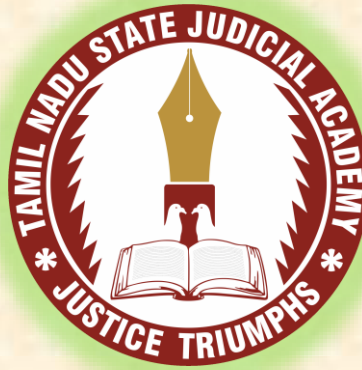


TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVI — PART 09 — SEPTEMBER 2021 ****

COMPENDIUM OF CASE LAWS



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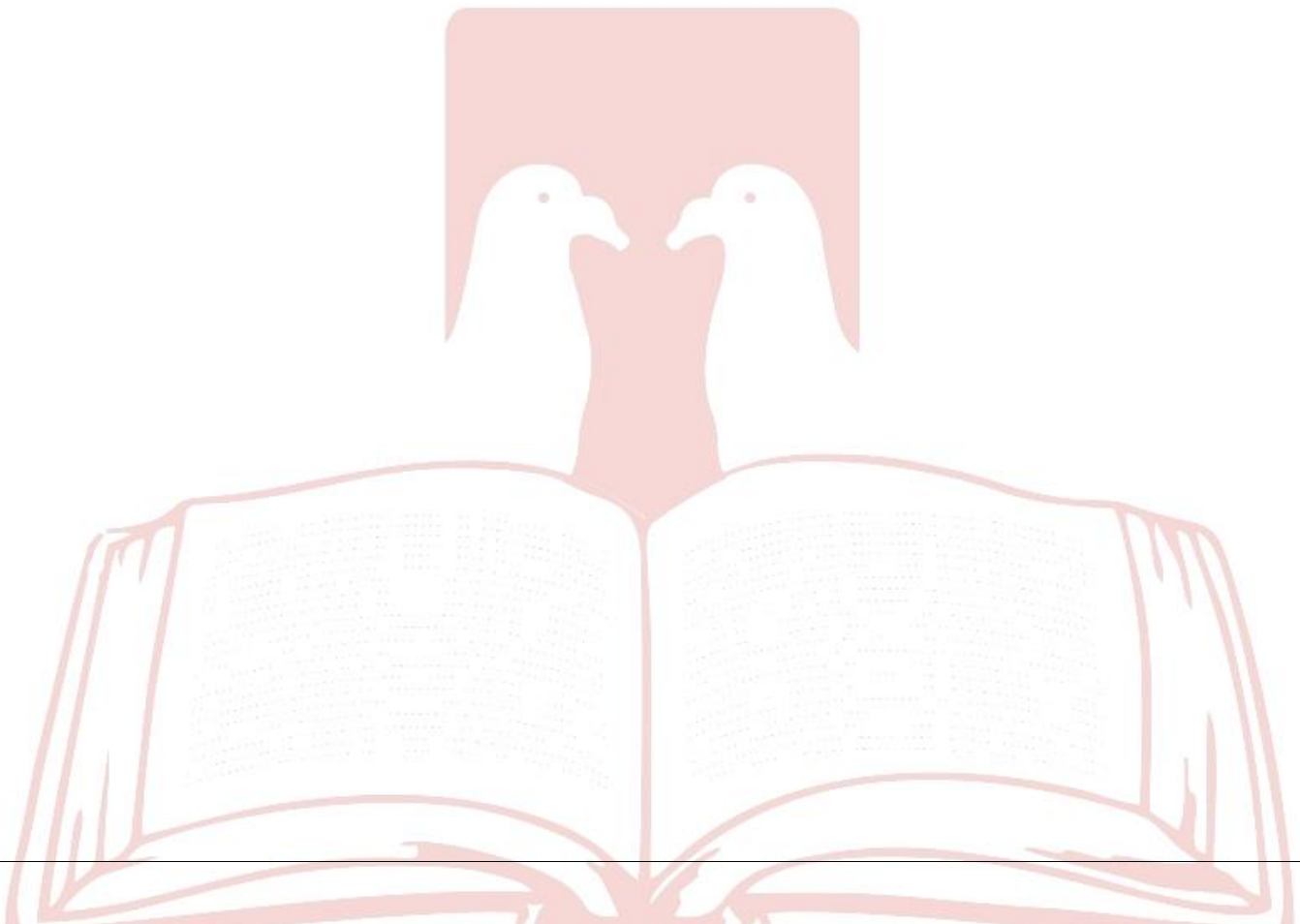


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7	<u>Rangarajan Narsimhan</u> <u>Vs.</u> <u>The Principal Secretary, Tourism,</u> <u>Culture & Religious Endowments, &</u> <u>Anr.</u>	W.P.No.18418 of 2021	03-09-2021
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9	<u>S. Venkatesan</u> <u>Vs.</u> <u>Minister of State for Home Affairs,</u> <u>Government of India</u>	W.P.(MD).No.17006 of 2020	19-08-2021
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3	<u>High Court of Madras</u> <u>Vs.</u> <u>B. Sathish Kumar & Ors.</u>	Suo Motu (Crl.) Contempt Petition No.929 of 2020	27-08-2021
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6	<u>M/s. True Value Homes India Pvt. Ltd. & Anr.</u> <u>Vs.</u> <u>The Tamil Nadu Pollution Control Board</u>	Crl.O.P.No.7750 of 2021	16-08-2021
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9	<u>Shurbir Singh, I.A.S., The Secretary to Government (Excise), Govt. of Puducherry & Ors. Vs. V. Gomathi</u>	Cont.A.No.3 of 2021	09-09-2021
10	<u>Vadivelu Vs. State Rep. by the Inspector of Police, Thondi Police Station, Ramanathapuram District</u>	CRL.A (MD) No.277 of 2018	24-08-2021

SUPREME COURT - CIVIL CASES**Bhupendra Ramdhan Pawar Vs. Vidarbha Irrigation Development Corporation, Nagpur & Ors. Etc. [Civil Appeal No(s). 5611, 5612 of 2021]****Date of Judgment: 09-09-2021****Valuation — Land Acquisition — Trees — Determination of Value of Land**

The Hon'ble Supreme Court while deciding a Civil Appeal held that, "If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise", and thus partly allowed the Appeal.

See Also

- Ambya Kalya Mhatre (Dead) through LRs & Ors. Vs. State of Maharashtra, 2011(9) SCC 325

**Common Cause (A Registered Society) Vs. Union of India & Ors. [Writ
Petition (Civil) No. 1374 of 2020]**
Date of Judgment: 08-09-2021

Section 25 — Central Vigilance Commission Act, 2003 [CVC Act] — Section 21 of the
General Clauses Act, 1897 — Extension of Tenure

The Hon'ble Supreme Court decided a Civil Writ Petition on the issue whether there can be extension of tenure of a person who has been appointed as a Director of Enforcement for a period of two years and who has attained the age of superannuation in the interregnum i.e., before the expiry of two years. The Principal Special Director in the Directorate of Enforcement was appointed as Director of Enforcement for a period of two years from the date of his assumption of charge of the post or until further orders, whichever is earlier. By an office order dated 13.11.2020, the President of India approved the modification of the order dated 19.11.2018, by amending the period of appointment from two years to three years. The grievance of the Petitioner is that the extension of tenure of the second Respondent to three years is contrary to Section 25 of the CVC Act. The Supreme Court held that, "Any interpretation contrary to the plain words of a statute would result in rewriting the statute which is not permissible. ...Section 25 (f) of the CVC Act has to be read as the tenure of office of the Director of Enforcement is for a minimum period of two years. There is no proscription on the Government to appoint a Director of Enforcement beyond a period of two years.... As the tenure of appointment of Director of Enforcement is not a maximum period of two years, a person can be appointed as Director of Enforcement for a period of more than two years....". The Writ Petition was thus dismissed.

**Estate Officer & Anr. Vs. Charanjit Kaur [Civil Appeal No. 4964 of 2021
(Arising out of SLP (Civil) No. 5051 of 2018)]**
Date of Judgment: 07-09-2021

Consumer Complaint — Deficiency in Service — Transfer of Title of Immovable Property — Consumer Protection Act — Transfer of Property Act

The Hon'ble Supreme Court while deciding a Civil Appeal held that, "In terms of Section 14(e) of the Consumer Act, the District Forum can inter-alia direct removal of deficiency in the services. The deficiency in service however does not include the transfer of title in favour of the allottee who was earlier granted leasehold rights. ...The expression 'service' includes housing construction and not allotment of a site or a plot...the consumer fora under the Act would not have jurisdiction to entertain the consumer complaints on the ground of deficiency in service related to transfer of title of the immovable property. The difficult and near impossible procedure leads to arbitrary and discriminatory action by the officials of the Estate Office."

The Supreme Court directed the Administration to constitute a Committee which may include a Member of Parliament, an architect, an advocate, who is or has represented Chandigarh Administration before the High Court, two representatives of the Municipal Corporation being representatives of the citizens of Chandigarh, apart from such officers which the Administration may think fit, so as to review and streamline the processes of sanction of mutation, grant of occupancy certificate, no-objection certificate and other citizen-centric requirements including calculation of unearned profit under the 1973 Rules or under 2007 Rules.

See also

- Amritpal Singh Vs. Chandigarh Administration, 2012 SCC OnLine P&H 9310
- Dheera Singh Vs. U.T. Chandigarh Admn. & Ors., 2012 SCC OnLine P&H 21473

Pichra Warg Kalyan Mahasabha Haryana (Regd.) & Anr. Vs. The State of Haryana & Anr. [Writ Petition (Civil) No. 60 of 2019]
Date of Judgment: 24-08-2021

Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 — Articles 14, 15 and 16, Constitution of India — Creamy Layer

The Hon'ble Supreme Court decided on a Civil Writ Petition seeking to quash the notifications issued by the State Government specifying the criteria for exclusion of 'creamy layer' within the backward classes as arbitrary and violative of Articles 14, 15 and 16 of the Constitution of India. The Supreme Court observed that, "...persons from backward classes who occupied posts in higher services like IAS, IPS and All India Services had reached a higher level of social advancement and economic status and therefore, were not entitled to be treated as backward. Such persons were to be treated as 'creamy layer' without any further inquiry. Likewise, people with sufficient income who were in a position to provide employment to others should also be taken to have reached a higher social status and therefore, should be treated as outside the backward class. Similarly, persons from backward classes who had higher agricultural holdings or were receiving income from properties, beyond a prescribed limit, do not deserve the benefit of reservation. The above-mentioned categories were necessarily to be excluded from backward classes...".

The Supreme Court held that, "in spite of Section 5(2) of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 making it mandatory for identification and exclusion of 'creamy layer' to be on the basis of social, economic and other relevant factors, the State of Haryana had sought to determine 'creamy layer' from backward classes solely on the basis of economic criterion and had committed a grave error in doing so". Thus, the Supreme Court set aside the notifications and directed the State Government to issue fresh notice following the principles laid down by the Apex Court in *Indra Sawhney-I*.

**Union of India & Ors. Vs. M/s. Puna Hinda [Civil Appeal No. 4981 of 2021
(Arising out of SLP (Civil) No. 11882 of 2018)]**
Date of Judgment: 06-09-2021

Writ Court — Contract — Private Law

The Hon'ble Supreme Court decided on a Civil Appeal arising from a notice inviting tender for construction and improvement of road work order. The work order had provided details of the work to be carried out and the estimated amount payable for each work with rate of each work. The work was divided into three parts, namely, [1] Formation work, which included jungle clearance etc.; [2] Permanent work which included excavation in trenches, cement concrete; and [3] Surface work which included preparation of subgrade in soil mix boulder, laying, spreading and compacting graded stone aggregate. The measurement process for payment was specified in the General Conditions of Contract.

The Supreme Court observed that "the dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. ...in the absence of any acceptance of Joint Survey Report by the competent authority, no right would accrue to the Writ Petitioner only because measurements cannot be undertaken after passage of time. ...the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the Writ Petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads."

The Supreme Court allowed the Appeal and held that, "the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties".

See also

- Joshi Technologies International Inc Vs. Union of India & Ors. (2015) 7 SCC 728
- Kerala State Electricity Board & Anr. Vs. Kurien E. Kalathil & Ors. (2000) 6 SCC 293

SUPREME COURT - CRIMINAL CASES

Harjit Singh Vs. Inderpreet Singh @ Inder & Anr. [Criminal Appeal No. 883 of 2021 (Arising from S.L.P. (Criminal) No.3739/2021)]

Date of Judgment: 24-08-2021

Criminal Procedure — Judgment — Key Points on writing a Judgment

The Hon'ble Supreme Court while deciding upon a Criminal Appeal, considered what a 'judgment' is and observed that, "Judgment" means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. "Judgment" is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. The term "judgment" is loosely used as judicial opinion or decision....

The Supreme Court further observed that, "It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides... The important elements of a judgment are: **a.** Caption **b.** Case number and citation **c.** Statement of Material (relevant) Facts **d.** Legal Issues or Questions **e.** Summary of arguments by both the parties **f.** Application of law, deliberation to reach at a decision, and **g.** The Ratio or Final conclusive verdict.

The Supreme Court observed that "judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution." and expressed its concern that, "it is desirable that the judgment should have clarity, both on facts and law and on submissions, findings, reasoning and the ultimate relief granted." The Appeal was allowed.

Lala @ Anurag Prakash Aasre Vs. State of Maharashtra [Criminal Appeal No. 540/2018]

Date of Judgment: 24-08-2021

Conducting Test Identification Parade [TIP] — when necessary

The Hon'ble Supreme Court in deciding a Criminal Appeal filed against the judgement upholding the conviction for offences under Sections 302, 120B, 147, 148 and 324 of IPC, referred to the Draft Rules of Criminal Practice, 2021, and observed that, "The practice of translating any relevant document must not differ so significantly across forums and submissions by parties to cast severe aspersions on evidence, which may otherwise be not warranted. Idiosyncrasies of colloquial terms, used for naming an accused, could well be the difference between conviction and acquittal of an Accused."

The Supreme Court dealt with the key issue whether the Appellant was identified as the person wielding the sword who gave the sword blow to the Informant (PW1) and also to the deceased, and observed that, "While it is true that the FIR is silent on the name of the appellant, we cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case."

The Supreme Court deliberated on the nature of, and weightage attached to the evidentiary value of a TIP, by citing the case of *Munshi Singh Gautam Vs. State of M.P. [(2005) 9 SCC 631]*, and agreed with the contention of the State that TIP was unnecessary in the present case as the identity of the appellant was known to the witnesses and was specifically identified by PW1, and PW2 as the person who wielded the sword and inflicted the injuries. The Supreme Court held, "In the face of appellant's such identification by name in the testimony of the eye witnesses, it can in our view, be safely concluded that the failure to conduct the TIP for the appellant will not vitiate his conviction ... the identity of the appellant as one of the attacking group members and his specific role in the assault is established beyond doubt." Appeal was dismissed.

Manjeet Singh Vs. State of Haryana [Criminal Appeal No. 875 of 2021]
Date of Judgment: 24-08-2021

Section 319, Cr.P.C — power to summon private respondents — Evidence of injured witness

The Hon'ble Supreme Court in deciding a Criminal Appeal, referred to the decisions of the Apex Court and observed that "the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly". Regarding the exercise of powers under Section 319 CrPC, the Supreme Court observed that "the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319 CrPC. At the stage of exercising the powers under Section 319 CrPC, the Court is not required to appreciate and/or enter on the merits of the allegations of the case. ... The High Court has failed to appreciate the fact that, for attracting the offence under Section 149 IPC, only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial.

The Supreme Court held that "powers under Section 319 CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage. ... This Court in *Rajesh vs. State of Haryana, (2019) 6 SCC 368*, has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319 CrPC." Thus, the Supreme Court allowed the application seeking to summon the private respondents to face the trial.

See Also

- State of MP Vs. Mansingh (2003) 10 SCC 414
- Abdul Sayeed Vs. State of MP (2010) 10 SCC 259
- State of Uttar Pradesh Vs. Naresh (2011) 4 SCC 324
- Hardeep Singh v. State of Punjab, (2009) 16 SCC 785

Saranya Vs. Bharathi & Anr. [Criminal Appeal No. 873 of 2021]**Date of Judgment: 03-08-2021****Framing charges — Appreciation of evidence at stage of framing charges**

The Hon'ble Supreme Court in deciding a Criminal Appeal referred to its earlier decisions and observed that, "at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that, at this stage the High Court is not required to appreciate the evidence-on-record and consider the allegations on merits, and to find out on the basis of the evidence recorded, the accused charge-sheeted or against whom the charge is framed is likely to be convicted or not."

The Supreme Court held that, "The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all, at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal.", and thus allowed the Appeal.

See Also

- State of Madhya Pradesh v. Deepak (2019) 13 SCC 62
- Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460
- State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198
- Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605

Shakuntala Shukla Vs. State of Uttar Pradesh & Anr. [Criminal Appeal No. 878 of 2021]

Date of Judgment: 07-09-2021

Criminal Procedure — Bail — Factors that must guide the exercise of power to grant bail

The Hon'ble Supreme Court while deciding upon a Criminal Appeal, considered the difference and distinction between 'an application for cancellation of bail' and 'an appeal before Supreme Court challenging the order passed by the appellate court granting bail'. The Supreme Court cited a plethora of decisions and observed that, "...the power of the Appellate Court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail." The Supreme Court further observed that "...the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail.", and that "...the test is whether the order granting bail is perverse, illegal or unjustified.". The Supreme Court allowed the Appeal, and thus set aside the impugned judgment and order passed by the High Court.

See also

- Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
- Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240
- Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118
- Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 4
- State of Maharashtra Vs. Sitaram Popat Vetal, (2004) 7 SCC 521

HIGH COURT - CIVIL CASES**J. Logeswaridas & Anr Vs. Sachin Sandeep & Ors. [S.A.Nos.496 & 497 of 2021]****Date of Judgment: 14-09-2021**

Order XXXII Rule 1 — Code of Civil Procedure 1908 — Settlement Deed — Agreement of Sale — Revenue Records — Consent Deed — Section 123 — Transfer of Property Act

The Hon'ble High Court decided a Second Appeal on the following questions of law:

- [1] When the Settlement deed is accompanied by a Consent Deed contemporaneously executed whereby, the Settles had confirmed that the Settlers would continue to receive rents in respect of the property settled till her life time, whether the same would amount to a conditional settlement giving a right to the Settlor to cancel the Settlement Deeds?
- [2] Whether the mother could act as a guardian and file a suit on behalf of the minors when the father, the natural guardian is very much available?
- [3] Whether prior permission of the Court has to be obtained when the minors are represented by the natural guardian?

The Court held that, "suspension or revocation can be made on the happening of the specified event which does not depend on the Will of the donor. Where a Gift is revocable wholly or partly, on the mere will of the donor it is void either wholly or in part. The Gift also could be revoked in cases where if it was a contract it could be rescinded ...Settlement Deed being a conditional one the same has to be considered in the light of the recitals contained in the deed ...A reading of provision of Order XXXII Rule 1, CPC would indicate that any person can act as a next friend of a minor. The only criteria are that the said person should be of a sound mind and should have attained majority. Further, he must have not any interest contrary to that of the minor.", and dismissed the Appeal.

See Also

- Alavi Vs. Aamana Kutti and others 1984 KLT 61 (NOC)
- Asokan Vs. Lakshmikutty and other 2019 (13) SCC 210
- Grandhi Ramakrishnayya Vs. Grandhi Atchutha Ramayya I.L.R. (1953) Mad. 146
- Namburi Basava Subrahmanyam Vs. Alapati Hymavathi and Others (1996) 9 SCC 388
- Renikuntla Rajamma (D) by legal representatives Vs. K. Sarwanamma 2014 (9) SCC 445
- S.Sarojini Amma Vs. Velayudhan Pillai Sreekumar (2019) 11 Supreme Court Cases 391

K. Senthilkumar Vs. The Principal Secretary to Government of Tamil Nadu, Tourism, Culture and Religious Department & Ors. [W.P.No.18190 of 2021]
Date of Judgment: 15-09-2021

Sections 34 and 78 — Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

The Hon'ble High Court while deciding a Writ Petition on the issue of fraudulent and illegal encroachments of temple properties held that, "The temple property, which is meant for the benefit of the temple, can never be allowed to be encumbered in a different manner... The 'Deity' in the temple is a 'minor' and the Court should be astute to protect the interests of an idol in any litigation. ... "it is the duty of the Court to ensure that the 'Deity' does not suffer thereby." ... The properties of deities, temples and Devaswom Boards, require protection and safeguarding by their Trustees/Archaks/Sebaites/employees. ...It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation...therefore, beyond the private right, a public right is involved in such matters. When a public right is involved and the allegations are far more serious, then the Courts are expected to step-in and deal with such matters sternly and in an appropriate manner, failing which, the High Court is failing in its duty to exercise its Constitutional obligations.... while dealing with the temple properties, Courts at no circumstances be unnecessarily protect the illegal occupants, who are abusing the properties of the temple for their personal and unjust gains...". Thus, the Court rejected the Writ Petition.

M. Ramesh & Ors. Vs. The Chief Secretary Government of Tamil Nadu & Ors.
[WP Nos. 4711 & 4717 of 2019]
Date of Judgment: 06-09-2021

Compensation — Minimum Safeguards and Protection — Tort — Negligence — Statutory and Vicarious Liability

The Hon'ble High Court while deciding on two Writ Petitions on the issue determining the quantum of compensation for a tort, held that, "the quantum of compensation, the amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of *restitution integrum*. ...a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages in difficult cases are normally limited to a sum which can in the circumstances be considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependents, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss. ... in cases of death due to the negligence of others, the tort-feasor has to be made liable to pay compensation to the family of the victim. An unexpected death of one of the members in the family will traumatise the family members besides it will leave a vacuum. In such cases, though the payment of compensation cannot restore the lost lives, it will certainly serve as a balm to the pained hearts.". The Writ Petitions were allowed.

See also

- D. Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, 2000 (III) CTC 24
- M.S. Grewal Vs. Deep Chand Sood, AIR 2001 SC 3660
- Nilabati Behera Vs. State of Orissa, 1993 (2) SCC 746
- R. Saroja Vs. The Chairman, Tamil Nadu Electricity Board, Chennai & Ors., W.P.No.6437 of 1998 dated 16.04.2008
- State of Rajasthan Vs. Vidhyawati, 1962 Supp (2) SCR 989
- Susanta Samanta and others Vs. WBSEB & Ors., AIR 2004 Calcutta 200
- Tamil Nadu Electricity Board Vs. Sumathi, 2000 (4) SCC 543

Madurai Kamaraj University, Represented by its Registrar Vs. Joint Commissioner, Office of the Commissioner of GST and Central Excise
[W.P.(MD)No.20502 of 2019]
Date of Judgment: 16-08-2021

Madurai Kamaraj University Act, 1965 — Service Tax — Finance Act, 1994 — Educational Institutions

The Madurai Bench of the Hon'ble High Court of Madras decided a Writ Petition concerning the issue whether the services rendered by the Petitioner university by granting affiliation and its allied activities, and also by providing shelter in their campus to the service providers like Bank, Post Office, or catering etc., directly beneficial to the students, staff and faculty of the university, are exempted services within the meaning of Section 66-D of the Finance Act, 1994, and also under the Mega Exemption Notification of the year 2012 as amended from time to time.

The Court held that, "the affiliation activity is an integral part of imparting education for any student for getting qualified to get a qualification like degree or diploma.... The college cannot independently function without the affiliation of the university. Therefore, for the purpose of providing the services of education, both the university as well as the college concerned, who get affiliated to the university, cannot be separated...holding or conducting an examination is primarily a job of the university and the colleges affiliated to the university are only facilitators... examinations are not conducted directly by the colleges, it is being conducted by the university, but the facilitator is the college. Therefore, the word "conduct of examination by such institution" means, conduct of examination by the university and the college and not by the college alone. The examination is the examination of the university, for which,... facilitation is given by the college, wherein the examinations are conducted and ultimately, valuation is to be done by the university and marks are awarded and degree is conferred by the university... it is the university, where, the facilitator is the college, where, the examination is being taken place and therefore, the word "conduct of examination", cannot have such a

narrow and pedantic interpretation as has been given by the Advance Ruling Authority.... The word "educational institution", cannot denote only the college affiliated to the university, but, it includes the university. As stated above, without the university, college cannot impart education on its own.... throughout the regime between 2012 and 2017, the educational institution had been provided with the exemption as has been stated in various provisions of the Act as well as the mega notification, followed by the amended notification and during all these periods, these institutions including the universities can very well enjoy the exemption.". The Court thus allowed the Writ Appeal.

P. Krishnan Vs. M. Ramachandran & Anr. [CRP(NPD).No.1441 of 2021 & CMP.No.11291 of 2021]

Date of Judgment: 13-09-2021

Section 16 — Section 34 — Arbitration and Conciliation Act, 1996

The Hon'ble High Court while deciding a Civil Revision Petition against an arbitral award after considering a plethora of decisions reiteratively held that, "challenge to an order dismissing the application filed under Section 16 of the Arbitration and Conciliation Act, 1996 questioning the jurisdiction of the Arbitral Tribunal can be raised only in an application under Section 34 of the Arbitration and Conciliation Act, and exercising the extraordinary power of the High Court under Article 227 of the Constitution of India is not permissible.". Thus, the Court dismissed the Civil Revision Petition.

See Also

- Bhaven Constructions Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., & Ors., 2021 (1) CTC 450
- Deep Industries Ltd. Vs. Oil and Natural Gas Corporation Ltd. & Anr., (2020) 15 SCC 706
- Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, (2010) 8 SCC 329

P. Malligarjunan & Ors. Vs. The Joint Commissioner of Labour & Ors.**[W.A.No.2024 of 2011]****Date of Judgment: 14-09-2021****Workman — Gratuity — Payment of Gratuity Act 1972**

The Hon'ble High Court while deciding on the issue of workmen being entitled to claim gratuity for no-work period, held that, "It is trite law that gratuity cannot be gifted for no work done by the workman and the gratuity is a retiral benefit and it is being granted for the services rendered by the workman. Thus, it is clear that unless and until the workman actually works for a minimum period of 240 days, he is not eligible to be considered for gratuity.", and thus dismissed the Writ Appeal.

Rangarajan Narsimhan Vs. The Principal Secretary, Tourism, Culture & Religious Endowments, & Anr. [W.P.No.18418 of 2021]
Date of Judgment: 03-09-2021

Hindu Religious and Charitable Endowments — Article 25 — Constitution of India

The Hon'ble High Court while deciding a Writ Petition seeking issuance of a Writ of Mandamus forbearing the Respondents from interfering in the religious affairs, and altering the religious practices of Hindu Religious Institutions in any manner, and seeking a further direction to withdraw the Annai Thamizhil Archanai scheme.

The Court found that it would not take a view at variance with that expressed in *V.S. Sivakumar Vs. M. Pitchai Battar, 2008-2-L.W. 236*, wherein it was held that the choice was vested with the devotees to seek for their archanas to be performed at their wishes by chanting mantras either in Tamil or in Sanskrit.

The Court held that, "Judicial discipline commands that when an issue has been decided, unless the circumstances have changed or the decision on the issue is rendered suspect on account of the judgment not taking the applicable law into account or any pronouncement of a superior forum has intervened, the matter may not be revisited.". The Court dismissed the Writ Petition for the reason that the issue raised by the Petitioner was covered by its earlier judgement in the case of *V.S. Sivakumar* which remains binding.

Smt. P. Suman, M/s. Suman Jewellery, Coimbatore Vs. The Commissioner of Income Tax, Central II, Chennai-34 & Anr. [Writ Appeal No.2005 of 2021 & CMP.No.12867 of 2021]

Date of Judgment: 18-08-2021

Assessee — Section 132 — Income Tax Act, 1961 — Income Tax Settlement Commission [ITSC]

The Hon'ble High Court dealt with a Writ Appeal filed by the Assessee, arising from a Writ Petition filed by the Revenue, challenging the Order of the ITSC. The Court considered the view that, "it has to be borne in mind that the proceedings before the ITSC is a special mechanism provided under the Act. Chapter XIXA of the Act deals with settlement of cases. Therefore, the Act itself provides for a mechanism or amnesty to an Assessee, who is undoubtedly a defaulter ...who has been subjected to search and seizure operations, to come before the ITSC, make a full and true disclosure and settle the case by paying taxes and other dues and if the ITSC is satisfied, then, it will be in a position to grant immunity from penalty and prosecution after recovering the tax payable by the Assessee. Therefore, the case has to be examined bearing in mind the fact that the Act itself provides for a mechanism for the defaulting Assessee to approach the ITSC with a view to settle the dispute".

The Court allowed the Writ Appeal and held that, "the assessee was examined qua the aspect of full and true disclosure... while dealing with the aspect as to whether the assessee would be entitled for immunity, the ITSC clearly recorded that the assessee readily agreed to abide by the directions that would be issued by the ITSC and that the direction for further disclosure was not because the assessee accepted any understatement of income, but basically with a view to bring quietus to the matter and in the spirit of settlement....".

S. Venkatesan Vs. Minister of State for Home Affairs, Government of India
[W.P.(MD).No.17006 of 2020]
Date of Judgment: 19-08-2021

Language — Official Languages Act, 1963 — Article 345, 350 — Constitution of India

The Hon'ble High Court while deciding a Writ Petition on the issue of language held that "thrust is to be given to education in mother tongue as that of English language. Knowledge in English is for economic reasons. The knowledge of mother tongue is for expressing one's own expressions in mother tongue. Without understanding anything in mother tongue, one's knowledge will not be completed. The Central Government should continue to use English along with Hindi which can act as a binding force... For information and communication, language is important. A few languages of India are thousands of years old and many are hundreds of years old. For preservation of all languages and for development of the languages, efforts should be taken by the Governments. One could understand the importance of language as the States were reorganized based on languages. Article 350 of the Constitution, is an important Article, with regard to the rights of the citizens to give representations in the languages used in Union or in the States... one is entitled to submit a representation to any Agency or Officer of the Union or the States in any of the languages used in India or in the States. Once a representation is given in English, it is the duty of the Union Government to give a reply in English only which will also be in consonance with the statute, viz., the Official Languages Act.", and thus allowed the Writ Petition.



The Branch Manager, M/s. Iffco-Tokio General Insurance Company Ltd., Vs. Vijayarani & Ors. [C.M.A.(MD).No.728 of 2019]
Date of Judgment: 02-09-2021

Section 173 — Motor Vehicles Act 1988 — Order XLI Rule 22(1) — Civil Procedure Code

The Hon'ble High Court dealt with a Civil Miscellaneous Appeal and Cross Objection against the award and decree passed by the Motor Accident Claims Tribunal. The Court upheld the order of the Tribunal which held that the accident had taken place due to the rash and negligent driving of the driver of the First Respondent, who did not have a valid driving license at the time of the accident. The Court referred to the decision in *Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors., (2018) 2 TN MAC 452*, and held that the 2nd and 3rd Claimants/minor children are entitled to parental consortium and that the 4th and 5th Claimants/parents of the deceased are entitled to filial compensation. The Court further modified the award of the Tribunal and enhanced the compensation.

Relying on the decisions of the Supreme Court which affirmed that "where the driver did not have the valid driving license and there are breach of policy conditions, 'pay and recover', can be ordered in case of third-party risks", the Court directed the Insurance Company to deposit the award amount and thereafter recover the same from the owner of the vehicle by filing an Executive Petition. Thus, the Court dismissed the Civil Miscellaneous Appeal and partly allowed the Cross Objection.

See Also

- National Insurance Co. Ltd. Vs. Swaran Singh [(2004) 3 SCC 297]
- Parminder Singh Vs. New India Assurance Company Ltd. & Ors. [(2019) 7 SCC 217]
- Shamanna & Anr. Vs. Divisional Manager, Oriental Insurance Company Ltd. & Ors. [(2018) 9 SCC 650]

HIGH COURT – CRIMINAL CASES**A. Daniel Vs. The Superintendent of Police, Sivagangai District and Anr. [Crl. O.P. (MD) No. 12309 of 2021]**
Date of Judgment: 26-08-2021**Harassment by police under the guise of investigation — guidelines issued**

The Hon'ble High Court dealt with a Criminal Original Petition praying for a direction against the 2nd Respondent to not harass the Petitioner under the guise of enquiry. The Court observed that numerous petitions were being filed in the High Court complaining of harassment and seeking directions to restrain the police from harassing the persons named in complaint. The Court held that the term 'harassment' has a wide meaning, and issued the following guidelines to the Police:

- a) While summoning any person named in the complaint or any witness to the incident complained of, the police officer shall summon such person through a written notice specifying a particular date and time for appearing before them.
- b) The respondent police is directed to serve notice mentioning the CSR number, date of complaint and the name of the complainant
- c) The police officer shall refrain himself or herself from harassing persons called upon for enquiry/investigation.
- d) The guidelines stipulated for preliminary enquiry or registration of FIR by the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh & Ors [2014 (2) SCC (1)] shall be strictly adhered to.
- e) During the course of enquiry, if it is found that any cognizable offence is made out, the respondents are free to register the First Information Report and this order shall not be a shield for the petitioner against the action taken by the respondent in accordance with law.

See also:
Lalitha Kumari Vs. Government of Uttar Pradesh [2014 (2) SCC 1]

A. Kamali Vs. State Rep. by Inspector of Police, E-1, Mylapore Police Station
[Crl. O.P. No. 21139 of 2017 and Crl. M. P. No. 12484]
Date of Judgment: 15-09-2021

Sections 448, 453 and 294(b) IPC — Trespass — dispute between petitioner and her brother — suit filed by petitioner to declare the settlement deed executed in her brother's favour as null and void — obtained injunction

The Hon'ble High Court dealt with a Criminal Original Petition filed under Section 482, CrPC, wherein the contention was that the Petitioner had trespassed onto the 2nd Respondent's land. The contention of the Petitioner was that the land is an ancestral property. The Court observed that the Petitioner and 2nd Respondent are sister and brother and that their father had executed a settlement deed in favour of the 2nd Respondent. The Court further observed that the Petitioner had obtained an injunction against the 2nd Respondent and that the dispute was a family dispute involving personal vendetta. The Court applying the precedent set in the case of *Inder Mohan Goswami Vs. State of Uttaranchal [(2007) 12 SCC 1]*, held that the present case was purely civil in nature and thus quashed the complaint.

See also:
Inder Mohan Goswami Vs. State of Uttaranchal [(2007) 12 SCC 1]

**High Court of Madras Vs. B. Sathish Kumar & Ors. [Suo Motu (Crl.) Contempt
Petition No.929 of 2020]**
Date of Judgment: 27-08-2021

Sections 2(c)(i) and (iii) read with Section 12, Contempt of Courts Act, 1971

The Hon'ble High Court in dealing with a Contempt Petition, found that "the alleged contemnors have acted in tandem and hatched a devious plot to manufacture the vexatious litigation in W.P.No.14434 of 2020, on the strength of patently false affidavit which was calculated to not only dislodge the then Registrar (Vigilance) from her post but also bring down the prestige of the High Court. In addition, the duo had caused the petition to be widely circulated in the press, even prior to the admission of the matter before this Court and had thus brought the administration of justice into disrepute in the eyes of the public, without realizing the fact that their conduct, as officers of the Court, would amount to recklessly hurling stones at the institution, thereby bringing the administration of justice into disrepute.". The Court referred to the Supreme Court's decision in *Haridas Das Vs. Usha Rani Banik & Ors. [(2007) 14 SCC 1]*, wherein it was stated that "There can be no quarrel with the proposition that anyone who intends to tarnish the image of judiciary should not be allowed to go unpunished. By attacking the reputation of Judges, the ultimate victim is the institution.". The Court held the contemnors guilty of the charges framed against them under Section 2(c)(iii) of the Contempt of Courts Act, 1971 (2 counts) and Section 2(c)(i) read with Section 12(1), *ibid.*

The 1st Contemnor was directed to pay a fine of Rs.2000 and undergo simple imprisonment for one week and was permitted to resume practice upon payment of fine. The 2nd Contemnor was directed to undergo one-month simple imprisonment and fine of Rs.2000/- for each of the charges, and to not practice in the Madras High Court for a period of one year, in light of the decision in *R.K. Anand Vs. Registrar, Delhi High Court [(2009) 8 SCC 106]*.

M. Murugan Vs. Bagavathy & Ors. [Cri. RC(MD) No.381 of 2021]
Date of Judgment: 15-09-2021

Section 125 CrPC — Maintenance amount Rs. 5000/- each to wife and two children — wife along with her daughter living separately — 3rd respondent/ child living with petitioner — duty of father to maintain his children — wife has no sufficient means to maintain herself, entitled to maintenance

The Hon'ble High Court decided a Criminal Revision Petition filed against the order passed by the Family Court, Tirunelveli wherein maintenance amount of Rs. 5000 was ordered to be paid to the wife (Respondent 1) and the two minor children (Respondents 2 and 3). The Court observed that Respondents 1 and 2 are entitled to maintenance under Section 125 CrPC as ordered by the trial Court, as the wife had no sufficient means to maintain herself and it is the duty of the husband to maintain his wife and duty of the father to maintain his child. Further, the Court observed that, since Respondent 3 is living with the Petitioner, the Petitioner is not entitled to pay maintenance for Respondent 3. Thus, the impugned order passed by trial Court with respect to Respondent 3 was set aside.

M/s. R.R. Plots Pvt. Ltd. Vs. S. Prabhakar Lal [Crl. R.C. No. 881 of 2018]
Date of Judgment: 08-09-2021

Sec. 45 of Indian Evidence Act, 1872 — Case of cheque dishonor — No forensic test to determine the age of ink on a document — accused disputed the signature of cheque — opinion of expert to be given

While deciding a Criminal Revision Petition seeking to set aside the order passed by trial Court, the Hon'ble High Court observed that, the Accused/Petitioner has disputed the signature on the cheque and cheque of the year 2012. Further, the High Court also observed that there is no forensic test to determine the age of ink and the view of learned trial magistrate was correct. The High Court concluded the case on the basis that since the accused has disputed the signature of the cheque, opinion of the expert has to be obtained.

M/s. True Value Homes India Pvt. Ltd. & Anr. Vs. The Tamil Nadu Pollution Control Board [Crl.O.P.No.7750 of 2021]
Date of Judgment: 16-08-2021

Sections 15, 16 and 19(a), Environment Protection Act, 1986 — environmental clearance — proceeding for violation

The Hon'ble High Court dealt with a Petition filed under Section 482, Cr.P.C., wherein the Petitioner, who was involved in the construction of residential apartments, was prosecuted for violation of Section 15 read with Sections 16 and 19(a), Environment Protection Act, 1986. The Court found that the prosecution was in violation of the decision of the Supreme Court in *Hindustan Copper Limited Vs. Union of India [2014 SCC Online Jhar 2157]*, and observed that, "There is no procedure under the Environment (Protection Act), 1986 or the Rules made thereunder which stipulates that the proposal for environment clearance would be considered only after the State Government provides evidence of the credible action taken against the alleged "violator". In the first place, MoEF cannot compel the State Government to take action for alleged violation and secondly, action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent." The Court held that continuation of criminal proceedings would lead to abuse of process of law and miscarriage of justice and thus allowed the Petition.

Ramanathapuram District Pathikkapattor Sangam Vs. The State of Tamil Nadu, Rep. by the Principal Secretary to Govt. of Tamil Nadu, Home Department & Ors. [W.P.(MD)No.17716 of 2020]
Date of Judgment: 17-08-2021

Central Bureau of Investigation — functional autonomy

The Hon'ble High Court in its order which it termed as "an attempt to release the Caged Parrot (CBI)", issued several directions, the sum and substance of which are as follows:

The Government of India was directed to consider granting statutory status with more powers and jurisdiction to the CBI by enacting a separate legislation. The CBI shall have separate budgetary allocation and shall have functional autonomy without administrative control of the Government. The Director of CBI shall be given powers as that of the Secretary to the Government and shall directly report to the Minister/Prime Minister without going through the Department of Personnel Training [DoPT].

The CFSL shall have more modern facilities and should be augmented on par with the facilities available to Federal Bureau of Investigation in United States of America and Scotland Yard in United Kingdom. CBI should file a well thought out Policy within a period of six weeks from the date of receipt of a copy of this order, for permanently recruiting (i) Cyber Forensic experts and (ii) Financial Audit experts, so that all the branches/wings of CBI should have these experts available with them and not on case to case basis. The DoPT should clear all the pending proposals pertaining to CBI's infrastructure development e.g. land construction, residential accommodation, upgradation of available technical gadgets etc., within a period of six weeks. The details of cases wherein charges have not been framed by the Trial Courts despite the charge sheets having been filed by CBI for more than one year, should be shared by Director, CBI with the respective Registrar Generals of the High Courts.

**S. Santhosam Vs. State by The Secretary to Government, Home, Prohibition
and Excise Department**
Date of Judgment: 02-09-2021

Tamil Nadu Suspension of Sentence Rules, 1982 (Sentence Suspension Rules) — Section 432, Cr.P.C

The Hon'ble High Court, in dealing with a Writ Petition seeking emergency leave of a prisoner who is facing trial in another case, elucidated on the Tamil Nadu Suspension of Sentence Rules, 1982, which originate from Section 432(5), Cr.P.C. The Court observed that the expression "suspension of sentence" used in Section 432, Cr.P.C is not akin to that used in Section 389 Cr.P.C, which deals with the power of the appellate Court to suspend the sentence, pending disposal of the appeal preferred by the sentenced person. The Court found that although the Sentence Suspension Rules are intended to provide a window for reformation by permitting convict prisoners to go on leave to spend time with their families, such leave cannot be claimed as a matter of right, but only a concession, which is evident from Rule 3 therein.

On analysing Rule 35 of the Sentence Suspension Rules- which states that "No prisoner on whom a case is pending trial shall be granted leave"- in the light of Rule 832 of the Tamil Nadu Prison Rules, the Court found that "a convict prisoner who is facing trial in a Court of law, is kept in the custody of the prison authorities under the orders of the Court for that case. It would, therefore, be impermissible for the executive to circumvent a judicial order by releasing the prisoner on leave." Relying on the decision in *State vs. Yesu [2011 (5) CTC 353]*, the Court held as follows- "the power to exempt cannot be used to grant leave outside the four corners of the Sentence Suspension Rules, as there exists no plenary power with the State Government to grant leave dehors the provisions of the Sentence Suspension Rules. What cannot be done on account of the express bar contained in Rule 35, *ibid.*, cannot be indirectly circumvented through the back door of Rule 40, *ibid.*" Thus, the Court dismissed the Writ Petition as devoid of merit.

Shurbir Singh, I.A.S., The Secretary to Government (Excise), Govt. of Puducherry & Ors. Vs. V. Gomathi - Cont.A.No.3 of 2021
Date of Judgment: 09-09-2021

Section 19, Contempt of Courts Act, 1971 — violation must be wanton and wilful, and not unintentional

The Hon'ble High Court in a case concerning Section 19, Contempt of Courts Act, 1971, decided on the following issues: [1] Whether the Appellant has wilfully violated the order of the Court? [2] Whether the finding of the learned Single Judge that the Appellant is guilty for contempt is sustainable?

On the maintainability of the Appeal, the Court referred to the decision in *S.C. Sekar & Anr. Vs. Tamilnad Mercantile Bank Shareholders' Welfare Association & Anr [2008 (5) CTC 769]*, and found that a wider interpretation of the words "any order or decision of the High Court in the exercise of its jurisdiction to punish", employed in Section 19(1) of the Contempt Act, implies that "a contemnor will not lose his right to appeal even though he was not punished for the act of contempt. Even if any non-punitive decision or order is passed by the Court, in the exercise of the Court's jurisdiction to punish for contempt, the alleged contemnor would have a right of appeal."

The Court, based on the decision in *Rama Narang Vs. Ramesh Narang & Ors. [2021 SCC Online SC 29]* observed that for a contempt action, it must be proved that not only there was a violation, but that such violation was wanton and wilful, despite the contemnors having the opportunity to comply. The Court accepted the submission of the Appellant that the inclusion of the impugned shop in the auction list was a mistake, and not wilful disobedience, Since the 3rd appellant/respondent has issued the corrigendum by deleting the shop in question from the list of shops shown in the earlier auction notification, the earlier inclusion is found to be unintentional and without being conscious of the earlier order of the Court.". Thus, the Court allowed the Contempt Appeal.

**Vadivelu Vs. State Rep. by the Inspector of Police, Thondi Police Station,
Ramanathapuram District [CRL.A (MD)No.277 of 2018]**

Date of Judgment: 16-07-2021

Section 302, Indian Penal Code — Dying declaration — Evidentiary value

The Hon'ble High Court dealt with a Criminal Appeal against conviction for offence under Section 302, I.P.C. Referring to the decision of the Supreme Court in *Amol Singh v. State of M.P. [(2008) 5 SCC 468]*, the Court observed as follows- "The law is settled that, if a dying declaration is found to be voluntary, reliable and made in fit state of mental condition, it can be relied for convicting the accused without any corroboration. However, in cases of multiple dying declarations and there are inconsistencies, then the Court has to examine whether the inconsistencies are material or not. On examining the dying declarations, if the Court found inconsistencies are material in nature, then, it is unsafe to convict the accused based on the dying declarations.". The Court found that there were material contradictions in the evidence given by the Prosecution Witnesses and in the multiple dying declarations given by the deceased, which creates a serious doubt as to whether the death of the deceased is due to self-immolation or homicide. Thus, the Court acquitted the Appellant/Accused and set aside the conviction and sentence.
