

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVIII— PART10— OCTOBER 2023\*\***

## IMPORTANT CASE LAWS



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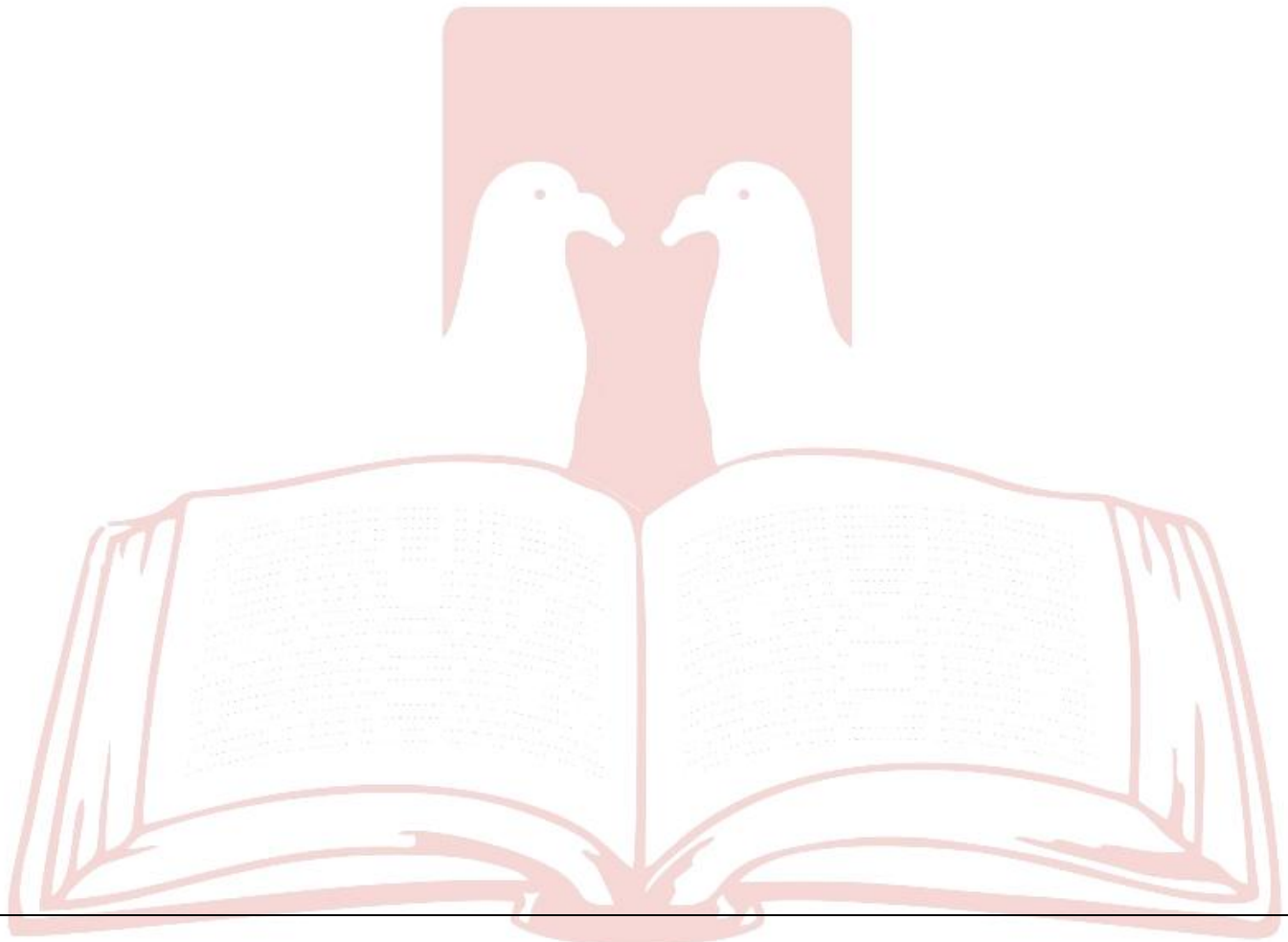
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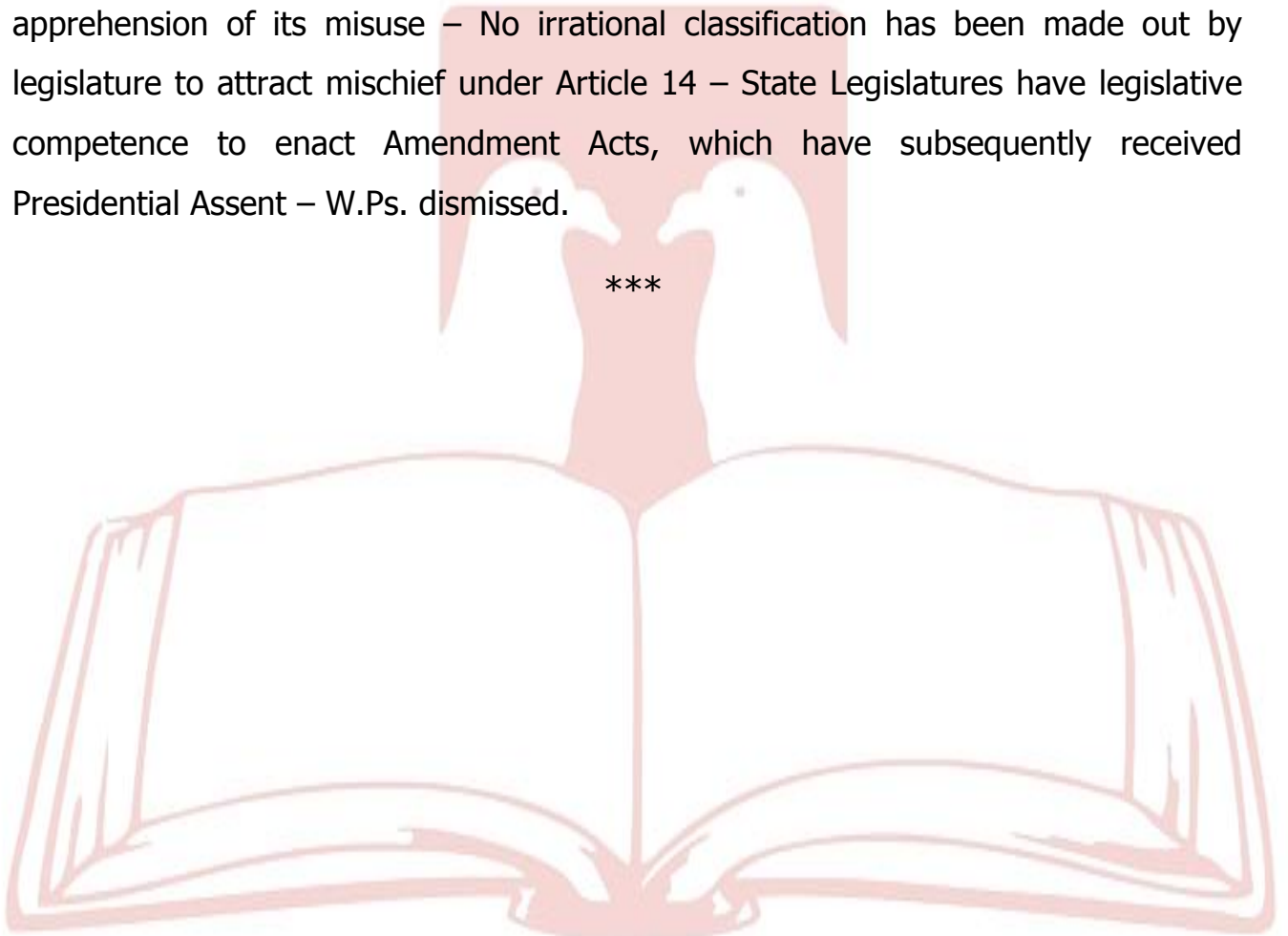
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**SUPREME COURT – CIVIL CASES****[The Animal Welfare Board of India & Ors. Vs. Union of India & Anr.\[2023 \(5\) CTC 779\]](#)****Date of Judgment: 18.05.2023**

**Prevention of Cruelty to Animals Act, 1960, Sections 3, 11(1)(a) & (m) – Constitution of India, Articles 14, 21, 51–A** – Whether ratio laid down in *Animal Welfare Board of India Vs. A. Nagaraja*, 2014 (7) SCC 547, sought to be by-passed by Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 and Prevention of Cruelty of Animals (Maharashtra Amendment) Act, 2017 – Held, three Amendment Acts have laid down rigid regulatory measures for conduct of Bovine Sports such as Jallikattu, Kambala & Bullock Cart Race – Conditions stipulated under Amendment Acts ban unnecessary pain or suffering that would be caused to Animals – Judicial power cannot be exercised to strike down law on assumption of apprehension of its misuse – No irrational classification has been made out by legislature to attract mischief under Article 14 – State Legislatures have legislative competence to enact Amendment Acts, which have subsequently received Presidential Assent – W.Ps. dismissed.

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**Kum. Geetha, D/o Late Krishna & Ors Vs. Nanjundaswamy & Ors. [2023  
(4) TLNJ 231 (Civil)]**

**Date of Judgment: 31.10.2023**

**Civil Procedure Code, 1908, Order VII Rule 11** – Joint family property – Deceased Karta was in a habit of temporarily mortgaging by executing nominal sale deeds and executing re-conveyance deeds when dues were cleared – Suit for partition and separate possession – IA by defendants after 4 years to reject the plaint – Dismissed since plaint does disclose a cause of action – High Court held that Plaintiffs did not deny the sale, but urged that there was a subsequent re-conveyancing of the property back to the joint family, without a corresponding mutation of revenue records – High Court rejected the Plaint for Schedule-A property – If the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail – Where it does not disclose a cause of action, the plaint shall be rejected – Plaintiffs pleaded that various sales were executed through 'nominal sale deeds', but were not acted upon – If the statements in the plaint are taken to be true, the joint family properties may enure to the benefit of its members and they may well be available for partition – It is a matter of trial – High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon – under Order VII Rule 11, CPC a plaint cannot be rejected in part – It is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendants and continue the same against the others – Appeal allowed.

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**Rahimal Bathu & Ors. Vs. Ashiyal Beevi [2023 (4) TLNJ 49 (Civil)]****Date of Judgment: 26.09.2023**

Civil Procedure Code, 1908, Section 115 – revision – Whether maintainable against an order of the subordinate Court rejecting on merits an application for review of an appealable decree passed in a civil suit – An application seeking a review of a judgment and decree – Civil suit is maintainable under Order XLVII Rule 1 CPC – Rule 4 of Order XLVII provides that where it appears to the Court that there is not sufficient ground for a review, it shall reject the application – Revisional Court not bound to interfere merely because any of the three conditions, as laid down in Section 115 exercise of such power, is satisfied – It must bear in mind, inter alia, whether it would be appropriate to exercise such power – Where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier – Where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order rejecting on merits a review of that decree – proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed – Revision of respondent against rejection of review of appealable decree ought not have been entertained by High Court – Appeal allowed.

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**Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors. [2023 (5) CTC 60]**

**Date of Judgment: 28.04.2023**

Civil - Non-rejection of plaint - Challenge thereto - Order VII Rule XI of Code of Civil Procedure, 1908 (CPC) - Original Defendant Nos. 9 and 10 have preferred the present appeal feeling aggrieved with the impugned judgment passed by the High Court, by which, the High Court has dismissed the said revision petition and has affirmed the order passed by the learned Trial Court dismissing/rejecting the application submitted by the Appellants herein - original Defendant Nos. 9 and 10 under Order VII Rule XI of Code of Civil Procedure - Whether plaint ought to have been rejected being vexatious? - Order 7, Rule 11 Rejection of Plaint – Suit barred by limitation – Suit instituted for Declaration of Title and Cancellation of Document – Suit essentially laid on cause of action that there was an error in Partition Deed of year 1953 – Plaintiff pleaded that subsequent Sale Deeds and other instruments executed based upon Partition Deed are all invalid – Suit instituted seeking cancellation of subsequent Deed without challenging Partition Deed executed in the year 1953– Plaintiff attempted to get rid of limitation by creating illusory cause of action limitation having been instituted after lapse of 61 years – Held, The plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting – In result, the application submitted by the Appellants - original Defendant Nos. 9 and 10 to reject the plaint in exercise of powers Under Order VII Rule XI(a) and (d) of the CPC is allowed and consequently, the plaint of Civil Suit is ordered to be rejected. - Appeal allowed.

**SUPREME COURT – CRIMINAL CASES****Chennupati Kranthi Kumar Vs. The State of Andhra Pradesh & Ors. [2023  
Cri. L. J. 3944]****Date of Judgment: 25.07.2023**

**Criminal Procedure Code** Sections 91, 104, 102 – Custody of passport – Taken by police in exercise of powers under section 91 – Imposition of conditions for release of – Validity – Criminal case was filed against appellant by his wife – Exercise of calling upon appellant to submit his passport in relation to said criminal case by police under section 91 of Cr.P.C was not legal – Passport was neither impounded in exercise of power under section 10 of Passport Act nor seized under Section 102 of Cr.P.C – Thus, appellant was entitled to return of passport as its retention was unauthorized – High Court directed return of passport subject to deposit to ensure his attendance at trial and he was not aggrieved by the direction – However, imposition of second condition of returning passports of his son and wife was not supported by law as he did not possess the same – Condition imposed on appellant to return passports of his son and wife, set aside – Directions given to wife to apply for re-issuance of passport and appellant was directed to cooperate by supplying required documents.

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**Jitendra Kumar Rode Vs. Union of India [2023 (4) MLJ (CrI) 45 SC]****Date of Judgment: 24.04.2023**

**Non-Availability of Trial Court Records** – Constitution of India, 1950, Article 21 – Code of Criminal Procedure, 1973, Section 385(2) – High Court upheld conviction of Appellant/Public servant by Trial Court for receiving bribe, hence this appeal – Whether, in the absence of records of Court of Trial, the Appellate Court could have upheld the conviction and enhanced the quantum of fine – Whether given the language employed under Section 385 of Code, present situation constitutes violation of accused's fundamental rights under Article 21 of the Constitution – Held, protection of rights under Article 21 entails protection of liberty from any restriction thereupon in the absence of fair legal procedure – Fair legal procedure includes opportunity for person filing an appeal to question the conclusions drawn by trial court – Same can only be done when record is available with Court of Appeal and that is the mandate of Section 385 of the Code – Non-compliance with the mandate of the section, in certain cases contingent upon specific facts and circumstances of the case, would result in a violation of Article 21 of Constitution – Language of Section 385 shows that Court sitting in appeal governed thereby was required to call for the records of the case from the concerned Court below – Same is an obligation, power coupled with a duty, and only after the perusal of such records would an appeal be decide – Appeal allowed.

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**Peethambaran Vs. State of Kerala & Anr. [2023 (4)MLJ (Cri) 36 SC]**

**Date of Judgment: 03.05.2023**

**Powers of High Court** – Code of Criminal Procedure, 1973, Section 482 – Indian Penal Code, 1860, Section 420 – Appellant challenged order of High Court on ground that re–investigation was ordered, in violation of procedure – Ingredients of section 420 of IPC was not met therefore High Court erred in not quashing proceedings subject of petition under section 482 – Whether High Court erred in not quashing proceedings in exercise of power under section 482 Cr.P.C and District Police Chief, could have ordered further investigation pursuant to which second final report was filed – Held, as clear from FR II that Inspector of Police, conducted further investigation as per order passed by police officer and not by any duly empowered judicial officer – Order from District Police Chief was not same as order issued by concerned Magistrate – Requirement of permission for further investigation was never taken, granted or ordered, consequently, FR–II was without basis – Threshold of Section 420 was not crossed, constituting offence, with just one need satisfied merely making comments to demonstrate dishonest intent or falsehood – Further inquiry could not have been ordered by District Police Chief since relevant Magistrate or higher court, not investigating agency, had power to do so – Order passed by High Court, set aside – Appeal allowed.

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**Santhosh @ Bhure Vs. State (G.N.C.T.) of Delhi [2023 (4) MLJ (Cri) 1 SC]****Date of Judgment: 28.04.2023**

Circumstantial Evidence – Indian Penal Code, 1860, Sections 302 and 34 – Indian Evidence Act, 1872, Sections 25, 26 and 106 – Appellants S and N, convicted for offence of murder by Trial Court – On appeal, High Court allowed appeal of accused-N and dismissed appeal of accused-S, hence these appeals Appellant-S and State – Whether, prosecution proved circumstances beyond reasonable doubt pointing towards guilt of accused – Held, prosecution failed to lead any evidence that two accused, were present in vicinity, or any time thereafter till recovery of dead body – Mere existence of dead body – in flat rented to Appellant-S was not sufficient reason to support Appellant-S's conviction under section 106 of the Act – Confessional statement of two accused in respect of suicide letter being written by accused-N was concerned, same being made by accused before police was hit by Sections 25 and 26 of Act, 1872 and Section 162 of Code – Disclosure qua suicide letter, was not admissible in evidence because suicide letter was discovered much before disclosures allegedly made on specified date – Other than expert assessment, there was no internal or external evidence to support prosecution's claim that accused-N wrote suicide letter – No reason to draw adverse inference against two accused on account of few days delay in their act of surrender – Circumstances with regard to making of disclosure statements and consequential discoveries/recoveries were not proved beyond reasonable doubt – There was no admissible evidence connecting accused-N with either Appellant-S or deceased – No admissible evidence to show that accused-N resided in that apartment either as co-tenant or sub-tenant thereof. No interference in acquittal of accused-N – Prosecution failed to prove chain of incriminating circumstances as to conclusively point out that in all human probability that it was the two accused or any one of them, and no one else, who had committed murder – Appeal filed by Appellant-S, allowed and Appeal filed by State challenging acquittal of accused N, dismissed – Appeals disposed.

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**HIGH COURT – CIVIL CASES**

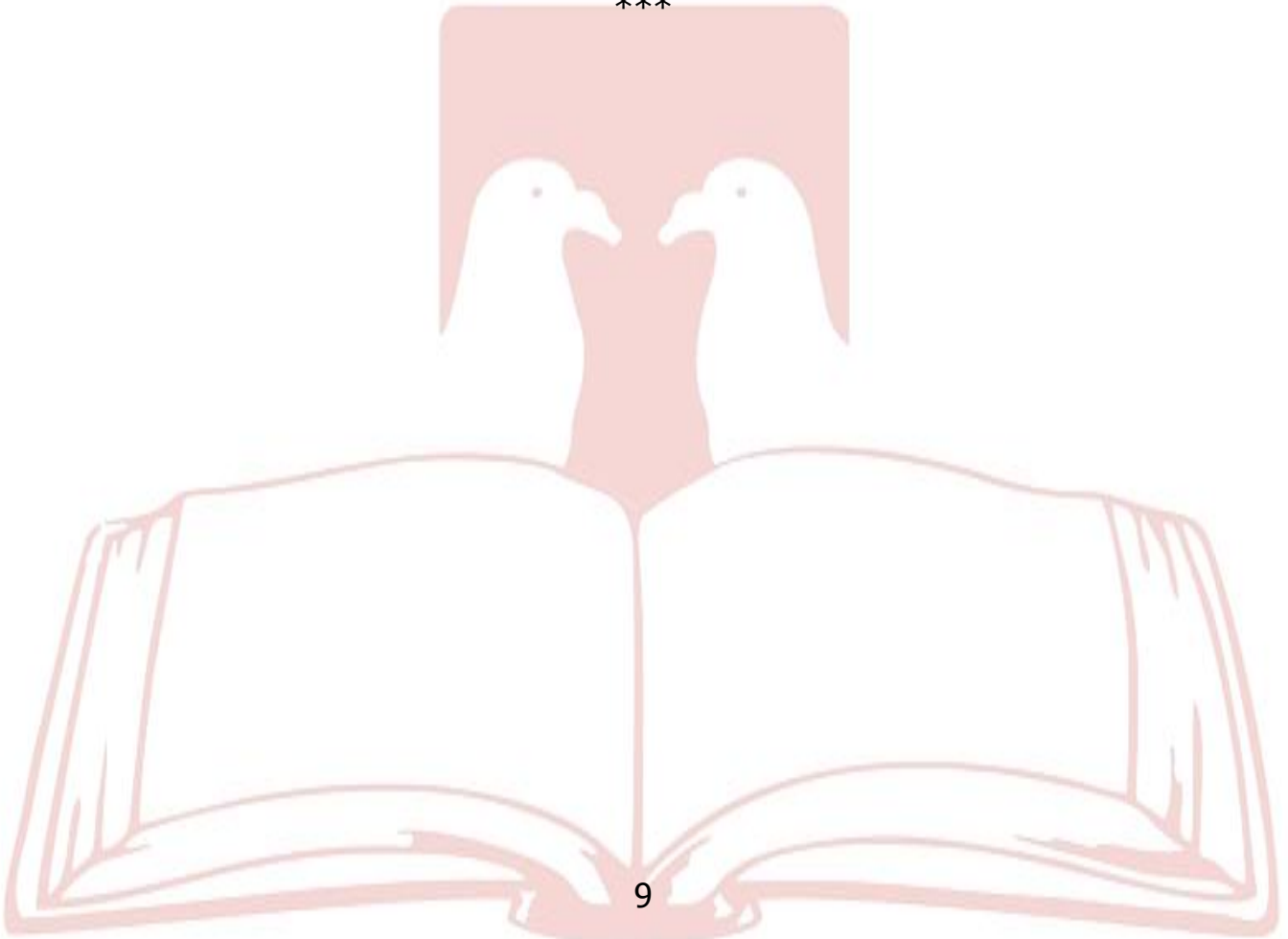
**M/s. Victor Guedes Industria, E.Commercio S.A., A company incorporated under the laws of Portugal And having office at Largo Monterroio Mascarenhas, Portugal Vs. The Deputy Registrar of Trade Marks, Trade Mark Office, Guindy & Anr. [2023 (5) CTC 767]**

**Date of Judgment: 03.03.2023**

**Trade Marks Act, 1999 (47 of 1999), Section 21 – Trade Marks Rules, 2002,**

**Rules 50 & 51** – Adducing Evidence in support of Opposition – Limitation – Evidence in support of Opposition to be filed within two months from date of service of Counter Statement – Extension period can be sought for, but it cannot exceed period of one month – In instant case, evidence sought to be adduced after expiry of Limitation period – Registrar refused to condone delay on ground that he does not have Statutory Power to do so – Whether Registrar has power to condone delay in adducing evidence in support of Opposition – Held, when Statute prescribes maximum condonable period, it is not open to Authorities/ under Statute to extend period – Application of Rule 50(2) is mandatory – W.Ps. dismissed.

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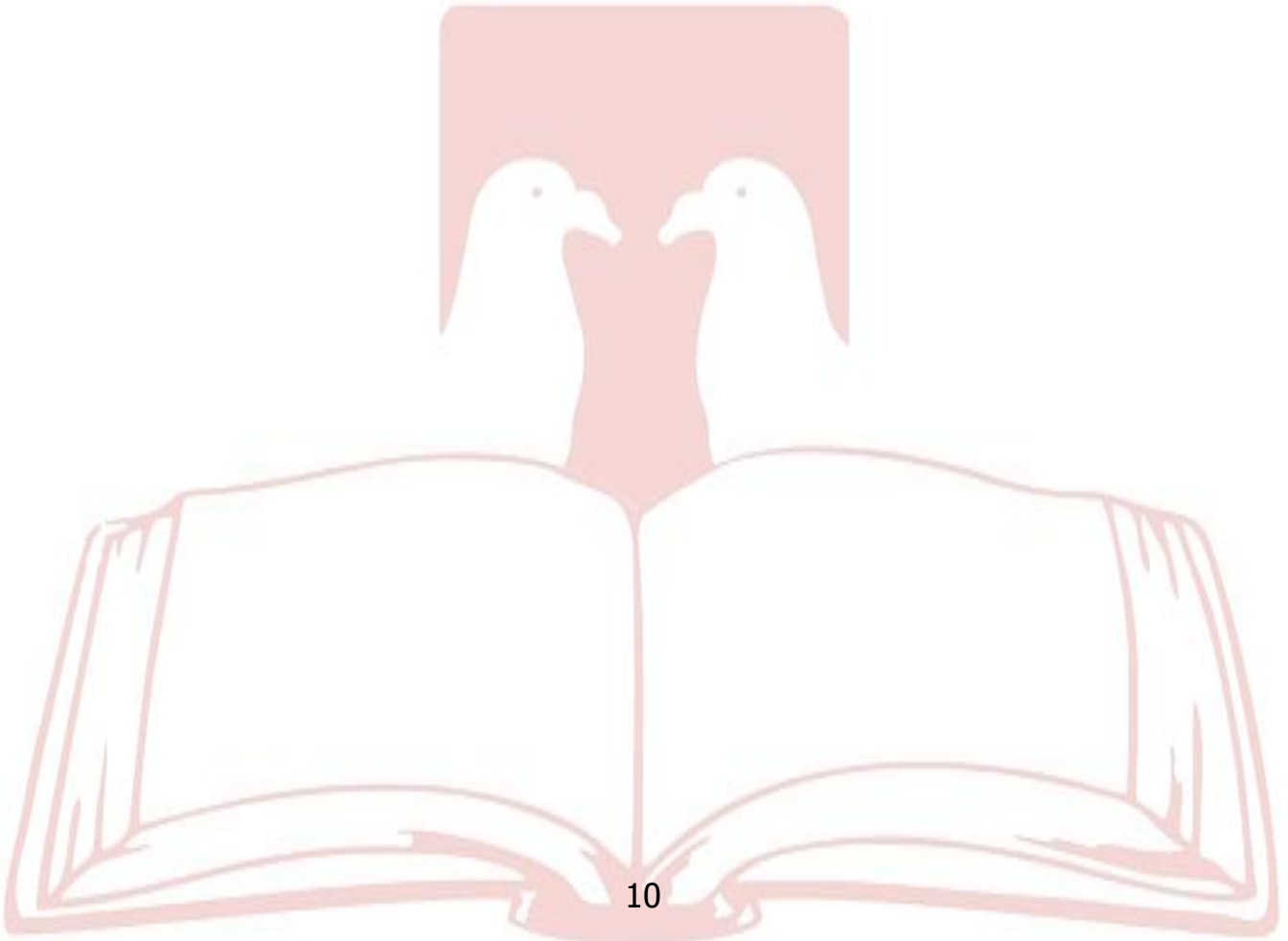


**Akkirajan Vs. Maheswari & Ors. [2023(5) CTC 543]**

**Date of Judgment: 11.10.2022**

**Indian Succession Act, 1925, Section 63(c) – Evidence Act, 1872, Section 68** – Will – Proof of Will – Attestation of Will – Defendants asserted their right to property by marking two Wills – Attesting Witnesses not examined to prove Will – Son of one of Attesting Witnesses and Scribe examined to prove Will – Tenability – Requirement of attestation of Will is Statutory in nature – Attesting Witnesses signed Will without evidencing execution of Will by Testator – Witnesses have not duly attested Will with "*onus probandi*" and "*animo attestandi*" – Examination of Scribe, who drafted Will, does not satisfy requirement of Proof of Will – Second Appeal allowed.

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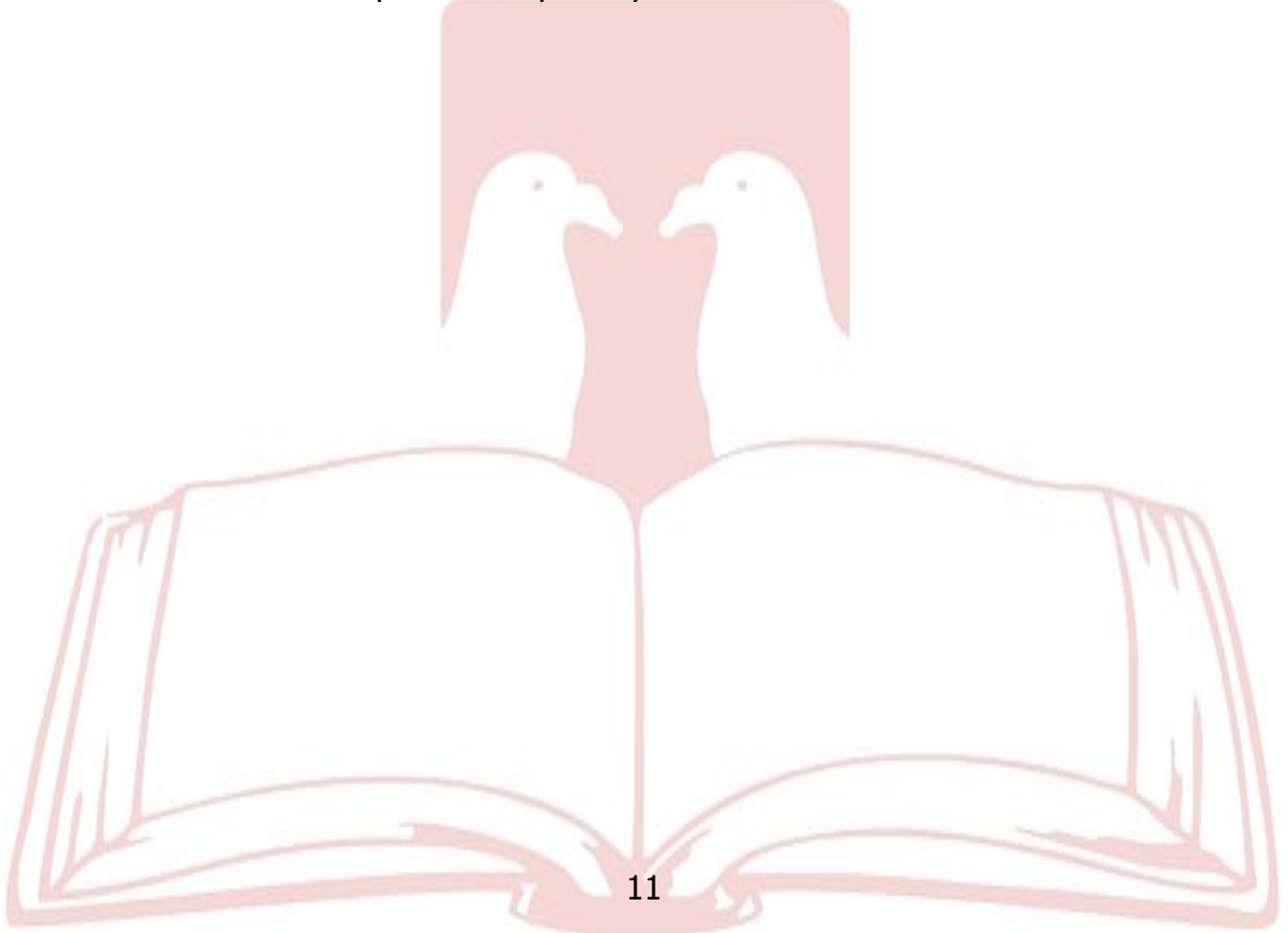




**SSS Enterprises Rep. by its Partner P.Sankar, Walajabath Taluk, Kanchipuram Vs. The District Collector & Ors. [2023 (5) CTC 565]**

**Date of Judgment: 02.02.2022**

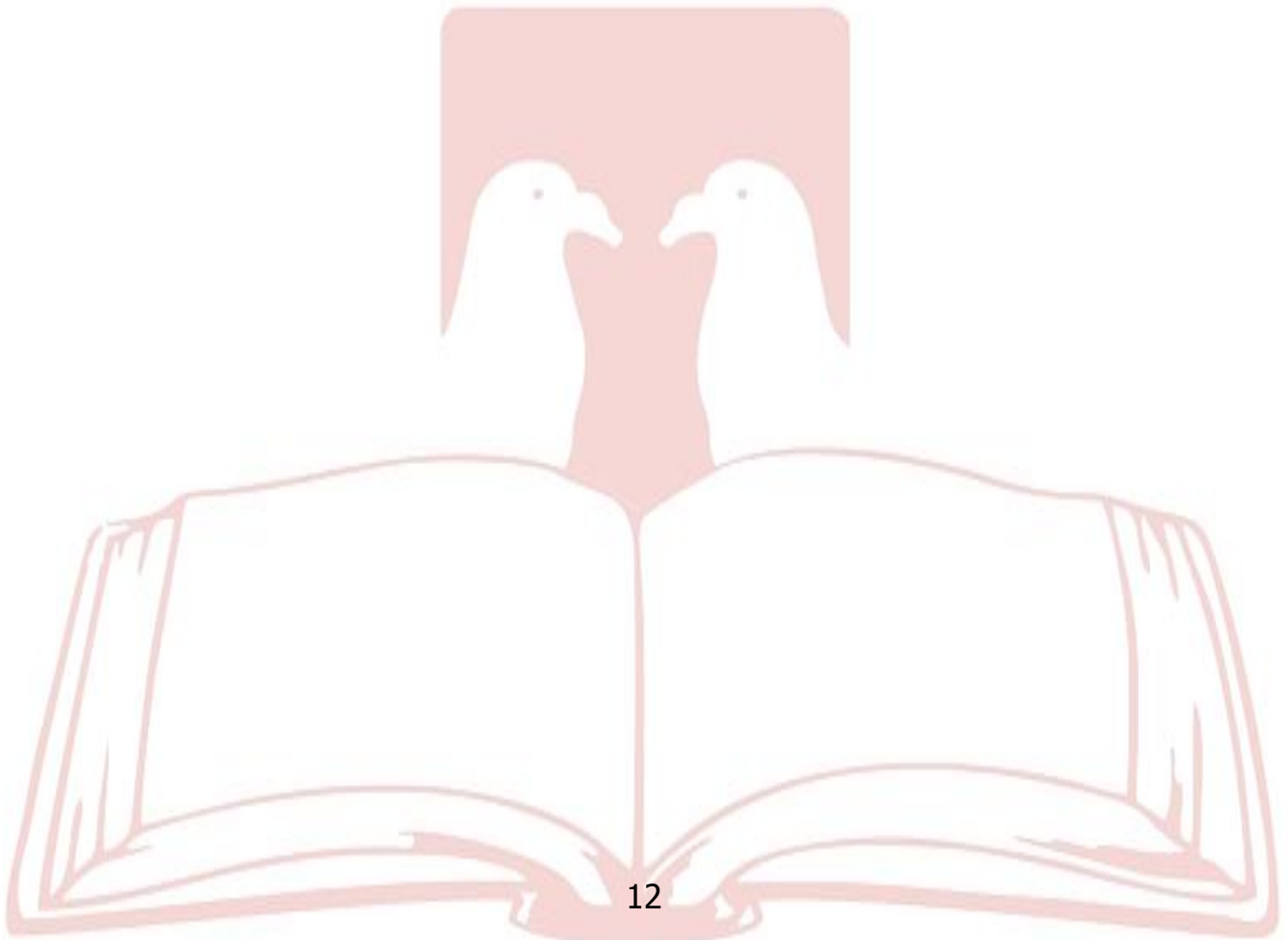
**Tamil Nadu Prevention of Illegal Mining, Transportaion and Minerals Dealers Rules, 2011, Rules 2(xiii) & 2(xv) – Tamil Nadu Minor Mineral Concession Rules, 1959, Rule 36(1)(ii-a)** – Minerals – Stone – Meaning – "M-Sand" – Crushed or Broken Stones – Definition – Rule mandates Minerals should be transported with requisite Transit Pass from Mines Department – Contention of Petitioner that once Rough Stones are crushed, it loses its character of "Mineral" – Whether "M" Sand is mineral – Held, crushing of Rough Stone does not result in production of Sand, but it produces loose component of Rough Stone which is termed as "M-Sand" – Resultant product of crushing of rough stones results in production of "M-Sand", which is not a by-product, but loose form of Mineral itself – "M-Sand" derived from crushing of Rough Stones would fall within definition of "Mineral" – Object of Rule is to prevent illegal and excess movement of crushed Mineral over and above permitted quantity – Writ Petition dismissed.



**B.Rajamani & Ors. Vs. N.Gunasekaran & Anr.[2023 (5) CTC 571]****Date of Judgment : 30.07.2021**

**Code of Civil Procedure, 1908, Order 7, Rule 11** – Rejection of Plaint – Suit property in possession of Revision Petitioners pursuant to Execution Decree in earlier Suit – After four rounds of litigation, present Suit filed for bare injunction against Revision Petitioners, claiming possession on basis of Sale Deed executed *lis pendens* – Parties in both suits are same, litigating under same Title and Schedule of property also same – Held, suit for bare injunction not maintainable, when possession already with Defendants/Revision Petitioners – Suit is abuse of process and does not have any cause of action – If plaint suffers from clever drafting or illusory cause of action, court duty bound to reject plaint – Principles laid down in *Raghawendra Sharan Singh* case, relied on – CRP allowed – Plaint rejected with Cost of Rs. 1,00,000/-.

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**Mrs.N.Kalavathy Vs. Mr.Sriramulu Naidu [deceased]**  
**& Ors. [2023 (5) CTC 598]**

**Date of Judgment : 07.06.2023**

**Hindu Succession Act, 1956, Section 6** – Undivided Coparcenary Interest – Devolution of interest in Coparcenary property – Gift of undivided Coparcenary interest – Necessity of prior Consent of other Coparcener – Gift by Coparcener of his undivided interest in coparcenary property either to stranger or to another Coparcener, without consent of other Coparcener is void.

**Law of Pleadings** – Gift of Coparcenary undivided interest – "Prior Consent" – "Implied Consent" – Meaning – Coparcener settled undivided share in property without prior Consent – Contention of Defendant that Consent of other Coparcener can be inferred by their implied conduct – Held, no specific pleading to infer implied Consent from other Coparceners – Defendant described properties as Self acquired properties in Gift Deed – Plea of Implied Consent of Coparcener cannot be entertained.

**Hindu Law** – Undivided Coparcenary Interest – Settlement of undivided Coparcenary Interest – Contention of Defendant that Settlement Deeds can be treated as conveyance by Renunciation – Legality – Whether Gift/Settlement can be construed as Renunciation – Held, Coparcener gets interest by birth in Coparcenary property – When person acquired an interest by birth, inheritance is known as unobstructed heritage – Share of Member of Coparcenary fluctuates from time to time – Daughters of Hindu Family have been given unobstructed heritage and their entitlement to get share by birth does not depend upon any event – Renunciation under Settlement Deeds will not extinguish character of Coparcenary property in absence of any division of Coparcenary interest.

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**HIGH COURT – CRIMINAL CASES****Sengaisamy Vs. State through: The Inspector of Police, Thiruppachethi Police Station, Sivagangai District [2023 L.W. (Cri.) 489]****Date of Judgment : 29.09.2023****I.P.C.**, Sections 141, 148, 149, 302, 307, 341.**Explosive substances Act (1908)**, Sections 3(a), 6, 7, trial of offence, consent of magistrate, need for, sanction, mandatory.

Murder – While A1 and A2 were armed with country bombs each in their hand, A3 and others were holding billhook machete in their hands and had unlawfully assembled for purpose of committing murder – Motive alleged was previous enmity between accused and deceased in connection with illegal sand mining.

When section 7 places a restriction on trial of an offence under Explosive Substances Act without consent of district magistrate, all further investigation against A3 for an offence of abetting under section 6, stand vitiated – prior consent is a mandatory requirement for any investigation and conviction under section 6 cannot be legally sustainable.

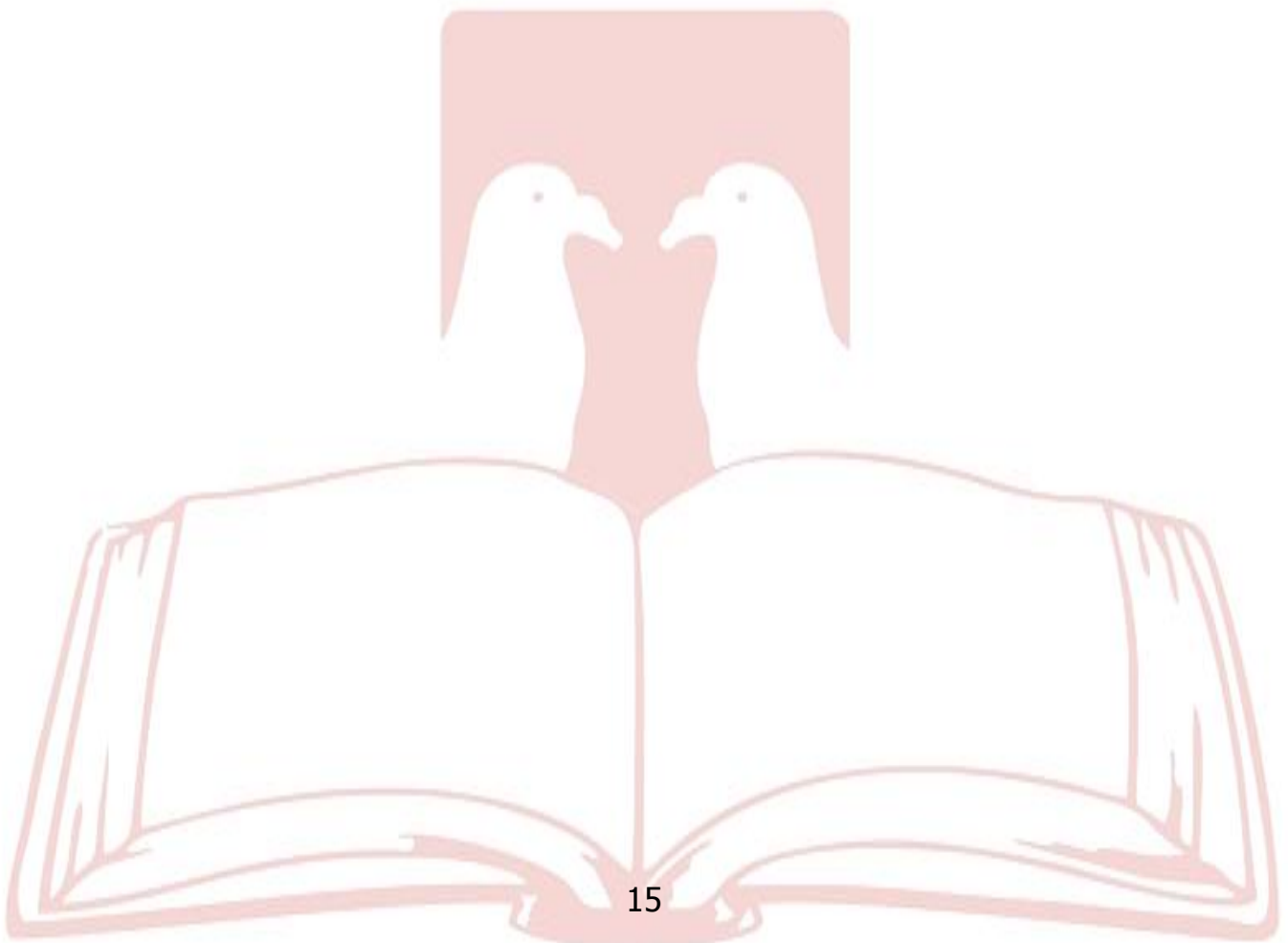
Unlawful Assembly – Conviction of A3 under section 148 and section 149 – whether proper – Requirement of section 141 not met, A3, who is a member among the three, cannot be guilty of an offence committed in prosecution of a common object under section 149 – same principle would also be made applicable for the offences under section 148.

Offence under section 341 – Absence of any specific evidence to implicate A3 for having indulged in wrongful restraint, his conviction for the offence under section 341 cannot be sustained.

In the absence of any specific overt act against A3 of having caused any sought of injury on PW1, A3 did not involve himself in any act with intention or knowledge of attempting to commit the murder of PW1 and ingredients for constituting an offence under section 307 not made out.

Involvement of A3 revealed at earliest stage – A3 committed murder for a previous motive – conviction and sentence modified.

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**Sugunabhai (a) Suguna W/o.Ramasamy Vs. Mathiyazhagan**  
**S/o.Pakkirisami [2023 (2) L.W. (Cri.) 508]**

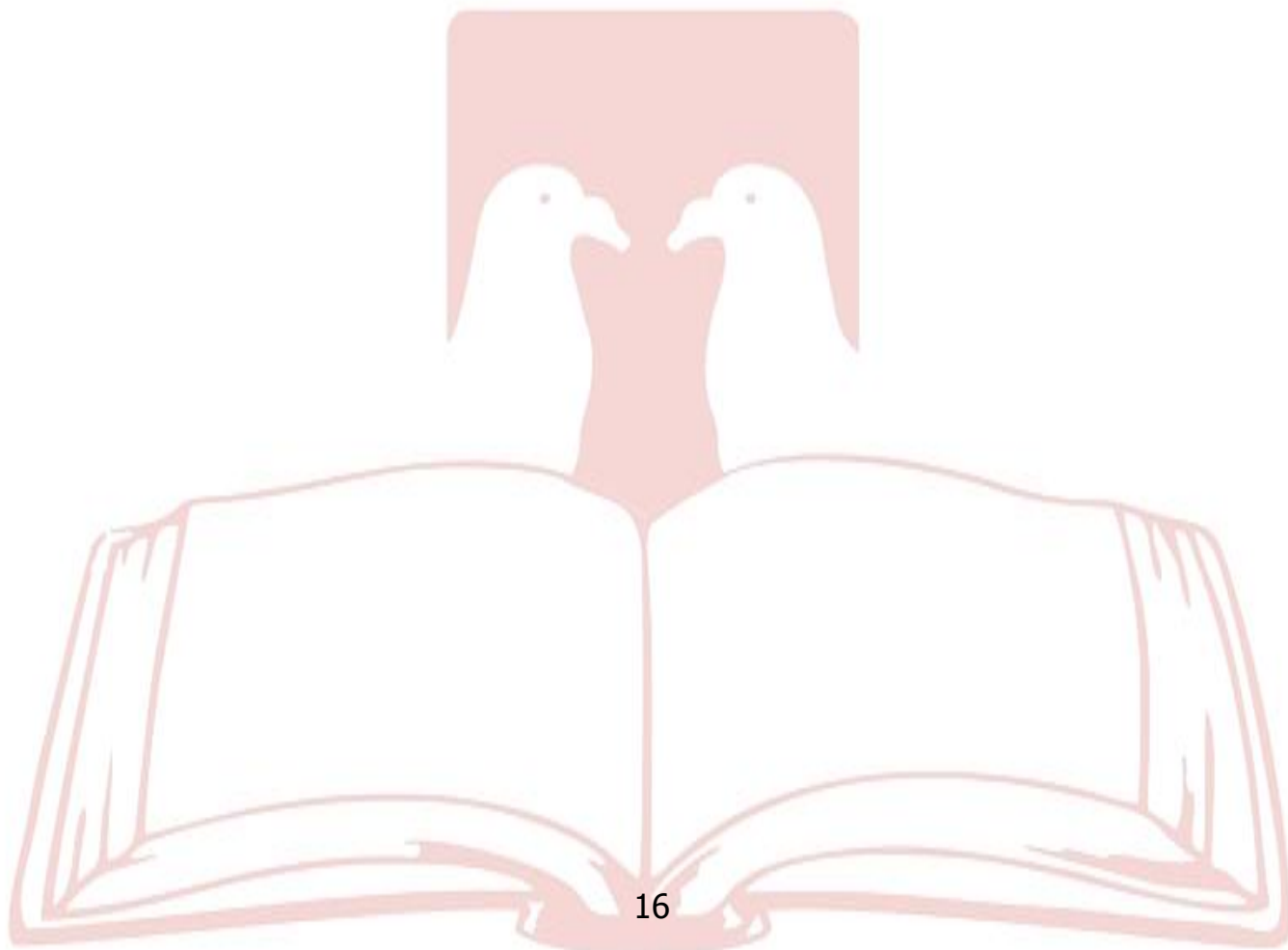
**Date of Judgment : 11.09.2023**

**Negotiable Instruments Act (1881)**, Sections 138, 141.

Petitions filed to quash complaint on ground that the cheque was issued by the partnership firm and the cheque was signed by the petitioner in her capacity as a partner whereas the partnership firm has not been made as an accused.

**Held:** Petitioner shown as an accused in her individual capacity – Complaint is not maintainable - Hence quashed.

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**M. Eswarappan, S/o. Muthusamy Vs. The State represented by Deputy Superintendent of Police, Chennai [2023 (2) L.W. (Cr.) 513]**

**Date of Judgment : 11.09.2023**

**Code of Criminal Procedure.** Section 167(2), bail, grant of.

**Tamil Nadu Protection of Interests of Depositors (TNPID) Act (1997),**  
Section 5.

**I.P.C.,** Section 420.

Petition seeking statutory bail – Whether can be granted, effect of incomplete final report.

**Held:** An incomplete charge sheet without completing the investigation cannot be put against the accused and the indefeasible right under section 167(2) cannot be taken away.

1368 complaints – Completion of investigation can happen only if the investigation is complete with regard to all the 1368 complainants – 161 statement of only 54 complainants have been recorded and the documents have been collected from them – Respondent police had not recorded 161 statement of all complainants – Final report filed cannot be taken to be in conformity with section 173(2) and it is an incomplete final report in the eye of law.

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**A.N. Jegadeesan Vs. S. Manikandan [2023 (2) L.W. (CrI) 517]**

**Negotiable Instruments Act**, Sections 138, 142.

Appeal against acquittal – Accused issued cheque for Rs. 1,15,000/- on 18.08.2011, second cheque for Rs. 1,15,000/- on 25.08.2011, third cheque for Rs. 1,15,000/- on 29.08.2011 and issued 4<sup>th</sup> cheque for Rs. 2,15,000/- on 17.09.2011 – Cheques were presented for collection on 11.11.2011, cheques were returned as 'account closed' on 24.11.2011 and the same was received from the bank on 28.11.2011 – Notice was issued by the appellant on 23.11.2011 and same was received by the accused on 26.12.2011.

Cheque was already presented for collection on 24.08.2011, 27.08.2011, 29.08.2011 and 20.09.2011 and the same was returned as 'account closed' – After presentation of the cheque in the first time, the appellant / complainant came to know about the closure of the account but PW1 again presented the cheque for collection, on 11.11.2011 – He ought to have issued notice immediately after return of the cheque within limitation – Earlier presentation of cheques were suppressed – Complainant failed to issue notice within limitation for first presentation of the cheque – Limitation to issue notice would start after return of cheque at first time since account was closed – There is no cause of action for the case.

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**Maharajothi & Anr. Vs. The Deputy Superintendent of Police, Madurai District & Anr. [2023 (2) LW (Cri.) 524]**

**I.P.C.**, Sections 366(A), 376.

**Scheduled castes and Scheduled tribes (Prevention of Atrocities) Act**, Sections 3(2)(v), 7(1)(a).

**Juvenile Justice (Care and Protection of Children) Act (2015)**, Section 94.

Prosecution failed to prove the age of victim – In the absence of birth certificate and school records ossification test conducted by the medical officer has to be taken into account and thereby court has taken the age of the victim as 18 years – conduct of victim shows that she consented for intercourse – Delay of nine days in First Information Report.

To investigate the case the superintendent of police has not given any written authorization under section 7(1)(a).

Since the victim herself has given consent offence under section 376 against first accused would not arise and against the third accused since victim was not minor on the date of occurrence – Offence under section 366(A) not attracted.

Offences under sections 366(A), 376 and section 3(2)(v) of SC/ST (PoA) Act are separate and distinct offences.

Offence under section 3(2)(v) is based on the main offences under sections 366(A) and 376 – No separate and specific charge framed for the main offences – Framing of Charge not in accordance with law.

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**K.Vellachamy Mahendran Vs. Vimala [2023 (2) L.W. (Cr.) 534]****Date of Judgment : 03.08.2023****Negotiable Instruments Act (1881)**, – Sections 118, 138, 139.**Evidence Act**, Section 120, husband, power agent, whether can depose.

Petitioner/Accused handed over three cheques and when cheques were presented for collection, the same were returned for reason of insufficient funds.

Respondent/Complainant had given power of attorney in favour of her husband– PW1 who in his deposition had stated that he is taking care of the entire business run by his wife (payee) and that he has personal knowledge about the entire business transaction between his wife (respondent/complainant) and the petitioner/accused.

Complaint is maintainable and the respondent/complainant had also proved the legally enforceable debt as against the petitioner – Petitioner had not denied his signatures in the cheques, there is a presumption unless the contrary is proved – Petitioner did not also deny the business transaction which he had.

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**L. Nadhan Vs. State represented by The Deputy Superintendent of Police,  
CBI/SEP Madras [2023 (2) L.W. (Cr.) 561]**

**Date of Judgment : 29.09.2023**

**I.P.C.**, Sections 34, 143, 147, 149, 201, 203, 323, 344, 376, 427. Vachathi village, murder.

**Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, (1989)**, Section 3(i)(x)(xi)(xiii)(xv), 3(ii)(vi) and (vii), Section 4, Vachathi Village, murder.

Vachathi village incident – Case against 269 accused, who were forest officials, revenue officials and police officials respectively, that more than 200 officials assembled unlawfully under the guise of preventing the villagers from smuggling sandal woods in and around vachathi village and restrained the villagers and beat them and raped 18 young ladies and also caused damages to their properties, who belong to SC/ST community.

Contention that investigating officer not competent officer to conduct investigation, which is violation of mandatory provisions under the SC/ST Act – Since offence involved is under SC/ST Act officials not less than a rank of DSP alone should conduct investigation.

SC/ST rules came into force only on 31.03.1995 – Case was registered on 20.03.1995 – Contention regarding competency of PW75 investigating officer is not sustainable – Whether prior sanction of prosecution necessary – Sanction of prosecution is not necessary – Allegations are not while discharging the official duty.

It was contended that offence under section 147 not attracted – There was no charge under section 146 and prosecution has not proved common intention to form unlawful assembly.

In this case since smuggling of sandal wood at Chitheri hills, there was a plan for mass raid and large number of Vachathi villagers were involved in smuggling of sandal wood – Whenever the appellants went for raid, the smugglers escaped and had hidden in the forest, officials could not secure them – They thought entire Vachathi villagers prevented and attacked the officials together – To teach a lesson, officials dragged the villagers and gathered them under a banyan tree – Officials selectively choose 18 young girls and raped – Act committed by officers are not coming under the purview of official duty – They deviated from their official duty and gathered in an unlawful assembly and committed the offence under sections 147 and 149.

Non production of community certificate may not be fatal to the case.

Test identification parade was conducted by the Chief Judicial Magistrate.

Non-mentioning atrocities during remand before the Magistrate, may not be a ground to disbelieve.

Considering peculiar nature of case, though case was not registered immediately and started investigation only after 3 years of the occurrence and trial was conducted after 10 years, which was inevitable, those are not material contradictions.

Accused have committed offence – Government of Tamil Nadu is directed to pay Rs. 10 Lakhs immediately to each of the victims directly to their accounts.

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**Mariappan Vs. The Inspector of Police, All Women Police Station,  
Rajapalayam, Virudhunagar District [2023 (2) L.W. (Cri.) 596]**

**Date of Judgment : 08.09.2023**

**Criminal Procedure Code**, Sections 51, 53, 54, 164–5(A).

**Protection of Children from Sexual Offences (POCSO) Act (2012)**, Sections 5,6,29,30.

**Evidence Act**, Section 6 "Res Gestae", Sections 53, 53A, 54.

**I.P.C.**, Sections 328, 366, 506(i).

Case that accused had committed penetrative sexual assault on victim girl thrice – PW–2 has nowhere whispered that she had witnessed the commission of penetrative sexual assault by the accused on her or she was conscious enough to understand that such an offence was committed on her.

PW–2 would say that accused had informed her that he had intercourse with her on that night – Such admission immediately after the occurrence can be admitted in evidence as *res gestae* under section 6.

Principles applicable in POCSO Act for drawing presumption under sections 29 and 30 – Foundational facts required to prove, what are, scope of.

When the accused has taken a specific defence, that he was falsely implicated in the case, evidence with regard to the conduct and character of the victim becomes relevant – PW2 and PW3 brother had drinking habits.

PW2 and child born to her and accused were subjected to DNA analysis test and a report was received, concluding that accused is excluded from being the father of the female child born to the victim girl PW2 – Prosecution failed to prove third and main foundational fact that accused committed penetrative sexual assault on the victim – Drawing of presumption does not arise.

Criminal trial – Marking of statements – Procedure – Practice of marking the entire statements under section 164 Cr.P.C by the Criminal Court is on the rise – Scope and Evidentiary value of the statement recorded under section 164 – To stop the practice of marking the entire statements – Criminal Court should permit only to mark the particular portion of the statement recorded under section 164 either for corroboration or for contradiction – Statement under section 164 cannot be considered as the evidence of the maker of the statement, but as per the amended provision under section 164(5–A), the statement recorded from a person against whom the sexual offence was committed, can be considered as their chief examination provided the conditions in section 164(5–A)(a) and (b) are satisfied – Even if satisfied, the trial court cannot mark the entire statement of the victim, but statement has to be treated as chief examination.

Neither prosecution nor defence has made attempt to mark any specific portion for corroborating or for contradicting the evidence given by the author of the statements.

Sections 53, 53(A) and 54 Cr.P.C deal with examination of the accused – Prosecution has not taken any steps for conducting potency test for the accused, despite charging him for the offence of penetrative sexual assault.

Inordinate delay in lodging the complaint fixing accused belatedly, non–conducting of potency test and the negative DNA report create suspicion in prosecution case.

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**Rajesh Vs. The Inspector of Police, All Women Police Station, Ulundurpet  
Villupuram District [2023 (2) L.W. (Cri.) 619]**

**Date of Judgment : 21.09.2023**

**I.P.C.**, Sections 90, 366, 375, 376, 417.

PW1 and accused were known to each other and were in relationship for 2 1/2 years – P.W.1 had eloped with accused on the same day when she was allegedly raped by the accused – It raises a doubt as to whether such an incident happened – It is clear that she had consented for intimacy of sex and it was not without her approval.

Doctor did not find any injury to suggest that accused forced himself upon her – Couple had sex on many occasions.

Delay in lodging complaint and registration of FIR.

No misconception of facts to construe that there was no consent – PW1, a major, herself admitted that she went along with the accused on her own, consented for sex and did not insist him to marry her – Offences are not made out under sections 366, 376 and 417.

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**R. Sriramajayam Vs. The State Rep.by the Inspector of Police, All Women Police Station, Tirukoilur, Villupuram District. [2023 (2) LW (CrI.) 634]**

**Date of Judgment : 04.09.2023**

**I.P.C.**, Sections 312, 376, 417.

Whether sexual intercourse with prosecutrix by accused is on a false 'promise of marriage' and refusing to marry, is cheating or not?

Accused in his own commitment towards PW1 has convinced his family members and as a 25 year old boy, having a medical qualification went to the house of PW1 with a marriage proposal along with elders – PW1 refused, it cannot be termed as he cheated her.

If there are materials to show that at the time of sharing the bed, the accused did not have the intention to marry the victim and he made false promise, then the offence under section 417 is made out.

Had the accused had no intention to marry, he could not have gone to her house – Section 417 IPC not made out.

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**G.Ramakrishnan Vs. State by The Inspector of Police, Vigilance and Anti Corruption Wing, Nagapattinam [2023 (2) LW (Cri.) 640]**

**Date of Judgment : 14.09.2023**

**Criminal Procedure Code**, Section 311, power to recall.

Petition to recall – Petitioner who exercised his right of cross examining the witnesses, if unable to place before the court that truth could not be unearthed and same has to be done for further examination of witnesses, the discretionary power under section 311 cannot be exercised un judiciously – If the application to recall witnesses is bereft of necessary details, such applications ought to be dismissed.

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