

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XVIII— PART 09 — SEPTEMBER 2023****

IMPORTANT CASE LAWS



TAMIL NADU STATE JUDICIAL ACADEMY HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044– 24958595 / 96 / 97 / 98 Fax: (044) 24958595

Website: www.tnsja.tn.gov.in E-Mail: tnsja.tn@nic.in / tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course,
COIMBATORE,

Tamil Nadu, India. PIN: 641 018

Telephone No: (0422) 2222610, 710

E-Mail: tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K. Pudur,
MADURAI,

Tamil Nadu, India. PIN: 625 002

Telephone No: (0452) 2560807, 811

E-Mail: tnsja.rc.mdu@gmail.com

TABLE OF CONTENTS

SUPREME COURT –CIVIL CASES	1
Y.P. Lele Vs. Maharashtra State Electricity Distribution Co. Ltd., & Ors. [2023 (5) CTC 87 (SC)].....	1
Bhasker & Ors. Vs. Ayodhya Jewellers [2023 (5) CTC 69 (SC) (DB)].....	2
M/S. Inox Renewables Ltd., Vs. Jayesh Electricals Ltd., [2023 (5) CTC 94(SC) (DB)]	3
H. Vasanthi Vs. A. Santha (dead) through L.Rs. and Ors. [2023 (5) CTC 79 (SC) (DB)].....	4
M/S. Orator Marketing Pvt. Ltd., Vs. M/S. Samtex Desinz Pvt. Ltd. [2023 (5) CTC 305 (SC) (DB)]	5
SUPREME COURT – CRIMINAL CASES.....	6
The State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai [2023 (3) MWN (Cr.) 64 (SC) (DB)].....	6
Vikas Rathi Vs. The State of Uttar Pradesh and Anr. [2023 (3) SCC (Cri) 70 (DB)].....	7
Nikhil Chandra Mondal Vs. State of West Bengal [2023 (3) SCC (Cri) 63 (DB)].....	8
Guna Mahto Vs. State of Jharkhand [2023 (3) SCC (Cri) 151 (DB)].....	9
The State of Madhya Pradesh Vs. Jad Bai [2023 (3) SCC (Cri) 56 (DB)].....	10
HIGH COURT – CIVIL CASES	11
U.Venkatesan Vs. Susila & Ors. [2023 (5) CTC 283 (DB)].....	11
M.Muthubava Kalifulla & Ors. Vs. Minor Ramyabharathi (rep.by next friend mother Eswari) & Ors. [2023 (3) MWN (Civil) 36].....	12
Maheswari Vs. Ayyappan @ Kumar [2023 (3) MWN (Civil) 32].....	13
Veerammal and Others Vs. General Manager, Tamil Nadu State Transport Corporation, Madurai Road, Virudhunagar District [2023 (2) TN MAC 307].....	14
Sri Dwaraka Doss Goverdhan Doss & Sowbhagyavathy Gangabai Memorial Trust, rep. by its Trustees and Ors. Vs. Haridas Purushothamdas @ P.Haridas & Anr. [2023 (3) MWN (Civil) 171].....	15
National Insurance Company Limited Vs. Saravanan and others [2023 (2) TN MAC 354] ..	16

M.Sekaran (Died) & Ors. Vs. Palaniammal & Ors. [2023 (5) CTC 186]	17
S.R. Trust, rep.by its Trustee, G.Sakthi Saravanan, Meenakshi Mission Hospital & Research Centre, Madurai Vs. Inspector General of Registration, Chennai & Ors. [2023 (5) CTC 213]	18
Dr.A.Jawahar Palaniappan, rep. by PoA, M.Krishna Meyyammal, Chennai Vs. Kumudam Publications Pvt. Ltd., rep. by its Chairman and Managing Director, P.Varadarajan, Chennai [2023 (5) CTC 165]	19
Malaravan Vs. Praveen Travels Pvt. Ltd., Sunguvarchathiram, Sriperumbuddur Taluk, Kancheepuram & Ors. [2023 (5) CTC 47]	20

HIGH COURT – CRIMINAL CASES21

J.N. Jahath Ramjee and Anr. Vs. State, rep. by Inspector of Police, Central Crime Branch, Vepery & Anr. [2023 (3) MWN (Cr.) 127]	21
Muthukrishnan and Ors. Vs. State, rep. by Inspector of Police, Valliyoor Police Station, Tirunelveli District (Crime No.161/2008) [2023 (3) MWN (Cr.) 144 (DB)]	22
P. Ramamoorthy Vs. P. Ananthan [2023 (3) MWN (Cr.) DCC 22 (Mad.)]	23
Mariappan Vs. The Inspector of Police, All Women Police Station, Rajapalayam, Virudhunagar District [2023 (2) TLNJ 270 (Criminal)]	24
Theerthagiri Vs. State, rep. by the Inspector of Police, Singarapettai Police Station, Krishnagiri District [2023 (2) TLNJ 193 (Criminal)]	25
Gnanasekaran Thiyagaraj Vs. State, Rep. by The Deputy Superintendent of Police Economic Offences Wing (EOW-II) Police Training College Ashok Nagar Chennai – 600 083. [2023 (2) L.W. (Crl.) 355]	26
K. Saravanan Vs. State, rep. by Inspector of Police, CBI/BS&FC, Bengaluru & Anr. [2023 (2) L.W. (Crl.) 412]	27

SUPREME COURT –CIVIL CASES**Y.P. Lele Vs. Maharashtra State Electricity Distribution Co. Ltd., & Ors.
[2023 (5) CTC 87 (SC)]****Date of Judgment: 16.08.2023**

Code of Civil Procedure – Order 9, Rule 13 & Order 17, Rule 2 –Setting aside of *ex parte* Decree – Procedure, if parties failed to appear on day fixed – Suit for Recovery of money – Plaintiff adduced evidence and at that stage Defendants' Counsel withdrew Vakalatnama – Trial Court proceeded to record evidence of Plaintiff by setting Defendants *ex parte* – Application filed to set aside *ex parte* Decree was allowed on terms – Revision to High Court – High Court has held that Application to set aside *ex parte* Decree was not maintainable in as much as Decree falls under Explanation to Order 17, Rule 2 – Explanation is confined to record presence of party which has led evidence or substantial evidence and subsequently failed to appear before Court – Evidence of Defendant has not been commenced and his Counsel did not cross-examine Plaintiff's Witness – Explanation could not be invoked as against Defendants' who had not led any evidence – High Court committed an error in applying Explanation to Order 17, Rule 2 – Application to set aside *ex parte* Decree is maintainable.



Bhasker & Ors. Vs. Ayodhya Jewellers [2023 (5) CTC 69 (SC) (DB)]**Date of Judgment: 10.05.2023****Code of Civil Procedure, 1908, Order 21, Rules 92, 94 & 95 – Limitation**

Act, 1963, Article 134 – Sale, when to become absolute:– Execution – Sale of Property – Application seeking Delivery of Possession by Auction Purchaser – Limitation – Computation of limitation – Sale, when to become absolute – Sale Certificate – Starting point of limitation – Contention of Judgment-debtor that limitation to file Application for Delivery of Possession should be computed from date of confirmation of Sale – Delay in issuance of Sale Certificate by Execution Court – Sale Certificates not issued by Execution Court immediately after confirmation of Sale – Procedural delay in issuing Sale Certificate for which no fault can be attributed to Auction Purchaser – Apparent inconsistency between provision of Code and Article 134 of Limitation Act – Delay in filing Application under Rule 95 of Order 21 cannot be condoned – Confirmation of Sale does not give cause of action to apply for possession – Date of Sale to be incorporated in Sale Certificate is date of passing of Order of Sale confirmation – Ratio laid down by Supreme Court in *Pattam Khader Khan* holding that Application for Delivery of Possession can be made even before Certificate of Sale is granted to auction Purchaser is doubted and referred to Larger Bench.

**M/S. Inox Renewables Ltd., Vs. Jayesh Electricals Ltd., [2023 (5) CTC
94(SC) (DB)]**

Date of Judgment: 13.04.2021

Arbitration and Conciliation Act, 1996, Section 20 – Place of Arbitration:–

Clause in Agreement mentions venue of Arbitration at Jaipur – Arbitration conducted in Ahmedabad – Arbitrator in his proceeding recorded that Venue shifted to Ahmedabad by mutual consent of parties irrespective of specific clause regarding venue at Jaipur – Contention that seat of Arbitration cannot be shifted without a Written Agreement, not tenable – Once seat of Arbitration is replaced by Mutual Agreement, Ahmedabad Court alone is vested with jurisdiction and not Rajasthan – Parties referred to Courts at Ahmedabad for resolution of Section 34 – Petition – Appeal Disposed of.

H. Vasanthi Vs. A. Santha (dead) through L.Rs. and Ors. [2023 (5) CTC 79 (SC) (DB)]

Date of Judgment: 16.08.2023

Hindu Succession Act, 1956, Section 29–A [as amended by Hindu Succession (Tamil Nadu Amendment) Act, 1989] – Right of Unmarried Daughter to become Coparcener of Ancestral property – Father & Brother claiming Partial Partition whereby share was allotted to Daughter and she had been enjoying the same – Oral Partition accepted in law – Previous Partition between Daughter on the one hand and Father & Brother on the other hand established by document – Plaintiff should discharge burden that property should be Coparcenary property and continue to be so on date of Amendment in 1989 – On Partition between parties to Suit property ceased to be Coparcenary property as on 25.03.1989, when Amendment came into force – Plaintiff failed to discharge burden – Appeal dismissed

**M/S. Orator Marketing Pvt. Ltd., Vs. M/S. Samtex Desinz Pvt. Ltd. [2023
(5) CTC 305 (SC) (DB)]**

Date of Judgment:26.07.2021

Interpretation of Statutes – Rules of Interpretation:– Relevant factors, while interpreting any Statutory provision are: (i) legislative intent of Statute; (ii) object and spirit behind Statute; (iii) word/phrase/sentence to be construed in light of general purpose of Act itself; (iv) previous state of law; (v) general scope and ambit of Statute; and (vi) mischief intended to be remedied – Statute to be read as whole – Meaning of provision in Statute has to be read in its context.

SUPREME COURT – CRIMINAL CASES**[The State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai \[2023 \(3\) MWN \(Cr.\) 64 \(SC\) \(DB\)\]](#)****Date of Judgment: 31.10.2022****Evidence Act, 1872 (1 of 1872), Section 32 – Dying Declaration recorded by Police Officer instead of a Magistrate – Admissibility of :-**

Dying Declaration though ought to be recorded by Magistrate as far as possible, Dying Declaration recorded by Police Officer cannot be said to be inadmissible for that reason – However, issue of admissibility must be decided after considering facts and circumstances of each case – Deceased physically and mentally fit to make statement as certified by Doctor in writing – Statement recorded by Police Officer in presence of Doctor– High Court incorrectly recorded that Doctor was examining another patient in adjacent room at time of recording of Dying Declaration – Record of cross-examination indicates that Doctor was examining a patient on adjacent table in same room and not in adjacent room – Both Police Officer and Doctor attested to this fact during their examination – Further, Dying Declaration recorded in deceased's words and read out to her – Deceased affixed her signature to it – Nothing that statement was result of tutoring or any enmity – Mere fact that Police Officer unable to remember whether deceased was admitted in General Ward or ICU, does not impeach authenticity of Dying Declaration, when Doctor testified that same recorded in his presence – Dying Declaration held to be voluntary and true and admissible – Appeal allowed.

Vikas Rathi Vs. The State of Uttar Pradesh and Anr. [2023 (3) SCC (Cri) 70 (DB)]

Date of Judgment: 01.03.2023

Criminal Procedure Code, 1973 – Sections 319 and 164 – Summoning of additional accused under Section 319 Criminal Procedure Code – When

permissible:– Principles summarised – Held, power under Section 319 Cr.P.C. is to be exercised sparingly and only in cases where strong and cogent evidence occurs against person from evidence led before court and not in casual and cavalier manner – Herein, evidence produced by prosecution was not beyond suspicion – Material was not sufficient for summoning of additional accused in exercise of power under Section 319 Cr.P.C. to establish complicity of appellant in crime – Material produced on record was not even sufficient for conviction of accused against whom charge sheet was filed – Hence, application filed by complainant for summoning appellant as additional accused, dismissed.

Nikhil Chandra Mondal Vs. State of West Bengal [2023 (3) SCC (Cri) 63 (DB)]

Date of Judgment: 03.03.2023

Criminal Trial – Confession – Extra–Judicial Confession/Hearsay – Principles summarised – Evidence Act, 1872, Sections 6 & 24:– *Held:–*

It is a settled principle of law that extra–judicial confession is a weak piece of evidence. Where an extra–judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is well – settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra–judicial confession. There is no doubt that conviction can be based on extra–judicial confession, but in the very nature of things, it is a weak piece of evidence – Appeal allowed.

[Guna Mahto Vs. State of Jharkhand \[2023 \(3\) SCC \(Cri\) 151 \(DB\)\]](#)

Date of Judgment: 16.03.2023

Circumstantial Evidence:

It is a settled principle of criminal jurisprudence that in a case revolving around circumstantial evidence, the prosecution must prove the guilt of the accused beyond reasonable doubt and the circumstances relied upon must point out only towards one hypothesis, that is, the guilt of the accused alone and none else. On various occasions, this Court has stated essential conditions that must be fulfilled before conviction of an accused can take place based on circumstantial evidence. They are

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

[The State of Madhya Pradesh Vs. Jad Bai \[2023 \(3\) SCC \(Cri\) 56 \(DB\)\]](#)

Date of Judgment: 24.02.2023

Indian Penal Code, 1860, Section 34 – Common Intention – When becomes applicable – Principles reiterated:– It has been held that Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 IPC to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design. Common intention can be formed at the spur of the moment and during the occurrence itself. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention can be arrived at only when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.

HIGH COURT – CIVIL CASES

[U.Venkatesan Vs. Susila & Ors. \[2023 \(5\) CTC 283 \(DB\)\]](#)

Date of Judgment : 10.01.2023

Specific Relief Act, 1963 (47 of 1963), Section 16(c):- Case of Plaintiff to stand on its own legs – When Plaintiff fails to prove readiness and willingness, he cannot get relief by referring to conduct of Defendants.

M.Muthubava Kalifulla & Ors. Vs. Minor Ramyabharathi (rep.by next friend mother Eswari) & Ors. [2023 (3) MWN (Civil) 36]

Date of Judgment: 06.07.2023

Evidence Act, 1872, Section 32 – Practice and Procedure – Criminal Court Judgment – Reading of Deposition in Criminal proceedings – Whether can be treated as admission in Civil proceedings:–

As per verdict of Constitutional Bench in *M.S. Sheriff v. State of Madras, AIR 1954 SC 397*, Judgment of Civil Court is not binding on Criminal Court and *vice versa* – When such is the case, Statement made during course of Criminal proceedings cannot be treated as Admission – It is at best, Statement made by living person under Evidence Act – Unless and until it goes whole hog, it cannot be treated as final and conclusive in Civil proceedings – Therefore, argument that Admission made by mother will be binding on daughter is not tenable.

[Maheswari Vs. Ayyappan @ Kumar \[2023 \(3\) MWN \(Civil\) 32\]](#)

Date of Judgment: 17.07.2023

Limitation Act, 1963, Section 5 – Hindu Marriage Act, 1955, Section 15 – Maintainability of Section 5 Application in setting aside *Ex parte* Decree of Divorce – Respondent/Husband sought Divorce – Petitioner set *ex parte* for non-filing of Counter – Subsequently *Ex parte* Decree of Divorce granted – Second Marriage contracted by Respondent/Husband after Statutory period of Appeal – Application filed to condone delay of 14 months in setting aside *Ex parte* Decree of Divorce – Remarriage by Respondent after expiry of statutory time limit cannot be dealt with lightly, as Third party right is also involved – Failure to set aside *Ex parte* Decree within reasonable time indicates no interest on part of Petitioner to pursue life with Respondent – Thus, Section 5 of Limitation Act becomes infructuous after Respondent has remarried.

Veerammal and Others Vs. General Manager, Tamil Nadu State Transport Corporation, Madurai Road, Virudhunagar District [2023 (2) TN MAC 307]

Date of Judgment: 09.06.2023

Compensation Under Conventional Heads:– Award of – Claimants: 5 Children of deceased – Tribunal awarding Rs. 60,000 towards Loss of Love & Affection – Not proper – Each Claimant entitled to Rs.40,000 towards Loss of Parental Consortium/Love & Affection – Accordingly, Rs.60,000 awarded by Tribunal enhanced to Rs.2,00,000 [Rs.40,000 x5] – Rs.15,000 awarded each under Funeral Expenses and Loss of Estate, confirmed.

Sri Dwaraka Doss Goverdhan Doss & Sowbhagyavathy Gangabai Memorial Trust, rep. by its Trustees and Ors. Vs. Haridas Purushothamdas @ P.Haridas & Anr. [2023 (3) MWN (Civil) 171]

Date of Judgment: 11.08.2023

Civil Procedure Code, 1908, Section 92 – Public Trust – Leave of Court:–

Suit instituted by two persons on obtaining Leave of Court – One of Plaintiffs withdraws himself from Suit – Maintainability of Suit – Continuation of Suit – Trial Court permitted other Plaintiff to prosecute Suit – Requirement of two or more persons as condition precedent is only for institution of Suit and not its continuation/prosecution of Suit – Withdrawal of one of the Plaintiff would not in any manner affect continuation/prosecution of Suit – Suit under Section 92 being representative in nature does not abate as a result of death or withdrawal of one of Plaintiff.

**National Insurance Company Limited Vs. Saravanan and others [2023 (2)
TN MAC 354]**

Date of Judgment: 30.06.2023

Motor Vehicles Act, 1988 – Section 147 – Private Car – Act Only Policy –

Liability of Insurer in respect of Occupants of Car:– Whether Tribunal justified in mulcting liability on Insurer – Occupant of Car, not being a "Third party", not covered by Act Only Policy – In absence of any coverage for Occupants, Tribunal not justified in mulcting liability on Insurer – No question of directing Insurer to pay and recover, when Occupant not covered by Policy – Setting aside Order of Tribunal fastening disability, Owner of Car held to be liable.

M.Sekaran (Died) & Ors. Vs. Palaniammal & Ors. [2023 (5) CTC 186]**Date of Judgment: 11.07.2023**

Adverse Possession – Essential requirements:– To get benefit of Adverse Possession, *firstly* there must be a pleading – *Secondly*, Pleading must contain essential elements namely admitting Title of Plaintiff, claiming open and hostile possession – *Thirdly*, an intention to possess to the detriment of the Title holder – Once Defendant pleads Permissive Possession, he cannot plead that his possession is open and hostile to the Title holder.

**S.R. Trust, rep.by its Trustee, G.Sakthi Saravanan, Meenakshi Mission
Hospital & Research Centre, Madurai Vs. Inspector General of
Registration, Chennai & Ors. [2023 (5) CTC 213]**

Date of Judgment: 07.06.2023

Transfer of Property Act, 1882, Sections 116 & 105 – “Lease” & “License”

– Distinction:– Memorandum of Understanding executed permitting Lessee to use Common Pathway for a period of ten years – Contention of Executants of document that permission to use Common Pathway is a License and cannot be construed as Lease – Nomenclature in document is not determinative factor to decide nature of transaction – Non–grant of exclusive possession to Lessee does not mean that transaction is not a Lease – Exclusive possession is not essential feature of Lease – Right conferred to party to utilize Common Pathway for a considerable period cannot be treated as mere right of usage – Right to use Pathway is based on interest created in property – Revenue justified in treating transaction as Lease.

**Dr.A.Jawahar Palaniappan, rep. by PoA, M.Krishna Meyyammal, Chennai
Vs. Kumudam Publications Pvt. Ltd., rep. by its Chairman and Managing
Director, P.Varadarajan, Chennai [2023 (5) CTC 165]**

Date of Date of Judgment: 04.08.2023

Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, Rule 12(2) –

Procedure for disposal of Applications – Rent Control proceeding is summary in nature – Rent Controller need not record evidence as done in Civil Court – Rent Controller records only "note of evidence" and not evidence itself – Rent Controller does not have power akin to C.P.C. to decide Preliminary Issues nor has power like a Labour Court to pass Preliminary Order and Final Award.

**Malaravan Vs. Praveen Travels Pvt. Ltd., Sunguvarchathiram,
Sriperumbuddur Taluk, Kancheepuram & Ors. [2023 (5) CTC 47]**

Date of Judgment: 18.08.2023

Central Motor Vehicle Rules, 1989 – Application for Compensation –

Limitation:– Accident took place on 11.10.2022 – Claim petition filed on 19.04.2023 Tribunal returned Claim Petition as barred by limitation – Tenability – Central Rules ensures that Detailed Accident Report filed by Police can be treated as Claim Petition – Claim Petition need not be commenced only by way of presentation of Petition – Reports filed by Police to jurisdictional Motor accident Claims Tribunal should be treated as Claim Petition – Claim Petition is only reminder to Tribunal to perform its duty under Rules – Limitation of six months will arise only in case, where no FIR has been registered by Police and no Report has been uploaded thereon – Report of accident forwarded to Tribunal shall be treated as Application for Compensation – Order of Trial Court set aside and direction issued to treat Application as reminder for plea of Just Compensation.

HIGH COURT – CRIMINAL CASES

J.N. Jahath Ramjee and Anr. Vs. State, rep. by Inspector of Police, Central Crime Branch, Vepery & Anr. [2023 (3) MWN (Cr.) 127]

Date of Judgment: 18.04.2023

Indian Penal Code, 1860 (45 of 1860), Sections 420, 120–B & 506(i) –

“Cheating” – Offence, when not attracted:– Petitioners/Accused allegedly sold their property and executed Sale Deeds, when Original Title Deeds were in possession of De facto Complainant – Sale Deeds executed without producing original documents in violation of terms of Circular issued by Government which stipulated that Original Title Deeds have to be presented before Sub–Registrar for verification before registering Sale Deeds – Held, allegations even if accepted to be true, would not attract offence of "Cheating" – Act of Petitioners undoubtedly amounts to breach of promise, which can be implied by fact that original Title Deeds were handed over to De facto Complainant – However, that would not attract offence of cheating – Very same issue addressed by Civil Court – MoU entered into between parties after registration of FIR, agreeing to exchange certain original documents and in exchange of same, De facto Complainant agreed to withdraw Criminal Complaint – Continuation of investigation on basis of the impugned FIR – therefore, an abuse of process of law – Impugned FIR quashed.

Muthukrishnan and Ors. Vs. State, rep. by Inspector of Police, Valliyoor Police Station, Tirunelveli District (Crime No.161/2008) [2023 (3) MWN (Cr.) 144 (DB)]

Date of Judgment:02.02.2023

Indian Penal Code, 1860, Sections 302, 365, 147 & 201 – Circumstantial

Evidence:– Prosecution case based on Circumstantial evidence – Conviction – Sustainability – *Last Seen theory* : Sought to be established through PW2, who allegedly informed PW1 and thereafter PW1 lodged Complaint: PW2 turned hostile : Evidence of PW1, therefore, only "hearsay" : Prosecution failed to establish circumstance of Last Seen together – *Extra-Judicial Confession*: PW12/VAO, who recorded Confession of A1, A2 & A7 stated in evidence that he signed Confession and other documents in Police Station and Confession recorded by him typed in Police Station : Treated hostile : PW15, who assisted PW12, came up with version contrary to that of PW12: EJC, therefore, liable to be discarded – *Discovery pursuant to Confession* of AI: Broken parts of skull recovered and Body exhumed pursuant to AI's Confession: Mother of deceased who allegedly identified body, died pending trial: PW1/Sister not stated as to how she identified body when face and head of deceased totally damaged: No skull Superimposition Test conducted to identify exhumed body: Broken part of skull found in scene of occurrence not compared with skull in exhumed body : Identity of deceased not established – *Held*, prosecution failed to conclusively establish circumstances against Accused – Appellants entitled to acquittal – Conviction set aside.

P. Ramamoorthy Vs. P. Ananthan [2023 (3) MWN (Cr.) DCC 22 (Mad.)]

Date of Judgment: 25.08.2023

Negotiable Instruments Act, 1881, Section 138 – “Legally Enforceable Debt/Time–barred debt it attracts offence under Section 138 :- Amount borrowed by Accused on 21.04.2016 and Cheque issued on 13.8.2019 as per Complaint averments – Cheque issued after period of 3 years i.e. after limitation period – Mere averment that Accused made part payment on 01.12.2016 would not amount to acknowledgement of debt in absence of any material to substantiate same – Acknowledgement should be in written within limitation period as per Section 18 of Limitation Act – Cheque having been issued in discharge of time – barred debt, offence under Section 138 not attracted – Decisions in *Jage Ram Karam Singh and Samadharman* squarely applicable – Impugned proceedings quashed.

**Mariappan Vs. The Inspector of Police, All Women Police Station,
Rajapalayam, Virudhunagar District [2023 (2) TLNJ 270 (Criminal)]**

Date of Judgment: 08.09.2023

Indian Penal Code, 1860, Sections 363 and 506(i) and Protection of Children from Sexual Offences Act, Section 5(1) r/w 6:- Rape complaint by 13 years old girl against accused – Conviction and sentence under – Appeal – Inordinate delay in lodging the complaint, fixing the accused belatedly, non-conducting of potency test and the negative DNA report – A great suspicion over the entire prosecution case – Trial Court relied on the chief examination of P.W.2 and P.W.3 and by simply observing that there was no explanation from the defence as to why a false complaint came to be lodged by the victim's mother against accused – Prosecution has miserably failed to prove the main charge under POCSO Act and the incidental charges under Sections 363 and 506(i) I.P.C – Conviction and sentence by the trial Court set aside – Investigating Officers not even offered any reason or explanation for stopping the investigation with the present accused and for not proceeding further, to find out who was responsible for P.W.2's pregnancy – Appeal allowed.

**Theerthagiri Vs. State, rep. by the Inspector of Police, Singarapettai
Police Station, Krishnagiri District [2023 (2) TLNJ 193 (Criminal)]**

Date of Judgment: 01.09.2023

Criminal Procedure Code, 1973, Section 167(2) – Statutory bail & Earlier

Bail Order on Merits:– Earlier bail order and non-compliance of the condition cannot be put against the accused person since on the expiry of the statutory period, the accused person gets an indefeasible right to be enlarged on bail –
Petition allowed and bail granted with conditions.

Gnanasekaran Thiyagaraj Vs. State, Rep. by The Deputy Superintendent of Police Economic Offences Wing (EOW-II) Police Training College Ashok Nagar Chennai – 600 083. [2023 (2) L.W. (Cri.) 355]

Date of Judgment: 16.08.2023

Criminal Procedure Code, 1973, Section 167(2) – Statutory Bail:-

If a statutory bail application is dismissed, it involves determination of an indefeasible right given to the accused person and such an order cannot be considered to be an interlocutory order and such order is more than a purely interlocutory order - Dismissal of a statutory bail application under section 167(2) can be considered only as an intermediate order and not as an interlocutory order. Such order can be challenged by way of filing a revision petition and the bar under Section 397(2) of Cr.P.C., will not apply to such an order - Criminal Original Petition is allowed

K. Saravanan Vs. State, rep. by Inspector of Police, CBI/BS&FC, Bengaluru & Anr. [2023 (2) L.W. (Cri.) 412]

Date of Judgment: 07.08.2023

Criminal Procedure Code, 1973, Chapter XXI–A, Section 265E

Plea Bargain:– Chapter XXI A of the Code has not been explored to the expectation of the Legislature as well as the higher Judiciary though this chapter been introduced in the Code on 05.07.2006 – The Hon’ble High Court in the instant case directed the trial court to entertain the plea bargain application and while disposing the case, the trial Court shall exercise its power conferred under the Code as well as follow the principle laid down by the Hon’ble Supreme Court In Re: Policy strategy for grant of bail, Suo motu Writ Petition (Criminal) No.4/2021 as well as the principle adopted by the Hon’ble Supreme Court in Kothari Polymers case.
