

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XIX— PART 02—FEBRUARY 2024****

IMPORTANT CASE LAWS



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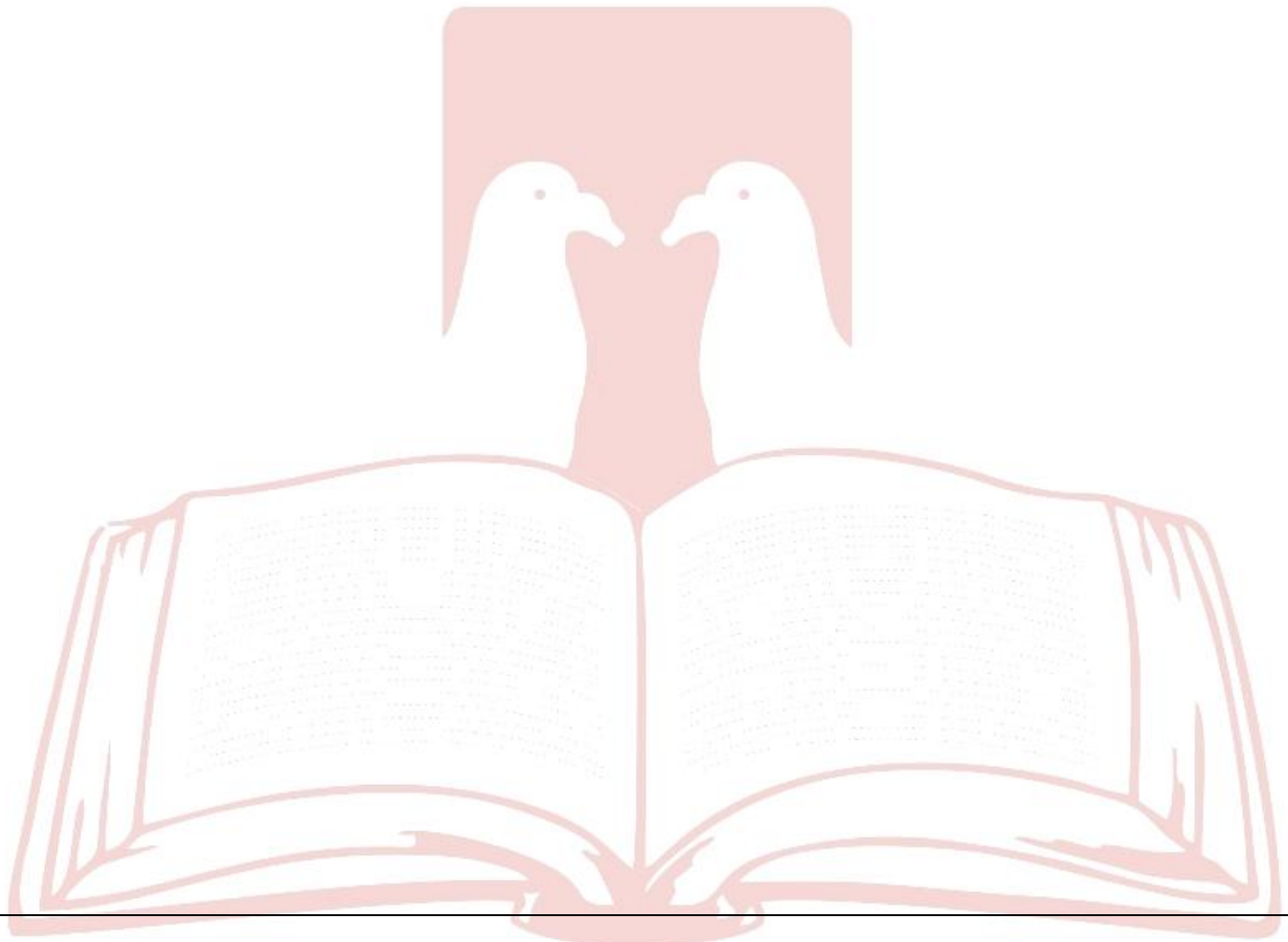
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SUPREME COURT –CIVIL CASES**Bharat Petroleum Corporation Ltd. and another Vs. ATM Constructions Pvt. Ltd., [2024 (1) CTC 104 (SC)]****Date of Judgment: 30.11.2023****Suit to include whole claim – If cause of action for subsequent suit is distinct and different, then second suit is not barred:-**

Code of Civil Procedure, 1908, Order 2, Rule 2 & Order 7, Rule 11(d) – Suit to include whole claim – Frame of Suit – Omission to sue for one of several reliefs – Relinquishment – Rejection of Plaintiff – Plaintiff purchased Suit property during subsistence of Lease – First Suit instituted for Recovery of Possession after expiry of Lease period – Second Suit instituted seeking Damages for use and occupation of property – Contention of Defendant that subsequent Suit claiming Damages is barred - Suit for Possession and Suit for Damages for usage of property are two different cause of action – Cause of action to institute subsequent Suit for Damages is distinct and different - Second Suit for Damages is not barred – Appeal dismissed.



Mohammed Abdul Wahid Vs. Nilofer and another [2024 (1) CTC 192 (SC)]**Date of Judgment: 14.12.2023****What is not pleaded cannot be argued:-**

Code of Civil Procedure, 1908, Order 7, Rule 14(4); Order 8, Rule 1-A(4)(a) & Order 13, Rule 1(3) – What is not pleaded cannot be argued as it is necessary for party to know contours of case it is required to meet – Production of document for limited purpose of effective cross-examination or to jog memory of Witness at stand if said document is not foreign to pleadings made, *held*, is permissible – However, said document only allowed to be presented at stage of cross-examination, if not produced along with Pleat or Written Statement – Said proposition, *held*, in conformity with mandate of Order 7, Rule 14(4); Order 8, Rule 1-A(4)(a) and Order 13, Rule 1(3).

**Ved Kumari (dead through her Legal Representative), Dr. Vijay Agarwal
Vs. Municipal Corporation of Delhi through its Commissioner.
[2024 (1) CTC 745 (SC)]**

Date of Judgment: 24.08.2023

Executing Court cannot treat Decree as inexecutable, merely because possession is with a Third party/encroacher:-

Code of Civil Procedure, 1908, Order 21, Rule 35 – Suit for Recovery of Possession, decreed – Execution Petition filed – Duty of Executing Court is to issue Warrant of Possession – Any resistance offered by stranger shall be adjudicated upon – Executing Court cannot treat Decree as inexecutable, merely because possession is with a Third party/encroacher – If this is allowed, then every Judgment- debtor shall hand over possession to a Third party to defeat right of Decree-holder – Executing Court directed to execute Decree by effecting delivery of possession.

S. Rajaseekaran Vs. Union of India [2024 (1) TN MAC 245 (SC)]**Date of Judgment: 12.01.2024****Compensation to Victims of Hit & Run Motor Accidents Scheme, 2022****[W.e.f. 01.04.2022]:-**

Motor Vehicles Act, 1988, Section 161 [as amended Act 32 of 2019 w.e.f. 1.4.2022] – Effective implementation of Scheme framed under Section 161(3) – Measures – Negligible number of victims of Hit & Run cases taken advantage of Scheme – Victims not aware of existence of Scheme – Standing Committee must look into causes of non-implementation of Scheme and direct corrective measures – Amendment to Scheme, if necessary for effective implementation, to be recommended – Public awareness and sensitization about Scheme across States and Districts necessary – Standing Committee directed to take necessary steps and issue elaborate directions – Compliance Report directed to be filed within 4 months – Officer-in-charge of jurisdictional Police Station directed to inform about Scheme in writing to victim/LRs. of victim – First Accident Report alongwith details of victim/LRs. of victim directed to be forwarded to Claims Enquiry Officer – Claim Application, if not received within one month, Claims Enquiry Officer to provide information to District Legal Service Authority to contact and assist Claimant – Constitution of Monitoring Committee at District Level directed – Central Government directed to consider whether Compensation amounts as fixed under Section 161(2) can be gradually enhanced annually.

Asma Lateef and Anr. Vs. Shabbir Ahmad and Ors
[2024 (1) MWN (Civil) 555 (SC)]

Date of Judgment: 12.01.2024

Determination of Jurisdiction vis-à-vis Grant of Interim Relief:-

Code of Civil Procedure, 1908, Section 9 & Order 14, Rule 2 – Determination of Jurisdiction *vis-à-vis* Grant of Interim Relief – When issue of maintainability and jurisdiction is raised in Suit, Court before granting Interim Relief ought to arrive at *prima facie* satisfaction that Suit is maintainable and not barred by law – Grant of Interim Relief without *prima facie* satisfaction with regard to jurisdiction and maintainability, *held*, would amount to improper exercise of power – Court, if of opinion that Suit is barred by law or not maintainable, can assign reason for refusing Interim Relief – Court, however, may grant such relief as it deems fit if it is pertinent to avoid irreparable harm or injury or undue hardship to party claiming relief and to ensure that proceedings are not rendered infructuous by non-interference of Court.

SUPREME COURT – CRIMINAL CASES**[Rajesh Jain Vs. Ajay Singh \[2024 \(1\) CTC 637 \(SC\)\]](#)****Date of Judgment: 09.10.2023****Burden of Proof – Legal Burden and Evidential Burden:-**

Evidence Act, 1872, Sections 101 to 103 – Burden of Proof – Two different types of burden of proof: Legal Burden and Evidential Burden – Legal Burden deals with burden of proof of facts arising from pleadings – Evidential Burden decides who should prove particular fact at first instance – Legal Burden commences at commencement of trial and continues till conclusion of trial – Complainant or Plaintiff should prove what he has pleaded – In contrast, Evidential Burden keeps shifting between parties based on general Principles of Burden of Proof.

**[Prakash Nishad @ Kewat Zinak Nishad Vs. State of Maharashtra](#)
[\[2024 \(1\) MWN \(Cr.\) 110 \(SC\)\]](#)**

Date of Judgment: 19.05.2023

**DNA Testing – Guidelines For Collection, Storage And Transportation Of
Crime Scene DNA Samples For Investigating Officer [Central Forensic
Science Laboratory, Directorate of Forensic Sciences Services Ministry of
Home Affairs, Government of India]:-**

Unexplained delay in sending samples to Scientific Laboratory – Effect of – Possibility of contamination and diminishment in value cannot be reasonably ruled out – "Without any delay" and "Chain of custody" aspects as emphasized in Guidelines which are indispensable to vitality of such evidence, not complied with – DNA Report, therefore, cannot be held to be dependable.

Nirmal Premkumar & Another Vs. State, rep, by Inspector of Police
[2024 (1) MWN (Cr.) 321 (SC)]

Date of Judgment: 11.03.2024

Appreciation of Evidence – Oral Testimony of Victim of Sexual offence:-

Appreciation of Evidence – Oral Testimony of Victim of Sexual offence – Court can rely on Victim as a "sterling Witness" without further corroboration, but quality and credibility must be exceptionally high – Statement of Victim must be consistent throughout right from initial statement to oral testimony without creating any doubt in Prosecution case – No conviction can be recorded on basis of unreliable/insufficient testimony with flaws and gaps.

Appreciation of Evidence – Oral Testimony of Victim of Sexual offence – Exact accurate account of incident not insisted – Victim can provide her version based on recollection of events to extent reasonably possible for her to recollect – Such evidence if credible and free from doubt, no corroboration necessary.

Appreciation of Evidence – Oral Testimony of Victim of Sexual harassment – Necessity of corroboration, when alleged offence committed within confines of a room/house or in a Public place away from Public view – Only in case of doubt regarding veracity of Victim's version, Court may seek corroboration from other Witnesses, who directly observed incident or from attending circumstances.

HIGH COURT – CIVIL CASES**Ultra Marina & Pigments Ltd., Mumbai Vs. Kala Karmegam and Others**
[2024 (1) CTC 620 (DB)]**Date of Judgment: 05.01.2024****Verification of Plaint:-**

Code of Civil Procedure, 1908, Order 29, Rule 1 – Plaint not signed and verified as mandated – However, said defect only curable defect – On account of subsequent ratification of said defect, Suit, *held*, maintainable.

**Ramar Coir Industries, rep. by its Managing Partner, K.R. Palanisamy,
Ramaragam, Coimbatore and Others. Vs. Dhana Natarajan and Others.
[2024 (1) CTC 694 (DB)]**

Date of Judgment: 12.01.2024

Partnership at Will – Right of Partner to seek dissolution:-

Partnership Act, 1932, Section 43 – Partnership at Will – Right of Partner to seek dissolution – Whether can be contracted out – Held, right of Partner to seek dissolution is Statutory right and cannot be contracted out – It exists independent of any restriction imposed in document of Partnership – If Partnership is at will, it is open to Partner to seek dissolution – Once dissolution sought for and Notice of dissolution issued, Firm stands dissolved from date specified in Notice – Exclusion of Plaintiff from business and mismanagement established by evidence adduced – Plaintiff entitled to seek dissolution of Firm.

[Kamalam \(Died\) and Others. Vs. Sasikala and Others \[2024 \(2\) CTC 218\]](#)

Date of Judgment : 23.02.2024

Execution of Will – Examination of identifying Witness without examining Attesting Witness:-

Indian Succession Act, 1925, Section 63(c) – *Held*, before examination of identifying Witness, Propounders have to establish that both Attesting Witnesses are dead or that they are not available for giving evidence and their whereabouts not known despite taking diligent steps to procure their attendance before Court – Propounders have not taken steps to find out whereabouts of two Attesting Witnesses – They have not attempted to take out any Application to compel attendance of Attesting Witnesses – Will not duly proved.

Muthukrishnan Vs. Muthusamy and 27 Ors. [2024 (1) CTC 836]

Date of Judgment: 20.11.2023

Execution proceedings – Application for removal of Obstruction –

Limitation:-

Code of Civil Procedure, 1908, Order 21, Rules 95, 96 & 97 – Limitation Act, 1963 (36 of 1963), Article 129 – Application for removal of Obstruction preferred under Order 21, Rule 97 challenged on ground of limitation – *Held*, originally Application under Order 21, Rule 95 preferred, only when issue of Obstruction came to light, Court directed Applicant to prefer Application under Order 21, Rule 97 – Grant of liberty by Court, *held*, would amount to condoning of delay and limitation as envisaged in Article 129 cannot be pressed against Application filed under Order 21, Rule 97 – Application preferred under Order 21, Rule 97, *held*, within limitation.

All India Anna Dravida Munnetra Kazhagam [*presently known as All India Anna Dravida Munnetra Kazhagam (Amma), Chennai Vs. All India Anna Dravida Munnetra Kazhagam (Puratchi Thalaivi Amma), through its Office -bearer: E. Madhusudanan and others [2024 (1) MWN (Civil) 290 (DB)]*

Date of Judgment: 05.12.2023

Rejection of Plaint to be decided based on Plaint alone – Exceptions are:-

Code Of Civil Procedure, 1908, Order 7, Rule 11 – Rejection of Plaint – Scope and ambit – Whether rejection of Plaint to be decided based on Plaint alone – *Held*, generally Court has to go only by contents of Plaint while deciding Application under Order 7, Rule 11 – Exceptions are: (i) Plaint is vexatious or is abuse of process; or (ii) original proceedings become infructuous by subsequent events – Court could take note of any subsequent events pointed out by Defendants to put an end to meritless/infructuous litigation – Suit as it stands today is a completely meritless.

J. Janakiram Vs. M. Sathyabama [2024 (1) MWN (Civil) 358 (DB)]**Date of Judgment: 08.11.2023****Section 65-B Certificate – Evidence Act not applicable to Family Court****Proceedings:-**

Family Courts Act, 1984 - Section 14 – Practice and Procedure – Photographs received as evidence without Section 65-B-Certificate annexed – Rules of evidence under Evidence Act not applicable to Family Court proceedings – Family Court entitled to receive any document, even if not relevant or admissible under Evidence Act, if in its opinion it would assist Court to deal with dispute effectively.

Iffco Tokio General Insurance Co. Ltd., Vs. Shajahan and Another
[2024 (1) TN MAC 186]

Date of Judgment: 19.01.2024

Whether Occupant can be brought within purview of "Third party":-

Motor Vehicles Act, 1988 - Sections 147(1)(b)(i) & 145(g) – Occupant in Private vehicle though deemed to be Third party, in absence of specific inclusion of Occupants by Contracting parties by paying additional Premium, Insurer cannot be held liable – Therefore, in case of Act Only Policy, "Third party" to be taken to mean a person outside vehicle and not Occupant in Private vehicle – Occupant would fall within ambit of Third party only when wider Policy taken for covering Occupants – In absence of additional Premium towards Occupants, Insurer not liable – In instant case, Policy being Statutory Policy without any additional Premium to cover Occupants of Private Car, would absolve Insurer of liability towards Occupants – Order directing Insurer to pay and recover held to be illegal, arbitrary and unreasonable and liable to be set aside.

HIGH COURT – CRIMINAL CASES**Aniket Vs. State of Maharashtra through Ahmednagar Police Station, Ahmednagar. [2024 (1) MWN (Cr.) 37 (FB) (Bom.)]****Date of Judgment: 19.12.2023****Offences involving POCSO Act and SC/ST Act – Right to Appeal:-**

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Sections 14-A, 14 & 20 – Protection of Children From Sexual Offences Act, 2012 (32 of 2012) (POCSO Act), Sections 28 & 42-A – Whether victim has right to Appeal under Section 14-A, in case involving offences under both Acts – Interpretation that Section 42-A, POCSO Act shall prevail over Section 14-A in matter of grant/refusal of Bail resulting into abrogating right of Victim to prefer Appeal under Section 14-A – If, sustainable – In a case wherein Accused charged with offences under both SC & ST Act & POCSO Act, jurisdiction to try said offences would exclusively be with Special Court constituted under Section 28, POCSO Act – POCSO Act does not provide a remedy of Appeal against Order granting or refusing to grant Bail by such Court – No such Appeal provided under Cr.P.C. also – Therefore, held, in a case involving offences under both Statutes, victim has no right to Appeal under Section 14-A of 1989 Act – Interpretation that Section 42-A of POCSO Act shall prevail over Section 14-A of 1989 Act, held, sustainable.

Mariyammal Vs. Inspector of Police, Redhills PEW Police Station, Chennai
[2024 (1) MWN (Cr.) 348]

Date of Judgment : 05.03.2024

Return of vehicle involved in NDPS offence:-

Code Of Criminal Procedure, 1973, Section 451 – Permissibility – Relying on decision of Apex Court in *Sainaba* following decision in *Sunderbhai*, High Court allowed return of Auto subject to conditions.

**Arunpandi Vs. Inspector of Police, Kariyapatti Police Station,
Virudhunagar District. [2024 (1) MWN (Cr.) 378]**

Date of Judgment: 15.02.2024

Mines and Minerals – Interim Custody of Vehicles:-

Code Of Criminal Procedure, 1973, Sections 451 & 193 – Mines And Minerals (Development And Regulation) Act, 1957 (67 of 1957), Sections 21(1), 21(4-A), 30-B & 30-C – Interim Custody of vehicle involved in illegal transportation – Impugned Orders passed by Special Court – Legality – Special Court empowered to take cognizance of case, which is committed by Judicial Magistrate – Special Court cannot directly take cognizance of offences under Act without Order of committal by Judicial Magistrate – Judicial Magistrate alone empowered to take cognizance of case and pass Order under Section 451 until committal Order passed – Special Court lacked jurisdiction to entertain Petition under and pass impugned Orders – Impugned Orders set aside – Petitioners granted liberty to approach Judicial Magistrate to file Petitions under Section 451.

**State of Tamil Nadu, rep. by the Inspector of Police, Otters Police Station,
Tambaram Vs. Muneeswaran.and Others. [2024 (1) MWN (Cr.) 381]**

Date of Judgment: 08.03.2024

Surrender before Magistrate having no Territorial Jurisdiction over case:-

Code Of Criminal Procedure, 1973, Sections 167(1) & 167(2) – Magistrate exercising power under Section 167(2) on basis of Surrender Petition to remand Accused – Permissibility and legality – Detention under Section 167(2) authorized only when Accused is "forwarded" to Magistrate in terms of Section 167(1) – Section 167(1) applies, when Accused is arrested and in custody of Police and investigation cannot be completed within 24 hrs. – Section 167(2) does not contemplate detention pursuant to Accused voluntarily surrendering before Magistrate – Accused, who is not "forwarded" and who voluntarily appears and files Surrender Petition, cannot be dealt with under Section 167(2) - Remand under Section 167(2) can be effected by a Magistrate irrespective of whether he has jurisdiction to try case or not – Section 167(1) contemplates forwarding of Accused to "nearest" Judicial Magistrate – Section 167(1) further mandates Police to transmit copies of Case Diary to Magistrate so as to enable him to apply his mind in deciding whether a case for remand made out or not – When Accused surrenders voluntarily, Magistrate is handicapped for want of Remand Report and copies of Case Diary – Unless Case Diary and Remand Report transmitted, Magistrate would not be in position to apply his mind effectively – Consideration of Remand Report and Case Diary, jurisdictional conditions for authorizing detention under Section 167(2). Remand without considering such relevant materials, held, clearly illegal and without jurisdiction – Accused, who voluntarily appears and files Surrender Petition, cannot be dealt with under Section 167(2).

Balakrishnan Vs. Gajapathi Rao [2024 (1) MWN (Cr.) 370]**Date of Judgment: 01.02.2024****Code Of Criminal Procedure, 1973, Section 246(4):-**

Scope of – Accused refusing to plead guilty and denying charges framed – Question as to whether Accused wants to cross-examine any of PWs. – Not to be put on very same day, when Court complies with requirements of Sections 246(2) & 246(3) – Accused can be questioned only during next hearing date – Accused must be given some time to think over and decide as to whether he wants to cross-examine PWs. – Trial Court erred in putting said question on very same day – Mandatory procedure not followed – Trial Court directed to recall PWs. and fix a date for cross-examination – Petitioner, if fails to cross-examine PWs. on fixed date, to lose his right to recall PWs. in future – Order dismissing Petition filed under Section 311 to recall PWs. For cross-examination, set aside.
