# TAMIL NADU STATE JUDICIAL ACADEMY

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# IMPORTANT CASE LAW

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# SUPREME COURT – CIVIL CASES

**2019 (3) MWN(Civil) 685**

**Ganesan, Rep by its Power Agent, G.Rukmani Ganesan vs. Commissioner, Tamil Nadu Hindu Religious and Chartiable Endownments Board, Chennai & 2 others**

**Date of Judgment: 03.05.2019**

**Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959(T.N.Act 22 of 1959), Sections 6(6), 6(7), 8, ((1), ((2), 69 & 70** – Civil Court – Whether Commissioner exercising jurisdiction under HR & CE Act is "Court"

When an appeal is provided against the Order of the Commissioner under Section 69 to the Court, which is defined under Section 6(7) there is no question of treating the Commissioner as a Court under the Statutory scheme of Act 1959.

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**2019 (6) CTC 584**

**U.C.Surendranath vs. Mambally's Bakery**

**Date of Judgment: 22.07.2019**

**Code of Civil Procedure, 1908(5 of 1908), Order 39, Rule 2-A** – Passing off – Inteirm injunction – willful disobedience.

For finding a person guilty of willful disobedience of the Order under Order 39, Rule 2-A, C.P.C., there has to be not mere "Disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of Criminal liability, the same has to be proved to the satisfaction of the court and the disobedience was not mere "disobedience" but a "willful disobedience". As pointed out earlier, during the second visit of the commissioner to the Appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the commissioner has noted is that "non removal of the hoarding" displayed in front of the appellants' shop for which the appellant has offered an explanation which in out considered view, is acceptable one.

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**2019(8) MLJ 16 (SC)**

**Madhukar Nivrutti Jagtap & others vs. Pramilabai Chandulal Parandekar and others**

**Date of Judgment: 13.08.2019**

**Contract – Specific Performance – Lis Pendens – Transfer of Property Act, 1882, Section 52** – Whether Appellants were bonafide purchasers and sale transactions in their favour hit by doctrine of lis pendens.

Both the sale transactions in favour of the present appellants, purporting to transfer the suit property in part, having been effected after filing of the suit, are directly hit by the doctrine of lis pendens, as embodied in Section 52 of the Act. The said sale transactions in favour of the Appellants shall have no adverse effect on the rights of the Plaintiffs and shall remain subject to the final outcome of the suit in question.

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**2019 (8) SCC 651**

**Ganpati Babji Alamwar (Dead) by Legal Representatives Ramlu & others vs. Digambarrao Venkatrao Bhadke & others**

**Date of Judgment: 12.09.2019**

**Transfer of Property Act, 1182 – Section 58(c) –** conditional sale mortgage(CSM) or absolute sale - determination of – essential requirements, explained in detail – on facts, held, transaction in question was mortgage by conditional sale and not a sale.

Whether an agreement is a mortgage by conditional sale or sale with an option for repurchase is a vexed question to be considered in the facts of each case. The essentials of an agreement, to qualify as a mortgage by conditional sale, can succinctly be summarized. An ostensible sale with transfer of possession and ownership, but containing a clause for reconveyance in accordance with Section 58(c) of the Act, will clothe the agreement as a mortgage by conditional sale. The execution of a separate agreement for reconveyance, either contemporaneously or subsequently, shall militate against the agreement being mortgage by conditional sale. There must exist a debtor and creditor relationship. The valuation of the property, and the transaction value, along with the duration of time for reconveyance, are important considerations to decide the nature of the agreement. There will have to be a cumulative consideration of these factors, along with the recitals in the agreement, intention of the parties, coupled with other attendant circumstances, considered in a holistic manner. The language used in the agreement may not always be conclusive.

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# SUPREME COURT – CRIMINAL CASES

**2019 (6) CTC 225**

**Birendra Prasad Sah vs. State of Bihar & another**

**Date of Judgment: 08.05.2019**

**Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142 –** Dishonour of Cheque - complaint – Limitation.

Appellant/Complainant filed complaint under Section 138 of NI Act for dishonor of cheque. It is pleaded in the complaint that the cheque was dishonoured on 04.12.2015 and first legal notice was issued on 31.12.2015. The Postal department has not delivered proof of service, despite request made by the complainant. Thereafter, the complainant has issued second legal notice on 26.02.2016 and lodged complaint on 11.05.2016 along with an application to condone the delay in filing. The trial court had condoned the delay for the period commencing from 06.04.2016 and taken cognizance of the complaint. The complaint was instituted on 11$^{th}$May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause(c) of the proviso to Section 138. The Proviso, however, stipulates that cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period. The Appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the Appellant for condoning the delay in instituting the complaint taking the basis of the complaint at the issuance of the first legal notice dated 31$^{st}$ December 2015.

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**2019 (10) SCC 437**

**Ishwari Lal Yadav & another vs. State of Chhattisgarh**

**Date of Judgment: 03.10.2019**

**Criminal Trial –** confession – extra-judicial confession/Hearsay – Evidentiary value of.

The confessional statements made to the police by the appellants, cannot be the basis to prove the guilt of the accused but at the same time there is no reason to discard the confessions made to the independent witnesses at the time when Chirag's body was found, prior to the arrival of police. It is true that extra judicial confession, is a weak piece of evidence but at the same time if the same is corroborated by other evidence on record, such confession can be taken into consideration to prove the guilt of the accused. In the case on hand, the evidence from independent witnesses is in one voice and consistent. The medical evidence on record also substantiated the case of the prosecution.

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**2019 (4) MLJ (Crl) 709 (SC)**

**Ravishankar @ Bab Vishwakarma vs. State of Madhya Pradesh**

**Date of Judgment: 03.10.2019**

**Rape and causing death** – Death Sentence – IPC 1860, Section 376-A –Trial Court held Appellant guilty of kidnapping minor girl, committing rape and killing her by throttling and therefore, sentenced him to death under Section 376-A – Whether Appellant deserves to be imposed with extreme sentence of death penalty.

However, death being irrevocable, there lies a greater degree of responsibility on the Court for an in depth scrutiny of the entire material on record. Still further, qualitatively, the penalty imposed by awarding death is much different than in incarceration, both for the convict and for the state. Hence a corresponding distinction in requisite standards of proof by taking note of 'residual doubt' during sentencing would not be unwarranted. We are thus of the considered view that the present case falls short of the 'rarest of rare' cases where the death sentence alone deserves to be awarded to the appellant. It appears to us in the light of all the cumulative circumstances that the cause of justice will be effectively serves by invoking the concept of special sentencing theory as evolved by this Court. For the reasons aforesaid, the appeals are allowed in part to the extent that the death penalty as awarded by the courts below is set aside and is substituted with imprisonment for life with a direction that no remission shall be granted to the appellant and he shall remain in prison for the rest of his life.

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**2019 (10) SCC 623**

**Rajender @ Rajesh @ Raju**

**Date of Judgment: 24.10.2019**

**Penal Code, 1860 – Section 120-B and S-302 – Criminal Conspiracy -** Existence of – Proof of – Essential Elements summarized.

With respect to conspiracy, it is trite law that the existence of three elements must be shown – a criminal object, a plan or a scheme embodying means to accomplish that object, and an agreement or understanding between two or more people to cooperate for the accomplishment of such object. Admittedly, the incorporation of Section 10 to the Evidence Act, 1872, suggests that proof of a criminal conspiracy by direct evidence is not easy to get. While we acknowledge this constraint, we do not find any discussion by the High Court on what circumstances indicate the existence of the essential elements of a criminal conspiracy in the instant case. On going through the entire material on record, we find that a criminal conspiracy has not been proved in the instant case.

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**2019 (10) SCC 337**

**XYZ vs. State of Gujarat and another**

**Date of Judgment: 25.10.2019**

**IPC – Section 376, 499 and 506 Part II –Evidence Act, 1872 – S.114-A** – Presumption under – When arises – S.114-A deals with the presumption as to absence of consent in certain prosecutions for rape.

Section 114-A of the Evidence Act, 1872 deals with the presumption as to absence of consent in certain prosecution for rape. A reading of the aforesaid section makes it clear that, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

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**Rohtas and another vs. State of Haryana**

**2019 (10) SCC 554**

**Date of Judgment: 05.11.2019**

**Criminal Trial** – Appreciation of Evidence – Contradictions, inconsistencies, exaggerations or embellishments – Minor discrepancies.

There is bound to be variations and difference in the behavior of the witnesses or their reactions from situation and individual to individual. There cannot be uniformity in the reaction of witnesses. The Court must not decipher the evidence on unrealistic basis. There can be no hard-and-fast rule about the uniformity in human reaction.

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**Rani Narasimha Sastry vs. Rani Suneela Rani**

**2019 (6) CTC 587**

**Date of Judgment: 19.11.2019**

**Hindu Marriage Act, 1955(25 of 1955), Section 13(1) (i-a) –** Cruelty – Prosecution launched against Husband, making serious allegations under Section 198-A of IPC – Husband underwent trial and ultimately acquitted – whether such prosecution amounts to cruelty.

In the present case, the prosecution is launched by the Respondent against the appellant under Section 498-A of IPC making serious allegations in which the Appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC, not only acquittal has been recorded, but observations have been made that allegations of serious nature are leveled against each other. The case set up the Appellant seeking Decree of Divorce on the ground of cruelty has been established. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, leveled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband.

# MADRAS HIGH COURT – CIVIL CASES

**2019 (5) LW 667**

**Ramaiyan Chinnadurai (died) and others vs. Ramamirtham**

**Date of Judgment: 26.02.2019**

**Suit for injunction** based on possession – cloud on title – duty to ask relief of declaration – Adverse possession – owners not added as parties – reliance on advocate commissioner's report for granting injunction – whether correct.

It is a definite case of the Plaintiff that she perfected the title to the suit property, by means of adverse possession. In fact, the adverse possession is not defined in any statute. However, it is acknowledged that adverse possession refers to actual and exclusive physical possession coupled with intention to hold the property as owner and hostile to the original owner. When a person openly and continuously enjoying a property under a claim of right adverse to the title, as true owner for more than the statutory period the person prescribes title by adverse possession in view of Section 27 of the Limitation Act, 1963. Adverse possession means a hostile possession, which is expressly or impliedly in denial of the title of the true owner. Further more the possession must be actual, exclusive, open and under a claim of right and adequate in continuity to the extent so as to show that his possession is adverse to the true owner. Mere possession without a claim of right is not sufficient to create adverse possession. Permissive possession does not become hostile till there is assertion of an adverse title to the knowledge of the owner. The title of the Plaintiff itself is questioned by the defendants, it is the duty of the plaintiff to file a suit for the relief of declaration. Therefore, since cloud appeared on the title of the B-schedule property, it is the duty of the plaintiff to file a suit for the relief of declaration and then injunction. It is true the injunction was granted based on the possession only. However, following the principle that title follows possession, the case of the plaintiff fails.

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**2019 (5) LW 56**

**Swamynathan vs. Dhanalakshmi**

**Date of Judgment: 12.04.2019**

**Evidence is against the recitals**- It is necessary for the Courts below to exclude an oral evidence let in by the parties against the recitals found in the documents – Courts below did not follow Section 92.

It is necessary for the Courts below to exclude an oral evidence let in by the parties to exclude an oral evidence let in by the parties against the recitals found in the documents. In this regard, the Courts below did not follow Section 92 of the Indian Evidence Act.

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**2019 (8) MLJ 269**

**Benjamin David Jayasingh vs. Hendry Selvaraj @ Hendry Samuel Sundar Sungh & another**
**Date of Judgment: 30.07.2019**

**Civil Procedure – Execution – Lok-Adalat award – Legal Services Authorities Act, Section 21 –** Suit filed by Respondent/1st Plaintiff for recovery of possession of suit property and damages from petitioner/defendant settled in Lok-Adalat and award passed – On execution petition filed by Respondent, Lower court directed Petitioner to vacate suit property and hand over vacant possession to Respondent, hence these revision petitions – Whether Lok-Adalat award and consequential or order passed by lower court in execution petition, liable to be interfered.

Merely because the value of settlement is more than the pecuniary jurisdiction of the Court, it cannot be said that the Lok-Adalat has no pecuniary jurisdiction to deal with the matter, Parties agreed for an award in the Lok-Adalat and an award has been passed based on the settlement already arrived at between the parties. Petitioner, after entering into an agreement with the Respondent and after conceding to an award, as per the settlement, before the Lok Adalath, with an intention to drag on the proceedings, has filed these petitions, which cannot either be appreciated or approved by this Court. This Court does not find any reason to interfere with the Lo-Adalat award and consequential order passed by the Court below in the execution petition.

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**2019 (8) MLJ 331**

**S.Chelladurai vs. Karpagavinayagar, Firm, by its Partner V.Lakshmanan, 37, Church 3rd Street, Karaikudi Nagar, Sivagangai District**

**Date of Judgment: 09.08.2019**

**Civil Procedure – Substitution of Partner - Objection by Court Receiver – Code of Civil Procedure, 1908, Section 151 and Order 22 –** Trial Court allowed application filed by Respondent/Petitioner Firm by substituting partner to represent Firm – Scope.

Once a Partnership Firm is arrayed as a party in the civil suit, the Firm consists of the partners and for the purpose of convenience and to avoid multiple stands, one partner has been chosen by the other partners, to represent the case on behalf of the Partnership Firm. This being the concept of "impleading", Order XXII of the Code of Civil Procedure is undoubtedly inapplicable in a case, where a representing member of the partnership died and another partner is substituted for the continuance of the law suit. Interlocutory application filed by one of the inducted partners, representing Firm and to inducted partners, representing Firm and to substitute name in lieu of expired partner is well within ambit of Section 151 of Code and same is maintainable. Mere substitution of one partner in lieu of the partner, who died, would not affect the cause and the rights of the respective parties. Such a substitution is made and required for the purpose of continuance of the law suit and to defend the Partnership firm, which is a party and legal person.

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**2019 (8) MLJ 216**

**V.Subramani vs. V.Renugopal & others**

**Date of Judgment: 28.08.2019**

**Succession Laws – Maintainability – Partition – Possession of property – Code of Civil Procedure, 1908, Order 2 Rule 2** – Plaintiff filed first suit for injunction restraining defendants from alienating suit property till partition was effected and mandatory injunction and second suit for partition – Maintainability.

The Plaintiff would trace title to the suit property through his grandfather. However, during the arguments he would put forward Ex.A.29 and claim that the property in question is a joint property and not a joint family property which is total contrary to the pleadings. It is the admitted case that the Plaintiff had filed an earlier suit for partition. Plaintiff has not obtained the leave of the court to file subsequent suit for partition in respect of the present suit property. Therefore, the second suit is clearly hit by the provisions of Order 2 Rule2.

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**2019 (5) CTC 767**

**A.V. Murugan vs. K. Maheswari and others**

**Date of Judgment: 12.09.2019**

**Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rules 9 & 10(2)** –Necessary party – proper party – Determination of.

The test for determining as to whether a party should be impleaded in a suit, will depend upon the fact as to whether they are necessary/proper party. Necessary party is one, without whom no effective Order can be made. Proper party is one, whose presence is necessary for a complete and final decision. It must be borne in mind that a person having relevant evidence may be a necessary Witness, but not a proper party to be impleaded in a Suit. Enquiry in such an Application would be whether enforceable legal right of such proposed party would be affected by determination of issues in the Suit. This fundamental Principle of Law regarding impleading a party as a Defendant in a Suit is well settled through a catena of decisions.

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**2019 (8) MLJ 375**

**P.Jothimani vs. M.Pughazhenthi**

**Date of Judgment: 21.10.2019**

**Hindu Law – Divorce – Cruelty and desertion – Hindu Marriage Act, Sections 9 and 13 -** Respondent/Husband filed petition for divorce on ground of cruelty and desertion while Appellant/Wife filed petition for restitution of conjugal rights - Scope.

The allegations that the Appellant/Wife was spreading rumors about the Respondent/husband's character and business status, due to which, there was a mental agony, was not proved by letting in any evidence. When there is not specific evidence stating that these acts created and caused mental agony, cruelty against the person, the divorce cannot be granted on that ground. The mere small trivial issues arising between the husband and wife regarding their expectations for future life, cannot be termed as a 'cruelty' caused by the wife. The Respondent/husband's admission that there was a panchayat held would show that he was in touch with the wife's family and the question of desertion does not arise.

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**2019 (8) MLJ 463**

**K.P.Selvah @ Panner Selvam vs. Atlee (Director and Writer) & others**

**Date of Judgment: 22.10.2019**

**Civil Procedure – Withdrawal of suit – filing of fresh suit – Code of Civil Procedure, 1908, Section2 2(2), 96 and 105, Order 23 Rule 1-** Petitioner/Plaintiff filed suit for permanent injunction restraining Respondents/ Defendants from taking or releasing movie based on story written by him – Respondents filed petitions for rejection of Plaint on grounds that suit was barred by law and lack of cause of action – on application filed by Petitioner, Trial Court permitted Petitioner to withdraw suit, however denied permission to file fresh suit before appropriate forum. Whether, trial court could deny permission/liberty to institute suit on same set of fact/subject matter before appropriate forum.

The trial court in the impugned order, while allowing the plaintiff to withdraw the suit, ought to have permitted him to institute a fresh suit before the appropriate court on the same subject matter of the suit, in view of the language used in Order23 Rule (1) Sub-rule(3). Failure to give such liberty and rejection of such plea made by the Plaintiff, in the impugned order, is nothing but an erroneous exercise of power by the trial court. In that view of the matter, this court is also of the considered view that, the impugned order, in so far as it disallowing the plaintiff to get such liberty is to be interfered with and to be set aside.

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**2019 (5) LW 592**

**Balakrishnan vs. Shanmugadurai & others**

**Date of Judgment: 25.10.2019**

**Transfer of Property Act, Section 3,** - explanation, section 52, Lis Pendens, **Specific Relief Act, Section 19(b) –** Specific Performance – to set aside exparte decree by third party – subsequent purchaser – impleading of – scope.

The Plaintiff is the dominus – litis of the suit filed by him and he cannot be forced to add party against his will, unless there is compulsion of law. Moreover, in a suit for specific performance of a contract of sale, the "lis" between the vendor and purchaser only shall be gone into and it is not open to the Court to decide as to whether the third party had acquired any title or possession. The very purpose of Section 52 of the Transfer of property Act about the transfer of a property pending the suit, is not subject to Section 19 (b) of the Specific Relief Act, which deals about the relief against the parties and the persons claiming any subsequent title by them, and hence the subsequent purchaser, pendente-lite, has to work out his remedy only with his vendor/first defendant.

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**2019 (8) MLJ 257**

**Quintessential Designs India Pvt LTd., Rep, by its CEO Syed Layak Ali and another vs. Puma Sports India(Pvt) Ltd., and another**

**Date of Judgment: 31.10.2019**

**Cvil Procedure** – Delivery of Interrogatories – Delay in Trial – Code of Civil Procedure, 1908, Order XI Rule 1 and Order XVI Rule 1 – Plaintiffs-Appellants's application under Order XI Rule 1 read with Order XVI Rule 1, to permit him to deliver interrogatories to Respondents - Scope.

Plaintiffs/applicants are trying to only dislocate and delay the trial by filing such applications at the highly belated stage. Provisions of Civil Procedure Code allowing the filing of such interrogatories are incorporated in Order XI Rule 1, to facilitate the settling of the issues between the parties upon clarification of certain facts at the initial stage of suit and therefore, this exercise can be undertaken only before the commencement of the trial, with the framing of issues under Order XIV Rule 1, CPC. The same cannot be allowed at the middle stage of the trial, as the material gathered upon such interrogatories is likely to give rise to additional defence requiring amendment of pleadings on both sides, which will put back the clock of trial back to stage one.

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**2019 (5) LW 400**

**The Executive Officer, Arulmighu Mariamman Temple, Udumalpet, Coimbatore District vs. The Special Tahsildhar, Adi Dravidar Welfare, Pollachi & others**

**Date of Judgment: 24.10.2019**

**Tamil Nadu Minor Indams (Abolition and Conversion into Ryotwari) Act,** (Act No. 30 of 1963), Section 8(2)(ii), hereditary Poojari's rights – Hereditary Poojari's – Temple – Kudivarm rightsor service inam – whether private respondents/hereditary poojaris are entitled for compensation amount as awarded in the land acquisition proceedings – Apportionment made by the reference court (sub-Court) based on the award passed by the Land acquisition officer.

On a careful perusal of the submissions made on either side, it is no doubt true that in the Settlement Tahisldar proceedings, the names of the Hereditary Poojaris have been included as "represented by poojaris for the time being Arunachala Pandaram, Palaniappa Pandaram, Mariappa Pandaram, Thangavelu Pandaram, Mylathal". But their names were entered temporarily to represent the appellant/Temple and individually their names were not included, more so, when the Ryotwari Patta was issued in favour of the appellant/Temple. It is clear that the Hereditary Poojaris, who claim themselves as land owners, were not given the land(s) as "Service Inam and they were not carrying on any cultivation activities. On the other hand, they have made an attempt to sell the property (ies)/land(s) of the Temple to third parties by clandestinely including their names in the Patta. This was also observed by the Land Acquisition Officer/Special Tahsildar in the Award. But, it is to be noted that Ex.R-1 proceedings of the Settlement Tahsildar shows that Kudivaram rights vest with the Temple, from which it is crystal clear that the Temple is predominantly the absolute owner of the lands/properties in question. Therefore, we are of the opinion that the Hereditary Poojaris have no right in the land(s) in question, though they have been rendering service as "Service Inam" in lieu of the remuneration for the service done by them in the Temple, coupled with the fact that they are not cultivating the land(s), and this shows that the Hereditary Poojaris have no right whatsoever in the land(s)/property(ies) in question.

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# MADRAS HIGH COURT – CRIMINAL CASES

**2019 (1) LW(Crl) 839**

**A.K.Alva vs. State Represented by Inspector of Police**

**Date of Judgment: 30.01.2019**

**Criminal Procedure Code, Section 319, I.P.C., Sections 120-B, r/w 409, 420, 468, 471. Prevention of Corruption Act, Sections 13(1)(c) and (d), 13(2) -** it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with accused – procedure.

A perusal of Section 319 makes it clear that in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with accused, the court may proceed against such person for the offence, which he appears to have committed. Further, as per sub-section (4) of the aforesaid provision makes it clear that where the court proceeds against any person under sub-section(1), the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard and subject to the provisions of clause(1), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced. Further, the aforesaid provision makes it clear that it is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence is available against a person from the evidence led before the Court, then, such power should be exercised and not in a casual and cavalier manner.

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**2019 (1) LW(Crl) 895**

**V.Venkatesan vs. State, Rep by Deputy Superintendent of Police Vigilance & Anti Corruption Detachment, Erode.**

**Date of Judgment: 28.03.2019**

**Criminal Procedure Code, Section 294 –** Marking of document received under RTI act – whether permissible – scope.

In this case, so far as the document sought to be marked is concerned, is a letter dated 24.03.2017, stated to have been received by the Petitioner by way of a reply under the RTI Act with enclosures containing copies of three letters of the Assistant Executive Engineer, Irrigation Sub-Division PWD, WRO, Gobichettipalayam. No particulars are available with regard to what was the information sought for in the application under the RTI Act and what was the reply given by the concerned authorities with regard to the same and in such circumstances, it would be unsafe to accept the documents without formal proof and thereby the trial court has rightly dismissed the petition.

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## 2019 (1) LW(Crl) 908

**Girija, W/o.Manavalan, Chetpet, Chennai vs. State, The Inspector of Police, G-7, Police Station, Chetpet, Chennai – 31**

**Date of Judgment: 08.04.2019**

**Criminal Procedure Code, Section 174, Police Standing Order 586 (2) –** unnatural death – suicide – procedure by investigating officer to be followed what is – inquest – when – protest petition dismissal – challenge to.

The combine reading of Section 174 of CrPC and the Police Standing Orders – 586(2), it is very clear that the Police Officer who takes up the investigation of unnatural and sudden death, he has to make an investigation to the apparent cause of death. Whenever, he receives information that a persons has committed suicide, he is not required to hold an inquest by Executive Magistrate. If the death do not raise a reasonable suspicion that some other persons has committed an offence. The intimation to the nearest Executive Magistrate to hold the inquest will arises only when there is a some suspicion about the death. Such suspicion must be a reasonable suspicion, that the death ought to have caused by some other persons and not by suicide.

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## 2019 (1) LW(Crl) 880

**Rajalingam vs. The State, through The Inspector of Police All Women Police Station, Kulithalai Karur District**

**Date of Judgment: 09.04.2019**

**Recording of evidence of witnesses during Court boycott by lawyers** - Can boycott of court by lawyers be special reasons for adjournment - Scope

Before parting, we deem it necessary to record our appreciation for Mr. M.Gunasekaran, B.A.,B.L., the Trial Jude, for the manner in which he has handled the recording of the evidence of witnesses during court boycott by lawyers. On 16.09.2016, three prosecution witnesses were present and there was boycott of Courts by Advocates. The trial Judge rightly did not send back the witnesses in view of the second proviso to Section 309(2) CrPC., Can boycott of court by lawyers be construed as special reasons for adjournment? The answer is an emphatic "No". Boycott of court by lawyers is illegal and unconstitutional. Could the Trial Judge have recorded the chief-examination of the witnesses and adjourned the case to another date for cross-examination? He could not have done that also. The Trial Judge has contacted the counsel for the accused over phone and has informed them that witnesses are present. When they expressed their inability to come to the court due to boycott of courts, the trial Judge has religiously recorded it in the deposition itself and has closed the evidence. Normally, trial Judges would record such adjudications only in the adjudication sheet which will not find place in the paper book and hence, will not come to our cognizance, while hearing the appeal. In this case, the Trial Judge has recorded this in the deposition itself and thus, it came to our notice. When such a categorical recording is made, then the High court would also loath to interfere when a petition is filed to recall the witness for cross-examination. Refusal of an Advocate to cross-examine the witness on the ground of Court boycott is fraught with another danger. If the accused suffers conviction on this ground, he can initiate disciplinary proceedings in the Bar Council and also claim compensation before the consumer Forum from his Advocate.

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**2019 (1) LW(Crl) 913**

**Latha & others vs. The Inspector of Police, District Crime Branch, Coimbatore & another**

**Date of Judgment: 24.04.2019**

**Indian Penal Code, Sections 415, 420 –** Cheating – Ingredients – what are – business transaction – non payment of money – suit pending – complaint cannot be sustained.

On perusal of the entire complaint, it shows that it is completely a business transaction between the first accused and the second respondent. Admittedly, some of the amount was repaid by the first accused and in respect of balance amount there is a dispute in the quantum. In this regard, a suit has also been filed by the first accused. Even before that, there was another crime registered as against the second respondent and as such the present complaint is nothing but a counter blast to the first complaint lodged by the fourth petitioner, who is none other the wife of the firs accused. That apart, even according to the second respondent/defacto complainant there is absolutely no allegations as against the petitioners herein. The entire transaction is between the first accused and the second respondent. Therefore the present complaint cannot be sustained as against the petitioners and it is clear abuse of process of law.

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**2019 (1) LW(Crl) 887**

**A.M.Manikandan vs. The Intelligence Officer, Directorate of Revenue Intelligence (D.R.I), Chennai.**

**Date of Judgment: 08.05.2019**

**Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, Section 8(c), 37 and Rules 58 and 59, Criminal Procedure code, Section 439** – Bail – Grant of – scope.

The Petitioner has to necessarily satisfy the twin test stipulated under Section 37 of the NDPS Act, namely that he is not guilty of the offence and he would not commit an offence if he is enlarged on bail. This court has to be satisfied on a reasonable ground that the accused person is not guilty and only then this Court can enlarge the accused person on bail otherwise, there is a bar to enlarge the accused person on bail, if he is in possession of a contraband, more than the commercial quantity. In the considered view of the Court, the petitioner has not satisfied the twin test imposed by Section 37 of the NDPS Act. In view of the same, this Court is not inclined to grant bail to the petitioner, and accordingly, this criminal original petition is dismissed.

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**2019 (4) MLJ Crl 675**

**Sudalaimadasamy (M/31), S/o Thangaraj, V.O.C. Saval, Melmanthai, Vilathikulam Taluk, Tuticorin District vs. State Represented by The Inspector of Police Soorangudi Police Station Soorangudi, Tuticorin District(Crime No. 89/2015)**

**Date of Judgment: 22.10.2019**

**Murder – Benefit of doubt –Indian Penal Code, 1860, Section 302 –** Trial Court convicted and sentenced accused-Appellant/husband under Section 302 of IPC for murder of his wife, hence this appeal – Whether, conviction of Appellant for murder, justified.

Motive as projected by prosecution, looks very unnatural conduct becomes very relevant since prosecution has not come up with true case, by concealing genesis of the case and has not revealed as to what was the earliest complaint given. Therefore, this Court has to necessarily take an adverse inference on the conduct of prosecution. Court is coming to such a conclusion based on appreciation of evidence and based on what has been stated before Court by P.W.1 and P.W.2. This attitude of prosecution in not revealing the initial complaint and the initial statements recorded from the witnesses, throws a lot of doubt on the case of the prosecution and therefore, this Court has to necessarily extend benefit of doubt to the appellant. Even though P.W.2 and P.W.3 were examined on the side of prosecution as eye-witnesses, due to concealment of the genesis of the case by the prosecution, their evidence becomes very doubtful.

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**2019 (5) LW 735**

**Girish M.Kataria vs. Deepa @ Vasanthi**

**Date of Judgment: 24.10.2019**

**Protection of Women from Domestic Violence Act(2005), Section 3 Clause IV(a), 18,19 and 20 –** Domestic violence – Maintenance- Mother in law, sister in law – whether necessary parties to petition – 'economic abuse' – what is – grant of relief – scope.

It is not known as to how the mother-in-law and sister-in-law are necessary parties to decide the payment of enhanced maintenance to the respondent. By adding the mother-in-law and sister-in-law as parties in the Domestic Violence Petition, it is clear that the proceedings in so far as they are concerned, is clearly an abuse of process of Court and the petition itself is not maintainable, in so far as the mother-in-law and sister-in-law are concerned. The allegations made against them and the attempt made to question the earlier decree passed by the competent Court can never be entertained and the proceedings in so far they are concerned has to be necessarily interfered with.

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**2019 (4) MLJ Crl 641**

**Udhyanithi vs. State through the Ins. of Police, Budalur Police Station,**

**Thanjavur District**

**Date of Judgment: 12.11.2019**

**Sexual assault – Testimony of victim – Protection of Children from Sexual offences Act, 2012, Sections 3, 5, 6 and 29 –**Whether act committed by Appellant fell within definition of 'penetrative sexual assault'.

The evidence of victim girl (P.W.2) is clear and it inspires the confidence of this Court and therefore, there is not requirement for this Court to look for any corroboration. The mother of the victim girl (P.W.1), who turned hostile does not in any way impact the case of the prosecution. Insertion of any part of the body is enough to attract the offence of penetrative sexual assault. Since the Appellant was not able to penetrate his penis, he had attempted to use his fingers in the private part of the victim girl and therefore, it clearly attracts Section 3(b) of the Act. In view of the fact that this Court has given a categorical finding that the act of the Appellant clearly falls under Section 3(b) of the Act, it also falls under Section 5(m) Act, as it clearly proved that the victim girl was only four years old at the time of the incident. The prosecution has proved the case beyond reasonable doubt and the appellant has failed to discharge the burden cast upon him under Section 29.

**2020 (1) TLNJ 126 (Criminal)**

**K.Navaneethan & 4 others vs. Abirami @ Arulmozhi**

**Date of Judgment: 06.01.2020**

**Protection of women from Domestic Violence Act, 2005, Section 12 –** Complaint against husband and in-laws. Complainant/wife alleged only against the 3rd petitioner/husband and not against the other petitioners, forcing them to face the trial is not proper.

The case of the petitioners is that the 3rd petitioner is the husband of the defacto complaint and the other petitioners are the father-in-law, mother-in-law, brother-in-law and sister-in-law of the defacto complaint. Considering the facts and circumstances of the case and considering the fact that respondent/complainant made allegations only against the 3rd petitioner and in respect of the other petitioners there are no allegations. In the absence of any specific allegations as against the other petitioners, forcing them to face the trial is not proper.

**2020 (1) TLNJ 138 (Criminal)**

**Ajay Kumar Bishnoi, former Managing Director M/s.Tecpro Systems Ltd., vs. Tap Engineering, Rep by Mr.Jawahar**

**Date of Judgment: 09.01.2020**

**Negotiable Instrument Act, 1881, Section 138 r/w 141** – Criminal prosecution against Managing Director under – Insolvency application by the accused company – accepted – whether by operation of the provisions of Insolvency and Bankruptcy Code, 2016, the criminal prosecution initiated under Section 138 r/w 141 of the NI Act can be terminated.

The question is whether by operation of the provisions of Insolvency and Bankruptcy Code, 2016, the criminal prosecution initiated under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 r/w. 200 of CrPC can be terminated. The categorical answer is "No". Sanction of a scheme under Section 391 of the companies Act, 1956 will not lead to any automatic compounding of offence under Section 138 of the Act without the consent of the complainant. Neither Section 14 nor Section 31 of the code can produce such a result. The binding effect contemplated by Section 31 of the Code is in respect of the assets and management of the corporate debtor. No clause in the Corporate Insolvency Resolution Plan even if accepted by the adjudicating authority/appellate Tribunal can take away the power and jurisdiction of the criminal court to conduct and dispose of the proceedings before it in accordance with the provisions of the Code of Criminal Procedure. Where the proceedings under Section 138 of the Act had already commenced and during the pendency, the company gets dissolved, the directors and the other accused cannot escape by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the Negotiable Instruments Act, 1881.

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