TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. IX— PART 06 — JUNE 2024**

IMPORTANT CASE LAWS

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SUPREME COURT – CIVIL CASES

Chander Bhan (Deceased) through Legal Representative Sher Singh Vs. Mukhtiar Singh & Ors. [Civil Appeal No. 2991 of 2024]

Date of Judgment: 03.05.2024

The civil appeal has been filed challenging the High Court's reversal order of the trial court's judgment which dismissed the prayer for specific performance, and recognized the respondents as bona fide purchasers. The appellant sought enforcement of the specific performance of the agreement to sell and invalidation of the transactions executed during the pendency of the litigation under the doctrine of lis pendens. The appellant contended that the respondents were aware of the pending litigation and the temporary injunction, thus invalidating their status as bona fide purchasers and emphasizing the doctrine of lis pendens, which affects transactions during litigation, and that the High Court erred in reversing the findings of the trial court and sought specific performance of the contract. On the other hand, the respondent contended that they made due inquiries about the property, found no indication of the appellant's agreement in the revenue records, asserted their bona fide purchaser status, and claimed that the transactions were legitimate.

The court had to decide on the applicability of the doctrine of lis pendens, and as to whether the respondents/subsequent purchasers could be considered as bona fide purchasers under Section 41 of the Transfer of Property Act, 1882, and whether the appellant was entitled to specific performance or just a refund of earnest money.

The court observed that the sale deed executed during the temporary injunction did not render the transaction void ab initio, but it must be evaluated under the doctrine of lis pendens, and that the release deed was executed after the filing of the suit for injunction and was covered by the doctrine of lis pendens. The principle of lis pendens is based on equity and good conscience and prevents alienation from operating against the appellant's interests. The objective of lis pendens is to

maintain status quo and prevent multiple proceedings. The transactions executed by the respondents during the injunction period were without legal sanctity. Investments or alterations made by respondents did not grant compensation or a stake against the property due to the temporary injunction order. The court, while allowing the appeal, directed the respondents to accept the balance sale consideration and to execute the sale agreement in favor of the appellant within 3 months.

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Deep Mukerjee Vs. Sreyashi Banerjee [SLP(C) Nos. 4834-4835 of 2024]

Date of Judgement: 05.04.2024

Section 45 of Indian Evidence Act read with Section 151 of Civil Procedure Code, 1908

The appellant/ husband had filed the Special Leave Petition against the order passed by the High Court, which set aside the order of trial court directing the parties to undergo potency test, fertility test and psychological health test.

The facts of the case were the appellant/husband and respondent/wife were married at Chennai and thereafter agreed to move to the United Kingdom where they stayed together happily for a period of 7½ years and then returned to Chennai. However, disputes arose between the parties and they got separated in April, 2021. Thereupon appellant/husband preferred an application seeking relief of restitution of conjugal rights. Subsequently, the respondent/wife filed a petition for divorce on the ground that the marriage between the parties was not consummated owing to impotency of the husband. Therefore, the husband moved application under section 45 of the Indian Evidence Act read with section 151 of the CPC for subjecting the appellant/husband to undergo potentiality test and at the same time for referring the respondent/wife for a fertility test and psychological/mental health test for both parties. The Trial Court allowed both the applications. Thereafter, the Trial Court's order was challenged by the respondent/wife before the High Court by way of two separate revisions which had been allowed, and aggrieved by the same, the appeal had been filed by the respondent/husband.

The Court observed that, the High Court has not assigned any cogent reason as to why the appellant/husband cannot be sent for potentiality test. Instead of dwelling on the contentions of the parties qua the merits of the interim applications decided by the Trial Court, the High Court focused on the conduct of the parties. Therefore, the Court allowed the appeal partly, holding that when the appellant/husband was

willing to undergo potentiality test, the High Court should have upheld the order of the Trial Court to that extent.

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Maya Gopinathan Vs. Anoop S.B. & Anr. [SLP (Civil) No.13398/2022]

Date of Judgement: 24.04.2024

Suit for recovery of money is equivalent to Stridhana Property

The appeal was filed challenging the order of the High Court of Kerala in a matrimonial dispute appeal. The High Court partly allowed the appeal of the respondent husband and set aside the relief granted to the appellant wife by the Family Court, Alappuzha, Kerala.

The Marriage of the appellant wife and the first respondent husband was solemnized on 4th May 2003. The appellant wife gifted 89 sovereigns of gold at the time of marriage and a DD of Rs 2,00,000/- dated 26th July 2004. The first respondent/husband took custody of all her jewellery and entrusted the same to the second respondent for safekeeping. The appellant contented that all her jewellery stood misappropriated by the respondents to discharge their pre-existing financial liabilities. Further, due to differences, the spouses drifted apart. The appellant wife filed for recovery of value of jewellery and the amount of Rs. 2,00,000/- and also filed a petition for dissolution of marriage. The family court allowed the appellant wife to recover Rs. 8,90,000/- as the value of gold and directed the first respondent to compensate the appellant Rs. 2,00,000/- within 3 months. In addition to it, the family court, by a decree of divorce, dissolved the marriage between the parties. Aggrieved by the decree of the recovery of value order, the first respondent filed an appeal in the High Court. The high court partly set aside the relief granted to the appellant, wherein the recovery of value of gold was set aside as there was no documentary evidence to prove the acquisition of gold jewellery, and the court upheld the direction of the family court for the return of Rs. 2,00,000/- to the appellant. Aggrieved by this order, the appellant wife filed the present appeal.

The Court observed that the High Court erred in disbelieving wife's claim on the ground of absence of documentary evidence. During pre-marriage negotiations, husband disclosed his involvement in business activities. Further, considering husband's conduct post marriage, there were hints of financial strain, potentially prompting the sale of wife's jewellery. Thus, it was unnecessary for wife to prove more. Further, the acceptance of Rs. 2,00,000/- by the husband, acknowledged by him more than year after the marriage, suggested greed, possibly linked to demand from the family of wife. The Court further observed that, family Court rightly concluded that the failure to return the jewellery constituted misappropriation. Hence, the Court while allowing the appeal, held that, in exercise of Article 142 of Constitution and in the interest of justice, the first respondent was directed to pay Rs.25,00,000/- to the appellant wife considering passage of time and the escalation in the cost of living.

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SUPREME COURT – CRIMINAL CASES

Ravishankar Tandon Vs. State of Chhattisgarh [Criminal Appeal No. 3869 of 2023

Date of Judgment: 10.04.2024

The criminal appeals were filed by the appellants/Accused No.1-4 challenging the judgment of the High Court, which had affirmed the conviction and sentence of the trial court. The facts of the case is that the complainant had reported his son (deceased) missing. The next day, based on the memorandum statements of the appellants made under section 27 of IEA, the police found the deceased's strangled body in a pond. The post-mortem report confirmed death by asphyxia due to strangulation and classified it as homicidal. After the trial, the appellants were convicted of murder and conspiracy, and sentenced to life imprisonment by the trial court. In the first appeal, the High Court also upheld the convictions. Therefore, these present appeals have been filed.

The main issue for the court to decide was whether the memorandum statements made by the appellants were admissible under Section 27 of the Evidence Act. The court observed that the prosecution had failed to prove that the discovery of the deceased's body from the pond was solely based on the disclosure statements made by the appellants under Section 27 of the Evidence Act. The court also noted that the police and witnesses were already aware of the death and the location of the body before the statements of the appellants were recorded, and there was the possibility of fabricated evidence by the police to implicate the accused. While allowing the appeal, the court held that the information provided by the appellants did not lead to any new discovery, rendering their statements inadmissible under Section 27, and the conviction and judgment of the trial court and the high court were set aside.

M/s. Rajco Steel Enterprises Vs. Kavita Saraff and Anr. [Petition for Special Leave to Appeal (Criminal) No. 5583 of 2022]

Date of Judgment: 09.04.2024

The criminal appeal has been filed challenging the common judgment of the High Court, by which the appellant's appeal against the acquittal of the first respondent in respect of the offence under Section 138 of the Negotiable Instrument Act, 1881 was dismissed. The appellant, a partnership firm, contended that all elements of Section 138 of the NI Act were satisfied and proven, as the respondent's signature on the cheques and the receipt of funds were undisputed, and that the burden shifted to the respondent to prove that the cheques were not issued to discharge a valid debt. The respondent contended that the cheques were not issued to discharge any debt owed to the appellant and that the presumption of guilt under Sections 118 and 139 of the NI Act did not apply, as there was no legally enforceable debt.

The apex court determined the major points to decide as whether the cheques were issued in discharge of a debt and if so, whether the accused/respondent no.1 was able to rebut the presumption in terms of Section 118 read with Section 139 of the NI Act. The Apex Court while dismissing the appeal, observed and held that based on the evidence and submissions of both sides, the appellant failed to establish the existence of a legally enforceable debt, and that the respondent's defense regarding the purpose of the funds received was plausible and that the appellant firm's balance-sheet did not reflect the alleged debt. Consequently, the Court upheld the acquittal and found no perversity in the High courts' decision.

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Selvamani Vs. State Rep. By Inspector of Police [Criminal Appeal No. 906 of 2023]

Date of Judgment: 08.05.2024

This Criminal Appeal was filed by the Appellant (Accused No.2) challenging the dismissal of Appeal by the High Court, which upheld the Trial Court judgment, convicting and sentencing the accused persons for offences punishable under sections 376(2)(g) & 506(1) Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

The Appellant, along with the other accused persons, had allegedly committed gang rape on the Prosecutrix and had assaulted her. The Appellant contended that the Prosecutrix, as well as her mother and her aunt, had not supported the prosecution case in their cross examination, and the medical evidence also did not support the evidence of the prosecution and that when the evidence of the Prosecutrix and the medical evidence did not support the prosecution case, the conviction could not be sustainable.

The Court observed that the statement of the Prosecutix under S.164 CrPC was recorded before a magistrate, and PW-6 had also deposed about the prosecutrix, giving the statement and narrating the entire incident. The medical examiner of the victim also established that there was forcible sexual intercourse on the Prosecutrix several times by several persons. This was confirmed by the abrasions found on the private parts of the Prosecutrix. The Court did not doubt the fact that the prosecutrix, her mother and her aunt, in their cross examination, which was recorded three and a half months after the recording of the examination-in-chief, had turned hostile and did not support the prosecution case. However, the Court held that, the law can be observed to the effect that the evidence of a hostile witness cannot be discarded as whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or defence. The delay in recording the Cross Examination had given time for the Accused persons to win over the

Prosecutrix, and they resiled from the version as deposed in the examination-in-chief which fully incriminated the accused. The court, while dismissing the appeal, held that it was imperative that if the examination-in-chief is over, then the cross examination should be completed on the same day, and if required, it can be adjourned to the next day but it should never be deferred for such a long time.

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Nirmala Vs. Kulwant Singh & Ors. [Criminal Appeal No.2194 of 2022]

Date of Judgment: 03.05.2024

The present appeal was filed by the appellant (maternal grandmother) against the judgment of the High Court allowing the petition filed under Article 226/227 of the Constitution of India, by the respondent/father of the detenu/minor child and directing the appellant, to hand over the custody of the minor child to the respondent. The appellant contended that during the investigation phase of Sangeeta's death (mother of the Minor), the respondent-father had voluntarily handed over the minor child to the appellant- grandmother and the respondent-father had also by way of an affidavit, appointed the appellant-grandmother as "Guardian" of the minor child and the "Caretaker" of a property that was gifted by the Aunt of respondent-father to the minor child. Since then, the custody of the minor child has been with the appellant- grandmother.

The Court observed that in child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court, which is summary in nature and what is important is the welfare of the child, and where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court.

The Court was of the view that compelling a minor child at the tender age of 7 years to withdraw from the custody of his grandparents, with whom he had been living for the last about 5 years may cause psychological disturbances. Therefore, an exercise for promoting the bond between the minor child and the respondent-father in a graded manner was necessary. Thereafter, considering the grant of custody of minor child to the respondent-father, taking into consideration the paramount interest of the welfare of the minor child, would be required to be done in the

present matter. The court, while allowing the appeal held that no observation in the impugned judgment and order and in the present judgment and order would be binding on the proceedings if taken by the respondent-father under the Guardians and Wards Act, 1890. The proceedings would be decided in accordance with law on its own merits.

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Hansraj Vs. State of M.P. [SLP (Crl.) No(s). 4626 of 2024]

Date of Judgment: 19.04.2024

This appeal was filed against the judgment of dismissal of appeal preferred by the appellant against the Trial Court's judgment convicting the Appellant for the offences punishable under Sections 394 r/w Section 397 of the IPC. The Trial Court had convicted the appellant based on the finding that the jewellery looted from complainant was seized immediately within two days after the incident, and therefore, there was no possibility that these ornaments could have come into the possession of the accused in any other way.

The court observed that the complainant, during the course of sworn testimony tried to improve her case by identifying the accused in the Court; however, the fact remained that such evidence of identification of the accused was not relied upon by the Trial Court and the High Court. The case was found proved only on the basis of recovery of ornaments. It was also important to note that the Investigating Officer who recorded the disclosure statement of the accused and effected the recovery did not prove the disclosure memo as required by law. An extracted portion of the deposition of the Investigating Officer revealed that he did not narrate the exact words spoken by the accused at the time of making the disclosure statement. He also did not state that the accused led him to the place where the articles were hidden; rather, he stated that he took the accused to the Beed and recovered the silver ornaments. The Court further held that it was also relevant that the Executive Magistrate was not examined in evidence. The complainant had made a categorical admission in her cross examination that she could recognize the silver articles in the test identification proceedings upon being pointed out by the police officials; therefore, the recovery of the ornaments at the instance of the accused and the identification thereof had no sanctity in the eyes of law and cannot be relied upon. No other evidence was led by the prosecution to connect the accused appellant with the crime.

Hence, the Court allowed the appeal, and the impugned judgments by the trial Court and the High Court respectively were set aside.

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HIGH COURT – CIVIL CASES

Ramesh Vs. Santha Devi & Anr. [C.M.S.A. (MD). No. 25 of 2020]

Date of Judgment: 23.04.2024

The Civil Miscellaneous Second Appeal has been filed under Order 21 Rule 58 (4) read with Section 100 of the C.P.C. to set aside the order of the first appellate court, which confirmed the order of the Trial court passed in an Execution Application during the course of execution proceedings.

The Appellant is a third party to the original suit and the 1st Respondent was the Plaintiff who had filed a suit for recovery of money based upon a mortgage, which was decreed. The decree holder had filed Execution Petition to bring the property for Court auction to recover the money, and the auction sale was conducted when the Judgment Debtor had filed an Execution Application under Order 21 Rule 90 of C.P.C., alleging that there were irregularities in the conduct of sale. The said application was dismissed and the sale was confirmed on the same day. The Judgment Debtor did not choose to challenge the said order. Meanwhile, the Judgment Debtor's son had filed an Execution Application under Order 21 Rule 97 of C.P.C., claiming title over the property and had contended that even before filing of the suit, a family arrangement was entered into, in which the subject matter of the disputed property was allotted in favour of the claim petitioner while he was a minor. The Judgment Debtor, though aware of the same had not disclosed the same before the Court and the claimant had come to know about the Court auction proceedings only, when he recently had visited the property. The Executing Court, observing that the said family arrangement document was created for the purpose of stalling the Execution Proceedings, dismissed the Application. Aggrieved by it, a Civil Miscellaneous Appeal was filed which was also dismissed. Hence, the Claimant had filed the present Civil Miscellaneous Second Appeal before the Hon'ble High Court.

The Court observed that on perusal of the family arrangement Deed, it reveals that the father of the claim petitioner had executed the said document in favour of his minor son, who is the claimant herein. The deed discloses that the properties were allotted only under the document and does not serve as a record of the partition or family arrangement that had already taken place. Therefore, there cannot be any doubt that the document required registration, and on the basis of an unregistered document, the claim petitioner cannot make a claim over the property. The scope of Order 21 Rule 97 is that the claim petitioner has to prove his independent title, right and possession over the suit schedule property. The claim petitioner's title was not dependent upon the validity or otherwise of the decree. Therefore, any attack made upon the decree has no relevance whatsoever to the scope of the enquiry under Order 21 Rule 97 of C.P.C.

Further, the Court, by relying on a judgment reported in [2011-1-LW.647] (Munusamy & 4 others Vs. Vengadachalam & 10 others) held that in a proceedings under Order 21 Rule 97 of C.P.C, the Court cannot go into the legality of the decree passed in favour of the decree holder at his instance of the obstructor.

The Court, while dismissing the Second Appeal, held that the grounds raised by the claim petitioner to the validity of the decree were not legally sustainable, and there was no substantial question of law to interfere in the order of the First Appellate Court. Thus, the Court had dismissed the second Appeal.

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Sowbakkiam Ammal & Anr. Vs. Gunasekaran [Second Appeal No.1419 of 2013 and M.P.No.1 of 2013]

Date of Judgment: 20.02.2024

The second appeal was filed against the judgement made in A.S. No. 40 of 2010, which reversed the judgement made in the suit for declaration of title, and permanent injunction, and other reliefs.

The facts of the case is that the original owner of the property, Vijayarama Reddiar, was in acute financial crisis and his properties were sold at auction. To restore the property from the clutches of the Government, his legal heirs had borrowed money from the second defendant/Ranganathan. The Second Defendant/Ranganathan gave them a sum of Rs. 80,000/- initially and once the property was retrieved from the Government, he gave an additional sum of Rs. 18,000/- and entered into an agreement for sale. As the legal heirs of Vijayarama Reddiar did not execute the sale deed, the plaintiff filed a suit in O.S. No. 142 of 2004 on 25.03.2000 for specific performance of the agreement of sale dated 30.12.1999. The said suit resulted in an exparte decree dated 30.01.2006, as the defendants did not contest the suit after filing the written statement. Meanwhile when the suit was pending, Vijayarama Reddiar executed a sale agreement dated 08.07.2004 to Gunasekaran/plaintiff in O.S. No. 35 of 2007. An execution petition was filed by Ranganathan after the exparte decree. However, Gunasekaran filed a suit for declaration of title and permanent injunction, stating that he was in possession and enjoyment of property by paying kist. The plea of the defendant was that, the sale deed executed in favor of the plaintiff does not bind them. The Court dismissed the suit, and held that the purchase made by the plaintiff was hit under Section 52 of the Transfer of Property Act and that the plaintiff was bound by the decree in O.S. No. 142 of 2004. Aggrieved by the same, appeal was filed before the PDJ, Villupuram which was allowed, reversing the judgement made in O.S. No. 35 of 2007 by the trial court.

Aggrieved by this order, the second defendant (Ranganathan) had preferred the present second appeal. The main contention taken for consideration in this appeal was whether the decree in O.S.No.142 of 2004 was a collusive decree, and therefore Section 52 of TP Act would not be attracted. Secondly, whether Ranganathan was a bona fide purchaser for value without notice and would be entitled to the benefit of Section 19 of the Specific Relief Act.

The Court observed that, the transaction was hit by the doctrine of Lis pendens. Section 19 of the Specific Relief Act operates in case a person has purchased the property without due notice of the agreement 'prior to the presentation of the plaint'. Once the purchase takes place after the presentation of the plaint, Section 52 is attracted. In the present case, since Ranganathan had purchased the property pending the Lis in O.S.No.142 of 2004 from the legal heirs of Vijayarama reddiar, he received what the defendants in that suit would have obtained. Therefore, the court allowed the appeal, thereby upholding the order of the trial court and held that the plaintiff/Ranganathan, in the present suit would be bound by the decree in O.S.No.142 of 2004 by the trial Court and cannot take refuge under Section 19 of the Specific Relief Act.

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K.R. Vijayakumar Vs. D. Ponnuvel & Anr. [C.R.P.(PD)No.3756 of 2018 and C.M.P.No.20948 of 2018]

Date of Judgement: 15.04.2024

The Revision Petition was filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner/first defendant seeking rejection of Plaint in the original suit filed by the respondent / plaintiff.

The suit was filed by first respondent / plaintiff against the petitioner and the second respondent, seeking specific performance of a sale agreement allegedly entered into by the first respondent with the petitioner for the purchase of plaint schedule property and also for consequential injunction restraining the second respondent/bank from proceeding with the auction of the suit property. The application to reject the plaint was filed on the ground that the suit was barred by section 34 of SARFAESI Act, 2002. The said petition for rejection of the plaint was dismissed by the trial Court and aggrieved by the same, the Civil Revision Petition was filed.

The Court Observed that, the contract between the petitioner and first respondent could very well be enforced in civil Court and any decree passed in the suit would be subject to the right of the secured creditor / second respondent bank over the secured asset. The auction proceedings initiated to the pursuance of Section 13(2) notice were being conducted by the second respondent under the power conferred on it by the provisions of the SARFAESI Act, and the first respondent was not entitled to seek injunction against second respondent bank. However, a plaint cannot be rejected in part while exercising power under Order 7 Rule 11 of CPC. Therefore, merely because one of the prayers in the suit was hit by Section 34 of the SARFAESI Act, the Court cannot reject the entire plaint when the first prayer for specific performance was found to be maintainable. Therefore, the Court while dismissing the petition, held that any decree passed in the suit would be subject to the right of the secured creditor / second respondent over the secured asset.

S.L.Mothi Lal & Ors. Vs. S.L.Kupplusamy(died) & Ors. [A.S.(MD)Nos.258 and 259 of 2008 and C.M.P.(MD)No.4237 of 2019]

Date of Judgment: 19.10.2023

The appeal suit was filed under section 96 of the CPC, challenging the Common Judgment passed in two original suits by the Trial court.

The suit in O.S. No. 60 of 2006 was for partition, and the suit in O.S. No. 31 of 2007 was for permanent injunction. Both the suits were tried jointly, and a common judgment was passed, whereby the trial Court held that all suit properties were separate properties of the deceased and passed a preliminary decree allotting 1/10th share in the suit properties to the plaintiff, as the contesting defendants have failed to prove the execution and attestation of the documents. Aggrieved by the said judgment, the defendants preferred this appeal.

The Court observed that, it was clearly evident that defendants have not adduced any clear evidence regarding the execution and attestation of the documents. Further the Court observed that, the Will and settlement are documents that required compulsory attestation. The Court referred to Section 68 of the Indian Evidence Act and held that if the execution of the deed, except for the Will, was not specifically denied, there was no need to call the attesting witness to prove the same. Therefore, the Court partly allowed the appeal and held that the judgment and the decree of the trial Court granting a 1/10th share in items 1 to 24 of the suit properties was set aside, and a preliminary decree was passed declaring that the plaintiff was entitled to 1/60 share in items 1 to 20 of the suit properties and a 1/10 share in items 21 to 23 of the suit properties.

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HIGH COURT – CRIMINAL CASES

Muthuraj Vs. Lakshmi [Crl.RC. (MD). NO. 28 of 2022]

Date of Judgment: 22.11.2023

The petitioner, by his husband, filed the Criminal Revision Petition, challenging the order passed by the Trial Court, to enforce the arrears of maintenance amount. The respondent/wife had filed a maintenance petition and the same was allowed, granting a sum of Rs. 3,000/- as monthly maintenance. The petitioner did not comply with this order, and hence the respondent had filed a petition for enforcement of order of maintenance but the petitioner did not make any payment for maintenance. Thereafter, the respondent filed a C.M.P. and NBW was issued as against petitioner and later produced before the court and was sentenced to undergo 11 months of Simple Imprisonment under Section 125(3) of Cr.P.C., for his failure to pay the maintenance amount to the respondent.

The petitioner contended that as per Section 125(B), the learned trial Judge had no jurisdiction to impose 11-month simple imprisonment and the execution petition filed by the respondent for more than a period of one year was not maintainable.

The Court, relying on the various decisions of the Apex Court, held that the Court has the power to impose a sentence of imprisonment against the husband who committed default in making the payment of arrears of maintenance until the payment was made. The wife need not file a successive application to enforce the maintenance award; she can file an application to enforce the entire arrears of maintenance. On the basis of the undertaking given by the petitioner to deposit the entire arrears of monthly maintenance amount, the Court granted the suspension of sentence as prayed for and also directed the petitioner to deposit the entire arrears of amount. The Court observed that the petitioner did not make any payment even after the directions were issued and therefore, dismissed the Criminal Revision Petition. The court directed the petitioner to pay the entire arrears of amount within

a period of two weeks from the date of receipt of the copy of the order. On his failure to do so, the jurisdictional police was directed to secure the petitioner and confine in prison until the entire arrears of amount were paid.

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R.N. Sabu Vs. The Commissioner of Police, Periyampet, Chennai & Anr. [Crl. O.P No. 3955 of 2024]

Date of Judgment: 29.02.2024

The criminal original petition was filed seeking a direction to the respondent police to register an FIR pursuant to the order passed by the Metropolitan Magistrate, which directed the police to enquire the parties and find out if any cognizable offence was made out in the petition filed u/s 156(3) Cr.P.C for a direction to respondent police to register an FIR.

The Court observed that the Magistrate had adopted a wrong procedure and the Law on this issue was that, whenever the complainant furnishes information to the Station House Officer with respect to the commission of a cognizable offence, the Station House Officer is duty bound to register an FIR and proceed further with the investigation under Chapter XII of Cr.P.C. If the Station House Officer does not act upon the complaint, Section 154(3) Cr.P.C, provides for a mechanism wherein the complainant can approach the Superintendent of Police concerned and make a representation for a direction to investigate the case. If this complaint also does not evoke any response, the complainant can approach the Jurisdictional Magistrate Court and file an application under Section 156(3) of Cr.P.C, for a direction to the Police to register the FIR. The remedy provided under Section 156(3) Cr.P.C enables the Magistrate to see if the complaint makes out a cognizable offence and in spite of the same, the Station House Officer had refused to register the FIR, then appropriate directions can be issued to register the FIR. The Court further observed that the Magistrate had committed this error by directing the police to conduct an enquiry and find if a cognizable offence was made out, in line with the judgment of the Apex Court in Lalitha Kumari's case.

Therefore, the Court recalled the impugned order and disposed of the criminal original petition, directing the Magistrate to pass appropriate orders under Section 156(3) of Cr.PC, within a period of two weeks from the date of receipt of copy of the

order. The Magistrate was also directed to submit a report, after compliance of the order.

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M.Christ Miller Vs. State represented by the Inspector of Police, Nagercoil [CRL.O.P (MD) No.2828 of 2024]

Date of Judgment: 03.04.2024

The criminal original petition has been filed under Section 482 of Cr. P. C. seeking to direct the trial court to add the accused No.2, who was omitted by the respondent police in the final report, without the knowledge of the petitioner/ defacto complainant. The facts of the case is that the complaint was lodged by the petitioner against two persons that they had cheated the petitioner. While deleting the second accused name from the final report, neither the respondent police nor the trial Court issued any notice to the petitioner and the trial court disposed of the petition. It is the petitioner's case that the commission of the alleged offence would not have been possible without the involvement of the second accused, and omitting an accused without informing the complainant is violation of law. On the other hand, the respondent contended that the accused No.2, originally implicated in the complaint, had no criminal involvement in the alleged offence and he was subsequently included as a witness instead of being arrayed as an accused.

While allowing the petition, the court observed and held that the trial court has a duty to notify the defacto complainant of any omissions. While the investigating agency may remove names it believes were wrongfully included, it must first serve notice to the complainant, as established by the Apex Court in Bhagwat Singh v. Commissioner of Police (1985) 2 SCC 537. The court also directed the trial court to decide on the petitioner's application within a specified time frame (eight weeks) in accordance with these provisions.

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R. Sekar and Anr Vs. State rep. by the Deputy Director, Directorate of Enforcement [Crl.M.P.No.971 of 2024 in Crl.A.No.98 of 2024]

Date of Judgment: 25.03.2024

The Criminal Miscellaneous Petition has been filed under Section 389(1) of the Cr.P.C, seeking to suspend the sentence imposed on the appellants by the trial court and enlarge the appellants on bail, pending disposal of the criminal appeal. The trial Court dismissed the applications for suspension of sentence because the appellants were not granted bail during the trial, thus making them ineligible under Section 389 (3) Cr.P.C. Therefore, the appellants have filed this petition.

The court examined the trial court's reasoning for rejecting the petition filed by the appellant and observed that If the accused is not in custody when sentenced to less than three years of imprisonment and has not executed bail bonds earlier, his request for suspension of sentence, cannot be denied, only for the reason that he has not executed bail bonds earlier. Relevant factors for considering suspension include the accused not being in custody and their willingness to execute bail bonds and offer sureties. The court's failure to require the accused to execute bail bonds should not prejudice the accused, as these provisions are only to ensure appearance. Suspension of sentence can also be granted subject to the execution of bail bonds with or without sureties. If the court has not obtained a bond under Section 88 of the Cr.P.C., or bail bonds in Judicial Form No.75, and the accused is sentenced to less than three years, suspension of sentence cannot be denied. While allowing the petition the court issued certain guidelines to ensure the accused's right to seek suspension of sentence:

(a) When an accused appears in court on summons without anticipatory bail or prior arrest, the Magistrate shall obtain a bond under Section 88 of the Cr.P.C. to ensure his appearance.

(b) During the trial, after the arguments, the court may obtain bail bonds valid for six months as per Rule 24 of the Criminal Rules of Practice.

(c) The trial court should not deny suspension of sentence on the judgment date merely because the accused has not furnished the bond, but may obtain the bail bond on that date and suspend the sentence if other conditions in Section 389(3) of the Cr.P.C. are satisfied.

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