TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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.nic.in**E-Mail:**tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE
No.251, Scheme Road, Race Course, Coimbatore - 641 018.
Telephone No: 0422 - 2222610/710
E-Mail:tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI
AlagarKoil Road, K.Pudur, Madurai - 625 002.
Telephone No: 0452 - 2560807/811
E-Mail:tnsja.rc.mdu@gmail.com

INDEX

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

Sl. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5.	Biraji @ Brijraji& Another Vs. Surya Pratap& Others	2020 (8) MLJ 266 (SC)	03.11.2020	**Evidence - Adoption** Application filed by Appellants/Plaintiffs to summon record relating to leave/service of 2nd Respondent/ 2nd Defendant Regiment in suit challenging adoption deed, dismissed by Trial Court and confirmed by Revisional Court and High Court, hence these appeals. No pleadings in the suit and belatedly at the final argument, petition filed to summon records. Whether application filed belatedly rightly dismissed by lower Courts?	3

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Paul Vs State of Kerala	2020 (2) L.W.(Crl.) 805	21.01.2020	**I.P.C., Sections 299, 300, 302, 304 Part 1, Part 2, Sections 34, 86, 498 - A, Exception 4 to Section 300 - Criminal procedure code , Section 313 -** Effect of inculpatory statement by the accused u/s. 313 of CrPC.	4
2.	Mohd. Anwar Vs State (N.C.T. of Delhi)	2020 (4) MLJ (Crl) 122 (SC)	19.08.2020	**Robbery with Hurt- Appeal against Conviction- Indian Penal Code 1860, Sections 84 and 394- Arms Act 1959, Section 25- Code of Criminal Procedure 1973, section 313**–Plea of Minority and mental disorder – Burden of Proof.	4
3.	Stalin Vs State represented by the Inspector of Police	2020 (2) LW.(Crl) 949	09.09.2020	**I.P.C., Section 300 Exception IV, Section 304 Part I, Section 302 -** Whether in a case of single injury, Section 302 IPC would be attracted?	5
4.	Rajnesh Vs Neha & Another	CDJ 2020 SC 809	04.11.2020	**Criminal Procedure Code, 1973 – Sections 125 and 128- Hindu Marriage Act, 1956 - Section 28A – Domestic Violence Act, 2005 - Section 20(6) – Civil Procedure Code, 1908 - Sections 51, 55, 58, 60 r/w Order 21 -** Payment of interim maintenance - Criteria for determining quantum of maintenance - Date from which Maintenance to be awarded - Enforcement of orders of maintenance – Certain directions issued.	5

MADRAS HIGH COURT – CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Southern Regional Manager, ThiruvaduthuraiAdheenam, Tirunelveli – 627 006 Vs. B.Shahjahan& OthersVs. B.Shahjahan& Others	2020(6) CTC 769	28.11.2019	**Registration Act, 1908 (16 of 1908), Sect ion 22-A [*as inserted by Tamil Nadu Act 48 of 1997*] – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22 of 1959), Section 34–** Property stands in name of Appellant/Mutt as per Revenue records – whether the Respondent can claim title to property on basis of 'No Objection Certificate' issued by Mutt to his Vendor?	7
2.	Singapore Reality Private Limited rep. by its Director Vs. Govt. of Tamil Nadu rep. by the Additional Chief Secretary to Government Industries Department, Fort St. George, Chennai – 600 009 & another	2020(6) CTC 487	10.01.2020	**Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11** – Principles Governing Rejection of Plaint	7
3.	M/s. Integrated Finance Company Limited rep. by its Legal Officer and duly constituted Attorney A. HemaJothi Vs Garware Marine Industries Limited Registered Office at ChanderMukhi	2020 (5) CTC 145	19.06.2020	**Commercial Courts Act , 2015 (4 of 2016),Section 2(1)(c)**- Whether Suit can be transferred to Commercial Division because related Suit is pending before Commercial Division?	8
4.	M/s. Virgo Industries (Engineers) Pvt Ltd., rep. By its Director Reethamma Joseph & Another Vs M/s. Venturetech Solutions Pvt Ltd., rep. by its Director N.Mal Reddy	2020(6) CTC 29	19.06.2020	**Code of Civil Procedure , 1908 (5 of 1908), Order 2, Rule 2** – Whether claim of partial relief and subsequent claim of other reliefs in a Civil Suit is sustainable?	8
5.	Durairam Vs Rathinam& Another	2020(2) TN MAC 113	31.07.2020	**Motor Vehicles Act, 1988 (59 of 1988), Section 163-A –** Claim of Compensation under– Maintainability of –Whether son of the owner who drove the vehicle at the time of accident can claim compensation as a third party?	9

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
6.	Josephine Ancilda Vs HDFC Bank Limited, Rep. By its Branch Manager, Chennai & Another	2020(7) MLJ 21	19.08.2020	**Code of Civil Procedure 1908, Order 7 Rule 10and Section 8 of Arbitration and Conciliation Act, 1908 and its application discussed**– What are the duties of the Court when it finds that it has no territorial or pecuniary jurisdiction?	9
7.	Bollineni Developers Ltd. Vs. K.Sailendra Kumar & Others	2020(6) CTC 145	21.08.2020	**Specific Relief Act, 1963(47 of 1963)** – Whether the Suit filed as Suit-simpliciter for the relief of execution and registration of the sale is maintainable?	10
8.	Thangavel& others Vs. Dhanabagyam& others	2020(6) CTC 181	21.08.2020	**Limitation Act, 1963 (36 of 1963), Article 65 – Evidence Act, 1872 (1 of 1872), Section 8** – Issue of ouster and adverse possession – Proof. Whether entries in School Leaving Certificate is a substantive piece of evidence to prove paternity?	10
9.	Ramachandran & Others Vs Balakrishnan& Others	2020(6) CTC 843	14.09.2020	**Code of Civil Procedure, 1908 (5 of 1908), Section 2(9) & Order 20, Rules 4(2) & 5** - Contents of *Ex Parte* Judgment.	11
10.	Ramasamy Vs. Vetrivelan&Others	2020(6) CTC 529	16.10.2020	**Code of Civil Procedure, 1908(5 of 1908), Section 2(12)** – Whether determination of the share of Income in Partition Suit is Mesne Profits?	11
11.	Pappathi& Another Vs Samiappan& Another	2020(4) TLNJ 464	01.12.2020	**Code of Civil Procedure 1908, Order 6 Rule 17 - Amendment of Plaint** - Whether the application for amendment for inclusion of properties in the partition suit can be rejected, when the defendants have not taken a plea that the suit is bad for partial partition and the trial had already commenced?	12

MADRAS HIGH COURT – CRIMINAL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Mr.X Vs. Inspector of Police, ThilagarThidal Police Station, Madurai & another	2020 (4) MLJ (Crl) 1	16.06.2020	**Unsoundness of mind – Indian Penal Code, 1860, Sections 84, 143, 188 and 341-** The accused has borderline intellectual capacity and behavior problems - Whether Petitioner was entitled for relief under Section 84 Code 1860?	13
2.	Lakshmi & another Vs. State, Rep. by The Assistant Commissioner of Police, M.K.B. Nagar Range, Chennai.	2020 ((4) MLJ(Crl) 7	08.07.2020	**Indian Penal Code, 1860, Sections 306 and 498A** –Whether non-disclosureof any ill-treatment and torture alleged to have been caused to the deceased by the accused in the complaint is fatal to the case of prosecution?	13
3.	Udayakumar Vs. State of Tamil Nadu, rep. by Inspector of Police, Thali Police Station, Krishnagiri District.	2020 (6) CTC 596	21.08.2020	**Evidence Act, 1872 (1 of 1872), Sections 5,6 and 8- Indian Penal Code 1860 (45 of 1860), Section 302, Protection of Children from Sexual offences Act, 2012 (32 of 2012) [POCSO Act], Section 5(1),(m),(n) and 6** – Test for conviction of the accused on the basis of circumstantial evidence.	14
4.	M.Dharmaraj Vs. Dr.SwethaRamamurthi	2020(4) MLJ (Crl) 406	23.09.2020	**Comparison of signature – Admitted documents** Trial Court dismissed petition filed for comparing disputed signature of accused with his admitted signatures -Whether court could send the document for comparison with disputed signature?– Test.	14
5.	P.Venkatesh& others Vs. State represented by The Inspector of Police, Shevapet Police Station, Salem – 636 002.	2020(2) LW(Crl) 966	16.10.2020	**I.P.C., Sections 498-A, 304-B – Dowry Prohibition Act, Section 4 – Criminal P.C., Section 207, Form 91 – Criminal Rules of Practice, Rule 339, diary extracts, reliance** Maintainability of Petition seeking a copy of the diary extracts allegedly written by the deceased and sent to the court.	15

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
6.	R.ManishHathiramani Vs. G.D.Ranka	2020(2) TLNJ 573	19.11.2020	**Criminal Procedure Code, 1973, Section 311**- Cheque dishonor case – Petition to recall P.W.1 for further cross examination - Maintainability of.	15
7.	R.Poornalingam and others Vs Prof.P.Kadhirvel.	2020 (3) MWN (Cr.) 696	24.11.2020	**Indian Penal Code, 1860, Sections 499 & 500** – Defamation – Whether the discussion in the Executive Committee Meeting of an Association in respect of financial management by the office bearers/accused amounts to defamation?	15
8.	R.Ramanathan Vs. V.Manickavasagam	2020(2) TLNJ 569	01.12.2020	**Appreciation of Evidence - Negotiable Instrument Act, 1881, Section 138** – Whether suggestion put forth to the opposite party in the cross examination can be construed as admission?	16
9.	The Directorate of Revenue Intelligence, (Represented by the Senior Intelligence Officer) Chennai - 600 017 Vs Shri Abdullah @ R.Panchamoorthy & Another	2020(2) LW(Crl) 921	02.12.2020	**Customs act (1962), Sections 110(1A), 110(1B), 110(1C), 126, 135 - Criminal Procedure Code, Sections 3, 4**-Whether the Magistrate referred in Chapter XIII in Sections 102, 103, 104, 105 and 110 of the Customs Act, 1962, is the Judicial Magistrate or Executive Magistrate?	17
10.	Thiruvasagam Vs State by Inspector of Police, All women Police Station, Ariyalur(Crime No.06 of 2012)	2020(2) TLNJ 534	09.12.2020	**Indian Penal Code, 1860, Section 376**– Sexual intercourse on the promise to marry – Accused convicted and sentenced – Whether consent given by the Prosecutrix is voluntary consent or consent given under misconception of fact?	17

SUPREME COURT – CIVIL CASES

2020 (2) TNMAC 1 (SC)

United India Insurance Company Limited & Others Vs Satinder Kaur @ Satwinder Kaur & Others

Date of Judgment:30.06.2020

Motor Accident Claims - Deduction towards Personal Expenses of Deceased aged 40 years employed in Foreign country.

Even though in ***SarlaVerma***, it was held that the deduction towards Personal and Living Expenses should be l/4th, if the number of dependent family members is four, in the present case, we feel that 50% of the Income of the deceased would be required to be deducted, since he was living in a foreign country. The deceased had to maintain an establishment there, and incur expenditure for the same in commensurate with the high cost of living in a foreign country. Therefore, we are of the view that the High Court rightly deducted 50% of his income towards Personal and Living Expenses.

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2020 (6) CTC 85

Ravinder Kaur Grewal & others Vs Manjith Kaur & Others

Date of Judgment:31.07.2020

Registration Act, 1908 (16 of 1908), Section 17(2)(v) – Evidence Act, 1872(1 of 1872), Section 115 - Memorandum of Family Arrangement - Registration, when necessary?

A priori, The Hon'ble Supreme Court have no hesitation in affirming the conclusion reached by the First Appellate Court that the document was nothing but a Memorandum of a Family Settlement. The established facts and circumstances clearly establish that a Family Settlement was arrived at in 1970 and also acted upon in 1988 by the concerned parties. That finding of fact recorded by the First Appellate Court being unexceptionable, it must follow that the document was merely a Memorandum of a Family Settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting Defendants were estopped from resiling from the stated Arrangement in the subject Memorandum, which had recorded the Settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes *qua* the subject property amongst the (signatories) Family Members despite absence of antecedent title to the concerned property.

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2020(7)MLJ 81(SC)

M/s. Radha Exports (India) Pvt. Limited Vs K.P. Jayaram & Another

Date of Judgment:28.08.2020

Limitation – Insolvency - Time Barred - Insolvency and Bankruptcy Code,2016, Sections 7 and 62 - Limitation Act, Article 136 - Proof as to how the debt claim is not barred by Limitation. Whether allegeddebt is not barred by Limitation, duty of the Applicant to place materials to prove the same.

Whenever any claim is made, when it is beyond three years period as envisaged under Article 136 of the Limitation Act, the person making claim is bound to disclose and explain as to how the debt claim is not barred by limitation. No such effort has been made by these Applicants to prove that this is within limitation.It is well settled in law that alternative defenses are permissible to contest a claim. It was thus open to the Appellant Company, to refute the claim of the Respondents by taking the plea of limitation and also to contend that no amount was in fact due and payable by the Appellant Company to the Respondents. Once a debt or even part thereof becomes due and payable, the resolution process begins. Once the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted, unless it is otherwise incomplete and not in accordance with the rules. The NCLT(National Company Law Appellate Tribunal) rightly refused to admit the application under Section 7 of the IBC(Insolvency and Bankruptcy Code, 2016), holding the same to be barred by limitation. The payment received for shares, duly issued to a third party at the request of the payee as evident from official records, cannot be a debt, not to speak of financial debt.

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2020 (8) MLJ 48 (SC)

Satish Chander Ahuja Vs. Sneha Ahuja

Date of Judgment:15.10.2020

Civil Laws – Right of Residence – Domestic Violence - Protection of Women from Domestic Violence Act, 2005, Sections 2 and 26 - Whether definition of shared household under Section 2(s) of Act 2005 has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share? Further, whether the orders of Criminal Court under Section 19 of Protection of Women from Domestic Violence Act, 2005, is relevant within the meaning of Section 43 of Indian Evidence Act and can be referred to and looked into by Civil Court?

Suit filed by Appellant for mandatory injunction and recovery of damages and further pleaded that Respondent/daughter in law is not entitled to claim right of residence against Appellant/father in law who has no obligation to maintain during lifetime of her husband. Trial court decreed suit filed by Appellant, however, High Court reversed said order, hence this appeal. The shared household is contemplated to be household, which is a dwelling place of aggrieved person. Orders or reliefs, which can be granted on an application filed by aggrieved person, all orders contemplate providing protection to women in reference to premises in which aggrieved person is or was in possession. Above conclusion is further fortified by statutory scheme as delineated by Section 19 of the Act, 2005. The entire Scheme of Act is to provide immediate relief to aggrieved person with respect to shared household where aggrieved person lives or has lived. Use of expression "at any stage has lived" was only with intent of not denying protection to aggrieved person merely on ground that aggrieved person is not living as on date of application or as on date when Magistrate concerned passes an order under Section 19. The Hon’ble Supreme Court, thus, are of the considered opinion that shared household referred to in Section2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent which makes it clear that for a shared household there is no such requirement that house may be owned singly or jointly by husband or taken on rent by husband. Further, the Hon’ble Supreme Court arrived at the following conclusions:

(i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V.Act under Section 19 regarding right of residence is not an embargo for initiating or

continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V Act, 2005.

(ii) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V.Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(iv)In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.

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2020 (8) MLJ 266 (SC)
Biraji @ Brijraji & Another Vs Surya Pratap & Others
Date of Judgment:03.11.2020

Evidence - Adoption - Application filed by Appellants/Plaintiffs to summon record relating to leave/service of 2nd Respondent/ 2nd Defendant from Regiment in suit challenging adoption deed, dismissed by Trial Court and confirmed by Revisional Court and High Court, hence these appeals. No pleadings in the suit and belatedly at the final argument, petition filed to summon records. Whether application filed belatedly rightly dismissed by lower Courts?

The Original Suit is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on specific date was mentioned; hence it was within the knowledge of the Appellants even on the date of filing of the suit. In the absence of any pleading in the suit filed by the Appellants, at belated stage, after evidence is closed, the Appellants have filed the application to summon the record relating to leave/service of 2nd Respondent on specific date from the Regiment Centre. When the adoption ceremony, which had taken place on specific date, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the 2nd Respondent was on duty as on specific date. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the Trial Court and confirmed by the Revisional Court and High Court. It is clear from the conduct of the Appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, Appellants were trying to protract the litigation.

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SUPREME COURT – CRIMINAL CASES

2020 (2) L.W.(Crl.) 805

Paul Vs State of Kerala

Date of Judgment:21.01.2020

I.P.C., Sections 299, 300, 302, 304 Part 1, Part 2, Sections 34, 86, 498 - A, Exception 4 to Section 300 - Criminal procedure code , Section 313 - Effect of inculpatory statement by the accused u/s. 313 of Cr.P.C.

The Hon'ble Supreme Court, have no hesitation in holding that a statement made by the accused under Section 313 Cr.P.C even if contains inculpatory admissions cannot be ignored and the Court may where there is evidence available proceed to enter a verdict of guilt. There is no material for us to come to the conclusion that there occurred a sudden quarrel leading to a sudden fight going by the version furnished by the appellant in his written statement under 313 CrPC which statement also recites that he fell fast asleep. Till such time there is no hint even of any sudden fight or sudden quarrel. It must also be appreciated that under Section 106 of the Evidence Act facts within the exclusive knowledge of the appellant as to what transpired within the privacy of their bed room even must be established by the appellant. The fact that appellant went about setting up of a palpably false case even at the late stage of filing the written statement under 313 after remand trying to attribute death by hanging by his wife falsely.

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2020 (4) MLJ (Crl) 122 (SC)

Mohd. Anwar Vs. State (N.C.T. of Delhi)

Date of Judgment:21.08.2020

Robbery with Hurt- Appeal against Conviction- Indian Penal Code 1860, Sections 84 and 394- Arms Act 1959, Section 25- Code of Criminal Procedure 1973, Section 313-Plea of Minority and mental disorder – Burden of Proof.

Testimonies of the witnesses are indeed impeccable and corroborative of each other. The crime of robbery with hurt has been established by the testimony of complainant and the other evidence on record. The complainant had no motive to falsely implicate the appellate and/or to allow the real culprits to go scot-free. The refusal to participate in the TIP proceedings and the lack of any reasons on the spot, undoubtedly establish the appellant's guilty conscience and ought to be given substantial weight.No evidence in the form of a birth certificate, school record or medical test was brought forth; nor any expert examination has been sought by the appellant. Instead, the statement recorded under Section 313 CrPC shows that the appellant was above 18 years around the time of the incident, which is a far departure from the claimed age of 15 years. The plea of mental disorder too remains unsubstantiated. No deposition was made by any witness, nor did the appellant himself claim any such impairment during his Section 313 CrPC statement. Mere production of photocopy of an OPD(Out Patient Department) card and statement of mother on affidavit have little, if any, evidentiary value. It must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defenses are thus well reasoned and unimpeachable. Court thus left with no option but to hold that the plea of mental illness is nothing but a made-up story, and is far from genuine.

2020 (2) L.W.(Crl) 949

Stalin Vs State represented by the Inspector of Police

Date of Judgment: 09.09.2020

I.P.C.,Section 300 Exception IV, Section 304 Part I, Section 302 - Whether in a case of single injury, Section 302 IPC would be attracted?

There is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence.

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CDJ 2020 SC 809

Rajnesh Vs Neha & Another

Date of Judgment:04.11.2020

Criminal Procedure Code, 1973 – Sections 125 and 128- Hindu Marriage Act, 1956 - Section 28A – Domestic Violence Act, 2005 - Section 20(6) – Civil Procedure Code, 1908 - Sections 51, 55, 58, 60 r/w Order 21 – Payment of interim maintenance - Criteria for determining quantum of maintenance - Date from which Maintenance to be awarded - Enforcement of orders of maintenance – certain directions issued.

In view of the foregoing discussion as contained in Part B -1 to V of this judgment, the Hon'ble Supreme Court deem it appropriate to pass the following directions in exercise of their powers under Article2 142 of the Constitution of India :

(a) Issue of overlapping jurisdiction:

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;
(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;
(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b)Payment of Interim Maintenance:

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance:

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B - III of the judgment. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded:

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B - IV above.

(e) Enforcement / Execution of orders of maintenance:

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts / Family Courts / Courts of Judicial Magistrates for awareness and implementation.

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2020(6) CTC 769

Southern Regional Manager, ThiruvaduthuraiAdheenam, Tirunelveli – 627 006

Vs. B.Shahjahan& Others

Date of Judgment: 28.11.2019

Registration Act, 1908 (16 of 1908), Section 22-A [*as inserted by Tamil Nadu Act 48 of 1997*] – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22 of 1959), Section 34– Property stands in name of Appellant/Mutt as per Revenue records – Whether the Respondent can claim title to property on basis of 'No Objection Certificate' issued by Mutt to his Vendor?

The Sub-Registrar, as Registering Authority refused to register a Sale Deed executed by the first respondent (R1) on receiving objections from the Appellant/Mutt, which stated that the Mutt is the Owner of the property in question. The Registering Authority issued Notice to R1 and Appellant to produce proof of their respective claims. On production of the documents, the Registering Authority found that the Revenue records stand in the name of the Appellant and there are no documents to establish as to how the R1 or his Vendor got the property from the Mutt. However, R1 relied on a No Objection Certificate issued by the Mutt as the basis of his claim. The Sub–Registrar refused registration and R1 filed an Appeal before District Registrar who dismissed the Appeal.

The Sale Deed was executed after obtaining 'no objection' from the Mutt. In our considered view any such person issuing such 'No Objection Certificate' on behalf of any Religious Institution or Mutt, if at all a Manager or Authorised Signatory had done so, it was an act beyond his jurisdiction and illegal and unenforceable especially after the Tamil Nadu Hindu Religious and Charitable and Endowments Act, 1959 has come into force. Consequently, can confer no benefit on any one's favour. Therefore, placing reliance on the so called 'No Objection Certificate' is of little avail and such contention has to be outrightly rejected.

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2020(6) CTC 487

Singapore Reality Private Limited rep. by its Director Vs. Govt. of Tamil Nadu rep. by the Additional Chief Secretary to Government Industries Department, Fort St. George, Chennai – 600 009 and another

Date of Judgment:10.01.2020

Code of Civil Procedure, 1908(5 of 1908), Order 7, Rule 11 – Principles Governing Rejection of Plaint

A plaint can be rejected under Order 7, Rule 11 of the Code of Civil Procedure only (i) if it does not disclose a cause of action (ii) the Plaintiff has not properly valued the suit or undervalued it (iii) the Plaint has not been presented before the Court having jurisdiction, or (iv) the Plaint is barred by any law for the time being in force. These are the circumstances under which a Plaint can be rejected. However, a Plaint can also be rejected, before it is being numbered, if it does not disclose a cause of action or if the Suit is filed beyond the statutory

period of limitation or if the Court before which it was filed lacks jurisdiction. But when once a Plaint is numbered, it could be rejected or struck off only after Notice was ordered thereof to the Defendants. In other words, after a Plaint has been numbered, only at the instance of the Defendants, by resorting to the provisions contained under Order 7, Rule 11 of CPC, a Plaint can be rejected. Whenever a Plaint is presented and numbered by the Registry, the Presiding Officer, in order to seek a response from the other side, direct service of notice to the Defendants. The reason being, once a Plaint is numbered and taken up for hearing, Principles of Natural Justice demands that the persons, against whom such Plaint has been filed, have to be heard and their response is sought by way of a Written Statement as contemplated under Order VIII Rule 1 of the Code of Civil Procedure. Therefore, the only procedure contemplated under the Code of Civil Procedure for rejection of a plaint after it has been numbered is at the instance of the Defendant who has to invoke the procedures contemplated under Order VII Rule 11 of the Code of Civil Procedure by raising the grounds mentioned therein for rejecting the Plaint.

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2020 (5) CTC 145

M/s. Integrated Finance Company Limited rep. by its Legal Officer and duly constituted Attorney A.HemaJothi Vs. Garware Marine Industries Limited, Registered Office at ChanderMukhi

Date of Judgment:19.06.2020

Commercial Courts Act, 2015 (4 of 2016),Section 2(1)(c)- Whether Suit can be transferred to Commercial Division because related Suit is pending before Commercial Division?

Merely because the Suit is pending before the Commercial Division of this Court, the other suit cannot be transferred to the commercial division. The criteria for transfer is whether the issues raised in the plaint is a commercial dispute or not. Therefore, for this purpose, we have to deal with the nature of the dispute involved.

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2020 (6) CTC 29

M/s. Virgo Industries (Engineers) Pvt Ltd., rep. by its Director Reethamma Joseph & Another Versus M/s. Venturetech Solutions Pvt Ltd., rep. by its Director N. Mal Reddy

Date of Judgment: 19.06.2020

Code of Civil Procedure , 1908 (5 of 1908), Order 2, Rule 2 – Whether claim of partial relief and subsequent claim of other reliefs in a Civil Suitis sustainable?

A reading of Order 2, Rule 2,CPC would show that a person, who institutes a suit, as Plaintiff, must include all the relief which he is legally entitled to claim, in such Suit, without omitting to seek any other ancillary or incidental relief, which he may be entitled to at the time of instituting the Suit. The omission to seek for any relief, which a Plaintiff is entitled to, shall be construed as a relinquishment of such claim. Of course, a plaintiff, on his own can relinquish his claim, if any, which he is entitled to under law, as per the latter part of Rule 2 (1) of Order 2 CPC in order to bring the Suit within the jurisdiction of any Court. The object with which Order 2, Rule 2, CPC has been framed is that a person, who comes forward with a suit, must include all the relief or reliefs which are incidental or ancillary to the main relief sought for in the Suit, without any omission to include any relief. In other words, there cannot be any partial relief asked for in a Suit by omitting a particular relief which may be necessary

to be asked. This is to ensure that the right of a person is adjudicated at once rather than adjudicating the ancillary or incidental relief in a piece-meal manner. Such a piece-meal adjudication would only result in consumption of valuable time of the Court as well as would frustrate the parties to the litigation, besides being hit by the provisions of Section 11 of CPC dealing with *res judicata*. Therefore, if cause of action is available to a person to institute a Suit by including all the reliefs which are incidental or ancillary to the main relief but he omits to include all such reliefs, the reliefs which were omitted to be sought, would amount to relinquishment and they cannot be asked for subsequently. When once a relief is omitted, without the leave of the Court, such relief cannot be sought to be adjudicated at a later point of time.

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2020(2) TN MAC 113

Durairam Vs Rathinam& Another

Date of Judgment: 31.07.2020

Motor Vehicles Act, 1988 (59 of 1988), Section 163-A – Claim of Compensation under Maintainability of –Whether son of the owner who drove the vehicle at the time of accident can claim compensation as a third party?

The facts established before the Tribunal is that the Appellant/Claimant was driving the Tata Nano Car and his father Mr.Rathinam is the owner of the car. Therefore, the Appellant cannot claim himself to be a Third party in view of the fact that he was working as Assistant Professor in Computer Science and Engineering Department in a Private Engineering College and he cannot be construed as a paid Driver. Therefore, the Appellant is not entitled for Compensation under Section 163-A of the Motor Vehicles Act, 1988. In the present case, the Appellant/Claimant was authorised to drive the Car belonging to his father, namely, the First Respondent herein. As such, the Appellant stepped into the shoes of his Owner and therefore, the Owner cannot lay any claim for Compensation. Only a "Third Party" can lay a claim for Compensation and therefore, the Claim Petition filed by the Appellant under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable at all.

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2020(7) MLJ 21

Josephine Ancilda Vs HDFC Bank Limited, Rep. By its Branch Manager, Chennai & Another

Date of Judgment: 19.08.2020

Code of Civil Procedure 1908, Order 7 Rule 10 and Section 8 of Arbitration and Conciliation Act, 1908 and its application discussed – What are the duties of the Court when it finds that it has no territorial or pecuniary jurisdiction?

Trial Court was perfectly justified in accepting the objection to the territorial jurisdiction and concluding that it has no jurisdiction to try the suit. But the Trial Court erred in dismissing the suit after having reached the conclusion that it has no jurisdiction to try the suit. Once a Court finds it has no territorial or pecuniary jurisdiction its duties are governed by Rule 10 of Order 7 of the Code of Civil Procedure. Trial Court was not right in dismissing the suit, after having held that it has no jurisdiction to entertain the suit. It ought to have returned the plaint under Order 7 Rule 10 of the Code of Civil Procedure, to enable the plaintiff to present before the proper Court.

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2020(6) CTC 145

Bollineni Developers Ltd. Vs. K.Sailendra Kumar & Others

Date of Judgment:21.08.2020

Specific Relief Act, 1963(47 of 1963)– Whether the Suit filed as Suit-simpliciter for the relief of execution and registration of the sale is maintainable?

The Suit has been filed as Suit-simpliciter for the relief of execution and registration of the sale in respect of the Suit Schedule mentioned property. It is admitted that the Agreement for Sale was executed only within the jurisdiction of this Court and the consideration was also paid within the jurisdiction of this Court. There is no prayer for a direction to the Defendant(s) to hand over the possession of the Suit property, either directly or impliedly. In fact, it is the specific case of the Respondents 1 to 3/Plaintiffs that the possession had already been handed over to them as early as on 4.8.2008 itself. Only the execution of the Sale Deed has to be made. In this regard, it is appropriate to notice the Judgment of this Court reported in *Harsha Estates v. Dr.P.KalyanaChakravarthy*, 2018 (4) CTC 721 (DB) : 2018 (3) LW 900 : 2018 (7) MLJ 281, wherein the Division Bench held that if the possession is sought for in a Suit for Specific Performance, then the same had to be filed only before a Competent Court of jurisdiction where the Suit property is situated. In the case on hand, as per the Plaint averments, the possession had already been handed over to the Plaintiffs, and therefore, they are not seeking possession of the property(ies) and the Suit is filed only for enforcement of the contract. The Suit filed for Specific Performance is an action *in personam* and it cannot be a Suit for land. In this regard, it is worthwhile to notice a decision of the Full Bench of this Court in the case of *P.M.A.ValliappaChettiar and others v. SahaGovinda Doss and others*, AIR 1929 Madras 721 : 1929 (57) MLJ 90, to contend that a suit filed for Specific Performance is an action *in personam* and it cannot be a Suit for land. This decision has been dealt with by this Court in a recent decision of a Division Bench of this Court in O.S.A. Nos.24 of 2019, etc., dated 19.6.2020, *Virgo Industries (Engineers) Pvt. Ltd. V.Venturetech Solutions Pvt. Ltd.*

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2020(6) CTC 181

Thangavel& others Vs.Dhanabagyam& others

Date of Judgment:21.08.2020

Limitation Act, 1963(36 of 1963), Article 65 – Evidence Act, 1872(1 of 1872), Section 8 – Issue of ouster and adverse possession – Proof. Whether entries in School Leaving Certificate is a substantive piece of evidence to prove paternity?

There are material evidence placed by the Defendants, to assert they were in exclusive enjoyment of the Suit properties as their own and dealing it absolutely with the knowledge of the Plaintiffs. Few properties mentioned in the Plaint Schedule were alienated long back but the plaintiffs are not even aware of those alienation. This reinforce the view that the Plaintiffs were never in joint enjoyment or administration of the Suit properties.Their ouster from possession in both constructive as well as physical. The Defendants over a long period of time been in exclusive possession of the properties open, visible and notorious, adverse to the interest of the Plaintiffs. In the instant case, the Defendants had established the exclusion of the Plaintiffs for over 26 years prior to the suit. Hence, it is held that the Courts below failed to analyse the issue of ouster and Adverse Possession properly. The facts of the case lead to the conclusion that by their conduct the Plaintiffs have stayed away from the suit property. By the time they stake claim, the Defendants had visibly asserted their exclusive possession

and enjoyment. It was held that entries in School Leaving Certificate is not a substantive piece of evidence to prove paternity. At best, it can be used for corroboration.

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2020(6) CTC 843

Ramachandran & Others Vs Balakrishnan& Others

Date of Judgment: 14.09.2020

Code of Civil Procedure, 1908 (5 of 1908), Section 2(9) & Order 20, Rules 4(2) & 5 - Contents of *Ex Parte* Judgment.

Even an *ex parte* Judgment must contain bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue. A judgment which does not contain the above would not qualify to be called a Judgment. While considering the scope of the definition of the Judgment under Section 2(9) of the Code of Civil Procedure read with Order 20 Rule 6(a), the Division Bench of this Court in ***Meenakshisundaram Textiles v. Valliammal Textiles Ltd.,*** has held as follows:

"10. Judgment not containing the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to call as "Judgment".

11. When the Defendant is *set exparte,* the burden is heavy on the Court, as it would not have the advantage of Defence. Therefore, the Court should be extra careful in such cases and they should consider the pleadings and evidence and should arrive at a finding as to whether the Plaintiff has made out a case for a Decree.

12. The "Judgment" should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the Suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a Decree in case the Defendant is absent. *The practice of writing a Judgment indicating that the Defendant was exparte and as such the claim was proved and the Suit was decreed, deserves to be Condemned."*

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2020(6) CTC 529

RamasamyVs. Vetrivelan& Others

Date of Judgment:16.10.2020

Code of Civil Procedure, 1908(5 of 1908), Section 2(12) – Whether determination of the share of Income in Partition Suit is Mesne Profits?

Mesne Profits is referable to those profits, which a person in "wrongful possession" received. As regards the partition action is concerned, the sharers are deemed to be in joint possession and possession of one of the sharers is on behalf of the others also. Therefore, it cannot be said that a sharer in possession of a joint property is in wrongful possession of the property. Therefore, a determination of the share of the income from the properties subject matter of a Partition Suit cannot be termed as determining Mesne Profits within the meaning of Order 20, Rule 12 of C.P.C. The nature of such determination is no longer *res-integra*. Order 20, Rule 12 will not apply to a Partition Suit and the determination of profits if any made in a Partition Suit is essentiallyunder Order 20, Rule 18 and not Order 20, Rule 12.

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2020(4) TLNJ 464

Pappathi&Another Vs Samiappan& Another

Date of Judgment: 01.12.2020

Code of Civil Procedure 1908, Order 6 Rule 17 - Amendment of Plaint - Whether the application for amendment for inclusion of properties in the partition suit can be rejected, when the defendants have not taken a plea that the suit is bad for partial partition and the trial had already commenced?

The suit is one for partition. According to the plaintiffs, the suit property though stands in the name of the 1st defendant, is joint family property since it belonged to the family of the 1st defendant. The suit went for trial. During trial the 2nd defendant who was examined as DW1, deposed to the effect that the two other properties that were purchased by the 1st defendant were available for partition. Upon such evidence, the plaintiffs sought to amend the plaint for inclusion of those properties. The learned Additional Subordinate Judge dismissed the application concluding that since the defendants have not taken a plea that the suit is bad for partial partition and the trial had already commenced, the application for amendment cannot be allowed. The suit is one for partition. It is for the plaintiffs to include all the partible properties as subject matter of the suit so that the Court can adjudicate the rights of the parties without leaving any scope of multiplicity of the proceedings. In the case on hand, the addition of the properties is to the advantage of the 2nd defendant who is a purchaser and the High Court is therefore of the opinion that the learned trial Judge was not justified in dismissing the application.

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MADRAS HIGH COURT – CRIMINAL CASES

2020 (4) MLJ(Crl) 1

Mr.XVs. Inspector of Police, ThilagarThidal Police Station, Madurai & another

Date of Judgment:16.06.2020

Unsoundness of mind – Indian Penal Code, 1860, Sections 84, 143, 188 and 341- The accused has borderline intellectual capacity and behavior problems - Whether Petitioner was entitled for relief under Section 84 Code 1860?

To attract an offence under Section 143 Code 1860, the person must have participated in an unlawful assembly with certain ill motives when the prohibitory orders are in existence. As per the certificate of the Clinical Psychologist, the Petitioner, though aged about 20 years and 10 months, is mentally aged about 11 years and 2 months. He has Borderline intellectual capacity and Behavior problems. This certificate was issued ten years before and since then, he was in a continuous treatment for his ailment. Mental age has also been verified by this Court, in person, in the presence of the *defacto* Complainant. The Petitioner is, therefore, entitled for the relief under Section 84 of the Indian Penal Code.

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2020 (4) MLJ (Crl) 7

Lakshmi & another Vs. State rep. by The Assistant Commissioner of Police, M.K.B.,

Nagar Range, Chennai

Date of Judgment:08.07.2020

Indian Penal Code, 1860, Sections 306 and 498A –Whethernon-disclosureof any ill-treatment and torture alleged to have been caused to the deceased by the accused in the complaint is fatal to the case of prosecution?

The prosecution case being encircled with the serious doubts defects, lacunae, failings, contradictions and conjectures and in particular, when the earliest complaint lodged by the deceased herself had been suppressed by the prosecution and when the complaint has also not disclosed any ill-treatment and torture alleged to have been caused to the deceased by the accused in any manner other than the quarrel which they had been having over the drinking habit of the first accused and when with reference to the above said weakness of the prosecution case, no plausible explanation is forthcoming to dispel the same one way or the other, in such view of the matter the benefit of doubt emerging from the same should be extended in favour of the accused and accordingly, hold that the prosecution has miserably failed to establish the above said charges levelled against the accused beyond reasonable doubt and resultantly, acquit the 1st and 2nd accused of the offences under Section 498-A IPC and further acquit 1st accused of the offence under Section 306.

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2020 (6) (CTC) 596

Udayakumar vs. State of Tamil Nadu, rep. by Inspector of Police, Thali Police Station, Krishnagiri District

Date of Judgment:21.08.2020

Evidence Act, 1872 (1 of 1872), Sections 5,6 and 8- Indian Penal Code, 1860 (45 of 1860), Section 302 - Protection of Children from Sexual offences Act, 2012 (32 of 2012) [POCSO Act], Section 5(1),(m),(n) and 6 – Test for conviction of the accused on the basis of circumstantial evidence.

There is no direct Eyewitness in this case. The prosecution case solely rests on circumstantial evidences. The burden is therefore on the prosecution to prove beyond all reasonable doubt the charges framed against the Appellant. Therefore, whether the prosecution has sufficiently proved the guilt or otherwise of the Appellant through oral and documentary evidence, has to be examined. Except the so-called Confession Statement obtained from the Appellant, there is no other evidence, lest medical evidence, to substantiate that the deceased was subjected to aggravated penetrative sexual assault. In other words, the prosecution failed to prove the circumstances that led to the death of the deceased beyond all reasonable doubt. There are several inconsistencies in the case of prosecution and the materials placed on record do not form a complete chain pointing the guilt against the Appellant/Accused beyond doubt. The Trial Court also, on an erroneous appreciation of the materials placed on record, has rendered a finding of guilt and convicted and sentenced the Appellant by imposing Life Imprisonment.

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2020(4) MLJ(Crl) 406

M.DharmarajVs. Dr.SwethaRamamurthi

Date of Judgment: 23.09.2020

Comparison of signature – Admitted documents

Trial Court dismissed petition filed for comparing disputed signature of accused with his admitted signatures -Whether court could send the document for comparison with disputed signature?– Test.

The petitioner is the complainant in S.T.C.No.863 of 2012, pending on the file of the learned Judicial Magistrate No.5, Tiruchirappalli. The petitioner filed a petition in Crl.M.P.No.322 of 2020 for comparing the disputed signature of the accused with his admitted signatures in Ex.C1 to C4. That petition was dismissed by the learned Judicial Magistrate No.5, Tiruchirappalli. Against the same, the petitioner preferred this Criminal Revision. On the side of the petitioner, it is stated that Ex.C1 to C4 are documents regarding a loan transaction between the respondent and the Bank. Those documents are not denied by the respondent. The trial Court dismissed the petition on the ground that the documents Ex.C1 to C4 are not related to the case. It is stated that the photograph of the respondent was affixed in the loan application. The respondent obtained loan from the State Bank of India and hence, the signatures in documents (Ex.C1 to C4) are to be compared with the disputed signature. An opportunity for the petitioner to prove the signature of the respondent is to be given. The rights of the petitioner cannot be shut down at the threshold.

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2020(2) LW (Crl) 966

P.Venkatesh& others Vs. State represented by The Inspector of Police, Shevvapet Police Station, Salem – 636 002.

Date of Judgment: 16.10.2020

I.P.C., Sections 498A, 304B – Dowry Prohibition Act, Section 4 – Criminal P.C., Section 207, Form 91 – Criminal rules of practice, rule 339,diary extracts, reliance

Maintainability of Petition seeking a copy of the diary extracts allegedly written by the deceased and sent to the court.

The Hon'ble High Court of Madras is of the view that the petitioners being the accused in the grave crime, are also entitled to receive the copies of the documents, which are all relied on by the prosecution for the purpose of proving the charges. It is a clear case that the documents sought for by the petitioners are to be furnished to the petitioners which were recovered by the investigating agency through Form 91. Therefore, it cannot be construed as though those documents are irrelevant to decide the case of the prosecution. Further, after producing those documents before the Court, refusing to furnish the copies of those documents is against the principles of law already settled by the Hon'ble Supreme Court.

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2020(2) TLNJ 573

R.ManishHathiramaniVs. G.D.Ranka

Date of Jedgment: 19.11.2020

Criminal Procedure Code, 1973, Section 311-Cheque dishonor case – Petition to recall P.W.1 for further cross examination -Maintainability of.

When the court below had furnished cogent and proper reasonings for rejecting the petition preferred by the petitioner under Section 311 of Cr.P.C for recalling P.W.1 for further cross examination and when it is noted that P.W.1 had already been vastly cross examined by the petitioner on all the aspects, as held by the court below, the present petition preferred by the petitioner is only intended to delay the proceedings endlessly and when it is seen that the case is pending from the year 2013 and further when it is noted that the complainant is an aged person, in such view of the matter, the petitioner, instead of cooperating with the progress of the case in the right direction, has levied the frivolous petition for dragging the proceedings, which cannot be countenanced.

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2020 (3) MWN (Crl.) 696

R.Poornalingam and others Vs Prof.P. Kadhirvel

Date of Judgment: 24.11.2020

Indian Penal Code, 1860, Sections 499 & 500 – Defamation – Whether the discussion in the Executive Committee Meeting of an Association in respect of financial management by the office bearers/accused amount to defamation?

When a person becomes a member of an Association, it is presumed that he submits himself to its Rules, Regulations and By-law. Thus, when allegations of financial mismanagement by accused surfaced, the Accused did not gossip or slander about it or insidiously spread rumours.

Instead, they called the Executive Committee on 23.2.2013, in which,accused was present. When the subject as regards the allegations against him was taken up for discussion, he was required to recuse and that has been recorded. The members of the Executive Committee unanimously approved to catalogue six heads of allegations and issue a Show Cause Notice to accused. Even in the Resolution, dated 23.2.2013, they have taken care to amend the word "charge" as "irregularity" so as to protect accused honour. To say that when allegations against accusedsurfaced, the Executive Committee Members should have sat idle and done nothing, fearing that doing something may lead to them being hauled up for defamation, would have not only rendered the whole objective of the IOA nugatory, but also, the Executive Committee would have been put to spite. A person joining in an employment, be it Government or private, is bound by certain Disciplinary Rules. If an allegation surfaces against an Employee, his superior is duty-bound to issue a Show Cause Notice, conduct an Enquiry and take action thereafter, depending upon the outcome of the Enquiry. In this case, the IOA appointed a retired District Judge as Enquiry Officer, which itself shows that they had no *mala fide* intention against accused. Just because, accused has been honourably exonerated subsequently of all the charges, the finding of the Enquiry Officer cannot date back to the day when the Annual General Body meeting was convened, viz., 2.10.2013, to hold that members of the Executive Committee had defamed accused. If the members of the Executive Committee had either peremptorily or subsequently, gone outside the General Body to publish the imputations against accusedthen, there may be a *prima facie* case to show that they had done so with the intention to harm, his reputation, which is not the case here. There is a peril undoubtedly when one joins an Association or body of individuals, of his reputation being besmirched within the contours of the Rules, Regulations and By-law of the association, which cannot be helped and least to say when he assumes an Office in that body.

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2020(2) TLNJ 569

R.RamanathanVs. V.Manickavasagam

Date of Judgment: 01.12.2020

Appreciation of Evidence - Negotiable Instruments Act, 1881, Section 138 – Whether suggestion put forth to the opposite party in the cross examination can be construed as admission?

During cross examination of the respondent, the suggestion put forth by the petitioner is that the respondent was working as Manager in M/s. Duruva Finance during the year 2014. In view of this suggestion, the petitioner wants to send receipt of M/s. Duruva Finance to the Hand Writing Expert, in which the respondent signature is found. The learned counsel for the petitioner submitted that the suggestion put forth by the petitioner during cross examination are observed in the impugned order as though it is an admission of the petitioner. It is hereby clarified that the suggestion put forth to the witness is only putting forth the case of the defence and it cannot be construed as admission.

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2020(2) LW (Crl) 921

The Directorate of Revenue Intelligence, (Represented by the Senior Intelligence Officer) Chennai Vs Abdullah & Another

Date of Judgment: 02.12.2020

Customs Act (1962), Sections 110(1A), 110(1B), 110(1C), 126, 135 - Criminal Procedure Code, Sections 3, 4- Whether the Magistrate referred in Chapter XIII in Sections 102, 103, 104, 105 and 110 of the Customs Act, 1962, is the Judicial Magistrate or Executive Magistrate? In Chapter XIII of the Customs Act, 1962, searches, seizures and arrest provisions have been enlisted. Section 100 of the Customs Act, deals with the power to search the suspected persons entering or leaving India. Section 101 of the Customs Act, deals with the power to search the suspected persons in certain other cases and the goods, which are liable to be confiscated. As per Section 102 of the Customs Act, 1962, the persons to be searched may require to be taken before the gazetted officer of Customs or Magistrate. The Magistrate referred herein is a Judicial Magistrate and there is no dispute. Section 103 of the Customs Act, deals with the power to screen or X-ray bodies of suspected persons for detecting secreted goods. Section 104 of the Customs Act, deals with the power to arrest. Section 105 of the Customs Act, power to search premises. Section 110 of the Customs Act, states the seizure of goods, documents and things, in which, the sub-section (1A), (1B) and (1C) were inserted by the Customs(Amended) Act 80 of 1985. Thus, the Magistrate referred in Chapter XIII in Sections 102, 103, 104, 105 and 110 of the Customs Act, 1962, is the Judicial Magistrate and not Executive Magistrate. There is no dispute or ambiguity for the same and the duties and functions referred therein are only to be discharged by the Judicial Magistrate.

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2020(2) TLNJ 534

Thiruvasagam Vs State by Inspector of Police, All Women Police Station, Ariyalur(Crime No.06 of 2012)

Date of Judgment: 09.12.2020

Indian Penal Code, 1860, Section 376– Sexual intercourse on the promise to marry – Accused convicted and sentenced – Whether consent given by the Prosecutrix is voluntary consent or consent given under misconception of fact?

Since, the Accused had been convicted for the offence under Section 376 of the Indian Penal Code, it is necessary to find out whether consent given by the Prosecutrix is voluntary consent or consent given under misconception of fact. In fact, a false promise is not a fact within the meaning of Penal Code. In this regard, Section 90 of the Indian Penal Code refers the expression 'Consent'. Though Section 90 of the Indian Penal Code does not define consent, but describes what is not consent. Since for the purpose of Section 375 of the Indian Penal Code requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. The consent given by the Prosecutrix is nothing but free consent. Further, at the time of getting consent, the Accused herein never intended to avoid marriage with the Prosecutrix. Only due to the other circumstances, now the promise made by the Accused was broken and resultantly, the Accused is before this Court. Therefore, the findings arrived by the Trial Court as the Accused is guilty under Section 376 of the Indian Penal Code is not correct and thereby, the conviction and sentence awarded to the Accused is liable to be set aside.

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