

# TAMIL NADU STATE JUDICIAL ACADEMY

**\*\* VOL. XVIII— PART12 — DECEMBER 2023\*\***

## IMPORTANT CASE LAWS



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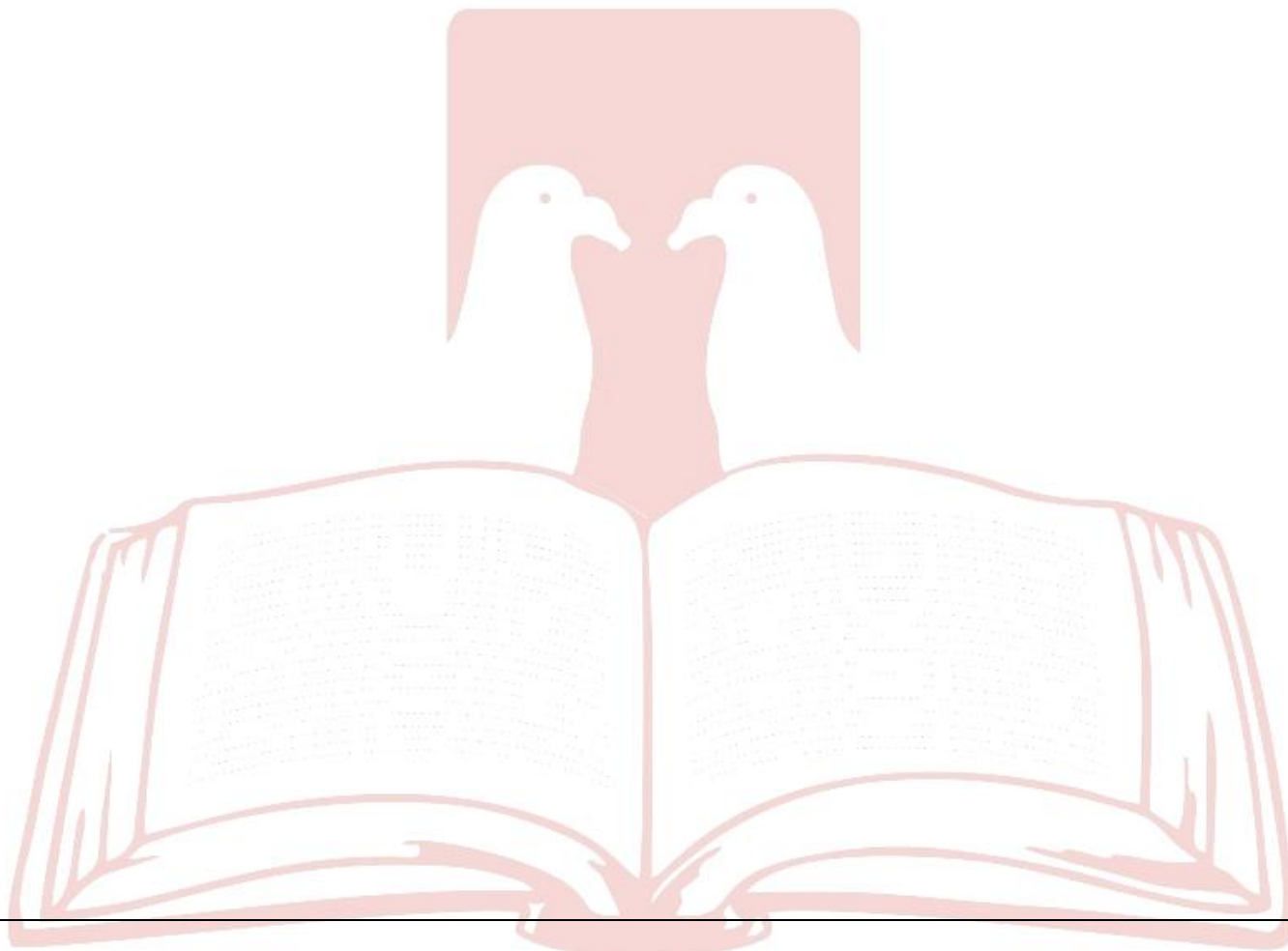
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**SUPREME COURT –CIVIL CASES**

**[Shakeel Ahmed Vs. Syed Akhlag Hussain C.A. No.1598 of 2023 \[2023 \(6\) CTC 533\]](#)**

**Date of Judgment : 01.11.2023**

**Registration Act, 1908 (16 of 1908), Sections 17 & 49 Transfer of Property Act, 1882 (4 of 1882), Section 54 :-**

No title could be transferred with respect to immovable properties on the basis of unregistered documents. In a suit for possession, plaintiff is relying upon unregistered agreement to sell and power of Attorney to claim possession of Suit Property. Further the property is in possession of the Defendant as he has received the same as gift from his own brother, who is the principal of plaintiff. Held, Statutory mandate of 1908 Act that no Title would pass on basis of unregistered documents. Moreover, even if Agreement to Sell and Power of Attorney were registered, Plaintiff could only have claimed relief of Specific Performance, if at all the documents have been registered. Thereby, Relief of possession granted to Plaintiff on basis of unregistered documents, untenable and set aside.

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**Mumtaz Yarud Dowla Wakf Vs. M/S Badam Balakrishna Hotel Pvt. Ltd. & Ors. [2023 (6) MLJ 277 (SC)]**

**Date of Judgment: 20.10.2023**

**Section 9 of Code of Civil Procedure, 1908 – Lack of Jurisdiction – Execution Proceedings – Effect of a failure to raise a *plea* :-**

Effect of failure to raise a plea regarding lack of jurisdiction in execution proceedings. Scope of Section 9, Code of Civil Procedure, 1908, and the maxim "Actus curiae neminem gravabit" has been elucidated. A party not having raised the issue of lack of jurisdiction despite the availability of an opportunity at an earlier point of time, should not be permitted to do so during execution proceedings. Further, where a Court has failed to check its jurisdiction and a plea has been raised subsequently and that too after receiving an adverse verdict, the forum shall not be declared as lacking of jurisdiction.

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**Prasanta Kumar Sahoo & Ors. Vs. Charulata Sahu & Ors. [2023 (9) SCC 641] Civil Appeals Nos. 2913-15 of 2018**

**Date of Judgment: 29.03.2023**

**Family and Personal Laws – Hindu Succession Act, 1956 – Section 6 – Devolution of interest in coparcenary property – Rights of daughter:-**

Daughters are entitled to one third share in all the properties as scheduled in the plaint. The same would be in accordance with the dictum as laid in *Vineeta Sharma* (2020) 9 SCC 1, while passing the final decree. Law has changed after the substitution of Section 6 and declaration of law in *Vineeta Sharma*. After decision in *Vineeta Sharma*, allotment of due Share in favour of daughter must be in accordance with law i.e. in equal share with any son(s). Further, when law governing parties has been amended before conclusion of final decree proceedings, the same must be considered and appropriately applied by court. As the law governing the parties has been amended before the conclusion of the final decree proceedings, the party benefited such amendment can make a request to the trial court to take cognizance of the amendment and give effect to the same.

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**Keshav Sood Vs. KirtiPradeepSood and Ors. C.A. No.5841 of 2023[2023  
(6) MLJ 392 (SC)]**

**Date of Order : 12.09.2023**

**Civil Procedure – Plea of res judicata – Rejection of Pleint – Code of Civil  
Procedure, 1908, Order VII Rule 11:-**

As far as scope of Rule 11 of Order 7 of C.P.C. is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application. The issue of *res judicata* could not have been decided on an application under Rule 11 of Order VII of CPC as an examination of the said issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore the Plea of res judicata is left open to be decided after framing an appropriate issue.

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**Vijay Vs. Union Of India & Ors. C.A. No. 4910 of 2023 [2023(15) SCALE]****Date of Judgment : 29.11.2023****Stamp Duty – Indian Stamp Act, 1899 – Section 2(10), 3 & 35; Article 23 [as amended by M.P. Amendment Act of 1990] Evidence Act, 1872 – Section 63 & 65 :-**

Instruments that are not duly stamped are inadmissible in evidence. Further, if a document is required to be stamped is not sufficiently stamped, a copy of such document as secondary evidence cannot be adduced. For stamp duty, the relevant date is the date of execution and not the date of adjudication. The Plaintiff and defendant entered into an agreement to sell on 4.2.1988, and pursuant to that, plaintiff was allegedly put in possession by defendant. When the defendant denied the existence of such an agreement, plaintiff filed a suit for specific performance of contract. Subsequently, Plaintiff filed an application to file a copy of the agreement to sell, among other documents, as secondary evidence. The Court held that secondary evidence of an agreement to sell could not be allowed as it was not executed on a proper stamp, thus barred u/s 35 of the Stamp Act. Thereafter, a Writ petition was filed by the plaintiff, challenging the constitutional validity of Section 35 of the Stamp Act and the High Court had upheld the validity of Section 35 of the Act. When the non-availability of the document is sufficiently and properly explained, then the secondary evidence can be allowed. Secondary evidence could be given, when the party cannot produce the original document for any reason not arising from this default or neglect. The decision of the supreme court in *Jupadi Kesava Rao Vs. Pulavarthi Venkata Subha Rao: (1971) 1 SCC 545*, held to be not applicable to the instant case.

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**SUPREME COURT – CRIMINAL CASES****XYZ Vs. State of Madhya Pradesh & Ors. Criminal Appeal No: 1184 of 2023**  
**[2023 (9) SCC 705]****Date of Judgment : 05.08.2022****Scope of Sections 156(3), 154(3), 36, 200, 202 and 482 of Criminal Procedure Code, 1973 and Powers of Magistrate under Section 156(3):-**

Use of expression "may" in Section 156(3). High Court held that the Magistrate was not under an obligation to direct the police to register the FIR and the use of the expression "may" in Section 156(3) indicated that the Magistrate had the discretion to direct the complainant to examine witnesses under Sections 200 and 202, instead of directing an investigation under Section 156(3).

Further, held, Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation. Section 156(3) includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Further held, whenever a cognizable offence is made out on the bare reading of complaint, the Magistrate may direct police to investigate.

Further held, though the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case, but this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning.

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**MunnaPandeyVs. State Of Bihar Crl. A. Nos. 1271-1272 of 2018 [2023 (4) MLJ (Cri) 451 (SC)]**

**Date of Judgment :14.09.2023**

**Scope of Section 162 of Criminal Procedure Code, 1973 - Sections 145 and 165 of Indian Evidence Act, 1872– Statements made to the police and Court's duty to bring on record the contradictions:-**

Where the witnesses were deposing contrary to what they had stated before the police in their statements recorded under Section 161 of the Cr.P.C., it was the duty of the Presiding Officer to put relevant questions to these witnesses in the exercise of his powers under Section 165 of the Evidence Act. Further, Section 162 of the Cr.P.C. does not prevent a Judge from looking into the record of the police investigation. There is nothing in the *proviso* to the section which says that the statement can be used to contradict the witnesses only at the request of the accused. Thus, nothing prevents a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. Even after the IO had deposed, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act.

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**Rupesh Manger (Thapa) Vs. State of Sikkim Criminal Appeal Nos. 2069-2070 OF 2022[2023 (9) SCC 739]**

**Date of Judgment : 13.09.2023**

**Sections 84 and 302 of Indian Penal Code, 1860 – Defence of insanity or unsoundness of mind:-**

An accused who seeks exoneration from liability of an Act u/s.84 of IPC has to prove legal insanity and not medical insanity. Abnormal conduct during incident in which homicide took place. Appellant was prescribed medicines for relapsable psychiatric ailments with attack possible at any time and the accused was also found to be under the influence of psychotropic substances at the time of arrest. In the light of evidence discussed by the trial court including the medical evidence about the mental illness of the appellant/accused and his abnormal behavior at the time of occurrence. It does not appear that the view taken by the trial court was perverse or that it was based on without any evidence. Appellant directed to be acquitted of the charge u/s.302 IPC.

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**HIGH COURT – CIVIL CASES**

**J.Janakiram Vs. M.Sathyabama C.M.A.(MD).No.1201 of 2022 [2023 (5)  
L.W. 718]**

**Date of Judgment :08.11.2023**

**Family Courts Act, Section 14, Application of Evidence Act:-**

Rules of evidence applicable under the Evidence Act are not applicable to proceedings before the Family court. Further, the Family court is entitled to receive in evidence, any document if in its opinion it would assist the court to deal with the dispute effectively, even if the said document is not relevant or admissible under the Evidence Act. The Family Court gave a finding that the respondent had proved that the appellant was having illicit relationship. The Burden is upon the appellant to establish that the photographs were morphed.

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**Aishwarya Sridhar, Rep. by her mother as her power of attorney holder S.Bhuvaneshwari Vs. Mr.Harihara Venkataraman Balasubramanian, Rep. by his father as his Power of Attorney Holder N.Balasubramanian [2023 (6) MLJ 409] C.R.P No. 2310 of 2023**

**Date of Order : 17.10.2023**

**Section 13(B) of the Hindu Marriage Act and Madras High Court Video-Conferencing in Courts Rules, 2020 - Divorce by mutual consent and Appearance of parties through video-conference:-**

It is made clear that in a petition filed u/s. 13(B) of the Hindu Marriage Act, through the authorized power agent of the parties for mutual divorce, the appearance of the parties is not necessary. Presiding officer of the family court insisted for the presence of at least one of the parties who were in the U.S. However, the High Court had observed that the appearance of parties was not necessary for receiving a petition under Section 13-B through a power agent. Allowing the revision, the Family Court was directed to receive the divorce petition through the power agents and dispose the same after ascertaining the consent of the parties through video-conferencing.

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**N.ThirumalaisamyVs. BalasubramaniyaChettiyar (Died) &Anr.  
C.R.P.(MD)Nos.2068 and 2086 of 2017 [2023 (5) L.W. 724]**

**Date of Judgment : 01.12.2023**

**Tamil Nadu Cultivating Tenants Protection Act, 1955, Section 2  
"Cultivating Tenant" - Permission to deposit rent in court:-**

Merely because, a person is a heir of a cultivating tenant, he does not automatically qualify under the definition of cultivating tenant, unless he contributes his own physical labour or that of member of his family in cultivating the land in question. Petitioners have not been able to establish, they have contributed their physical labour, either their own, or that of any member of the petitioners' family, in cultivating the lands belonging to the respondent. It is only a cultivating tenant, who can seek to deposit rents and not a legal heir or legal representative of a cultivating tenant.

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**Gunasekaran Vs. The State of Tamil Nadu Rep by its Secretary to Government, Revenue Department, Fort St. George & Ors. W.P.No.3002 of 2018 [2023 (4) TLNJ 547 (Civil)]**

**Date of Judgment : 23.11.2023**

**Tamil Nadu Land Encroachment Act, 1905, Section 6:-**

A Petition was filed seeking for declaration that Section 6 Act, 1905 is void and violates Articles 14, 19(1)(e) and 21 of the Constitution of India. A person in unauthorized occupation cannot claim protection of Article 21 of the Constitution of India. Further, a person who unauthorisedly possesses the property cannot be heard to say that he has a constitutional right to unauthorisedly occupy the property. Government property can be used for public purpose and an individual cannot be allowed to occupy the same. Once the Constitution Bench upheld the constitutional validity of the Act of 1905, and more particularly the same provision assailed by the petitioner, it will not be permissible to again consider the challenge to the same. Petitioner could not remotely show a semblance of right over subject writ property.

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**T. Mohan Kumar Vs. R. Asok Kumar A.S. No.693 of 2018 & C.M.P. No.19208 of 2018 [2023 (4) TLNJ 553 (Civil)]**

**Date of Judgment : 06.12.2023**

**Negotiable Instruments Act, 1881, Section 118:-**

Plaintiff admitted that he has not produced any document to show he had lent or was in possession of Rs.23 lakhs on date of lending or carrying on some business, and the plaintiff has further admitted that he had no bank account and that he was not an Income Tax assessee. Not even a single utterance of the plaintiff has been made in his proof affidavit, to show that he was doing some business. The plaintiff also admits that he has not paid profession tax or property tax. Presumption can be drawn from the silence on the part of the defendant which cannot undo the damage done by the plaintiff in his own cross-examination as P.W.1. The conduct of the defendant in not sending a reply to the legal notice issued by the plaintiff has not been rebutted by the defendant. Therefore, presumption under section 118 has been rebutted by the evidence of P.W.1.

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**Batmavady (died) & Ors. Vs. Sarala & Ors. A.S.No.547 of 2016 and C.M.P.No.13876 of 2016 [2023 (6) MLJ 223]**

**Date of Judgment : 12.10.2023**

**Section 68 of Indian Evidence Act – Settlement deed – Proof of Execution:-**

As per *Proviso* to Section 68, in case of a non-testamentary instrument, it shall not be necessary for the attesor to be examined if the execution of the document is not specifically denied. The execution of the settlement deed was never denied by the appellant and the same is, in fact, admitted as the prayer itself is to declare it void and *non-est* in the eye of law to the extent of 7/8<sup>th</sup> share only. Therefore, the case on hand would clearly fall under the *proviso* to Section 68 of the Evidence Act, which exempts examination of the attesting witness if execution of the document is not specifically denied.

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**U. Shoban Kumar Vs. A. Karunakaran & Ors. Civil Revision Petition PD No.1411 of 2023 and C.M.P.No. 9513 of 2023 [2023 (6) CTC 487]**

**Date of Judgment : 07.06.2023**

**Specific Relief Act, 1963, Section 22 - Suit for Specific Performance - Territorial jurisdiction of court:-**

Suit for Specific Performance of Agreement of sale is not suit for land even though relief of recovery of possession is consequential or inherent. Further, even if property is situated outside the jurisdiction of the Court, where cause of action arose, court has jurisdiction to entertain the same. Hence, the learned District Judge is directed to receive and number the suit rejected for want of territorial jurisdiction.

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**Karuppaiyan Vs. Sudhakar & Ors. CRP(MD) NO. 696 of 2023 [2023 (5) LW 662]**

**Date of Judgment : 10.11.2023**

**Order 1 Rule 10 of Civil Procedure Code - Proper and necessary party, subsequent purchaser, Order 20 Rule 18 - Transfer of Property Act, Section 52, Lispendens:-**

Order 1 Rule 10 of C.P.C. enables the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and to settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the court. A transferee pendente lite of an interest in an immovable property which is the subject matter of the suit is a representative in interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings.

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**K. Sundar @ Krish Sundar Vs. Nalini Wilson & Another C.M.A.No.2297 of 2021 [2023 (4) TLNJ 415 (Civil)]**

**Date of Judgment: 23.11.2023**

**Motor Vehicle Act, 1988, Section 173:-**

Accident when claimant had travelled in a car. Disability certificate was produced and it was not accepted by tribunal since claimant did not appear before the Medical board. Further, disability was assessed at 40% and compensation of Rs.5,07,500/- was awarded. Disability assessed by tribunal to be a intemperate outburst because of the attitude of the claimant not appearing before Medical Board. A Tribunal should not be so emotional and be vindictive against the parties, who normally act according to the advice of their counsel. Personal emotions against the counsel or a party should not be reflected in the judgments. Functional disability is 100% because a 90% Quadriplegic is definitely confined to a wheel chair and claimant cannot move about without help of others. Petitioner has a Diploma in Hotel Management & Catering and also a Diploma in Computer Office Management. In result, on considering the above grounds, the total compensation was enhanced to Rs.54,24,000/-.

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**HIGH COURT – CRIMINAL CASES**

**V.Vijaysundar & Ors. Vs. The State represented by the Inspector of Police,  
Kadaladi Police Station, Ramanathapuram District & Anr.  
Crl.OP(MD)No.10830 of 2022 [2023 (2) TLNJ 522 (Criminal)]**

**Date of Judgment : 07.11.2023**

**Indian Penal Code, 1860 Section 294(b), 353 & 503 – Restraining police  
from arrest of an accused by petitioners and uttered abusive words:-**

Words uttered are defamatory of the complainant, not obscene and utterance to constitute an offence under Section 294(b). Further, a mere allegation that the petitioners used the abusive word does not satisfy to attract the offence under section 294 (b). No material to show that the petitioners along with others made assault on the public servant in execution of his duty, as a reason of which, Section 353 of IPC is not attracted. A simple abusive word alleged to have been made has been exaggerated as if he was criminally intimidated and abused in filthy language does not attract Section 503 of IPC.

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**State Rep. By the Inspector of Police, All Woman Police Station, Guindy  
Vs. xxx Father of the victim child and xxx Mother of the victim child R.T.  
No.2 of 2022 and CrI.A. Nos.427 and 392 of 2023 [2023 (2) TLNJ 528  
(Criminal)]**

**Date of Judgment : 21.11.2023**

**Protection of Children from Sexual Offences Act, 2012, Section 6, 17,  
21(1), Juvenile Justice Act, 2015, Section 75:-**

Continuous sexual assault on minor girl by her own father. Even if expert opinion of the Doctor is ignored, there is nothing to doubt PW2's version, even though there are some violations of statutory provisions. These provisions are to ensure that accused gets a fair trial. Further, non-examination of witnesses, who were aware of the abuses, would not make any difference. Thus, merely because counsel not having put certain questions to the witnesses, the trial would not be vitiated. Victim's version about the role played by A2 and her knowledge of the abuses committed by A1 is also natural and in consonance with normal human conduct. Role of A2 does not suggest that she had any intention to aid A1 in committing sexual offences. Further, A2 had protested at every stage and A1 had abused and beaten A2. A2's knowledge of the illegal acts and her omission to prevent it or complaint not amount to "intentional aiding." The court has been convinced that the victim/PW2 has spoken the truth and there is no reason to disbelieve the statement of victim/PW2. In result, Sentence of death of penalty against A1 only modified to life imprisonment and A2 is acquitted of the charge under section 6 r/w 17 of the POCSO Act. Appeal allowed with modification of sentence.

**K.Sivamani Vs. State represented by, the Inspector of Police, Vigilance and Anti-Corruption, Head Quarters, Chennai Crl.O.P.No.25160 of 2023 and Crl.M.P.No.17443 of 2023 [2023 (2) TLNJ 553 (Criminal)]**

**Date of Judgment : 20.11.2023**

**Criminal Rules of Practices Rules Section 26-A(1), 91 – Offences under Prevention of Corruption Act:-**

Two final reports were filed by two Investigation officers, which were identical. Based on the final report of the 2<sup>nd</sup> officer, case was taken and the Petition to produce the reports of IOs, was dismissed by trial court. As per Rule 26-A (1) of the Criminal Rules of Practice, respondent is mandated to furnish a copy of the list as referred to in clause (xxxi) of sub-rule (7) of Rule 25 to the accused while furnishing copies under section 207 of the code. Categorical admissions by IOs that they prepared draft final reports absolving the petitioner. Subsequently, Court called and perused those documents and though those documents are not relied upon by the prosecution, they are not confidential documents.

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