TAMIL NADU STATE JUDICIAL ACADEMY

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COMPENDIUM OF CASE LAWS

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SUPREME COURT – CIVIL CASES

Ajay Dabra Vs. Pyare Ram & Ors. [C. A. No..of 2023]
Date of Judgment: 31-01-2023

Agricultural Land – Himachal Pradesh Tenancy and Land Reforms Act, 1972

The Hon'ble Supreme Court considered whether a land in Himachal Pradesh could be transferred to a non -agriculturist without State Government permission.

The defendant had entered into a contract with M/s Himalayan Ski Village Pvt. Ltd. to sell agricultural land in Himachal Pradesh. The sale agreement required the defendant to obtain government approval within a specified period. However, the State Government did not grant the necessary approval, and the defendant assigned his rights to the plaintiff, who subsequently filed a suit for specific performance.

The Apex Court held that, Section 118 of the 1972 Act aims to safeguard farmers who own small plots of land. In Himachal Pradesh, it is prohibited to transfer land to a non-agriculturist to prevent the conversion of agricultural land for non-agricultural purposes and to protect the interests of underprivileged farmers. Non-agriculturists can only purchase land in the state with the authorization of the government. The state evaluates each case individually to decide whether to grant permission or not. In this particular case, the government chose not to grant permission since the transfer was for non-agricultural purposes. The intended use of the land would defeat the purpose of the Act if it were merely transferred to an agriculturist who intends to use it for non-agricultural purposes.

Thus, the Apex Court dismissed the Civil Appeal.

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Anushka Rengunthwar & Ors. Vs. Union of India & Ors. [W. P. (C) No.891 of 2021]

Date of Judgment: 03-02-2023

Citizenship Act, 1955; Section 7B

The Hon'ble Supreme Court of India considered a notification brought under challenge by the petitioners who were Overseas Citizens of India aspiring to become Doctors by pursuing the MBBS course by securing admission through NEET selection process and thereafter the post- graduation as also the super specialty in the field of medicine.

The Apex Court observed that, although the notification issued on 04.03.2021 is based on a policy and falls within the statutory powers of a Sovereign State, its provisions will only apply to individuals born in a foreign country after the date of the notification, who seek registration as an OCI cardholder from that date onwards. This is because parents would have the option to seek citizenship by descent or remain foreigners under the existing policy of the Sovereign State at the time of their child's birth. The right of OCI cardholders is a middle ground in the absence of dual citizenship. Therefore, if a statutory right is granted and subsequently withdrawn through a notification, the withdrawal process must be reasonable and directly linked to the intended purpose. The exercise of such power should not be arbitrary or without basis and must take into account the possible consequences, even if it is a sovereign power.

The Apex Court held that, the goal post is shifted when the game is about to be over. Hence, we are of the view that the retroactive operation resulting in retrospective consequences should be set aside and such adverse consequences are to be avoided. Thus, the Apex Court allowed the Writ Petition.

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Bar Council Of India Vs. Bonnie Foi Law College & Ors. [C.A.No. 969 of 2023]

Date of Judgment: 10-02-2023

The Advocates Act, 1961

The Hon'ble Supreme Court considered the Scope of BCI's powers in this Civil Appeal. The Apex Court considered the validity of the All India Bar Examination.

The Apex Court observed that, quality of lawyers is an important aspect and part of administration of justice and access to justice. Half-baked lawyers serve no purpose. It is this quality control, which has been the endeavour of all the efforts made over a period-of-time.

The Apex Court held that, the legislative object was clear i.e. not to confer such powers on the State Bar Councils. However, that could not affect the position of the power of the Bar Council of India, and naturally such a power existed. If the Bar Council of India never had such a power, then the same could not be read by implication. But, if the Bar Council of India had sufficient powers, then the 1973 Amendment would not take away those powers of the Bar Council of India as the said amendment did not deal with the aspect of the powers of the Bar Council of India.

Thus, the Apex Court disposed the Civil Appeal.

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Baini Prasad (D) thr. LRs. Vs. Durga Devi [C. A. No.6182-6183 of 2009]

Date of Judgment: 02-02-2023

Transfer of Property Act, 1882; Section 51

The Hon'ble Supreme Court of India considered a Civil Appeal wherein the case involves a respondent who filed a Civil Suit for possession of land and permanent prohibitory injunction against the defendant. The suit was decreed, and the defendant appealed. The First Appellate Court modified the judgment and decreed that the plaintiff was not entitled to recovery possession but awarded compensation at the market value of the land. The respondent filed RSA No.276 of 1996 challenging the modification of the judgment, and the High Court restored the judgment and decree of the Trial Court. The defendant's review petition was dismissed, and hence, the appeals were filed.

The Apex Court held that, Section 51 of the Transfer of Property Act pertains to a transferee who has made improvements on a property in good faith, believing themselves to be the absolute owner. In order for Section 51 to apply, the occupant of the land must have possessed the property under color of title, their possession must not have been merely possession of another, but rather adverse to the title of the true owner, and they must have a genuine belief that they have secured good title to the property and are the rightful owner. Section 51 only recognizes these three things statutorily. However, if the defendant encroached upon the land in question and built structures on it without a bona fide belief and at their own risk, they cannot be considered a transferee under the TP Act and therefore cannot claim the protections of Section 51.

Thus, the Apex Court dismissed the Civil Appeal.

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Saurav Das Vs. Union of India & Ors. [W.P.(C) No. 1126 of 2022]
Date of Judgment: 20-01-2023

Right to Information

The Hon'ble Supreme Court considered the prayer of the petitioner seeking for appropriate directions/orders directing the States to enable free public access to chargesheets and final reports filed as per Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') in furtherance of the rationale as established in *Youth Bar Association of India Vs. Union of India, [(2016) 9 SCC 473]* on their websites.

The Apex Court held that, the directions given in the Youth Bar Association of India case were only to publish copies of the FIRs on police or state government websites within 24 hours of registration, and that this decision was in favor of the accused, not the general public. Moreover, the Criminal Procedure Code mandates that, the investigating officer supply the accused with copies of the police report and other documents including the First Information Report, which contradicts the petitioner's argument for public access to chargesheets. Therefore, putting chargesheets on the public domain or state government websites would be contrary to the Criminal Procedure Code and may violate the rights of the accused, victim, and investigating agency.

Thus, the Apex Court dismissed the Writ Petition.

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SUPREME COURT - CRIMINAL CASES

Ajai Alias Ajju Etc. Vs. The State Of Uttar Pradesh [Cri. A. Nos.598-600 of 2013]

Date of Judgment: 15-02-2023

Criminal Procedure

The Hon'ble Supreme Court of India considered the correctness of the judgment and order of the High Court whereby the conviction recorded by the Trial Court under section 302/149 of the Indian Penal Code and other allied offences, both under the IPC as also the Arms Act, 1959 was affirmed.

The Apex Court observed that, it is not the quantity of the witnesses, but the quality of witnesses that matters. The Apex Court held that, non-recording* of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial.

Thus, the Apex Court dismissed the Criminal Appeal.

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*Supplied by TNSJA

B.V. Seshaiah Vs. The State of Telangana & Anr. [Cri. A. No. ... of 2023]
Date of Judgment: 01-02-2023

Negotiable Instruments Act, 1881

The Hon'ble Supreme Court of India considered whether conviction could be confirmed overriding agreement between parties to compound the offence.

The Apex Court observed that, it is not possible to confirm a conviction when the parties have agreed to settle the offense through compounding. The terms and conditions of the settlement that the parties have entered into bind them to resolve the dispute amicably or through arbitration, as specified in clause 8 of the Memorandum of Understanding. Therefore, the appellants cannot be convicted based on the orders passed by the lower courts since the settlement is merely a compounding of the offense. This is a clear example of the parties entering into an agreement to compound the offense to avoid litigation, which is permissible under the law. As a result, the High Court cannot override such compounding and impose its will. It is essential to note that the offense under section 138 of the N.I Act is primarily a civil wrong and is a compoundable offense.

The Apex Court held that, conviction cannot be confirmed overriding the agreement between the parties to compound the offence.

Thus, the Apex Court allowed the Criminal Appeal.

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Prakash Nayi @ Sen Vs. State of Goa [Cri. A. No. 2010 of 2010]

Date of Judgment: 12-01-2023

Evidence

The Hon'ble Supreme Court considered a plea of insanity on the mandate of Section 84 of the Indian Penal Code.

The Apex Court observed that, the burden of proof lies on the accused to prove that they were insane while committing the prohibited act and this burden is discharged by producing prima facie evidence of insanity. The provision only applies to a person who is incapable of knowing the nature of the act or whether it is wrong or contrary to the law due to their unsound mind.

The concept of preponderance of probabilities should be applied when dealing with the case under Section 84 of the IPC, and the behavior and conduct of the accused before, during, and after the occurrence should be considered. The prosecution and the court have distinct roles to play in facilitating a person of unsound mind to stand trial. The court must do complete justice considering the provisions of Chapter XXV CrPC, including the provisions incorporated by way of amendments in the year 2009.

The Apex Court held that, the accused has the burden of proving their insanity to the court, but this can be done based on a *prima facie* case and reasonable evidence. It is not necessary to prove beyond a reasonable doubt. It is the responsibility of the person, the court, and the prosecution to determine the proof of insanity collaboratively.

The behavior of the accused before, during, and after the incident should be considered. The provision requires the existence of an unsound mind, not just a medical insanity, and the inability to understand the nature of the act is essential. The court must determine if the accused is sound enough to stand trial and facilitate their ability to do so. The court's role is to find remedies and ensure complete justice. Thus, the Apex Court allowed the Criminal Appeal.

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Rana Ayyub Vs. Directorate of Enforcement, through its Assistant Director [W.P. (Crl.) No.12 of 2023]

Date of Judgment: 07-02-2023

Sections 3 and 44, Prevention of Money Laundering Act, 2002 — territorial jurisdiction

The Hon'ble Supreme Court decided a Writ Petition on the following issues: [1] whether the trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or vice versa

[2] whether the Court of the Special Judge, Anti-Corruption, CBI Court No.1, Ghaziabad, can be said to have exercised extra-territorial jurisdiction, even though the offence alleged, was not committed within the jurisdiction of the said Court.

The Apex Court observed that Section 3 comprises of two essential limbs, namely, (i) involvement in any process or activity; and (ii) connection of such process or activity to the proceeds of crime. The Apex Court noted that Section 44(1)(a) uses the expression "offence" in three places in contradistinction to the expression "scheduled offence" used only once. In all three places where the word "offence" alone is used, it connotes the offence of money-laundering. The place where the expression "scheduled offence" is used, it connotes the predicate offence.

The Apex Court compared Sections 44(1)(a) and 44(1)(c) of the PMLA Act and observed that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. The trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa. The Apex Court further noted that Explanation (i) to Section 44(1) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

The Apex Court observed that the provisions of CrPC are applicable to all proceedings under the PMLA including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, Section 71, PMLA providing an

overriding effect, has to be construed in tune with Section 46(1) and Section 65 of PMLA.

The Court referred to *Kaushik Chatterjee vs. State of Haryana & Ors. [2020 (10) SCC 92]*, and observed that on a combined reading of Section 44 of the PMLA and the provisions of Sections 177 to 184 of CrPC, even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering.

The Court found that the question of territorial jurisdiction in this case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were (i) concealed; or (ii) possessed; or (iii) acquired; or (iv) used. This question of fact will actually depend upon the evidence that unfolds before the Trial Court.

The Court held that the question of territorial jurisdiction cannot be decided in a writ petition, and should instead be raised before the Special Court. Thus, the Apex Court dismissed the Writ Petition.

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Talat Sanvi Vs. State of Jharkhand & Anr. [Cri. A. No. 205/2023]
Date of Judgment: 24-01-2023

Interim Victim Compensation

The Hon'ble Supreme Court of India considered whether interim victim compensation in proceedings for anticipatory bail can be imposed as a condition for the same. The Court reiterated that, impugned order suffers from an infraction of law, as the question of interim victim compensation cannot form part of the bail jurisprudence.

The Apex Court observed that, the objective is clear that in cases of offences against body, compensation to the victim should be a methodology for redemption. Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail.

The Apex Court held that, the compensation for victims is typically determined at the same time as the final decision regarding whether the alleged offense was actually committed or not. Therefore, there is no possibility of imposing compensation before the matter is resolved or before the trial takes place. In cases where the offense is against the victim's physical body, compensating the victim can serve as a means of redemption. Additionally, compensation has been introduced to prevent unnecessary harassment in cases where frivolous criminal proceedings have been initiated. It is not feasible to determine such compensation at the stage of granting bail, as this would be premature.

Thus, the Apex Court allowed the Criminal Appeal.

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HIGH COURT - CIVIL CASES

Abbotsbury Owners' Association Vs. The Member Secretary [W.P.No. 5765 of 2020]
Date of Judgment: 20 .01.2023

Non-Floor a Space Index

The issue before the Hon'ble Madras High Court pertains to a Writ Petition filed by an association of apartment owners seeking a direction to the respondents to hand over possession of the basement and ground floor portion of the building to the association. The association claims that it is the rightful owner of the said portion of the building and the land on which it has been constructed.

The Court observed that once the land is shown as a common area and a common facility is developed, the land would belong to the owners of such a common facility. Therefore, if there is an error in the calculation of the undivided share of the land (UDS), the builder must rectify it and cannot take advantage of the mistake to claim payment from the purchasers for the unsold portion of the UDS.

Accordingly, the Court directed the Chennai Metropolitan Development Authority to hand over the vacant Non-FSI building to the flat owners' association and complete the execution of the rectification deeds within three months from the date of the order. The Court held that the conveyance of the undivided share in the land along with the Non-FSI block to the 2nd respondent by the 3rd respondent was irregular and against the sanctioned planning permission. The sale of the Non-FSI block by the 3rd respondent to the 2nd respondent was in violation of the planning permission granted. The Court noted that the 3rd respondent is a prominent builder and had misled the purchasers by adopting a wrong formula for calculating the UDS. The Court disposed of the writ petition.

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Eswari Vs. Chief Secretary to Government of Tamil Nadu [W.P. No. 27298 of 2021]

Date of Judgment: 25-01-2023

Service Law

In the matter before it, the Madras High Court considered two issues - firstly, whether the petitioner had the *locus standi* to file the Writ Petition challenging the appointments of respondent Nos. 7 to 60 as Junior Assistants in the office of the sixth respondent, i.e., the Coimbatore Corporation. Secondly, if the petitioner was found to have the *locus standi*, whether the appointments of the respondent Nos. 7 to 60 as Junior Assistants by the sixth respondent Corporation were proper and whether all relevant rules and procedures were adhered to before making the appointments.

The Court found that the petitioner was ineligible to apply for the post of Junior Assistant as per the recruitment notification issued by the sixth respondent Corporation. Therefore, the petitioner was not an aggrieved person but a stranger to the selection process. Hence, the petitioner could not legally maintain a Writ Petition seeking to challenge the appointments of respondent Nos. 7 to 60 to the post of Junior Assistants by the sixth respondent Corporation.

In coming to this conclusion, the Court relied on the decision of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed [AIR 1976 SC 578]* wherein the Court had held that a stranger who is not an aggrieved person cannot maintain a writ of certiorari or mandamus. The Court also referred to the decision in *Umakant Saran Vs. State of Bihar [AIR 1973 SC 964]*, where it was held that a person who is not eligible for consideration for appointment at the relevant point of time has no right to question the appointments since he is not an aggrieved person.

Accordingly, the Court dismissed the Writ Petition.

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G Devarajan Vs. The Chief Secretary and others [W.P.Nos. 34706 & 43127 of 2016]

Date of Judgment: 06-02-2023

Cinema Ticket Charges Fixation – Public Interest Litigation

The Hon'ble Madras High Court examined a set of Writ Petitions that were filed in the nature of Public Interest Litigations by an individual seeking a direction against cinema theatre owners in Chennai and Tamil Nadu who were accused of collecting excessive ticket charges for three specific movies, namely Bairavaa, Singham-III, and Kabali. The court noted that these writ petitions are currently ineffective.

The court ruled that the State must continue its efforts to monitor the collection of ticket fees, and must also make a suitable decision on what should be done with the excess charges collected by cinema theatres. At present, the theatre owners keep the excess charges, while the State only imposes a penalty for any detected violations.

The court directed the State Government to maintain its measures to monitor the amount of fees charged for movie tickets in cinema theatres and dismissed the Writ Petition.

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M/s. Transtonnelstroy – Afcons (JV) Vs. M/s. Chennai Metro Rail Ltd [O.S.A.(CAD). Nos. 147 of 2021]

Date of Judgment: 01-02-2023

Arbitration

The Hon'ble High Court of Madras considered an original side appeal and decided on the issue of the Arbitral Tribunal's incorrect methods of obtaining additional materials.

The Court observed that, data entered by the parties during the contract's execution and the relevant software, from the claimant after reserving orders and analyzing them independently before awarding the claim, is unfair to the Respondent, as they were not given an opportunity to present their case.

The Court held that, requesting the necessary documents without disclosing the reasons behind the request and then reserving the case for orders and internal deliberation is equivalent to obtaining the materials without the knowledge of the concerned parties. This is evident from the emails of both the tribunals, which do not contain any indication of the purpose behind the request. Simply marking a copy of the email to both parties does not provide them with an opportunity to respond when they have no idea why the materials are being requested. This mistake by the Tribunal is substantial and fundamental in this case since the additional materials form the basis of the core reasoning of the award. Therefore, it is a compelling reason for the Court to set aside the arbitral award.

Thus, the Court disposed of the Original Side Appeal.

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K. Palaniappan Vs. Dhanalakshmi and Ors. [A.S. (MD) No. 138 of 2014 and M.P. (MD) No. 1 of 2015

Date of Judgment: 25-01-2023

Civil Procedure

The Madras High Court heard an Appeal Suit that challenged an order rejecting a plaint under Order VII Rule 11 of the Code of Civil Procedure. The plaint sought specific performance of a sale agreement between the plaintiff and defendants for a property for Rs. 1,00,000. The defendants received Rs. 1,00,000 in advance and Rs. 5,00,000 through two cheques but did not complete the sale. The defendants applied to reject the plaint under Order VII Rule 11 C.P.C. alleging that the plaintiff listed five properties not in the sale agreement, violated the agreement's terms, and the suit was time-barred. The trial judge dismissed the first two arguments but deferred the other two for trial. The defendants argued that the plaintiff had no cause of action, but the Supreme Court clarified that only the plaint's averments and attached documents must be considered in such applications.

The Court explained that Order VII Rule 11 of the Code of Civil Procedure outlines the grounds on which the Courts reject plaints. One such ground is the absence of a cause of action. A plaint can be rejected if it fails to disclose any cause of action. Without a cause of action, a civil suit cannot be filed.

The Court held that there cannot be a piecemeal rejection of a plaint and that it can only be rejected as a whole or not at all. Therefore, the Court allowed the Appeal Suit.

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Panneer Selvam Vs. Kalaivani & Anr. [A.S.No.1074 of 2012]
Date of Judgment: 14-02-2023

Good faith — partition deed — settlement deed — undue influence

The Hon'ble High Court decided an Appeal Suit on the issues whether the Partition Deed is vitiated by fraud and misrepresentation, and whether the setting aside of the settlement deed is valid.

The Court referred to Section 111, Evidence Act, 1872 and Section 52 of IPC and observed that the expression "good faith" in criminal jurisprudence has a definite connotation. The Court referred to *In Re, S.K.Sundaram [AIR 2001 SC 2374]*, wherein it had been held that its import is totally different from saying that the person concerned has honestly believed the truth of what is said.

The Court observed that the Plaintiff is not a dependent of father or her brothers. This cannot be a presumption of undue influence as it is not even pleaded that the father was in a position to dominate her will. The pleading is fraud and misrepresentation. Therefore, the burden lies on her to prove her case.

The Court further observed that the partition and settlement deed were executed by way of family arrangement as wished by the father. The Plaintiff failed to establish that the document was signed by her without knowing its contents, and believing the words of her father that the document was required to avail the loan in connection with the family business.

The Court held that there is no prayer challenging the settlement deed. Despite there is neither pleadings nor a prayer, the trial Court set aside the Settlement Deed under Ex.B.1 ignoring that the beneficiaries of the settlement are not parties. Thus, the Court allowing the appeal suit set aside the findings and Judgements of the Trial Court as unsustainable.

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R. Rajesh Vs. Union of India and Ors. [Writ Petition No. 31852 of 2017 and WMP.Nos.35008 and 35009 of 2017]

Date of Judgment: 08-02-2023

Only HC can frame rules relating to dress code for advocates

The Madras High Court dealt with a Writ filed under Article 226 of The Constitution of India praying to invalidate an impugned by the Registrar of NCLT that mandated advocates appearing before any bench of NCLT to wear gowns. The order was in conflict with the Bar Council of India Rules, which made wearing gowns mandatory for an advocate only if one is appearing in the Supreme Court or the High Courts.

The Division's Bench of Madras High Court noted that Section 34 of the Advocates Act and the Bar Council of India Rules state that only the High Court can frame dress code rules for advocates' appearances. In the absence of such rules, the rules in Chapter IV of the Bar Council of India Rules shall prevail, and Tribunals have no authority to issue instructions on the dress code. The wearing of gowns before any court other than the Supreme Court or the High Courts is optional, not mandatory, according to the court.

The NCLT Rules' under Rule 51 are merely for discharging functions as per the Act, in accordance with the principles of natural justice and equity. The same does not mean conferring power to prescribe the dress code, more so when it is contrary to the Bar Council of India rules.

The Court held that "other powers" granted to the President of the NCLT are with respect to the President's administrative power and could not be stretched to include the power to frame any rule or issue any instruction, like the one impugned, to prescribe the dress code for advocates. Thus, the Hon'ble High Court allowed the Writ Petition.

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R. Sadasivam & Ors. Vs. K. Subramanian & Ors. [A.S.No.425 of 2012]
Date of Judgment: 14-02-2023

Specific Performance — readiness and willingness

The Hon'ble High Court decided an Appeal Suit challenging the dismissal of a suit for specific performance upon an Agreement of Sale and permanent injunction.

The Court referred to *Chand Rani [Dead] by LRs Vs. Kamal Rani [Dead] by LRs [AIR 1993 SC 1742]*, wherein it was held that when time is specified in the Agreement, the same will be a relevant factor to decide whether time is the essence of the contract or not. The Court found that as indicated by the forfeiture clause in the suit agreement, time is agreed to be the essence of the agreement.

The Court referred to *Man Kaur Vs. Arthar Singh Sangha [2010 (6) CTC 652]*, *Umabai Vs. Nilkanth Dhondiba Chavan [(2005) 6 SCC 243]*, *U.N. Krishnamurthy through LRs Vs. A.M. Krishnamurthy [2022 [2] MWN [Civil] 799]*, and reiterated that Section 16(c), Specific Relief Act is a personal bar and that the mandatory requirement of readiness and willingness cannot be dispensed with merely because the defendants have repudiated the contract or they were not in a position to perform their part of the contract. Section 51 of the Contract Act does not dispense with the proof of readiness of plaintiff to perform his part of the contract. The Court found that in the absence of any pleading to at least show that the Plaintiffs had the money to pay the balance even at the time of filing of the suit, were not ready and willing to perform their part of the contract in terms of the suit Agreement.

The Court further referred to *Katta Sujatha Reddy & Anr. Vs. Siddamsetty Infra Projects Pvt Ltd & Ors. [C.A.No.5822 of 2022, dated 25.08.2022]*, and *V. Dhanasekaran & Ors. Vs. A. Krishnamurthy [died] & Ors. [A.S.No.355 of 2014, dated 02.02.2023]*, and upon interpretation of Section 20, Specific Relief Act, found that the Appellants are not entitled to the relief of specific performance.

The Court dismissed the Appeal Suit.

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S.J. Abul Hassan Vs. Tamil Nadu Wakf Board and Ors. [C.R.P. Nos. 964, 1311 and 1333 of 2022

Date of Judgment: 25-01-2023

Civil Procedure - Waqf Act, 1995 - Section 17, Waqf Act, 1995 - Section 17(1), Waqf Act, 1995 - Section 83(9)

The Hon'ble Madras High Court considered Civil Revision Petitions filed challenging the order passed by the Wakf Tribunal, dismissing the original application filed by the petitioner, challenging the appointment of respondents 3 to 11 as Trustees.

The Court observed that, there was no physical meeting of the board on the day the appointment was allegedly made, and that the alleged concurrence of the majority of the members through email could not be treated as a valid resolution.

The Court further observed that, once the order passed by the Wakf Board appointing a person to the trusteeship is open to challenge it means such an order must be a speaking order. It is settled law, giving reasons to the conclusion reached by the authority, whose order is open to challenge in a superior forum, is recognized as a third principle of natural justice. Unless reasons are given in support of the conclusions reached by the authority, the superior authority before whom the conclusions are challenged cannot take a decision, whether the conclusions reached by the original authorities are correct or not.

The Court held that, the Wakf Board can only appoint trustees by a resolution supported by a majority of its members, and that the chairman of the board has no independent right to do so.

Thus allowed the Civil Revision Petition.

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The Federal Bank Ltd. Vs. The Sub Registrar and others [W.P.No. 2758 of 2023]

Date of Judgment: 08-02-2023

Rule 55A of the Tamil Nadu Registration Rules

The writ petition before the Hon'ble Madras High Court challenges an order issued by the first petitioner rejecting the petitioner's request for registration of the Sale Certificate. The petitioner, a bank, is a secured creditor of a property that was mortgaged to them on October 19, 2017. As the mortgagor failed to repay the outstanding amount, the loan account was classified as a Non-Performing Asset (N.P.A.), and action was initiated under the SARFAESI Act. The property was sold through a public auction, and a sale certificate was issued on September 9, 2022. However, when the petitioner presented the sale certificate for registration, the request was rejected solely on the ground that the property was provisionally attached under Sec.83 of the G.S.T. Act on December 18, 2021.

The Hon'ble High Court held that the authorities under the Registration Act do not have the jurisdiction to make rules that have the direct and immediate effect of restraining transactions that are permitted under the Transfer of Property Act. Such a restriction would be illegal and would violate a citizen's right to deal with their property, infringing Article 300-A of the Constitution. The Court further noted that the legal position had already been declared by the Division Bench of the Court and affirmed by the Supreme Court, and it is not open to the Inspector General of Registration to take a contrary view and notify a subordinate legislation that completely renders nugatory the interpretation made by the Court. The Court held that the first proviso to Rule 55-A (i) is clearly illegal and is vitiated by a clear abuse of power.

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HIGH COURT – CRIMINAL CASES

C. Kasthuriraj Vs. The State Rep. by Inspector of Police, K-4, Anna Nagar Police Station, Chennai and Anr. [Crl.O.P.Nos.22099 & 22374 of 2019 and Crl.M.P.No.11457 of 2019]

Date of Judgment: 03-02-2023

Woman Harassment – dismissal without reason – stage of this case was premature to come to any conclusion

A Criminal Original Petition was filed in the Hon'ble Madras High Court under Section 482 of Cr.P.C., to set aside the order of passed by a Metropolitan Magistrate Court. The crux of the case was that, the complaint was working for the petitioner in his firm and the said petitioner had approached her in in an inappropriate and unsolicited manner on several occasions. It is alleged that the petitioner used also send the *defacto* complaint sexually coloured messages. Since the complainant did not respond to the demands of the petitioner, the petitioner had dismissed the complainant. A petition was filed against the petitioner by the complainant under Section 156(3) before the Magistrate as the police officials failed to take action against her complaint. The allegation was countered by the petitioner stating that the complainant had misappropriated the funds of the firm by issuing fake vouchers. It is stated by the petitioner that the impugned order by the Magistrate was a cryptic one and did not speak about any justification for directing the registration of FIR.

The Hon'ble High Court observed that the motive alleged can be put to test only when a detailed investigation is made. Further, it was noted that the stage of this case was premature to come to any conclusion based on the materials. The Hon'ble High Court also noted that, since the materials disclosed a cognizable offence, the it was right for the Magistrate to order the registration of FIR. In fine, the Criminal Original Petition was dismissed and the order passed by the Metropolitan Magistrate was confirmed.

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Dharmaraj Vs. Sijin and Ors. [Crl.O.P.(MD). No.21471 of 2022]
Date of Judgment: 14-02-2023

Petition under Section 439(2) Cr.P.C – Cancellation of bail

A Criminal Original Petition was filed in the Madras high Court under Section 439(2) of Cr.P.C., to cancel the bail granted by the 4th Respondents to the 1st and 2nd Respondents, namely Accused No. 2 and Accused No. 3. The facts of this case is that, a complaint was lodged with second respondents against Selvanayagam S/o.Thangkamuthu and his two sons namely, Sujin and Vijin stating that they waylaid the petitioner's car, abused him in filthy language, assaulted him, caused damage to his car and snatched his chain.

It was also contended by the petitioner that the fourth respondent, investigating police official initially was reluctant in registering a case and later registered the case after five day and is said to have supported the accused persons. The petitioner also submitted that a writ petition was filed before this Court in seeking transfer of investigation and the same was dismissed as premature in nature. Further, it was contended that, the fourth respondent himself deleted Section 379 IPC and released the accused 2 and 3 on own bond in the station itself. It was also submitted that, the gold chain of the petitioner was lost in the incident and if Section 379 IPC is deleted, the petitioner will lose his chain and further, Section 506(i) IPC, which is a non-bailable offence was also deleted and thereby, the accused were let out on station bail. Thus, the petitioner has filed the petition seeking to cancel the bail granted to the respondents 1 and 2/A2 and A3.

The Respondents submitted that, the complaint was preferred on account of a previous enmity regarding the civil dispute, the petitioner had given a false complaint against the respondents. Further it was contended that the petitioner had purposefully given a false complaint only to see that Non-bailable offences are registered against the respondents. It was submitted by the Government Pleader that, after independent investigation the fourth respondent police official found that an exaggerated complaint was given by the petitioner/de-facto complainant. Based

on the enquiry conducted by the respondent police by summoning the accused, they found that no theft had been committed and hence, deleted Section 379 of IPC. The Government Pleader also relied on the Judgments of the Hon'ble Apex Court in *Joginder Kumar Vs. State of U.P. and Others, (1994) 4 SCC 260* and *Arnesh Kumar Vs. State of Bihar and Another, (2014) 8 SCC 273,* where slew of directions were issued and only after following the said directions, the respondent police had taken such a step to delete the Section pertaining to theft and thereby, the Government Pleader sought for dismissal of the cancellation of bail application.

The Hon'ble High Court taking into consideration the facts and the submissions was satisfied with the submissions made by the respondent police and thus, dismissed the Petition.

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Divya and Ors. Vs. State Represented by The Sub Inspector of Police, Theni Police Station, Theni District. [CRL.O.P(MD)No.14631 and 14764 of 2022]

Date of Judgment: 14-02-2023

Petition under Section 438 – Anticipatory Bail

The Hon'ble Madras High Court dealt with Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest by the respondent police. The crux of the case is that, the petitioners induced the *de-facto* complainant under the guise of arranging a loan in State Bank of India and had received 65 sovereigns of jewels and later, cheated the de-facto complainant by not arranging for the amount.

The counsel for the petitioners contended that the petitioners were innocent and a false case had been foisted against them and submitted that a case of financial dispute between the parties was being projected as a case of cheating. It was also submitted by the petitioners that, there were financial dealings between the petitioners and the relatives of the *de-facto* complainant, upon which several complaints were given before the District Crime Branch. The enquiry was conducted upon the complaint and it was found that there was a financial transaction between the petitioners and one Selvam, who is the relative of the de-facto complainant, and thereby the respondent Police had earlier closed the complaint.

It was submitted that in the complaint, the de-facto complainant had specifically stated that the jewels were handed over to one Selvam, who is her relative had handed it over to the petitioners for pledging the jewels and received money and now a different version has been given before this Court. Further, it was submitted that without prejudice to their rights and contentions, to show their bona fide, the petitioners are ready and willing to jointly deposit Rs.5,00,000/- to the credit of crime number. Hence, sought for anticipatory bail.

The counsel for the respondents objected the grant of anticipatory bail. Upon perusal of materials on record and submissions of both the sides, the Hon'ble High

Court was inclined to grant anticipatory bail to the accused persons with certain conditions.

The petitioners were asked to deposit a sum of ₹10,00,000 to the credit of the crime number without prejudice their rights and contentions and on production of proof for deposit, the petitioners were ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate, Additional Mahila Court, Theni District.

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Harina Vs. The Regional Passport Officer, Regional Passport Office, Municipal Water Tank Building, W.B.Road, Tiruchirappalli and Ors. [W.P(MD)No.27893 of 2022]

Date of Judgment: 30-01-2023

Writ filed for issuance of passport to a stateless person

A writ of Certiorarified Mandamus under Article 226 of the Constitution was filed in the Hon'ble High Court to call for the records on the file of the first respondent and quash the same and directing him to issue passport to the petitioner by considering the petitioner's representation within a prescribed time. The nub of this case is that, the petitioner had approached the Hon'ble High Court for directing the Central Government to issue passport to her. The petitioner applied for passport go abroad for employment was denied to issue passport since her parents were Srilankan Citizens and had escaped to India to avoid persecution in the country of their birth.

It is said that the petitioner's parents were housed in the refugee camp at Rayanoor, Thanthondrimalai, Karur District and the petitioner was born on 24.02.2002 in Government Hospital, Kodankipet Village, Karur District. It is also said that the petitioner had completed her schooling in the same District and pursued her higher studies in Michael Job College of Arts and Science for Women affiliated to Bharathiyar University, Coimbatore.

It was pointed out by the Standing Counsel for the Central Government that the petitioner was born after the cut-off date i.e., on 01.07.1987, she cannot claim Indian citizenship as a matter of right, relying on the judgment of the Apex Court in *Sarbananda Sonowal v. UOI (2005) 5 SCC 665.* Further the Counsel submitted that, the petitioner can apply for citizenship by naturalization and that it would be considered on merits by the competent authority.

The Hon'ble High Court granted the petitioner the liberty to apply for Indian citizenship by naturalization under Section 6 of the Citizenship Act. However, since it is a long process and which might not afford the petitioner immediate relief, it

considered other alternative relief. A counsel present in the court drew the attention of the Hon'ble High Court to Section 20 of the Passports Act, 1967.

The Hon'ble High Court noted the reason for incorporating the aforesaid provision is set out in Clause 20 of Objects and Reasons in the following terms "*Under this clause, a passport can be refused on the ground that the applicant is not a citizen of India. But, in special cases, having regard to international convention and usage, it may become necessary for the Government to issue a passport or travel document to a person who is not a citizen of India. This clause seeks to give necessary powers to the Central Government in this behalf.*"

The Hon'ble High court cited two important International Conventions addressing Statelessness though India was not a signatory to these conventions. Firstly, the Court noted that the Convention on Status of Stateless Persons, 1954 was designed to ensure that stateless people enjoy a minimum set of human rights, guarantees stateless people a right to identity, travel documents and administrative assistance. Further, the Convention on Reduction of Statelessness 1961 which establishes that children are to acquire the nationality of the country in which they are born if they do not acquire any other nationality was also noted.

Upon considering the facts and circumstances of the case, the Court observed that the petitioner has made out a case for relief and the Court permitted the petitioner to submit an application under Section 20 of the Passports Act. The Court directed the authorities to consider her application and pass the order as expeditiously as possible.

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High Court Raja and Ors. Vs. The Inspector of Police, Melapalayam Police Station, Tirunelveli District and Anr. [Crl.O.P.(MD)No.2376 of 2023 and Crl.M.P.(MD)No.2139 of 2023]

Date of Judgment: 09-02-2023

Quash of FIR under Section 482 Cr.P.C

The Hon'ble High Court recently dealt with a Criminal Original Petition under Section 482 Cr.P.C to quash an FIR on the file of Respondent Police. The brief facts of this case is that, on 13.05.2022 at about 07.00 am somebody had changed the lock of the *de-facto* complainant's home and it is alleged that when she enquired the same, her mother-in-law, father-in-law, husband and her three in-laws started wordy quarrel with the her and abused her in filthy language and also attacked her. It is said that due to the attack she suffered injuries and was admitted in Tirunelveli Government College Hospital and on the basis of the statement given by her, a FIR came to be registered.

The petitioners contended that, the complaint was lodged to wreak vengeance, that there were no averments in the FIR, to attract the ingredients of the offences under Sections 294(b), 323, 506(ii) IPC and under Section 4 of Tamil Nadu Prohibition Act and that the above FIR was registered with *mala fide* intention. The Hon'ble High upon perusal of material on record and several decisions of the Hon'ble Apex Court held that, "…*a cursory perusal of the FIR makes out a prima facie case to proceed against the accused. Hence, this Court concludes that this is not a fit case to invoke Section 482 Cr.P.C., for quashing the FIR at this stage and the same is liable to be dismissed".*

In fine, the High Court dismissed the Criminal Original Petition and directed the respondent police to complete the investigation and file final report within a period of three months from the date of receipt of copy of this order.

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M. Narasimhan Vs. State Rep. by, The Forest Ranger [Crl.R.C.No.81 of 2023 & Crl.M.P.No.19981 of 2022]

Date of Judgment: 01-02-2023

Criminal Revision petition – compoundable offence – Forest Act

A Criminal Revision Petition was under Sections 397 and 401 of Cr.P.C against the impugned order passed by the Trial Court. The crux of the case is that the petitioner's licensed gun and bullets were seized from him without any reason by the respondent/Forest Ranger and registered a case for the offences under Sections 2(16), 9, 50, 51 (1) of Wild Life Protection Act.

The Counsel for the petitioner submitted that, a petition was filed before the Hon'ble High Court and the Court permitted the petitioner to compound the offence and approach the trial Court to return of property. As per order of this Hon'ble Court, the offence was compounded on payment of fine of Rs.25,000. Further it was submitted that, a petition for return of property was filed before the Trail Court and the Learned Magistrate dismissed on the ground that the seized the property is the property of the State Government and even though, the offence was compounded, the petitioner was not entitled to receive the property. The Counsel for the Petitioner contended that the order passed by the Trial Court was against the principle laid down by the Hon'ble Apex Court in *Principal Conservator of Forest Vs. J.K.Johnson and others [2011 (10) SCC Page 764],* hence the order was liable to be set aside.

The Hon'ble High Court noted that, once the offence is compounded, the accused should be released and the property should be returned. In light of Section 68 of the Forest Act, 1927, further ordered the accused be released and the property confiscated in connection with the offence be returned upon payment of a compoundable sum, and no further action is necessary. The Court thus, overturned the impugned order.

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Mr. Jay Shah Vs. The Commissioner of Police – Chennai City EVK Sampath Road, Vepery, Periyamet and Ors. [Crl.O.P.No.31460 of 2022]

Date of Judgment: 14-02-2023

Harassment by Police – restaurant running with licenses and permits

The Hon'ble High Court of Madras dealt with a Criminal Original Petition under Section 482 Cr.P.C. to direct the respondents 3 and 4 to not harass the petitioner nor his staffs in relation to the running of his restaurant "Kafe Latte" along with Hookah service, except in accordance with law.

The crux of this case is that the petitioner was carrying on a restaurant business in the name and style of "KAFE LATTE" (previously known as "LATTE") and is said to have obtained necessary statutory licenses and permits for the running of restaurant business. It was also stated that only the customers over the age of 21years were served hookah in a designated smoking area in conformity with all guidelines laid down under the Cigarettes and Other Tobacco Products Act. Additionally, the petitioner claimed that the restaurant was not located within 100 yards of any educational facilities and that appropriate warning boards and signs addressing health concerns had been put up in obvious locations.

It is said that previously a Writ Petition was filed by the petitioner seeking injunction restraining the respondents from interfering with the peaceful conduct of the petitioner's restaurant and was disposed by the Hon'ble High Court with a direction that in name of surprise inspection, respondent police cannot violate the law. The present case was instituted after the respondents 3 and 4 registered FIR after finding that materials for making "hookah" were available in the premises.

The counsel for the State contended that, there was no specific zone in the restaurant for smoking and the restaurant was functioning near schools and colleges which may affect the health of students. The State further submitted that it had implemented a Bill to amend the "Cigarettes and Other Tobacco Products

(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act prohibiting hookah bars.

It was observed that the Hon'ble Apex Court and the Hon'ble Madras High Court in plethora of cases stated that Hookah is not a banned substance. It was further observed that, until the Act was introduced in the Tamil Nadu legislative assembly, it could not be given any effect and there was already an injunction order by the High Court against the police authorities from interfering with the working of petitioner's restaurant.

The Hon'ble Court noted that the materials seized from the restaurant were hookah pots, Tubes, Alufo-Aluminium foils and premium coconut charcoal and smoking through hookah is not prohibited as per the judgment in *Narinder S.Chadha and others Vs. Municipal Corporation of Greater Mumbai and others* [(2014) 15 SCC 689]. In fine the Court held that, the registration of this First Information Report appears to be on the wrong understanding of the provisions of the Act and Rules. Thus, the High Court disposed the petition with a direction to the respondent police not to harass the petitioner or his staff and also not to interfere with the petitioner's running of restaurant "Kafe Latte" along with Hookah service.

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P. Rathinam Vs. The State of Tamil Nadu, Rep. by the Secretary to the Government, Home Department and Ors. [W.P.(MD)Nos.24324 & 25333 of 2019 and 3431 of 2020, etc...,]

Date of Judgment: 03-02-2023

Melavalavu Massacre – State Government exercised power conferred under Article 161 of the Constitution of India – Plea challenging premature release of convicts

Writ of Certiorarified Mandamus were filed under Article 266 of the Constitution of India in the Madras High Court challenging the premature release 13 convicts in the Melavalavu Massacre by the State Government in exercise of its power conferred under Article 161 of the Constitution of India. The petitioner prayed for the release to be quashed thereby restoring the conviction and sentence imposed on the convicts.

The nub of this case is that, Melavalavu Village Panchayat in Madurai was a General constituency till 1996 and subsequently Government of Tamil Nadu notified it as a constituency exclusively reserved for the members of Scheduled Caste. Resentment from other communities surfaced resulting in violent protest and thereafter the election was postponed several till. A few members of the Schedule Caste filed their nominations but withdrew it fearing danger to life. After much persuasions, the nominations were not withdrawn, but, on the date of election, there was rioting and booth capturing, leading to postponement of the election. Finally, the election held on 31.12.1996 and one Murugesan was elected as President and one Mookan was elected as Vice-President.

After about a period of six months on 20.06.1997, while Murugesan and Mookan and other passengers were travelling in a private bus, an armed gang of roughly 40 people stopped the vehicle and violently beat the passengers. Six people, including Murugesan and Mookan, were killed in the aforementioned incident, while several other were injured. It is said that all the victims belonged to Schedule Caste. Thereby the jurisdictional Police registered the case under Sections 120-B, 147, 148, 341, 307 and 302 IPC and Section 3(2)(v) of the SC and ST (POA) Act, 1989.

The trial court then acquitted 23 and convicted 17 for offences under Section 302 r/w 34 IPC and sentenced them to life imprisonment. The conviction was upheld by both the High Court and the Apex Court. It is also stated that the accused were acquitted of the charges under the provisions of SC & ST (POA) Act, 1989. One of the 17 persons found guilty had passed away in prison, while three were released prematurely in 2008.

The State Government had established a plan to evaluate cases of early release of inmates who have served their 10-year sentences in honour of the birth centennial of former Chief Minister M. G. Ramachandran. As a result, the State administration chose to release the other convicts in 2019. It was also submitted by the petitioners that one of the convicts was previously convicted of committing the double murder of members belonging to the Schedule Caste community which disentitled him to get the benefit of remission.

In this instant case, the Hon'ble Division Bench however refused to interfere with the order of the Government and held that the order of premature release was made after due consideration exercising the State's power conferred under Article 161 of the Constitution. In fine, dismissed the batch of pleas challenging the premature release of the convicts.

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Sivankalai Vs. State rep. by the Deputy Superintendent of Police and Ors.[Crl.A (MD) No. 18 of 2023]

Date of Judgment: 03-02-2023

Misbehaving with a woman belonging to Scheduled Caste and Scheduled Tribe

The Hon'ble High Court in this case dealt with a Criminal Appeal filed under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Amendment Act), 2015 to set aside the order of the Trial Court and to enlarge the petitioner on bail. The appellant was arrested and remanded to judicial custody on 03.12.2022, for the offences punishable under Sections 510 IPC r/w Section 3(1)(w)(ii), 3(2)(va) of SC/ST (POA) Amendment Act 2015.

The case of the prosecution in a nub is that, the appellant approached the complainant in a drunken state and demanded for her cell phone when she was purchasing the vegetables in Gudalur weekly market. It is stated that when she objected the same, he insisted and caused trouble and also misbehaved with her and thereafter left from that place. On the basis of the above said occurrence, she lodged a complaint and the appellant was arrested.

It is stated that the appellant had earlier moved the Special Court for bail, his application was dismissed. Aggrieved by it the present appeal is filed before the Hon'ble High Court. The prosecutor and the advocate for the defacto complainant have objected to enlarge the appellant on bail since he was an habitual offender and there is every likelihood of him causing trouble again.

The Hon'ble High Court considering the period of incarceration and also considering the fact that the above said misbehaviour was alleged to have been caused by the petitioner in a drunken mood, he was directed to file undertaking affidavit before the Court and granted bail to the appellant.

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Venkatesan @ Venkatesh Vs. State Rep. by The Deputy Superintendent of Police and Anr. [Crl.O.P Nos.17889 of 2021 and Crl.M.P. No.9825 of 2021]

Date of Judgment: 06-01-2023

Sole accused – unloading adulterated diesel – search and seizure by Tahsildar

The Hon'ble High Court of Madras dealt with a Criminal Original Petition filed under Section 482 of Criminal Procedure Code to quash the proceedings as against the petitioner pending on the file of first respondent. The crux of the case is that, the petitioner, sole accused was said to be unloading adulterated diesel and after due search and seizure, the then Tahsildar had given a complaint to the Deputy Superintendent of Police based on which the case was registered under the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 2005 and Essential Commodities Act, 1955.

The contention of the petitioner was that, the authorised person for conducting search and seizure in these types of cases was a police officer not below the rank of Deputy Superintendent of Police duly authorised by general or special order of the Central Government or State Government. It was submitted that in the instant case Tahsildar had conducted such seizure. The Hon'ble Court observed that, the Tahsildar conducted the search and seizure, and the sample was sent to the police when the complaint was filed. It was further observed that, the samples were sent to the laboratory after 2 months as against the 10 days timeline prescribed by law. Despite having 20 days from the time the sample was received to submit the test findings, the laboratory delivered its analysis report one year later. Moreover, the accused was never informed of the test findings.

In this instance, the Court held that delays at each stage precluded the accused from taking advantage of the chance to defend. As a result, the court decided that it was appropriate to quash the FIR since the required procedure and the prescribed time limit were violated.

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