TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. I — PART 1 — JANUARY 2022 **

COMPENDIUM OF CASE LAWS

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SUPREME COURT - CIVIL CASES

B.L. Kashyap And Sons Ltd. Vs. JMS Steels And Power Corporation
Civil Appeal C.A. No.-000379-000379 / 2022
Date of Judgment: 18.01.2022

Privity of Contract - Order XXXVII Rule 3 – Civil Procedure Code

The Hon'ble Supreme Court decided on a Civil Appeal against the judgment and order whereby the High Court of Delhi at New Delhi dismissed the appeal filed by the present appellant and affirmed the judgment and decree Trial Judge, in the money recovery summary suit, filed by the Plaintiff/1st Respondent, wherein the present Appellant was arrayed as 2nd Defendant and the present 2nd Respondent was arrayed as 1st Defendant.

The subject matter of the suit was primarily based on supply of goods and Privity of contract between the two parties. The trial court had declined the leave for the defendants to defend and the High Court dismissed the appeal filled by the defendants. The facts in issue were based on written contract arising out of written purchase orders issued by the appellant on the instructions and on behalf of defendant No. 1; and the plaintiff had raised the invoices against such supplies under the purchase orders.

The Apex Court didn't interfere on the decision of the High Court on the issue whether the plaintiff was entitled to maintain a summary suit under Order XXXVII CPC for the claim in question since the contention against maintainability of the summary suit in terms of Order XXXVII CPC couldn't be accepted. The Apex Court, on the issue whether the appellant-defendant No. 2 has rightly been declined the leave to defend, differed from its earlier view observing that, the principles stated in paragraph 8 of *Mechelec Engineers** case shall stand superseded in the wake of amendment of Rule 3 of Order XXXVII … in the case of substantial defence, the defendant is entitled to unconditional leave; and even in the case of a triable issue on a fair and reasonable defence, the defendant is ordinarily entitled to unconditional leave to defend. In case of doubts about the intent of the defendant or genuineness of the triable issues as also the probability of

defence, the leave could yet be granted but while imposing conditions as to the time or mode of trial or payment or furnishing security.

Thus, … It is only in the case where the defendant is found to be having no substantial defence and/or raising no genuine triable issues coupled with the Court's view that the defence is frivolous or vexatious that the leave to defend is to be refused and the plaintiff is entitled to judgment forthwith. Of course, in the case where any part of the amount claimed by the plaintiff is admitted by the defendant, leave to defend is not to be granted unless the amount so admitted is deposited by the defendant in the Court. Therefore, while dealing with an application seeking leave to defend, it would not be a correct approach to proceed as if denying the leave is the rule or that the leave to defend is to be granted only in exceptional cases or only in cases where the defence would appear to be a meritorious one. Even in the case of raising of triable issues, with the defendant indicating his having a fair or reasonable defence, he is ordinarily entitled to unconditional leave to defend unless there be any strong reason to deny the leave. It gets perforce reiterated that even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious.

The Apex Court held that, "a prayer for leave to defend is to be denied in such cases where the Defendant has practically no defence and is unable to give out even a semblance of triable issues before the Court.…The grant of leave to defend (with or without conditions) is the ordinary rule and denial of leave to defend is an exception" and thus allowed the appeal.

See Also

Mechelec Engineers & Manufacturers v. Basic Equipment Corporation, (1976) 4 SCC 687

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Brigade Enterprises Limited Vs. Anil Kumar Virmani
Civil Appeal C.A. No.- 001779/2021
Date of Judgment: 17.12.2021

Consumer Protection Act 2019 – Section 35(1)(c) – Civil Procedure Code – Section 2(5), 38 and 100 – Order I Rule 8

The Supreme Court while deciding a Civil Appeal Challenging an order of the National Consumer Disputes Redressal Commission, on the issue whether the complaint filed by respondents may be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers. Under Section 35(1)(c) of the Consumer Protection Act, 2019 seeking the consumer complaint filed by applicants, as a class action and the permission sought by them was in the nature of a permission that could be granted by the Civil Court in terms of Order I Rule 8 of the Code of Civil Procedure. The Apex Court, observed that, "a complaint filed under Section 35(1)(c) could either be "on behalf of" or "for the benefit of" all consumers having the same interest….Section 38(11) of the Consumer Protection Act, 2019 makes the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 applicable to cases where the complainant is a consumer referred to in Section 2(5)(v), which defines a 'complainant' to mean *one or more consumers, where there are numerous consumers having the same interest*….Order I Rule 8, CPC, unlike Section 35(1)(c) operates both ways and contains provisions for a two way traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity…" the Apex Court also discussed the salient features of Order I Rule 8 illustratively and noted that, "The Explanation under Order I Rule 8 is of significance. It distinguishes persons having the same interest in one suit from persons having the same cause of action. To establish sameness of interest, it is not necessary to establish sameness of the cause of action…" The apex Court held that, "The Explanation under Order I Rule 8, is a necessary concomitant of the provisions of the

Rules 1 and 3 of Order I. Order I Rule 1, CPC, allows many persons to join in one suit as plaintiffs. Order I, Rule 3 allows many persons to be joined in one suit as Defendants. But to fall under Order I Rule 1 or Order I Rule 3, the right to relief should arise out of or be in respect of the same act or transaction allegedly existing in such persons, jointly, severally or in the alternative. To some extent, Rules 1 and 3 of Order I are founded upon the sameness of the cause of action. This is why the Explanation under Order I Rule 8 distinguishes sameness of interest from the sameness of the cause of action….Since "sameness of interest" is the pre requisite for an application under Order I Rule 8, CPC read with Section 35(1)(c) of the Consumer Protection Act, 2019, it was necessary for the Respondents to include in the consumer complaint, sufficient averments that would show sameness of interest. " and thus allowed the appeal.

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Devas Multimedia Private Ltd Vs. Antrix Corporation Ltd.
Civil Appeal C.A. No.-005766 / 2021
Date of Judgment: 17.01.2022

Winding-up – Companies Act, 2013 - Rule 5 of the Companies (Winding up) Rules, 2020

The Hon'ble Supreme Court while deciding a Civil Appeal challenging an order of winding-up considered Rule 5 of the Companies (Winding up) Rules, 2020, that, "Admission of petition and directions as to advertisement. - Upon filing of the petition it shall be posted before the Tribunal for admission of the petition and fixing a date for the hearing thereof and for appropriate directions as to the advertisements to be published and the persons if any upon whom copies of the petition are to be served and where the petition has been filed by a person other than the company the Tribunal may if it thinks fit direct notice to be given to the company and give an opportunity of being heard before giving directions as to the advertisement of the petition if any and the petitioner shall bear all costs of the advertisement."

The Court held that, "the purpose of advertisement is to provide an opportunity to all the stakeholders to either support or oppose the proceedings and to serve as a warning to all those dealing with the company so that they would know there is an element of risk involved…advertisement has been said to cause more harm to the company than the benefits it brings…if fraudulent affairs of company are continuing, right to seek winding up becomes recurring" and thus dismissed the appeal.

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Seethakathi Trust Madras Vs. Krishnaveni
Civil Appeal Nos. 5384-5385 Of 2014
Date of Judgment: 17.01.2022

Specific Performance – Decree – Bonafide Purchaser

The Hon'ble Supreme Court while deciding a land dispute on the importance of framing the question of law under Section 100 of the Civil Procedure Code, 1908, observed that, "…it is not possible for us to accept that a decree could have been obtained behind the back of a bona fide purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance", the apex court held that, "the question of law ought to have been framed under Section 100 of the Civil Procedure Code. Even if the question of law had not been framed at the stage of admission, at least before deciding the case, question of law ought to have been framed" thus allowed the appeal.

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Sunny Abraham Vs. Union Of India
Civil Appeal C.A. No.-007764-007764 / 2021
Date of Judgment: 17.12.2021

Service Law – Disciplinary Proceedings - Central Civil Services (Classification, Control, and Appeal) Rules, 1965 – Rule 14 – non est – prior approval – charge memorandum

The Hon'ble Supreme Court while deciding the Civil Appeal brought before it by the Assistant Commissioner of Income Tax against whom the authorities issued a memorandum of charges (charge memorandum) proposing to hold an inquiry against him on 18th November, 2002 for major penalty under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Apex court considered the decisions and authorities relied by the High Court of Delhi and the Central Administrative Tribunal for arriving at a conclusion in the writ preferred by the Union of India and took the considered view that, "chargesheet/charge memorandum not having approval of the Disciplinary Authority would be *non est* in the eye of the law…The distinction between the prior approval and approval simplicitor does not have much impact so far as the status of the subject charge memorandum is concerned…the term *non est* conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity….In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. …What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. … the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts,

each one requiring independent application of mind on the part of the Disciplinary Authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage." and held that, "Considering the fact that the proceeding against the appellant relates to an incident which is alleged to have taken place in the year 1998 and the proceeding was initiated in the year 2002, … in the event the department wants to continue with the matter, and on producing the material the Disciplinary Authority is satisfied that a fresh charge memorandum ought to be issued, such charge memorandum shall be issued not beyond a period of two months, and thereafter the proceeding shall take its own course." and allowed the appeal.

See also

- Union of India Vs. B.V. Gopinath (2014) 1 SCC 351
- Promod Kumar v. State Of Tamil Nadu 2016 SCC Online CAT 5542

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SUPREME COURT - CRIMINAL CASES

Brijmani Devi Vs. Pappu Kumar
Criminal Appeal Crl.A. No.-001663-001663 / 202
Date of Judgment: 17.12.2021

Grant of bail – reasoning

The Hon'ble Supreme Court while deciding a Criminal Appeal seeking, grant of bail, observed that, "While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction *vis-à-vis* the offence/s alleged against an accused. … The Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and safeguarding purity of the trial of the case on the other. The Apex Court held that, "elaborate reasons may not be assigned for grant of bail, at the same time an order *de hors* reasoning or benefit of the relevant reasons cannot result in grant of bail. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record." thus allowed the appeal.

See also

- Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. (2010) 9 SCC 496
- Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118
- Bhoopindra Singh Vs. State of Rajasthan & Anr. 2021 (13) SCALE 38

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Govindan Vs. State Represented By The Deputy Superintendent Of Police
Criminal Appeal Crl.A. No. - 001665-001665 / 2021
Date of Judgment: 17.12.2021

Section 304 Part II, IPC – factors for determining quantum of sentence – modification

The Hon'ble Supreme Court decided a Criminal Appeal in a case where the Appellant was convicted for offence under Section 304(ii) of IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/-. The Trial Court by appreciating oral and documentary evidence on record, has recorded a finding that the de facto complainant's family members were the aggressors and they have tried to disturb the peaceful possession of the accused.

The Trial Court had also found that the appellant stabbed the deceased, Kamsala with a knife, but there was no premeditation or pre-planning and it was a sudden quarrel and the appellant exercised his right of private defence, but exceeded the limit. The High Court while dismissing the Criminal Appeal, has observed that when the Civil Suit is pending between the parties and if at all, the de facto complainant passed through their patta land, the appellant/accused should have availed a remedy before the Civil Court, but should not have attacked the deceased.

With regard to quantum of sentence the Apex Court discussed that, it all depends on background facts of the case, antecedents of the accused, whether the assault was premeditated and pre-planned or not, etc. In this case on hand, it was clear from the evidence on record that there was a dispute with regard to pathway, which the complainant's family members were claiming from the land of the accused. In view of such interference, it appears that the accused filed a Suit and obtained injunction orders from Civil Court and in spite of the same, for violation of Court orders, the family members of the complainant were put behind bars for 30 days. The same is evident from the deposition of PW-1. The incident occurred in front of the house of the accused and when the female family members of the accused were assaulted, the appellant in

retaliation seems to have assaulted the family members of the complainant. Trial Court itself has recorded that the de facto complainant's family members are the aggressors and they have tried to disturb the peaceful possession of the accused from their land. The said findings recorded by the Trial Court, became final. The same was not questioned either by the State or by the complainant. It is also clearly held by the Trial Court that it was not a premeditated or preplanned incident. It happened in a sudden quarrel on the day of occurrence i.e. on 14.06.2010.

Therefore, the apex Court taking due consideration of its previous decisions held that, "With regard to quantum of sentence, it all depends on background facts of the case, antecedents of the accused, whether the assault was premeditated and pre-planned or not, etc." and allowed the appeal.

See also

- Lakshmi Chand & Anr. Vs. State of Uttar Pradesh (2018) 9 SCC 704
- Madhavan and Ors. Vs. State of Tamil Nadu (2017) 15 SCC 582
- Ram Pyare Mishra Vs. Prem Shanker & Ors. (2008) 14 SCC 6114

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Mohd. Zahid Vs. State
Criminal Appeal No. 1457 of 2021
Date of Judgment: 07.12.2021

NDPS Act – Section 427 - CrPC

The Hon'ble Supreme Court while deciding a Criminal Appeal in a case where a Pakistan national was convicted under the NDPS Act by two Courts in two different trials and it was argued that the sentences should run concurrently, the Apex Court observed that, Whether two sentences may be allowed to run concurrently under S. 427. Under Section 427 of Cr.PC, when a person who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced. Meaning thereby the sentences in both the conviction shall run consecutively. However, there is an exception to that, namely unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Further, as per Sub-section (2) of Section 427 of Cr.PC, when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. Therefore, in aforesaid two cases only the subsequent sentence shall run concurrently with previous sentence. Otherwise the subsequent sentence shall run consecutively and the imprisonment in subsequent sentence shall commence at the expiration of the imprisonment to which he has been previously sentenced.

Principles laid down in a series of Supreme Court Rulings

(i) If a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced;

(ii) ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence;

(ii) the general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.PC;

(iv) under Section 427 (1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence.

…the Court has the power and discretion to issue a direction that the subsequent sentence to run concurrently with the previous sentence in that case also, the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed.

The apex Court held that "the offences under the NDPS Act are very serious in nature and against the society at large, hence, no discretion under Section 427 CrPC shall be exercised in favour of such accused who is indulging into the offence under the NDPS…No leniency should be shown to the accused found guilty under the NDPS Act" thus dismissed the appeal.

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Ram Ratan Vs. State Of M.P.
Criminal Appeal Crl.A. No.-001333-001333 / 2018
Date of Judgment 17.12.2021

Criminal law – Section 392 – Robbery – Section 397 – Deadly Weapon – Indian Penal Code - M.P. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 (The M.P. The Robbery and Kidnapping Affected Areas Act, 1981)

The Hon'ble Supreme Court in a Criminal Appeal decided whether the Appellant is also an 'offender' who used the firearm so as to be charged under both Section 392 and Section 397 of the IPC even if he is complicit to the incident, more particularly when Section 34 IPC has not been invoked. The charge under Section 34 IPC was not framed against the Appellant nor was such an allegation raised and proved against the Appellant.

The Apex Court, having taken note of the manner in which the trial court referred to the evidence and the same been re-appreciated by the High Court held that, "…the use of the weapon to constitute the offence under Section 397, IPC does not require that the 'offender' should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is sufficient. The other aspect is that if the charge of committing the offence is alleged against all the accused and only one among the 'offenders' had used the firearm or deadly weapon, only such of the 'offender' who has used the firearm or deadly weapon alone would be liable to be charged under Section 397, IPC….though the above would be the effect and scope of Section 397, IPC as a standalone provision, the application of the same will arise in the totality of the allegation and the consequent charge that will be framed and the accused would be tried for such charge. In such circumstance, in the teeth of the offence under Section 397, IPC being applicable to the offender alone, the vicariability of the same will also have to be noted if the charge against the accused under Sections 34 and 149 of IPC and such other provisions of law, which may become relevant, is also invoked along with Section 397, IPC. In such event, it will have to be looked at differently in the totality

of the facts, evidence and circumstances involved in that case and the provisions invoked in that particular case to frame a charge against the accused… Hence, benefit of the interpretation raised on the scope of Section 397, IPC to hold the aggressor alone as being guilty, will be available to the Appellant if there is no specific allegation against him. The Apex Court, considering the evidence on record set aside the conviction u/s. 397 IPC, thus allowing the appeal.

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Sunil Todi Vs. State of Gujarat
Criminal Appeal No. 1446 of 2021
Date of Judgment: 03.12.2021

Section 138 – Negotiable Instruments Act

The Hon'ble Supreme Court while deciding a Criminal Appeal dealt with the issue whether a debt incurred after the drawing of the Cheque but before its encashment was excluded from the phrase 'debt or any other liability', and explained the scope of the phrase 'debt or any other liability' under Section 138 of the NI Act. The Apex Court observed that, "the term 'debt' includes a sum of money promised to be paid on a future day by reason of a present obligation. A post-dated cheque issued after the debt has been incurred would be covered by the definition of 'debt'. However, if the sum payable depends on a contingent event, then it takes the color of a debt only after the contingency has occurred." On the issue whether Section 138 only covers a debt that exists as on the date of drawing of the cheque the Apex Court observed that, "the explanation to Section 138 of the NI Act provides that 'debt or any other liability' means a legally enforceable debt or other liability. The *Proviso* to Section 138 stipulates that the cheque must be presented to the bank within a period of six months from the date on which it is drawn or within its period of validity Moreover, Parliament has used the expression 'debt or other liability'. The expression 'or other liability' must have a meaning of its own, the legislature having used two distinct phrases. The expression 'or other liability' has a content which is broader than 'a debt' and cannot be equated with the latter. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment." The Apex Court upon the above observation held that, "the true purpose of Section 138 would not be fulfilled, if 'debt or other liability' is interpreted to include only a debt that exists as on the date of drawing of the Cheque", and thus dismissed the appeal.

See also

- Webb v. Strention [1888] Q.B.D. 518
- Banchharam Majumdar v. Adyanath Bhattacharjee ILR (1909) 36 Cal 936

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HIGH COURT - CIVIL CASES

Constance Rani Vs. Krishnaraj @ Natarajan (died) & Ors.
S.A.No.2114 of 2002
Date of Judgement: 05.01.2022

Section 39, Transfer of Property Act, 1882 — statutory charge

The Hon'ble High Court dealt with a Second Appeal concerning a suit for declaration of title and possession, wherein both the suit and the First Appeal was dismissed against the Appellant. The Court observed that "It is true that a statutory charge is created under Section 39 of Transfer of Property Act, 1882 till the maintenance amount is paid by the father of the plaintiff. A charge is only a security for the payment of amount. … It is settled position of law that even a mortgaged property can be alienated subject to the mortgage. Hence, a statutory charge over a property does not prevent the owner of the property from alienating the same in favour of the third parties. The only right of the decree holder under the maintenance decree is to recover the maintenance amount from and out of the charged property even if it had passed into the hands of the third parties."

The Court found that [1] the sale deeds executed by the Plaintiff's father, when there was no order of attachment operating, and was hence valid [2] since there is no pleading regarding the fictitious nature of the property, the sale deeds cannot be said to be void on ground of fraud on registration [3] The release deed has been executed only in consideration of the past maintenance of the Plaintiff in favour of her father. Hence, the statutory prohibition under Section 6(dd) of Transfer of Property Act is not applicable. [4] Statutory charge under Section 39 of Transfer of Property Act and under Section 28 of Hindu Adoption and Maintenance Act, 1956 only empower the decree holder to recover the maintenance amount from and out of the said property even if it had passed into the hands of the third parties. A charge decree does not prevent any alienation of the charged property. The Court held that the sale deeds will not be void due to the statutory charge, and thus dismissed the Second Appeal.

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J.K.K. Rangammal Charitable Trust Vs. A. Manichamudaliar
C.R.P(NPD)No.5159 of 2011
Date of Judgment: 23.12.2021

Order XXIII Rule 1(3), CPC — Section 151, CPC — withdrawal of suit — formal defect

The Hon'ble High Court dealt with a Civil Revision Petition on the issue whether the Petitioner/Plaintiff can withdraw the present suit, under Order XXIII Rule 1(3) and Section 151 of C.P.C.

The Court observed that, as per the provisions of XXIII Rule 1(3) of C.P.C, there must be some formal defects to withdraw the suit. The words 'Formal Defect' in Order XXIII Rule 1(3) means the defect with respect of form prescribed by rules of procedure which does not affect the merits of the case.

The main contention of the Petitioner/Plaintiff was that the details of the sale transaction between the 9th Respondent/9th Defendant and the 1st to 8th Respondents/1st to 8th Defendants have not been furnished. The Court rejected this contention and found that, the failure on the part of the 9th Respondent/9th Defendant to disclose the details of the property is not a sufficient ground to withdraw the suit, as the Petitioner/Plaintiff can file a separate suit for declaration.

The Court further found that although the suit was of the year 2004, the Petitioner/Plaintiff had filed the interim application only in 2011, while she could have withdrawn the suit much earlier in this seven-year period.

The Court held that, "the Petitioner/Plaintiff did not satisfy the provisions contemplated under Order XXIII Rule 1(3)(a)&(b) of C.P.C. Hence, she is not entitled to withdraw the suit with liberty to file a fresh suit for the same cause of action."

Thus, the Court confirmed the order of the Additional District Munsiff and dismissed the Civil Revision Petition.

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K. Thirumalaivadivu Vs. S. Rajasekaran
C.M.A.(MD)Nos.360 and 361 of 2012
Date of Judgment: 23-12-2021

Attachment of property before judgement — transfer of property *pendente lite*

The Hon'ble High Court deal with a Civil Miscellaneous Appeal challenging the Trial Court's order to raise attachment before judgement.

The Court dealt with the issue whether the transfer of subject property *pendente lite* after receipt of pre-suit notice, after issuance of summons in the suit and after issuance of notice in the attachment before judgment application, can be construed as a bona fide transfer, not tainted with the act of collusion and fraud.

Upon perusing Sections 52 and 53 of the Transfer of Property Act, the Court observed that there shall be no bar for transferring the property pending suit, provided, such transfer is not a collusive transfer to affect the right of any other party under any decree or order, or with intention to defeat or delay the creditors of the transferor. If any private alienation of the property is made after the attachment, such transfer shall be void.

The Court observed that it is the duty of the purchaser to prove his *bona fide*, through the passing of consideration, which is proportionate to the value of the property. The Court found that the third-party purchaser/Second Respondent cannot claim to be a *bona fide* purchaser as he had failed to provide accounts for the sale consideration, and that the creation of stamped document ante-dating the payment unravels his intention to defeat the creditors, who have already initiated recovery proceedings.

The Court further observed that the trial Court had miserably failed to examine the sale deed in the light of the recital found in the said document, and only concentrated on the validity of the *pendente lite* transaction. Thus, the Court allowed the Civil Miscellaneous Appeals and set aside the impugned trial Court orders.

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M/s. A.H.M. Traders, Rep. by Authorized Representative S. Abubakkar & Anr. Vs. The Commissioner, Greater Chennai Corporation & Ors.
W.P.Nos.23866 and 23870 of 2021
Date of Judgment: 17-12-2021

Section 80A, Town and Country Planning Act, 1971

The Hon'ble High Court dealt with a Writ Petition seeking to quash the Lock and Seal and Demolition orders passed by the Second to Fourth Respondents, wherein the Petitioners were asked to stop the ongoing works for want of approved plan. The Court observed that title of the property cannot be decided by the Authority under the 1971 Act and that it is for the Writ Petitioners and the Third Party to approach the Appropriate Civil Forum.

The Court referred to the decision in *Mehraj Begum Vs. The Government of Tamil Nadu [W.P.No.27499 of 2018, dated 16.10.2018]* which had formulated certain guidelines to be followed for disposal of the appeal and other applications by the Authority under the 1971 Act, and other decisions of the Supreme Court*, wherein the Court ordered for demolition of buildings/deviated constructions, constructed on the public places unauthorizedly. The Court observed that the administrative authorities dealing with applications under Section 80A of the 1971 Act, who do not comply with the orders of the Court will be liable for fine and imprisonment.

The Court further noted that the authorities concerned can also utilize the advanced technology of drone survey in the presence of the respective parties in order to ascertain the factum of encroachment, along with conducting periodical inspection of the entire building. The Court held that Authority under the 1971 Act shall decide the matter within the time limit prescribed under the Act, after affording an opportunity to the petitioners, by conducting the matter on a day-to-day basis, and thus dismissed the Writ Petition.

***See Also:**

- The Kerala State Coastal Zone Management Authority Vs. The State of Kerala, Maradu Municipality & Ors. [(2019) 7 SCC 248]
- Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors. [2021 SCC Online SC 648]

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Muvendar Trust Vs. The Income Tax Officer
W.P.(MD)No.22287 of 2021
Date of Judgement: 16-12-2021

Section 12AA, Income Tax Act, 1961 — availing alternate remedy

The Hon'ble High Court decided on a Writ Petition challenging the Assessment Order pertaining to cancellation of registration under Section 12AA, Income Tax Act, 1961.

The Court found that the case did not warrant interference with the impugned order for the reason that the impugned order did not cancel the registration but only recorded the cancellation, and that even if it was so, there was an effective and efficacious alternative remedy available vide an appeal under Section 246 or revision under Section 264 of the Income Tax Act, 1961.

The Court observed that the rule of alternate remedy is not an absolute rule, but only a rule of discretion. The Court referred to the recent decision of the Supreme Court in *The Assistant Commissioner of State Tax & Ors. Vs. M/s. Commercial Steel Ltd. [Civil Appeal No.5121 of 2021, dated 03.09.2021]*, which held that interreference will arise only in exceptional circumstances.

The Court further found that Writ Petitioner has not given any acceptable reason for not uploading the registration certificate under Section 12AA of the Income Tax Act, despite the Second Respondent asking the Writ Petitioner to upload the same, and following up the notice under Section 142(1), Income Tax Act with two subsequent reminders. Furthermore, the Court held that since, on an earlier occasion, the Writ Petitioner had assailed an assessment order by way of a statutory appeal, the same remedy can be availed for the impugned order as well.

The Writ Petition was thus dismissed.

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P. Kalyanasundaram Vs. P. Saraswathy (died) & Ors.
A.S.No.734 of 2009
Date of Judgment: 22-12-2021

Joint family properties — valid execution of Will — valid execution of partition deed

The Hon'ble High Court dealt with an Appeal Suit arising from a suit for partition and declaration, and decided whether: [1] the suit schedule properties were joint family properties? [2] the 2nd and 3rd Plaintiffs are entitled to an equal share as the 1st Defendant? [3] the Will is validly executed? [4] the partition deed is validly executed?

The Court noted that the Plaintiff has to not only establish the existence of an ancestral (nucleus) but also prove that the income generated therein, after defraying the expenses for the maintenance of the properties and the family, still yielded a surplus which formed the nucleus for the purchase of the other properties. The Court referred to the decisions in *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango & Ors. [AIR 1954 SC 379]* and *K.V. Ramasamy & Anr. Vs. K.V. Rahgavan & Ors. [2010 (1) MLJ 1019]*, and found that the Plaintiffs have neither produced documents nor oral evidence to show the kind of income that was generated from the joint family properties. The Court answered 1st and 2nd issues in favour of the Appellant/Defendant and set aside the finding of the trial Court that the suit schedule properties partook the nature of joint family properties.

On the 3rd issue, the Court found that the original Will was not produced for scrutiny before the court, and the non-production of the original assumes significance since the Plaintiffs have questioned its very execution. The Court found that the trial Court had extensively considered the suspicious circumstances surrounding the execution of the Will and thus answered the 3rd issue in favour of the Plaintiff. On the 4th issue, the Court found that, the attesting witness to the partition deed is a paid witness and therefore the trial Court had rightly come to the conclusion that the partition deed was not validly executed. The 4th issue was answered in favour of the Plaintiffs. Thus, the Court partly allowed the Appeal Suit.

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Paulraj Vs. The District Collector, Kanyakumari District, Nagercoil
W.P(MD). No.11276 of 2020
Date of Judgment: 10/01/2022

Writ of Certiorari – Permission to build Church in residential area – Use of Loud speakers

The Hon'ble High Court decided on a Writ Petition challenging the permission granted by the First Respondent to construct a church in the Petitioner's neighbourhood.

The contention of the Petitioner was that he was not heard before permission to build the church was confirmed by the First Respondent. The Court observed that "The petitioner is a resident in the area and building permission is issued only to the person who applies for such permission. The petitioner being a resident is not directly involved with the construction. He may have grievances over the activities which are being conducted or for which the building is put to use.

The Court noted that, "The petitioner should learn to live with everybody else around him. This country takes the pride in unity in diversity. The petitioner should accept the group of people living across, and around with him and he should also accept that people of various faith and various caste, creed and religion and given rights under the constitution. The country is a secular country recognizing practice of religion. The petitioner cannot make complaint against the same".

The Court further suggested the 5th Respondent to conduct the prayers in a gentle manner without the use of loudspeakers.

The Court in fine observed that, the 1st Respondent/District Collector either by himself/herself or through the 2nd Respondent/Sub Collector, were to impress upon the 5th Respondent to practice tolerance and respect and only then sense and sensibility would prevail over pride and prejudice.

Thus, the Writ Petition was allowed.

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Sethuraj (Died) & Ors. Vs. Sivanandam
C.R.P.(NPD) (MD) Nos.2643 & 2644 of 2010
Date of Judgment: 23-12-2021

Rent Control Law — Demolition and owners' occupation — Subsequent facts

The Hon'ble High Court decided on a Civil Revision Petition filed by a landlord challenging the Order of the Rent Control Appellate Authority which reversed the Order of the Rent Controller, which had ordered eviction on the ground of wilful default, but had however, rejected the landlord's plea regarding demolition and re-construction and owners' occupation.

Based on the report of the Advocate Commissioner, the Court found that the building was uninhabitable and open to the sky, and that therefore, it cannot be said that the tenant is still in possession of the property and in occupation of the same. The Court observed that therefore, the relief of demolition and re-construction, by efflux of time, has been granted to the Petitioner. The Court further observed that the Respondent Tenant had wilfully defaulted in payment of rent for duration of the revision petitions, and is liable to be evicted from the premises. The Court found that the order of the Appellate Authority directing the payment made towards electricity deposit to be adjusted towards the rents, is not sustainable, as there is no evidence that the landlord has permitted the tenant to do the same.

On the question of taking note of subsequent facts, particularly the non-existence of the building, the Court referred to the decisions in *V.Kannadasan vs. K.Swaminatha Pathar [2007-4-L.W.435]*, *Maganlal vs. Nanasaheb [2010 3 SCC 470]*, and *Pasupuleti Venkateswarlu vs. Motor and General traders [(1975) 1 SCC 770]*, and observed that Courts should take into account the subsequent conduct as well while dealing with litigation especially when the same has a direct bearing not only on the facts of the case, but also on the relief to be given to the party. Thus, the Court allowed the Civil Revision Petition and set aside the impugned judgement.

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Trichy Cold Storage (P) Ltd. Vs. The Superintendent of Police, Trichy District
W.P.(MD)No.22382 of 2021
Date of Judgement: 22-12-2021

Storage of seized perishable goods — Section 73, Indian Contract Act, 1872

The Hon'ble High Court decided on a Writ Petition concerning the storage of contraband goods seized by the police. Owing to the perishable nature of the seized goods, the Judicial Magistrate had ordered the Second Respondent to keep the seized goods in cold storage until the disposal of the case, and subsequently the goods were entrusted with the Petitioner. The Court noted that since the case remained undecided, the goods perished while in storage, resulting in financial loss to the Petitioner, as the unpaid bills for the storage facility kept mounting. The Court observed that neither the local police nor the complainant can be expected to pay the dues for the storage facility to the Petitioner, as they acted only in furtherance of the order of the Court. The Court further noted that although as per Section 170 of the Indian Contract Act, 1872, the Petitioner had a right of lien over the seized goods until the dues are paid, exercise of the said right would worsen the condition of the right-holder. The Court found that the Judicial Magistrate was not justified in passing the order for storage of the seized contraband goods, as the goods could have been disposed through sale under Section 459, CrPC. The Court observed that the High Court exercising its superintendence over the courts of Judicial Magistrate subordinate to it, under Section 483, CrPC, has to intervene when it comes to know of an improper disposal of a case. The Court applied the rule of mitigation as per Section 73 of the Indian Contract Act, and held that the Petitioner is entitled to only part of the bill amount as he did not take reasonable steps to mitigate the loss. The Court directed that the part of the bill amount along with the cost of removing the decayed goods, shall be paid to the Petitioner from the victim compensation fund, and thus allowed the Writ Petition.

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WITCO (India) Pvt.Ltd. Vs. NITCO & Ors.
Civil Suit No.372 of 2009
Date of Judgement: 22.12.2021

Infringement of trademark — Passing off

The Hon'ble High Court dealt with a Civil Suit concerning a trademark dispute. The Court referred to the decision of the Supreme Court in *S. Syed Mohideen vs. P. Sulochana Bai [(2016) 2 SCC 683]* and observed that registration is merely a recognition of the rights pre-existing in common law and in case of conflict between two registered proprietors, a valuation of the better rights in common law would be the guiding factor.

The Court observed that for a passing off action, the three ingredients to be established are: firstly, that the Plaintiff was a prior user and had a goodwill/reputation; secondly, that the Defendants are attempting to misrepresent or is trying to deceive the customer by using a deceptive mark; and thirdly, that the Plaintiff suffers an injury or a loss or there is a possibility of loss. The Court followed the test laid down by the Supreme Court *in Parle products (P) Ltd. vs J.P. and Co., Mysore [1972 1 SCC 618]*, and found that the "impugned mark bears such an overall similarity both visually and phonetically and it will certainly create confusion in the mind of a person of average intelligence and of imperfect recollection. Defendants are practicing deceit and trying to sell goods/services on the goodwill/reputation of the Plaintiff and obtained an economic advantage/gain. This Court finds that the Plaintiff has a better/superior right in common law and has made out a case for passing-off action.

The Court held that, closing down all their showrooms will not deprive the Plaintiff from getting the relief in the present suit and granted permanent and mandatory injunction in favour of the Plaintiff, and directed the Defendant to pay exemplary costs to the Plaintiff, since there are no sufficient materials to determine the damages suffered by the Plaintiff.

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HIGH COURT – CRIMINAL CASES

Azhagupandiyan @ Pandiyan Vs. State Rep. by, The Inspector of Police, Anaikaranchatram Police Station, Mayiladuthurai District
Crl.O.P.No.21424 of 2021
Date of Judgement: 11/01/2022

Section 482 CrPC – Quashing of FIR – Epidemic Diseases Act, 1897 – Non-Cognizable Offence

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to quash the FIR against the petitioner. The fact of this instant case is that, the petitioner was roaming in his two-wheeler on 12/06/2021, during which time, there prevailed a lockdown in view of the COVID-19 pandemic. The petitioner in this case was charged for the offences punishable under Sections 188, 269, 270 and Section 3 of the Epidemic Diseases Act, 1897, which was registered on the same day. This petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the Police have no right to register the case and investigate it. It was contended that as far as Section 269 IPC is concerned, there is no intention on the part of the petitioner to spread the disease to another and simply he was roaming in that area.

Further, the relying on the decision of this Hon'ble court, in "In *Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another*", it has been held that the Police has no right to file a case under Section 188 IPC and to investigate the same without getting proper permission from the concerned jurisdictional Magistrate.

The Hon'ble High Court observed that, "here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the respondent has no right to register the case and to investigate the matter". Further, the Hon'ble High Court observed that, "the offence

under Section 269 IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioner was simply roaming in the road. It is a trivial matter in which no offence of grievous nature is involved. Even though Section 144 CrPC order was in force, during the relevant time the respondent Police ought to have warned the petitioner to go in-door, instead of that, they filed a case".

In fine, the Hon'ble Court held that, "Considering the nature of allegations and the offences involved in this case, this Court is of the considered view that roaming in the road without any reason should not be a reason for spoiling the future of the petitioner. Unintended casual act should not take away the future of the petitioner." Therefore, the FIR against the petitioner was quashed.

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C.P.Girija Vs. The Superintendent of Police Villupuram District
W.P.No.37089 of 2015
Date of Judgment: 20/12/2021

Need to install CCTV cameras – restraining the law enforcement agencies from repeatedly conducting inspections in the business premises – suo motu impleaded Director General of Police on the need to issue a circular

The Hon'ble High had to deal with a Writ of Mandamus under Article 226 of the Constitution forbidding the respondents their subordinates in any manner interfering with the petitioner's lawful business of Maruthasanjevani Ayurvedic Therapy Centre. The plea was to seek relief in terms of restraining the law enforcement agencies from repeatedly conducting inspections in the business premises and interfering with the lawful business of the petitioner, thereby causing disturbances. The Hon'ble Madras High Court held that it cannot pass preventive orders to curb the law-enforcing authorities from exercising their powers in accordance with the law. The Hon'ble High Court opined that, the petitioner's claim about 'lawful business' can't always be trusted upon and the Police authorities are duty-bound to verify the same. Further, the court *suo motu* impleaded Director General of Police on the need to issue a circular to that effect. The court also observed that installing CCTV Cameras in such public places will go a long way in preventing illegal activities. The High court felt that it was necessary to make functional CCTV cameras a norm in all Municipalities and corporations in Tamil Nadu. Accordingly, the Court noted in the order as follows: "The respondents are directed to issue appropriate orders to all the Spa and Massage centers, Therapy centers etc., across the State of Tamil Nadu to install CCTV cameras which must be functional in all circumstances."

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G. Babu Vs. The District Collector Perambalur, Perambalur District and Ors.
W.P.No.14420 of 2016
Date of Judgement: 04/01/2022

Stray dog hunting – negligently shooting a woman – country gun – bullet containing poison

The Hon'ble High Court dealt with a Writ Petition under Article 226 of the Constitution of India to issue a Writ of Mandamus against the respondents and direct them to compensate the Petitioner for negligently, lethargically and irresponsibly causing the death of the petitioner's mother. The issue in this case is that, the District Administration had deputed Local Village Panchayat to curtail the stray dog menace and subsequent the Village Panchayat had deputed certain persons belonging to the 'Narikuravar' Community to hunt the stray dogs. It is alleged that at around 9.30 p.m. on 25.02.2015, the mother of the petitioner was doing household work outside their house and the persons deputed to hunt stray dogs, aimlessly and negligently shot the petitioner's mother on her foot. Later, the petitioner's mother was taken to hospital by the authorities and it is alleged that the hospital authorities were not informed about the petitioner being shot negligently and therefore, she was treated only for the wound on the foot and not for the extraction of the poisonous bullet. Days later, the mother of the petitioner developed respiratory problems and succumbed to death and the post mortem report reveals that, the death occurred due to the poison in the bullet that was still inside her foot.

The Hon'ble High Court condemned the authorities for shooting stray dogs, which is an illegal act in itself and observed that, "It is an unusual incident where the responsible Panchayat President and the Councilors have engaged the 8th respondent for shooting out the stray dogs in the Village. The very operation itself is illegal and further the bullet removed from the mother of the petitioner during postmortem confirms that the death occurred due to the bullet injuries. Under these circumstances, this Court is inclined to consider the case of the petitioner for grant of compensation…"

The High Court further observed that the respondent authorities were insensitive in dealing with this issue and noted, "Unfortunately, the official respondents 1 to 4 have not shown sensitiveness in this matter nor initiated appropriate immediate action, contrarily they have slowed down the actions and thereby colluded in a passive manner. Even the passive collusion of the public authorities can never be tolerated. The illegal operations made by the respondents 5 to 8 were not seriously taken nor immediate actions are initiated"

Since the factum established, the Hon'ble High Court has ordered the respondents 5 to 7 to jointly pay a sum of Rs.5,00,000/- to the petitioner towards compensation and the first respondent to pay a sum of Rs.5,00,000/- to the petitioner. In fine, the petitioner is entitled for a total compensation of Rs.10,00,000/- [Rupees Ten Lakhs only] by the High Court.

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Gopi @ Saravanan Vs. State rep. by The Inspector of Police, Kalasapakkam Police Station, Tiruvannamalai District
Crl.R.C.No.708 of 2014
Date of Judgment: 23/12/2021

Rape – absence of consent – Sec. 90 of I.P.C

In a Criminal Revision Case filed by the Petitioner to set aside his conviction under Section 376(1) of the IPC, wherein the petitioner/accused had denied the charges claiming that the act was consensual, the Hon'ble High Court noted that the trial Court perused the evidence on record and had independently appreciated them.

It was held by the Hon'ble High Court that, Section 375 of I.P.C undoubtedly lays down that if the act of the accused is against the will of the prosecutrix and against her consent, it would amount to the offence of rape. Further, it was observed that, Section 90 of I.P.C clearly states that consent shouldn't be born out of fear or misconception and the Hon'ble High Court has also referred Section 114-A of the Indian Evidence Act, and noted that, "As per Section 114-A of the Evidence Act, there is a presumption of absence of consent in the offense of rape if the victim deposes that she did not consent. To rebut this presumption, there must be positive evidence let in by the accused and mere absence of a valiant and violent effort on the part of the victim certainly does not amount to consent". The Hon'ble High Court relying on numerous decisions of the Apex Court and the earlier decisions of the Hon'ble Madras High Court, confirmed the sentence passed by the trial court and the appellate court along with a fine.

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K. Muthuirul Vs. The Inspector of Police, Samayanallur Police Station
CRL OP(MD). No.18273 of 2021
Date of Judgement: 06/12/2021

NDPS Act – Default bail – Application filed by investigating agency before in time

The Hon'ble High Court dealt with a Criminal Original Petition filed under Section 482 r/w 439 of CrPC to set aside the impugned order of the petitioner/accused by the trial court in NDPS case. The petitioner in this case was an accused under the NDPS Act and had filed an application for default bail which was subsequently dismissed by the trial court, considering the gravity of the offence and serious objections by the prosecution since huge quantity of the contraband was involved. The Hon'ble High court noted that the charge sheet was filed on the same day as the application for default bail, but the former was filed by the investigating agency before in time.

Further, it was observed by the Court that, there is a misconception that in cases where the bail petition under Section 167(2) CrPC and the charge sheet are being filed on the same day, then the time at which, bail petition or the charge sheet is filed, is the deciding factor and that if the charge sheet is filed earlier to the bail petition, then the accused is not entitled to get the statutory bail or in case, if the bail petition is filed before laying of charge sheet, then the bail application has to be allowed.

It was also noted by the Hon'ble Court that, while interpreting the procedural law, there must be some reasonable time limit, under the Criminal Procedural Code or the specific provisions under Narcotic Drugs and Psychotropic Substances Act, enabling the accused to apply for statutory bail upon the expiry of a period of time. "In Tamil Nadu, all the Courts shall ordinarily sit at 10.30.am. If the investigating agency files the charge sheet by 10.30 am, on the next day, after the expiry of the period prescribed under Section 167(2) Cr.P.C, can we say that the accused has lost his right of filing the petition for default bail subsequently, on the same day? In my considered view, the accused can

exercise his right to apply the default bail on the whole day, on which, the indefeasible right to apply the statutory bail accrues to him", the court laid down in the order.

It is made clear by the Hon'ble High Court that, the investigating agency has to file the charge sheet "before" the expiry of 60 days, 90 days (mentioned in CrPC) or 180 days (mentioned in NDPS Act) as the case may be, if they require the detention of the accused beyond the prescribed period of 60 or 90 or 180 days. The Court further noted, "If the charge sheet is filed on 61st or 91st or 181st day, as the case may be, even prior to the filing of the bail petition on the same day, the said filing of the charge sheet will not defeat the right already accrued to the accused and if such an interpretation is not given, then that will lead to a proposition that the investigating agency can file a charge sheet even on 61st or 91st or 181st day as the case may be, as of right and detain the accused in judicial custody."

The court also relied on the Hon'ble Apex Court's order in *S. Kasi v. State through the Inspector of Police, Samayanallur Police Station, Madurai District 2020 SCC Online SC 529*, where it was clarified that "the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently." In fine, the Hon'ble High Court set aside the order of trial court and granted statutory bail contingent upon the execution of bond and adherence to other bail conditions.

See Also:

- M.Ravindran Vs. State of Tamil Nadu (2021) 1 SCC (Cri) 876
- Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67
- M.Ravindran Vs. The Intelligence Officer, Director of Revenue Intelligence (2021) 2 SCC 485
- Dr. Bipin Shantilal Panchal vs State Of Gujrat (1996) 1 SCC 718
- Mohamed Iqbal Madar Sheikh Vs State Of Maharashtra (1996) 1 SCC 722
- Sanjay Dutt vs State Through C.B.I. (1994) 5 SCC 410
- Bikramjit Singh Vs. State of Punjab 2020 SCC Online SC 824
- Uday Mohanlal Acharcya Vs. State of Maharastra (2001) 5 SCC 453
- Achpal @ Ramswaroop and another Vs. State of Rajastan (2019) 14 SCC 599

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Maridhas Vs. State Rep. By,The Inspector of Police, Melapalayam Police Station, Tirunelveli
Crl.O.P.(MD)No.20560 of 2021 And CRL.MP(MD)No.11714 of 2021
Date of Judgment: 23/12/2021

Section 295A IPC – Article 19 (1) (a) – YouTube Video – Tablighi Jamaat

The Hon'ble High Court dealt with a Criminal Original petition is filed under Section 482 of CrPC, to quash the FIR filed against the petitioner. The case was that, the Petitioner a YouTuber, had falsely spoken about the attendees of Tablighi Jamaat conference held in March 2020 at New Delhi, were responsible for spreading Covid-19 and also that he insulted Islam with an intention to create ill-will and discord between Muslims and non-Muslims in his video. The Hon'ble court opined that the petitioner was only expressing his view as a public commentator about an event which was undoubtedly characterized as a 'super spreader'.

Further, the Hon'ble court critically examined the demeanor of the petitioner while expressing his views in the YouTube Video and noted that, he 'nowhere targeted Islam or the religious beliefs of Muslims as a class.' The court while observing for offence under Section 295A IPC [Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs], pointed out; "…In fact, the petitioner has given several disclaimers in his video. He repeatedly cautioned the viewers that his presentation should not be misconstrued as criticism of Muslims. There is no reference to religion even in the remotest sense of the term in the video in question. By no stretch of imagination could Section 295A of IPC have been invoked."

Relying on the decisions of the Apex Court in *Ramji Lal Modi Vs. State of U.P, AIR 1957 SC 620*, the court made an interpretation that Section 295A cannot be invoked for any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens. It was held by the court that, the petitioner as a YouTuber actively commenting on current issues is entitled to the protection of Article 19(1)(a) of the

Constitution and that the petitioner has relied solely on the news resources then available in the public domain. It was further held that, criticism of an organization cannot be taken as a criticism of a community and Tablighi Jamaat cannot be equated with Islam as it is a religious organization professing particular goals. In fine, the Hon'ble High Court quashed the impugned FIR observing that, 'After a careful consideration of the rival submissions, it come to the conclusion that none of the ingredients of any of the offences are present in this case'.

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Mathivanan Vs. Inspector of Police Vadipatty Police Station & Ors.
Crl OP(MD)No.18337 of 2021 and Crl MP(MD)No.10063 of 2021
Date of Judgement: 17/12/2021

Refusal to remand – Waging war against state – Right to be funny enshrined under Article 19 (1) (a) of the Constitution of India

The Hon'ble High Court in this case had to deal with a Criminal Original Petition to quash the FIR registered against the accused over a Facebook post which reads, "*துப்பாக்கி பயிற்சிக்காக சிறுமலை பயணம்*" which translates to "Trip to Sirumalai for shooting practice". The Vadipatty police arrested the petitioner/accused and produced him before the judicial magistrate, after registering a case against the accused for 'waging war against the state'. The petitioner was also charged for offences under Sections 120B, 122, 505(1)(b) and 507 of I.P.C. The Judicial Magistrate of Vadipatty, relying on *State Vs. Nakeeran Gopal (2019 SCC OnLine Mad 42)* passed a detailed order refusing the remand of the accused for the charges of 'Waging war against the State'.

The Hon'ble High court observed that the remand was rightly refused by the Judicial Magistrate and the impugned FIR was 'absurd and an abuse of legal process'. The Court observed that the correlative right to be funny can be "mined in Article 19 (1) (a) of the Constitution of India" and quashed the criminal proceedings against the accused since none of the required ingredients of the offences was fulfilled.

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Nakkeeran @ JeroanPandy Vs. State rep.by, The Inspector of Police, All Women Police Station, Arani, Thiruvannamalai District
Crl.R.C.No.333 of 2014
Date of Judgement: 07/12/2021

Extramarital Relationships amounts to 'Mental Cruelty' – Section 498(A) Of Indian Penal Code – Circumstances and Facts Of The Case

The Hon'ble High Court dealt with a Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment of the trial court. The matter involved in this case is that, the aggrieved respondent 2 had lodged a complaint against her husband alleging that he had committed bigamy and had failed to maintain a proper relationship with her and also physically and mentally abused her ever since she got married to him. The case was filed under sections 498A, 406, 494, and 506(ii) of IPC. The learned judicial magistrate held that the accused was found to be inflicting cruelty from the year 2000 to 2005 on the complainant by asking for dowry. However, offence of bigamy was not proved beyond reasonable doubt and therefore, the Court acquitted other accused persons. The petitioner/accused was convicted under Section 498A of IPC and was sentenced to two years of rigorous imprisonment and a fine of 3000/- rupees and in case of default of payment of the fine to undergo simple imprisonment of 3 months. Aggrieved by this the petitioner filed an appeal in Sessions court where the learned sessions judge confirmed the conclusions of the trial court and upheld the sentence. Therefore, this led to the filing of the revision petition in the Hon'ble High Court.

It was also contended that the trial court and the first appellate court had committed a grave error in considering the evidence related to the extramarital affair and mere allegation of having an extramarital relationship will not amount to an offence under Section 498A of IPC. The court noted that in the case of *K.V. Prakash vs. State of Karnataka*, the Apex court observed that to ascertain mental cruelty it is required that

facts and circumstances of each case be examined separately and so there is no generalized meaning of the same. In this case, it was also held the extramarital affair, per se, does not amount to mental cruelty but even so, it depends on the facts of each case and every individual's mental sensitivity.

Further, the court after perusing the evidence on record, came to the conclusion that there did exist an extramarital relationship between the petitioner and the 6th accused as alleged by the respondent. It was therefore, held that the action of petitioner/accused had caused a serious trauma to the respondent and had affected her mental health gravely and due to this she was forced to leave her matrimonial home. Therefore, the court came to the conclusion that this act of the petitioner would amount to cruelty within Section 498A of IPC. The Hon'ble High Court held that, there was no illegality or any error in the conclusion of the Trial Court and the Lower Appellate Court that the petitioner is guilty of the offence under Section 498A of IPC. However, the court keeping into consideration the circumstances of the present case, modified the sentence of the accused and thus partly allowed the criminal revision petition.

See Also:

- Jogi & Ors., Vs. The State of Madhya Pradesh in Crl.A.No.1350 of 2021
- Manikkam Vs. State of Tamil Nadu
- Tahsildar Singh and Another Vs. The State of Uttar Pradesh
- Manju Ram Kalita Vs. State of Assam
- Munna Devi Vs. State of Rajasthan and another
- D.Stephens Vs. Nosibolla

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Payel Biswas Vs. The Commissioner of Police, Trichy City
WP (MD)No.22667 of 2021
Date of Judgment: 04/01/2022

Right to Privacy – Constitutional morality over public morality – Installing CCTV cameras in spas infringes a person's right of bodily autonomy

The Hon'ble High had to deal with a Writ of Mandamus under Article 226 of the Constitution to direct the second respondents to issue a No Objection Certificate to the petitioner to run a "SPA" i.e., cross massage in the name and style of "QUEEN AYURVEDIC CROSS SPA CENTRE". The Hon'ble High court observed that, mere apprehension about a breach of morality cannot be a valid ground to curb the right to relax, which is a part and parcel of the right to privacy and referred to the landmark decision of the Apex Court in Navtej Singh Johar & Ors. Vs. Union of India & Ors, (2018) 10 SCC 1, pointing out that 'constitutional morality shall trump public morality'. The Hon'ble High Court has also relied on the decision of the Apex Court in *K.S Puttaswamy Vs. Union of India, (2017) 10 SCC 1* which expounds different facets of right to privacy guaranteed under Article 21. These forms of the right to privacy include; i) a right to bodily autonomy, ii) a right to informational privacy and iii) a right to a privacy of choice and thus, observed that, "The installation of CCTV equipment inside premises such as a spa would unquestionably infract upon a person's bodily autonomy, these are inviolable spaces where the prying eye of the state simply cannot be allowed to enter".

The court further clarified that; the Police will have no authority to unnecessarily interfere in the functioning of the cross-massage centre as long as it is run in accordance with law. The writ petition was disposed of granting the respondent authorities 4 weeks' time to decide on the petitioner's application for 'No Objection Certificate'. It was also directed that the law enforcement authorities must avoid unnecessary interference with the business if the no-objection certificate is issued and the license is granted.

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State Rep. by The Deputy Superintendent of Police, Embal Police Station, Pudukkottai District Vs. Samivel @ Raja
R.T.(MD)No.2 of 2021 And Crl.A.(MD)No.534 of 2021
Date of Judgement: 12/01/2022

POCSO – aggravated penetrative sexual assault – causing death of the child – capital punishment

The Hon'ble High court dealt with a Referred Trial and Criminal Appeal under Section 374 of the Code of Criminal Procedure. This instant case arose out of murder of a child aged about 7 years, who belonged to Scheduled Caste community and was done to death after an aggravated penetrative sexual assault on the deceased victim child. The division bench of the Hon'ble High Court upheld the death sentence imposed on the accused by the trial court.

While stating reasons for the confirmation of the capital punishment to the accused, the bench also mentioned Adolf Hitler augmented that, people can be deceptive and that reformation of such persons' maybe difficult, and noted; "It is pertinent to mention here that everyone's mind contains a liar, a cheat and a sinner and a man cannot be judged by his outer appearance, as Adolf Hitler, who ordered the execution of some eight million people and was responsible for the deaths of many millions more, hated cruelty to animals and was a vegetarian. If a person like the accused herein is allowed to survive in this world, he will definitely pollute the mind of other co-prisoners, who will be at the verge of release from jail in which he is confined. When the attitude of a man turns into the one of a beast, having no mercy over other creatures, he should be punished and sent to the eternal world."

The Hon'ble division bench to fit this instant case in the rarest of rare doctrine relied on the judgements of the Apex Court such as, *Ramnaresh & Ors. Vs. State of Chhattisgarh (2012) 4 SCC 257*, *Baldev Singh Vs. State of Haryana, 2009 SC 963* and *Bachan Singh Vs. State of Punjab reported in 1980 (2) SCC 684*, the court observed that the prosecution

witness statements, deposition of doctor who conducted autopsy and postmortem certificate reveal the barbaric nature of the act committed by the accused. The Hon'ble High Court also supplemented that the chain of evidence in the present case was complete enough not to leave any reasonable ground for the conclusion consistent with the innocence of the accused by relying on the decision of the Hon'ble Apex Court in *Hanuman Govind Nargudkas Vs. State of M.P, AIR 1952 SC 343*. In fine, the Court the criminal appeal by the accused under Section 374 CrPC was dismissed and the conviction and death penalty were affirmed.

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