TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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INDEX

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4.	C.S. Venkatesh Versus A.S.C. Murthy (D) By Lrs. & Others	CDJ 2020 SC 138	07-02-2020	**Specific Relief Act, 1963 - Section 16(c) – readiness and willingness -** Readiness and willingness- Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract	3
5.	Nirmala Kothari Vs. United India Insurance Co. Ltd.	CDJ 2020 SC 311	04-03-2020	**Motor Vehicles Act, 1988 - Section 149(2)(a) -** While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake,however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.	4

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Bhagwan Singh vs. State Of Uttarakhand,	CDJ 2020 SC 395 ,	18-03-2020	**Indian Penal Code, 1860, Section 302, Section 307 - The Arms Act,1959, Section 25 -** The conviction of the Appellant under Section 302, IPC is modified to Section 304 Part-2, IPC and that under Section 307, IPC is altered to Section 308, IPC- grounds for modification.	5
2.	Shilpa Mittal Vs. State Of NCT Of Delhi & Another,	CDJ 2020 SC 024	09-01-2020	**Juvenile Justice (Care and Protection of Children) Act, 2015, Section 2(33) - Indian Penal Code, 1860, Section 304 –** In exercise of power conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and shall be dealt with in the same manner as children who have committed serious offences. An offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence.	5
3.	Raja @ Ayyappan vs. State of Tamil Nadu	CDJ 2020 SC 417	01-04-2020	**Constitution of India - Article 21 - Indian Penal Code - Section 120B - Code of Criminal Procedure, 1973 - Section 164 and Section 313 - Indian Evidence Act, 1872 - Section 24 to Section 30 - Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(3), Section 4(1), Section 15 and Section 19 - Explosive Substances Act, 1908 - Section 4 and Section 5 - Unlawful Activities (Prevention) Act, 1967 - Sections 2F(d)(1) and (2) read with**	6

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				Section 13 - Arms Act - Section 7 read with Section 35(1)(A) and Section 3 read with Section 25(1)(B) – Whether the statemen co-accused is admissible in evidence –If joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case.	
4.	M. Subramaniam & Another vs. S. Janaki & Another	CDJ2020SC401	20.03.2020	**Constitution of India- Article 136 - Indian Penal Code, 1860 - Section 403, Section 406, Section 408, Section 418(i), Section 420, Section 424 and Section 465** –Civil dispute should not be given the colour of a criminal offence, and at the same time mere pendency of the civil proceeding is not a good ground and justification to not register and investigate an FIR if a criminal offence has been committed.	6
5.	State of Gujarat vs. Mansukhbhai Kanjibhai Shah	CDJ2020SC496	27-04-2020	**Offences under Sections 7, 8, 10 and 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of Indian Penal Code, 1860 -** whether the respondent-who is allegedly a trustee in the Sumandeep Charitable Trust which established and sponsors the said University ('Deemed to be University') is a 'public servant covered under Section 2(c) of the PC Act.	7
6.	Samta Naidu & Another vs. State of Madhya Pradesh & Another	CDJ 2020 SC305	02-03-2020	**Sections 200 & 203 of the Criminal Procedure Code -** Maintainability of second complaint and second protest petition on the same facts - no bar to the entertainment on the same facts but it will be entertained only in exceptional circumstances.	7

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
7.	Hira Singh & Another vs. Union of India & Another	CDJ 2020 SC 466	22-04-2020	**Narcotic Drugs and Psychotropic Substances Act, 1985 -** Whether the decision of Supreme Court in E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161 requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 with Section 21? – Reference is answered.	8

MADRAS HIGH COURT – CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Ambalavanan & Another vs. Saravanan & Others	CDJ 2020 MHC 925	06-03-2020	**Tamil Nadu Survey and Boundaries Act, 1923 - Sections 9, 11, 13 and 14** - suit filed for declaration and mandatory injunction.-Whether the suit is barred by limitation in spite of non compliance of the mandatory provisions contained in Sections 9, 11, 13 and 14 of Tamil Nadu Survey and Boundaries Act (VIII of 1923 before effecting resurvey?	9
2.	Arulmigu Velukkai Sri Azhagiya, Singaperumal Devasthanam, Rep. by its Trustees A. Venkatarayalu & Others vs. G.K. Kannan (Deceased) & Others	CDJ 2020 MHC 1159	05-03-2020	**Section.34 of the Specific Relief Act -** The plaintiff faces a denial of his title in the written statement, but chooses to face the trial without a declaratory relief. Should in every such circumstance the plaintiff be non-suited?- Test.	10
3.	Divisional Manager, M/s. Cholamandalam MS General Insurance Company Limited, Chennai vs. Anandan & Another	CDJ 2020 MHC 1141	11-03-2020	**Road Accident Claim under Motor vehicles Act -** Negligence- The claimant committed a guilt before the Criminal Court of Law and paid fine- whether he is entitled for compensation?	11
4.	Dr.(Mrs) Snehalatha Elangovan vs. S. Shanmugam	CDJ 2020 MHC 1343	18-03-2020	**Presidency-towns Insolvency Act, III of 1909 - Section 9, Section 10,Section 11, Section 12 & Section 13** –The act of insolvency is committed, when the transfer of property is effected with intent to defeat the rights of the Creditor- any adjudication have been obtained fraudulently is not binding.	11
5.	G.T.P.Transport Company, Swaranpuri, Salem & Another vs. National Insurance Company Ltd., Div. Manager, Salem & Another	CDJ 2020 MHC 1194	02-03-2020	**Sections 9 and 10 of the Carriers Act -** notice of demand specifying the amount of loss is sufficient compliance under section 10 of carriers Act.	12

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
6.	IFFCO-TOKIO General Insurance Co. Ltd., Represented by its Manager, K.S.C.M.F. Buildings, Bangalore Vs. Mageswari & Others	CDJ 2020 MHC 1065	13-03-2020	**Road Accident Claim under Motor vehicles Act -** Compensation- Fixation of notional income of a 10 year old minor boy- The monthly income of Rs.3,000/- was fixed for the minor boy aged about 10 years and 15 multiplier was applied- No infirmity.	12
7.	K. Rathinam vs. Gopalakrishnan & Others	CDJ 2020 MHC 1146	05-03-2020	**The Hindu Minority and Guardianship Act,1956, sections 6 and 11 -** A foster mother or a foster father cannot be construed as a natural guardian by any stretch of imagination, at best they can be termed as de- facto guardian.	13
8.	Thaheera & Others vs. Hashan & Another	CDJ 2020 MHC 1133	12-03-2020	**Motor vehicles Act,1988, section 163-A -**Borrower, who drove the vehicle cannot claim compensation from the owner of the vehicle as he is not a third party'	13
9.	Syrma Technology Private Limited, Chennai vs. Powerwave Technologies Sweden AD (in bankruptcy), Rep., by the Bankruptcy Administrator, Niklas Korling & Another	CDJ 2020 MHC 1027	13-03-2020	**Commercial Courts Act -** Circumstances under which summary judgements is to be delivered- explained .	14
10.	A. Gunasekaran & Others vs. Minor Eswararaj, Rep. By next friend and guardian mother Premalatha & Another	CDJ 2020 MHC 1220	06-03-2020	**Hindu Succession Act,1956, section 6 and 8 -** In order to be classified as ancestral property in which the descendants acquire a right by birth, it should be shown that it devolved by succession for more than three generations .	15

MADRAS HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Arjunan vs. State rep.by Deputy Superintendent of Police, (Omalur Sub Division), Salem	CDJ 2020 MHC 1059	11-03-2020	**Section 376(1) IPC and Section 3(2) (v) SC / ST (Prevention of Atrocities) Act, 1989.** There was no external injuries in the private parts of the victim girl - Whether the offence attributed against the accused would not fall under the definition of rape as contemplated under IPC and only consensual sex between the victim girl and the accused?	16
2.	Bettiah Lokesh, Managing Director, Triway Travels Pvt. Ltd., Bangalore vs. N. Ramesh, Accredited Representative of Sangam Travels, Chennai	CDJ 2020 MHC 1057	12-03-2020	**Indian Penal code sections 499 and 500 -** Criminal complaint on the basis of a show cause notice against the authority who empowered to issue the same-maintainability.	16
3.	J.A. Murugan vs. The Registrar of Co-operative Societies, Kilpauk, Chennai & Another	CDJ 2020 MHC 926	06-03-2020	**Prevention of Corruption Act, 1988 - Section 2(c), Section 2(c)(ix), Section 7 and Section 13(2) r/w Section 13(1)(d) -** Whether the appellant who was the Secretary of District National Engineering Employees Co-operative Thrift and Credit Society would come within the definition of public servant and can prosecution to be launched against him under the provisions of the 1988 Act - whether, the Registrar of Co-operative Societies, had the authority to issue the impugned Circular, thereby, bringing all employees of every category of Co-operative Society within the fold of 1988 Act.	17

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
4.	Lakshmanan vs. The State rep. by Inspector of Police, Chennai	CDJ 2020 MHC 1150	05-03-2020	**Sections 420, 406 and 109-B IPC read with Section 5 of TNPID Act and section 167(2) of criminal procedure code -** . The petitioner has filed a petition under Section 167 (2) Cr.P.C and seeking statutory bail. The Trial Court has rejected the said petition stating that already he has filed a bail application and in which the Trial Court has passed an order to enlarge the petitioner on bail with a condition. - whether the petitioner is entitled to file a petition under Section 167(2) Cr.P.C seeking statutory bail and without complying the said condition and without challenging the said order by filing revision?	17
5.	N.C. Lakshmi Narasimhan vs. The State rep. by Inspector of Police, W-32 All Women Police Station, Madipakkam, Chennai & Another	CDJ 2020 MHC 1082	18-03-2020	**Sections 354-A, 506(i) of the Indian Penal Code, 1860, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, and Sections 3(1)(s), 3(1)(u) and 3(1)(w)(i) of the SC/ST Act -** Bail-surrendered before the Trial Court and seeking bail. The Trial Court has accepted the surrender of the Appellant/Accused, but dismissed the Bail Application and remanded the Appellant/Accused to the judicial custody- appointing Investigating Officer itself as per Rule 7 of the SC/ST Rules, the concerned authorities have taken more than 60 days.- grounds for bail.	18

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
6.	P. Suresh vs. State Rep.by Assistant Commissioner of Police, Pattabiram Range, (T-11, Thirunindravur Incharge)	CDJ 2020 MHC 1361	17-03-2020	**Section 304-B, 306 & 498-A of Indian Penal Code, Section 113-B of the Indian Evidence Act -** when the cruelty inflicted upon the deceased by the appellant is also found to be falling within the definition of the cruelty contemplated under Section 498-A IPC and in such view of the matter, the ingredients of Section 304-B IPC having been satisfied by the prosecution beyond any reasonable doubt as above pointed out, the prosecution is entitled to rely upon the presumption under Section 113-B of the Indian Evidence Act.	18
7.	M/s. Creative Disgnostic Medicare Pvt. Ltd., Represented by Satish Sadanand Karekar, Director & Others vs. The State of Tamilnadu rep. by M. Rani, Drugs Inspector, Chennai	CDJ 2020 MHC 383	29-01-2020	**Drugs and Magic Remedies (Objectionable Advertisement) Act - Section 3 - read with Schedule (1) (Asthma) of Rule 6 –** The object of the Act is that the advertisement in the label of the particular drug should not mis-direct the consumers/ patients - Only when the advertisement in the label of the drug mis-directs the consumers/ patients - it would attract the penal provision under the Act	19
8.	Tamilselvan vs. State, Inspector of Police, Namakkal	CDJ 2020 MHC 445	05-02-2020	**Indian Penal Code,1860, section 302&201 -** Murder by poisoning - no poisonous substance was found in the viscera. Therefore, the said aspect create a doubt in the story putforth by the prosecution. .	19
9.	Abdul Kalam Azad vs. The State, Rep by the Deputy Superintendent of Police, CB, CID, Ariyalur, Perambalur District	CDJ 2020 MHC 571	10-02-2020	**Sections 409 r/w. 109 of Indian Penal Code -** The exoneration of accused in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution against him.	20

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
10.	State, Rep. by The Inspector of Police, Special Investigation Team CB-CID, Chennai vs. Santhu Mohammed @ Sait & Others	CDJ 2020 MHC 991	07-02-2020	**Section 307 r/w 120 (B), 307 and 307 r/w 109 IPC and Section 6 r/w 4 (a) of the Explosive Substances Act -** Conspiracy - The necessary ingredient is the meeting of minds between the conspirators - To bring home a charge u/s 120 (B) IPC, it is necessary for the prosecution to show, either through direct or circumstantial evidence that there was an agreement between two or more persons to commit an offence.	20

SUPREME COURT – CIVIL CASES

CDJ 2020 SC 405

Dhanpat vs. Sheo Ram (Deceased) Through Lrs. & Others

Date of Judgment: 19-03-2020

Succession Act - Section 63, 69 - Evidence Act - Section 65- Suit for declaration - the trial court dismissed the suit on the ground that the suit will is shrouded with suspicious circumstances. First Appellate court confirmed the findings of the trial court. High Court reversed the concurrent finding in second appeal by holding that the will was not surrounded by suspicious circumstances and the execution of will stands proved. - Hence this appeal.

The cumulative effect of the unusual features and circumstances surrounding the will, would weigh upon the court in the determination required to be made by it. The judicial verdict will be based on the consideration of all the unusual features and suspicious circumstances put together and not upon the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution. In the present case, a close reading of the will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reason for exclusion of the sons is apparent from the will itself - Appeal allowed and the suit is dismissed.

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CDJ 2020 SC 452

Sushilaben Indravadan Gandhi & Another vs. The New India Assurance

Date of Judgment:15-04-2020

Motor Vehicles Act, 1988 - Section 166 and scope of the Workmen's Compensation Act, 1923 - Contract entered into between an Institute and an independent professional - "employment" refers only to regular employees of the Institute, which, deceased was certainly not. Terms of the contract make it clear that the contract is one for service, and that with effect from the date on which the contract begins, deceased shall no longer remain as a regular employee of the Institute, making it clear that his services are now no longer as a regular employee but as an independent professional - services cannot be terminated in the usual manner of the other regular employees of the Institute but are terminable on either side by notice. High Court held in the impugned judgment that as additional premium had been paid so as to attract the applicability of IMT-5 and in any case the Insurance Company would be liable under the policy to pay compensation in the case of death of unnamed passengers other than the insured and his paid driver or cleaner, deceased being one such unnamed passenger. This was done on the footing that the exception to IMT-5 was that a person in the employ of the insured coming within the scope of the Workmen's Compensation Act, 1923 is excluded from the cover, but that as deceased did not come within the scope of the Workmen's Compensation Act, compensation payable due to his death in a motor accident would be covered by IMT-5 court find no reason to disturb this finding - inapplicability **of** endorsement IMT-16, as additional premium had not been paid would, make no difference on the facts of this case "employment" refers only to regular employees of the Institute, which, deceased was certainly not.

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CDJ 2020 431

In Re: Guidelines For Court Functioning Through Video Conferencing During COVID-19 Pandemic

Date of Judgment:06-04-2020

The recent outbreak of COVID-19 (Coronavirus) in several countries, including India, has necessitated the immediate adoption of measures to ensure social distancing in order to prevent the transmission of the virus. The Supreme Court of India and High Courts have adopted measures to reduce the physical presence of lawyers, litigants, court staff, para legal personnel and representatives of the electronic and print media in courts across the country and to ensure the continued dispensation of justice.

In exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice- Directions issued.

Faced with the unprecedented and extraordinary outbreak of a pandemic, it is necessary that Courts at all levels respond to the call of social distancing and ensure that court premises do not contribute to the spread of virus. This is not a matter of discretion but of duty. Indeed, Courts throughout the country particularly at the level of the Supreme Court and the High Courts have employed video conferencing for dispensation of Justice and as guardians of the Constitution and as protectors of individual liberty governed by the rule of law. Taking cognizance of the measures adopted by this court and by the High Courts and District Courts, it is necessary for this court to issue directions by taking recourse to the jurisdiction conferred by Article 142 of the Constitution.

Therefore, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, we direct that:

i. All measures that have been and shall be taken by this Court and by the High Courts, to reduce the need for the physical presence of all stakeholders within court premises and to secure the functioning of courts in consonance with social distancing guidelines and best public health practices shall be deemed to be lawful;

ii. The Supreme Court of India and all High Courts are authorized to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and

iii. Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies;

iv. The concerned courts shall maintain a helpline to ensure that any complaint in regard to the quality or audibility of feed shall be communicated during the proceeding or immediately after its conclusion failing which no grievance in regard to it shall be entertained thereafter.

v. The District Courts in each State shall adopt the mode of Video

Conferencing prescribed by the concerned High Court.

vi. The Court shall duly notify and make available the facilities for video conferencing for such litigants who do not have the means or access to video conferencing facilities. If necessary, in appropriate cases courts may appoint an amicus-curiae and make video conferencing facilities available to such an advocate.

vii. Until appropriate rules are framed by the High Courts, video conferencing shall be mainly employed for hearing arguments whether at the trial stage or at the appellate stage. In no case shall evidence be recorded without the mutual consent of both the parties by video conferencing. If it is necessary to record evidence in a Court room the presiding officer shall ensure that appropriate distance is maintained between any two individuals in the Court.

viii. The presiding officer shall have the power to restrict entry of persons into the court room or the points from which the arguments are addressed by the advocates. No presiding officer shall prevent the entry of a party to the case unless such party is suffering from any infectious illness. However, where the number of litigants are many the presiding officer shall have the power to restrict the numbers. The presiding officer shall in his discretion adjourn the proceedings where it is not possible to restrict the number.

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CDJ 2020 SC 138

C.S. Venkatesh Versus A.S.C. Murthy (D) By Lrs. & Others

Date of Judgment:07-02-2020

Specific Relief Act, 1963 - Section 16(c) – readiness and willingness - Readiness and willingness- Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract

The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attendant circumstances. The amount which he has to pay the defendant must be of necessarily proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

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CDJ 2020 311

Nirmala Kothari vs. United India Insurance Co. Ltd.

Date of Judgment:04-03-2020

Motor Vehicles Act, 1988 - Section 149(2)(a) - While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake, however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance, lies on the insurer

While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

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SUPREME COURT – CRIMINAL CASES

CDJ 2020 SC 395

Bhagwan Singh vs. State Of Uttarakhand

Date of Judgment:18-03-2020

Indian Penal Code, 1860, Section 302, Section 307 - The Arms Act,1959, Section 25 - Conviction of the Appellant under Section 302, IPC is modified to Section 304 Part-2, IPC and that under Section 307, IPC is altered to Section 308, IPC- grounds for modification.

The Appellant of course cannot absolve himself of the conclusions that he carried a loaded gun at a crowded place where his own guests had gathered to attend the marriage ceremony. He did not take any reasonable safety measure like to fire the shot in the air or towards the sky, rather he invited full risk and aimed the gun towards the roof and fired the shot. He was expected to know that pellets could cause multiple gunshot injuries to the nearby persons even if a single shot was fired. The appellant is, thus, guilty of an act, the likely consequences of which including causing fatal injuries to the persons being in a close circuit, are attributable to him. The offence committed by the appellant, thus, would amount to `culpable homicide' within the meaning of Section 299, though punishable under Section 304 Part 2 of the IPC.

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CDJ 2020 SC 024

Shilpa Mittal vs. State Of NCT Of Delhi & Another

Date of Judgment:09-01-2020

Juvenile Justice (Care and Protection of Children) Act, 2015, Section 2(33) - Indian Penal Code, 1860, Section 304 –In exercise of power conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act shall be dealt with in the same manner as children who have committed serious offences. An offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence.

Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'. In view of the above discussion

we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes a call on the matter.

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CDJ 2020 SC 417

Raja @ Ayyappan vs. State of Tamil Nadu

Date of Judgment:01-04-2020

Constitution of India - Article 21 - Indian Penal Code - Section 120B - Code of Criminal Procedure, 1973 - Section 164 and Section 313 - Indian Evidence Act, 1872 - Section 24 to Section 30 - Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(3), Section 4(1), Section 15 and Section 19 - Explosive Substances Act, 1908 - Section 4 and Section 5 - Unlawful Activities (Prevention) Act, 1967 - Sections 2F(d)(1) and (2) read with Section 13 - Arms Act - Section 7 read with Section 35(1)(A) and Section 3 read with Section 25(1)(B) – whether the statement of two other co-accused is admissible in evidence –A joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case.

We are of the view that since the trial of the other two accused persons was separate. There is nothing on record to prove the voluntariness of the statement - if for any reason, a joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case.

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CDJ 2020 SC 401

M. Subramaniam & Another vs. S. Janaki & Another

Date of Judgment:20.03.2020

Constitution of India- Article 136 - Indian Penal Code, 1860 - Section 403, Section 406, Section 408, Section 418(i), Section 420, Section 424 and Section 465 – civil dispute should not be given the colour of a criminal offence, and at the same time mere pendency of the civil proceeding is not a good ground and justification to not register and investigate an FIR if a criminal offence has been committed.

The police on being satisfied that a criminal offence is made out would have liberty to register an FIR. It is also open to the first respondent to approach the court of the metropolitan magistrate if deemed appropriate and necessary. Equally, it will be open to the appellants and others to take steps to protect their interest. We would clarify that this Court has not expressed any opinion on merits and whether or not the complaint discloses any criminal offence. The only clarification that is required is that a civil dispute should not be given the colour of a criminal offence, and at the same time mere pendency of the civil proceeding is not a good ground and justification to not register and investigate an FIR if a criminal offence has been committed.

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CDJ 2020 SC 496

State of Gujarat vs. Mansukhbhai Kanjibhai Shah

Date of Judgment:27-04-2020

Offences under Sections 7, 8, 10 and 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of Indian Penal Code, 1860 - whether the respondent- who is allegedly a trustee in the Sumandeep Charitable Trust which established and sponsors the said University ('Deemed to be University') is a 'public servant covered under Section 2(c) of the PC Act.

"University" under Section 2(f) of the UGC Act is established either in the Central Act, a Provincial Act or a State Act. At the same time, such of the institutions for higher education other than the University created under the statutory enactment, after being declared by the Central Government by notification in the Official Gazette, shall be deemed to be university for the purposes of this Act and all provisions of the UGC Act shall apply to such institutions as if it were a university within the meaning of clause (f) of Section 2 of the Act. It cannot be lost sight of that the Act, 1988, as its predecessor that is the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repeals and replaces the Act of 1947 contains a definition of 'public servant' with vide spectrum in clause (c) of Section 2 of the Act, 1988, so as to purify public administration. The objects and reasons contained in the Bill leading to passing of the Act can be taken assistance of, which gives the background in which the legislation was enacted. When the legislature has introduced such a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing the growing menace of corruption in the society imparting public duty, it would be apposite not to limit the contents of the definition clause by construction which would be against the spirit of the statute. By introduction of Section 2(c)(xi) of the Act, 1988, any person or member of any governing body with whatever designation called has been included in the definition of "public servant". Any university includes all universities regardless of the fact whether it has been established under the statute or declared deemed to be university under Section 3 of the UGC Act. It is true that the distinction has been pointed out by the Parliament under the provisions of the UGC Act for consideration and determination of standards of education in universities, but in my view, no distinction could be carved out between the university and deemed to be university so far it relates to the term 'public servant' as defined under Section 2(c) (xi) of the Act 1988.

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CDJ 2020 SC 305

Samta Naidu & Another vs. State of Madhya Pradesh & Another

Date of Judgment:02-03-2020

Sections 200 & 203 of the Criminal Procedure Code - Maintainability of second complaint and second protest petition on the same facts - no bar to the entertainment on the same facts but it will be entertained only in exceptional circumstances

The law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit. The protest petition can always be treated as a complaint and proceeded with in terms of

Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.

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CDJ 2020 SC 466

Hira Singh & Another vs. Union of India & Another

Date of Judgment:22-04-2020

Narcotic Drugs and Psychotropic Substances Act, 1985 - Whether the decision of Supreme Court in E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161 requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 with Section 21?

Not agreeing with the view taken by this Court in the case of E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau (2008) 5 SCC 161 taking the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration, the questions are referred to a three Judge Bench, Reference is answered as under:

> **(I).** The decision of this Court in the case of E. Micheal Raj (Supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;
>
> **(II).** In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;
>
> **(III).** Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;
>
> **(IV).** Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

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MADRAS HIGH COURT – CIVIL CASES

CDJ 2020 MHC 925

Ambalavanan & Another vs. Saravanan & Others

Date of Judgment:06-03-2020

Tamil Nadu Survey and Boundaries Act, 1923 - Sections 9, 11, 13 and 14 - suit filed for declaration and mandatory injunction.-Whether the suit is barred by limitation in spite of non compliance of the mandatory provisions contained in Sections 9, 11, 13 and 14 of Tamil Nadu Survey and Boundaries Act (VIII of 1923 before effecting resurvey?

It is clear that the plaintiffs, if aggrieved, should prefer an appeal or second appeal and thereafter, they should have filed a suit within three years. The plaintiffs have come out with a vague statement that they came to know of the resurvey only in the year 2004 .The plaintiffs are entitled to agitate the matter from the date of their knowledge. But for that, they should establish that the resurvey was illegally conducted without notice in violation of Sections 9, 11, 13 and 14 of the Act. Then only they will get any cause of action to agitate the matter. Even assuming that they have established the fact, they have avenues of two appeals. Since the plaintiffs have not come out with a clear date of the resurvey proceedings conducted pursuant to Section 5 of the Act, since they failed to examine the official witnesses with regard to notification published in the District Gazette as provided under Section 13 of the Act and since the plaintiffs have failed to prove that no notice was served or that no publication was made by the official respondents through independent witnesses, it cannot be held that notice was not at all served during resurvey proceedings. The Lower Appellate Court has found through cross examination of P.W.1 that the defendants 4 and 5 are enjoying the property by putting up boundaries around it at least from the year 1982. In the absence of any proof that resurvey was conducted only in the year 2004, the statement made by the defendants 4 and 5 shall be taken into account. As per section 14 of the Act, suit should have been filed within three years from the date of notification under Section 13 of the Act. But the suit came to be filed on a vague pleading after a lapse of about 15 years. The findings of the Lower Appellate Court that the suit is barred by limitation is correct and valid.

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CDJ 2020 MHC 1159

Arulmigu Velukkai Sri Azhagiya, Singaperumal Devasthanam, Rep. by its Trustees A. Venkatarayalu & Others vs. G.K. Kannan (Deceased) & Others

Date of Judgment:05-03-2020

Section 34 of the Specific Relief Act - The plaintiff faces a denial of his title in the written statement, but chooses to face the trial without a declaratory relief. Should in every such circumstance the plaintiff be non-suited?- Test.

A denial of the plaintiff's title in the written statement is merely a pleading of the defendant. It is part of his strategy, and is fundamentally self- serving. Can therefore, a denial of plaintiff's title without anything more, be adequate enough to conclude that the title of the plaintiff has come under a cloud? For instance, in the present case, Andalammal had purchased two items of properties (of which one is the suit property), sometime in 1892 and 1893, and endowed them for religious charity under Ext.A-5 in 1907, and the plaintiff has produced documents up to couple of years next before the institution of the present suit for proving the character of the suit property. So far as the plaintiff-temple is concerned, the initial burden cast on it to prove its case has been discharged. The law on shifting of burden of proof informs that the burden shifts to the defendant only after the plaintiff has discharged his burden, which in other words would mean that when the evidence produced by the plaintiff is found to be capable of producing a certain prima facie conclusion in support of the latter's case. Now, can the prima facie conclusion on the plaintiff's title based on his evidence, be stated to have been adequately defended by a mere denial of plaintiff's title in the written statement, or its inadequate proof? If a mere denial in the pleading of the defendant is considered adequate, it instantly dispenses him of his burden to prove his plea of denial of plaintiff's title, which then will automatically elevate the defendant's pleading on a disputed fact (and not law) to the status of its proof. This would give an unfair procedural advantage to the defendant. Viewing it from another angle, if only a denial of plaintiff's title in the written statement without anything more, can be a ground to non-suit the plaintiff for not seeking a declaratory relief, then that could have been made the ground to dismiss the suit on a preliminary issue, but Order XIV Rule 2 CPC, does not provide for this course. It cannot be ignored that, notwithstanding the nature of action, and irrespective of whether the relief sought is one under the common law, or a discretionary relief in equity, the procedure which the Courts adopt for trial of the case and the law on burden of proof that govern the trial remain the same for both.

It can now be deduced that, to constitute a cloud on plaintiff's title, there must be evidence for the Court to conclude prima facie that the plaintiff's assertion of title to a legal character, or to a right over a property has come under the cloud. Let it not be forgotten, that life's experience in this country, which both the Courts and the legal practitioners would vouchsafe, that not every litigant makes a bonafide denial of plaintiff's title. While, a bonafide denial of plaintiff title with some evidence may merit consideration, to non- suit the plaintiff with a colourable denial of former's title will be unconscionable, if only it is acknowledged that fairness is integral to our adversarial jurisprudence. This Court has tried multiple approaches to test if the plaintiff should have sought any declaratory relief, but each of them only produce the same result: That given the nature and character of the suit, there is no need for the plaintiff to seek any declaratory relief. Hence, the suit is maintainable without a declaratory relief.

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CDJ 2020 MHC 1141

Divisional Manager, M/s. Cholamandalam MS General Insurance Company Limited, Chennai vs. Anandan & Another

Date of Judgment:11-03-2020

Road Accident Claim under Motor vehicles Act - Negligence- The claimant admitted the guilt before the Criminal Court of Law and paid fine- whether he is entitled for compensation?

It is for the claimant to establish at the first instance, he has not committed any guilty. Once, the claimant admitted the guilt before the Criminal Court of Law and paid fine, the other possible circumstances that he was taking treatment and he was unable to move from one place to another place cannot be accepted at all. This Court is of the considered opinion that the claimant at the first instance is bound to establish the factum regarding the accident and it is for the claimant to establish that he is entitled for compensation by filing document to establish that Insurance policy coverage is in force and he is entitled for compensation and he has not committed an act of negligence and all other aspects. The Insurance company, in the event of taking a defense, is bound to disprove the said statements, if any made by the claimants. This being the principles to be followed, when the claimant himself filed all the documents including the documents relating to the criminal court proceedings, wherein he pleaded guilty, which was marked as Documents on the side of the claimant, then there is no reason to arrive a conclusion by the Tribunal that the 2nd respondent Insurance company should elicit further evidence in this regard. When the documents related are filed by the claimant and the said documents are relied on by the respondent Insurance company, then the Tribunal ought not to have arrived a conclusion that the Insurance company, ought to have elicited more information during the cross examination. In this regard, the burden of proof cannot be shifted on the Insurance company. The claimant is not entitled for compensation.

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CDJ 2020 MHC 1343

Dr.(Mrs) Snehalatha Elangovan vs. S. Shanmugam

Date of Judgment:18-03-2020

Presidency-towns Insolvency Act, III of 1909 - Section 9, Section 10,Section 11, Section 12 & Section 13 –The act of insolvency is committed, when the transfer of property is effected with intent to defeat the rights of the Creditor- any adjudication obtained fraudulently is not binding.

It is also relevant to note that in the affidavit filed in support of the Application No.269 of 2018 by the Debtor, he has not mentioned about the earlier notice issued to him. The suppression of the said fact also leads to an inference that the Debtor manured to get himself insolvent only in order to screen the property from the creditors, he conveniently transferred the property in his wife's name. The act of insolvency is committed, when the transfer of property is effected with intent to defeat the rights of the creditor. Further, after insolvency notice was issued without making disclosure and getting himself adjudged with the help of some third party make it clear that the earlier order of adjudication is also result of collusion and fraudulent Act of the Respondent. Such order has obtained only in order to defeat the right of the Creditor. Such order has been hurriedly obtained only to avoid the property being brought under the control of official assignee for distribution of the amount to the creditors. Therefore, any adjudication have been obtained fraudulently is not binding and admittedly, the act of insolvency committed immediately after the appeal filed against money suit was dismissed. The Appeal filed against the money decree was dismissed and within two years

Insolvency Notice was issued as referred above. Therefore the debtor is liable to be adjudicated as insolvents, as per the procedure known to law.
Accordingly, the Debtor is adjudicated as Insolvent and any transfer made by the Debtor is not binding and same is not valid in the eye of law.

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CDJ 2020 MHC 1194

G.T.P. Transport Company, Swaranpuri, Salem & Another vs. National Insurance Company Ltd., Divisional Manager, Salem & Another

Date of Judgment:02-03-2020

Sections 9 and 10 of the Carriers Act - notice of demand specifying the amount of loss is sufficient compliance under Section 10 of carriers Act .
Section 10 of carriers Act imposes an obligation on the consignors to issue a notice within a period of six months from the time of the loss or injury came to the knowledge of the plaintiff. Section 10 does not prescribe any format for issuance of such notice. All that is required is a notice of demand specifying the amount of loss.

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CDJ 2020 MHC 1065

IFFCO-TOKIO General Insurance Co. Ltd., Represented by its Manager, K.S.C.M.F. Buildings, Bangalore Vs. Mageswari & Others

Date of Judgment:13-03-2020

Road Accident Claim under Motor vehicles Act - Compensation- Fixation of notional income of a 10 year old minor boy- The monthly income of Rs.3,000/- was fixed for the minor boy aged about 10 years and 15 multiplier was applied- No infirmity.
The accident occurred on 24.01.2011 at about 17.00 Hours in front of Tea Shop at Arasakanahalli Village. Perumbalai Police Station registered a case in Crime No.25 of 2011 under Sections 279 and 304 (A) of IPC. The minor boy died on the way to Salem Government Hospital, who was aged about 10 years at the time of accident and a compensation of Rs.28,55,000/- was claimed. As far as the quantum of compensation is concerned, the Tribunal awarded a sum of Rs.8,10,000/-. The future prospects was calculated and a sum of Rs. 2,70,000/- was awarded, loss of income was calculated and a sum of Rs.5,40,000/- was awarded. The monthly income of Rs.3,000/- was fixed for the minor boy aged about 10 years and 15 multiplier was applied. the accident occurred in the year 2011 and the deceased boy was aged about 10 years and the notional income of Rs.3,000/- was fixed by the Tribunal, this Court do not find any infirmity or perversity as such.

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CDJ 2020 MHC 1146

K. Rathinam vs. Gopalakrishnan & Others

Date of Judgment:05-03-2020

The Hindu Minority and Guardianship Act,1956, sections 6 and 11 - A foster mother or a foster father cannot be construed as a natural guardian by any stretch of imagination, at best they can be termed as de- facto guardian.

In view of Section 6 of the Hindu Minority and Guardianship Act, 1956, which defines the natural guardians of a Hindu minor and their property. A foster mother or a foster father cannot be construed as a natural guardian by any stretch of imagination, at best they can be termed as de- facto guardian. Section 11 of the Act, prohibits an alienation of a minor's property by the de-facto guardian. In view of Section 11 of the Act, the alienation by Marakkal, of the share of the minor, would become void ab initio. It is not voidable as in the case of alienation by a natural guardian. Once it is found that the sale is void ab initio, the plaintiff can ignore the same and seek partition of his share in the suit property.

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CDJ 2020 MHC 1133

Thaheera & Others vs. Hashan & Another

Date of Judgment:12-03-2020

Motor vehicles Act,1988, section 163-A - Borrower, who drove the vehicle cannot claim compensation from the owner of the vehicle as he is not a third party'

Under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the Principle of 'No Fault Liability'. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act, against the owner/Insurer of the vehicle, which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act, against the owner and Insurer of the vehicle.

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CDJ 2020 MHC 1027

Syrma Technology Private Limited, Chennai vs. Powerwave Technologies Sweden AD (in bankruptcy), Rep., by the Bankruptcy Administrator, Niklas Korling & Another

Date of Judgment:13-03-2020

Commercial Courts Act - Circumstances under which summary judgements is to be delivered- explained.

Order XIII-A Rule 4 deals with the procedure to be followed. This provision imposes certain duties on both the applicant and the respondent. The compliance of the procedure is mandatory on the part of the parties. It deals with the grounds for summary judgment. Here again there are two elements, which are to be kept in mind. One "the real prospect of succeeding on the claim or defending" and the other "the existence of any other compelling reason". Order XIII-A Rule 3(a) is applicable to the applicant, who can either be the plaintiff or the defendant. He has to satisfy the Court with respect to the non existence of the real prospect. Thereafter, the respondent in the application has to convince the Court on the existence of any other compelling reason. These two factors will have to be considered by the Court. Order XIII-A Rule 4 deals with the procedure to be followed. This provision imposes certain duties on both the applicant and the respondent. The compliance of the procedure is mandatory on the part of the parties. Order XIII-A Rule 7.

This rule provides sufficient power to the Court to pass a conditional order. This power has to be exercised when "it appears" to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so. If we read order XIII-A Rules 6 and 7 together, a clear picture would emerge. If it appears to the Court that a claim or defence may succeed and it is also probable, then the application filed seeking a summary judgment will have to be dismissed. If it appears to the Court that it is possible but improbable as stated in Rule 7 of Order XIII-A of the Act, then it may consider passing a conditional order. If the Court considers that a plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, there is no other compelling reason as to why the claim should not be disposed of before recording of oral evidence, it may give a summary judgment. Alternatively, the Court can also consider striking out the pleadings either in whole or in part. This discretion is given to the Court before deciding to give a summary judgment. Therefore, the Court has to keep in mind and decide as to whether it is a fit case for striking out the pleadings dismissing an application and proceed further or a conditional order could be passed. After exhausting these stages, the question of granting a summary judgment would arise.

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CDJ 2020 MHC 1220

A. Gunasekaran & Others vs. Minor Eswararaj, Rep. By next friend and guardian mother Premalatha & Another

Date of Judgment:06-03-2020

Hindu Succession Act,1956, section 6 and 8 - In order to be classified as ancestral property in which the descendants acquire a right by birth, it should be shown that it devolved by **succession for more than three generations.**

The Lower Appellate Court has just gone by the description in the document "***Piturarjithamaai"*** which cannot always mean that the property is ancestral property in which the sons or grandsons acquired a right by birth. In order to be classified as ancestral property in which the descendants acquire a right by birth, **it should be shown that it devolved by succession for more than three generations. In the absence of such devolution, though, the property has been inherited from the ancestors it cannot be characterized as ancestral property in which the sons or grandsons would get a right by birth.**

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MADRAS HIGH COURT – CRIMINAL CASES

CDJ 2020 MHC 1059

Arjunan vs. State rep.by Deputy Superintendent of Police, (Omalur Sub Division), Salem

Date of Judgment:11-03-2020

Section 376(1) IPC and Section 3(2) (v) SC / ST (Prevention of Atrocities) Act, 1989.
There was no external injuries in the private parts of the victim girl - Whether the offence attributed against the accused would not fall under the definition of rape as contemplated under IPC?

The accused belongs to Vanniar community and the victim girl belongs to Adi Dravidar community. The mere fact that there was no external injuries in the private parts of the victim girl by itself would not be conclusive of the fact that she was not subjected to rape or lead to the conclusion that there has been only consensual sex between the victim girl and the accused. As far as the above aspect of the matter, the medical officer had also deposed that there is possibility of the victim girl not sustaining injuries, when she was subjected to rape against her will and accordingly, merely because, no external injuries are noted in the private parts of the victim girl, it cannot be held that the accused has not committed the offence of rape of the victim girl against her consent or will. Similarly, the absence of semen in the liquid gathered from the private parts of the victim girl or in the clothes seized from the victim girl by itself would not indicate that the **victim girl had not been subjected to rape. As above pointed out, when the victim girl is found to be aged about 15 to 16 years at the time of occurrence and as per the definition of rape under Section 375 IPC, if the** victim girl is under 18 years of age, when the accused has sexual intercourse withor without her consent, the same would also amount to rape.**F**urthermore, when the penetration of his penis into the vagina would be considered sufficient for the commission of rape. In the light of the abovesaid factors, the mere absence of injuries and semen cannot be a ground to hold that the victim girl had not been subjected to forcible sex by the accused and that they had only consensual sex as sought to be projected by the accused counsel.

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CDJ 2020 MHC 1057

Bettiah Lokesh, Managing Director, Triway Travels Pvt. Ltd., Bangalore vs. N. Ramesh, Accredited Representative of Sangam Travels, Chennai

Date of Judgment:12-03-2020

Indian Penal code sections 499 and 500 - Criminal complaint on the basis of a show cause notice against the authority who empowered to issue the same- maintainability.

The petitioner is arrayed as first accused in the complaint lodged by the respondent in C.C.No.3824 of 2016 for the offences under Sections 499 and 500 of IPC, alleging that the petitioner issued show case notice dated 20.02.2016 to the respondent raising false allegations and accusation intentionally and deliberately fully knowing that such imputations will harm the reputation and cause serious damage and injury to the name and reputation of respondent and as such the imputations are highly defamatory in nature. The petitioner is a lawful authority viz., the Managing Director of Travel Agents Association of India and as per Article 24 of the Memorandum of Articles of Association of the Travel Agents Association of India, they have power to issue show cause notice to the respondent herein. Therefore, this Court is of the considered opinion that entire allegations made in the complaint did not have prima facie case or make out a case against the petitioner to punish him for the offences under Sections 499 and 500 of IPC

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CDJ 2020 MHC 926

J.A. Murugan vs. The Registrar of Co-operative Societies, Kilpauk, Chennai & Another

Date of Judgment:06-03-2020

Prevention of Corruption Act, 1988 - Section 2(c), Section 2(c)(ix), Section 7 and Section 13(2) r/w Section 13(1)(d) - Whether the appellant who was the Secretary of District National Engineering Employees Co-operative Thrift and Credit Society would come within the definition of public servant and can prosecution to be launched against him under the provisions of the 1988 Act - whether, the Registrar of Co-operative Societies, had the authority to issue the impugned Circular, thereby, bringing all employees of every category of Co-operative Society within the fold of 1988 Act.

Society in which the appellant is working is only for the employees working in private companies and is not open to public at large. There is no material to even remotely suggest that the society in question receives any aid financial or otherwise from the State or Central Government. Society is neither controlled or aided so as to make its employees amenable to the 1988 Act. No permission could be granted to sanction prosecution of the writ petitioner under the 1988 Act. Registrar of Co-operative Societies cannot expand the definition of a public servant under the impugned circular. It is completely in the domain of the legislature to define or lend a meaning to the terms in the Act. Circular of the Registrar which states that all employees of all Co-operative Societies would be amenable to the prosecution under the Prevention and Corruption Act and they all are coming within the definition of public servant has no basis and is contrary to the statute and deserves to be struck down. Circular is struck down as beyond the competence of the Registrar and ultra vires the Constitution as well as the provisions of Prevention and Corruption Act ,1988.

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CDJ 2020 MHC 1150

Lakshmanan vs. The State rep. by Inspector of Police, Chennai

Date of Judgment:05-03-2020

Sections 420, 406 and 109-B IPC read with Section 5 of TNPID Act and section 167(2) of criminal procedure code - The petitioner has filed a petition under Section 167 (2) Cr.P.C and seeking statutory bail. The Trial Court has rejected the said petition stating that already he has filed a bail application and in which the Trial Court has passed an order to enlarge the petitioner on bail with a condition - **whether the petitioner is entitled to file a petition under Section 167(2) Cr.P.C seeking statutory bail and without complying the said condition and without challenging the said order by filing revision?**

The petitioner herein was arrested and remanded to judicial custody on 22.11.2019 for the alleged offence under Sections 420, 406 and 109-B IPC read with Section 5 of TNPID Act in Cr.No.5 of 2019 on the file of the respondent. The petitioner herein has filed a petition under Section 167 (2) Cr.P.C on 29.01.2020 seeking statutory bail. The Trial Court has rejected the said petition stating that already he has filed a bail application in Crl.MP.No.1720 of 2019 in which the Trial Court has passed an order on 03.01.2020 to enlarge the petitioner on bail with a condition to deposit a sum of Rs.50,00,000/- and without complying the said condition and without challenging the said order by filing revision, the petitioner filed a petition under Section 167(2) Cr.P.C seeking statutory bail. It is clear that even though the accused was granted bail on merits by imposing certain conditions, the same was not able to be complied with by the petitioner and as a result of the same the petitioner was not able to come out on bail.

The same will not stand in the way of the accused to file a fresh bail petition under Section 167(2) Cr.P.C., once statutory period expires and no final report is filed by the respondent-police. In this case admittedly, the respondent has not filed any charge sheet so far and as such he is entitled to get statutory bail under Section 167(2) Cr.P.C.

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CDJ 2020 MHC 1082

N.C. Lakshmi Narasimhan vs. The State rep. by Inspector of Police, W-32 All Women Police Station, Madipakkam, Chennai & Another

Date of Judgment:18-03-2020

Sections 354-A, 506(i) of the Indian Penal Code, 1860, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, and Sections 3(1)(s), 3(1)(u) and 3(1)(w)(i) of the SC/ST Act - Bail -surrendered before the Trial Court and seeking bail. The Trial Court has accepted the surrender of the Appellant/Accused, but dismissed the Bail Application and remanded the Appellant/Accused to the judicial custody - appointing Investigating Officer itself as per Rule 7 of the SC/ST Rules, the concerned authorities have taken more than 60 days.- grounds for bail.

As per Rule 7 of the SC/ST Rules, an offence committed under the SC/ST Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time. Sub-rule (2) of Rule 7 of the SC/ST Rules says that the Investigating Officer so appointed shall complete the investigation within a period of 60 days. In this case, for appointing Investigating Officer itself, the concerned authorities have taken more than 60 days. Further, even though, the Trial Court has remanded the Appellant/Accused on 18.02.2020 itself, no requisition has been submitted before the Trial Court for seeking extension of the remand, but it appears that the Trial Court has routinely extended the remand. Since the Police Authorities have not shown any interest to appoint the Investigating Officer as mandated under the SC/ST Rules, and also taking into consideration of the fact that the Appellant/Accused is in custody for the past 30 days, this Court is inclined to allow this Appeal. The order passed by the Trial Court in Crl. M.P. No. 1072 of 2020 dated 18.02.2020 is set aside. The Trial Court is directed to release the Appellant/Accused on bail with conditions.

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CDJ 2020 MHC 1361

P. Suresh vs. State Rep.by Assistant Commissioner of Police, Pattabiram Range, (T-11, Thirunindravur Incharge)

Date of Judgment:17-03-2020

Section 304-B, 306 & 498-A of Indian Penal Code, Section 113-B of the Indian Evidence Act -when the cruelty inflicted upon the deceased by the appellant is also found to be falling within the definition of the cruelty contemplated under Section 498-A IPC and in such view of the matter, the ingredients of Section 304-B IPC having been satisfied by the prosecution beyond any reasonable doubt as above pointed out, the prosecution is entitled to rely upon the presumption under **Section 113-B of the Indian Evidence Act.**

The trial Court has relied upon the acceptable, reliable and satisfactory evidence of PWs 1 to 5 in arriving at the conclusion that the appellant had been repeatedly driving the deceased to her father's house to fetch more amount as demanded by him and accordingly, when it has been pointed out and established by the prosecution that the deceased had died only due to the dowry harassment committed by the appellant and when the cruelty inflicted upon the deceased by the appellant is also found to be falling within the definition of the cruelty contemplated under Section 498-A IPC and in such view of the matter, the ingredients of Section 304-B IPC having been satisfied by the prosecution beyond any reasonable doubt as above pointed out, the prosecution is entitled to rely upon the presumption under Section 113-B of the Indian Evidence Act and when the accused has failed to discharge the presumption by adducing acceptable and reliable evidence and as above pointed out, when the evidence DWs1 to 3 cannot at all be relied

upon in any manner, in all, it is seen that the trial Court is justified in holding that the accused had committed the offences punishable under Section 498-A and 304-B IPC and the sentence imposed on the accused by the trial Court is also found to be not excessive.

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CDJ 2020 MHC 383

M/s. Creative Disgnostic Medicare Pvt. Ltd., Represented by Satish Sadanand Karekar, Director & Others vs. The State of Tamilnadu rep. by M. Rani, Drugs Inspector, Chennai.

Date of Judgment:29-01-2020

Drugs and Magic Remedies (Objectionable Advertisement) Act - Section 3 - read with Schedule (1) (Asthma) of Rule 6 –
The object of the Act is that the advertisement in the label of the particular drug should not mis-direct the consumers/ patients - Only when the advertisement in the label of the drug mis-directs the consumers/ patients - it would attract the penal provision under the Act

The alleged advertisement clearly shows that the drug is the choice of treatment in management of allergic rhinitis, allergic asthma etc., - and it did not say that the drug is the choice of treatment in curing allergic rhinitis, allergic asthma etc., if consumed - The object of the Act is that the advertisement in the label of the particular drug should not mis-direct the consumers/ patients - Only when the advertisement in the label of the drug mis-directs the consumers/ patients - it would attract the penal provision under the Act - Hence, the advertisement labelled in the carton of the drug CREDISOL Aqueous allergen extract did not violate the provision - as alleged by the Drugs Inspector and the complaint is a mis-conceived one - criminal original petition is allowed

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CDJ 2020 MHC 445

Tamilselvan vs. State, Inspector of Police, Namakkal

Date of Judgment:05-02-2020

Indian Penal Code,1860, section 302 & 201 - Murder by poisoning - no poisonous substance was found in the viscera. Therefore, the said aspect create a doubt in the story put forth by the prosecution.
The case of the prosecution is that the marriage between the accused and one Revathi was solemnised eight years ago and due to such wedlock, two children were born. Due to matrimonial dispute, on 20.12.2015, the wife of the accused Revathi committed suicide by consuming poison. In connection with the death of his wife, the accused was remanded to judicial custody. PW1, brother of the deceased Revathi and brother-in-law of the accused was taking care of the two minor children born to Accused and Revathi. When the appellant was released on bail on 15.03.2016, he came to the house of PW1 and took the custody of the minor children with him. It is the further case of the prosecution that the accused suspected that the minor son Dharnish was not born to him and therefore, he administered the adhesive gel solution into his mouth with an intention to commit his murder. After the death of the minor child, the accused allegedly buried the dead body of the minor child by digging the earth on the North Western side of his house in the **corn groove.** The accused also set fire to the dead body of the minor child by pouring adhesive solution and thereafter closed the pit. After closing the pit, he had sprinkled cow dunk to ensure that the smell did not emanate therefrom.

The Doctor, who conducted autopsy gave evidence that no poisonous substance was available in the viscera and hence, he is not in a position to give any opinion about the death of the child. From the evidence of Doctor, the cause of death has not been proved by the prosecution. In fact, during the time of occurrence, it is alleged that the deceased administered P.V.C. solution in the mouth of child and killed him. But the report given by the experts is against

the said fact, which means as per the report issued by the Forensic Department, no poisonous substance was found in the viscera. Therefore, the said aspect create a doubt whether the story put forth by the prosecution is found true or not. There are several infirmities in the case of the prosecution in respect of registration of the case, identifying the scene of occurrence, recording the extra judicial confession and about the cause of death.**Result?**

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CDJ 2020 MHC 571

Abdul Kalam Azad vs. The State, Rep by the Deputy Superintendent of Police, CB, CID, Ariyalur, Perambalur District

Date of Judgment:10-02-2020

Sections 409 r/w. 109 of Indian Penal Code - The exoneration of accused in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution against him.

In the present case, though the Enquiry Officer has filed the report in favour of the petitioner, that report does not amount to giving clean **sheet**chit to the petitioner unless the Disciplinary Authority takes a final decision on the issue. It is also un-disputed fact that though the Enquiry Officer filed a report, till date, the Disciplinary Authority has not taken any decision on the Departmental Proceedings

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CDJ 2020 MHC 991

State, Rep. by The Inspector of Police, Special Investigation Team CB-CID, Chennai vs. Santhu Mohammed @ Sait & Others

Date of Judgment:07-02-2020

Section 307 r/w 120 (B), 307 and 307 r/w 109 IPC and Section 6 r/w 4 (a) of the Explosive Substances Act - Conspiracy - The necessary ingredient is the meeting of minds between the conspirators - To bring home a charge u/s 120 (B) IPC, it is necessary for the prosecution to show, either through direct or circumstantial evidence that there was an agreement between two or more persons to commit an offence.

Conspiracy consists of an agreement between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or a criminal act or to do a lawful act by unlawful means. The agreement may be express or implied, or in part express and in part implied. Therefore, for an offence to fall under this section, bare engagement and association to break the law is the requirement and the methods employed should be illegal. However, the onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial. It is emphatically clear that to bring home a charge u/s 120 (B) IPC, it is necessary for the prosecution to show, either through direct or circumstantial evidence that there was an agreement between two or more persons to commit an offence. The necessary ingredient here is the meeting of minds between the conspirators.

The prosecution has miserably failed to prove the conspiracy charge by proving the meeting of minds of the conspirators with cogent and convincing evidence. Mere surmises and conjectures relating to conspiracy cannot take the place of evidence, which is a mandatory requirement to bring home the charge u/s 120 (B) IPC. To say the least, the prosecution, has not proved the charge of conspiracy. Bereft of any circumstantial evidence relating to the conspiracy, and there being no link in the circumstantial chain having been established by the prosecution, the charges framed against the accused, in the considered opinion of this Court, have not been proved and the chain is a broken chain in all respects and, therefore, this Court is not inclined to accept the version projected by the prosecution

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