

TAMIL NADU STATE JUDICIAL ACADEMY

**** VOL. XIX— PART01—JANUARY 2024****

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

AlagarKoil Road, K. Pudur,

MADURAI,

Tamil Nadu, India. PIN: 625 002

Telephone No: (0452) 2560807, 811

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

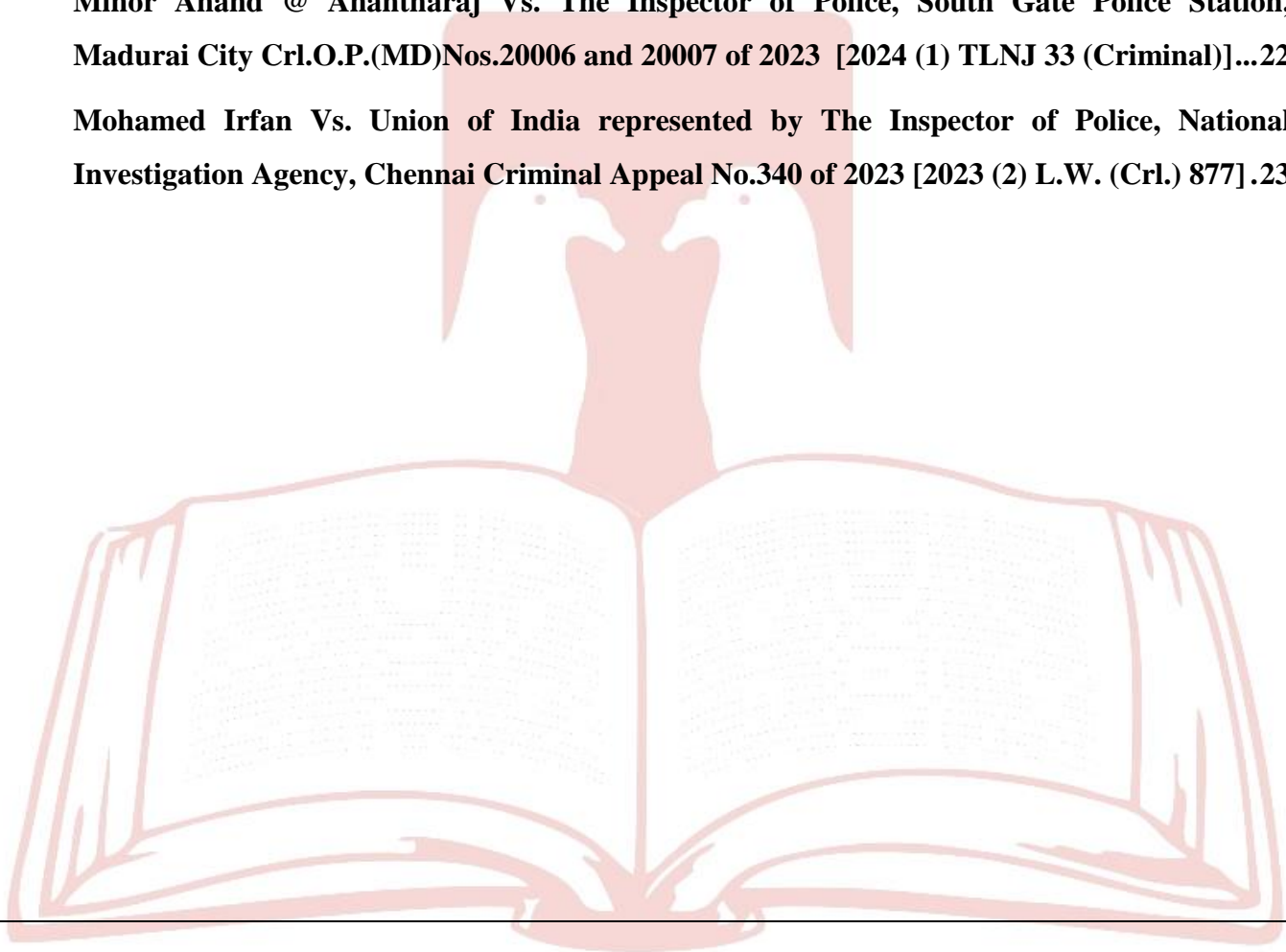
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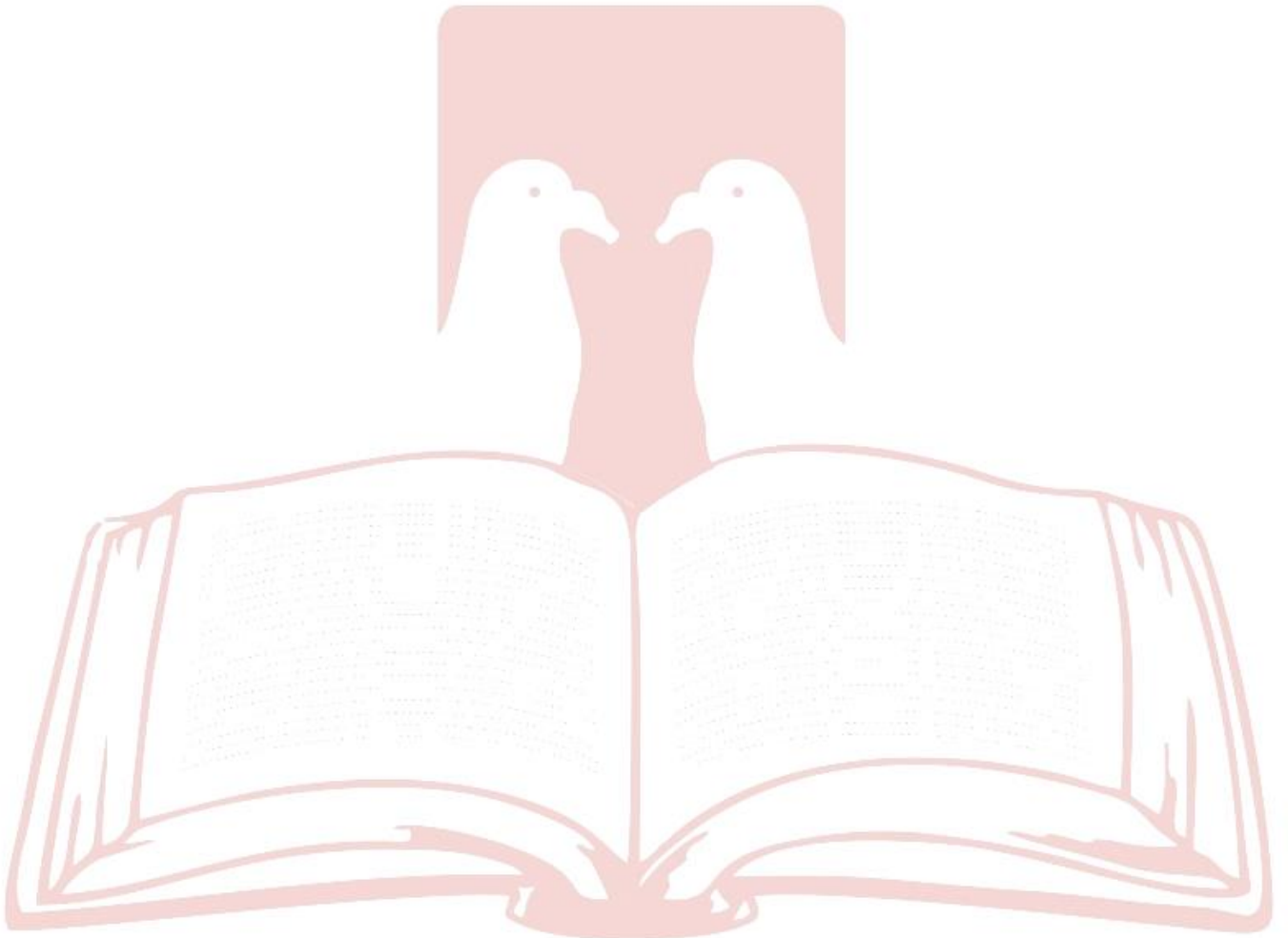
SUPREME COURT –CIVIL CASES

Kanwar Raj Singh (D) Th. Lrs.Vs. Gejo. (D) Th. Lrs&Ors. Civil Appeal No. 9098 of 2013 [2024 (1) TLNJ 43 (Civil)]

Date of Judgment: 02.01.2024

Registration Act, 1908, Section 47:-

Consideration fully paid on the date of execution of sale deed. Sale deed was registered with the interpolation made about area of the property sold. As per section 47, a registered sale deed where entire consideration is paid would operate from the date of its execution. Corrections unilaterally made by D.1 after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. If such changes would have been made with the consent of the original plaintiff, the same could relate back to the date of the execution.



SUPREME COURT – CRIMINAL CASES**Anil Kumar Vs. the State of Kerala Criminal Appeal No.2697 of 2023 [2023 (2) TLNJ 597 (Criminal)]****Date of Judgment: 01.11.2023****Indian Penal Code, 1860, Sections 302, 498-A:-**

Murder of wife by lighted a matchstick on her while she already poured kerosene on her. Conviction and sentence. Wife poured kerosene upon her body and Husband had set her ablaze. There was a quarrel between the couple and, husband left saying that he would come later. It was thereafter the incident of pouring kerosene and burning took place. There was sufficient time between the two acts. It cannot be said that there was a sudden quarrel and provocation. Husband on seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. Having taken "undue advantage" of the situation, it cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of Part II of 304 IPC.

**Central Bureau of Investigation Vs. KapilWadhawan&Anr. Criminal Appeal
No. 391 of 2024 [2024 (1) TLNJ 122 (Criminal)]**

Date of Judgment: 24.01.2024

Criminal Procedure Code, 1973, Section 167 (2) – Default bail:-

Claim of statutory right of default bail under section 167 (2) on the ground that the investigation qua other accused was pending. Benefit of section 167 would be available to the offender only when a charge sheet is not filed and the investigation kept pending against him. Once charge sheet is filed, the said right ceases. Further, the Right of the IO to pray for further investigation in terms of section 173(8) not taken away only because a charge sheet filed under sub-section (2) thereof against the accused. Once material is produced along with charge sheet and the court is satisfied about the commission of an offence, it is immaterial whether the further investigation in terms of section 173(8) is pending or not. Pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge sheet would neither vitiate the charge sheet, nor would it entitle the accused to claim default bail on the ground that the charge sheet was an incomplete charge sheet.

**[NanheVs. State of Uttar Pradesh Criminal Appeal No. 2791 of 2023 \[2023
\(2\) TLNJ 602\]](#)**

Date of Judgment: 21.11.2023

**Indian Penal Code, 1860, Sections 302 & 304-Part II – Gun Shot with
intoxicated state of mind:-**

Murder of deceased by mistake when his intention to kill other person. Deceased may have been killed accidentally by the appellant in the state of intoxication but there is no iota of evidence to establish that due to intoxication he was incapable of knowing the nature of his act. Not the case that appellant was administered intoxication without his knowledge or against his will. Hence provision of Section 86 IPC not be applicable and the Appellant is not entitled to reduction from 302 IPC to Section 304 Part-II.

ZunaidVs. State of U.P. & Ors. Criminal Appeal Nos.2628-2629 of 2023
[2023 (2)TLNJ 499 (Criminal)]

Date of Judgment: 29.08.2023

Criminal Procedure Code, 1973, Section 190(1)(b), 200 and 482 –
Offences under sections 147, 148, 149, 307, 323, 324, 504 IPC:-

Final report filed and Complainant filed protest petition. CJM had rejected the Final Report and directed to register protest petition as complaint case. Further, CJM issued summons to accused after recording the statements of complainant witnesses. There remains no shadow of doubt that on the receipt of the police report under section 173 Cr.P.C., Magistrate may decide that there is no sufficient ground for proceeding further and drop action, may take cognizance of the offence under section 190(1)(b) and proceed to examine upon oath the complainant and his witnesses under section 200. In any case the High Court should not have interfered with the discretion exercised by the CJM within the four corners of law.

**Mohammad Wajid and Another Vs. State of U.P. & Ors. Criminal Appeal
No. 2340 of 2023 [2023 (4) MLJ (Cri) 595 (SC)]**

Date of Judgment: 08.08.2023

**Intentional insult to provoke breach of peace - Indian Penal Code, 1860,
Section 504:-**

Mere abuse, discourtesy, rudeness or insolence will not attract Section 504 if the person insulted has not been incited to commit a breach of peace. In this case, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present.

HIGH COURT – CIVIL CASES

PrabakaranVs. S. Kokilam&Ors. Criminal Appeal(MD)No.131 of 2018
[2023 (5) L.W. 773]

Date of Judgment: --.10.2023

C.P.C., Order 6 Rule 16, to strike of pleadings, withdrawal of written statement, whether permissible:-

In a suit for declaration and permanent injunction, Respondents 1 and 2 filed an application to permit them to withdraw the written statement. Indirectly they are stating they are not accepting the pleadings made in the written statement already filed. If the same is allowed, it would amount to permitting respondents 1 and 2 to withdraw the averments made by them in the original written statement or withdraw the admissions and concessions made by them. If the defendants are permitted to come forward with contradictory plea, it would prejudice not only the third respondent/plaintiff but also to petitioner-second defendant. Original plea raised in the written statement already filed cannot be ignored.

[Vijayalakshmi @ Vennila Vs. P. Kandaswamy 2023\(5\)L.W.823](#)

Date of Judgment: 28.11.2023

Negotiable Instruments Act (1881), Section 118, Promissory Note, Suo

Moto reconstruction of:-

SuoMoto reconstruction of misplaced suit promissory note was ordered by trial court. Xerox copy of suit pronote was received and reconstructed and both the parties proceeded with trial without any objection. No infirmity in the order.

**P. Pandi&Ors. Vs. Pannerselvam&Ors. C.R.P.(MD) No.1344 of 2021 [2024
(1)TLNJ 113 (Civil)]**

Date of Judgment: 20.12.2023

**Civil Procedure Code, 1908, Order VII Rule 11 – Power of trial court can
be exercised at any stage of the suit:-**

For the purpose of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane. Pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decisions in the previous suit, such a plea will be beyond the scope of Order VII Rule 11 (d), where only the statements in the plaint will have to be perused. Plaint cannot be rejected under Order VII Rule 11 (d).

S. Shantha&Anr. Vs. C. Kumarasamy&Ors.Civil Miscellaneous Appeal
No.1268 of 2022 [2024(1)L.W.97]

Date of Judgment : 14.12.2023

Motor Vehicles Act (1988), Section 2(30) 'owner', section 50 'transfer of ownership' - Liability to pay compensation:-

Question is whether second respondent in whose name vehicle stood registered on the date of accident would be liable or fourth respondent, who had purchased the vehicle. The vehicle in question stood in the name of the second respondent on the date of the accident, the transfer was effected much later with effect from an anterior date. Liability to pay compensation under chapter XII would be always on the person in whose name the vehicle stands registered on the date of the accident and not any other person. Second respondent liable to pay compensation, as awarded by the tribunal and not the fourth respondent.

**C. K. RajendranVs. N. Ravi Chandran S.A.No.755 of 2010 [2023 (4) TNLJ
605 (Civil)]**

Date of Judgment: 07.12.2023

Specific Relief Act, 1963, Section 16(C) – Suit for specific performance of agreement of sale by plaintiff:-

Appellant's mere presence before the Sub Registrar Office on the particular day without any proof as to the purchase of the stamp papers to engross the sale deed will in no way be considered as ready and willingness of the appellant. No evidence as to the financial capacity of the plaintiff as well as the positive conduct to get the sale deed. While considering the ready and willingness, the escalation of the price of the property and possible unfair benefit from the decree would also have to be considered.

Ramasamy @ Ors. Vs. The Managing Director, Tamil Nadu State Transport Corporation, Thirumayam Road, Pudukkottai District C.M.A.(MD)No.332 of 2014 [2024 (1) TLNJ (Civil) 73]

Date of Judgment: 05.01.2024

Motor Vehicle Act, 1988, Section 163 – Accident:-

Death of two wheeler rider. Tribunal held deceased as tort feasor cannot claim compensation. Merely own use of motorcycle by the owner/borrower/permissive user does not entitle such persons to maintain Section 163A petition as the same is against the insurer. Owner/borrower/ permissive user are not third parties in relation to their own/borrowed vehicles and hence, not covered by the statutory insurance under section 147. Deceased driver of the two wheeler involved in the accident himself was responsible for the accident due to his rash and negligent driving under the influence of alcohol has dashed behind the bus.

**M.Maria Albert Stanly & another Vs. M/s. Diamond Hospital Equipments,
PanditShriram Sharma Metro Station on Green Line, Banadurgarh C.S.
Nos. 14 and 48 of 2022 [2024 (1)L.W.54]**

Date of Judgment: 19.12.2023

**Commercial Courts Act (2015), Section 15, transfer of pending cases,
section 16, amendment to CPC - Rules 6-A to 6-G:-**

When a defendant makes a counter-claim and the commercial court takes it on file after scrutiny, a plaintiff has to be put on notice so as to file his written statement for it. A plaintiff on receipt of counter-claim made by a defendant is entitled to file his written statement in response within 30 days. If it is filed after the said period, but before expiry of 90 days thereafter (aggregating to 120 days on the whole), the commercial court on satisfactory explanation from the plaintiff in an application is empowered to condone such delay, but such right to file written statement shall axiomatically stand forfeited thereafter.

Commercial Courts across the State shall with effect from 01.01.2024 conduct scrutiny of every counter-claim before it is taken on file by the respective courts. Statutory provisions applicable for taking on file plaint in suits in the commercial court shall *mutatis mutandi* apply in that regard. Registry shall serve notice of such counter-claim along with its copy, either on the plaintiff or his advocate, in the same manner as provided for suits in commercial disputes. Period for filing the written statement by a plaintiff in response to a counter-claim filed by a defendant shall be reckoned from the date on which that notice along with copy of the counter-claim is served by the registry of the court on the plaintiff or his advocate.

Further, in suits relating to commercial dispute received till date the relevant date for commencing period of limitation for filing a written statement by a plaintiff to a counter-claim made by a defendant would be the date on which a plaintiff or his advocate has received the final authenticated copy of the counter-claim along with copies of documents. In respect of suits instituted before the

commencement of the CC Act on 23.10.2015, the timeline for filing written statement by a plaintiff in response to a counter-claim made by a defendant in such suit would be such period as may be fixed by the commercial court during case management hearings in exercise of powers under proviso to section 15(4) read with order XV-A.

All the applications for condonation of delay upto a maximum period of 120 days in filing the written statement by a plaintiff in response to a counter-claim made by a defendant shall be heard by the concerned court, and not by the Master.

**K.Malarkodi& others Vs.Vanitha& others AS.No.925 of 2010 [2024 (1)
L.W.85]**

Date of Judgment: 29.11.2023

Life insurance Act (1938), Section 39, Role of nominee:-

Nominee is only entitled to receive the benefits and give a valid discharge to the payee and the nominee only receive the benefits and holds the same as trustee and the same has be distributed equally to the persons entitled as per succession.

**KrishnamoorthyVs. VaithiyalingamChettiyar&Ors. C.R.P.(MD)No.1198 of
2018 [2024(1)L.W.13]**

Date of Judgment: 01.12.2023

Stamp Act, Sections 35, 38, 40:-

Suit for bare injunction was filed based on an unregistered family arrangement under which the suit property was allotted. Court had given an option to take advantage of the proviso to section 35 and work out remedy. Trial court concluded that along with deficit stamp, 10 times penalty have to be levied. Any document which is chargeable with duty cannot be admitted in evidence, for any purpose, unless such instrument is duly stamped.

Memorandum of family arrangement was referred to the Special Deputy Collector (stamps) for deciding the actual amount payable on account of deficit stamp duty who informed the court the prevailing guideline value and the stamp duty, to be collected from the plaintiff, as deficit stamp duty.

Special Deputy Collector (Stamps) has not indicated that the document should be received only subject to the payment of penalty. It is not necessary for the collector to levy penalty in all cases. Communication sent by the Special Deputy Collector (Stamps), competent authority to the District Munsif Court not indicating any penalty amount, the trial court ought not to have passed the order, once again sending the matter back to the authority for the purposes of levying a penalty.

HIGH COURT – CRIMINAL CASES**A. Vasanthi&Ors. Vs. S.Jayakumar&Ors. C.M.A.No.1960 of 2017 [2024
(1)L.W. 34]****Date of Judgment: 15.12.2023****Motor vehicles Act (1988), Section 173, hit and run cases, filing of final report in time, directions passed - Criminal Procedure Code, Sections 173(2), 468, limitation, hit and run cases, filing of final reports, in time, directions passed:-**

Claiming that the lorry was driven in a rash and negligent manner by its driver and the accident was the result of the said negligence of the driver, the claimants sought for a compensation.

Insurance company pointed out that the First Information report filed on the date of the accident did not disclose the vehicle that was involved in the accident. No final report was filed pursuant to the First Information Report, and the Magistrate had closed the First Information Report as time barred under section 468. Doubt entertained by court as to how a final report/ charge sheet which should have been filed before the criminal court was produced before the Tribunal after the criminal case was closed as barred by limitation under section 468 .

A final report which is prepared and not forwarded to a Magistrate has no value and the same cannot be relied upon, as evidence, in any other proceeding. Mere non-filing of the final report is a dereliction of duty on the part of the police officer in- charge of the investigation of the crimes. Police Department to ensure that final reports are filed within time contemplated under section 468 and to issue appropriate circular to all the Investigating officers, impressing them upon the need for filing the final reports in time. To ensure that appropriate disciplinary action is taken in cases where there is a failure on the part of the officer to comply with section 173(2)(i) within time limit under section 468.

State Rep. by the Inspector of Police, All Woman Police State, Guindy, Vs. XXX Father of the victim child and xxx Mother of the victim child R.T. No. 2 of 2022 and CrI.A. Nos.427 and 392 of 2023 [2023 (2)L.W. (CrI) 825]

Date of Judgment : 21.11.2023

IPC., Sections 114, 354, 354B, 376AB, 376(3), 506(i) – Protection of Children from Sexual Offences (POCSO) Act (2019), Sections 5(j)(ii)(l)(m)(n), 6, 17 – Juvenile Justice (Care and Protection of Children) Act, Section 75 –Penetrative sexual assault – Two finger test by Doctors:-

Regrettably that two finger test had been conducted in the instant case, though the Hon'ble Supreme Court and this Court in several cases have repeatedly held that such a test is neither acceptable nor desirable to ascertain whether the victim was subjected to sexual intercourse. The Hon'ble Supreme Court took this opportunity to remind the Doctors that, if they conduct any test in contravention of the directions of the Hon'ble Supreme Court in the *State of Jharkhand Vs. Shailender Kumar @ PandavRaj*, reported in (2022) 14 SCC 289, they shall be guilty of misconduct as held by the Hon'ble Supreme Court.

C.Anandane Vs. Directorate of Enforcement, Government of India rep. by Assistant Director, PMLA CrI.R.C.No.1956 of 2023 [2023 (2)L.W. (CrI.)844]

Date of Judgment :27.11.2023

Prevention of Money laundering Act, Sections 3, 4 - Criminal Procedure Code, Sections 193, 202 - Prevention of Corruption Act, Sections 13(1)(e), 13(2) - Plea of Double Jeopardy:-

In the case of holding disproportionate assets, if the offender continues to possess or conceal the proceeds of crime, after the check period, the offence of money laundering is made out. Prosecuting person accused of an offence under section 13(1)(e) and for an offence under section 3 of PMLA would amount to double jeopardy, is untenable. Section 44 of PMLA is an exception to section 190 of CrPC, which provides for cognizance only by the magistrate. Further, Section 44 (1)(b) permits special court, which has to be a sessions court, to take cognizance of complaint filed by the authority. Hence, the necessity for conducting an inquiry under section 202(2) does not arise.

Petchiyammal Vs. State through the Inspector of Police, Aathoor Police Station, Thoothukudi District [2024(1)TLNJ 100 (Criminal)]

Date of Judgment: 24.01.2024

Indian Penal Code, 1860, Section 302 & 84 – Murder of own sister's son by unsound mind lady by setting fire:-

Death due to burn injuries.Chain of events unerringly leading to conclusion that the appellant had committed the offence. From the evidence it is found that appellant, nearly ten years prior to occurrence was suffering from mental disorder and took treatment. Even the mother of the appellant had stated that eight days prior to the occurrence, appellant was sleepless and in a disturbed condition. Further, PW1& PW2 had stated that, at the scene of occurrence the appellant without any action or reaction was sitting besides the body.Appellant has paranoid schizophrenia and suffers from sleep disturbances, anxiousness, sudden outbursts, irrelevant talks with violent and irrational behavior. Once a person's unsoundness of mind is confirmed, then no offence is committed by such person as per section 84 of IPC. Appellant entitled to the benefit of section 84 of IPC.

**C.R. Balasubramanian Vs. P. Eswaramoorthi [2024 (1)TLNJ 112
(Criminal)]**

Date of Judgment: 22.01.2024

**Negotiable Instrument Act, 1881, Section 138 &148 – Compensation of
20% imposed in a chequedishonour case:-**

The petitioner had already filed an insolvency petition, complainant after being aware of the same misused the cheque. While dealing an application for suspension of sentence or for grant of bail when an appeal is filed against the conviction for offence u/s. 138 of the Act, the courts must not mechanically impose a condition of deposit of 20% compensation. When any ground raised for reducing or for exempting the deposit, it has to be dealt with by the appellate court and a reasoned order must be passed.

Minor Anand @ Anantharaj Vs. The Inspector of Police, South Gate Police Station, Madurai City Crl.O.P.(MD)Nos.20006 and 20007 of 2023
[2024 (1) TLNJ 33 (Criminal)]

Date of Judgment: 08.11.2023

Juvenile Justice (Care and Protection of Children) Act, 2015, Section 10(2) & 12:-

Combined reading of Sections 10(2) & 12, clears that only in case of refusal or rejection of the bail, the juvenile can be sent to the observation home. It is well within the power of Juvenile Justice Board to get proper enquiry report from the probation officer. For that purpose, it is not desirable to order the juvenile be detained in the observation home. Instead of sending juvenile to home, as an interim measure, may send the juvenile in conflict with law to the custody of the parents / guardians. It is not always necessary that at the first instance, the child must be sent to the observation home, pending the bail application proceedings.

**Mohamed Irfan Vs. Union of India represented by The Inspector of Police,
National Investigation Agency, Chennai Criminal Appeal No.340 of 2023
[2023 (2) L.W. (CrI.) 877]**

Date of Judgment: 09.11.2023

**I.P.C., Sections 148, 506(ii), grant of bail - Unlawful Activities
(Prevention) Act, 1967, Sections 13, 38, 39 - Arms Act,1959, Section 28:-**

Allegation against appellant that he had committed offence under section 18 of the UA (P) Act by conspiring to commit a terrorist act and also under section 39, relating to support given to a terrorist organization. Merely because appellant had threatened the person stating that he was associated with an ISIS terrorist, it would by itself not be a reasonable ground to hold that he had supported a terrorist organization. Further, the fact that appellant handled the funds of A1 cannot be the basis to infer his support to any terrorist organization. Allegation of conspiracy to commit a terrorist Act must spell out the object of the conspiracy (i.e) as to what exactly was the terrorist Act that was agreed to be committed.
