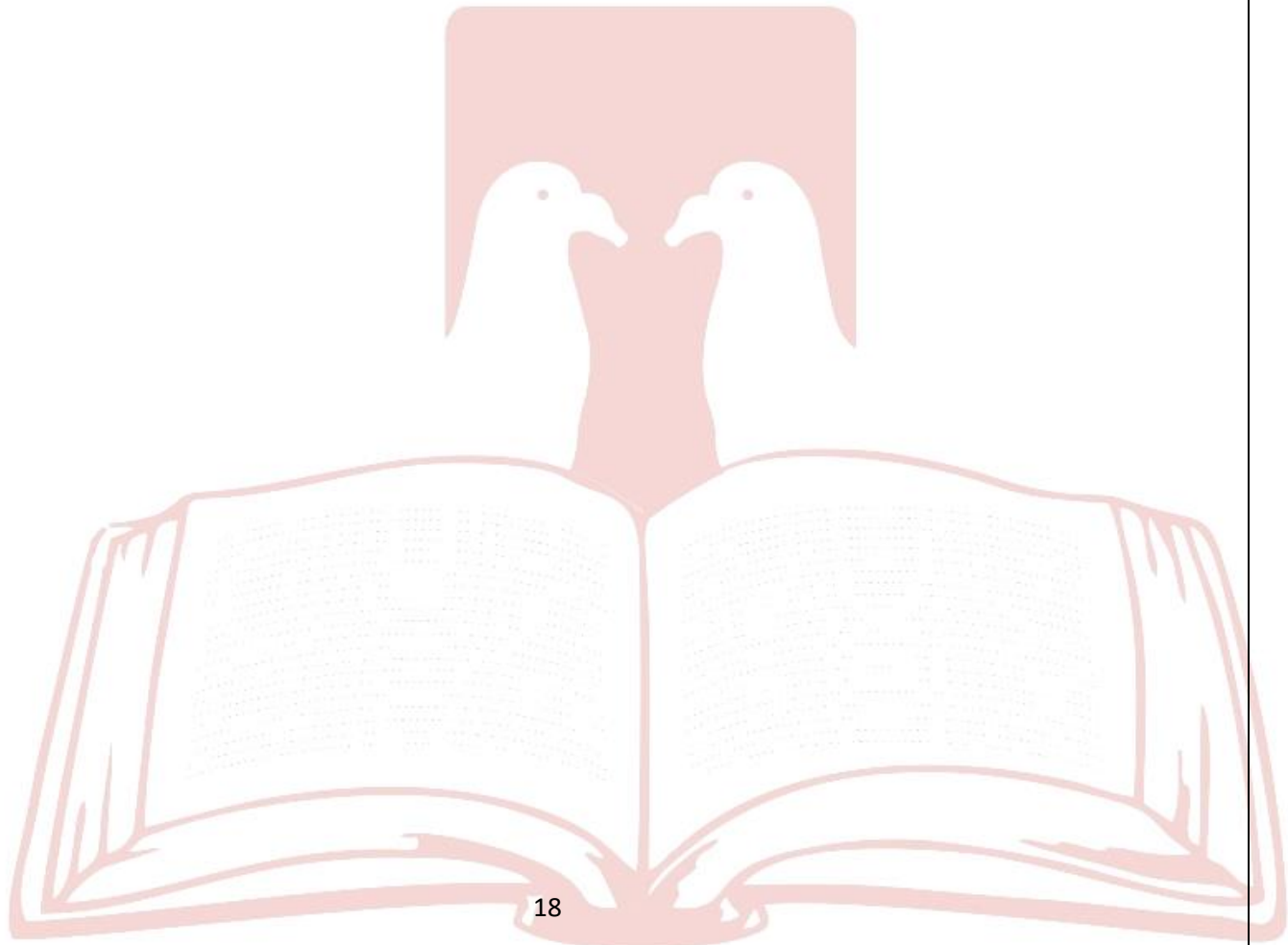
Both parties are required to set out the grounds on which the application is being prosecuted or defended, as the case may be, and all documents proposed to be relied upon for such purpose.

Although Rules 4 & 5 provide for the filing of evidence, including documentary evidence, by both parties, as in the case of any other application, the burden of proof is on the applicant.

The general principle under the law on evidence, which is enshrined in Section 103 of the Indian Evidence Act, 1872, that the burden of proof lies on the person who makes an assertion applies to an application under Order XIII A CPC also.

The Court held that a suit cannot be summarily decreed at the instance of a plaintiff unless such plaintiff satisfies the court that the suit claim stands duly proved.

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**P. Krishnakumar Vs. The State of Tamil Nadu Rep. by its Secretary,  
Department of Human Resources Management & Ors. [W.A. No.237 of  
2022]**

**Date of Judgment: 06-06-2022**

Service Laws –Section 25(b) - Tamil Nadu Government Servants (Conditions of Service) Act, 2016

The High Court decided on the point of consideration, [1] Whether there is any conflict between the Special Rules and Section 25(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, if so, whether the Special Rules would override Section 25(b) of the Act and [2] Whether, while fixing the qualification for the posts which included Engineering Graduates, its omission subsequently would indicate that the intention was to exclude Engineers and thereby exclude/ nullify the operation of the fiction contained in Section 25(b) of the Act.

The Hon'ble High Court held that, if a rule making authority intended to exclude, it ought to have been set out expressly. Failure to do so would only indicate that the rule making authority never intended to narrow or whittle down the rule. The Court reiterated that, "A statute must be read as a whole and one provision of the Act or the rules made thereunder should be construed with reference to other provisions in the same Act/Rules so as to make a consistent enactment of the whole statute read with relevant rules. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a Section or between a Section and other parts of the statute or between sections and the Rules. The provisions of one Section of a statute cannot be used to defeat those of another Rule or Section."

Thus the High Court dismissed the Writ Appeal and closed the connected Civil Miscellaneous Petitions.

**\*See Also**

- Union of India Vs. Ranjit Kumar Saha [(2019) 7 SCC 505]
- P. V. M. Ranganatha DesikaIyengar Vs. Govt. of A.P. [(1996) 3 SCC 75]
- MSP Infra. Ltd. Vs. M.P. Road Development Corpn. Ltd. [(2015) 13 SCC 713]
- Collector of Central Excise, Jaipur Vs. Raghuvar India Ltd. [(2000) 5 SCC 299]

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**Ramasamy Gounder @ Senban (died) & Ors. Vs. Chinnapillai @ Nallammal & Ors. [S.A.No.211 of 2015]**

**Date of Judgment: 18-05-2022**

Civil Procedure – Order XLI Rule 31

The Hon'ble High Court decided on an issue of assigning "cogent reason" under Order XLI Rule 31 of CPC.

The Court found that, no amount of evidence can be looked into where the same has not been laid down as foundational facts in the pleadings.

In a suit for partition, the plaintiff is expected to plead certain essential facts as held by the Supreme Court in *Shasidhar and Others Vs. Ashwini Uma Mathad and Others [(2015) 11 SCC 269]*

The proof of the existence of a joint family does not lead to the presumption that the property held by any member of the family is joint. The plaintiff is expected to prove that there was a joint family nucleus and the joint family properties were capable of earning income and further there was surplus income to purchase the suit property after meeting other commitments of the joint family. The property standing in the individual name of a co-owner will be presumed to be his property and the burden of proof is upon the plaintiff to establish that it was purchased from the surplus income from the joint family nucleus. This is not a matter of assumption and it has to be necessarily pleaded and proved through evidence.

The Court held that, merely because a property is described as an ancestral property in the recitals of the document, that by itself is not a conclusive proof as to what is stated therein, more particularly when there are other materials to show that properties concerned are not ancestral properties.

The Court thus set aside the Judgment and Decree passed by the lower Appellate Court.

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**S. Nalini Selvaraj & Ors. Vs. The Joint Commissioner & Ors.**  
**[W.P.Nos.26270 of 2021 (Batch)]**

**Date of Judgment: 15-06-2022**

Section 78 - The Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959  
- Claim of Ownership through will executed by Zamindars

The Hon'ble High Court observed with respect to the claim of the 4<sup>th</sup> respondent that the land transferred to them by Zamindar in the year 1884 which will be overridden by the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, came into force with effect from 01.01.1951 and from that date onwards, as per Section 3(b), the zamin estate land has been transferred and vested with the Government free from all encumbrances.

The Court observed that As per Section 3(b), (c), (d) and (e), all the rights and interests created over the estate before the notified date will cease and determine against the Government." And hence the 4th respondent is entitled to get only Ryotwari Patta. Though the 4th respondents failed to prove the possession and cultivation of the land but also they did not raise any objection when the government categorized those lands as 'Anatheenam Land'. Since they are the landlords to the petitioners they are entitled to collect rent from the petitioner under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

The Court decided that "the rights pertaining to the land in question will be governed by the result of appeal, which is still pending before the Commissioner of Land Administration, the petitioners are entitled to the relief sought for in the Writ Petitions". After the claim made by the "respondents 3 and 4, in the notes of submission, admitted that the issue between the Revenue Department and the temple will be governed by the appeal pending before the Commissioner of Land Administration".

Thus, the Court set aside the impugned notice proceedings initiated by the 1st respondent and allowed the Writ Petitions.

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**T.R. Ramanathan v. Tamil Nadu State Mental Health Authority & Ors. [WP No. 12540 of 2022]**

**Date of Judgment: 12-05-2022**

**Right of the disabled to be educated – State's Obligation**

The Hon'ble High Court considered the issue whether the certifying authority can insist that the person for whom the certificate of disability is sought should come to the premises of the institution for the purpose of assessment even though he or she is unable to come.

The Court held that, State has the obligation to design a special approach depending upon the special needs of the concerned category of disabled. The Government of Tamil Nadu has introduced a laudable scheme "*Illam Thedi Kalvi*" (*Education at doorsteps*). ...persons suffering from mental retardation or mental illness are entitled to have the assessment done at the place where they reside. The disabled persons are entitled to rights guaranteed under Article 21 of the Constitution of India and are entitled to obtain a certificate under Section 58 of the Rights of Persons with Disabilities Act, 2016 without any hassle or difficulty.

Thus, the Court allowed the Writ Petition.

**See Also:**

- Jacob M. Puthuparambil and Ors. Vs. Kerala Water Authority [(1991) 1 SCC 28]
- Sambhavana Vs. University of Delhi [(2013) 14 SCC 781]

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**Thanaseelvi Mary & Ors. Vs. Tamil Nadu Electricity Generation & Distribution Corporation & Ors. [W.P.Nos. 13321 of 2022 (Batch)]**

**Date of Judgment: 25-05-2022**

**Recruitment – Right to Appointment to post of Field Assistant**

The Hon'ble High Court decided a batch of Writ Petitions seeking a direction to appoint the Petitioners as Field Assistants (trainee) pursuant to the results published and vacancies announced.

The Court found that the Petitioners had participated in the selection process, and were not in the zone of consideration for appointment.

The Court opined that, appointment can never be claimed as a matter of absolute right and appointments are to be made strictly in accordance with the recruitment rules in force. Equal opportunities in public employment are the Constitutional mandate. Thus, whenever a decision is taken for recruitment, the competent authorities are bound to follow the recruitment rules in force by providing equal opportunities to all the candidates who all are aspiring for securing public employment.

The Court found that the Petitioners have not established any right for the purpose of granting the relief of appointment to the post of Field Assistant, as appointments are to be made in accordance with the recruitment rules in force.

Thus, the Court dismissed the Writ Petitions, with the liberty that petitioners can participate in the selection process for appointment to the post of Field Assistant, if any notification is issued by the competent selection authorities.

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**Veranda Race Learning Solutions Private Limited Vs. M/s.Trichy Race Academy [O.A.No.73 of 2022 in C.S.(Comm. suit) No.23 of 2022]**

**Date of Judgment: 08-06-2022**

Civil Procedure – Trade Marks Act – Registered Proprietor – Passing Off – Appreciation of Evidence

The Hon'ble High Court considered the issue under Order XIV Rule 8 of Original Side Rules and Order XXXIX Rule 1 and 2 of CPC praying to grant ad interim injunction, on the usage of a logo, identical name or deceptively similar name. Two applications were filed to restrain alleged infringement of trademark and passing off.

The Court observed that, "the Plaintiff is not the registered proprietor of the trademark in question as on date. Since the Plaintiff is not a registered proprietor, the Plaintiff is not entitled to sue for infringement or seek interim relief in relation to infringement at this juncture. It should be noted, however, that once the assignment is registered by the trademarks registry, it would take effect from 25.11.2021(the date of the application). Since the suit was instituted on 25.01.2022, the relief in respect of alleged infringement would become maintainable in that event. Nonetheless, as indicated above, at this juncture, the Applicant/Plaintiff is not entitled to prosecute the application for interim injunction for alleged infringement. As regards the application for interim injunction for passing off, Section 27(2) of the Trade Marks Act saves the common law remedy of passing off. As such, the application for passing off should be considered on merit."

On the question whether the use of the mark by the Defendants, including on banners and advertisement, constitutes passing off, the Court held that, "the Defendants have used the impugned mark for a considerable period of time and hence the balance of convenience is not in favour of the granting an interim injunction".

Thus, the Court dismissed the Application.

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**HIGH COURT – CRIMINAL CASES****Agavai (name changed) Vs. The State Rep. Inspector of Police Avadi, Chennai [Cri.R.C.No.877 of 2021]****Date of Judgment: 29-04-2022**

Sections 6, POCSO Act, 2012 - Juvenile Justice (Care and Protection of Children) Act, 2015

The Hon'ble High Court decided a Criminal Revision Case challenging the detention Order of the Juvenile Justice Board for an offence under Section 6, POCSO Act 2012.

The Court found that the Board in the current case had not been established in accordance with Rule 19(14) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and pointed out that at the time of the case's final disposition, only one member had issued the order.

The Court found that even though the petitioner/confession of the child in conflict with law was recorded on 15.8.2019, the charge sheet was not prepared until 3.8.2020, and the order of detention was only issued on 17.3.2021—indicating that the time limit specified by the Act was not followed in its strictest sense when the investigation was finished.

The Court referred to Sabarinathan Vs. The Inspector of Police (2019) 3 MLJ (Cri.) 110 and Vijayalakshmi & Anr Vs. State (Rep. by Inspector of Police) [2021 Mad 317], and observed that, "Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act."

The Court set aside the Order of detention, and set the Petitioner at liberty. Juvenile Justice Act should have been followed before issuing any orders of detention, and is supposed to be the last resort after making a reasonable inquiry, as stated in Section 3(xii) of the Juvenile Justice Act. Instead, the Juvenile Justice Board has issued an order of detention based solely on the petitioner/minor's statement which is said to have been given of his own free will.

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**Balu @ Balamurugan Vs. The State Rep. by The Inspector of Police, All Women Police Station, Salem Town [Cri.R.C.No.412 of 2017]**

**Date of Judgment: 15-06-2022**

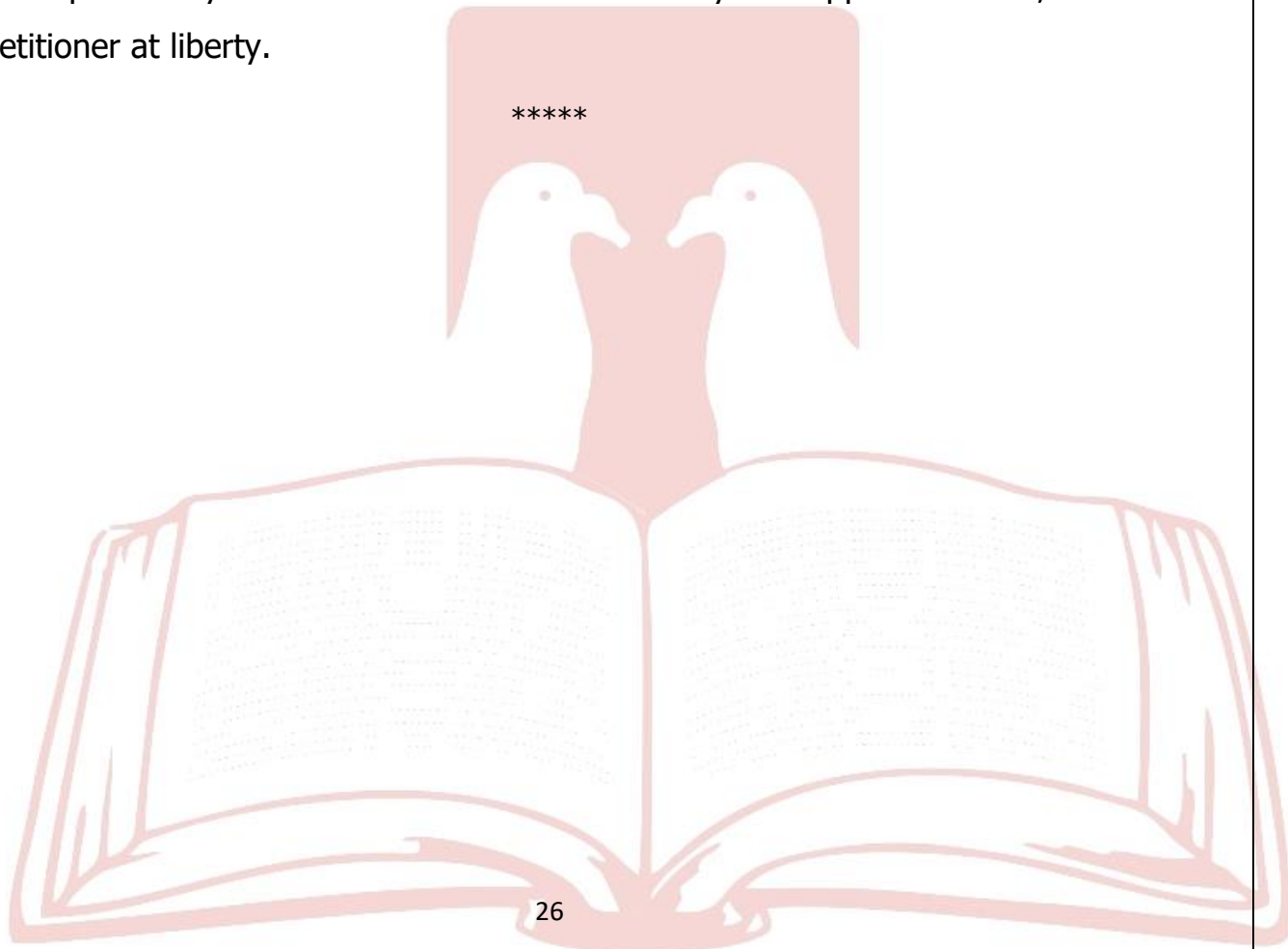
**Criminal Procedure - Dowry Prohibition**

The Hon'ble High Court decided a Criminal Revision Case praying to set aside the Judgment confirming the conviction and sentence of the trial Court, for an offence under Section 498A, IPC and Section 4 of Dowry Prohibition Act.

The Court found that the trial Court had heavily relied upon the witnesses who were interested and failed to note that, there is no independent corroborative evidence. The Court observed that conviction can be rendered even based on the sole evidence, if it is reliable and inspires confidence of the Court. The Court found that the evidence of PW1 in the present case lacked reliability and corroboration from independent witness, and hence held that the trial Court finding is perverse and incorrect.

Thus, the Court allowed the Criminal Revision Case, set aside the conviction and sentence passed by the trial Court and confirmed by the Appellate Court, and set the petitioner at liberty.

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**C. Sundaram Vs. State Rep. by Deputy Superintendent of Police EOW-II, Salem & Ors. [Crl.R.C.Nos.822 to 824 of 2021]**

**Date of Judgment: 27-05-2022**

**Section 233(d), CrPC — Same Transaction**

The Hon'ble High Court decided a set of Criminal Revision Cases challenging the Orders passed by the TNPID Court, seeking for consolidation of charges and single trial under Section 219, CrPC.

The Court observed that in the present set of cases involving multiple accused persons, instead of Section 219, CrPC, it is more relevant to apply Section 233(d), CrPC, which is not fettered by any numerical limitation on the number of persons or offences that can be charged against the accused in one trial.

The Court discussed the use of the expression 'same transaction' used in Section 233(d), CrPC, referred to State of A.P. Vs. Cheemalapati Ganeswara Rao [AIR 1963 SC 1850] and Balbir Vs. State of Haryana [(2000) 1 SCC 285], and observed that where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences 'committed in the course of the same transaction'. The Court referred to Nasib Singh Vs. State of Punjab [(2022) 2 SCC 89], and observed that the Court would then be justified in ordering a joint trial.

The Court observed that when an accused person invokes any provision of law, the minimum respect the Court ought to give the accused person is to take the application on file, more so where there is a statutory right to seek a prayer.

The Court found that all the cases involved must be consolidated for framing charges and only a single trial must be held. The Court allowed all the Criminal Revision Cases and set aside the impugned Orders.

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**M/s. Friends Brothers Enterprises Pvt. Ltd. Vs. State rep. by the Inspector of Police, PEW – Kancheepuram Police Station, Kancheepuram District**  
**[Cri.R.C.No.564 of 2022]**

**Date of Judgment: 10-06-2022**

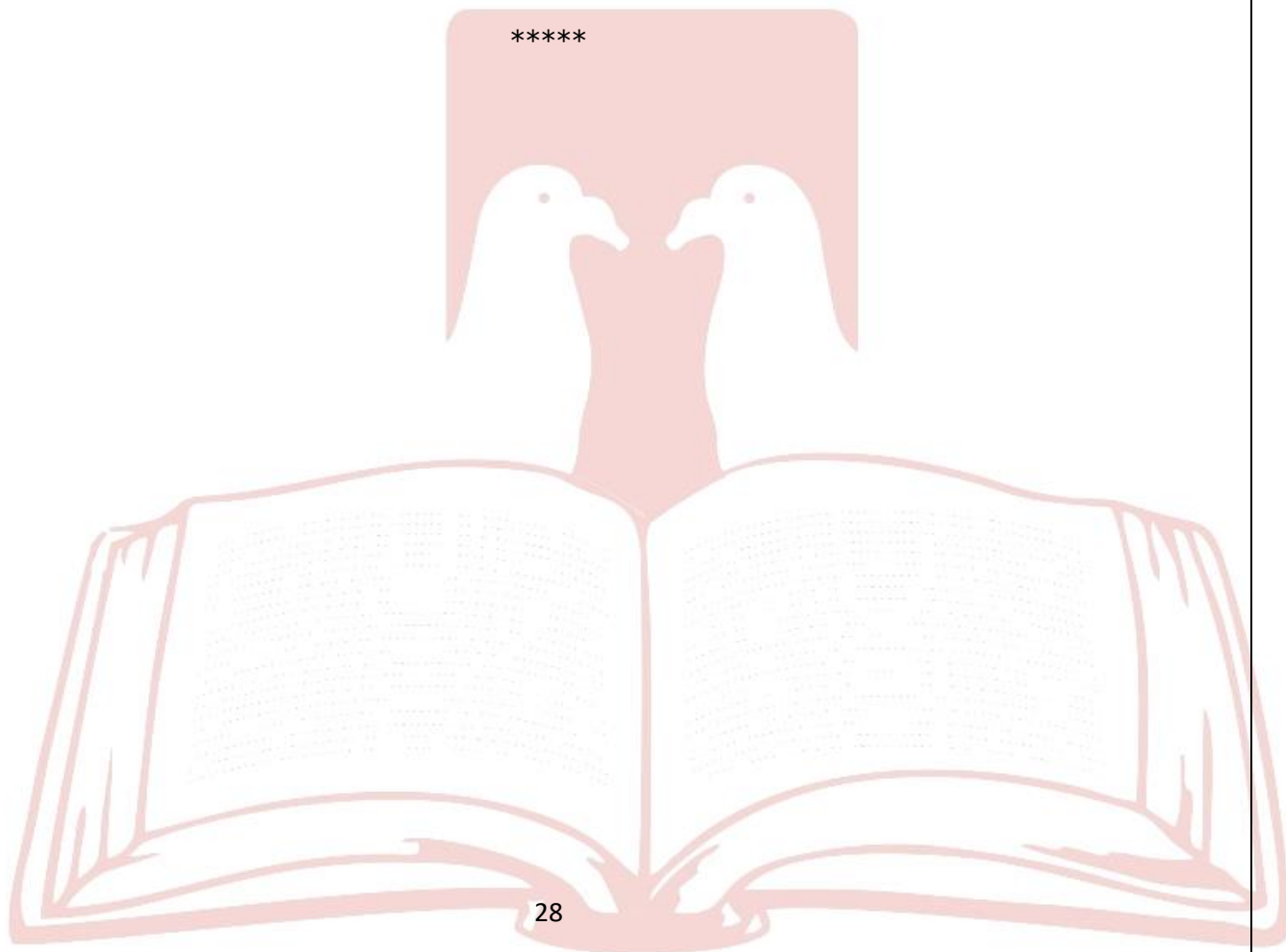
**Criminal Procedure – Return of Property**

The Hon'ble High Court decided a Criminal Revision Case seeking the release of the Petitioner's vehicle which was seized for involvement in an offence under Section 4(1)(aaa), 4(1-A) of Tamil Nadu Prohibition Act.

The Court referred to *State of M.P. Vs. Uday Singh [(2020) 12 SCC 733]*, and observed that pending confiscation proceedings, it may not be open for entrustment of interim custody. At the same time the Court noted that the confiscation proceedings had been pending for a long time, and directed the Respondent to complete the proceedings within one month, failing which the Petitioner is entitled for return of custody of the vehicle, subject to certain conditions.

Thus the Court set aside the Order of the Magistrate, and disposed off the Criminal Revision Case.

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**M/s. Kanya Resorts Private Ltd. & Ors. Vs. The Assistant Registrar of Companies, Tamilnadu [CRL.O.P.No.28730 of 2019 (Batch)]**

**Date of Judgment: 26-05-2022**

Companies Act — Continuing Offence — Prosecution launched under repealed Act

The Hon'ble High Court decided a batch of Criminal Original Petitions seeking to quash the criminal proceedings filed for offences under Companies Act, 1956/2013.

The Court found that whether the alleged offence is a continuing offence or one time offence has to be decided on the basis of the punishment prescribed in each and every case. The Court referred to *State of Bihar Vs. Deokaran Nenshi & Anr. [AIR 1973 SC 908]* and observed that, in cases where fine is imposed for each and every day the violation continues, the offence is a continuing offence. In cases where imprisonment or fine is prescribed without the continuation of fine for continuing violation, the complaint should be filed within the limitation period prescribed under Section 468, CrPC.

The Court observed that it is for the company to establish that it has cleared its debts and liabilities and stopped its operations.

The Court found that there was no illegality in launching prosecution for non-filing of financial statements for the financial year 2014-2015, since it is only the penal provision and not the provision which defined the offence, which came into force on 01.06.2016.

In some of the cases, the Court referred to *Mahmadhusen Abdulrahim Kalota Shaikh Vs. Union of India & Ors. [(2009) 2 SCC 1]* and Section 465, Companies Act, 2013, and observed that cases in question had not been instituted and pending immediately before the commencement of 2013 Act and therefore, prosecution launched under the repealed Companies Act, 1956, cannot be maintained.

In another case, the Court observed that whether show cause notice was given before launching prosecution is a disputed fact and can be decided only in the trial.

Thus, the Court allowed some of the Petitions and dismissed the others.

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**M/s. SYR Infrastructure Vs. State Represented by Inspector of Police  
Central Bureau of Investigation, Anti-Corruption Bureau, Chennai  
[Cri.R.C.No.1084 of 2021 (Batch)]**

**Date of Judgment: 26-05-2022**

**Probative Value of the Materials on Record**

The Hon'ble High Court decided a batch of Criminal Revision Cases seeking discharge of offences and dismissal of the complaint involving offences under Section 120(b) read with Section 420 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The case concerned an auction for the sale of iron ore.

The Court considered the huge difference in the reserve price for 'fair' quality iron ore and found that there is an element of strong suspicion with regard to the low reserve price fixed by the Fourth Accused. The Court observed that whether the alleged act of collusion is a purely business transaction or an action to cheat in conspiracy with other Accused, can be ascertained only when trial is conducted, witnesses examined and documents marked. Conspiracy can be proved either by direct evidence or by circumstances. If the complicity of any other person comes to light, it is always open to add them as accused under Section 319, CrPC.

The Court referred to *Amit Kapoor Vs. Ramesh Chander & Anr. [(2012) 9 SCC 460]* and observed that, "A same cause of action may give rise to civil and criminal consequences. Merely because a civil remedy is possible, criminal prosecution cannot be subverted. At the time of framing of charges, the probative value of the materials on record cannot be gone into and the materials by the prosecution have to be accepted as true. If there is sufficient ground to proceed, then charges can be framed."

The Court found that there are sufficient materials to charge the Petitioners, and that the trial Court had rightly dismissed the discharge petitions. The Court thus dismissed the Criminal Revision Cases and confirmed the Order passed by the trial Court.

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**Mani @ Manikandan Vs. State by the Inspector of Police, J.J. Nagar Police Station [Crl.A.No.244 of 2019]**

**Date of Judgment: 10-06-2022**

Sections 356, 376 and 377 of IPC — Appreciation of Evidence

The Hon'ble High Court decided a Criminal Appeal challenging the conviction and sentence for abducting and raping a child.

The Court found that the cross examination of the child survivor did not demolish the facts spoken by her during her chief examination, and that the child survivor had clearly identified the accused before the trial Court. The Court further observed that the evidence of the child survivor was corroborated by the evidence of doctors who had examined her.

The Court referring to *State of Himachal Pradesh Vs. Sanjay Kumar [2017 2 SCC 51]*, reiterated that in sexual offences the evidence of the survivor alone is sufficient to convict the accused. Once the Court is convinced that the evidence of the survivor is acceptable, it is not always necessary to look for corroborative evidence.

The Court found that the non-examination of the witness who caught hold of the Accused, was not fatal to the case of the prosecution, as the evidence of the prosecution witnesses were cogent and clear that when the public and relatives of the child went near the Accused, he had threatened them by pelting stones at them, and thereafter the Accused had been arrested by the police.

The Court found that there was no delay in registration of FIR, and that except for minor discrepancies, there was no lacuna in the case of the prosecution. The Court further noted that when the Accused was questioned under Section 313, CrPC, he had merely denied everything and had not given any explanation as to the motive of Prosecution Witnesses against him. Moreover, during the cross-examination, no suggestion was put to the witnesses in this regard.

Thus, the Court confirmed the conviction and sentence of the trial Court and dismissed the Criminal Appeal.

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**R. Sridharan Vs. State By The Inspector of Police, T.Nagar, Chennai**  
**[CrI.R.C.No.424 of 2015]**

**Date of Judgment: 15-06-2022**

**Section 304A, IPC — Appreciation of Evidence**

The Hon'ble High Court decided a Criminal Revision Case seeking to set aside the Judgment confirming the order of conviction by the Trial Court, for an offence under Section 304A, IPC.

The Court found that both the Courts had not considered the fact that prosecution witnesses has not spoken about rashness or negligence on the part of the accused, but had only said that the bus was driven very fast by the accused. The Court observed that driving a vehicle in a high speed *per se* is not an inference for rash or negligent driving. There must be evidence to show by driving the vehicle at high speed it likely to endanger the human life.

The Court further found that none of the witness had disposed that the vehicle was driven in a manner endangering the human life or rashly, and therefore, there was an error in the finding of the lower Court.

The Court allowed the Revision and set aside the conviction and sentence passed by the trial Court and confirmed by the appellate Court.

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**The Deputy Commissioner of Police District Crime Branch, Chennai Vs. D. Marudhupandiyar [R.T. No. 4 of 2021]**

**Date of Judgment: 08-06-2022**

**Sections 34 and 149 of IPC — Appreciation of Evidence — SC/ST Act**

The Hon'ble High Court in a Referred Trial dealt with a case of honour killing which took place in 2003. The Court observed that the word 'investigation' defined under Section 2(h), CrPC, is wide enough to enable the CBI to collect evidence and investigate fresh materials which run *contra* to the story of the police.

The Court reiterated that only the testimony of the witness in the witness stand should be analysed, and that the statement recorded before the police can only be used to contradict the witness during cross-examination. The Court further reiterated that once the trial Court had decided that the evidence of a witness is essential for the just decision of the case, the opinion of the Investigating Officer that such witness would not be a reliable witness is really of no consequence.

The Court observed that the definition of the word 'proved' in Section 3, Evidence Act, uses the expression "considering the matters before it" and not "considering the evidence before it", and that the Court has the discretion to appreciate the evidence and decide whether a fact has been proved or not, from the standpoint of a prudent man. The Court observed that a burden is cast upon the accused under Section 106, Evidence Act, to prove facts which are exclusively within his knowledge, by offering a plausible explanation or by a preponderance of probability.

The Court observed that when witnesses who are supposed to speak about several relevant facts and facts in issue turn hostile, it is the Court's duty to remove chaff from grain to arrive at the truth, and that, Courts cannot ignore power dynamics in social strata of villages which largely influence the way evidence is given in Courts.

The Court reiterated that Section 34 IPC does not create an offence but is only a rule of evidence. The Court referred to *Karnail Singh Vs. State of Punjab [AIR 1954 SC 204]* and *Nallabothu Venkaiah Vs. State of Andhra Pradesh [(2002) 7 SCC 117]*, and observed that Sections 34 and 149 of IPC are not mutually exclusive. An

assembly of five or more persons may have a common object and may also share a common intention to commit an offence. Despite the absence of Section 34, IPC in the charges, both provisions can be applied to a prosecution under Section 3(2)(v), SC/ST Act, even without the aid of Section 6, SC/ST Act.

The Court observed that the word "group" used in Section 8(b), SC/ST Act makes the presumption applicable to both Sections 34 and 149 of IPC. It reverses the *onus* and casts it on a member to show that he or she neither shared the common intention nor had the knowledge about the common object of the group. Further, the Court observed that conspiracy, like any other offence, can be established by the process of inference with the aid of Section 10, Evidence Act.

The Court observed that the issue of who could be jointly tried under Section 233(d), CrPC, is to be considered at the time of framing charges. The Court held that the trial Court had framed charges rightly and that witnesses turning hostile is not an excuse for the accused to claim they ought not to have been tried together, when they had participated in the trial without any objection.

The Court found that the evidence is watertight and took the aid of Sections 34 and 149 of IPC to sustain the conviction of most of the accused. Further, the Court applied the principle of parity and reduced the death sentence imposed on A2, to one of life imprisonment. The Court acquitted those Accused against whom the evidence was scanty, and set aside their conviction and sentence.

The Court suggested the trial Courts to record in the preamble portion of the deposition of a witness, the names and ranks of both those accused present in the Court and those absent, and directed the Registry to issue a circular to all the trial Courts in this regard after getting approval from the Hon'ble Chief Justice. The Court emphasized that a lucid trajectory of the case is to be set out in the preamble portions of the order and judgment, in compliance with the High Court Circular dated 07.04.2021 in R.O.C. No.814/2020/RG/F1 (P.Dis.No.36/2021).

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**Viswak Garments Vs. Woodstock Merchandising [Crl.O.P.No.6905 of 2022]****Date of Judgment: 06-06-2022****Section 256, CrPC**

The Hon'ble High Court decided a Criminal Original Petition challenging the dismissal of a private complaint for an offence under Section 138, Negotiable Instruments Act.

The Court observed that since the complainant is not a public servant, presence of the complainant and their examination on oath is absolutely necessary before taking the complaint on file. Dismissal of the complaint can be made only after the same is taken on file. The Court noted that the Magistrate, had dismissed the complaint for default viz. for the absence of the complaint, even before issuing process to the accused.

The Court observed that the objective of Section 256, CrPC, is that the court should take serious note of the absence of the person who approached the court to set the law in motion, when the accused person makes himself present before the court for enquiry. The Court further noted that the complaint had been dismissed during the covid pandemic period and that there was nothing on record to show that the court had issued notice to the complainant for his appearance before taking the drastic step of dismissing the complaint.

The Court observed that though normally for an order passed under Section 256, CrPC, only an appeal will lie, since an illegal order had been passed even prior to taking of cognizance, the inherent powers of the Court under Section 482, CrPC is invoked.

The Court found that the trial Court had not exercised its discretion judicially and fairly. The Court held that order passed misconstruing the scope of Section 256 is illegal set aside the same.

**See Also**

- Associated Cement Co. Ltd. Vs. Keshavanand [1998(1) crimes 88]
- S. Sankar Vs. C.V. Pasupathi [2001 Cri. LJ 2144]
- K. Meenakshi Vs. S. Mohana [2008 Cri. LJ 1781]
- O.C. Periyaswamy Vs. D. Venkatesan [CDJ 2010]

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