

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVII — PART 11 — NOVEMBER 2022 ****

COMPENDIUM OF CASE LAWS



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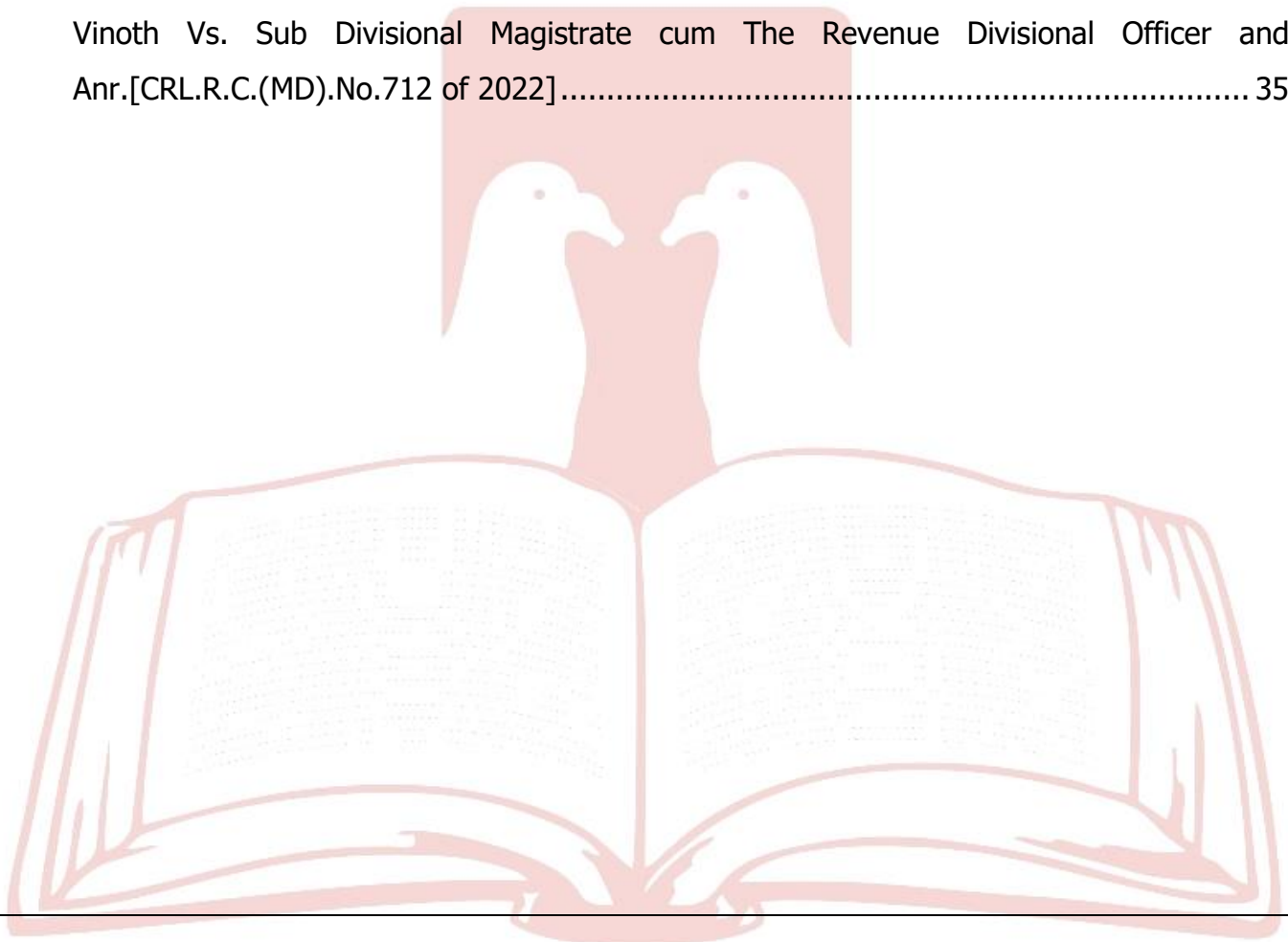
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SUPREME COURT – CIVIL CASES**BSES Rajdhani Power Ltd. Vs. Delhi Electricity Regulatory Commission****[C.A.No. (S). 4323 of 2015]****Date of Judgement: 18-10-2022**

Civil Procedure - Electricity Act, 2003

The Hon'ble Supreme Court of India considered a Civil Appeal arising out of an impugned order passed by the Appellate Tribunal for Electricity. The Apex Court considered the issue whether it is permissible to amend the tariff order made under Section 64 of the 2003 Act.

The Apex Court referred to *Sir Chunilal V. Mehta & Sons Vs. The Century Spg. & MFG. Co. Ltd [1962 Supp (3) SCR 549]* and observed that, the appropriate test for determining whether the question of law raised in the case is substantial would be to see whether it directly and substantially affects the rights of the parties. The Apex Court noted that, "If it is established that the decision is contrary to law or the decision has failed to determine some material issue of law or if there is substantial error or defect in the decision of the case on merits, the court can interfere with the conclusion of the lower court or tribunal."

The Apex Court observed that, a tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority.

The Apex Court referred to *SLDC Vs. GERC [2015 SCC Online APTEL 50]* and *NDPL Vs. DERC [2007 ELR (APTEL) 193]*, and found that 'truing up' stage is not an opportunity for the DERC to rethink *de novo* on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination"

Therefore, the Apex Court held that it is not permissible to amend the tariff order made under Section 64 of the 2003 Act during the 'truing up' exercise.

Thus, the Apex Court allowed the appeals.

Fertilizers and Chemicals Travancore Ltd. & Ors. Vs. Anusree K.B.
[C.A.No.6958 of 2022]

Date of Judgement: 30-09-2022

Scheme - Dying in Harness - Appointment on Compassionate Basis

The Hon'ble Supreme Court considered whether the Respondent was entitled for appointment on compassionate ground upon death of her father, who died in the year 1995.

The Apex court noted that, appointment on compassionate ground is an exception to the general rule. A deceased dying in harness and leaving his family in penury, a provision to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment is made in the rules.

The Apex Court also considered its decision in Umesh Kumar Nagpal Vs. State of Haryana [(1994) 4 SCC 138] which held that, the whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis.

The Apex Court held that, the Respondent should not be entitled to the appointment on compassionate ground on the death of her father after a period of 24 years from the death of the deceased employee. The Court pointed out that there was serious error and affirmed that, if such an appointment is made now and/or after a period of 24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

Thus, the Apex Court allowed the Appeal.

Janhit Abhiyan Vs. Union of India [W.P. (Civil) No. 55 of 2019]**Date of Judgment: 07-11-2022****Basic Structure – 103rd Constitution Amendment – reservation for Economically Weaker Sections [EWS]**

The Hon'ble Supreme Court considered the challenge rose to 103rd Amendment to the Constitution. The Constitution (One Hundred and Third Amendment) Act, 2019, which came into effect on 14.01.2019, whereby the parliament amended Articles 15 and 16 of the Constitution of India. A Constitutional Bench of the Apex Court decided on 3:2 majority, holding that the Constitution (One Hundred and Third Amendment) Act, 2019 is constitutional for not being violative of the basic structure of the Indian Constitution.

The Apex Court in its majority held that, the doctrine of basic structure as a sword against the amendment in question and thereby to stultify State's effort to do economic justice cannot be countenanced. If reservation is one of the features of the Constitution, it being in the nature of enabling provision only, cannot be regarded as an essential feature of that nature whose modulation for the sake of other valid affirmative action would damage the basic structure of the Constitution. Therefore, the doctrine of basic structure cannot be invoked for laying a challenge to the 103rd Amendment.

The Apex Court for majority noted on the time span of the reservation policy that, at the end of seventy-five years of our independence, we need to revisit the system of reservation in the larger interest of the society as a whole, as a step forward towards transformative constitutionalism.

The Apex Court for majority also noted that, reservation is not an end but a means to secure social and economic justice. Real solution, however, lies in eliminating the causes that have led to the social, educational and economic backwardness of the weaker sections of the community. The longstanding development and the spread of education have resulted in tapering the gap between the classes to a considerable extent. ... it is very much necessary to take into review the method of identification

and the ways of determination of backward classes, and also, ascertain whether the criteria adopted or applied for the classification of backward is relevant for today's conditions.

The Apex Court viewed that, Article 15(6), which is the subject matter of challenge and which provides for reservation for the "EWS other than the SC, ST and OBC-NCL" in private unaided educational institutions, cannot be said to be altering the basic structure. It is constitutionally valid.

The Apex Court also considered its decision in *Pramati Educational and Cultural Trust (Registered) and Ors. Vs. Union of India and Ors. [(2014) 8 SCC 1]* that, "The goals of fraternity, unity and integrity of the nation cannot be achieved unless the backward classes of citizens and the Scheduled Castes and the Scheduled Tribes, who for historical factors, have not advanced are integrated into the mainstream of the nation..."

The Apex Court held that, the 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution by permitting the State to make special provisions in relation to admission to private unaided educational institutions.

The Apex Court for the minority held that, reservations, as a concept cannot be ruled out in private institutions where education is imparted. They may not be State or State instrumentalities, yet the value that they add, is part of the national effort to develop skill and disseminate knowledge. These institutions therefore also constitute material resources of the community in which the State has vital interest, and are not merely bodies set up to further private objective of their founders, unlike in case of the shareholders of a company. Such institutions are seen as part of the State's endeavour to bring educational levels of the country up, and foster fraternity.

Jaycee Housing (P) Ltd. Vs. High Court of Orissa [C.A.No.6876 of 2022 (Batch)]

Date of Judgment: 19-10-2022

Commercial Courts Act, 2015 – Jurisdiction – Arbitration and Conciliation Act, 1996

The Hon'ble Supreme Court of India in deciding a Civil Appeal, considered the issue whether conferring the jurisdiction upon the Court of Civil Judge (Senior Division) to exercise the powers under the Commercial Courts Act including the proceedings under the Arbitration and Conciliation Act, 1996 would be contrary to Section 2(1)(e) of the A&C Act, 1996, which is a Special statute.

The Apex Court observed that, the Objects and Reasons of Commercial Courts Act, 2015 is to provide for speedy disposal of the commercial disputes which includes the arbitration proceedings. To achieve the said Objects, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the Act, 2015. ... As per settled position of law, it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail.

The Apex Court considering Section 15 and 21 of the Act, 2015, found that Sections 3 & 10 of the Act, 2015 shall prevail and all applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted.

The Apex Court held that, "There cannot be two fora with respect to different commercial disputes."

Thus, the Apex Court upheld the notification conferring jurisdiction upon the court of learned Civil Judge (Senior Division) designated as Commercial Court to decide the applications or appeals arising out of arbitration under the provisions of Act, 1996, and dismissed the Civil Appeal.

M/s. OCL India Ltd. Vs. State of Orissa & Ors. [C.A.No.2348 of 2004]**Date of Judgement: 04-11-2022****Local Areas – Municipality - Orissa Entry Tax Act, 1999**

The Hon'ble Supreme Court while deciding a Civil Appeal concerning the levy of entry tax, considered the issue whether the exclusion of industrial area(s) from the limits of municipal councils/municipalities under the state laws in exercise of statutory power or by virtue of a declaration under proviso to Article 243Q, would result in that area ceasing to be a "local area" within Entry 52 of List II.

The Apex Court observed that "The exemption from application of municipality laws or such enactments in relation to industrial areas – as also the exemption from the application of Part-IX A by virtue of proviso to Article 243Q(1) is to exclude the application of certain requirements, such as election etc. As far as the nature of services provided in industrial areas are concerned, those are relevant factors taken into account by the State or Governor while issuing exemptions under municipal laws or proviso to Article 243Q(1). These, however, do not in any manner impact or undermine the fact that such industrial areas or estates are equally "local areas"."

The Apex Court observed that, it is also a cardinal rule of interpretation that words of a taxing statute should be read in their ordinary, natural, and grammatical meaning. Further, in construing the words in a constitutional enactment that confers legislative power, a liberal construction should be placed upon the words so that they may have effect in their widest amplitude.

The object of the levy, i.e., entry tax, is the regulation of entry of goods in a regular area for consumption, i.e., manufacture, use or sale. ... In any case, the levy would be attracted because the incidence is the entry into the local area.

Thus, the Apex Court held that the industrial areas or estates are equally "local areas" and the application of state laws regarding industrial areas squarely falls within the expression "description of a body constituted for the purposes of local affairs of the State". The Apex Court dismissed the appeals.

SUPREME COURT - CRIMINAL CASES**Manoj Kumar Tiwari Vs. Manish Sisodia & Ors. [Crl.A.No.1791 of 2022]****Date Of Judgment: 17-10-2022**Sec.199, CrPC – Sec.499, IPC

The Hon'ble Supreme court while deciding a Criminal Appeal, referred to Subramanian Swamy Vs. Union of India [(2016) 7 SCC 221], and observed that, Sub-section (6) does not contain any conditions subject to which the right thereunder can be exercised. ... The word "nothing" appearing in sub-section (6) will include the non-obstante clause in sub-section (1) also.

The Apex Court further observed that, "Merely because it was stated in K.K. Mishra Vs. State of Madhya Pradesh & Anr. [(2018) 6 SCC 676], that what is envisaged in sub-sections (2) and (4) of Section 199 is a departure from the normal rule, it does not mean that sub-section (6) stands nullified. ... A person falling under the category of persons mentioned in sub-section (2) of Section 199 can either take the route specified in sub-section (4) or take the route specified in sub-Section (6) of Section 199.

The Apex Court observed that, it is a fundamental rule of criminal jurisprudence that if the allegations contained in the complaint even if taken to be true, do not constitute the offence complained, the person accused should not be allowed to undergo the ordeal of a trial.

The Apex Court observed that defamatory statements should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. The Apex Court held that, the claim made by a person involved in politics that the answers provided by his rival in public office to the questions posed by him, will expose his scam, cannot be *per se* stated to be intended to harm the reputation of the person holding office.

Thus, the Apex Court allowed the Appeal.

Mohd. Arif Vs. State (NCT of Delhi) [Rev.Pet. (Crl.) Nos. 286-287 of 2012]**Date Of Judgment: 03-11-2022****Criminal Procedure – Terrorism – Review Petition**

The Hon'ble Supreme Court while deciding a Review Petition observed that the decision Anvar P.V. Vs. P.K. Basheer & Ors. [(2014) 10 SCC 473], as clarified in Arjun Panditrao Khotkar Vs. Kailash Kushanrao Khotkar [(2020) 7 SCC 1], is the law declared on Section 65B of the Evidence Act, and that since the instant matter pertains to award of death sentence, this review petition must be considered in light of these decisions.

The Apex Court referred to Vasanta Sampat Dupare Vs. State of Maharashtra [(2017) 6 SCC 631] and observed that, death sentence was awarded in a crime relating to similar offences punishable under the IPC, the Apex Court found that the aggravating circumstances had clearly outweighed the mitigating circumstances. It also stated that there is no evidence in the file that supports the review petitioner as having a mitigating situation.

The Apex Court observed that, the factors that might even remotely be taken into consideration as mitigating circumstances on record are completely outweighed by the aggravating circumstances that are evident from the record, particularly the fact that there was a direct attack on the unity, integrity, and sovereignty of India.

The Apex Court held that, when there is challenge to the unity, integrity, and sovereignty of India by acts of terrorism, such acts are taken as the most aggravating circumstances. The cumulative effect of the aggravating factors and the mitigating circumstances must be taken into account before the death sentence is awarded.

Thus, the Apex Court dismissed the appeal.

Naveen Vs. State of Haryana [Crl.A.No. ... of 2022]**Date of Judgement: 01-11-2022****Criminal Procedure — Section 319, CrPC**

The Hon'ble Supreme Court decided a Criminal Appeal arising from the rejection of an Application filed by the Complainant under Section 319, CrPC to summon the Appellant/Accused to face the trial for offences under Sections 307, 364, 366, 376 read with Section 34 of IPC.

The Apex Court reiterated the scope of Section 319, CrPC as laid down by *Hardeep Singh Vs. State of Punjab [(2014) 3 SCC 92]*, that the power under Section 319, CrPC is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

The Court found that the present case is based on circumstantial evidence, and that the Appellant visiting the hospital would not make him an accomplice with the other accused Arjun. The Apex Court further found that no one has accompanied the deceased other than accused Arjun.

The Apex Court examined the material on record, and held that, the evidence recorded during the course of prosecution, if remains unrebutted, will not be sufficient to lead the conviction so far as the present appellant is concerned.

Thus, the Apex Court allowed the Appeal, and set aside the Order passed by the High Court.

P. Ponnusamy Vs. State of Tamil Nadu [SLP (Cri.) No.9288 of 2022]

Date of Judgment: 07-11-2022

Criminal Procedure – Disclosure Requirement – Criminal Rules of Practice

The Hon'ble Supreme Court addressed the main concern, about the 'right of the accused to be supplied with documents or materials, seized or collected during the investigation, but not relied upon'.

The impugned Order of the High Court declining to direct State to produce documents enlisted were called to question by the Apex Court. The Apex Court noted the salient aspects and inconsistencies in the rules and practices of the High Courts and emphasized the importance of having consensus. The Apex Court re-emphasized the need for amending rules of practice/criminal manuals to bring about uniform best practices across the country.

The Apex Court held that, the draft rules of practice framed were a product of thorough consultative exercise undertaken to remedy lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage. The Apex Court pointed out that, recognition of, the need to streamline trials or mitigate delays, cannot come at the cost of the accused's right of fair trial.

The Court in its dissent held that, the said Draft Rule No. 4 as and when brought into force after following the due process of law could be pressed into service by the accused only during the course of investigation and during the course of trial, and not at the appellate stage before the High Court or the Supreme Court.

See Also

- Siddharth Vasisht @ Manu Sharma Vs. State of NCT Delhi [(2010) 6 SCC 1]
- Manoj & Ors. Vs. State of Madhya Pradesh [2022 SCC OnLine SC 677]
- Manjeet Singh Khera Vs. State of Maharashtra [(2013) 9 SCC 276]
- Criminal Trials Guidelines Regarding Inadequacies and Deficiencies in Re Vs. State of Andhra Pradesh & Ors. [(2021) 10 SCC 598]

State of Himachal Pradesh Vs. Nirmal Kaur @Nimmo & Ors. [Crl.A.No.956 of 2012]

Date of Judgement: 20-10-2022

Narcotic Drugs and Psychotropic Substances Act, 1985

The Hon'ble Supreme Court of India considered a criminal appeal on the issue of whether in case of recovered contraband the prosecution needs to prove sample recovered or its species of the recovered contraband as well.

The Apex Court referred to several judicial precedents and observed that even in relation to a penal statute, any narrow and pedantic, literal and lexical construction may not always be given direct effect and the interpretation has to be preferred with regard to the subject matter of the offence and the object of law it seeks to achieve. The interpretation that defeats the plain intention of the legislature, even though there may be some inexactitude in the language used, will have to be rejected. The golden construction for the purpose of bringing out an effective result will have to be accepted.

The Apex Court observed that the substance would amount to 'opium derivate' within the meaning of Section 2(xvi)(e) of the 1985 Act. It was therefore held that, what was recovered from the appellant therein was 'manufactured drug' within the meaning of Section 2(xi) of the 1985 Act. The Court therefore held that, the offence proved against the appellant therein clearly fell within Section 21 of the Act, for illicit possession of a 'manufactured drug'.

The court also discussed that once the established material contains 'meconic acid' and 'morphine', it will be sufficient to establish that the substance is derived from the plant 'papaver somniferum L' as defined in sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act. There has been no other species of 'papaver' which has been notified by the Central Government to be 'opium poppy' for the purpose of the 1985 Act.

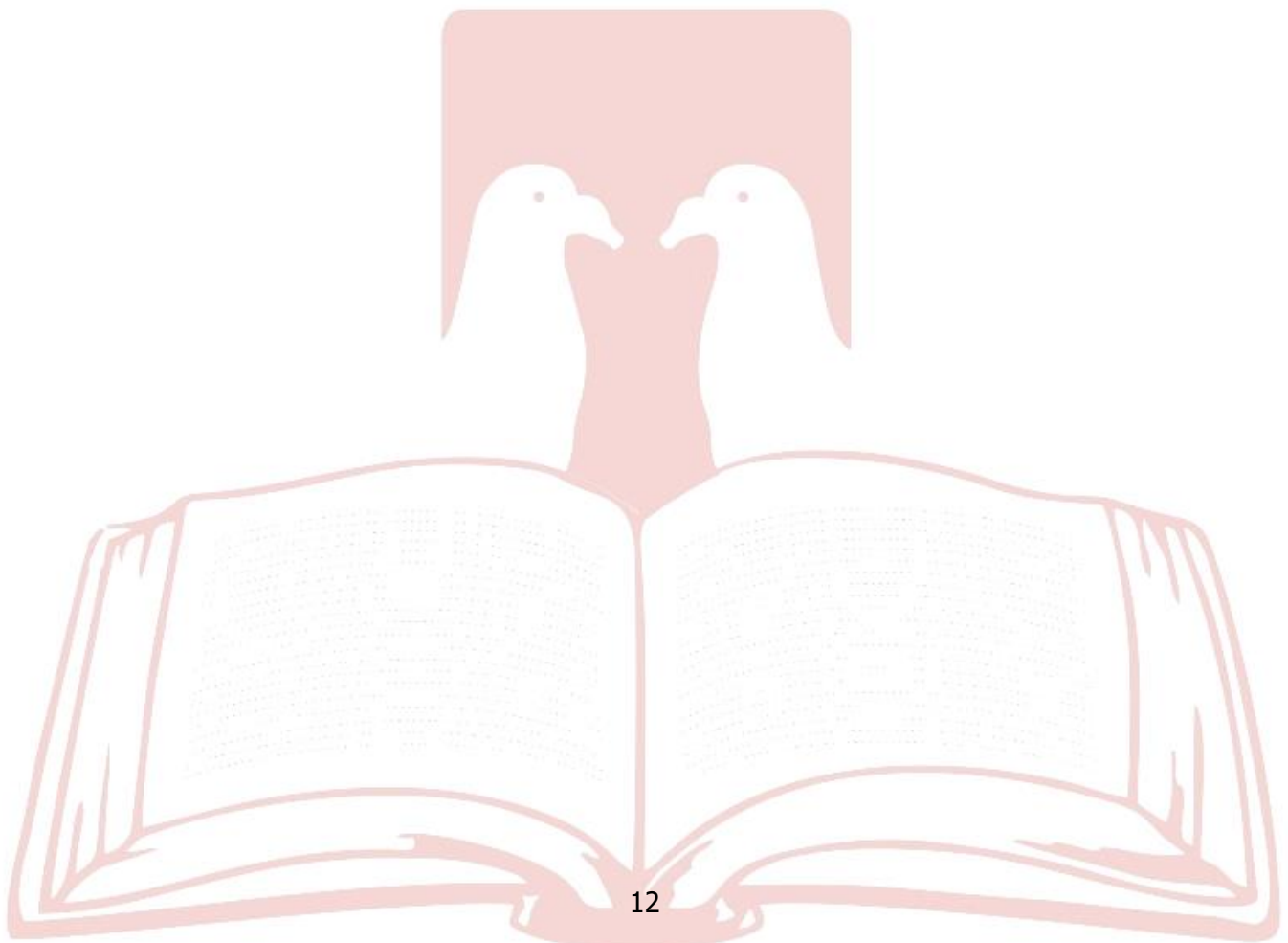
Therefore, the Apex Court had laid down that, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no

other test would be necessary for bringing home the guilt of the accused under the provisions of Section 15 of the 1985 Act.

The Court remanded the matter to the High Court for consideration afresh. The appeal was allowed.

See Also

- Baldev Krishna Sahi Vs. Shipping Corporation of India Ltd. & Anr. [(1987) 4 SCC 361]
- Sanjay Dutt Vs. State through C.B.I., Bombay (II) [(1994) 5 SCC 410]
- State of M.P. and Others Vs. Ram Singh [(2000) 5 SCC 88]
- Standard Chartered Bank & Ors. Vs. Directorate of Enforcement & Ors. [(2005) 4 SCC 530]
- Hira Singh & Anr. Vs. Union of India & Anr. [(2020) 20 SCC 272]
- E. Micheal Raj Vs. Narcotics Control Bureau [(2008) 5 SCC 161]



HIGH COURT - CIVIL CASES**A. Porkodi Vs. Mrs. Leelavathi [A.S.No.105 Of 2014]****Date of Judgment: 20-10-2022****Right of mortgagor**

The Hon'ble High Court decided an Appeal Suit on the issue, whether the Civil Court is entitled to grant the relief of permanent injunction restraining the Bank from selling or enforcing its rights under the alleged mortgage/deed, arising out of the mortgage, in respect of the 2/3rd share belonging to the plaintiffs also.

The Court observed that "there is a specific difference between the SARFAESI Act and the RDDBFI Act. If any proceedings are initiated under the SARFAESI Act, even third parties can question by filing an Appeal under Section 17 the RDDBFI Act before the Tribunal and therefore if any person wants to challenge the measures taken under the said Act, they have to approach only the Tribunal."

The Court referred to Jagadish Singh Vs. Heeralal [MANU/SC/1126/2013], and found that the finding of the Trial Court that the proceedings are taken under the SARFAESI Act is perverse, and that in the present case, the proceedings were initiated under the RDDBFI Act.

The Court referred to Nahar Industrial Enterprises Ltd. & Ors. Vs. Hong Kong and Shanghai Banking Corporation & Ors. [(2009) 3 SCC (Civil) 481], and observed that it was open to the Plaintiffs to challenge the Bank's claim. In this regard, the Court noted that the jurisdiction of the Civil Court is ousted only in respect of the questions which strictly fall under Section 17 of the RDDBFI Act and to that extent, it doesn't fall to the jurisdiction of the Tribunal, and the inherent remedies under the common law and the jurisdiction of the Civil Court, are not barred.

The Court referred to Rule 11 of the Second Schedule to the Income Tax Act, and observed that the phrase 'Tax recovery Officer' has to be read as 'Recovery Officer' under the RDDBFI Act.

The Court observed that the mortgagee is not allowed to possess greater rights than the mortgage holder, and that it may not be legal for the fourth defendant/Bank to sell more than 1/3 of the share belonging to the judgement debtor/borrower if the mortgagor does not have the right to the entire property and was only entitled to 1/3 of the share in the property mortgaged. However, the Court found that as a result of the forged Legal Heirship Certificate, only the Bank had to suffer consequences, and not the other siblings, and that therefore the suit for permanent injunction is maintainable.

The court found that the Plaintiffs had established their entitlement to 2/3rd share of the property and that they were qualified for partition relief. However, the Court modified the relief and found that it is expedient and necessary to sell the suit property and divide the sale proceeds into three shares and 1/3rd share amount shall be paid out to the 4th Defendant/Bank. The Court referred to J.P. Builders Vs. A. Ramadas Rao [(2011) 1 SCC 429], and held that the Plaintiffs have to vacate and handover possession to the auction purchaser.

Thus, the Court allowed the Appeal Suit, set aside the Judgment and Decree of the Trial Court, and decreed the Original Suit upon certain conditions.

ACS Marine Services (P) Ltd. Vs. Poompuhar Shipping Corpn. [W.P.No. 27323 of 2022 (Batch)]

Date of Judgement: 09-11-2022

Tender – Interpretation of Clauses

The Hon'ble High Court considered a Writ Petition praying for issuance of a Writ of Mandamus, to declare the action of accepting the tender violative of the tender conditions as illegal, arbitrary and void.

The Court held that, commercial transactions arising out of the tender, normally would not be interfered by the Court for any reasons, unless and until it is established that, there is an arbitrary exercise of power and with malafide intention the tender has not been accepted or tender of another person is accepted. The terms and conditions of the tender document if it is taken up for interpretation, the Court has held that, the Author is the best person to understand and appreciate its requirement. Therefore its interpretation should not be second guessed by a Court in Judicial Review. If the Court finds that, there is a total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

Thus, the Court dismissed the Writ Petition.

C. Gurusami & Ors. Vs. Nagajothi & Ors. [A.S. (MD) No. 65 of 2014]**Date of Judgment: 10-11-2022****Partition – Section 58, Indian Evidence Act, 1872 - Order XIV Rule 1, CPC – Framing of Issues**

The Hon'ble High Court decided an Appeal Suit challenging the judgment and decree of the trial Court, whereby a preliminary decree of partition of 1/6th share in the suit property was decreed in favour of the plaintiff and 1/6th share each in favour of the defendants 2 to 5 and 15 to 17.

The Court found two flagrant legal flaws are noticed in the procedure adopted by the trial Court while the suit was decreed. Firstly, the plaintiff had categorically admitted in the plaint that the first defendant was adopted by Thiru. late. Kannayiram Pillai and had reiterated such statement in her oral evidence. The first defendant had also taken similar plea in his written statement, as well as through the oral evidence of D.W.1/15th defendant, who is the wife of the first defendant. However, the trial Court ventured to frame an issue on this admitted fact of adoption of the first defendant by Thiru. late. Kannayiram Pillai. Secondly, while framing the issues, it had gone into the validity of the plaintiff's claim to be the adopted daughter of Thiru. late. Kannayiram Pillai.

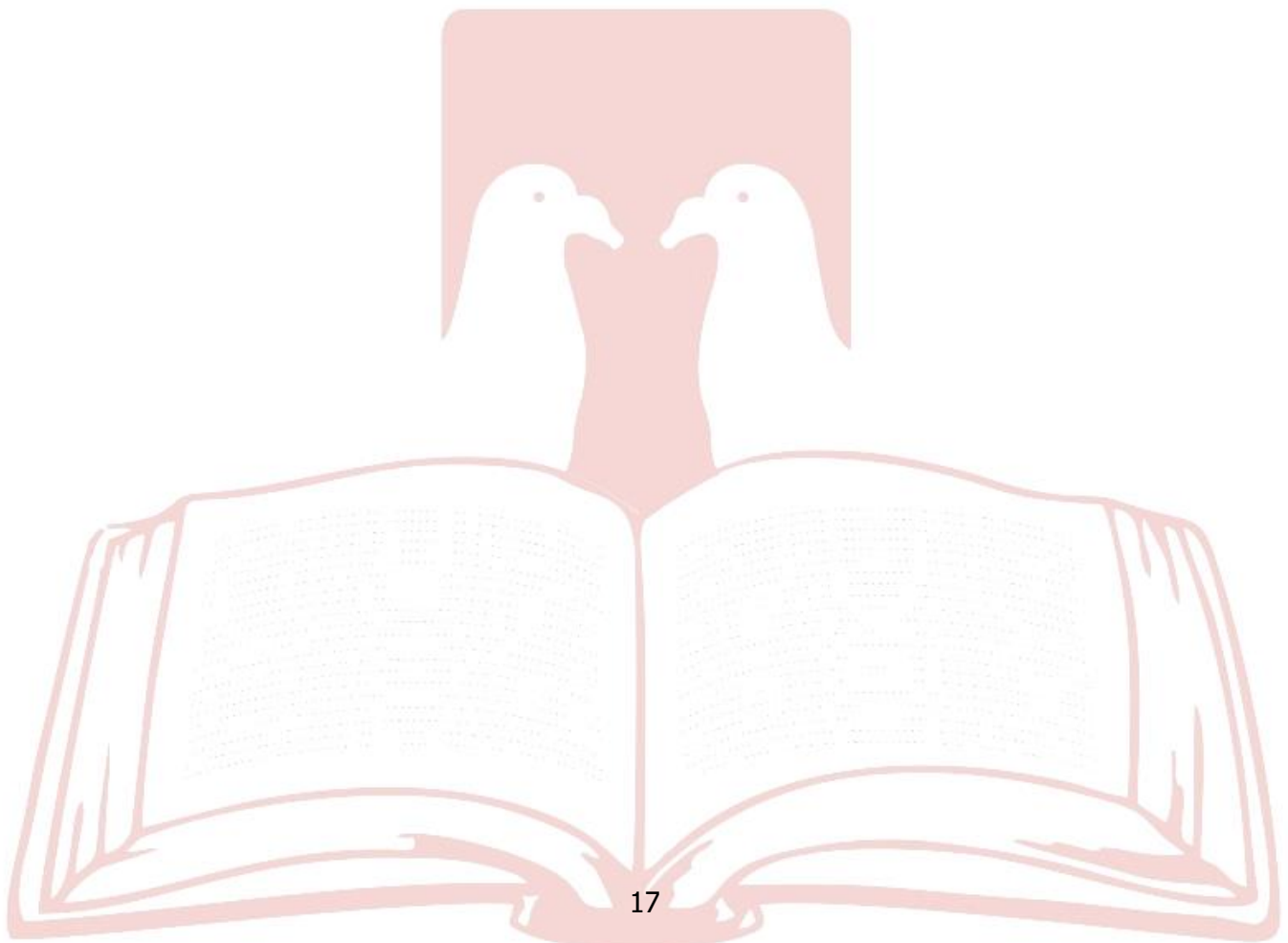
The Court reiterated that, Order XIV Rule 1 of CPC provides for framing of issues when a material proposition of fact or law is affirmed by one party and denied by the other. Section 58, Indian Evidence Act, 1872, postulates that admitted facts need not be proved. It is needless to emphasise that admission of a party in the proceedings, either in the pleading or oral, is the best evidence and the same does not need any further corroboration, as held in Ahmedsaheb (Dead) by Lrs. & Ors. Vs. Sayed Ismail [(2012) 8 SCC 516] and Jagdish Prasad Patel (Dead) Through LRs. & Anr. Vs. Shivnath & Ors. [(2019) 6 SCC 82].

The Court observed that, while the law does not mandate proof of admitted facts, the trial Court had ventured to frame an issue with regard to the validity of the adoption of the first defendant by Thiru. Late. Kannayiram Pillai and had ultimately

placed reliance on the evidences before it and held that such an adoption, though admitted by the plaintiff in her pleading, as well as oral evidence, is invalid. Such an exercise is not only unwarranted, but also against the provisions of law, as well as the various dictums of the Hon'ble Supreme Court.

The Court pointed out that Section 30 of the Hindu Succession Act, 1956, clearly laid down that any Hindu may dispose of by Will or other testamentary disposition any property, which is capable of being so disposed of by him.

Thus, the Court allowed the appeal.



Commissioner of Income Tax Chennai Vs. MAC Public Charitable Trust [T.C.A. No. 303 of 2021]

Date of Judgement: 31-10-2022

Tamil Nadu Educational Institution (Prohibition of Collection of Capitation Fee) Act, 1992

The Hon'ble High Court while dealing with appeal assailing from Orders of the Income Tax Appellate Tribunal, considered the issue of capitation fees/monies wherein, the capitation fee received by trusts in a *quid pro quo* manner for allotment of seats to the students.

The Court at the beginning expressed that, 'Education' is a means to cognitively enlighten the bonded soul by empirical methods, which not only transcends beyond the mystical cycle of birth, but also to achieve terrestrial satisfaction and then mundane goals. The Court emphasized that, it is a tool to eradicate social injustice.

The Court observed that, the Central and State government will thrive to ensure that all those who deserve, but are unable to get admission in educational institutions for want of funds, are accommodated to pursue education and take appropriate steps to eradicate the collection of capitation fee by creating policies and awareness and for that purpose, on the lines of the web-portal under the aegis of the Supreme Court.

The Court directed that, a web-portal of a similar nature must be set-up, wherein any information about the private colleges charging capitation fees can be furnished by the students or their parents or anyone having first-hand information in this regard and a pamphlet should be compulsorily given to the students and their parents at the time of counselling informing them about the availability of the web-portal stated above.

The Court allowing the appeal held that, the collection of 'capitation fees,' or donations by private educational institutes in exchange for admissions is illegal and punishable.

J. Dhanapal Vs. V. Manimala & Anr. [A.S. (MD) No.102 of 2013]**Date of Judgement: 10-11-2022**

Sec.16(c), Specific Relief Act, 1963 — readiness & willingness — time is essence of contract

The Hon'ble High Court decided an Appeal Suit challenging the dismissal of a suit for specific performance.

The Court found that, that the Plaintiff failed to let in any other evidence to show that he was ready with the balance of sale consideration for the purpose of concluding the sale agreement.

The Court referred to Syed Dastagir Vs. T.R. Gopalakrishna Setty [(1999) 6 SCC 33], Pukhraj D. Jain & Ors. Vs. G. Gopalakrishna [(2004) 7 SCC 25], which had dealt with the scope of 16(c) of the Act and held that in the absence of any averments by the plaintiff showing his readiness and willingness to perform his part of the contract, the equitable remedy of specific performance, cannot be invoked.

The Court found that the first defendant's conduct in receiving the advance amount after expiry of 45 days, would only indicate that the time was not the essence of the contract. The Court referred to K.S. Vidyadnam & Ors Vs. Vairavan [(1997) 3 SCC 1] and Kolli Satyanarayana (dead) by Lrs. Vs. Valuripalli Kesava Rao Chowdary (dead) through Lrs. & Ors. [C.A.No.1013 of 2014, dated 27.09.2022], and found that the Plaintiff was never ready and willing to perform his part of the contract and though time was not the essence of the contract, he was legally bound to perform his part, within a reasonable time.

Further, the Court referred to N. Sekaran & Anr. Vs. C. Rajendran [AIR 2018 Mad 67], and Thiruveedhi Channaiah Vs. Gudipudi Venkata Subbarao (D) by LRS [(2009) 17 SCC 34], and held that though the Plaintiff had not prayed for an alternate relief for refund of the advance sale amount, the plaintiff would be entitled for refund of the advance amount, together with interest.

Thus, the Court upheld the finding of the Trial Court and partly allowed the Appeal.

J.F. Irani & Ors. Vs. Hajee Sir Ismail Wakf Estate, Rep. by its Trustees & Ors. [O.S.A. No. 326 of 2011]

Date of Judgment: 19-10-2022

Right of pre-emption

The Hon'ble High Court decided an Original Side Appeal challenging the dismissal of suit seeking mandatory injunction and directing the Defendants to execute the sale deed in favour of the Plaintiffs.

The Court observed that mere participation and giving offer by 1st Plaintiff will not amount to waiving of pre-emptive right of plaintiffs, and held that the plaintiffs have not acquiesced and waived their right of pre-emption.

Subsequently, the Court found that hold that the 1st Defendant is liable to give first option to the Plaintiffs to purchase the property at Rs.35,00,000/- per ground and only if the Plaintiffs reject the said offer, the 1st Defendant can accept and confirm the offer of the 2nd Defendant.

Further, the Court referred to Section 17 of the Registration Act, 1908, and found that in view of non-registration of compromise decree, creating an interest in superstructure 'Casino Theatre', worth more than Rs.100/-, no title has been transferred to 1st Defendant, and the 1st Defendant did not become owner of Casino Theatre.

The Court observed that in view of separate Rules incorporated in C.P.C. with regard to specific relief suit as well as pre-emption suit and also Order XX Rule 14 of C.P.C., the contention of the learned Senior Counsel appearing for the 2nd defendant that present suit filed by the plaintiffs is in the nature of suit under Specific Relief Act is not acceptable. Therefore, we hold that suit is not pre-mature and plaintiffs are entitled to relief of substitution.

Thus, the Appeal was allowed.

J.R. Chandran & Anr. Vs. P. Kubendra Singh & Ors. [C.R.P.(NPD) No. 838 of 2021]

Date of the Judgement: 10-11-2022

Tamilnadu Building (Lease and Rent control) Act, 1960

The Hon'ble High Court considered an issue concerning statutory tenancy and title by adverse possession. The Court observed that, a tenancy under the Act is a statutory tenancy, and once a lease comes under the operational ambit of the statute, a tenant will remain always a tenant till the Act intervenes to end the tenancy in an eviction proceeding.

The Court underscored that, the jurisdiction of the Tribunal under the scheme of the Act in deciding the disputed title of landlord is limited. It can either enter a finding whether the denial of landlord's title by the tenant is bonafide or not.

The Court emphasized that, when the legislature provides special treatment for leases relating to buildings within the territory where the Act is in force, carved out an exception to the application of Transfer of Property Act and barred the civil court jurisdiction, the same cannot be construed as a pampering mode to condone the faults of the tenant. The grounds of eviction that it has provided may be the visible part of the enactment which may give an impression that landlord's rights to evict the tenant are curtailed. But the invisible part and less realised part is how the tenant should conduct himself if he is keen not to invite the wrath of the statute.

The Court held that the CPC has limited application in a proceedings under the Act, and that the nature of enquiry contemplated under the Act is summary in character. So amending the pleading and framing issue are not considered mandatory within the scheme of the Act. What is required is that the rule of fairness should not be ignored, which implies that the tenant should be put on notice about facts that would impair his prospects in the litigation.

The Court found that the tenant is in willful default in paying the rent, and thus dismissed the revision petitions.

M. Sudheer Vs. M. Kamaraj [C.R.P.(PD). No. 3307 of 2022]**Date of Judgement: 20-10-2022****Section 65-B - Evidence Act, 1872**

The Hon'ble High Court considered a Civil Revision Petition challenging the fair and decretal order passed by the Trial Court. The respondent filed a suit for recovery of money. Inter alia the petitioner resisted the same by raising a plea of discharge. The trial commenced and when the matter was posted for recording the evidence on the side of the petitioner/defendant, the petitioner sought to send the pen drive for comparison. The said application was dismissed. Aggrieved by that, the petitioner approached the Hon'ble High Court.

The Court observed that, the legal position argued by the learned counsel for the petitioner is concerned, the certificate under Section 65-B of the Evidence Act need not be produced along with the electronic record. Law in this regard is no longer Resintegra. It would be appropriate to refer to the observations of the Apex Court in a case law reported in Union of India Vs. CDR. Ravindra V. Desai [(2018) 16 SCC 273] wherein, the Apex Court has held that the non-production of certificate under Section 65-B of the Evidence Act is a curable defect. Affirmed by the Supreme Court in Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal [(2020) 7 SCC 1].

The Court held that, the non-production of certificate under Section 65-B of the Evidence Act is a curable defect. It can be produced by the party even subsequent to production of electronic record before the Court. But it shall be produced before marking of said electronic record.

The Court confirmed the Order passed by the Court below on the ground that the electronic record which is sought to be compared by the petitioner is not a part of the case records.

Thus, the Court dismissed the Civil Revision Petition.

S. Rajmohan Vs. T.N. Civil Supplies Corpn. Ltd. [W.P.No.28260 of 2017 (batch)]

Date of Judgement: 09-11-2022

Civil Procedure – Selection Procedure

The Hon'ble High Court decided a Writ Petition calling for the records pertaining to recruitment notification and selection procedures for the post of electrician.

The Court observed that equal opportunity in public employment is the constitutional mandate. Rule of Reservation is to be followed scrupulously, while undertaking the process of selection.

The Court observed that, the process of selection was conducted in a corrupt manner and the petitioner was selected and appointed illegally, depriving the opportunity of all other candidates to participate in the process of selection. ... More so, the petitioner was appointed on temporary basis. Thus, he is liable to be dismissed at any point of time without any prior notice, since the selection and appointment of the writ petitioner was found to be not in order and in violation of the recruitment rules. ... Mere continuance of the writ petitioner in service during the pendency of the writ petition based on the interim order cannot be construed as it is a litigious employment and would not confer any right on him.

The Court found that, "all the established procedures for selection were violated. The petitioner was illegally selected and appointed. When equal opportunity in public employment is denied to all other candidates, who had participated in the process of selection, then the selection became unconstitutional and the appointed candidates have no vested rights to continue in services."

Thus, the Court dismissed the writ petition.

Tirumalaa Dairy Ltd. Vs. Tirumala Milk Products (P) Ltd. [C.R.P.No.2919 of 2022]

Date of Judgement: 27-10-2022

Order VII Rule 1, CPC — Sections 134 and 135, Trade Marks Act, 1999

The Hon'ble High Court considered a Civil Revision Petition challenging the order dismissing the petition to reject the plaint filed by the revision petitioners, on a trademark dispute.

The Court observed that, the combined reading of Section 20 of CPC and Section 134, Trademarks Act, makes it clear, apart from the places where a suit can be instituted under Section 20 of the C.P.C. in cases involving infringement of trade marks, the plaintiff is having the luxury of instituting the suit before the Court within whose jurisdiction, he actually and voluntarily resides or carries on business or personally works for gain. ... One of the main objects of the Act is to provide better protection of the trade marks. Therefore, to facilitate legal remedy to the persons affected by infringement of trade marks at their door steps, the Parliament in its wisdom introduced Section 134(2) of the Trade Marks Act by conferring territorial jurisdiction on the Courts within whose jurisdiction the plaintiffs voluntarily reside, carries on business or works for gain.

The Court found that on the basis of the averments found in the plaint, the Principal District Court, Thiruvallur has got territorial jurisdiction to entertain the plaint.

The Court referred to Indian Performing Rights Society Ltd. Vs. Sanjay Dalia [(2015) 10 SCC 161], held that as per Section 134(2), Trade Marks Act, the plaintiff is entitled to present the plaint before the Court within whose jurisdiction it has got registered office.

Thus, the Court dismissed the Civil Revision Petition.

HIGH COURT – CRIMINAL CASES**Koolan Vs. State [CrI.O.P. No.15881 of 2022]****Date of Judgement: 29-08-2022****Sec. 482 petition – to conduct investigation and file final report**

A Criminal Original Petition was filed under Section 482 of Criminal Procedure Code, to direct the respondent police to conduct an investigation and file a final report in the said case before the appropriate Court. The issue in the present case was whether; High Court can pass an order to file a final report on the said case before the appropriate court?

It was observed by Hon'ble High Court that, several final reports had not been filed, clearly demonstrating that the concerned court or magistrates are not treating this matter seriously with the relevant police officials even in the Crime Meeting or Monitoring Meeting. Further, the Police officials were directed to file a final report in the open court along with an acknowledgement provided by the concerned court at with the time such a report was filed, along with an endorsement and signature with date.

The Hon'ble High Court further took note of an Order dated 11.04.2022 made in *H.C.P(MD). No. 1498 of 2021* while referring to Sub Rule 7 of Rule 25 of the Criminal Rules of Practice, 2019, thereby directing all the criminal courts to not return the final reports for non-enclosure of reports which are listed out as Nos.(vii) to (x) & (xxix) of Sub Rule 7 of Rule 25 of the Criminal Rules of Practice and also ensure those final reports are filed online. The Hon'ble High Court directed the Registry to circulate this Order to all the Courts after obtaining an order from, the Hon'ble Chief Justice and dismissed the Petition.

Lilly Pushpam Vs. The Additional Chief Secretary, Government of Tamil Nadu and Ors. [H.C.P.No.1223 of 2022]

Date of Judgment: 02.11.2022

Violation of procedural safeguards – unexplained delay – detention illegal

The Hon'ble High Court of Madras in this case dealt with a Writ of Habeas Corpus petition calling for the records pertaining to the order of detention passed by the second respondent and to set aside the same and directing the fifth respondent to produce the detenu, petitioner's father Babu @ Anthonysamy, was confined in the Central Prison, Cuddalore, thereby setting him at liberty.

It was submitted by the petitioner counsel that, there was gross violation of procedural safeguards, which vitiated the detention and that, the representation made on behalf of the detenu was not considered in time and there was an inordinate and unexplained delay.

It was contended by the Additional Public Prosecutor that, though there was a delay in considering the representation, the detention order could not be quashed for that reason alone and further, no prejudice was caused to the detenu which would affect his rights under Articles 21 and 22 of the Constitution.

The Hon'ble High Court relying upon the decision of the Hon'ble Apex Court in *Rekha v. State of Tamil Nadu, Tara Chand v. State of Rajasthan & others* and the decision of the Hon'ble Madras High Court in *Sumaiya v. The Secretary to Government* opined that, time and again it was held that unexplained delay renders the very detention illegal and is sufficient to set aside the detention order thus, setting aside detention order.

**M. R. Sivaramakrishnan Vs. State Rep. by Sub Inspector of Police G3
Kilpauk Police Station Kilpauk, Chennai [Cri.O.P No.18261 of 2021]**

Date of Judgment: 28.10.2022

Harassment of Women – Offence even if not committed in Public Place

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 of Cr.P.C to quash the Final Report with respect to Sexual Harassment of women under section 354 IPC.

The crux of the case is that Petitioner is said to have harassed the Defacto complainant and her sister in filthy language in connection with parking issue in common pathway and also threatened Defacto complainant about pending in civil suit.

The Court held that in order to punish the accused for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, the occurrence ought to have occurred in a public place, still the harassment of a woman is an offence and the accused can be punished under Section 354 IPC. Because, the Court is not precluded to punish the accused for any other lesser offence, if the offence is cognizable in nature.

The Court observed that exact location in which the occurrence had taken place is common pathway and therefore are sufficient materials available on record to charge the accused for the offences under Sections 341, 294(b), 323, 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. Thus, the Criminal Original Petition was dismissed.

Prasanna Gunasundari Vs. The Deputy Inspector General of Police and others. [W.P.No.2554 of 2017]

Date of Judgment: 01.11.2022

DGP entertaining Mercy Petition against departmental action – Unconstitutional

The Hon'ble High Court decided a Writ Petition challenging the order of the Respondents imposing penalty of compulsory retirement and seeking direction of the respondents to reinstate the petitioner into service and grant her all consequential service and monetary benefits.

The fact of the case is that the Woman Police Constable was penalized of compulsory retirement for mishandling gold jewelry which was confirmed by the Director General of Police. The Petitioner filed a mercy petition before the Director General of Police; however, Mercy Petition was rejected.

The court observed that the Office of the Director General of Police entertaining mercy petition is illegal and directly in violation of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in force. The court held that the exercise of jurisdiction by authorities in excess of their Jurisdiction would result in colourable exercise of power.

The Court referred to Article 161 of Indian Constitution *The power of entertaining the mercy petition is conferred only on the Constitutional Authority, namely, the 'Governor of the State'.* Accordingly, the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Such a power conferred to the Governor of a State under Article 161 of the Constitution of India, cannot be exercised by any other Executive Authority in the State.

The Court held that Petitioner is at the liberty to approach the Revisional Authority, the authority Competent shall decide the same on merits and in accordance with law independently. Thus, the Court disposed of the Writ Petition.

**R* Vs. The Inspector General of Police (South Zone) &
Ors.[H.C.P.(MD)No.1856 of 2022]**
Date of Judgment: 15.11.2022

Habeas Corpus Petition – Rape survivor made to run pillar to post for registering a complaint – detained at a home

The Hon'ble High Court of Madras in this case dealt with a Habeas Corpus petition filed under Article 226 of the Constitution directing the respondents to produce the person or body of the petitioner's younger sister before this Court and set her at liberty.

The detinue's older sister filed a habeas corpus petition. The petitioner claimed that even though her sister came forward to file a complaint about the rape the same day, she was forced to go to multiple police stations, and as a result, her complaint was not filed. Eventually, a case was registered at her request when she went to the District Collector. Further it was contended that, after the registration of the complaint, her sister was kept at a home where the detinue was not even allowed to meet her family and thus, the present Habeas Corpus was filed.

While hearing the petition, the detinue was produced in the Court and she expressed her willingness to go with the petitioner. The counsel for the petitioner also pointed out the hardships faced by the detinue to register a complaint for being a survivor of rape, and how she was made to run pillar to post. The Hon'ble Bench of the Madras High Court also stressed that both the Apex Court and the High Courts have repeatedly held that in rape cases, even if the police station does not have jurisdiction, it should immediately forward the matter to the concerned police station having jurisdiction and the investigation should commence at the earliest.

In the present case, the court was satisfied that even for registration of FIR, there was a delay of 24 days. Further, upon perusal of the status report submitted by the Superintendent of Police, the Hon'ble Bench directed the Deputy Superintendent of Police to investigate the case from all angles and to file a report within three months from the date of order.

* Names of the Petitioner and detinue are concealed to protect the identity of the detinue.

Ramesh Dugar Vs. Deputy Director; Enforcement Directorate
[W.P.No.28848 of 2022]

Date Of Judgement:03.11.2022

Search and Seizure – does not give jurisdiction to Court – to return of articles – investigation – in a different place

The Hon'ble High Court decided a Writ Petition seeking to return the "illegally" seized documents and mobile phone of the Petitioner which was seized from Petitioner's residence by the Enforcement Directorate (ED).

The Fact of the case is that CBI had registered an FIR against Petitioner under Section 120B of the IPC and Sections 8 and 9 of the Prevention of Corruption Act 1988 for criminal conspiracy and bribing a public servant. During the course of investigation ED conducted search in the Petitioner's premises and seized certain materials including records and digital devices.

The Petitioner contended that since the items were seized from the premises of the Petitioner in Chennai, the Madras High Court had territorial jurisdiction to entertain the petition. It was submitted that under Article 226(2) of the Constitution, the High Court within whose jurisdiction a part of the cause of action arises, would have territorial jurisdiction.

The court observed that, "In the facts and circumstances of the case, seizure and recovery of the articles from the premises of the petitioner in Chennai, cannot confer jurisdiction on this Court because, the investigation by the CBI as well by the Enforcement Directorate is being held at New Delhi and the search and seizure is the effect of the investigation and not the cause of the investigation".

The Court held that the search and seizure was the effect of the investigation and not the cause of the investigation, thus the court dismissed the Writ Petition.

Sahil Raj Vs. The State of Tamil Nadu, Through: Inspector of Police, Cyber Crime P.S. Villupuram and Ors. [W.P.No.21344 of 2022]

Date of Judgment: 14.09.2022

Bank account frozen – summons under section 91 Cr.P.C – police have no jurisdiction to freeze bank account – police failed to inform jurisdictional magistrate about freezing the bank account

The Hon'ble High Court in this case decided Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to quash the impugned notice under Section 41A of CrPC. This writ was filed to defreeze the bank account of the petitioner which has been frozen in pursuant to the registration of FIR by the first respondent.

The brief of this case is that, the complainant was cheated by an unknown person who had offered a part time job. In order to secure the job, the complainant made payments in instalments to a tune of Rs. 5,58,749. The petitioner in this case was in the trade of crypto currency and had received an order of purchase for a sum of Rs. 89,000 and he released the said cryto currency within 15 days.

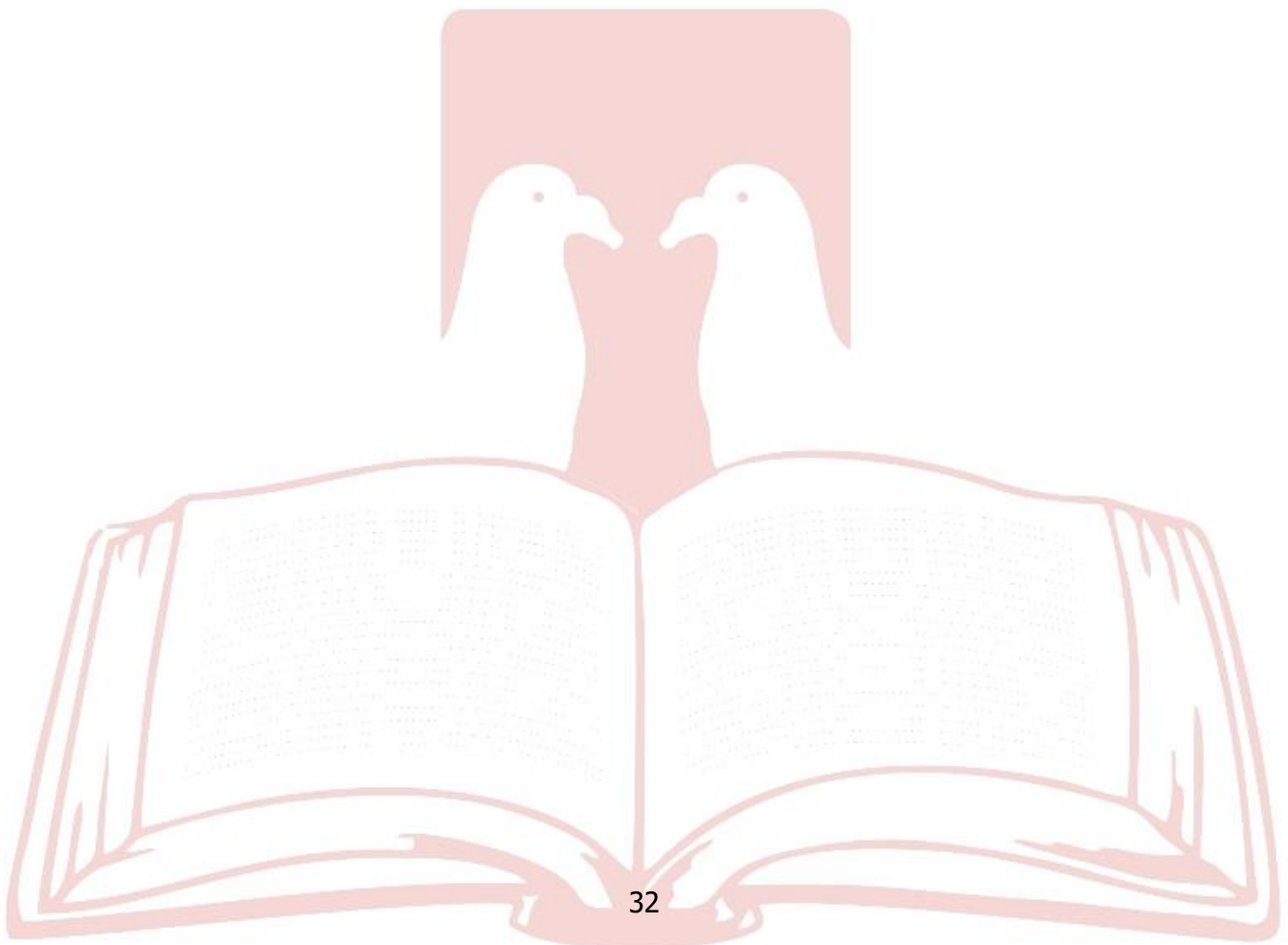
It was submitted by the petitioner's counsel that, the petitioner is the sole proprietor of his proprietorship business 'AD Street' which was engaged in the work of printing business and also engaged in trading i.e. purchase and sale of virtual digital assets such as crypto currency on different exchanges. While being so, the petitioner received an order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021 and he made payment of Rs.89,000/- for the said purchase. The petitioner released the crypto currency within 15 days to the said Raj Ghosh.

While being so, the first respondent issued notice under Section 91 of Cr.P.C. to the Branch Manager of Punjab National Bank, Inderpuri, New Delhi and directed to freeze all the account of the petitioner. It is further submitted that, the petitioner was also not an accused in the aforesaid crime, i.e, crime No.33 of 2021.

The Hon'ble High Court held that the police have no jurisdiction to freeze bank accounts while issuing summons under Section 91 of CrPC and that the investigating officer can only summon a person to produce the document or other things.

Further, the Hon'ble High Court noted that, the respondent police had failed to inform the jurisdictional Magistrate about the freezing of the account as was required under Section 102(3) CrPC.

The Hon'ble Court, held that, the petitioner had admitted to placing a purchase of crypto currency to a tune of Rs. 89000, and further the Hon'ble Court directed the petitioner to deposit the amount as fixed deposit in favour of the crime. The Court also directed the respondents to permit the petitioner to use his bank accounts.



**Shiva Sankar Baba Vs. State rep. by Inspector of Police, CBCID, OCU
Police Station - II, Chennai [CrI.O.P.No.23806 of 2021]**

Date of Judgment: 17-10-2022

Sexual harassment – case barred by limitation – Magistrate taking cognizance of petition to condone delay under Section 473 Cr.P.C.

The alleged incident of the case is said to have occurred when the second Respondent had an opportunity to discuss her son's academic issue with the Petitioner, who runs a school in which the second respondent's son studied. The Hon'ble Madras High Court, while deciding this Criminal Original Petition concerning the issue of sexual harassment under Section 354 I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002, noted that, "the serious nature of the offence of sexual abuse leads to an understandable reluctance in giving a complaint immediately after the occurrence".

While observing that the case is barred by limitation as per Section 468 Cr.P.C., as the complaint was given on 19.08.2021 for the incident that had allegedly occurred between 2010 and 2011, the Court also noted that it is possible to get the case taken on file if a petition could be filed by the prosecuting agency with convincing reason under Section 473 Cr.P.C to condone the delay while filing the report.

The Court, referring to Section 190 Cr.P.C. and a decision of the Hon'ble Supreme Court, Sarah Mathew Vs. Institute of Cardio Vascular Diseases (2014) 2 SCC 62, held that the relevant date for filing the petition to condone the delay under Section 473 Cr.P.C. is the date on which the complaint is sent to the Magistrate as the act of taking cognizance by the Magistrate would start from the moment the Magistrate applies his mind while reading the FIR. Citing the absence of any petition under Section 473 Cr.P.C., the Court allowed the Criminal Original Petition, quashing the case and closing the connected miscellaneous petition.

V. Vinoth Vs. The State of Tamil Nadu, rep. by its Principal Secretary to Government & Anr.[W.P.No.19672 of 2022]

Date of Judgment:31.10.2022

Satisfied with CBCID investigation – Refusal to CBI probe

The Hon'ble High Court decided a Writ Petition seeking a direction to the Respondents to transfer Investigation in crime on the file of the CBCID to CBI. The Petitioner sought to transfer the Investigation to CBI as the Police investigation was in a biased manner, they further alleged that investigation was in total disregard to the victims.

The court on observation of investigation status report found no materials that the present Investigation agency, CBCID conducted the investigation in a tainted or bias manner.

The Court held that there was no hard and fast rule in deciding the transfer of cases. The decision whether transfer of investigation should or should not be ordered rests on the Court's satisfaction, whether the facts and circumstances of a given case demand such an Order.

The Court further observed that the present case does not fall into the category of rarest of rare cases and proper investigation was being conducted. Thus, the Writ Petition was Dismissed.

Vinoth Vs. Sub Divisional Magistrate cum The Revenue Divisional Officer and Anr.[CRL.R.C.(MD).No.712 of 2022]

Date of Judgment: 31.10.2022

Proceedings under section 110 Cr.P.C – execution of bond to maintain good behaviour – Executive Magistrates not aware of guidelines pertaining to legal principles to be followed by the Executive Magistrates

The Hon'ble High Court in this case decided a Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to call for the records pertaining to the order passed by the Sub-Divisional Magistrate cum The Revenue Divisional Officer and set aside the same.

The brief facts of the case were that, on the basis of a report by the second respondent, the first respondent-initiated proceedings under Section 110 Cr.P.C, for which an enquiry was conducted and petitioner was ordered to execute a bond thereby to maintain good behaviour for a period of one year. Within the expiry of one year, a case was registered against the petitioner under sections 302 IPC r/w 302, 120(b) and 34 IPC and the petitioner was arrested and remanded to judicial custody. It was alleged by the second respondent that, the petitioner violated/breached the bond executed by him, has sent a communication, requesting the first respondent to initiate necessary action under Section 122(1)(b) Cr.P.C.

Based on the report of the second respondent, the first respondent issued a show cause notice to the petitioner and directed the Superintendent of District Prison, Thiruppur to produce the petitioner and thereafter, the first respondent conducted an enquiry and passed an impugned order cancelling the security bond executed by the petitioner and ordered to detain him in prison till the expiry of the period of bond. Aggrieved by this the petitioner preferred the present revision.

The Hon'ble High Court noted that, "..this Court is constrained to say that the Executing Magistrates, without knowing/understanding the basic concepts of criminal justice delivery system and by conducting some sort of enquiry as per their

whims and fancies, are playing with the personal liberty of the accused, casually and mechanically."

It was also noted that, the Hon'ble Madras High Court in *P.Sathish @ Sathish Kumar Vs. State rep. by the Inspector of Police & Anr. [2019 (2) MWN (Crim) 136]* had formulated legal principles to be followed by the Executive Magistrates while passing orders under Section 122 CrPC. These guidelines are an integral part of Article 21 and 22 and also in consonance with Section 39-A of the Direct Principles of State Policy.

The High Court moreover observed that, though instructions were issued to the Executive Magistrates to follow these guidelines, they were still unaware of these guidelines and have failed to take steps to follow them.

Furthermore, the Hon'ble Court observed that, "It is right time for the Government to take appropriate steps to conduct Training or Refresher courses to the newly appointed or promoted Executive Magistrates about the basic concepts of criminal law, how to conduct enquiry and how to pass reasoned orders." Therefore, the Hon'ble High Court held the impugned order of the Sub Divisional Magistrate to be not good in law the court set aside the same.

