

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVII — PART 3 — MARCH 2022 \*\***

## COMPENDIUM OF CASE LAWS



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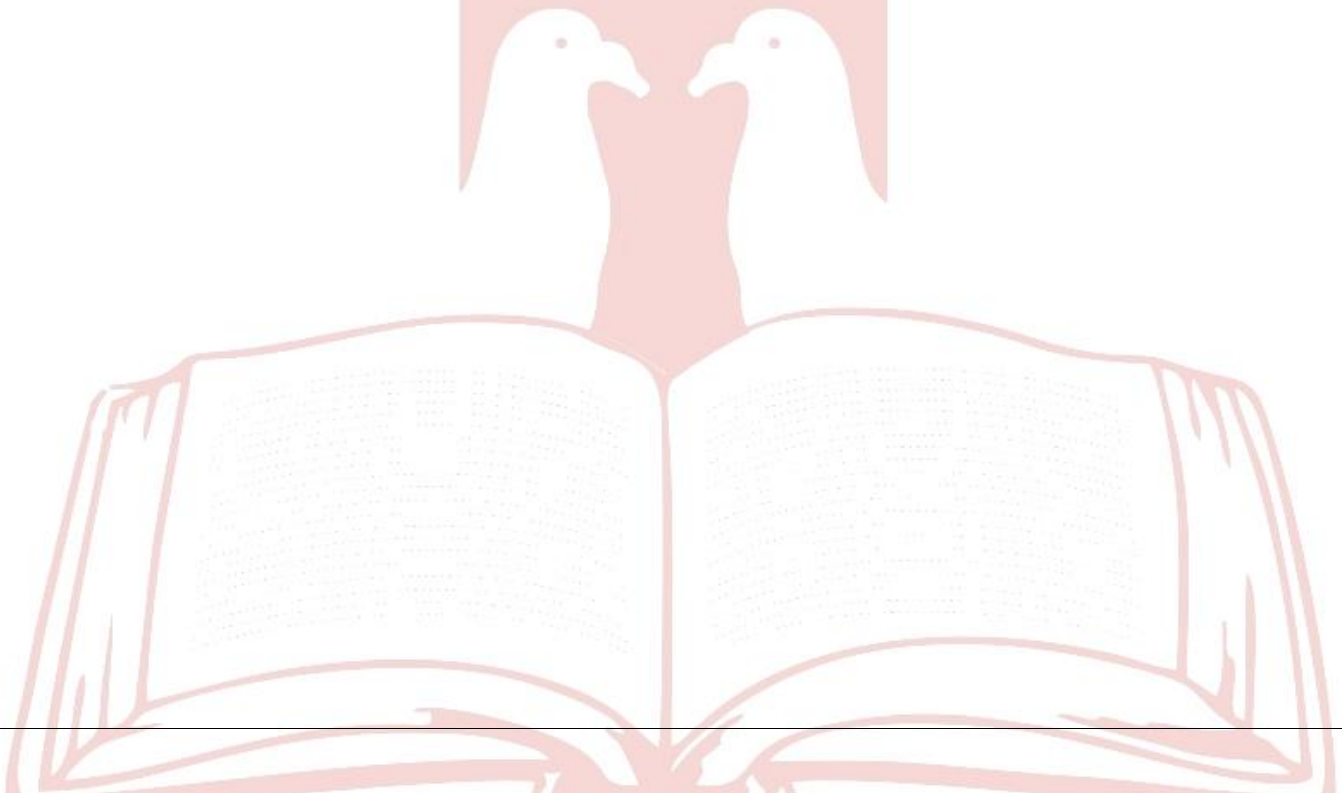
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9	<a href="#"><u>S. Meena and Anr. Vs. Sivakumar and Ors.</u></a>	A.S.No.900 of 2012	03.03.2022
10	<a href="#"><u>Shrutivinda Agro Farms Pvt. Ltd. Vs. Nova Dyeing and Printing Mills Ltd.</u></a>	O.S.A.Nos.191 & 192 of 2018	11.03.2022

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1	<a href="#"><u>Ashraf and Ors. Vs. State by Inspector of Police, J-4, Kotturpuram Police Station, Chennai</u></a>	Crl.O.P.No.3163 of 2022 and Crl.M.P.Nos. 1419 & 1422 of 2022	14.02.2022
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5	<a href="#"><u>Ganeshan Vs. State Represented by the Inspector of Police, Periyanaikkanpalayam Police Station, Coimbatore</u></a>	Crl.O.P.No.4131 of 2022 and Crl.M.P.No.2060 of 2022	07.03.2022
6	<a href="#"><u>Kannan@ Mannanai Kannan and Ors. Vs. State by Inspector of Police, C5 Karimedu Police Station, Madurai City</u></a>	Crl.A.(MD)No.3 of 2020 and Crl.M.P.(MD)No.1422 of 2022 and Crl.A.(MD)No.22 of 2020	28.02.2022
7	<a href="#"><u>P. Kannan Vs. The Commissioner for Municipal Administration</u></a>	W.P.Nos.2165 of 2015	15.03.2022



8	<a href="#"><u>Pastor Muniyandi @ Ramesh Vs. The Inspector of Police, Gobichettipalayam Police Station</u></a>	Crl.A.No.130 of 2018	21.03.2022
9	<a href="#"><u>S. Palanichamy &amp; Ors. Vs. The Assistant Director, Directorate of Enforcement, Government of India</u></a>	Crl.O.P.No.2821 of 2017	21.03.2022
10	<a href="#"><u>State rep by The Deputy Superintendent of Police, Metro Wing-I, Crime Branch CID, Egmore, Chennai Vs. A. Sivakumar and Ors.</u></a>	CRL.O.P.No.6330 of 2022	18.03.2022

## SUPREME COURT - CIVIL CASES

### **Hotel Priya, A Proprietorship Vs. State of Maharashtra & Ors.**

**Civil Appeal No.        of 2022**

**Date of Judgement: 18-02-2022**

Licensing and Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rule, 1960 — gender cap on performers

The Hon'ble Supreme Court decided a Civil Appeal challenging the condition of retaining only four female and four male artists on stage during orchestra performances. The Apex Court referred to the decisions in *C.B. Muthamma v. Union of India* [(1979) 4 SCC 260], *Anuj Garg & Ors. v. Hotel Association of India & Ors.* [(2008) 3 SCC 1] and observed that, "Such measures – which claim protection, in reality are destructive of Article 15(3) as they masquerade as special provisions and operate to limit or exclude altogether women's choice of their avocation."

The Apex Court found that "the restriction is upon the gender, in the sense that it seeks to cap the number of performers on the basis of gender. This restriction directly transgresses Article 15(1) and Article 19(1)(g)- the latter provision both in its effect to the performers as well as the license owners."

The Apex Court observed that, "whenever challenges arise, particularly based on gender, it is the task of the judges to scrutinize closely, whether, if and the extent to which the impugned practices or rules or norms are rooted in historical prejudice, gender stereotypes and paternalism. Such attitudes have no place in our society ... Similarly, in the present case, this court holds that the gender cap imposed by the impugned condition is void." The Apex Court held that "that the condition imposing a gender cap as to the number of women or men, who can perform in orchestras and bands, in bars licensed under the Rules, 1960 and other allied provisions, is void." Thus, the Apex Court set aside the impugned judgement and allowed the Civil Appeal.

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**Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of  
Central Excise and Service Tax, Alwar  
Civil Appeal No. 1482 of 2018  
Date of Judgement: 23-02-2022**

Service tax — Rajasthan Agricultural Produce Markets Act, 1961 — Finance Act, 1994

The Hon'ble Supreme Court decided on a Civil Appeal concerning the levy of service tax on the "market fee" collected and under the category of "renting of immovable property" in respect of the lands and shops rented out by the Appellants. The Apex Court observed that, "As per the exemption circular of 2006 only such activities performed by the sovereign/public authorities under the provisions of law being mandatory and statutory functions, and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. ... it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service." "An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard." The Apex Court found that, under Section 9(2) of the Act of 1961, it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the space to the traders, since the word "may" is used in place of "shall". "Even the fees which is collected is not deposited into the Government Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). ... such a fee collected cannot have the characteristics of the statutory levy/statutory fee." The Apex Court held that the Appellants are not exempted from the liability to pay service tax, and thus dismissed the Appeals.

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**Shyam Sel and Power Ltd. & Anr. Vs. Shyam Steel Industries Ltd.**  
**Civil Appeal No.1984 of 2022**  
**Date of Judgement: 14-03-2022**

**Clause 15 of Letters Patent — Infringement of trademark — grant of interim injunction**

The Hon'ble Supreme Court decided on a Civil Appeal arising from a suit for infringement of trademark and passing off. The Apex Court observed that the term 'judgement' used in Clause 15 of the Letters Patent has undoubtedly a concept of finality in a broader and not in a narrower sense. "... where an order vitally affects a valuable right of the defendants, it will undoubtedly be treated as a 'judgment' within the meaning of Letters Patent so as to be appealable to a larger Bench."

The Apex Court found that the order passed by the Single Judge did not contain the traits and trappings of finality, and cannot be construed to be a 'judgment' within the meaning of Clause 15 of Letters Patent and as such, the appeal to the Division Bench of the High Court was not tenable. The Apex Court observed that the Division Bench of the High Court had not observed as to how the discretion exercised by the learned Single Judge was arbitrary, capricious or perverse.

The Apex Court further observed that while considering the question of grant of interim injunction, the courts are required to consider the three tests of, *prima facie* case, balance of convenience and irreparable injury. The Apex Court found that besides a passing observation that respondent-plaintiff has made out a *prima facie* case, there was no discussion as to how the *prima facie* case was made out, and further, there was no mention of the tests of balance of convenience and irreparable injury in the impugned judgement and order of the Division Bench. Thus, the Apex Court allowed the Appeal, set aside the impugned judgement and order of the Division Bench and held that the orders passed by the Single Judge would continue to operate until further orders passed by the Single Judge.

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**State of Orissa & Ors. Vs. M/s. Utkal Industries**  
**Civil Appeal Nos.5666-5668 of 2009**  
**Date of Judgement: 03-03-2022**

Excisable article — Section 27(1) of Bihar and Orissa Excise Act, 1915

The Hon'ble Supreme Court decided on a Civil Appeal concerning the levy of excise duty on industrial alcohol, which was wastage of liquor after distillation process. The Court referred to the decisions in *State of U.P. & Ors. Vs. Modi Distillery & Ors.* [(1995) 5 SCC 753], and *Synthetics and Chemicals Ltd. & Ors Vs. State of U.P. & Ors.* [(1990) 1 SCC 109], and reiterated that the Constitution makers distributed the term 'alcohol liquor' into two heads, viz., (a) for human consumption; and (b) other than for human consumption. And that the State Legislature had no authority to levy duty or tax on alcohol, which is not for human consumption as that could be levied only by the Centre.

The Apex Court found that the wastage generated has been found to be unfit and unsafe for potable purpose.

The Court observed that, "Perusal of Section 27(1) of Bihar and Orissa Excise Act, 1915, would reveal that the State's power to impose duty on import, export, transport and manufacture is only in respect of any excisable articles imported, exported, transported and manufactured. 'Excisable article' has been defined to be any alcoholic liquor for human consumption or any intoxicating drug. It is thus clear that even under the relevant statute, the State has power to levy excise duty only in respect of the alcoholic liquor for human consumption."

The Apex Court held that there is no reason to interfere with the impugned judgement and order, and thus dismissed the Civil Appeal as devoid of merits.

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**Universal Petro Chemicals Ltd. Vs. B.P. PLC & Ors.**  
**[Civil Appeal No. 3127 of 2009]**  
**Date of Judgement: 18-02-2022**

Section 21(5), Specific Relief Act, 1963 — Suit for specific performance — specific plea for damages

The Hon'ble Supreme Court decided a Civil Appeal on the issue whether the Appellant who had filed a suit for specific performance, is entitled to damages.

The Apex Court referred to the decisions\* on the scope and applicability of Sections 21(4) and 21(5) of the Specific Relief Act, and, observed that the Appellant had not claimed for the relief for damages or compensation. "Even in the appeal filed by the Appellant, no relief for damages was claimed by the Appellants. In fact, it was a specific submission on behalf of the Appellant before the Division Bench that no relief in the nature of damages and/or compensation could be granted. It was submitted that it was difficult to quantify such damages/compensation as neither the anticipated loss of business nor estimated value of the goodwill could be prospectively assessed."

The Apex Court held that the Appellant is not entitled to the relief and thus dismissed the Civil Appeal.

\* ***See Also***

- *Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647]*
- *Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi [(2018) 2 SCC 284]*
- *Sukhbir v. Ajit Singh [(2021) 6 SCC 54]*
- *Shamsu Suhara Beevi Vs. G. Alex & Anr. [(2004) 8 SCC 569]*

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## **SUPREME COURT - CRIMINAL CASES**

### **Abdul Vahab Vs. State of Madhya Pradesh**

**CrI.A.No.340 of 2022**

**Date of Judgement: 04-03-2022**

Confiscation Order — difference between confiscation proceeding and criminal prosecution — Section 11(5), M.P. Prohibition of Cow Slaughter Act, 2004 — Rule 5, M.P. Govansh Vadh Pratishedh Rules, 2012

The Hon'ble Supreme Court decided on a Criminal Appeal arising from a challenge to the Confiscation Order for the truck of the Appellant, who was acquitted by the Trial Court.

The Apex Court referred to the decisions in *State of M.P Vs. Madhukar Rao [2008 (14) SCC 624]* *State of West Bengal Vs. Sujit Kumar Rana [(2004) 4 SCC 129]*, and observed that, the vehicle cannot be withheld and then confiscated by the State, when the original proceedings have culminated into acquittal. The Apex Court further observed that "The confiscation proceeding before the District Magistrate, is different from criminal prosecution. However, both may run simultaneously, to facilitate speedy and effective adjudication with regard to confiscation of the means used for committing the offence. The District Magistrate has the power to independently adjudicate cases of violations under Sections 4, 5, 6, 6A and 6B of the 2004 Act and pass order of confiscation in case of violation. But in a case where the offender/accused are acquitted in the Criminal Prosecution, the judgment given in the Criminal Trial should be factored in by the District Magistrate while deciding the confiscation proceeding. ... The confiscation of the appellant's truck when he is acquitted in the Criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300A. The Apex Court held that the Confiscation Order of the District Magistrate cannot be sustained, as it is arbitrary and inconsistent with legal requirements. Thus, the Apex Court allowed the Appeal and set aside the decision of the High Court.

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**Babu Venkatesh & Ors. Vs. State of Karnataka & Anr.****Crl.A.No.252 of 2022****Date of Judgement: 18-02-2022****Section 156(3), CrPC**

The Hon'ble Supreme Court decided on a Criminal Appeal arising from the dismissal of petitions under Section 482, CrPC. The Apex Court found that in the present case, though civil suits had been filed with regard to the same transactions and though they were contested by the 2<sup>nd</sup> Respondent by filing written statement, he has chosen to file complaint under Section 156(3), CrPC, after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants, and found that the present case fits within the category of cases where power to quash criminal proceedings can be exercised, as per the decision of the Supreme Court in *State of Haryana & Ors. Vs. Bhajan Lal & Ors.* [1992 Supp (1) SCC 335].

The Apex Court observed that, "prior to the filing of a petition under Section 156 (3), CrPC, there have to be applications under Sections 154(1) and 154(3) CrPC. ... The necessity to file an affidavit [is] so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate under Section 156(3), CrPC."

The Apex Court further referred to the decision of the Supreme Court in *Priyanka Srivastava Vs. State of U.P.* [(2015) 6 SCC 287], and observed that, "when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3), CrPC." The Apex Court held that continuation of the present proceedings would amount to nothing but an abuse of process of law. The Apex Court thus allowed the Criminal Appeal, set aside the impugned High Court judgements and quashed the FIRs.

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**Kamla Devi Vs. State of Rajasthan & Anr.**  
**Crl.A.No.342 of 2022**  
**Date of Judgement: 11-03-2022**

Grant of Bail — reasoning

The Hon'ble Supreme Court decided on a Criminal Appeal against the Order of the High Court granting bail to the Accused in a case involving offences under Sections 302, 201 and 34 of the IPC. The Apex Court referred to its recent decisions in *Manoj Kumar Khokhar Vs. State of Rajasthan & Anr.* [2022 SCC OnLine SC 30] and *Jaibunisha vs. Meharban & Anr.* [2022 SCC OnLine SC 58], and observed that while decided upon the grant of bail, "the Court ... cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima-facie satisfaction of the Court in support of the charge against the accused."

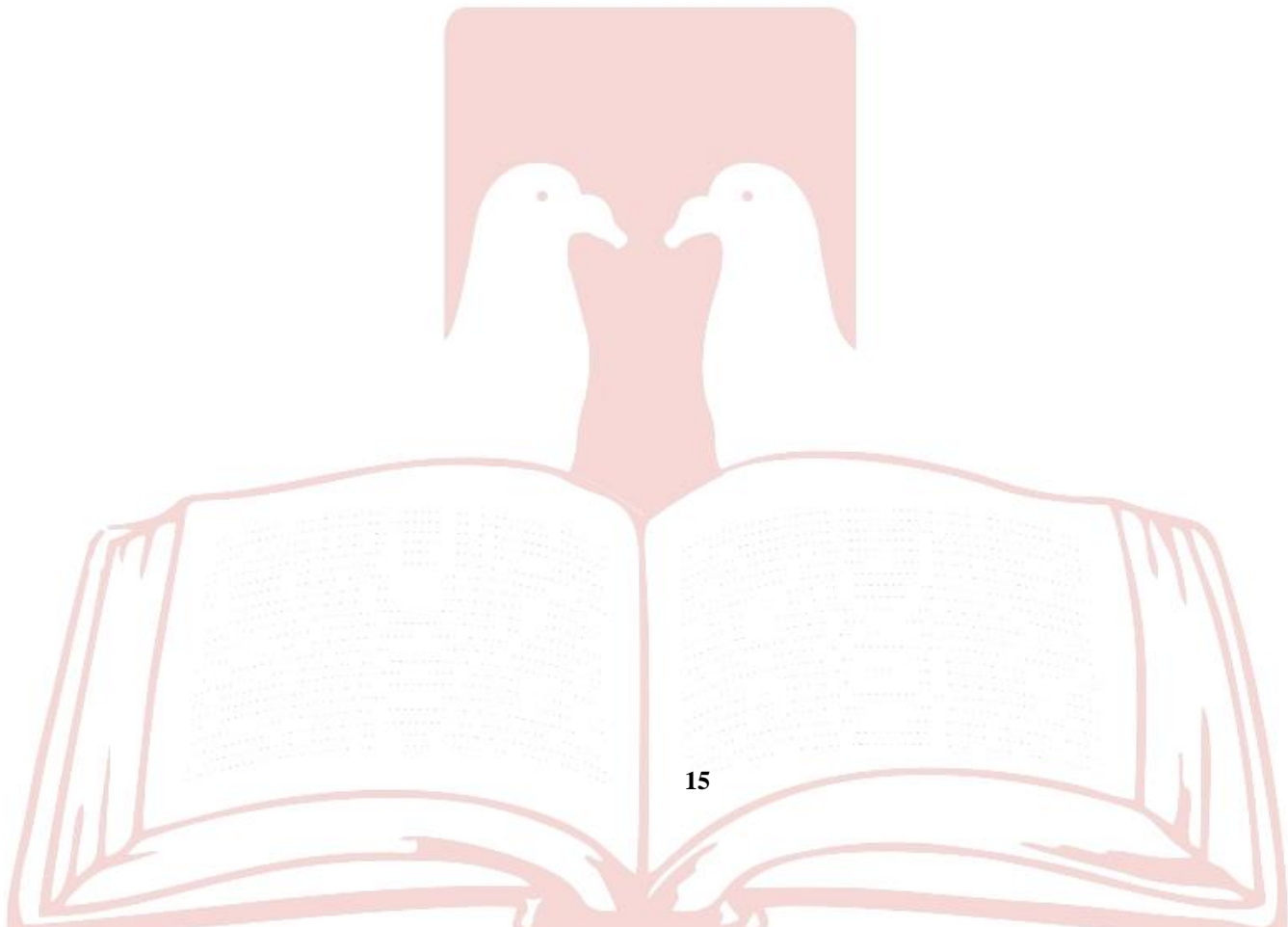
The Apex Court referred to the decision in *Gurcharan Singh vs. State (Delhi Admn.)* [1978 CriLJ 129] and reiterated that, the State may, if new circumstances have arisen following the grant of bail, approach the High Court seeking cancellation of bail under Section 439(2), CrPC. However, if no new circumstances have arisen, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused.

The Apex Court found that the High Court has granted bail to the Respondents-Accused by passing a very cryptic and casual order, *de hors* cogent reasoning, and held that the

present case is not fit for grant of bail, owing to the seriousness of allegations against the Respondents-Accused.

The Apex Court thus allowed the Criminal Appeal and cancelled the bail bonds of the Respondents-Accused.

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**Luckose Zachariah @ Zak Nedumchira Luke & Ors. Vs. Joseph Joseph & Ors.**  
**Crl.A.No.256 of 2022**  
**Date of Judgement: 18-02-2022**

Sections 172 and 173(8), CrPC

The Hon'ble Supreme Court decided on a Criminal Appeal arising from the dismissal of a Protest Petition. In the present case, the initial report under Section 172, CrPC, found that *prima facie* the appellants were involved in the commission of the offences alleged, but the subsequent report under Section 173(8) came to the conclusion that no *prima facie* case involving the commission of the offences has been established.

The Apex Court found that the decision of the Kerala High Court in *Joseph v. Antony Joseph [2018 (3) KHC 23]*, which had observed that "when a positive report under Section 173(2) of Cr.P.C. is followed by a negative report under Section 173(8) Cr.P.C. and cognizance has been taken upon the former report, the magistrate shall proceed with the case ignoring the latter report.", is contrary to the legal position set out in the decision of the Supreme Court in *Vinay Tyagi Vs. Irshad Ali alias Deepak [(2013) 5 SCC 762]*. The Apex Court held that the Sessions Judge was justified in setting aside the order of the Magistrate as "the Magistrate was duty bound in terms of the dictum in paragraph 42 of the decision in *Vinay Tyagi*, as well as the subsequent three-Judge Bench decision in *Vinubhai Haribhai Malaviya Vs. State of Gujarat [(2019) 17 SCC 1]*, to consider both the original report and the supplementary report before determining the steps that have to be taken further in accordance with law. The Magistrate not having done so, it was necessary to restore the proceedings back to the Magistrate so that both the reports could be read conjointly by analyzing the cumulative effect of the reports and the documents annexed thereto, if any, while determining whether there existed grounds to presume that the appellants have committed the offence, and thus disposed of the Criminal Appeal accordingly.

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**Waheed-ur-Rehman Parra Vs. Union Territory of Jammu & Kashmir****Crl.A.No.237 of 2022****Date of Judgement: 25-02-2022**

Sections 173(6) and 207, CrPC — Section 44 of the Unlawful Activities (Prevention) Act, 1967 — protected witness — redacted statements

The Hon'ble Supreme Court decided a Criminal Appeal on the issue whether the defence seek recourse to Section 207 and Section 161 of the Cr.P.C. for obtaining copies of redacted statements of protected witnesses as declared by the Trial Court.

The Apex Court observed that, "the provisions of Section 173(6) of the Cr.P.C. read with Section 44 of the UAPA and Section 17 of the NIA Act stand on a different plane with different legal implications as compared to Section 207 of the Cr.P.C. ... They are also in the context of special provisions made for offences under special statutes."

The Apex Court found that the Trial Court deciding the Application under Section 207, CrPC is not an exercise of power of review of its earlier Order declaring the witnesses as protected witnesses, but the exercise of powers at two different stages of proceedings under two different provisions. The Apex Court further found that the Order of the Trial Court allowing the Application under Section 207, CrPC, has been cautiously worded and permitted redaction of not only the address and particulars of the witnesses, but even other relevant paras in the statement which would disclose their occupation and identity, thus giving a wide discretion to the Prosecution.

The Apex Court held that the Order of the Trial Court was both fair and reasonable for the prosecution and defence while protecting the witnesses, and not depriving the defence of a fair trial with the disclosure of the redacted portion of the testimony under Section 207 of the Cr.P.C.

The Apex Court thus allowed the Criminal Appeal and set aside the impugned judgement of the High Court and restored the Order of the Trial Court.

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## HIGH COURT - CIVIL CASES

### **B. Amudha Vs. K. Rajendran (Died)**

**S.A.(MD)No.80 of 2010**

**Date of Judgment: 28.03.2022**

Section 100, Civil Procedure Code — Section 19 (b), Specific Relief Act, 1963 — ambulatory nature of the onus of proof — purpose of re-examination

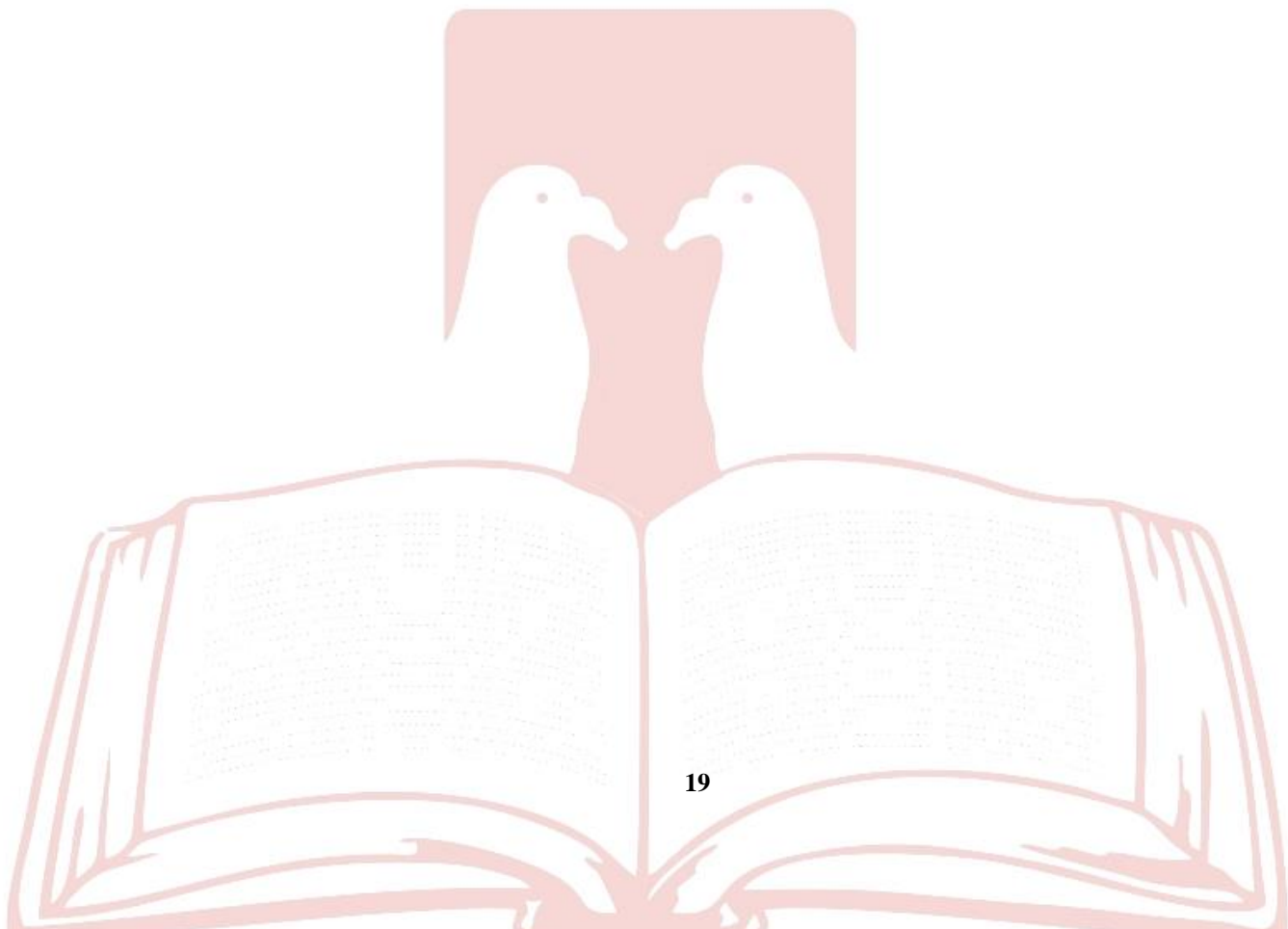
The Hon'ble High Court in a Second Appeal discussed the importance of onus of proof and its ambulatory nature. The Court highlighted Section 138 of the Indian Evidence Act, 1872 and illustrated that the present case is an example for the ambulatory nature of onus of proof. The Court considered the case of *Arunachala Thevar v. Govindarajan Chettiar* [(1977) 90 LW 543] and stated that, want of knowledge of the prior contract, the purchaser can discharge the burden in certain circumstances by a mere denial. This is because the onus is negative in character. The Court affirmed the importance of re-examination in such type of cases and highlighted the cases of *Chanan Singh Vs. State of Haryana* [(1971) 3 SCC 466] and *Ramsewak Vs. State of M.P* [(2004) 11 SCC 259].

The Court sustained the finding of the first appellate court stating that, "Were you not once prosecuted and punished?"-to this blunt question during cross-examination, the witness tried to give an explanation. He was cut short with a firm "Say, yes or no". The poor witness meekly replied "yes sir". The cross-examining counsel after a few more questions sat down with a victorious smirk. The other side counsel was alert and with the leave of the court to re-examine his witness, put a question "can you tell the Hon'ble Court as to why you were prosecuted and what was the punishment you received?". The witness explained with a sense of relief "I was charged for a traffic violation and paid a small amount as fine".

This story highlights the importance of re-examination. If the counsel had failed to elicit this explanation, the judge would have carried an impression that the witness is an ex-

convict. Failure to re-examine a witness can sometimes turn out to be fatal. The case on hand is a good illustration.

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**Bajaj Allianz General Insurance Company Ltd. Vs. Munni & Ors.****CMA No. 2787 of 2017****Date of Judgment: 04.03.2021**

Sections 163-A, 166 of Motor Vehicles Act, 1988 — Rule 3, Motor Accident Claims Tribunal Rules

The Hon'ble High Court in a Civil Miscellaneous Appeal arising from the order of the Motor Accident Claims Tribunal about determining the quantum and grant of compensation noted that, in any petition filed under Section 166 of the Motor Vehicles Act 1988, a burden is cast on the claimants to establish that the accident occurred owing to the rash and negligent driving of the vehicle involved.

The Court reiteratively held that, under Section 168 of the Motor Vehicles Act, 1988, power had been given to the Claims Tribunal, to hold an enquiry into the claim and then make an award determining the amount of compensation which appears to be just and specifying the person or persons, to whom compensation shall be made and also indicate the amount which shall be paid by the insurer or by the owner or by the driver of the vehicle involved in the accident. Section 169 of the Motor Vehicles Act 1988 gives the procedure and powers of the Claims Tribunal and clarifies the nature of enquiry to be conducted and had stated that summary procedure shall be followed. It had also been stated that the Tribunal shall have the powers of a Civil Court for taking evidence on oath and shall be deemed to be a Civil Court while adjudicating any claim for compensation and while recording evidence.

Thus, the Court dismissed the Appeal confirming the order of the accident claims tribunal.

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**D.S.Radhika Vs. The State rep.by the Secretary to Government Health,  
Medical and Family Welfare Department Fort St.George, Chennai and Ors.  
W.P.(MD) No.2476 of 2022 and W.M.P.(MD) No.2177 of 2022  
Date of Judgment: 14.03.2022**

Government Employee taking video of other employees during office hours – suspension of employment – Employee using abusive language

The Hon'ble Madras High Court in this case dealt with a Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for records relating to the order of suspension by respondent number 3 and quash the same. The brief of this case is that, the petitioner was working as Superintendent in the Regional Workshop (Health), Tiruchirapalli and placed under suspension on the ground that in spite of being continuously warned by the Workshop Superintendent, Regional Workshop (H), Trichy (the Head of Office) at many instances not to shoot video of the co- employees and officers at the work place, the respondent continued to take video using her mobile phone. In order to prevent her from taking the video and stop the unlawful activity, the Workshop Superintendent picked her mobile phone in the presence of office staff, while the video was being shot and handed it over for safe custody. It is contended by the respondent no. 4 that, the petitioner suddenly resorted to violence, used abusive and filthy language and tried to attack the Officer. When the Officer moved away by instinct, she bit the hand of the Watchman causing grievous injury to him. It was also contended by the Additional government pleader that, there were several allegations against the petitioner mostly regarding high-handedness and misbehaving with other officials of the Department.

The Hon'ble High Court opined that, "that using mobile phones by the public servants during office hours has become nowadays a normal scenario. Using mobile phones and taking videos inside the office is a grave misconduct. The officials working in the Government Departments should never be allowed to use mobile phones inside the office for their personal use. If at all any emergency call is to be attended, proper permission



must be obtained from superiors to go out from the office and use mobile phones.” Further the High Court posited that, “In all circumstances, the mobile phones must be either switched off or kept in vibration / silent mode, without causing any disturbance or nuisance to be public, who all are attending the office as well as the other officials working in the office. This must be the minimum discipline to be followed in the Government Offices.” It was also observed that, the Government is duty bound to ensure that the public servants are not wandering with mobile phones inside the office during office hours and it is to be regulated in accordance with the Tamil Nadu Government Servants' Conduct Rules, 1973.

In fine, the Hon'ble High Court disposed the writ petition passed several directions restricting the use of mobile phones by government officials during office hours and further in the matter concerning this particular case held that, the allegations set out are serious in nature warranting an enquiry to be conducted by the respondents.

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**Irfan Vs. K.S.Kumaran and Anr.**  
**C.M.A.No.2184 of 2018**  
**Date of Judgment: 03.03.2022**

Driving in rash and negligent manner – appellant at the time of accident was minor – claimant not entitled to claim compensation as he was minor

The Hon'ble Madras High Court dealt with a Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree of the Small Causes Court, Chennai. The brief facts of this case are that, the appellant was riding a motorcycle on Dr. Natesan Road and an autorickshaw driven by its driver in a rash and negligent manner and hit the two wheeler driven by him. In the impact, the appellant sustained several injuries and was admitted in the hospital as inpatient to be treated for the injuries. The appellant at the time of the incident was a minor and for the injuries sustained by him, he has filed a claim petition for a sum of ₹7 lakhs as compensation against the driver and the insurer of the autorickshaw. The second respondent vehemently opposed the claim on the ground that the claimant is not entitled to ride the two wheeler in as much as he was minor at the time of accident. Since the policy condition has been violated by the owner of the vehicle in whose favour the insurance policy stands, the second respondent prayed for dismissal of the petition.

The Hon'ble High Court on perusal of records and arguments observed that, "... there is a clear bar and embargo for the appellant to drive the vehicle even before attaining the majority or in the absence of driving licence issued by the competent authority as has been enunciated under Section 4 of the Motor Vehicles Act." Further the High Court observed that, "Though this Court sympathizes with the appellant for the injuries sustained by him, it will not be a ground for this Court to recognize or to give a stamp of approval for the act done by him in riding the two wheeler, while he was a minor. If the claim of the appellant is entertained, this Court is afraid that it would open the flood gate and those who have no right to drive the motor vehicle would approach this Court

and would justify their act to be recognized resulting in docket explosion". Thus, the Hon'ble High Court upheld the decision of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai and hence dismissed the petition.

*Also See:*

- *United India Insurance Co. Ltd., Vs. Sunil Kumar and another [2013 (2) TN MAC 737 (SC)]*
- *Karnan Vs. State represented by Inspector of Police, Traffic Wing, Salem [2012 (4) MLJ (CrI) 677]*

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**J. Thulasirama Reddy Vs. B. Shanmugam & Ors.****S.A.No.261 of 2013****Date of Judgment: 14.03.2022****Benami Transactions Prohibition Act 1988**

In an issue arising out of benami transaction, brought before the Hon'ble High Court in second appeal the Court reiterated the finding given in *Satya Gupta Vs. Brijesh Kumar*, [(1998) 6 SCC 423] that, the High Court, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible.

The Court pointed out the caution laid down by the Apex Court in *Thiagarajan Vs. Venugopaldaswamy B. Koil* [(2004) 5 SCC 762] that, "even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material. This Court in a catena of decisions held that where findings of fact by the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own findings on re-appreciation of evidence merely on the ground that another view was possible."

The Court pointed out the observation in *Durga Chowdhurani Vs. Jawahir Singh* [17 IA 122] that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to, and concluded that, within the narrow jurisdictional parameters of Section 100, an interference on facts was permissible only in cases where it was shown that the appreciation of facts by the Courts suffered from perversity.

Thus, the Court dismissed the Second Appeal with cost.

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**Kothandapani & Ors. Vs. Devamirtham & Ors.****CMA No. 2812 of 2017****Date of Judgment 11 .03.2021**

Sections 384 and 382, Indian Succession Act, 1925 — Sections 114 and 50, Indian Evidence Act, 1872

The Hon'ble High Court decided a Civil Miscellaneous Appeal filed under Section 384, Indian Succession Act, 1925, on the issue of grant of succession certificate, wherein a woman claimed a right on the strength of long relationship which had been recognized and had been continuous.

Section 50 of the Indian Evidence Act, 1872 indicates that, where a Court has to form an opinion regarding the relationship of one person to another it states that an opinion expressed, relating to such relationship, by any other person, who has knowledge of that particular subject, becomes relevant. This would imply that if the Court was to give a finding on the existence of a stated relationship between two persons, then, such relationship can be stated to have been established if there are some evidence which point out to the same. That evidence becomes relevant.

Section 114 of the Indian Evidence Act, 1872 wherein relates to the presumption which the Court can draw of the existence of certain facts in the natural course of human conduct. Section 114 of the Indian Evidence Act also states that the existence of a fact can be presumed in the common course of natural events.

The Court observed that, when these two provisions are read together, then if a particular relationship is urged by a party in judicial proceedings, then on the basis of normal human conduct, that particular relationship should be examined based on other relevant materials. The Court dismissed the petition and held that, the Court will lean towards presumption of validity of a relationship, and that the burden to rebut the presumption is on the party who seeks to deprive the relationship of a legal origin.

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**P. A. Joseph Vs. The State of Tamil Nadu and Ors.**  
**W.P.No.3681 of 2022**  
**Date of Judgment: 23.2.2022**

Mandamus seeking adoption of NCERT syllabus – policy decision not violating statutory provisions, court has limited powers

The Hon'ble High court in this case dealt with a Writ of Mandamus filed under Article 226 of the Constitution seeking issuance of directions to the respondents to adopt the NCERT syllabus from elementary to higher secondary in government and government aided schools across Tamilnadu to enable the students to meet with all central and other state government entrance qualifying and employment exams. It was noted by the Hon'ble High Court that, "the petitioner has failed to refer to any provision which mandates the State Government to adopt the NCERT syllabus for the Government schools. Rather, the State Government has come out with a syllabus and the challenge to that did not sustain up to the Supreme Court." Further, it was held that, "a policy decision not shown to be in violation of the statutory provisions, the jurisdiction of this Court would be very limited. It is up to the State Government to take a policy decision regarding syllabus, whether to adopt NCERT syllabus or to provide some other syllabus as per the Rules." Thus, the Hon'ble High Court dismissed the petition finding it to be devoid of merits.

*Also See:*

- *State of Tamil Nadu & Others Vs. K. Shyam Sundar & Others [Civil Appeal Nos.6015-6027 of 2011 dated 09.8.2011]*
- *Shiv Kumar Pathak Vs. State of U.P. [W.P.No.57476 of 2013 dated 18.8.2015]*

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**P. Pugalenti Vs. The State of Tamil Nadu, rep. by the Secretary to  
Government and Ors.  
W.P.No.5093 of 2022  
Date of Judgment: 08.3.2022**

Scam in supply of stationery to various government departments – Mandamus to direct respondents to commence and complete investigation of complaint by the petitioner – petitioner set at liberty to seek registration of the First Information Report or to file a private complaint invoking Section 190 of the Criminal Procedure Code

The Hon'ble High court in this case dealt with a Public Interest Litigation filed under Article 226 of the Indian Constitution to issue Writ of mandamus directing respondent 4 to commence and complete the investigation of the complaint given by the petitioner relating to the scam in the supply of stationery articles by respondent 3 - Central Prison, Madurai to various Government Departments including Judicial Department between 2016-2021. Prior to filing of this Public Interest Litigation, the petitioner had made complaint exposing the scam in the supply of stationery articles by the third respondent and a representation was sent to the fourth respondent - Director, Vigilance and Anti-Corruption. Since the efforts of the petitioner did not yield any results, the petitioner has filed this petition. After considering the submissions and upon perusal of records, the Hon'ble High Court examined, whether the direction for investigation into the complaint sought for by the petitioner can be given without registration of the First Information Report.

The Hon'ble Madras High Court in this case held that, "The prayer made by the petitioner for causing investigation in the complaint, cannot be granted, as it is not flowing from Article 14 of The Constitution of India to cause an investigation as and when a complaint is given by the individual. Rather, it has to be as per the provisions of law i.e., the Criminal Procedure Code and the Prevention of Corruption Act, 1988." Further it was noted that, "It is no doubt true that whenever allegation of scam or corruption is made, it has to be dealt with in the manner known to law and not in the manner as prayed by the petitioner." Therefore, the Hon'ble High Court disposed the writ petition with liberty to

the petitioner to seek registration of the First Information Report or to file a private complaint invoking Section 190 of the Criminal Procedure Code.

*Also See:*

- *Vineet Narain Vs. Union of India [1998 (1) SCC 226]*

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**S. Meena and Anr. Vs. Sivakumar and Ors.****A.S.No.900 of 2012****Date of Judgement: 03.03.2022****Claim in ancestral property of deceased – marriage cannot be proved with single photograph**

The Hon'ble High Court in this case dealt with an Appeal Suit filed under Section 96 of C.P.C, to set aside the judgment and decree of the Principal District Judge. The matter involved in this case is that, the appellants claim 1/7<sup>th</sup> share in the suit property on the premise that they are widow and son of one late Sakthivel. Defendants arrayed as 1 to 5 are brothers of the said Sakthivel and defendants 6 and 7 are the mother and father of Sakthivel. The claim of the petitioners has been denied by the defendants and the defendants have also stated that, the deceased Sakthivel remained bachelor till his death. The trial court in this case has negated the claim of the petitioners that, they are widow and son of the deceased Sakthivel, since they failed to produce, marriage certificate of the first petitioner with Sakthivel, birth certificate of 2<sup>nd</sup> petitioner to show the parentage and proof of residence to show the petitioners and Sakthivel along with other defendants lived jointly.

The Hon'ble High Court observed that, The factum of marriage and long cohabitation are not matters, which can be inferred through a single photograph, where a male and female as seen together. More so, when only the positive is filed without negative and the person, who took the photograph not examined. Further it was held that, the School Transfer Certificate of the second appellant, minor, was issued with his initial as 'A' instead of 'S' (Sakthivel). As a result, the court upheld the findings of the trial and refused to consider the certificate as proof of parentage/marriage and stated; "As rightly pointed out by the trial Court, the school certificate [Ex.A-3] issued in the name of A. Aravind without mentioning the father name cannot be taken as proof that the deceased Sakthivel as the father of the second plaintiff. More so, when the first plaintiff herself

admits that prior to her marriage with Sakthivel, she got married to another person hailing from Thirunavallur, whose name she has forgotten. However, the marriage got dissolved. There is no evidence to corroborate that the earlier marriage got legally dissolved." The Hon'ble High court also noted that, though the dictum of the Hon'ble Supreme Court that Court should lean towards legitimacy and frown upon bastardy is to be followed, in the instant case Court cannot hold responsible a deceased person for the birth of second plaintiff in the absence of reliable evidence. In fine, the Hon'ble High court dismissed the suit with exemplary costs of Rs 25,000/- in addition to the regular costs.

*Also See:*

- Badri Prasad Vs. Dy. Director of Consolidation and others [AIR 1978 SC 1557]  
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**Shrutivinda Agro Farms Pvt. Ltd. Vs. Nova Dyeing and Printing Mills Ltd.**  
**O.S.A.Nos.191 & 192 of 2018**  
**Date of Judgment 11.03.2022**

Sections 293, 397, 398, and 402 of the Companies Act 1956 — Section 16(c), Specific Relief Act, 1963 — Section 115, Indian Evidence Act, 1872

The Hon'ble High Court decided an Original Side Appeal regarding Sections 293, 397, 398 and 402 of Companies Act 1956, principle of estoppel, Section 115, Indian Evidence Act, and Section 16(c), Specific Relief Act. The Court emphasized the jurisdiction of the tribunal over the Trial Court in matters concerning company affairs.

The Court found that, the plaintiff who has obtained an order of injunction restraining the first defendant not to interfere with the sale agreement, cannot complain that there was no readiness or willingness to perform the execution of the contract and cannot take the defence of non-issuance of pre-suit notice by the first defendant, as the first defendant has to respectfully comply with the order of injunction.

The Court on Section 16(c), Specific Relief Act, 1963 took a considered view that, "To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances."

The Court also discussed the aspect of admission and estoppel found that, admission made before the trial Court that he/she was a party to the decision by virtue of Section 58, Evidence Act read with Order XII, Rule 6 and Order XV, Rule 1, CPC dictates the trial court to decree the suit for specific performance.

The Court allowing the appeal, held that the suit for specific performance is maintainable in law, as when the trial Court had found that when the first defendant was the bona fide sale agreement holder, the suit filed by the plaintiff should have been dismissed.

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**HIGH COURT – CRIMINAL CASES****Ashraf and Ors. Vs. State by Inspector of Police, J-4, Kotturpuram Police Station, Chennai****Crl.O.P.No.3163 of 2022 and Crl.M.P.Nos. 1419 & 1422 of 2022****Date of Judgement: 14.02.2022**

Protest against management of IIT Madras – Suicide of student – FIR against protesters for preventing free flow of movement

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 of Cr.P.C to call for records pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same. The brief facts of this case are that, the petitioners are members of an organisation called "Campus Friends of India", who were protesting against the management of IIT Madras seeking justice for a deceased student who committed suicide in the hostel. It is also stated that the deceased student had written suicide note mentioning the names of some Faculty. The case of the respondents is that the petitioners were protesting by raising slogans against the management of IIT and prevented the free flow of movement and thereby, the respondent had initiated a *suo motu* proceedings against the petitioners and registered FIR for the offence under section 143, 145 and 341 of IPC. The petitioners contended that, they are law abiding persons and had gathered only to ventilate their grievance and had not created any disturbance to the public, yet, they have been roped into the present case falsely. It is further stated by the petitioners that, the case filed against the petitioners was with the intention to prohibit the fundamental right of freedom to assemble peacefully and without arms and therefore, it was in violation of the fundamental rights guaranteed under Articles 14, 19(1)(a) 19(1)(b) and 21 of the Constitution of India. The Hon'ble High Court perusing the materials on record and relying upon several decisions, allowed the petition and quashed the case pending on the file of Metropolitan Magistrate, thus closing all the connected miscellaneous petitions.

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**Balamurugan Vs. The State**  
**Crl.O.P(MD)No.1800 of 2020**  
**Date of Judgment: 03.03.2022**

Section 4A(1a), Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 —  
Section 505(1), Indian Penal Code

The Hon'ble High Court decided a Criminal Original Petition filed under Section 482, CrPC, to quash the final report filed under Section 4A(1a), Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 and Section 505(1), IPC.

The Court held that, "a demand made by the Hindu People Party by way of advertisement to remove the dilapidated mosque situated in the main road and the demand was made towards the State Government as well as the Central Government. Any advertisement which incites any section of the citizen of India to act in violence or which intended to outrage any religious faith or cause indecent to the faith or intended to blackmail or any such advertisement which incite any one to commit violence, is an objectional advertisement. Therefore, mere demand to remove the dilapidated mosque which was not at all used by the Muslim community which was standing on the road. Such demand itself cannot be construed to mean that it is an objectionable advertisement. From the materials unearthed by the prosecution, this Court is unable to find that such advertisement hurt the feelings of the other religion or was intended to outrage the religious faith of other community." Thus, the Court allowed the Criminal Original Petition.

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**Baskar Vs. State by the Inspector of Police Rasipuram Police Station,  
Namakkal**

**Crl.A.No.731 of 2018**

**Date of Judgment: 01.03.2022**

POCSO Act, 2012 — appreciation of evidence

The Hon'ble High Court in a Criminal Appeal challenging a judgement of conviction and sentence gave an elaborate detail on appreciation of evidence in POCSO cases. The Court considered the issue whether the Appellant/Accused is entitled to acquittal, for which, a thorough scrutiny of the evidence, both oral and documentary is necessary and it is done as under for the offences under Section 5(m) read with Section 6 of the POCSO Act. The Court reiterated the position taken by the apex court that,

1. Nobody can be convicted on mere suspicion; however strong it may be.
2. Evidence can be rejected, if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony.
3. If there is intrinsic merit in the evidence of the witnesses, it cannot be rejected.
4. Discrepancies and contradictions, if found material and substantial, are in respect of vital aspects of facts, then the entire testimony cannot be discarded.

The Court dismissed the Appeal finding the decision of the trial Court commensurate and cogent holding that, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. A message must be conveyed to the Society at large that if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes, they shall be punished suitably and no leniency shall be shown to them. The Court also directed the Social Welfare Department to disperse the compensation immediately.

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**Dr. Esther Vs. The State of Tamil Nadu and Ors.**  
**W.P. No.8237 of 2020 & W.M.P. Nos.9842 and 9845 of 2020**  
**Date of Judgment: 15.03.2022**

**Premature release of convict prisoner – rejection of recommendation of the State Level Committee for premature release of live convict**

The Hon'ble High Court in this case dealt with a Writ of Certiorarified Mandamus filed under Article 226 of Constitution to direct the respondents to release the petitioner's son confined at the Central Prison – I, Puzhal. The brief of this case is that, the Petitioner's son is a life convict for the murder of a co-student. To commemorate the birth centenary of Dr. MGR, a Government Order was passed for premature release of several convict prisoners by fixing several conditions. The issue in this petition was name of the petitioner's son was not considered in the GO for premature release, aggrieved by this the petitioner filed an habeas corpus petition seeking premature release of her son. The State Government passed G.O.(D) No.372, Home (Prison-IV) Department dated 22.07.2019 during the pendency of the said habeas corpus petition, rejecting the recommendation of the State Level Committee for premature release of the petitioner's son John David.

The Hon'ble High Court relied on several decisions of the Hon'ble Apex Court and opined that, "The State Level Committee which is composed of the Inspector General of Prisons and the Deputy Inspector General of Prisons (Headquarters) can only recommend a case to the State Government and cannot exercise the power under Article 161 of the Constitution of India. The Governor of the State would exercise the power under Article 161, on the recommendation of the Cabinet. Thus, the Cabinet has the authority to accept or reject the recommendation of the State Level Committee and accordingly, give their advice to the Governor."

In fine, the Hon'ble High Court of Madras deduced that, the High Court has no ground to interfere with Government Order and thus, dismissed the petition as it was devoid of merits.

*Also See:*

- Satish @ Sabbe Vs. The State of Uttar Pradesh [2020 SCC OnLine SC 811]
- Home Secretary (Prison) and Others Vs. H. Nilofer Nisha [(2020) 14 SCC 161]
- R. Muthukumar and Others Vs. Chairman & Managing Director, TANGEDCO & Others [2022 SCC OnLine SC 151]
- K. Rajasekar Vs. State and Others (MANU/TN/0641/2022)
- Epuru Sudhakar and another vs. State of Andhra Pradesh and Others [(2006) 8 SCC 161]
- Sikkander Vs. State, represented by its Secretary to Government of Tamil Nadu and Others (2021 SCC Online Mad 6586)

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**S. Ganeshan Vs. State Represented by the Inspector of Police,  
Periyanaikkanpalayam Police Station, Coimbatore  
Crl.O.P.No.4131 of 2022 and Crl.M.P.No.2060 of 2022  
Date of Judgement: 07.03.2022**

POCSO Act and Prohibition of Child Marriage Act – re cross examination on victim – victim attained majority does not come under the definition of child

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 Cr.P.C to set aside the order of the trial court. The case of the petitioner is that, the petitioner was facing trial for the offence under Section 366 of IPC, Section 5(I) read with Section 6 of the POCSO Act, 2012 and under Section 9 of the Prohibition of Child Marriage Act 2006. The petitioner had now changed the counsel and since the earlier Advocate was not instructed properly, certain vital questions were left out to the witnesses, thus, the petitioner has filed the present petition seeking to recall the witnesses, after the appointment of new counsel. The request to recall the witnesses and cross-examine them was dismissed by the Trial Court on the ground that PW2/victim is a "Child" and that as per Section 33(5) of the POCSO Act, the child witness cannot be called repeatedly to testify in the Court. The contention of the petitioner is that, on the date of the occurrence the victim was a minor, but as on the date she was 21 years of age and the bar under Section 33(5) of the POCSO Act will not operate against the petitioner. The Hon'ble High Court observed that since the victim has now attained majority, she will not fall within the definition of "child" so as to invoke Section 33(5) of the POCSO Act, 2012. Further, the Hon'ble High Court noted that, Section 33(5) of the Act only mandates that the child witness cannot be called repeatedly to testify in the Court and observed that, "As per Section 29 of the POCSO Act, unless the contrary is proved, the Special Court shall presume that the accused has committed or abetted or attempted to commit the offence as the case may be, unless, the contrary is proved...As stated above, PW2 [victim], PW7 & PW8 [doctors] are crucial witnesses. If the witnesses are not cross-examined, the evidence stands unrebutted and it would amount to a case

of no defence resulting in grave prejudice to the petitioner." In fine, the Hon'ble High Court relying on Section 311 of Cr. P. C and several decisions of the Apex Court and other Hon'ble High Courts allowed the Criminal Original Petition.

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**Kannan@ Mannanai Kannan and Ors. Vs. State by Inspector of Police, C5  
Karimedu Police Station, Madurai City  
Crl.A.(MD)No.3 of 2020 and Crl.M.P.(MD)No.1422 of 2022 and  
Crl.A.(MD)No.22 of 2020  
Date of Judgment: 28.02.2022**

Accused convicted on the basis of post mortem report and medical evidence – witnesses turning hostile

The Hon'ble High Court in this case dealt with a Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Madurai. The present appeal is due to the trial court judgement whereby the accused were convicted solely relying upon the evidence of Medical Officer and post-mortem certificate. The witnesses in this case had turned hostile and did not support the case of prosecution in the trial court. It was observed by the Hon'ble High Court that, the learned trial Judge has rightly found that all the witnesses turned hostile, however in paragraph 27 of the judgment, the trial Court recorded its findings, as if witnesses admitted the occurrence in their cross examination. The Hon'ble High Court perused the chief examination of all the witnesses and it was observed that none of the witnesses supported the prosecution version in any manner. The Hon'ble High Court further noted that, "Even assuming that the witnesses admitted in the cross examination that they have stated the above statement before the Investigating officer, such evidence would be useful only to prove the one particular fact that the said witness has given a statement under Section 161(3) Cr.P.C., not for any other purpose." It was observed by the Hon'ble High Court that, entire statement of the witnesses recorded under Section 161(3) Cr.P.C., were put to the witnesses in the cross examination and in the last line it is suggested that they have given false evidence in order to support the accused. In the view of the above circumstance, the Hon'ble High Court allowed the Criminal Appeal and set aside the judgement of the trial court and acquitted the appellants.

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**P. Kannan Vs. The Commissioner for Municipal Administration****W.P.Nos.2165 of 2015****Date of Judgment: 15.03.2022**

Rule 3(e), Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955  
— Rape allegations — Suspension — Section 167, CrPC

A three-judge Bench of the Hon'ble Madras High Court in a Writ Petition, clarified the two positions of law taken by the Division Benches in *Director General of Police & Anr. Vs. T. Kamarajan* [2019 SCC OnLine Mad 35836] and *Chairman-cum-Managing Director, TANGEDCO & Ors. Vs R. Balaji* (27.08.2021) respectively.

The Court rendered the judgment in *R. Balaji*, to be per incuriam and of no reference to the earlier judgments of co-equal strength. The Court noted that, Ajay Kumar Choudhary ought to have followed the law laid down in Central Board of *Dawoodi Bohra Community Vs. State of Maharashtra*, [(2005) 2 SCC 673], observing that, "A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench of larger quorum .... The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength."

The Court referred to the decisions in *State of Orissa v. Bimal Kumar Mohanty* [(1994) 4 SCC 126], and *The Superintending Engineer, TANGEDCO & Anr. Vs. Mohan Kumar* [W.A.(MD)No.1827 of 2021, dated 20.1.2022] and reiterated that, "suspension is not a punishment, but only one for forbidding or disabling an employee to discharge the duties

of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct ...”

The Court referred to the decisions in *Ajay Kumar Choudhary Vs. Union of India*, [(2015) 7 SCC 291], *Arignar Anna Sugar Mills Ltd Vs. R.Vengatasamy & Ors.* [2017 SCC OnLine Mad 33673], and held that, “The judgment of the Apex Court in the case of Ajay Kumar Choudhary does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/chargesheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.”

The Court further held that the issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable to the delinquent. “Judicial review in such matters should be minimal. ... Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.”

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**Pastor Muniyandi @ Ramesh Vs. The Inspector of Police, Gobichettipalayam  
Police Station**

**Crl.A.No.130 of 2018**

**Date of Judgment: 21.03.2022**

**POCSO Act 2012 — Prohibition of Child Marriage Act, 2006**

The Hon'ble High Court in deciding a Criminal Appeal challenging the conviction and sentence for offence under Section 366, IPC, Sections 9 and 10, Prohibition of Child Marriage Act, 2006 and Section 6, POCSO Act.

The Court found that there was no material evidence to show that the survivor was forcibly taken away, however, that by itself is insufficient to exonerate the accused of the charges, as owing to the medical evidence the survivor was aged between 14 and 15 years at the time of occurrence. "Therefore, consent has no relevance at all in this case, but can at the most be considered as a mitigating factor, while deciding the question of sentence."

The Court rejected the contention that the accused/abettors were made to believe that the survivor was aged above 18 years, as during her cross examination the survivor clearly stated that she was in her school uniform when she was taken to the house of the accused. The Court observed that the word "abatement" defined under Section 16, POCSO Act, is almost in *pari materia* with the definition of the word "abatement" in Section 107, IPC. However, explanations in both the provisions differ. "Section 29 of the POCSO Act, there is a presumption clause, which not only brings in the actual offender, but also the abettor and the burden is on the accused to prove the contrary. ... Similarly, under Section 30 of the POCSO Act, there is a presumption of *mens rea*, which is required to be discharged by the accused, when the foundational facts are established." The Court confirmed the conviction and reduced the sentence for the offence under Section 6, POCSO Act.

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**S. Palanichamy & Ors. Vs. The Assistant Director, Directorate of Enforcement, Government of India**

**Crl.O.P.No.2821 of 2017**

**Date of Judgment: 21.03.2022**

Section 3 r/w 4 of Prevention of Money Laundering Act, 2002

The Hon'ble High Court decided a Criminal Original Petition on the issue whether the criminal prosecution initiated against A8 to A15 is sustainable or not. The Court reiterated the ingredients of under Section 3 r/w 4 of PMLA that are essential for a prosecution, as being, (i) A criminal activity should have been committed; (ii) Some money should have been generated via the criminal activity; (iii) The money so generated (proceeds of crime) should have been projected as untainted one.

The Court emphasized the position of the Supreme Court in *Nikesh Tarachand Shah Vs. Union of India & Anr. [(2018) 11 SCC 1]* "whosoever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property."

The Court found that "there is no material to show that A8 to A15 had committed any criminal activity at all. A8 had purchased lands for his business from A4, A6 and A7 through their power agent and thereafter, he sold those lands to A9 to A15 for a valuable consideration." "It is most pertinent to state here that the FIR for the 'scheduled offence' was registered by the CBI only on 06.10.2010 and these sale transactions had taken place much before that. Therefore ... the purchasers of the land could be expected to anticipate that the land that they are intending to purchase must have been purchased by their vendors with monies generated by a criminal activity."

The Court held that the prosecution of A8 to A15 is an abuse of process of law, and thus allowed the criminal appeal and quashed the proceedings.

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**State rep by The Deputy Superintendent of Police, Metro Wing-I, Crime Branch CID, Egmore, Chennai Vs. A. Sivakumar and Ors.**

**CRL.O.P.No.6330 of 2022**

**Date of Judgement: 18.03.2022**

**Non-bailable warrant issued against absconding, accused police officials – accused aided in kidnapping and extortion**

The Hon'ble High Court in this case dealt with a Criminal Original petition filed under Section 482 of Criminal Procedure Code, to set-aside the order passed by the Special Trial Court and dismissing the petition to issue Non- Bailable Warrants and issue a direction to the learned Metropolitan Magistrate, Special Trial Court to issue a Non-Bailable Warrant against the absconding accused.

The brief of this case is, the respondents who are police officials aided other accused in kidnapping, extortion and illegal transfer of property belonging to the complainant. Despite issuance of notice under Section 41(a) Cr.P.C, the respondents had not complied with and instigated their family members to file a complaint against the Officer before the Human Rights Commission. The contention of the petitioner is that, the respondents belonging to the uniform service, are supposed to obey the Law and not evade investigation. Further, the petitioner filed an Application before the learned Special Judge for issuance of Non-Bailable Warrant of arrest under Section 73 of Cr.P.C.

The Hon'ble High Court relying on *State through CBI v. Dawood Ibrahim Kaskar & Ors*, 2000(10) SCC 43 observed that, Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. Thus,



the Hon'ble High Court set aside the impugned order while directing the magistrate to issue Non-Bailable Warrant of arrest as against the absconding accused.

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