

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII — PART 03 — MARCH 2023 ****

COMPENDIUM OF CASE LAWS



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TABLE OF CONTENTS

SUPREME COURT – CIVIL CASES	1
Anoop Baranwal Vs. Union Of India [W. P. (Civil) No. 104 of 2015]	1
Ashwini Kumar Upadhyay Vs. Union Of India & Ors. [W.P. (Civ) No.190 of 2023].....	3
The Secretary Ministry of Consumer Affairs Vs. Dr. Mahindra Bhaskar Limaye & Ors. [C. A. No. 831 of 2023]	4
The State of Haryana and Ors. Vs. Satpal & Ors. [C.A. Nos. 2984-2985 OF 2022]	5
Union of India Vs. Sanjiv Chaturvedi & Ors. [C. A. No. /2023].....	6
SUPREME COURT - CRIMINAL CASES	7
Kashibai & Ors. Vs. The State Of Karnataka [Cri. A. No. of 2023]	7
M/S. BLS Infrastructure Limited Vs. M/S. Rajwant Singh & Others [Cri. A. Nos. 657-664 of 2023].....	8
Royden Harold Buthello & Anr Vs. State Of Chhattisgarh & Ors [Cri. A. No.634 of 2023] ...	9
Sarabjit Kaur Vs. The State of Punjab & Anr. [Cri. A. No. 581 of 2023]	10
The State of Chattisgarh & Anr. Vs. Aman Kumar Singh & Ors. Etc. [Cri. A. Nos. ... of 2023]	11
HIGH COURT - CIVIL CASES	13
A.C. Murugesan and Ors. Vs. The District Collector, The District Level Committee, Collectorate, Salem and Ors. [W.P.No.8498 of 2022]	13
M/s. Re Sustainability Health Care Solutions Ltd. Vs. The District Collector & Ors. [WP(MD)No.2679 of 2023 and WMP(MD)Nos.2439 & 2442 of 2023]	14
R. Balasundaram Vs. The Tamil Nadu State Level Scrutiny Committee-III, Adi Dravidar and Tribal Welfare Department an Ors. [W.P.No.13526 of 2022 and W.M.P.Nos.12723 & 12725 of 2022].....	15
S. Manoharan Vs. Reserve Bank of India and Ors. [W.P.No.19456 of 2017 and W.M.P.Nos.20981 & 24303 of 2017]	16
Saravanan & Anr. Vs. Semmayee & Ors. [A. S. No 905/2018].....	17

Surajlal Vs. Pradeep Stainless India Pvt. Ltd and others [O.S.A. Nos.26 to 29 of 2020]	18
The Child rep. by her mother Vs. State of Tamil Nadu and others [W. P. No. 24973 of 2022]	19
The High court of Judicature at Madras Vs. Thirumalai & Ors. [C.M.P.No. 1172 of 2023] .	20
V. Ayyadurai Vs. The State of Tamil Nadu & Ors. [W.P.Nos.19905, 20129 of 2020 and 298 of 2021].....	21
Vimal Jayachandran Vs. Diana Jerine Johnson [C.R.P.(MD).No.2594 of 2022].....	22

HIGH COURT – CRIMINAL CASES 23

A. Malliga Vs. The State rep. by, The Inspector of Police, CCIW Police Station, Salem. [Crl.O.P.No.4204 of 2023].....	23
Calin Macdonald & Anr. Vs. State rep by, The Deputy Director, Industrial Safety and Health [Crl.O.P.Nos.13770 to 13777 of 2015].....	24
Leena Manimekalai Vs. Susi Ganeshan [Crl.O.P.No.5697 of 2022 and Crl.M.P.No.3140 of 2022].....	25
M. Syed Ali Fathima Vs. State, Rep. by The Secretary to Government, Home Department [W.P.No.5058 of 2015 and M.P.No.1 of 2015].....	26
S. Salma Vs. State of Tamil Nadu [WP.No.29972 of 2015].....	27
Shahul Hammed Vs. Union of India [Crl.A.No.879 of 2022]	28
Shiva Shankar Baba Vs. State represented by Inspector of Police, CBCID, OCU Police Station-II, Chennai and Anr. [Crl.O.P.No.23806 of 2021 and Crl.M.P. No.13107 of 2021]	30
State rep. by The Public Prosecutor, High Court, Madras Vs. Dandayutham @ Kannan [Crl.A.No.482 of 2016]	31
State rep. by The Public Prosecutor Vs. V. D. Mohanakrishnan [Crl.A.No.352 of 2015].....	32
The Superintendent of Police, Villupuram District Vs. S. Rajeshkumar [Rev. Appln. No.17 of 2023 in W.A.No.2759 of 2018]	34

SUPREME COURT – CIVIL CASES

[Anoop Baranwal Vs. Union Of India \[W. P. \(Civil\) No. 104 of 2015\]](#)

Date of Judgment: 02-03-2023

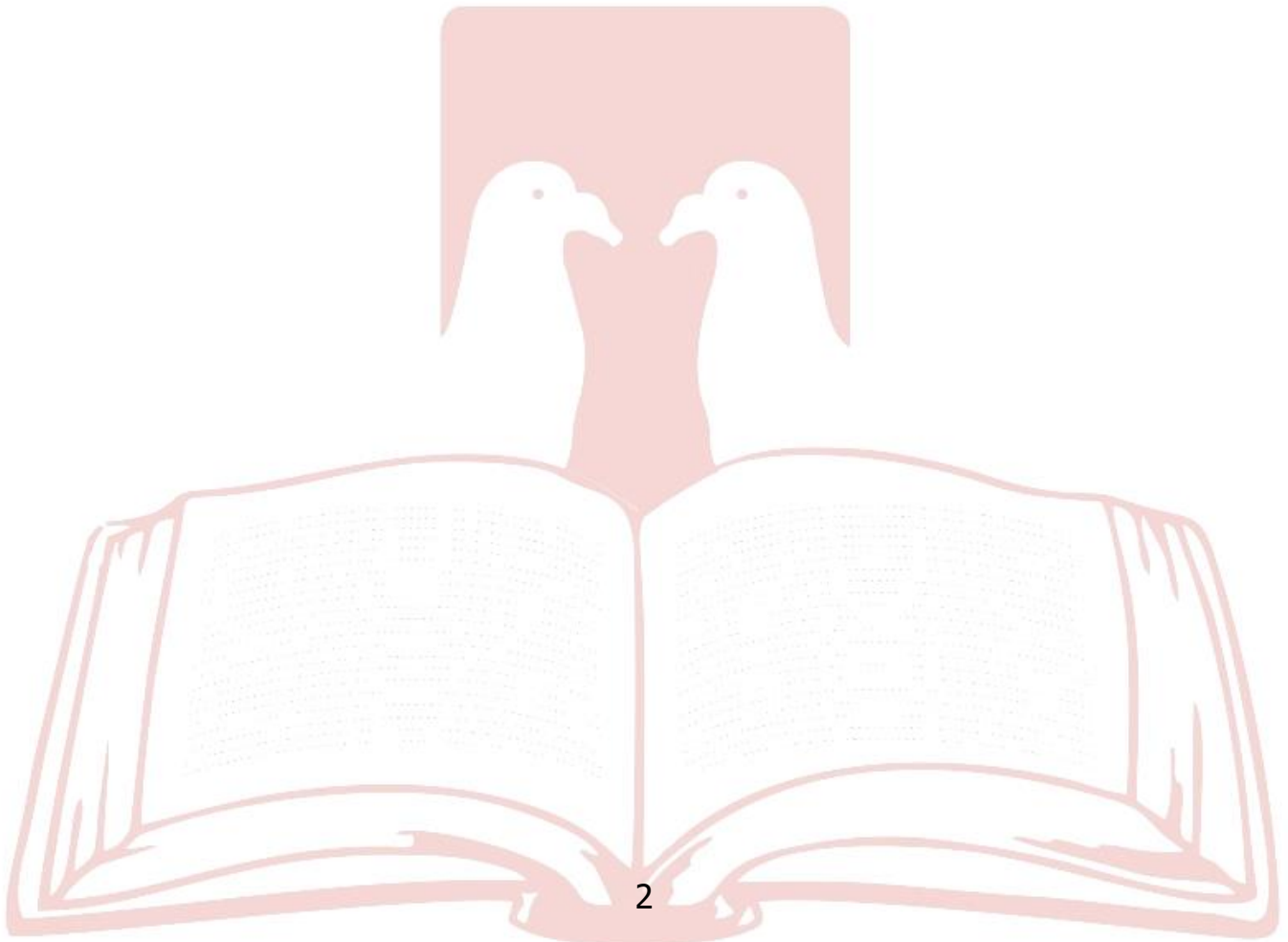
Election

The Hon'ble Supreme Court of India considered a clutch of writ petitions maintained under Article 32 of the Constitution. The Court considered the true effect of Article 324 and, in particular, Article 324(2) of the Constitution.

The Apex Court observed that, the criminalization of politics and the influence of money and media in elections have shaken the faith of citizens in democracy. The appointment of an independent, honest, competent, and fair Election Commission is crucial and must be tested against the rule of law and the mandate of equality. Democracy can only succeed when all stakeholders uncompromisingly work towards it and transform the ruled into a citizenry with fundamental rights, freely exercised. The abuse of the electoral process is the surest way to the grave of democracy. An independent person cannot be biased and must come to the rescue of the weak. Political parties often betray and do not cooperate with the Election Commission due to their insatiable quest for power. The Executive can bring an otherwise independent body to its knees by cutting off its financial resources, which is a threat to its efficient and independent functioning.

The Apex Court held that, according to Article 324(2) of the Constitution of India, 1950, the President of India is responsible for appointing the Chief Election Commissioner and the Election Commissioners. The appointment is made based on the advice given by a committee consisting of the Prime Minister of India, the Leader of the Opposition in the Lok Sabha, and, in the absence of such a leader, the leader of the largest party in the opposition with the largest numerical strength in the Lok Sabha, and the Chief Justice of India. This provision will remain in effect until Parliament enacts a law on the matter. Regarding the request to establish a permanent Secretariat for the Election Commission of India and to charge its expenses

to the Consolidated Fund of India, the court has urged the Union of India/Parliament to consider making the necessary changes to ensure that the Election Commission of India operates independently.



Ashwini Kumar Upadhyay Vs. Union Of India & Ors. [W.P. (Civ) No.190 of 2023]

Date of Judgment: 27-02-2023

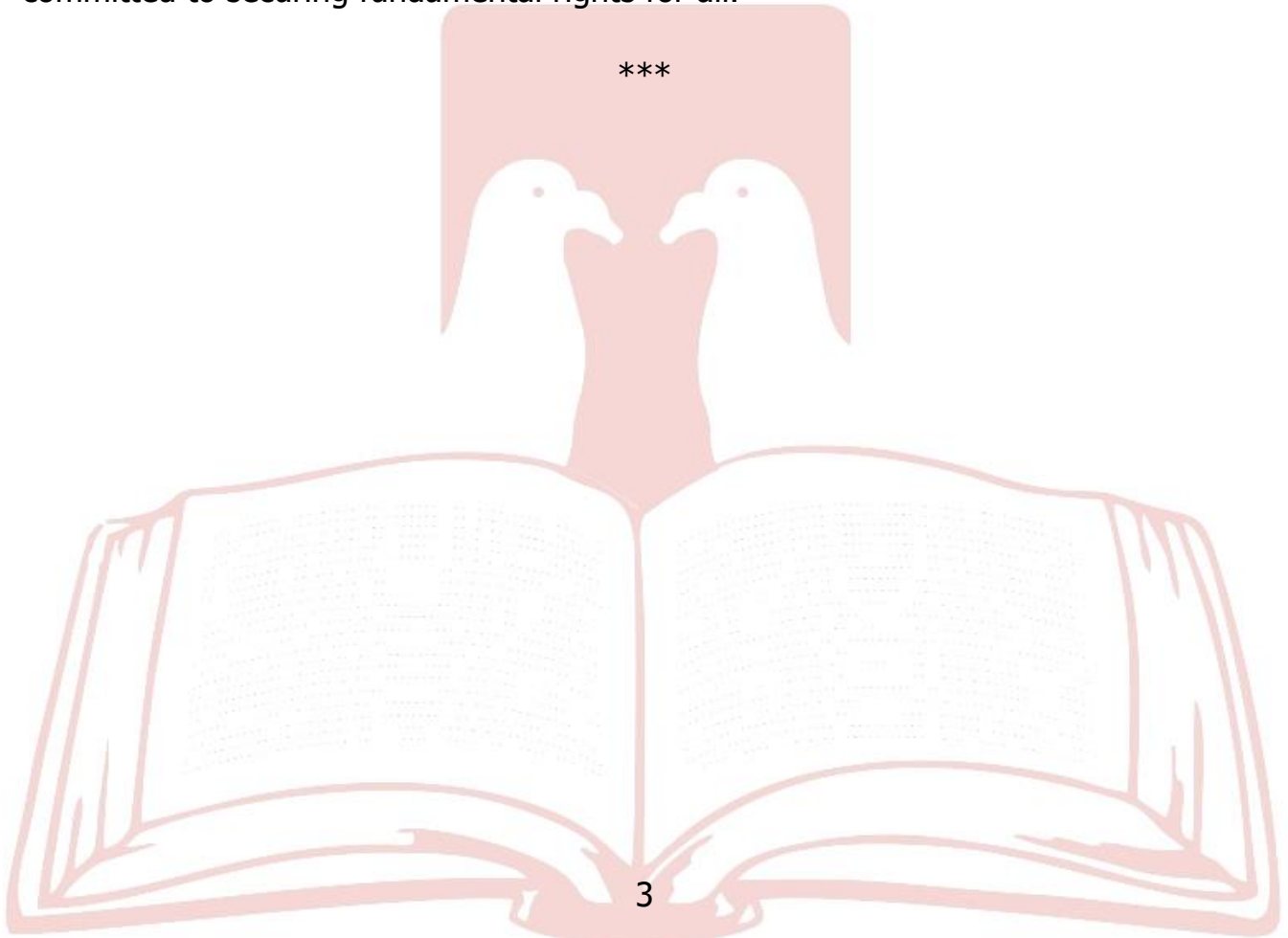
Secularism

The Hon'ble Supreme Court considered the issue on a plea to rename places named after Muslim rulers, stating that a country's present and future cannot be held prisoner by its past. The Apex Court emphasized the importance of Article 14, which guarantees equality and fairness in the state's actions.

India's identity as a secular country adheres to the rule of law and constitutionalism.

The Apex Court held that, the principle of fraternity, which is enshrined in the preamble of India's constitution, is crucial for maintaining harmony between different sections of society and promoting a true sense of nationhood.

The Apex Court dismissed the Writ Petition pointing out that, all parts of the state, including the courts, must be guided by the realization that India is a secular nation committed to securing fundamental rights for all.



**The Secretary Ministry of Consumer Affairs Vs. Dr. Mahindra Bhaskar
Limaye & Ors. [C. A. No. 831 of 2023]**

Date of Judgment: 03-03-2023

Consumer Protection

The Supreme Court upheld the Bombay High Court's decision to strike down the Consumer Protection Rules' provisions that excluded individuals with ten years of professional experience from appointment to State Consumer Commissions and District Consumer Forums.

Rule 6(9), the Selection Committee is empowered with the uncontrolled discretionary power to determine its procedure to recommend candidates to be appointed as President and Members of the State and District Commission. The Apex Court found that, Rule 6(9) to be opaque and providing too much power to the selection committee.

The Apex Court directed that persons with a Bachelor's degree and ten years of experience in consumer affairs, law, public affairs, or administration should be qualified for appointment as Presidents and members of State and District Commissions. The appointment will be made based on the performance of two written papers and a viva. The qualifying marks for the papers shall be 50%.

The Apex Court allowing the civil appeal held that the rules were unconstitutional and arbitrary and that they violated the Supreme Court's prior judgments.

The State of Haryana and Ors. Vs. Satpal & Ors. [C.A. Nos. 2984-2985 OF 2022]

Date of Judgment: 03-03-2023

Education - Encroachment of Public Land

The Hon'ble Supreme Court of India considered an impugned judgment passed by the Hon'ble Punjab and Haryana High Court. The issue in the impugned judgment revolved around unauthorized possession of the land.

The Apex Court emphasized the importance of having a playground in every school. They stated that even the students who attend a school are entitled to a good environment. However, the court noted that the school in question was surrounded by unauthorized constructions made by the original writ petitioners. Therefore, the unauthorized occupation and possession of the land reserved for the school and the playground cannot be directed to be legalized. The court has also set aside the High Court's direction to legalize the unauthorized occupations near the school by taking market value, deeming it unsustainable. It has been emphasized that encroachment of public land is unacceptable, especially when it hinders the education and well-being of students.

The Apex Court held that, the original writ petitioners have constructed unauthorized buildings around the school. As a result, it is not possible to legalize their occupation of the land that was reserved for the school and its playground. A school cannot function without a playground, and it is important for students to have a good environment. Therefore, the unauthorized construction cannot be allowed to continue.

Thus, the Apex Court allowed the appeal.

Union of India Vs. Sanjiv Chaturvedi & Ors. [C. A. No. /2023]**Date of Judgment: 03-03-2023****Tribunal**

The Hon'ble Supreme Court of India considered an issue on Jurisdiction of a High Court to entertain a challenge to an order passed by a Tribunal situated outside its jurisdiction.

It was submitted before the Apex Court that, under the Constitutional scheme, all twenty-five High Courts have equivalent jurisdiction, and no discrimination or special treatment is envisaged to any particular High Court. This is one of the facets of independence of judiciary. The power of judicial review is an integral and essential feature of the Constitution and even a constitutional amendment cannot exclude the power of the high courts and the Supreme Court to exercise their power of judicial review and this power can never be ousted.

The Apex Court held that, the matter pertains to the territorial jurisdiction of High Courts and the impact of Article 226(2) of the Indian Constitution. The issue has been raised with respect to the challenge of an order passed by the Chairman of CAT, Principal Bench, New Delhi, and affects a considerable number of employees. Given the public importance of the issue, the Court has decided that a larger bench should consider the matter. This decision was taken after reviewing the judgments and orders passed by the Court in the L. Chandra Kumar and Alapan Bandyopadhyay cases, as well as the statement made by the Law Minister while introducing Article 226(2) of the Constitution.

Thus, the Apex Court referred the matter to a larger bench.

SUPREME COURT - CRIMINAL CASES

[Kashibai & Ors. Vs. The State Of Karnataka \[Cri. A. No. of 2023\]](#)

Date of Judgment: 28-02-2023

Evidence

The Hon'ble Supreme Court of India considered the issue whether mere fact of commission of suicide by itself would be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC.

The Apex Court observed that, although Section 113A of the Evidence Act allows for the presumption of abetment of suicide by a woman's husband or relatives if she has committed suicide within seven years of marriage and was subjected to cruelty by them, it is important to note that simply proving the commission of suicide is not enough to hold the accused guilty of Section 306 IPC. For the court to establish abetment under Section 107 IPC or the charge under Section 306 IPC, there must be evidence of instigation, conspiracy, intentional aid, or a positive act by the accused to drive the victim to commit suicide.

The Apex Court held that, mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC. In order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established. In order to bring the case within the purview of 'Abetment' under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose, proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide. Thus, the Apex Court allowed the Criminal Appeal.

M/S. BLS Infrastructure Limited Vs. M/S. Rajwant Singh & Others [Cri. A. Nos. 657-664 of 2023]

Date of Judgment: 01-03-2023

Criminal Procedure

The Hon'ble Supreme Court examined the validity of dismissing criminal complaints for non-appearance of the complainant after their statement had been recorded. The Court referred to its decision in *Associated Cement Co. Ltd.* and considered why was a provision like Section 247 in the old Code (or Section 256 in the new Code) included? The Court observed that, it serves as a deterrent against complainants who use dilatory tactics to delay the legal process. When a complainant sets the law in motion through a complaint, an accused who is required to attend court on all posting days can be greatly inconvenienced if the complainant fails to appear in court when their presence is necessary. Therefore, this section protects the accused against such tactics by the complainant. However, this does not mean that if the complainant is absent, the court is obligated to acquit the accused against their will.

The Apex Court held that, according to the decision in *Associated Cement Co. Ltd.* (Supra), if the complainant has already given testimony in the case, it would not be suitable for the court to issue an acquittal order solely based on the complainant's non-appearance. As a result, the acquittal order was revoked, and it was ordered that the prosecution continue from the point it had reached before the acquittal order was issued.

Thus, the Apex Court allowed the Appeal.

See Also

- *Associated Cement Co. Ltd. Vs. Keshvanand* [(1998) 1 SCC 687]

Royden Harold Buthello & Anr Vs. State Of Chhattisgarh & Ors [Cri. A. No.634 of 2023]

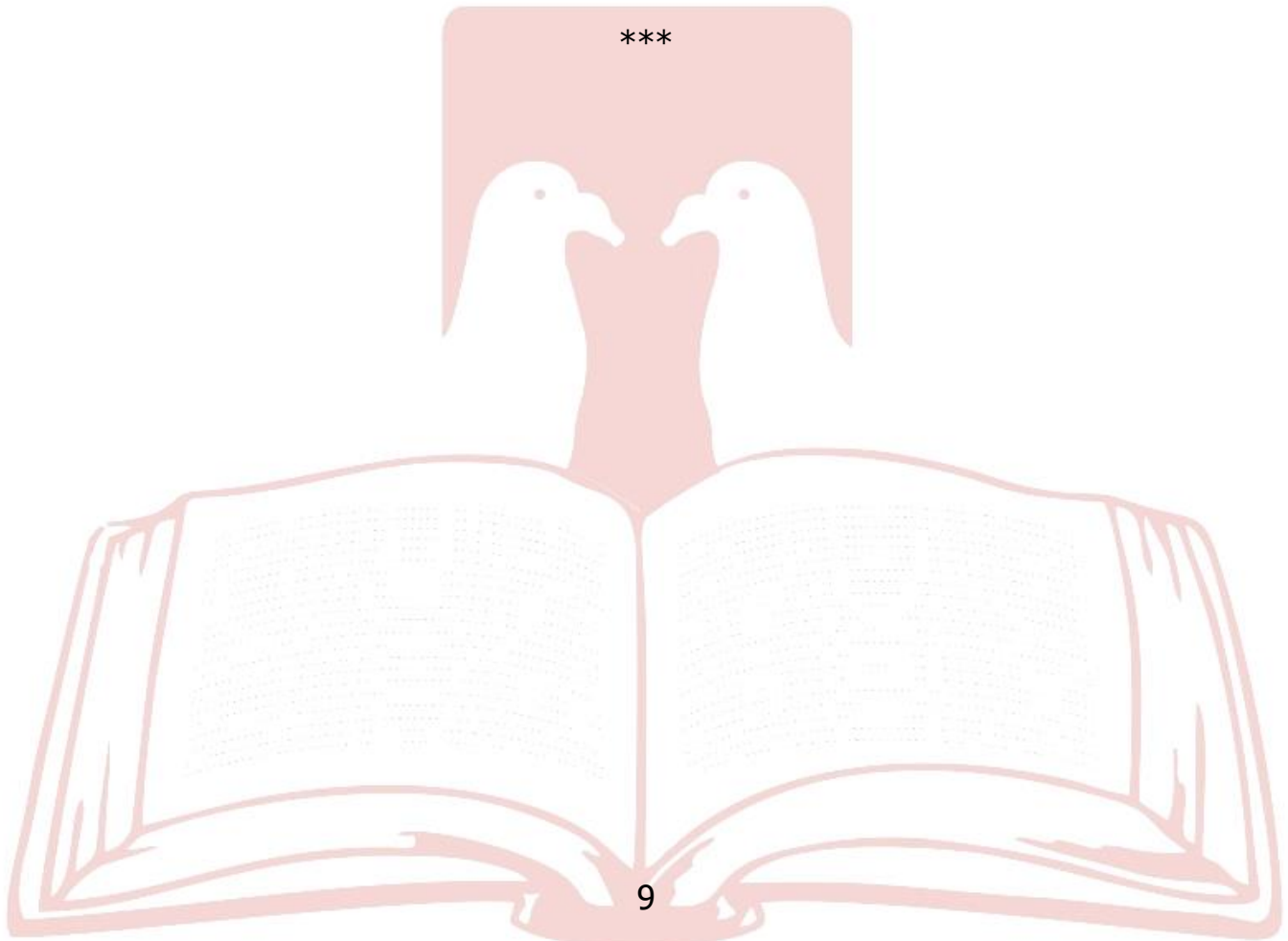
Date of Judgment: 28-02-2023

Transfer of investigation to CBI

The Hon'ble Supreme Court considered the issue whether there are any inflexible guidelines or a straightjacket formula laid down on the power to transfer the investigation.

The Apex Court held that, it is evident that there are no fixed rules or a rigid formula in place regarding the power to transfer an investigation, but it is considered an extraordinary power. It should only be utilized in rare circumstances where the court, after examining the facts and circumstances of the case, determines that there is no other means of ensuring a fair trial without the assistance and investigation of the CBI or another specialized investigative agency that possesses the necessary expertise. This power should be exercised with great caution and restraint.

Thus, the Apex Court dismissed the Appeal.



Sarabjit Kaur Vs. The State of Punjab & Anr. [Cri. A. No. 581 of 2023]**Date of Judgment: 01-03-2023****Criminal Procedure – Breach of Contract – Cheating**

The Hon'ble Supreme Court considered a prayer made for quashing of F.I.R. No.430 dated 16.10.2017 under Sections 420, 120B and 506 of the Indian Penal Code, 1860. The petition filed before the High Court seeking quashing thereof was dismissed.

The Apex Court observed that, the intention behind the action appears to be to turn a civil dispute into a criminal one, in order to coerce the appellant into returning the allegedly paid amount. The criminal justice system should not be used as a tool to settle scores or pressure parties into resolving civil disputes. Criminal courts should only take action where there are clear indications of criminal conduct.

The Apex Court noted that, in this case, the complaint was filed almost three years after the last date for registration of the sale deed, and allowing the proceedings to continue would be an abuse of the court's process. A breach of contract does not automatically warrant criminal prosecution for cheating, unless there is evidence of fraudulent or dishonest intent from the outset of the transaction. Allegations of a failure to fulfill a promise are not enough to justify initiating criminal proceedings.

Thus, the Apex Court allowed the appeal.

The State of Chattisgarh & Anr. Vs. Aman Kumar Singh & Ors. Etc. [Cri. A. Nos. ... of 2023]

Date of Judgment: 01-03-2023

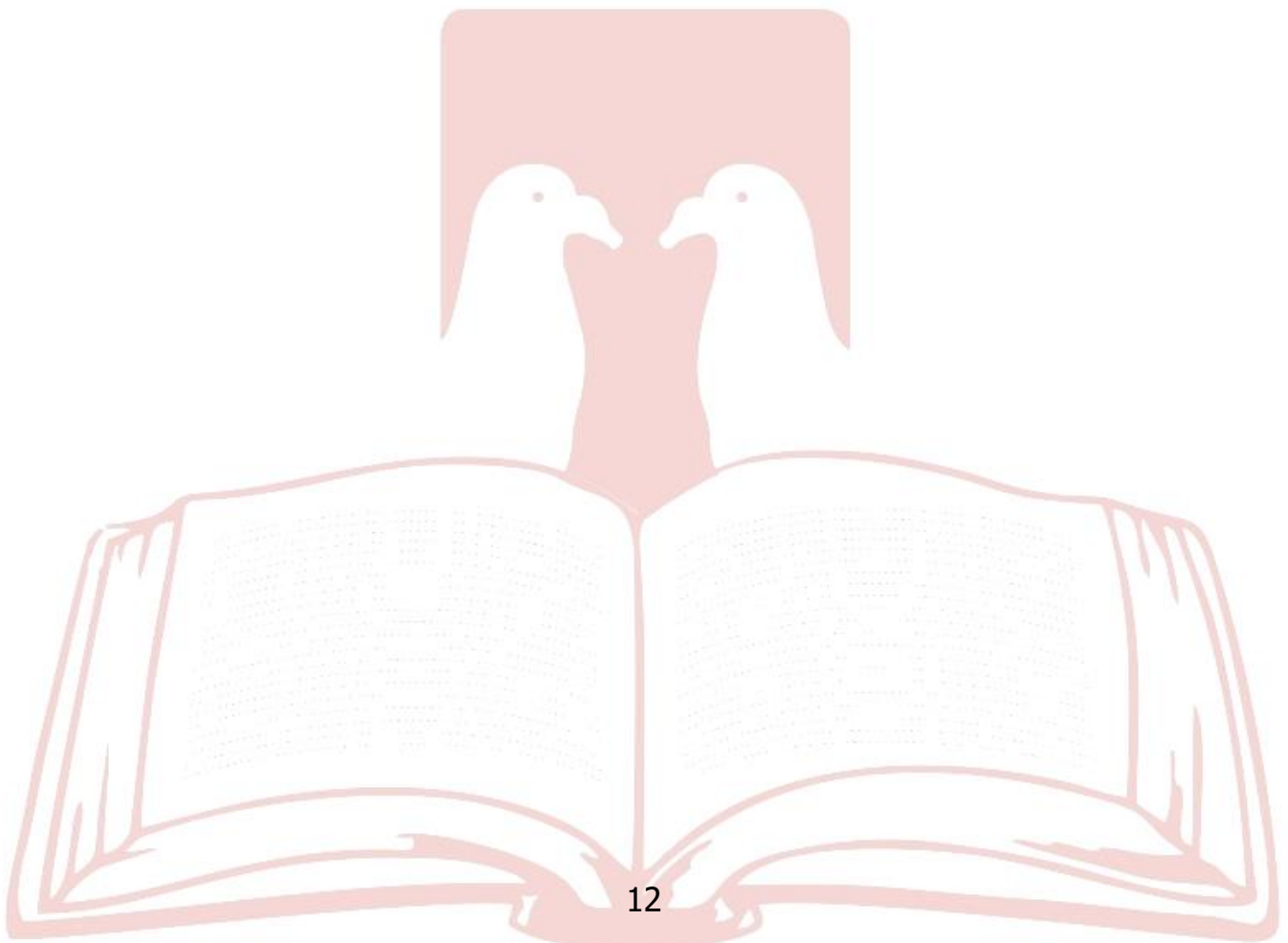
Criminal Procedure

The Hon'ble Supreme Court considered the issue whether and to what extent would a court exercising power under Article 226 of the Constitution or section 482 of the Code of Criminal Procedures be justified to quash a first information report registered under section 13 of the P.C. Act while the police embarks on an investigation against a public servant.

The Apex Court observed that, it is difficult to come to a conclusive opinion about whether a public servant possesses property disproportionate to their known sources of income based solely on a first information report. The investigation that follows will ultimately determine the truth. To maintain integrity in the government and eradicate corruption, it is desirable for high courts to refrain from quashing corruption-related first information reports, even if there are signs of strong-arm tactics by the ruling dispensation during the investigation stage. The government must employ sincere and dedicated personnel to connect a public servant with illicitly acquired assets. If the investigation proceeds without interference, the investigating officer will be able to gather sufficient evidence linking the public servant to the property or pecuniary resources in question.

The Apex Court also observed that, the court should not inquire into the reliability or authenticity of the allegations made in the first information report or the complaint, and the court's extraordinary powers do not permit arbitrary actions. What is important is that criminal prosecution must be based on sufficient evidence and be justifiable, even if it has significant political overtones and mala fide motives. It is not always the case that an individual accused of criminal acts will be prosecuted if they have the support of the ruling dispensation. While there may be cases of innocent public servants being caught up in investigations due to motivated complaints, this is a small price to pay for a society governed by the rule of law.

The Apex Court allowing the appeal, held that corruption is a pervasive problem in society and a major obstacle to achieving social justice and equal distribution of wealth, as promised by the Indian Constitution.



HIGH COURT - CIVIL CASES**A.C. Murugesan and Ors. Vs. The District Collector, The District Level Committee, Collectorate, Salem and Ors. [W.P.No.8498 of 2022]****Date of Judgment: 10-03-2023**

Forest Dwellers rights – cannot be claimed on the mere basis of ancestral residence in the forest

The Madras High Court dealt with a petition filed by a group of persons claiming benefits under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. The Court observed that rights under the Act cannot be claimed merely on the basis of ancestral residence in the forest. It was necessary to prove that the persons were solely dependent on the forest for their livelihood. The High Court supported an earlier view of the divisions bench that a bona fide livelihood included ploughing, irrigation, and planting for the purpose of livelihood, but not for commercial exploitation of the land.

In this case, the petitioners challenged the eviction notices by claiming that the land was not a forest land, but their challenge was dismissed. They then claimed rights under the Forest Rights Act, stating that they had been in possession of the land for over 75 years. However, they failed to establish that they were primarily dependent on the forest for their livelihood.

The authorities submitted that there was no evidence to support the petitioner's claims. As per the Act, to claim benefit as "other traditional forest dwellers," it must be proved that at least three generations prior to 13th December 2005, primarily resided in the forest and were dependent on the forest for their livelihood. The Hon'ble High Court noted that the petitioners had never claimed benefits under the Act when they initially challenged eviction notices, but had only claimed that the land was not forest land. The Court thus, concluded that there was no merit in the petitioner's claim and dismissed the petition.

M/s. Re Sustainability Health Care Solutions Ltd. Vs. The District Collector & Ors. [WP(MD)No.2679 of 2023 and WMP(MD)Nos.2439 & 2442 of 2023]

Date of Judgment: 01-03-2023

Movement of Bio-medical wastes

The Madras High Court issued a set of directions for the movement of biomedical waste following a plea filed by a company engaged in the business of collecting and disposing of biomedical waste. The company had faced restrictions from villagers after a plastic pocket containing amputated limb had fallen on the road in transit. The Court criticized the villagers for holding the company at ransom and noted that the right to carry on business was guaranteed under Article 19(1) (g) of the constitution.

The Court found it necessary to issue certain directions to the company for carrying biomedical waste while balancing the company's right to carry on business and the villagers' right to a clean environment. The Court directed healthcare facilities to be registered online and given login IDs to ensure transparency in fee collection. Further it was said that, Biomedical waste should be collected every 48 hours, transported in closed vehicles without overstuffing, and with fixed dates and timings for collection. It was also noted that the drivers must be trained to pay due care to avoid hazards to the general public, and barcode scanning should be introduced to track online via an app. The Court also suggested the use of colour-coded collection bags for proper segregation and also the setting up of a Grievance cell by the State Pollution Control Board.

The Court also noted that the polluter pays principle is to be applied, and the company would be made liable if any similar incident happens in the future. Thus, the Writ petition was partly allowed.

R. Balasundaram Vs. The Tamil Nadu State Level Scrutiny Committee-III, Adi Dravidar and Tribal Welfare Department an Ors. [W.P.No.13526 of 2022 and W.M.P.Nos.12723 & 12725 of 2022]

Date of Judgment: 10-03-2023

Cancellation of Community certificate – Reports suggests petitioner did not belong to the ST community

The Madras High Court in this case dismissed a writ petition by a retired Upper Division Clerk challenging the cancellation of his community certificate. The certificate had certified him as belonging to the Hindu Konda Reddy, a Scheduled Tribe community, which allowed him to be appointed to the Institute of Forest Genetics and Tree Breeding under ST quota. The Tamil Nadu State Level Scrutiny Committee-III of Adi Dravidar Tribal Welfare Department had cancelled his community certificate after a Vigilance cell concluded that he did not belong to the ST community.

The petitioner had challenged this cancellation, arguing that there was an inordinate delay of 40 years and the proceedings had no legal sanctity. However, the Court noted that the Vigilance Officer's report and the anthropologists' report, which were in tune with the Vigilance report, had established that the petitioner did not belong to the ST community. The report also pointed out discrepancies in his family's lineage. Thus, the Hon'ble High Court dismissed the plea of the petitioner and refused to interfere with the findings of the committee.

While doing so, the Madras High Court held that the reservation policy was a matter of great pride and its exploitation could not be justified even if it was detected late. The Court further stated that there were now systems in place to determine the genuineness of a person's SC/ST lineage, which did not exist earlier. Therefore, when a vigilance committee clearly establishes with sufficient proof that the person in question does not belong to the ST community, the Court has no reason to pronounce judgment or examine the full-fledged report.

S. Manoharan Vs. Reserve Bank of India and Ors. [W.P.No.19456 of 2017 and W.M.P.Nos.20981 & 24303 of 2017]

Date of Judgment: 08-03-2023

Individual borrower

The Madras High Court in this case ruled that the definition of "individual borrower" can only be expanded by the Reserve Bank of India (RBI) and not by the Court. The decision came in response to a plea filed by the, the proprietor of the Murugan Idli Shop, who had claimed that he was entitled to waive foreclosure charges as he fell under the category of individual borrower.

The petitioner relied on circulars issued by the RBI in 2014 and 2019 that instructed banks not to impose foreclosure charges on floating-rate term loans issued to individual borrowers. However, the Hon'ble High Court noted that the petitioner had signed the loan documents as the sole proprietor of the Murugan Idli Shop and not as an individual borrower.

It was argued that he could not be considered an individual borrower within the meaning of the circular and the petitioner fell under the category of Small Medium Enterprise (SME), and thus, he was not eligible for foreclosure charge waiver.

It was also informed to the Court that the petitioner had accepted all the terms and conditions when he entered into the loan agreement and therefore could not claim foreclosure penalty waiver. In fine, the High Court held that the petitioner would not fall under the category of "individual borrower" as per the Reserve Bank of India Circular.

Saravanan & Anr. Vs. Semmayee & Ors. [A. S. No 905/2018]**Date of Judgment: 22-02-2023****Hindu Succession Act – extended to tribal women**

An appeal was filed under section 96 of CPC before the Hon'ble High Court of Madras on the legal issue whether tribal women can be excluded from their family property share under Hindu Succession Act, 1956 in a suit for partition. The Trial Court decreed the suit in favour of the Plaintiff and held that Tribal women are also entitled to equal share in their family property on par with the other male coparceners against which the present appeal has arisen.

The High Court noted that, Section 2(2) of the Hindu Succession Act does not exclude tribal women from the application of the Hindu Succession Act as the legislature had not intended for any inequality or unconstitutionality in matters of inheritance by tribal women and also issued a direction that steps need to be taken by the government of Tamilnadu by issuing appropriate notification under section 2(2) of Hindu succession Act 1956, to protect tribal women's equal property rights.

In fine, the appeal was dismissed and the judgment and decree of the Trial Court was upheld.

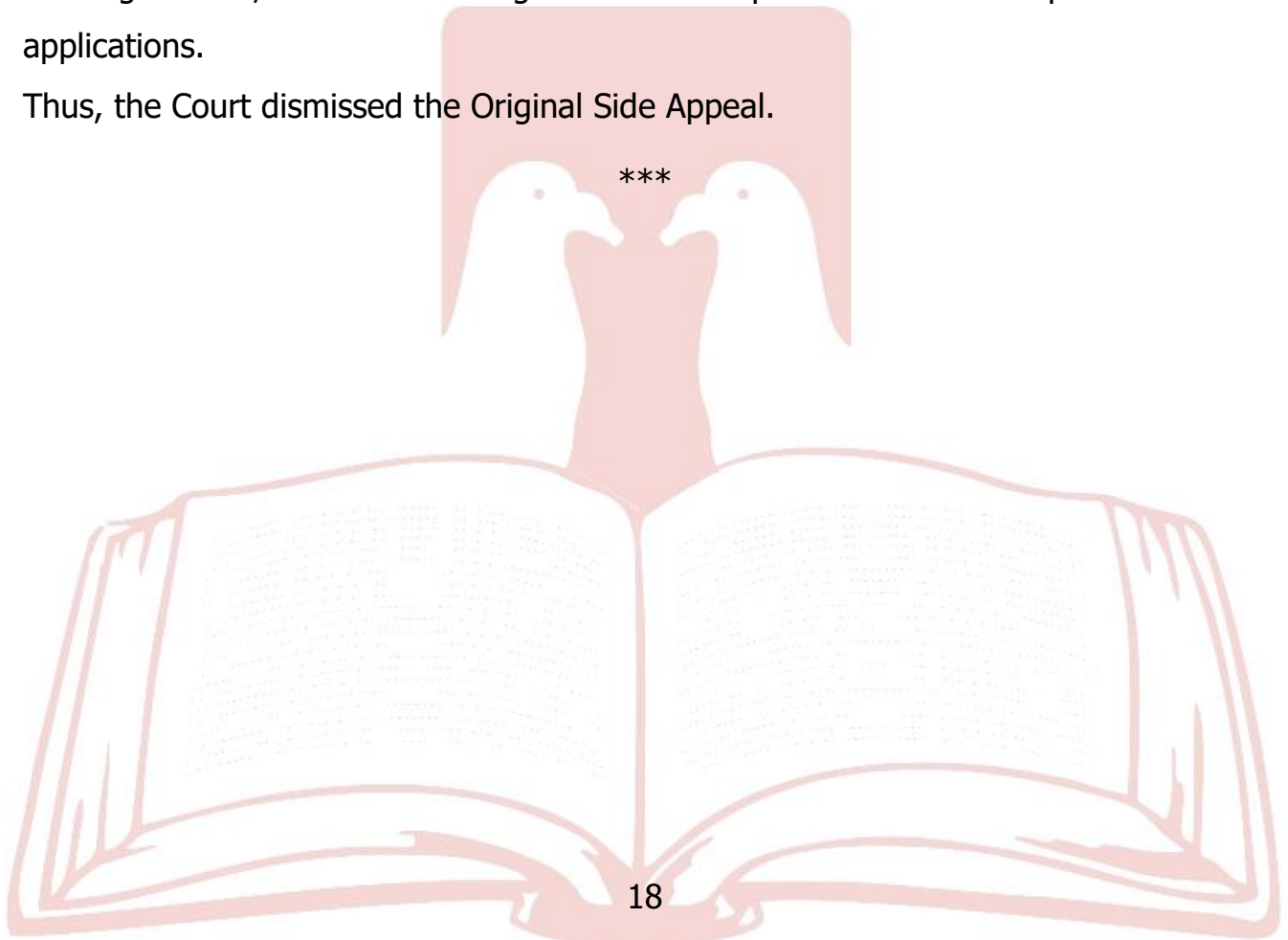
Surajlal Vs. Pradeep Stainless India Pvt. Ltd and others [O.S.A. Nos.26 to 29 of 2020]

Date of Judgment: 02-03-2023

Civil Procedure

The Hon'ble High Court considered appeal arising from a suit seeking a money decree. The Court held that, if the Court passes an order under Clause 12 of the Letters Patent for the High Court of Madras, granting an applicant leave to file a suit within the Court's jurisdiction, it will be considered an order passed under the Commercial Courts Act 2015. This is because the Court is exercising its jurisdiction conferred by Section 7 of the Act. The appellants' argument that a suit does not become a commercial cause until it is numbered and any order passed before that stage is not an order passed by the Commercial Division is not accepted. When interpreting a statute, such as the Commercial Courts Act, the Court must stick to the language used in the Act and not add to or modify its provisions to expand its scope. Section 7, which grants jurisdiction to hear and dispose of commercial disputes to the Commercial Division of the High Court, does not distinguish between pre-institution and post-institution applications.

Thus, the Court dismissed the Original Side Appeal.



The Child rep. by her mother Vs. State of Tamil Nadu and others [W. P. No. 24973 of 2022]

Date of Judgment: 22-02-2023

Mental Retardation and Multiple Disabilities Act, 1999 - Rights of Persons with Disabilities Act, 2016

The Hon'ble Madras High Court considered a Writ Petition on the issue where an educational institution denied admission to a child with special needs.

The Court held that, the sixth respondent, who is named after a third-generation American Medical Missionary in India, is ironically not following the principles or core conduct of the noble lady. It is questionable whether the current administration is using the name for their benefit without upholding her values. A voluntary offer to appoint teachers trained to teach children with special needs should come from the heart and be genuine, not just empty words. It appears that the statement was made only to cover up the earlier refusal to look after these children. The Courts have always been sensitive to the needs of children with special needs and have called on educational institutions to rise to the occasion and support these children. Education is a means of uplifting children and helping them achieve their dreams. The sixth respondent has failed in this duty and betrayed the name of the noble Missionary and their Christian faith. The Court can only express its views and cannot force any child on any school. However, it can encourage educational institutions to be inclusive in their approach to education. The options remain open.

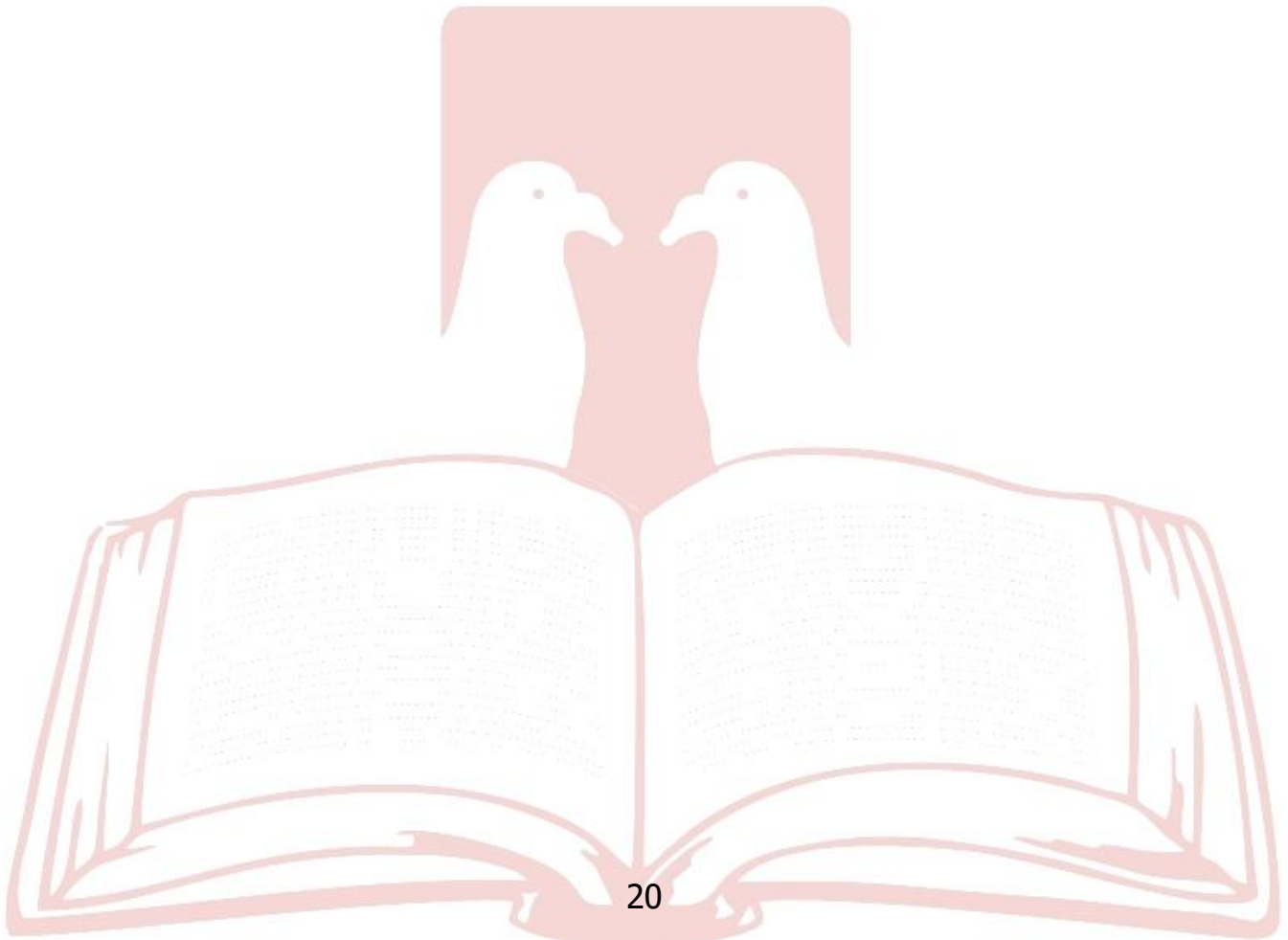
Thus, the Court disposed the Writ Petition.

The High court of Judicature at Madras Vs. Thirumalai & Ors. [C.M.P.No. 1172 of 2023]

Date of Judgment: 01-03-2023

Civil Procedure – Article 215 Constitution of India

In the issue before it, the Hon'ble Madras High Court had to determine whether the administrative side was permitted to seek a review of its own judgments on the judicial side. The Court noted that any such petition seeking leave to review which did not fall within the prescribed parameters could not be entertained as it would undermine the Judicial fibre, whose touchstone is its fierce independence, and its duty to discharge its responsibilities without fear or favor. The Court further observed that it was faced with a perplexing situation where the High Court on its administrative side was seeking leave to review an order passed by its judicial side, despite not being a party to the proceedings, let alone an aggrieved party. The Court questioned whether it was thus confronted with a two-faced JANUS? Consequently, the Court dismissed the Civil Miscellaneous Petition.



V. Ayyadurai Vs. The State of Tamil Nadu & Ors. [W.P.Nos.19905, 20129 of 2020 and 298 of 2021]

Date of Judgment: 03-03-2023

Advocate Fees

In a writ petition on Advocate Fees, the Hon'ble Madras High Court made several observations. The Court stated that the Government Order (G.O.Ms. No. 339) appeared to reduce a legal professional, who is knowledgeable about the nuances of the law, to a contract worker. The Court opined that this should not be done, and the government should recognize the effective work done by legal professionals in upholding the letter and spirit of its policies. The Court held that the Government Order passed by bureaucrats cannot be used as a benchmark to estimate the skills and knowledge of an advocate who defends a government order or advances the cause of the government's policies. Additionally, the Court expressed that the government also has a duty to ensure that it recognizes the dignity of the legal profession.

The Court further held that it was deeply distressed by the wordings in G.O.Ms. 339 and G.O.Ms. No.486, as they had no connection to the efforts put in by any Law Officer. The Court found that both Government Orders were an insult to the legal profession. The Court emphasized that the value of an advocate representing the government was immeasurable and that the government had to protect itself, whether it was a small case or a big case. The Court also noted that the dignity and sanctity of the government were in the hands of its law officers and that bureaucrats would never understand these facts.

As a result, the Court allowed the writ petition.

Vimal Jayachandran Vs. Diana Jerine Johnson [C.R.P.(MD).No.2594 of 2022]

Date of Judgment: 08-03-2023

Divorce decree of Foreign Court — Section 10(1), Divorce Act, 1869 — Section 13, CPC

The Hon'ble High Court decided a Civil Revision Petition seeking to strike off the I.D.O.P filed by the Respondent, on the ground that once a divorce decree has been granted by a competent Foreign Court, thereafter, restitution of conjugal rights proceedings cannot be permitted to be proceeded with. The High Court referred to Section 10(1), Divorce Act 1869, Section 13, CPC, and the decision in *Y. Narasimha Rao & Ors. Vs. Y. Venkata Lakshmi & Anr. [(1991) 3 SCC 451]*, and observed that the Foreign Court has granted a divorce decree on the ground of irretrievable breakdown of marriage which is not a ground available under the Divorce Act which governs the parties to the marriage...it is a judgment clearly in violation of the law of India and therefore, it clearly falls under the mischief of Section 13(c) of CPC.

The High Court found that the foreign court without considering of the sworn affidavit filed by the wife pointing out the anti-suit injunction and passing a divorce decree is clearly opposed to the principles of natural justice. Therefore, the said judgment cannot be considered to be a conclusive proof in view of Section 13(d) of C.P.C. The divorce granted on a ground of irretrievable breakdown of marriage would clearly be an order based on breach of Divorce Act 1869. Therefore, as contemplated under Section 13(f) of I.P.C, the judgment becomes unenforceable in India. The High Court found that the divorce decree granted by the Foreign Court is not conclusive between the parties and therefore, the said judgment cannot be a ground to strike off I.D.O.P. filed by the wife for restitution of conjugal rights in India. The High Court held that there are no grounds to strike off the I.D.O.P and thus dismissed the Civil Revision Petition.

HIGH COURT – CRIMINAL CASES**A. Malliga Vs. The State rep. by, The Inspector of Police, CCIW Police Station, Salem. [CrI.O.P.No.4204 of 2023]****Date of Judgment: 08-03-2023****Onerous bail condition**

The Madras High Court dealt with a criminal original petition to set aside an order passed by the Judicial Magistrate-IV, Salem. The facts of the Case are that a jewel appraiser along with the petitioner and other customers had obtained loan amount of Rs. 93,79,360/- by pledging spurious jewelries. The petitioner submits the petitioner is a senior citizen (lady) aged about 70 years and the main accused / A1, using the ignorance of the petitioner had obtained signature from her in certain documents and pledged spurious jewelries and obtained a loan amount to the tune of Rs.4,65,200/-.

The Trial Court had granted bail to the petitioner upon a condition directing to deposit 50% of misappropriated amount of Rs.2,32,600/- to the credit of Cr.No.02 of 2021. Aggrieved by the said condition a petition was filed to modify the condition imposed but, later it was dismissed. The High Court relying upon various Judgments such as *Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66* held that, the condition imposed is onerous and it is liable to be set aside and held that the petitioner to be released on a condition that "*the petitioner shall execute r own bond for a sum of Rs.10,000/- with one surety for a likesum to the satisfaction of the learned Judicial Magistrate No.IV, Salem*" and the other conditions imposed by the Trial Court were unaltered.

Calin Macdonald & Anr. Vs. State rep by, The Deputy Director, Industrial Safety and Health [Crl.O.P.Nos.13770 to 13777 of 2015]

Date of Judgment – 24-02-2023

Accidental death – compensation paid by company

A criminal petition was filed under Section 482 Cr.P.C. to quash the records related to C.C.Nos.120 to 127 of 2015 on the file of the Chief Judicial Magistrate Court, Chengalpet. The case was related to the death of a worker who suffered 45% burn injuries after falling onto the floor during descaling work at the Renault Nissan Automotive India Private Limited factory, where a chemical called Clout was used. The respondent conducted an inspection and found several violations, such as lack of proper training and protective gear for employees, leading to show cause notices and complaints filed against the petitioners.

The petitioners argued that the cognizance order was bad in law since it lacked subjective satisfaction of the trial court and application of mind. The counsel further argued that the descaling work was maintenance-related operations carried out during the scheduled shutdown period, which the petitioners monitored. Additionally, the petitioners had informed the respondent immediately after the accident. The petitioners had also paid compensation of Rs.6,00,000/- to the family of the deceased.

The Hon'ble Court held that the complaints were vitiated on account of total non-application of mind, and no useful purpose would be served by making the petitioners undergo the ordeal of facing a trial. Hence, the proceedings in C.C.Nos.120 to 127 of 2015 on the file of the Chief Judicial Magistrate Court, Chengalpet were quashed.

Leena Manimekalai Vs. Susi Ganeshan [CrI.O.P.No.5697 of 2022 and CrI.M.P.No.3140 of 2022]

Date of Judgment: 16-03-2023

Defamation suit – Transfer

The Madras High Court dealt with a Criminal Original Petition seeking transfer of the proceedings from a Metropolitan Magistrate Court to a different court. The nub of this case is that, the respondent had filed a defamation case against the petitioner after she accused him of sexual harassment during the MeToo movement. The petitioner had alleged that the Magistrate was giving preferential treatment to the respondent. However, the respondent denied all such allegations and alleged that the petitioner was not cooperating with examination of witnesses and completion of the trial. The Court noted that both the High Court and the Supreme Court had directed to dispose of the case within a time frame, but the trial was not properly conducted. Despite giving an Undertaking that she will cooperate for the smooth conduct of the trial, the proceedings showed that the trial was not conducted as desired.

Further the Court noted that the Magistrate had committed two procedural violations by receiving proof affidavits of witnesses instead of examining them under oath in the open court, and by examining some witnesses even before questioning the accused under Section 251 CrPC. The court also noted that the magistrate had permitted scrapping of evidence of certain witnesses even without giving the petitioner an opportunity to oppose the memo filed for scrapping the evidence.

The Court rejected the allegation of favouritism but ordered the transfer of the proceedings on the file of the Metropolitan Magistrate, Saidapet to another Metropolitan Magistrate in Saidapet establishment. The Court also directed the new Magistrate to dispose of the case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

**M. Syed Ali Fathima Vs. State, Rep. by The Secretary to Government,
Home Department [W.P.No.5058 of 2015 and M.P.No.1 of 2015]**

Date of Judgment: 17-03-2023

Writ seeking compensation – person died in rehabilitation centre

A Writ Petition was filed by a woman seeking compensation from the Director of the Institute of Mental Health for the death of her husband while he was admitted in a rehabilitation centre in Chennai. The petitioner claimed that her husband was brutally attacked by the centre's management prior to his death. It was noted that the petition had remained pending for over seven years, and upon inspection by the District Social Welfare Officer, Chengalpattu, it was discovered that the centre was running in a shifted location with a new name and without necessary licenses from competent authorities.

The Court also noted that the rehabilitation centre had obtained a license from the Institute of Mental Health, Kilpauk, and that the Director of the Institute of Mental Health had failed to conduct an inspection, resulting in irregularities and illegalities. The Court further directed the Director to inspect the rehabilitation centre within one week and initiate appropriate action if any lapses were identified. The Hon'ble Madras High Court has emphasized that rehabilitation centres must operate with proper permission and necessary licenses, with regular inspections by social welfare officers to protect the public interest.

Additionally, the court directed the Judicial Magistrate to commit the case to the Session Court after being informed that a charge sheet had been filed in the criminal case before the Judicial Magistrate, Alandur. The Principal District and Sessions Court at Chengalpattu was also directed to dispose of the criminal case within four months from the date of committing the case by the Judicial Magistrate. The court also allowed the woman to pursue the criminal case before the Sessions Court and claim compensation based on the outcome of the trial.

S. Salma Vs. State of Tamil Nadu [WP.No.29972 of 2015]**Date of Judgment: 16-03-2023****Compensation – take disciplinary action**

The Hon'ble High Court dealt with a Writ of Mandamus filed under Article 226 of the Constitution of India, to direct the respondents to pay a compensation of Rs.25,00,000/- to the petitioner and further direct the respondents 1 to 3 to take disciplinary action against the concerned officers.

The crux of the case is that, the petitioner a journalist by profession was charged with the offences under Section 75(1)(c) of the Tamil Nadu City Police Act, 1988, and Sections 506(1) and 505(1)(b) of the Indian Penal Code. The petitioner was arrested and remanded and later was acquitted of all the alleged charges against her. Thereafter, the Petitioner this writ on the ground that her arrest was illegal as per Section 46(4) of Code of Criminal Procedure 1973. The two conditions which must be satisfied before arresting a woman; i.e, before sunrise and after sunset firstly, necessitates the presence of a Woman Police Officer and only after obtaining prior permission of a Judicial Magistrate by submission of written report can arrest a woman.

It was alleged that, the second condition was not obliged by the authorities during arrest, the Court observed that, though the second condition was obliged, there were exceptional circumstances warranting the arrest. As a result, the writ petition was dismissed and it was ordered that the guidelines to be frame and placed before the Court within eight weeks from the date of this Order.

Shahul Hammed Vs. Union of India [Crl.A.No.879 of 2022]**Date of Judgment: 14-03-2023****Sec. 21 NIA Act – Sec. 38 UAP Act – Bail bond - sureties**

A Criminal Appeal was filed in the Madras High Court under Section 21 of NIA Act by Accused No. 6 challenging the order passed by the Trial Court and set aside the same and release the appellant. The brief of the case is that the appellant was arrayed as Accused No.6 was charged under Section 38 of 'the Unlawful Activities (Prevention) Act, 1967.

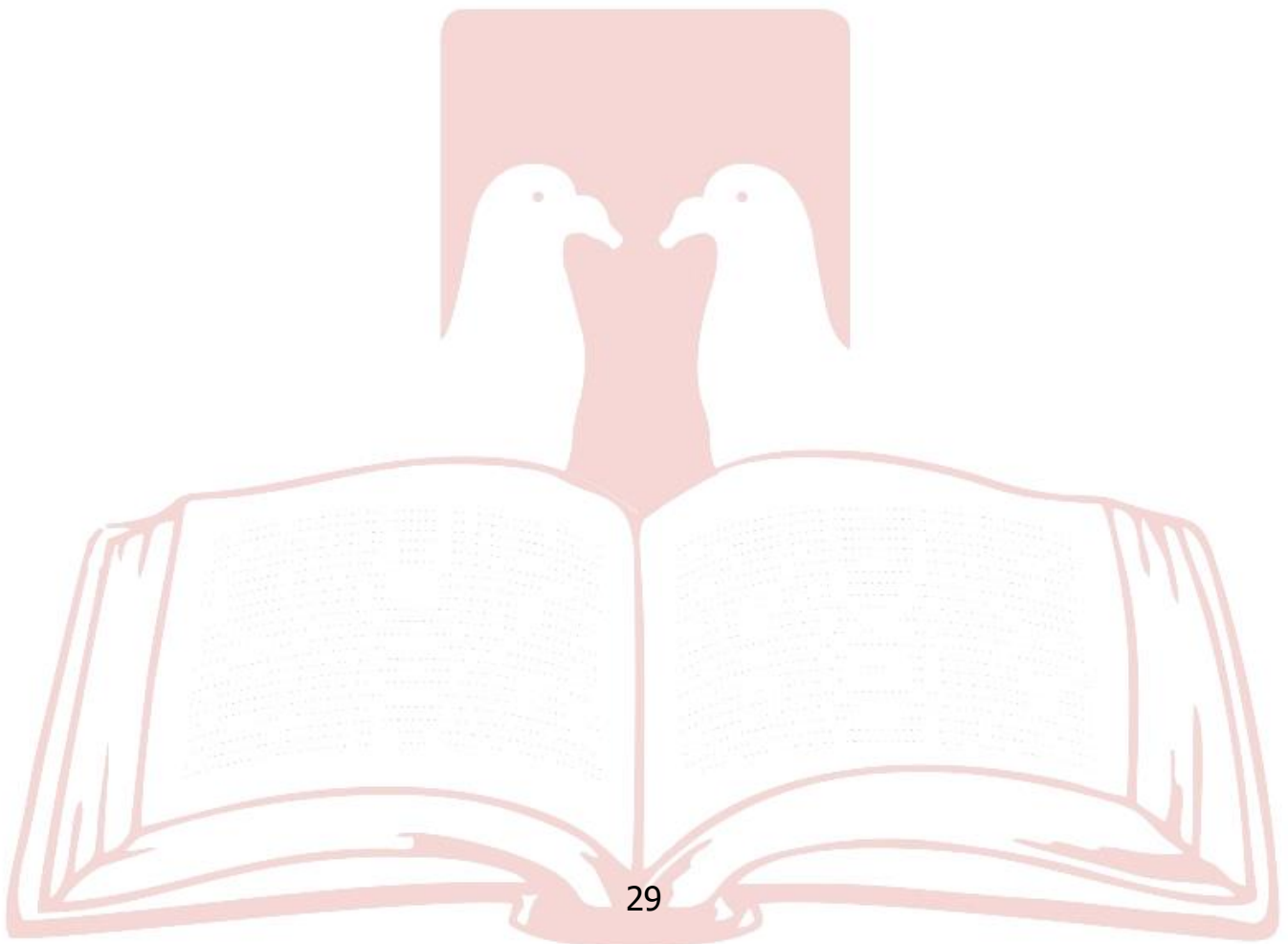
It is said that earlier the appellant was granted bail by the Trial Court by order dated 22.02.2019 aggrieved by it, the respondent filed an appeal before the Hon'ble High Court in Crl.A.No.133 of 2019 against the order of the Trial Court. Further, the High Court disposed the appeal directing the Trial Court to complete the trial within a period of six months without disturbing the bail granted. It is contended that, after the investigation was completed, chargesheet was filed and when the trial commenced neither the appellant nor his counsel appeared before the Trial Court and hence Bailable Warrant was issued against the appellant.

The appellant contended that, on the next day he appeared and filed a recall petition which was later considered and the appellant was directed to furnish sureties as per Section 88 Cr.P.C. It is said that the appellant could not furnish sureties as per Sec. 88 CrPC and was adjourned to another date. The case was again adjourned and the petitioner nor his counsel was not present and hence NBW was issued. The next day, the petitioner filed another recall petition with a memo and with one surety which was dismissed and the appellant was remanded to custody. Aggrieved by the same, the petitioner has now approached the Hon'ble Court.

The counsel for the petitioner contended that, whenever the case was called either the petitioner or the counsel appeared before the Trial Court and the Trial Court had not progressed with the trial and adjourned the case periodically. It was also submitted that, submitted that the appellant filed a memo before the Trial Court giving

reasons for not producing the sureties immediately. Further it was said that, earlier when the Court had granted bail to the appellant, he produced two sureties and thereafter on the satisfaction of the same, bond was accepted and the petitioner was released on bail. The counsel for appellant submitted that the petition was appearing before the Trial Court regularly and complying with the condition.

The Hon'ble High Court upon perusing the materials and submissions set aside the order passed by the Trial Court and directed the appellant to be released on bail with a condition to execute a bond for Rs.10,000/- with two sureties, each for a sum to the satisfaction of the Special Court under the National Investigation Agency Act.



Shiva Shankar Baba Vs. State represented by Inspector of Police, CBCID, OCU Police Station-II, Chennai and Anr. [Crl.O.P.No.23806 of 2021 and Crl.M.P. No.13107 of 2021]

Date of Judgment: 01-03-2023

Petition under Sec. 482 to quash FIR – Complaint filed beyond limitation

The Madras High Court dealt with a Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to quash the FIR as against the petitioner. The nub of this case is that the petitioner is the founder of a school, was accused of sexually harassing a woman who had come to discuss her son's removal from the school. The Madras High Court initially quashed the FIR filed against him on the grounds of limitation. However, the order was recalled after the *de facto* complainant filed a petition to be heard in the matter.

The Court noted that the complaint was filed well beyond the limitation period, and the investigating officer had not sought permission to condone the delay. The prosecution argued that there was no obligation to file a petition seeking extension of the limitation period at the stage of registering the FIR. However, the Court disagreed and added that deliberate inaction on the part of the prosecution in filing such a petition could not guard it from being hit by the bar of limitation. The Court also stated that the Magistrate was duty-bound to give reasoned orders for extension of limitation as a fair trial is the facet of Article 21 of the Constitution. Furthermore, the Court emphasized that a police officer cannot investigate or arrest an accused in a time-barred case unless it is in the interest of justice.

In this case, the Court noted that the *de facto* complainant had filed a Criminal Revision petition to set aside the order of cognizance for enabling the prosecution to file a petition under Section 473 and to enable the Court to pass speaking orders on limitation. The Court in fine disposed of the application filed by the petitioner and gave him liberty to raise objections and file a petition for quashing the charge sheet before the Trial Court.

State rep. by The Public Prosecutor, High Court, Madras Vs. Dandayutham @ Kannan [Crl.A.No.482 of 2016]
Date of Judgment: 28-02-2023

POCSO Act – Victim assistance – 10 years rigorous imprisonment

The Madras High Court sentenced a man to 10 years of rigorous imprisonment for sexually molesting an 8-year-old girl under the POCSO Act and for rape, sexual assault, and criminal trespass under the Indian Penal Code. The trial court had acquitted the accused, but the High Court overturned the verdict, noting that it was based on irrelevant considerations and materials while ignoring relevant evidence, such as the deposition of the child and corroborative evidence. The High Court also directed the Tamil Nadu government to pay 10.5 lakh rupees to the victim child and provide state assistance to ensure the education and livelihood of the accused's three minor children.

The assault on the victim was brutal, leaving her with serious physical and psychological injuries, including lacerated wounds, bruises, contusions, and a tear injury in her private parts. The child also suffered from sub-conjunctival haemorrhage in her eyes and Post Anoxic myoclonus due to the strangulation. The court noted that the assault was much worse than 'animalistic,' and it left the child terrified and distracted. The Hon'ble High Court rejected the accused's version, alleging that the victim's mother had tutored her to falsely implicate him, and held that the evidence of the child with respect to the identity of the accused was consistent and of stellar quality. The Court also appreciated the efforts of the hospitals and doctors who had treated the victim child and had taken all possible measures to save her life. This case also highlighted the plight of the 3 innocent children of the accused who are referred to as "Orphans of Justice" or "Invisible Victims" or "Hidden Victims" by the Court and the Court directed the Social Welfare and Women Empower Department to consider the case of the accused's wife and three children for assistance to ensure their education, nutrition, and livelihood.

State rep. by The Public Prosecutor Vs. V. D. Mohanakrishnan
[CrI.A.No.352 of 2015]

Date of Judgment: 16-02-2023

Court Officer – misrepresentation

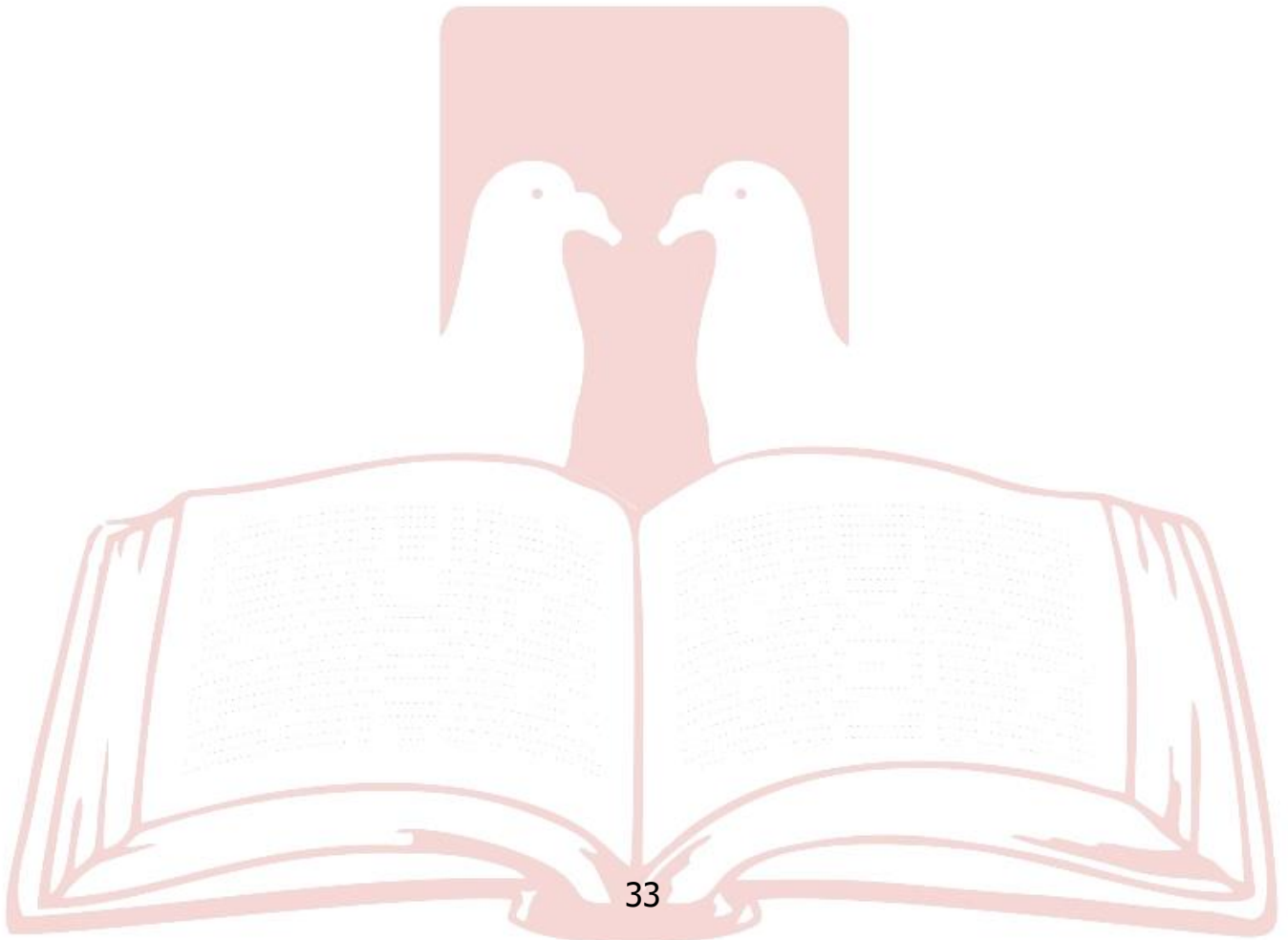
The Madras High Court convicted a Court Officer under Section 420 and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, for misusing his official position and cheating an illiterate man with a promise of securing a job for him and obtained Rs 40,000 for the same. The accused had misrepresented to the complainant that he could secure a job for him by using his influence and demanded Rs 40,000 from the complainant on two occasions. When the complainant asked him to return the money on failure to secure a job, he issued a cheque which was dishonoured at the time of presentation.

The Trial Court had acquitted the accused by extending the benefit of doubt. State challenged the order of the Trial Court and the High Court reversed the order finding him guilty after through perusal of material records. The accused contended that the transaction between him and the complainant was merely a loan transaction and that he had not misused his official position in any manner.

However, the Court noted that being a public servant, the accused should not have entered into any financial transaction without prior permission from the concerned department. The Court also disagreed with the contention of the accused that a private complaint under Section 138 of the Negotiable Instruments Act would clarify that the money given was, as loan. The Court observed that it was improbable for the accused to seek financial assistance from a poor person like the complainant.

The Court further noted that previously also disciplinary proceedings were initiated against the accused for receiving illegal gratification in the pretext of securing jobs. In fine, the Hon'ble Court held that the accused should not have had any financial transaction with a private party without prior permission from the department and

sentenced him to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs 5,000.



The Superintendent of Police, Villupuram District Vs. S. Rajeshkumar
[Rev. Appln. No.17 of 2023 in W.A.No.2759 of 2018]

Date of Judgment: 01-03-2023

Review petition – Sec. 24 JJ Act

The Hon'ble Madras High Court dealt with a Review application filed against the order in W. A. NO 2759 of 2018 directing the authorities to appoint the candidate as Grade II Police Constable and send him for training with next batch, citing the Tamil Nadu Police Subordinate Service Rules 1955, which considers suppression of a pending criminal case as a disqualification. The respondent argued that he was acquitted of the alleged offense and that an acquittal should not be a ground for rejecting his candidature. The respondent also relied upon Section 24 of the Juvenile Justice (Care and Protection of Children) Act 2015, which seeks to remove the stigma associated with Children in Conflict with Law.

The Court noted that the Service Rules should not prevail over the Legislative intent of the Juvenile Justice Act and that even if the candidate had been convicted of the offence, the same would not disqualify him from employment. Further, the Court emphasized that the purpose of the Juvenile Justice law would be defeated if the State's attempt to attach stigma was allowed. Thus, the court dismissed the review and directed the authorities to appoint the candidate.
