TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XVIII — PART 01 — JANUARY 2023 **

COMPENDIUM OF CASE LAWS

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TABLE OF CONTENTS

SUPREME COURT – CIVIL CASES 1

Basavaraj Vs. Padmavathi & Anr. [C.A. No.8962 of 2023].................................. 1

Gohar Mohammed Vs. Uttar Pradesh State Road Transport Corporation & Ors. [Civil Appeal No. 9322 of 2022].. 2

IFB Agro Industries Ltd. Vs. SICGIL India Ltd & Ors. [Civil Appeal No. 2030 of 2019]... 5

M/S Indian Medicines Pharmaceuticals Corporation Ltd Vs. Kerala Ayurvedic Co Operative Society Ltd. & Ors. [Civil Appeal No 6693 of 2022] 6

M/s. Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr. Vs. Prudent ARC Ltd. & Ors. [Civil Appeal No. 8969 of 2022].. 7

SUPREME COURT - CRIMINAL CASES 9

B. Venkateswaran Vs. P. Bakthavatchalam [Criminal Appeal No. 1555 of 2022].... 9

Hasmukhlal D. Vora Vs. State of T.N. [Criminal Appeal No. 2310 of 2022] 10

Iqram Vs. State of U.P [Criminal Appeal No 2319 of 2022] 11

Kaushal Kishor Vs. State of U.P. [Writ Petition (Criminal) No. 113 of 2016]........12

Prem Singh Vs. State (NCT of Delhi) [Criminal Appeal No. 01 of 2023]...............13

HIGH COURT - CIVIL CASES..15

Durgai Lakshmi Kalyana Mandapam Vs. Idols of Arulmigu Siddhi Ganesar Natarja Perumal [A.S. No. 397 of 2010]..15

K.B. Hemchand Vs. K.J. Shankar & Ors. [C.M.A.No.2701 of 2013]......................17

M. Vijayakumar Vs. V. Subba Reddy (Died) [A.S.No.930 of 2012] 19

M/s. Ashok Leyland Finance Limited Vs. The Deputy Commissioner of Income Tax, Company Circle 1(1), Chennai [T.C.A.No.1025 of 2009] 20

M/s. Naramada Infrastructure Construction Enterprises Limited & Anr. Vs. The Assistant Commissioner of Income Tax [T.C.A.Nos.868 to 870 of 2009] 22

N. Karthish Vs. Nil [CRP(MD)No.2619 of 2022] 24

Pugazendhi Thangaraj Vs. The Inspector of Police, K-10, Koyembedu Police Station, Chennai [W.P. No.339 of 2023]..25

Rathinavel & Anr. Vs. Rajamanickam & Anr. [A.S.No.348 of 2014] 27

S. Venkataramanan Vs. S. Muthukrishnan [Arb. O.P. (Com. Div.) No. 597 of 2022] 28

U. Venkatesan Vs. Susila & Ors. [A.S.No.19 of 2014] 30

HIGH COURT – CRIMINAL CASES 31

Ayisha Vs. State by the Inspector of Police, Berigal Police Station, Krishnagiri District [C.A.No.74 of 2016]..31

Dankinpa @ Benjamin and Anr. Vs. State rep. by The Inspector of Police V-6 Kolathur Police Station Chennai [CRL.A.No.587 of 2019] 33

Jeya Sudha and Ors. Vs. The Inspector of Police, Sindhupatti Police Station, Madurai District and Ors. [CRL OP(MD).Nos:5104, 5843, 10854 & 10902 of 2021] 35

M. Munusamy @ Chinnapaiyan Vs. The Superintendent of Police Tiruvallur District and Anr. [Writ Petition No.592 of 2023]...38

Madesh Vs. State by The Inspector of Police, All Women Police Station, Denkanikottai [Criminal Appeal No.631 of 2022 and Crl.M.P.No.8369 of 2022] 40

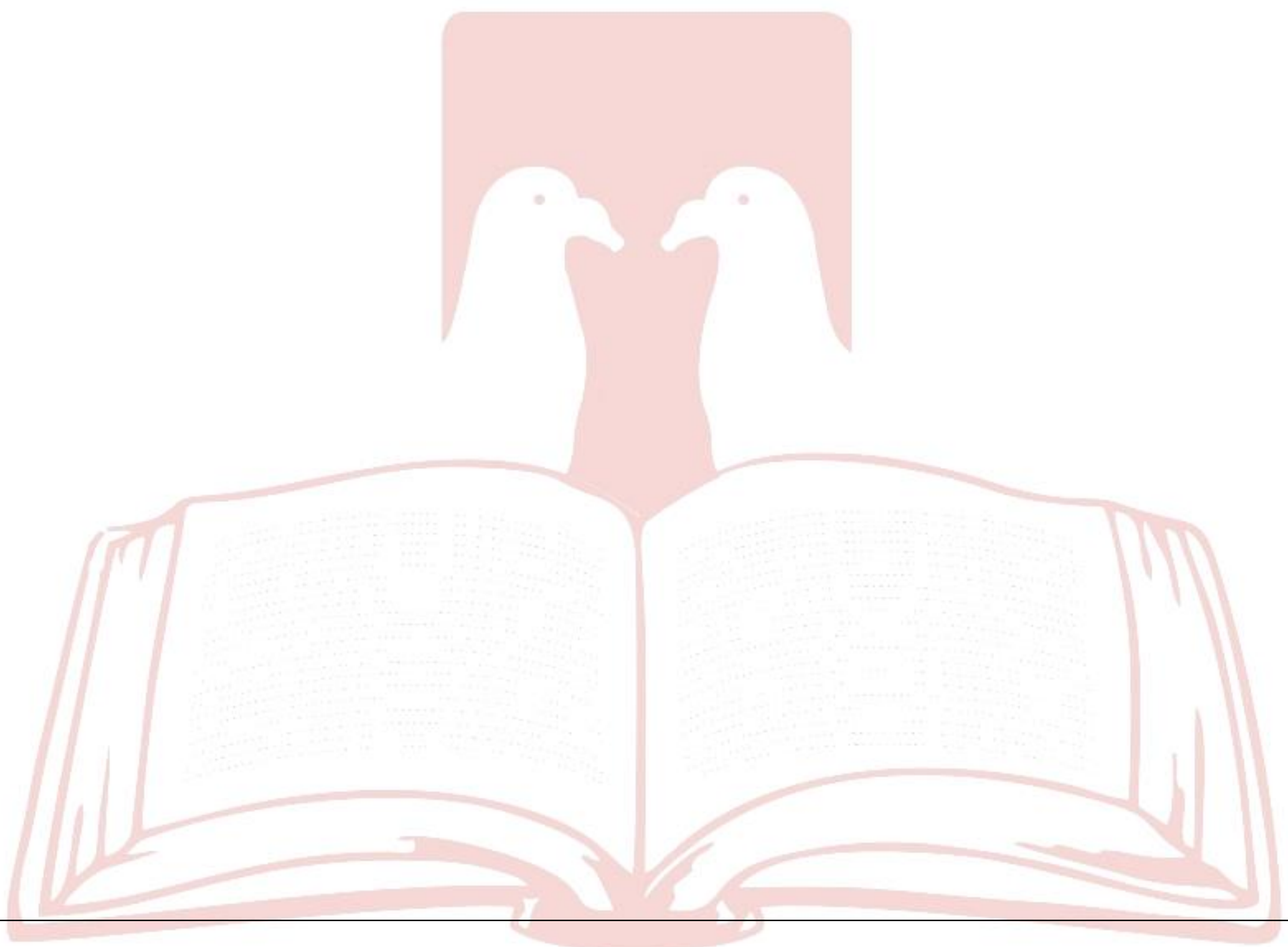
Manikandan Vs. State rep. by The Inspector of Police All Women Police Station Virudhachalam [CRL.A.No.44 of 2021] 42

Mir Anas Ali Vs. State rep. by The Inspector of Police, Ambur Town Police Station, Thirupathur District [CRL.A.No.1232 of 2022]..44

Rajeshwari Vs. State rep by The Inspector of Police, Kovilpatti West Police Station [Crl. A(MD)No.283 of 2020] 45

Rasiyappan Vs. The Sub Inspector of Police, District Crime Branch Police Station, Dindigul District [CRL OP(MD). No.22934 of 2022]..47

Timothy Donald Archer Vs. The Foreigner Regulation Registration Officer (FRRO) Bureau of Immigration, Government of India and Ors. [W.P.(MD)No.27937 of 2022]..49



SUPREME COURT – CIVIL CASES

Basavaraj Vs. Padmavathi & Anr. [C.A. No.8962 of 2023]
Date of Judgment: 05-01-2023

Suit for Specific Performance

The Hon'ble Supreme Court decided a Civil Appeal challenging the judgment and decree passed on Specific Performance of the sale agreement dated on 13.03.2007.

The Apex Court referred to the decision on *Indira Kaur and Ors. Vs. Sheo Lal Kapoor [(1988) 2 SCC 488]* after considering the observation made in the case of *Ramrati Kuer Vs. Dwarika Prasad Singh [(1967) 1 SCR 153]*, wherein the court held that, unless the plaintiff was called upon to produce the passbook either by the defendant or, the court orders him to do so, no adverse inference can be drawn.

The Apex Court held that, whereby an adverse inference had been drawn against the plaintiff therein for not producing the passbook and thereby holding that the plaintiff was not ready and willing to perform his part of the agreement. Unless the plaintiff was called upon to produce the passbook by either the defendant or, the Court orders him to do so, no adverse inference can be drawn.

The Apex Court considered the impugned judgment and order passed by the High Court to be unsustainable, quashed and set aside. Thus, the Apex Court restored the judgment passed by the learned Trial Court for specific performance of the agreement to sell dated 13.03.2007.

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Gohar Mohammed Vs. Uttar Pradesh State Road Transport Corporation & Ors. [Civil Appeal No. 9322 of 2022]

Date of Judgment; 15-01-2022

Motor Accident Claims Tribunal

The Hon'ble Supreme Court decided a Civil Appeal arising from an award of the Motor Accidents Claims Tribunal. The Apex Court held that, Appellant did not have a valid and effective permit to ply the offending vehicle on the route where the accident took place, and thus dismissed the Appeal.

The Apex Court then dealt with the concern regarding the delay in disposal of Motor Accident Claims cases. The Apex Court traced the evolution of the law on Motor Accidents and reiterated the responsibilities of an Investigation Officer to complete all their action within the time frame and act as facilitator to the victim(s)/claimant(s), insurance company by furnishing all details in prescribed forms, thereby claimant(s) may get damages/compensation without delay.

The Apex Court also emphasized the procedure to be followed by the Claims Tribunal as per Sections 149 and 166 of the Motor Vehicles Act. The registering authority is also bound to take action in the matter of verification of the permit, fitness of vehicle, driver licence and on other ancillary issues. The insurance company is bound to appoint the Nodal Officer as per Rule 24 to facilitate the Investigating Officer in the matter of enquiry and investigation, submitting details regarding insurance and coordinate with the stakeholders.

In order to curb delay on account of pendency of claim petition(s) before different Claim Tribunals within the territorial jurisdiction of different High Courts, the Apex Court directed that on initiation of the proceedings under Section 149, registering a Miscellaneous Application by the Claims Tribunal, in whose jurisdiction the accident occurred would continue until the proceedings under Section 166 has been filed by the claimant(s) separately. In the event of filing a separate application and on receiving the information in this regard either from the claimant(s), or investigating officer or insurance company, the proceedings under Section 149 shall be deemed as closed and be tagged with the proceedings of Sections 164/166 filed by the

claimant(s). In case the claimant(s)/legal representative(s) have filed different applications under Section 166 before different Claim Tribunals at different places outside the territorial jurisdiction of one High Court, in the said contingency the Claims Tribunal, where the first claim petition is filed shall have jurisdiction to adjudicate and decide the same and other claim petition(s) filed by the claimant(s)/legal representative(s) in the territorial limits of other High Courts shall stand transferred to the Claims Tribunal where the first claim petition was filed and the proceedings under Section 149 shall be tagged with the said file. The Apex Court directed that Registrar General of the High Courts shall issue appropriate orders for transferring the subsequent proceedings and records to the Claims Tribunal where the first claim petition filed by the claimant(s) is pending. The parties are not required to file any transfer petition before this Court seeking order of transfer in such individual cases pending in the jurisdiction of different High Courts.

The Apex Court found that, it is urged, the legislation to pay compensation in monetary terms for damages to person or property cannot put the claimant into his original position. *What may be the adequate amount for a wrongful act is an extreme task.* The payment of compensation in a case of death or for damage to the body in a motor accident claim may be based on arithmetical calculation. Therefore, in assessing the compensation uniformity and reasonability are required to be followed.

- In High Courts where the distribution of police stations and specified Claims Tribunals is not already in force, steps shall be taken by the Registrar Generals to prepare distribution memos and notify the same time to time, thereby the proceedings under Section 149 may continue effectively in such Claim Tribunals without any delay.
- The Designated Officer, while making an offer, shall assign detailed reasons to show that the amount which is offered is just and reasonable. In case, the said offer is not accepted by the claimant(s), the onus would shift on the

claimant(s) to seek for enhancement of the amount of compensation and the said enquiry under Section 149(3) would be limited for enhancement only.

- If the claimant(s) wants to exercise the option under Section 166(2) of the M.V. Amendment Act, they are free to take such recourse by joining the Designated Officer/Nodal Officer of the insurance company of the place where the accident occurred as respondent in the claim petition.
- The Head of the Home Department of the State and the Director General of Police in all States/Union Territories shall ensure the compliance of the Rules by constituting a special unit in the police stations or at least at town level to investigate and facilitate the motor accident claim cases. The said action must be ensured within a period of three months from today.

The Apex Court gave a slew of further directions for efficient disposal of MACT cases, and thus disposed of the Appeal.

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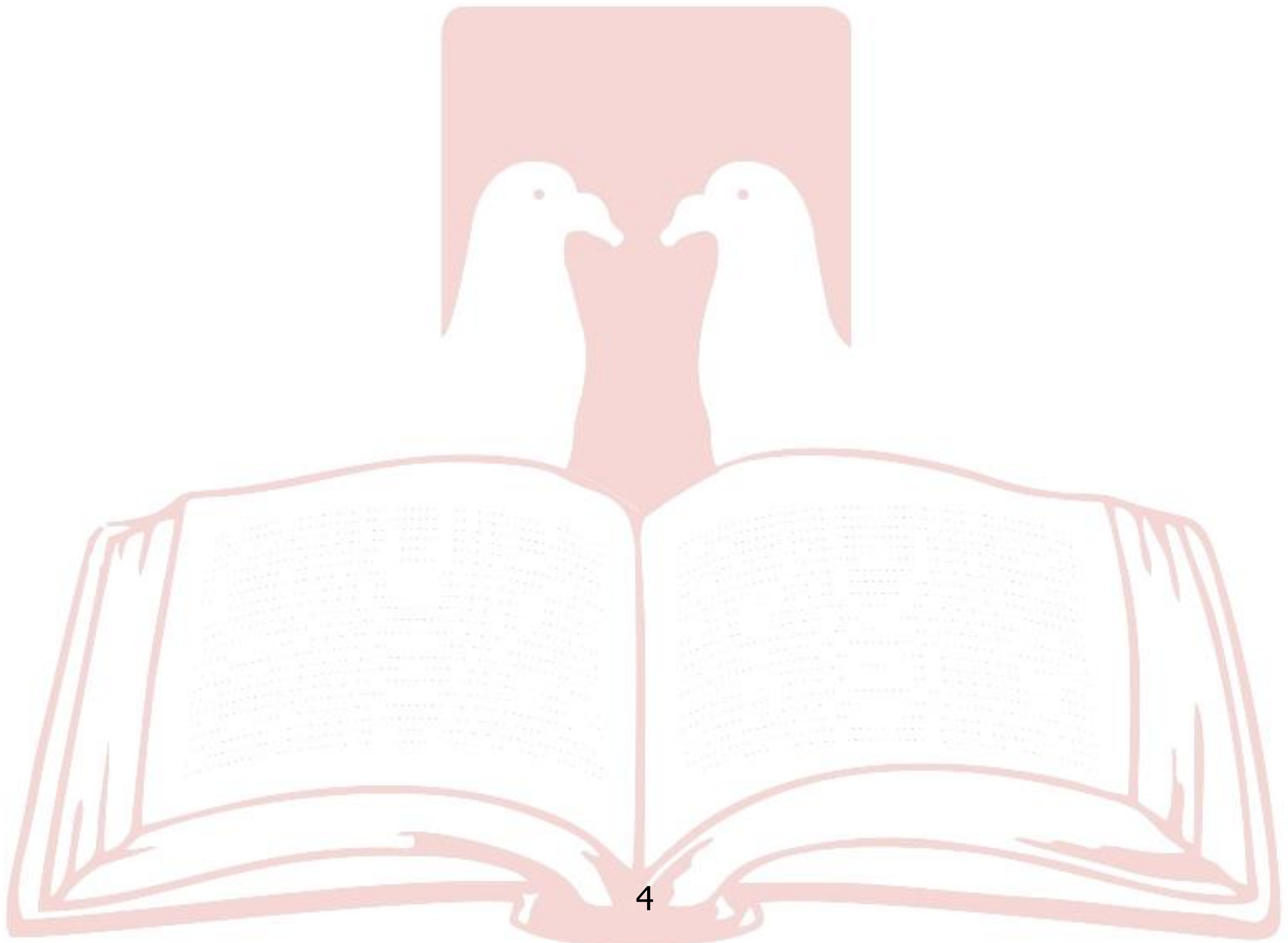

IFB Agro Industries Ltd. Vs. SICGIL India Ltd & Ors. [Civil Appeal No. 2030 of 2019]

Date of Judgment: 04-01-2023

Rectificatory jurisdiction - National Company Law Tribunal - Section 59 - Companies Act, 2013 - EBI (SAST) Regulations, 1997 - SEBI (PIT) Regulations, 1992

The Hon'ble Supreme Court considered Civil Appeal on the scope of rectificatory jurisdiction of the National Company Law Tribunal under Section 59 of the Companies Act, 2013.

The Apex Court observed that, regulatory control by an independent body composed of domain experts enables a consistent, transparent, independent, proportionate, and accountable administration and development of the sector. All this is achieved by way of legislative enactments, which establish independent regulatory bodies with specified powers and functions. They exercise powers and functions, which have a combination of legislative, executive, and judicial features.

The Court relied on *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. & Ors.* [*(1998) 7 SCC 105*] to hold that the rectificatory jurisdiction under Section 59 of the Companies Act, 2013 is summary in nature and not intended to be exercised where there are contested facts and disputed questions. The Apex Court on a comparative note held that, the rectificatory powers of a Board/Company Court remain same in all the previous enactments of the Companies Act.

The Apex Court held that, it is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry.

Thus, the Apex Court with no order as to costs dismissed the Civil Appeal.

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M/S Indian Medicines Pharmaceuticals Corporation Ltd Vs. Kerala Ayurvedic Co Operative Society Ltd. & Ors. [Civil Appeal No 6693 of 2022]

Date of Judgment: 03-01-2023

Ayurvedic-Medicine-Quality-Medicine- Arbitrary- Interpretation of the Operational Guidelines

The Hon'ble Supreme Court considered a special leave petition challenging the Order of the High Court. The special leave petition considered the test of just, fair and reasonableness of a Government action.

The Apex Court referred to the case *K Achuthan Vs. State of Kerala [AIR 1959 SC 490]* and held that it is open to the Government to choose a person to their liking, to fulfill contracts which they wish to be performed. The Court observed that, when one party is chosen over another, the aggrieved party could not claim the protection of Article 14 since the Government has the discretion to choose with whom it will contract.

The Apex Court held that, the Government could not act arbitrarily while dealing with the public, whether it is while giving jobs or entering into contracts. A transparent process must award government contracts. The process of inviting tenders ensures a level playing field for competing entities. While there may be situations, which warrant a departure from the precept of inviting tenders or conducting public auctions, the departure must not be unreasonable or discriminatory.

There is no material on record to support the submission that IMPCL is the only establishment among the establishments mentioned in paragraph 4(vi)(a) that manufacture good quality Ayurvedic drugs. In fact, paragraph 4(vi)(b) states that 50 percent of the grant-in-aid shall be used to purchase medicines from the units mentioned in the paragraph "keeping in view the need for ensuring quality of AYUSH drugs and medicines."

Thus, the Apex Court dismissed the Special Leave Petition.

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M/s. Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr. Vs. Prudent ARC Ltd. & Ors. [Civil Appeal No. 8969 of 2022]

Date of Judgment: 05-01-2023

Section 18 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

The Hon'ble Supreme Court decided Civil Appeal decided the interpretation of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The Apex Court held that, u/S. 17, the scope of enquiry is limited to the steps taken u/S. 13(4) against the secured assets. Therefore, whatever amount is mentioned in the notice u/S. 13(2) of the SARFAESI Act, in case steps taken u/S. 13(2)/13(4) against the secured assets are under challenge 18 before the DRAT will be the 'debt due' within the meaning of proviso to Section 18 of the SARFAESI Act. In case of challenge to the sale of the secured assets, the amount mentioned in the sale certificate will have to be considered while determining the amount of pre-deposit u/S. 18 of the SARFAESI Act. However, in a case where both are under challenge, namely, steps taken u/S. 13(4) against the secured assets and also the auction sale of the secured assets, in that case, the "debt due" shall mean any liability (inclusive of interest) which is claimed as due from any person, whichever is higher.

The Apex Court also held that, if the words used in the second proviso to Section 18 of the SARFAESI Act are "borrower has to deposit", it is not appreciable how the amount deposited by the auction purchaser on purchase of secured assets can be adjusted and/or appropriated towards the amount of pre-deposit, to be deposited by the borrower. It is the "borrower" who has to deposit the 50% of the amount of "debt due" from him. At the same time, if the borrower wants to appropriate and/or adjust the amount realized from sale of the secured assets deposited by the auction purchaser, the borrower has to accept the auction sale. In other words, the borrower can take the benefit of the amount received by the creditor in an auction sale only if he unequivocally accepts the sale. In a case where the borrower also challenges the auction sale and does not accept the same and also challenges the steps taken u/S. 13(2)/13(4) of the SARFAESI Act with respect to secured assets,

the borrower has to deposit 50% of the amount claimed by the secured creditor along with interest as per section 2(g) of the Act 1993 and as per section 2(g), “debt” means any liability inclusive of interest which is claimed as due from any person.

Thus, the Apex Court partly allowed the appeals.

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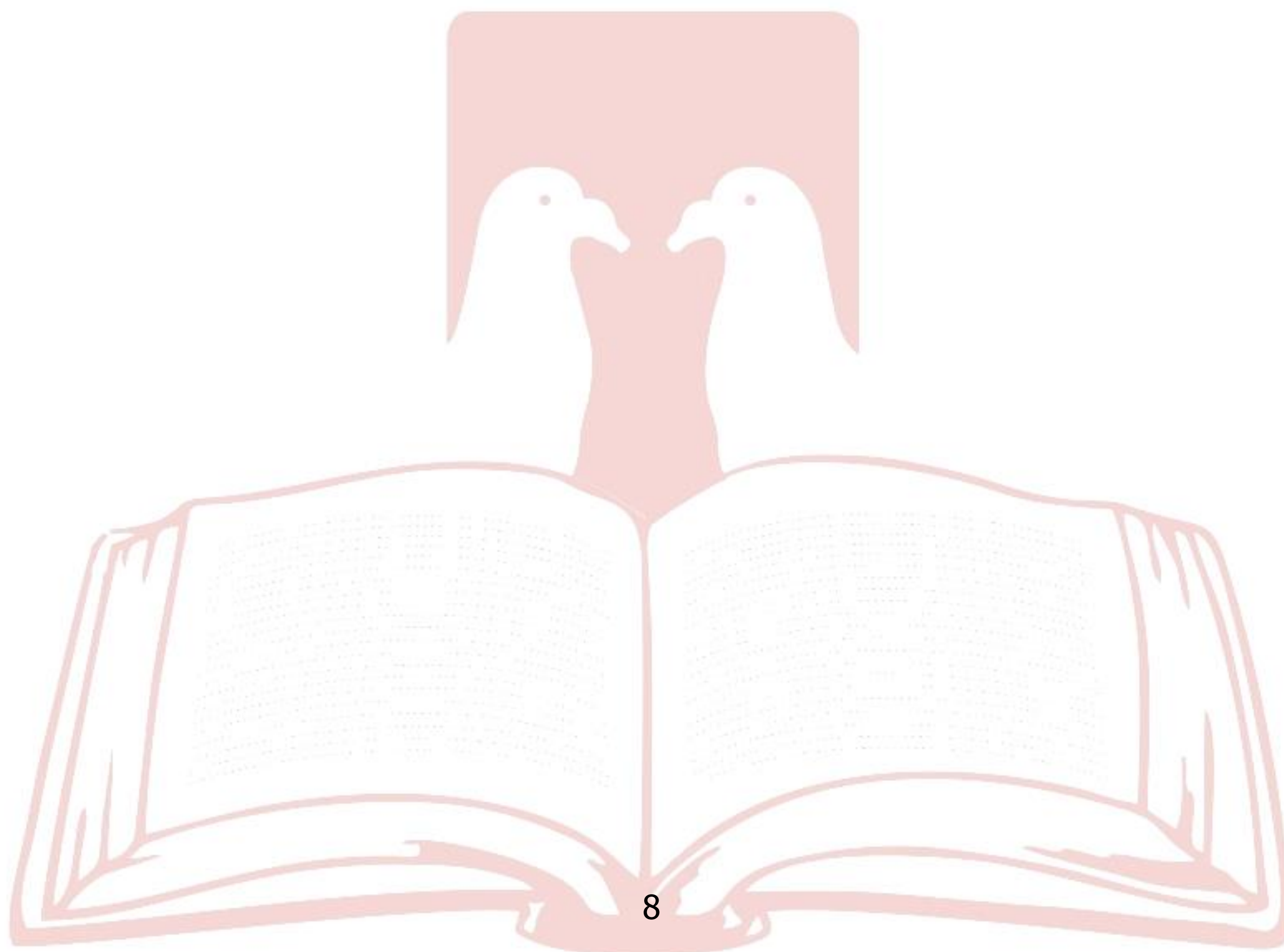

SUPREME COURT - CRIMINAL CASES

B. Venkateswaran Vs. P. Bakthavatchalam [Criminal Appeal No. 1555 of 2022]

Date of Judgment: 05-01-2023

3(1)(v) and (va) - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Hon'ble Supreme Court considered the impugned judgment and order passed by the High Court of Judicature at Madras for the offence under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the accused have preferred present appeal.

The respondent filed a private complaint under Section 200 of the Code of Criminal Procedure in the Court of learned Metropolitan Magistrate, Egmore, Chennai for alleged offence under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 alleging inter alia that the petitioners herein – original accused have conspired and unlawfully encroached the pathway adjacent to his house and started to construct temple. It was alleged that the said temple was built up on the complainant water pipeline, Sewage Pipeline and EB cable and thereby caused obstructions to him to enjoy his property. Being aggrieved and dissatisfied with the summons issued by the learned Special Court, the accused persons filed the petition under Section 482 of the Code of Criminal Procedure before the High Court to quash the criminal proceedings against them.

The Apex Court held that, when no case for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, even prima facie and when none of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/ or satisfied, in the case at hand the High Court ought to have quashed the criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure.

Thus, the Apex Court allowed the appeal.

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Hasmukhlal D. Vora Vs. State of T.N. [Criminal Appeal No. 2310 of 2022]

Date of Judgment: 16-12-2022

Criminal Procedure - Drugs and Cosmetics Act, 1940 - Food Safety and Standards Act, 2006

The Hon'ble Supreme Court considered a criminal appeal where the Appellants' plea under Section 482 of the Cr. P.C. to quash the criminal complaint against them was dismissed.

The Apex Court observed that, for the quashing of a criminal complaint, the Court, when it exercises its power under Section 482 Cr. P.C., only has to consider whether the allegations in the complaint disclose the commission of a cognizable offence. The Apex Court highlighted that, the broad guidelines for quashing a criminal complaint.

The Apex Court quoting a plethora of decisions[*], highlighted on what evidence and material can get into in cases where a prayer for quashing a complaint has been made and summarized to some categories of cases where inherent power can and should be exercised to quash the proceedings.

The Apex Court held that, while inordinate delay in itself may not be a ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint. The purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.

Thus, the Apex Court allowed the Appeal.

See Also

- State Of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335].
- State of Andhra Pradesh Vs. Golconda Linga Swamy [(2004) 6 SCC 522]
- R.P. Kapur Vs. State of Punjab [(1960) 3 SCC 388]

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Iqram Vs. State of U.P [Criminal Appeal No 2319 of 2022]

Date of Judgment: 16-12-2022

Criminal Procedure – Sentence – Consecutive – Concurrent

The Hon'ble Supreme Court considered a case in which the appellant was charged with and put to trial in respect of nine distinct first information reports relating to alleged incidents involving the theft of electricity equipment belonging to the Electricity Department of the State of Uttar Pradesh. Nine sessions trials were conducted by the Additional District and Sessions Judge-I, Hapur1. The number of accused in each of the sessions trial varies. The appellant was the constant feature in all the nine trials. The appellant agreed to plea bargain.

The Apex Court observed that, the plea bargain was with reference to the provisions of Chapter XXI-A of the CrPC. Section 265-G stipulates that the judgment delivered by the Court shall be final and no appeal (except a Special Leave Petition under Article 136 and a Writ Petition under Articles 226 and 227 of the Constitution) shall lie in any court against such a judgment. Section 427 provides that when a person 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, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. Sub-section (1) of Section 427 confers a discretion on the court to direct that the subsequent sentence following a conviction shall run concurrently with the previous sentence.

The Apex Court expressed its anguish and held that, the facts of the present case provide another instance, a glaring one at that, indicating a justification for this Court to exercise its jurisdiction as a protector of the fundamental right to life and personal liberty inhering in every citizen.

Thus, the Apex Court disposed of the Criminal Appeal.

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Kaushal Kishor Vs. State of U.P. [Writ Petition (Criminal) No. 113 of 2016]

Date of Judgment: 03-01-2023

Criminal defamation - Constitutional Tort

The Hon'ble Supreme Court considered the following issues in this Writ Petition.

The Apex Court considered five fundamental issues

A. Can the Freedom of Speech and Expression be restricted on grounds outside of those contained in Article 19(2) of the Constitution?

B. Can citizens claim right to life and liberty violations under Article 21 of the Constitution against non-State actors like other private individuals?

C. Does the State have an obligation to protect citizens from violations of their Right to Life and Personal Liberty from other non-State actors?

D. Can statements made by public officials be attributed to the government if it is linked to state affairs?

E. Can governments be held responsible for the statements of public officials which result in constitutional rights violations?

The Apex Court observed that, all such statements need not necessarily give rise to an action in tort or in constitutional tort.

The Apex Court held that, insensitivity or lack of understanding or low constitutional morality to use a language that has the potential to demean the constitutional rights of the women could not be a ground for action in Constitutional tort. The Apex Court emphasized the need to have a proper framework to define what would amount to Constitutional tort. It is not prudent to treat all cases where a statement made by a public functionary resulting in harm or loss to a person/citizen, as a constitutional tort. No one could either be taxed or penalised for holding an opinion, which is not in conformity with the constitutional values.

Thus, the Apex Court delivered its 4:1 decision.

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Prem Singh Vs. State (NCT of Delhi) [Criminal Appeal No. 01 of 2023]

Date of Judgment: 02-01-2023

Circumstantial Evidence - Burden Of Explanation - Hostile Witness – Motive

The Hon'ble Supreme Court considered this appeal directed against the judgment and order passed by the High Court of Delhi at New Delhi whereby the appellant was held guilty of offences punishable under Sections 302 and 201 of the Penal Code, 18601 and was awarded varying punishments, including that of imprisonment for life for the offence under Section 302 IPC.

The Apex Court observed that, it is, of course, the duty of prosecution to lead the primary evidence of proving its case beyond reasonable doubt but, when necessary evidence had indeed been led, the corresponding burden was heavy on the appellant in terms of Section 106 of the Evidence Act to explain as to what had happened at the time of incident and as to how the death of the deceased occurred. There had not been any explanation on the part of the appellant and, as noticed, immediately after the incident, he attempted to create a false narrative of accidental drowning of the children. There had not been any specific response from the appellant in his statement under Section 313 Cr.P.C either.

The Apex Court also observed that, the evidence on record, taken as a whole, at the most shows that the appellant was addicted to alcohol and was admitted to the rehabilitation centre for de-addiction. However, there is absolutely nothing on record to show that the appellant was medically treated as a person of unsound mind or was legally required to be taken as a person of unsound mind.

There was no fault on the part of the Trial Court or the investigating agency, it is also noteworthy that contrary to even a trace of want of mental capacity of the appellant at the time of commission of the crimes in question, the manner of commission, with strangulation of the children one by one; throwing of their dead bodies into the canal; appellant himself swimming in the canal and coming out; and immediately thereafter, stating before several persons that the children had accidentally slipped into the canal so as to project it as a case of accidental drowning, if at all, show an alert and calculative mind, which had worked with

specific intent to cause the death of the children and to cause disappearance of evidence by throwing dead bodies into the canal and thereafter, to mislead by giving a false narrative. By no logic and by no measure of assessment, the appellant, who is found to have carried all the aforesaid misdeeds, could be said to be a person of unsound mind.

The Apex Court held that, where the accused is charged of murder, the burden to prove that the murder was a result of unsoundness of mind and that the accused was incapable of knowing the consequences of his acts is on the defence.

Thus, the Apex Court dismissed the appeal.

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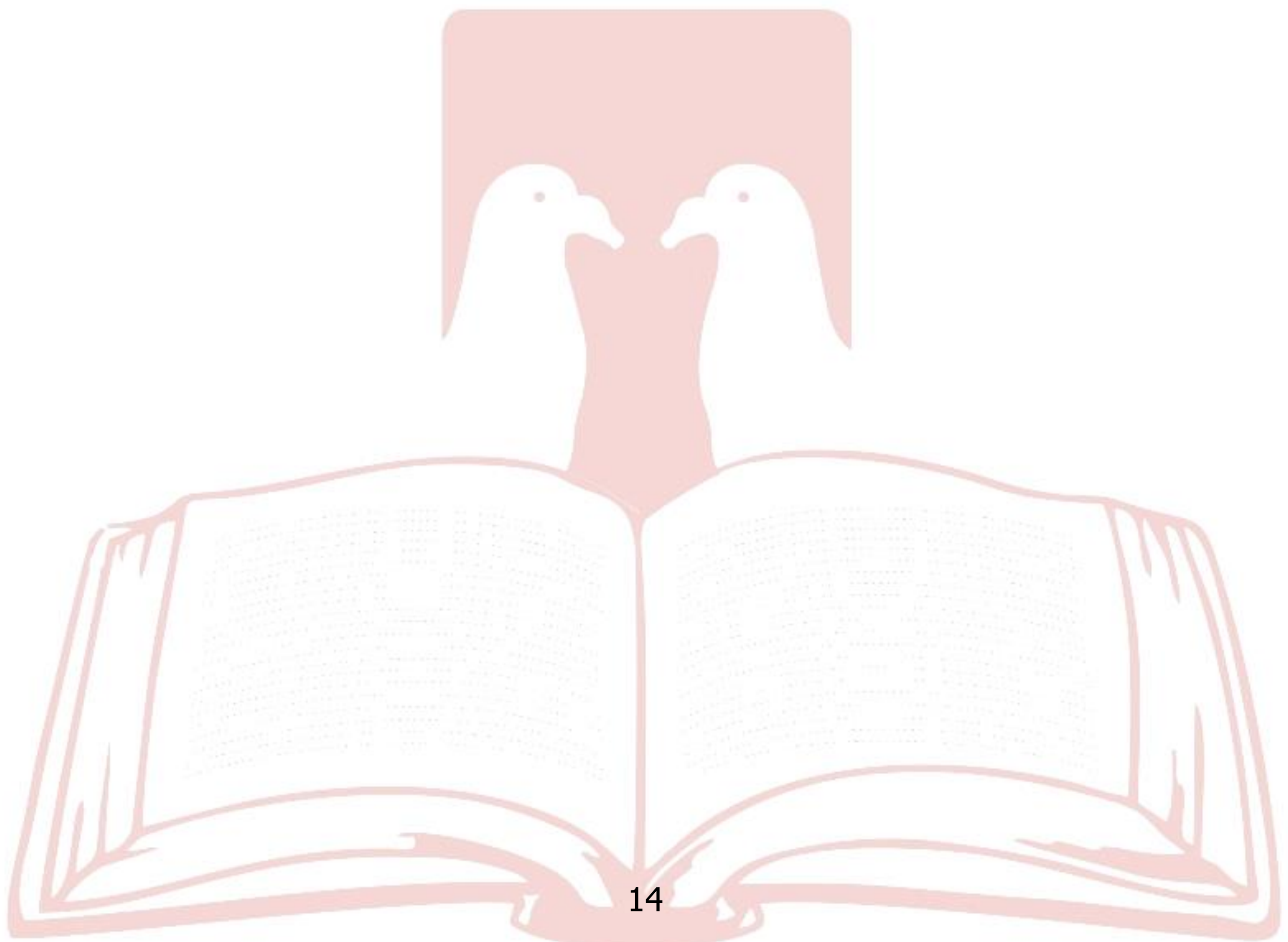

HIGH COURT - CIVIL CASES

Durgai Lakshmi Kalyana Mandapam Vs. Idols of Arulmigu Siddhi Ganesar Natarja Perumal [A.S. No. 397 of 2010]

Date of Judgment: 15.03.2023

Sections 78 - 79 - 6(15) - Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

The Hon'ble Madras High Court considered this Appeal Suit filed under Section 96 and Or XLI R 1 and 2 of CPC to set aside judgment and decree passed to declare that the plaintiff temple will be entitled to manage and administer the Durgai Lakshmi Kalyana Mandapam and to direct the defendants to quit and deliver vacant possession of the schedule properties and for verifying the accounts and rents.

The Court observed that, by considering Sections 6 & 45 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, when the powers and duties are to be defined by the Commissioner at the time of appointment of the Executive Officer, it is held that unless the Commissioner expressly authorizes the filing of the suit by the Executive Officer, the suit is not maintainable.

The Court further observed that, always the march of law has to be seen with reference to the social transformation and in tune with societal concerns. It could be seen that there were times when people were donating their properties to Temples. Temple properties were not earning great income and quite often Trustees in their discretion permitted persons to occupy or cultivate the same. Many a times if they default to pay the meagre rent, still action was not taken considering their economic background or their services to the temple. Generally, people had a sentiment/fear not to exploit the temple property. However, with the population growth and urbanisation, this sentiment has vanished in thin air and the properties of the temple, be it residential plots or commercial buildings or agricultural lands are encroached upon without any guilt and the temple is divested of the income. Thus, the 'power' to file a suit has transformed into a 'duty' to file a suit. When the law has been laid down that it is the duty of the Executive Officer to protect the property and it is incumbent upon him to file the suit, then Section 45 can no more be read

as requiring an express authorisation to file a suit as the very appointment enjoins the said duty.

On maintainability of the appeal suit the Court held that, the Court being the *parens patriae* in respect of the Temple and its properties, the Executive Officer only sets the law in motion by filing the suit.

On a perusal of the records, except Ex.B-4 rental bill book, no accounts have been produced by the second and the third defendants even before the Court. The third defendant remained ex parte. The written statement of the second defendant does not even contain any averment that he is properly maintaining the accounts or the monies, out of the income from the endowment, being paid to the temple. The first defendant, Mandapam, is held to be a specific endowment of the temple and once there is mismanagement, the temple is entitled to recover. The only defence which is taken in the written statement is that an appeal against the order refusing to appoint the second defendant's father as Hereditary Trustee is pending. However, neither in the pleadings nor in the evidence a copy of the said appeal is produced. No particulars are furnished even during the arguments. Therefore, the second and the third defendants do not have any defence whatsoever in respect of the mismanagement and therefore, the plaintiff temple is entitled for the said reliefs.

Thus, the Court dismissed the Appeal Suit.

See Also

- Sri Arthanaeeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy Vs. T.M. Muthusamy Padayachi [2002 SCC OnLine Mad 514]
- A.N. Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamali, rep. by its Executive Officer (Asst. Commissioner) Thiruvannamalai [(2011) 2 LW 1]
- Joint Commissioner, HR & CE, Admn. Deptt. Vs. Jayaraman [(2006) 1 SCC 257]

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K.B. Hemchand Vs. K.J. Shankar & Ors. [C.M.A.No.2701 of 2013]
Date of Judgment: 10.01.2023

Auction sale — mortgage decree — Order XXXIV Rule 5 and Order XXI Rule 89 CPC

The Hon'ble High Court decided a Civil Miscellaneous Appeal concerning the setting aside of an auction sale pursuant to a mortgage decree. The Court referred to several judicial precedents* and enlisted the principles as follows:

a) The provisions of Order XXXIV Rule 5 CPC is available to a mortgagor in the case of a mortgage decree till the confirmation of sale and once the provision is invoked and there is a due compliance of the deposit, the Court is bound to set aside the sale/ put the mortgagor in possession/ direct the mortgagee to hand over the original title deeds to the mortgagor.

b) For invoking the remedy under Order XXXIV Rule 5 CPC it is not mandatory that it should be in the form of an application, the same could be in the form of an objections with deposit of the entire amount or by an oral representation however with due compliance of the provision of deposit.

c) The provisions of Order XXXIV Rue 5 CPC can be invoked when an appeal or revision is filed as well and would apply parallely along with an application filed under the provisions of Order XXI Rule 89 CPC.

d) The provisions of Order XXXIV Rule 5 CPC stand on a different footing and on a higher plane from the provisions of Order XXI Rule 89, 90 and 92 of the CPC.

e) The provisions of Order XXI Rule 89 CPC would apply to mortgage decrees where there is no challenge to the decree and amounts have not been deposited as contemplated under the provisions of Order XXXIV Rule 5 CPC.

f) This Right of the mortgagor is based on the provisions of Section 60 of the Transfer of Property Act. Since the general principle is that there can be no clog on redemption until the sale is finally concluded by orders of Court or by confirmation of sale or by sale becoming absolute as per Order XXI Rule 92 CPC.

The Court held that the right of a mortgagor to redeem the property and have the sale set aside stands on a higher platform than the right given to the other judgement debtors.

Thus, the Court upheld the Judgment and Decree of the trial Court and dismissed the Civil Miscellaneous Appeal.

*__See Also__

- Valliammal Vs. Subramania Iyer [(1964) 1 MLJ 275]
- Varadarajan Vs. Muthu Venkatapathi Reddy [(1953) 1 MLJ 148]
- Ramathal Vs. Nagarathinammal [(1967) 1 MLJ 260]
- S.V. Ramalingam & Ors. Vs. K.E. Rajagopalan & Anr. [1975 2 MLJ 494]
- Kaliammal & Ors. Vs. S.A.S. Alagappa Chettiar & Ors. [(1989) 2 MLJ 212]
- Magan Lal Vs. M/s. Jaiswal. Industries, Neemach [AIR 1989 SC 2113]
- U. Nilan Vs. Kannayyan [AIR 1999 SC 3750]
- N. Krishnamoorthy Vs. N.M.A.R.H. Ramaswamy Chettiar & Ors. [AIR 1992 Mad 200]
- Challamane Huchha Gowda Vs. M.R. Tirumala & Anr. [(2004) 1 SCC 453]
- Hukumchand Vs. Bansilal & Ors. [AIR 1968 SCC 86]

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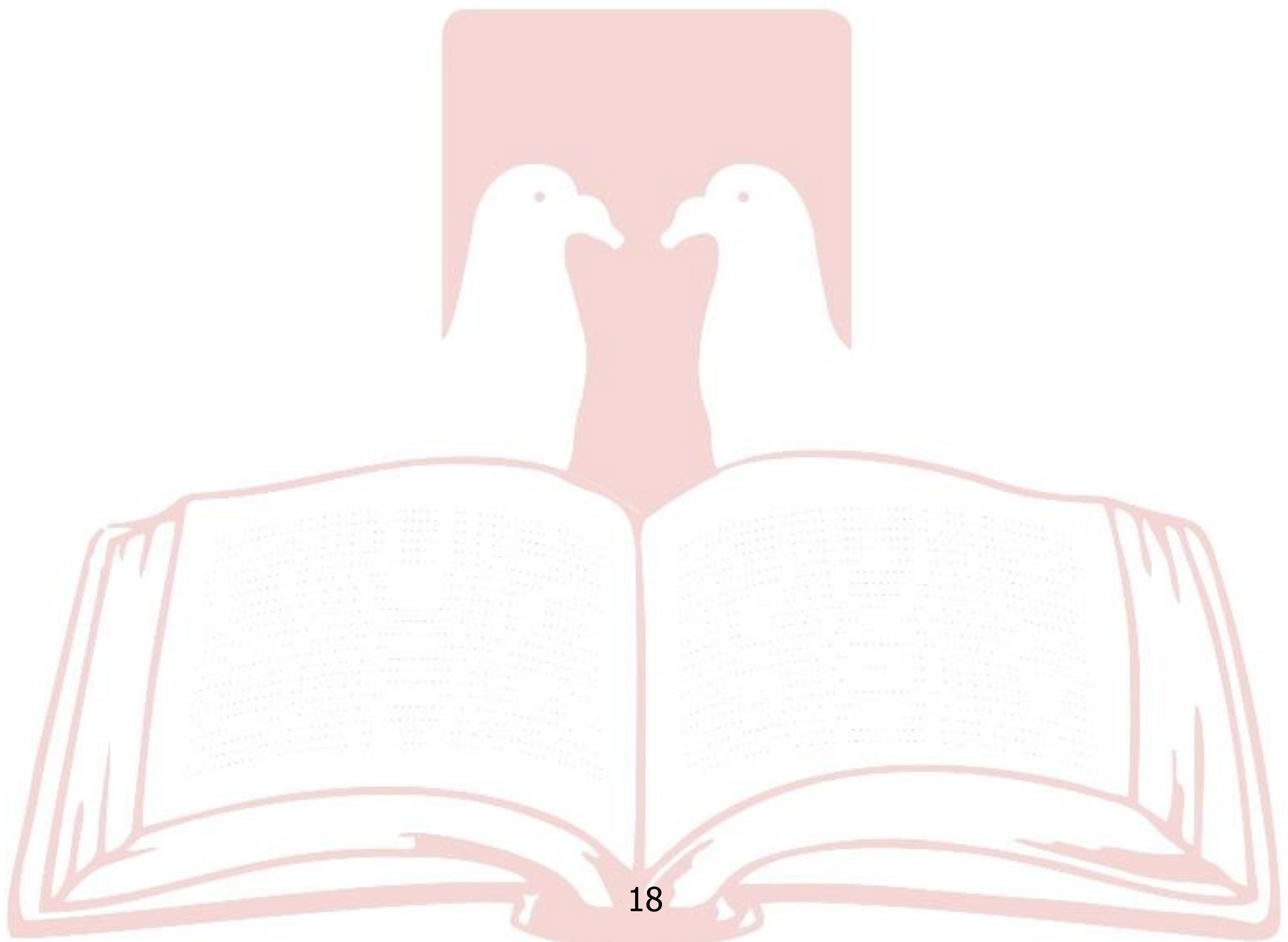

M. Vijayakumar Vs. V. Subba Reddy (Died) [A.S.No.930 of 2012]
Date of Judgment: 22-12-2022

Specific performance — readiness and willingness

The Hon'ble High Court decided an Appeal Suit challenging the judgement and decree declining the relief of specific performance.

The Court observed that the concept of readiness and willingness implies to two aspects. Whereas readiness refers to the possession of funds or the capacity to mobilize funds, willingness on the other hand refers to the conduct of the party and the attending circumstances which would reflect his willingness throughout to perform his part of the contract in terms thereof. The Court found that in the absence of specific pleading that the plaintiff either had the funds or he had the capacity to mobilize the funds it cannot be said that the plaintiff was ready to perform his obligations.

The Court referred to *U.N. Krishnamurthy Vs. A.M. Krishnamurthy [2022 SCC OnLine 840]* and observed that a fleeting statement in the plaint or evidence does not satisfy the mandatory requirements of Section 16(c), Specific Relief Act. The Court found that the Plaintiff was never ready and willing to perform his part of the contract in terms thereof and there has been no compliance of Section 16 of the Specific Relief Act by the Plaintiff.

On whether time is essence of the contract, the Court referred to *Chand Rani Vs. Kamal Rani [1993 1 SCC 519]*, *K.S. Vidyanadam & Ors. Vs. Vairavan [1997 (1) SCR 993]* and *Saradhamani Kandappan Vs. S.Rajalakshmi & Ors. [2011 (12) SCC 18]*, and observed that when time is stipulated under the contract the same cannot be totally ignored and some sanctity has to be attached to the same. The Court found that since the Plaintiff failed to perform his obligations under the contract, within the prescribed time period, he was disentitled to relief.

Thus, the Court confirmed the Judgment and Decree of the trial Court and dismissed the Appeal.

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M/s. Ashok Leyland Finance Limited Vs. The Deputy Commissioner of Income Tax, Company Circle 1(1), Chennai [T.C.A.No.1025 of 2009]

Date of Judgment: 29.12.2022

Appeal u/s. 260A of IT, Act - income redetermined - Commission passed order u/s. 263 of IT Act

An appeal under Section 260A of the Income Tax Act, 1961 was filed in the High court against the order of the Income Tax Appellate Tribunal. The crux of case on hand is, the appellant, a leasing company is engaged in the business of hire, purchase, finance, leasing of motor vehicles and bill discounting etc., had filed its return of income under Section 139 of the Income Tax Act, 1961 for the assessment year 2002-2003, thereby declaring a "taxable income" of Rs.52,51,21,000/-.

It is said that, the return was processed under Section 143(1) of the Income Tax Act, 1961 and upon scrutinization, a notice under Section 143(2) of the Income Tax Act, 1961 was issued to the appellant. The Assessment was thereafter completed under Section 143(3) of the Income Tax Act, 1961 and income of the appellant was re-determined as Rs.57,36,86,630/-.

However, in the year 2006 the Commissioner of Income Tax had invoked Section 263 of the Income Tax Act, 1961 and issued a Show Cause Notice to the appellant to revise the assessment on the ground that an amount of Rs.338.92 Lakhs was wrongly debited under the head "Provisions and Write Off" as a diminution in value of repossessed stock was not an allowable expenditure. It is said that, the reply to the show cause notice by the appellant was rejected by the Commissioner of Income Tax and passed an order under Section 263 of the Income Tax Act, 1961. Further it is said that, the Commissioner of Income Tax directed the Assessing Officer to revise the assessment by adding back the amount debited by the appellant towards diminution in the value of repossessed assets.

Aggrieved by the order of the Commissioner of Income Tax, the appellant had approached the Income Tax Appellate Tribunal which was dismissed by the tribunal. Aggrieved by the dismissal the appellate has now approached this Hon'ble Court.

The Hon'ble High Court opined that, the appellant had wrongly debited a sum of Rs.338.92 lakhs under the headings 'provision and write-off' as the diminution in the value of the repossessed stock and it was not allowable expenditure. Further, the Court observed that, "..*it is evident that the order passed by the Assessing Officer was not only erroneous but also prejudicial to the interest of the revenue"*.

In lieu of the assessment under Section 143(3) of the Income Tax Act, 1961, the Hon'ble Court held that, it was not only erroneous but also was passed in a manner prejudicial to the interest of the revenue. Therefore, the Commissioner of Income Tax Act, 1961 had correctly invoked the power under Section 263 of the Income Tax Act, 1961. In fine, the Court dismissed the appeal.

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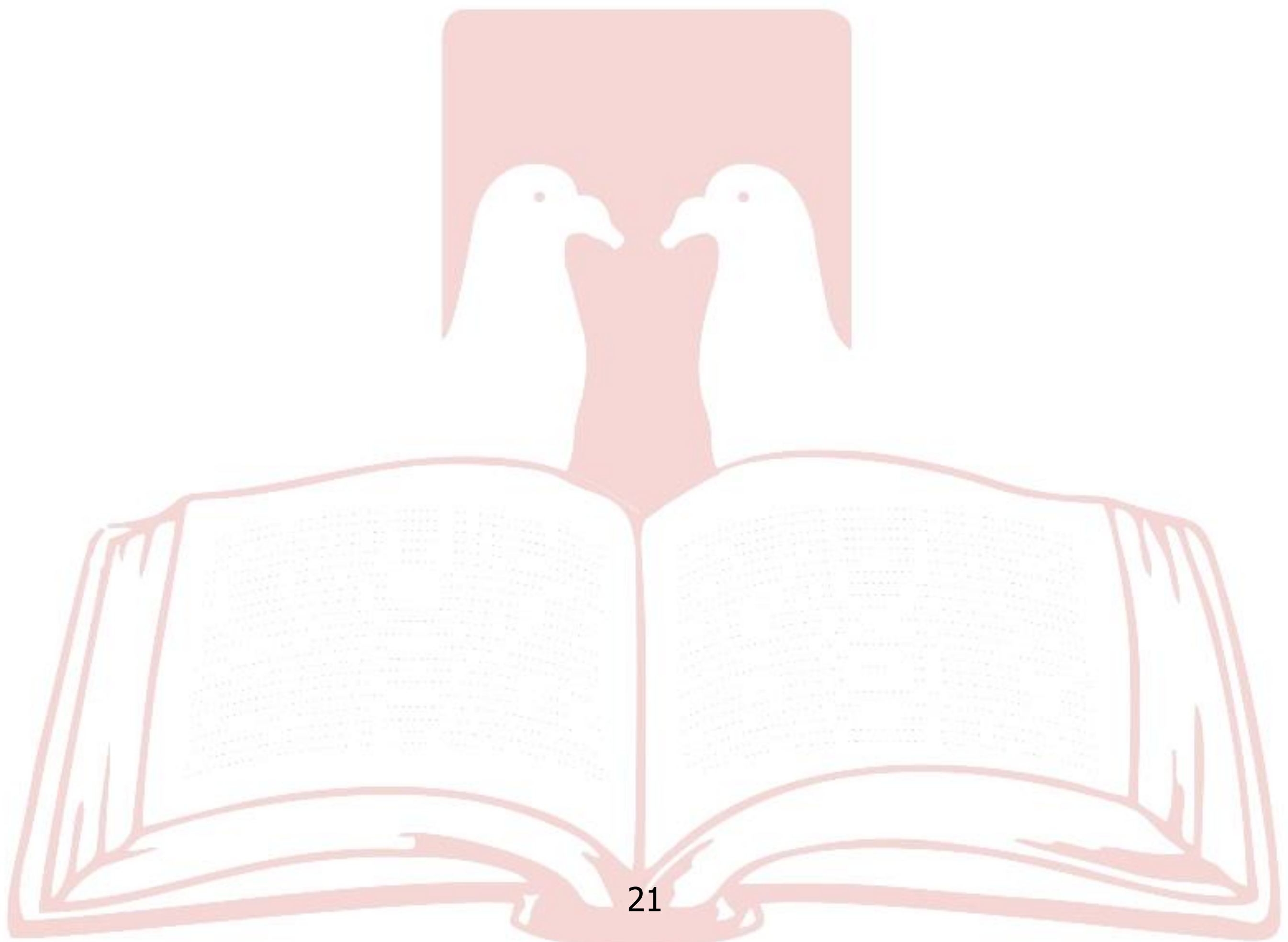

M/s. Naramada Infrastructure Construction Enterprises Limited & Anr. Vs. The Assistant Commissioner of Income Tax [T.C.A.Nos.868 to 870 of 2009]

Date of Judgment: 29.12.2022

Income Tax

The Hon'ble High Court considered a batch of tax case appeals arising out of a concessionaire agreement for construction of a Toll Bridge built under the Build and Transfer Operative scheme was "plant" for the purpose of Income Tax Act, 1961 and therefore the assessee was entitled to depreciation at 35%.

The Court delved deeply into the definitions of "Plant" "Plant" in section 43(3) of the Income Tax Act, 1961, and emphasized that, "Toll Bridge" constructed nor the "Toll Road" laid by the respective assessee are a "plant" for the purpose of Section 32 of the Income Tax Act, 1961. The Court affirmed that, a claim for depreciation under Section 32 of the Income Tax Act, 1961 by the respective assessees are misplaced.

The Court observed that, the respective assessees as agreement holders were merely given a privilege/a right to collect tolls from vehicles passing through them as a consideration for having developed them. The right to collect toll from vehicles was merely a deferred consideration for putting up the Road and for maintaining them during the term under the respective concessionaire agreements. No separate consideration was paid to the respective assessees by the respective Governments. The rights that were conferred under the respective concessionaire agreements signed between the respective government with the respective assessees was in lieu of the consideration for completing the aforesaid road infrastructure which would have otherwise not been made available to them. It is a mechanism adopted to recuperate the expenses incurred by the respective assessees as contractee's under the respective concessionaire agreement with a scope for making reasonable profit over a period of such agreement for having put up the aforesaid road infrastructure and for maintaining them during such period. Therefore, even otherwise respective assessees are not eligible to claim depreciation under the provisions of section 32 of

the Income Tax Act, 1961 Further, depreciation is given for an asset owned by an assessee to reduce the tax liability considering the expenses incurred on "such asset" and its effective life. It is the monetary equivalent towards wear and tear of one's capital asset or building used in the business or profession. It is allowed to be set aside/saved to facilitate its replacement. The expenditure incurred by the respective assessees for constructing the "Toll Bridge" and "Toll Road" were to be amortised and written-off in the books of account over a period of time in proportion with the period during which the concessionaire agreements were to be in force as per the relevant Accounting Standards.

The Court held that, the Tribunal has erred in concluding that the Assessing Officer has taken one of the plausible view before for the benefit of depreciation at 25% on "Toll Road" as "Plant". Such view was not plausible as "Toll Roads" under the concessionaire agreement neither conferred upon the said Assessee any "Tangible Assets" nor "Intangible Assets".

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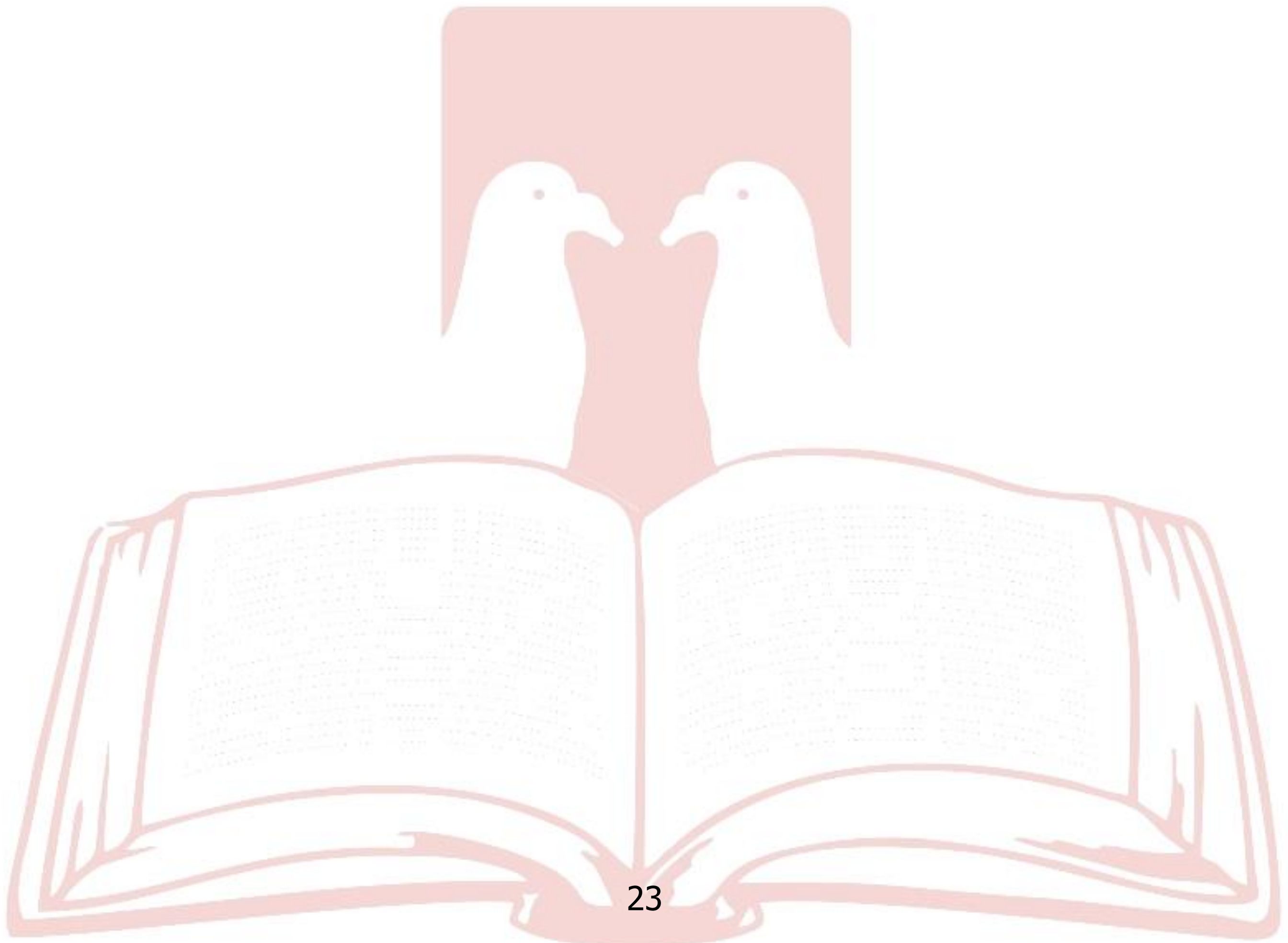

N. Karthish Vs. Nil [CRP(MD)No.2619 of 2022]
Date of Judgment: 12.01.2023

Interlocutory Application after final decree

A civil revision petition was filed the Hon'ble High Court under Article 227 of the Constitution of India to direct the Principal District Court, Ramanathapuram, to number the interlocutory application. It is said that the petitioner had filed a petition in S.O.P.No.7 of 2020 before the Principal District Court, Ramanathapuram, seeking succession certificate and the same was decreed by the learned Principal District Judge, Ramanathapuram on 08.12.2020. Thereafter, the petitioner has filed an interlocutory application under Order 6 Rule 17 CPC to add his grandfather's name in the prayer stating that it was erroneously left out.

It is said that the trial court, based on the Will dated 26.01.1999, had already passed a decree granting succession certificate and grievance of the petitioner is that he had failed to include his grandfather's name in the prayer. Therefore, he filed the present interlocutory application for amending the prayer and the trial Court returned his application stating that the main original petition was already disposed of.

The Hon'ble High Court replying on the decision of the Apex Court in *Peethani Suryanarayana v. Repaka Venkata Ramana Kishore [(2009) 11 SCC 308]* observed that, the amendment in plaint is permissible even after the passing of the final decree. Thus, the High Court disposed the present petition, with a direction to the trial court to number the interlocutory application and to decide the same, on merits, by applying the ratio laid down in *Peethani Suryanarayana's* case.

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Pugazendhi Thangaraj Vs. The Inspector of Police, K-10, Koyembedu Police Station, Chennai [W.P. No.339 of 2023]

Date of Judgment: 10.01.2023

Writ seeking grant of permission to conduct oratory competition on the 68th Birth Anniversary of late LTTE leader Prabaharan

The Hon'ble High Court dealt with a Writ of Certiorari to quash the records relating to the order passed by the respondent on 21.12.2022, in so far as the conditions viz: first part of the condition No. i, ii, iv, v, vii, viii, ix & x are concerned. The petitioner submitted that he had filed a Writ previously seeking the relief of direction to quash the order of rejection by the respondent in notice dated 03.12.2022 to conduct oratory competition on 10.12.2022 in the occasion of 68th Birth Anniversary of late Prabaharan.

It was also said that the Hon'ble High court of Madras on 14.12.2022 had disposed the previously filed Writ petition holding that petitioner may be permitted to conduct oratory competition on the 68th Birth Anniversary of late Prabaharan with suitable conditions that may be imposed by the respondent. In pursuance of the order, the respondent imposed conditions vide his letter dated 21.12.2022 numbering about ten conditions. Of these conditions, petitioner had no qualms over the condition numbers 2, 5 to 10.

The counsel for the petitioner further submitted that when the oratory competition is conducted on the eve of 68th Birth Anniversary of late Prabaharan on condition that the speech shall not eulogise the banned outfit, or its leaders either directly or indirectly and should not be against the sovereignty of the Nation is not correct and is against the freedom of speech of the participants in the oratory competition. It was also contended that the petitioner required a minimum of eight hours for organizing the oratory competition and also submitted that, since the Police are going to cover the programme for legal scrutiny, the condition that petitioner should also video-graph the entire programme is also not required.

The court agreed with the petitioner and pointed out that a requirement not to eulogise the leader is not fair or appropriate given that the competition will be held in conjunction with Late Prabaharan's 68th birth anniversary. The court held that the competition could go on for eight hours and directed that the police officials to make their own arrangements for video-graphing the competition.

Further, the Hon'ble Court held that the speech shall not be against the sovereignty of the nation, should not affect the sovereignty of the friendly relations of SAARC nations and also upheld other conditions imposed by the respondents. In fine the petition was disposed accordingly.

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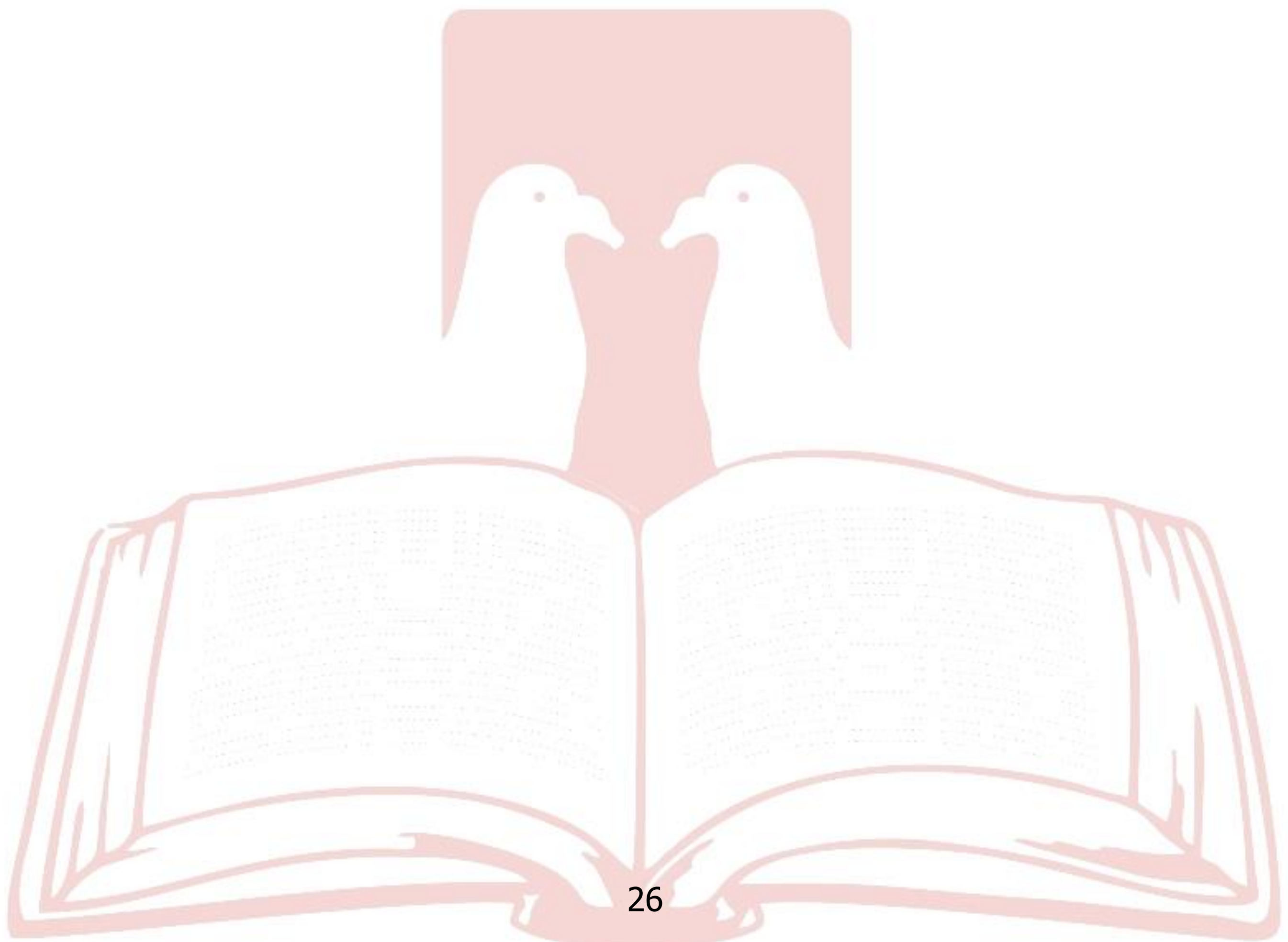

Rathinavel & Anr. Vs. Rajamanickam & Anr. [A.S.No.348 of 2014]
Date of Judgement: 22-12-2022

Indian Succession Act, 1926 — validity and execution of Will

The Hon'ble High Court decided an Appeal Suit arising from a suit for partition.

The Court found that the Will stated to be executed was not signed by the testator in the presence of two witnesses, and that therefore, its execution was not complete. The Court noted that there must be at least proper pleading before proving the due execution of the Will by examining the Sub Registrar or the identifying witnesses who have signed the document at the time of registration.

The Court reiterated the settled position that conscience of the Court must be satisfied that the Will in question is executed and attested in the manner required under the Indian Succession Act. The Will is executed to alter the mode of succession. The propounder of the Will has to remove all the suspicious circumstances which would raise some genuine doubt having regard to the nature of transaction, relationship of parties and other surrounding circumstances.

The Court referred to *Raj Kumari & Ors. Vs. Surinder Pal Sharma [2019 SCC Online SC 1747]*, and emphasised the importance of statutory requirements to prove the Will irrespective of the fact whether the execution of the Will or the signature of the testator in the Will is admitted or not.

The Court denied the Respondent further opportunity to prove attestation by examining the Registering Officer or the other identifying witness, as further evidence and held that the Will is not valid and its execution is not proved. The Court further held that the Appellants are entitled to a decree for partition.

Thus, the Court allowed the Appeal Suit and set aside the Judgment and Decree of the trial Court.

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S. Venkataramanan Vs. S. Muthukrishnan [Arb. O.P. (Com. Div.) No. 597 of 2022]

Date of Judgment: 04.01.2023

Petition to set aside arbitral award – reference made by the petitioner/claimant before the Sole Arbitrator with regard to recovery – Award of dissolution of the firm and sale of land and machinery passed by Arbitrator

A petition was filed under Section 34(2-a)(iv), 34(2-b)(ii) and 34(2A) of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award passed by the Sole Arbitrator. The main ground of challenge to the impugned award is that the reference made by the petitioner/claimant before the learned Sole Arbitrator with regard to recovery of Rs. 1,03,00,000/- along with interest at the rate of 12% per annum. However, while dealing with the claim of the petitioner/claimant, the learned Sole Arbitrator without passing any order with regard to recovery of money, passed an order dissolving the firm and sale of land and machinery.

It was submitted by the petitioner that the scope of reference is only with regard to recovery of money and not with regard to dissolution of the firm and sale of land and machinery. Further the petitioner submitted that, the learned Sole Arbitrator has committed patent illegalities in passing the impugned order without any jurisdiction.

The Hon'ble Court has found that the arbitration case was initially numbered as ARB No. 1 of 2017 and in the impugned award, it has been mentioned as ARB No. 1 of 2021 without any application of mind. The Hon'ble Court noted that, "..*the main reference for arbitration made to the learned Sole Arbitrator was only for recovery of a sum of Rs. 1,03,00,000/- along with interest, but the learned Sole Arbitrator has not at all dealt with this aspect. On the other hand, he has exceeded his jurisdiction by dissolving the firm and bringing the land and machinery of the firm for sale through public auction without any reference in that regard as contended by learned counsel for both parties."*

The Hon'ble High Court observed that the impugned award was liable to be set aside as the learned Sole Arbitrator had acted beyond the scope of reference and

exceeded his jurisdiction and committed patent illegalities in passing the impugned award. With the above observation the Court disposed the Original Petition and also appointed a new Arbitrator.

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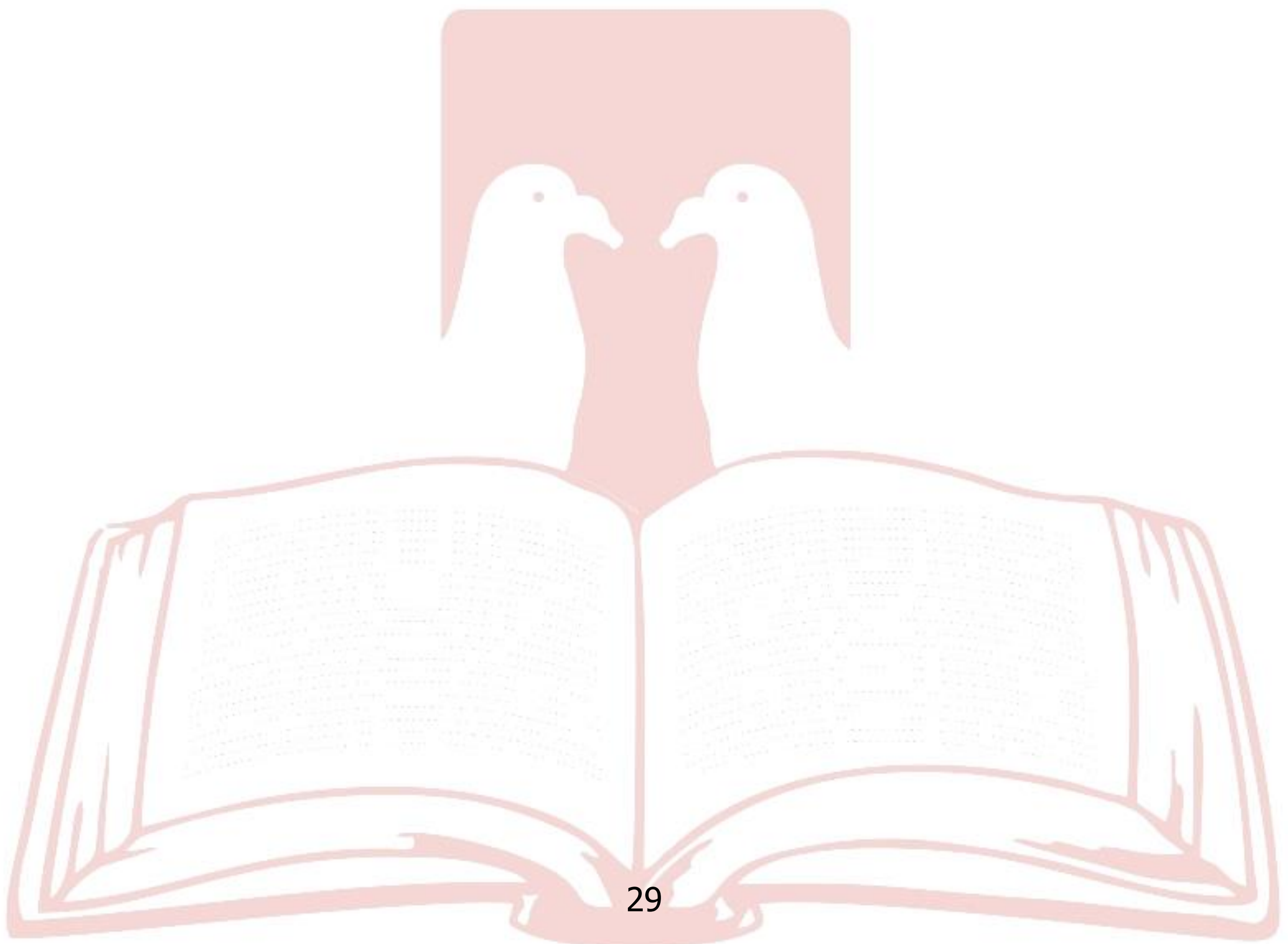

U. Venkatesan Vs. Susila & Ors. [A.S.No.19 of 2014]

Date of Judgment: 10.01.2023

Specific performance — doctrine of mutuality

The Hon'ble High Court decided an Appeal Suit challenging the dismissal of a suit for specific performance.

The Court referred to *G. Banumithra & Ors. Vs. D. Santhakumar [A.S.No.1101 of 2008, dated 22.12.2000]* and observed that as per the suit agreement the parties had mutually agreed that the contract should be performed within four months from the date of Agreement. If the purchaser/plaintiff failed to perform his part of contract within the time specified, he has to forego what he has paid as advance. The Court noted that no other circumstance or conduct of defendants had been relied upon, to show that defendants had ever given hope for extending the time agreed, and found that time is the essence of the contract.

On the issue concerning enforceability of the contract since the 6th Defendant, who was one of the vendors, had not signed the agreement, the Court referred to *Sethu Parvathy Ammal Vs. Bajji K.Srinivasan Chettiar & Ors. [AIR 1972 Mad 222]* and Section 12, Specific Relief Act, 1963 and observed that the contract is valid in respect of 8/9th share which is enforceable against Defendants 1 to 5 and 7 to 9.

The Court further found that the doctrine of mutuality is against the Appellant/Plaintiff who has failed to perform his part of the contract under the pretext of a mere apprehension about possible acquisition in future. by referring to the conduct of the defendants. Since this Court has held that the plaintiff/appellant was never ready and willing to perform his part of contract, this Court cannot grant the equitable relief in favour of appellant/plaintiff.

The Court directed the Defendants to pay the amount advanced to them by the Appellant/Plaintiff, along with interest. Thus, the Court upheld the judgment and decree of the trial Court with the above modification, and dismissed the Appeal Suit.

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HIGH COURT – CRIMINAL CASES

Ayisha Vs. State by the Inspector of Police, Berigal Police Station, Krishnagiri District [C.A.No.74 of 2016]

Date of Judgment: 04.01.2023

Poured hot oil on husband – deceased doubted fidelity of wife – no eye witnesses.

The appellant in this instant case filed a Criminal Appeal aggrieved by the Judgment of Conviction and Sentence to undergo Rigorous Imprisonment for a period of five years for offence under Section 304(ii) IPC by the trial court. The background of the case is that, they had killed her husband by pouring hot oil on him since he behaved in a psychic manner and often doubted her fidelity.

The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the appellant and challenging the legality of the said conviction and sentence, the present appeal has been filed. The Hon'ble Court noted that the relationship between the appellant and the deceased were not cordial it was a strained relationship. In this case, the occurrence had taken place inside the house of the appellant and the deceased. No one other than them were present inside the house. With the burn injuries, the deceased came running out from the house which was witnessed by PW3. PW3 made arrangements, who sent the injured along with two persons namely, Kaleemullah and Amzath to Ashok Hospital, Berigal.

Further the Hon'ble Court also noted that, strangely, no Accident Register was collected and no Doctor, who gave treatment to the deceased for 28 days in Government Hospital, Hosur, was examined. Likewise, no corresponding medical records for 28 days treatment produced, except the postmortem report. It was also noted that, in the Observation Mahazar nothing is recorded to show there was spillage of oil inside the house of the appellant. Admittedly, no statement from the deceased recorded though he took treatment for 28 days and was in a condition to speak with brother, relatives and friends.

The Hon'ble High Court of Madras in this case observed that, the reason for death is *'septicemia due to burn injuries'* which might be for various reasons including improper medical treatment and care. In this case, there is dearth of medical records of the deceased and the Doctors who treated the deceased and the corresponding medical records not produced. With the above observation the High Court modified the sentence of imprisonment passed against the appellant to Section 326 IPC. Thus, partly allowed the Criminal Appeal.

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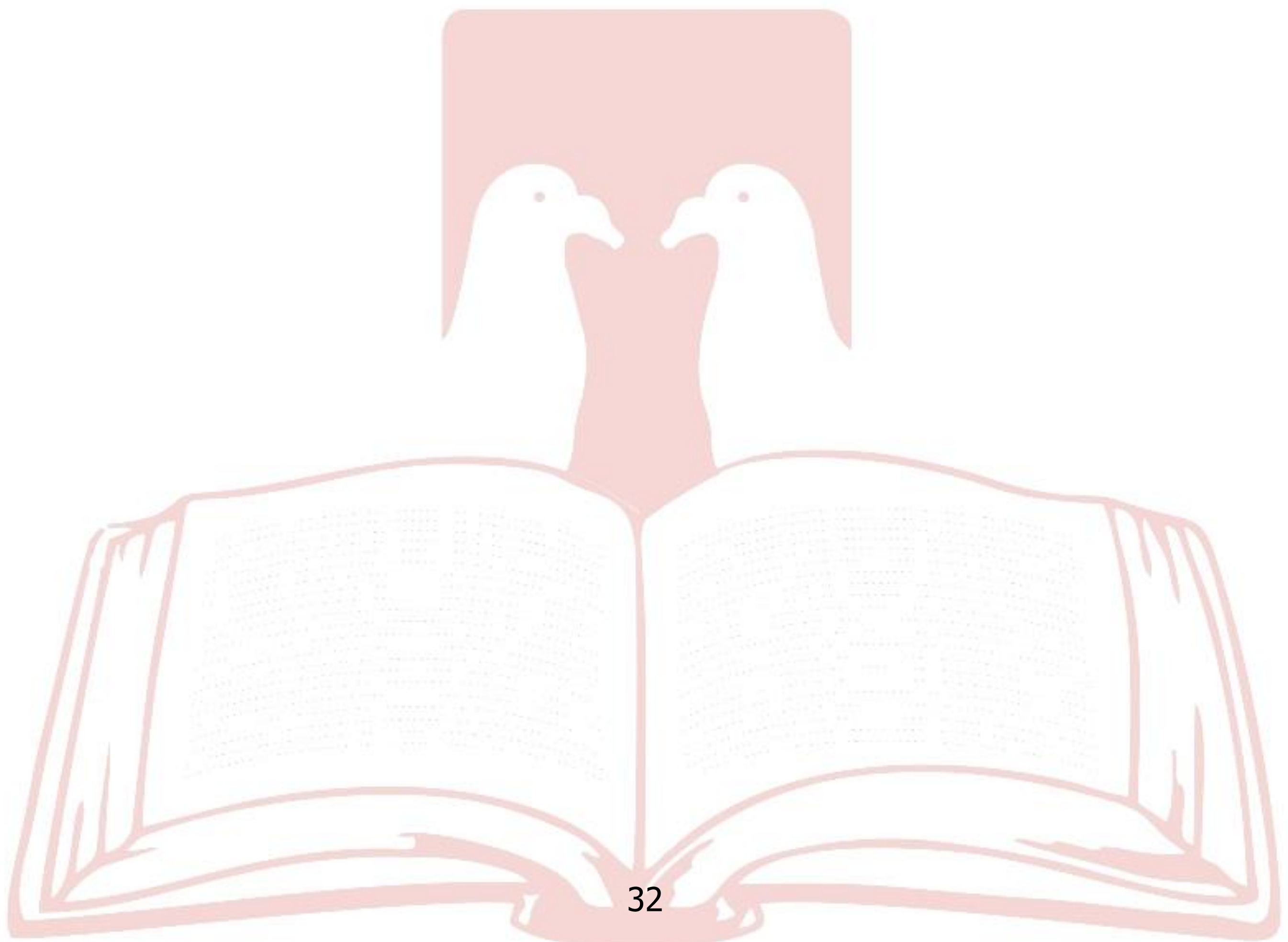

Dankinpa @ Benjamin and Anr. Vs. State rep. by The Inspector of Police V-6 Kolathur Police Station Chennai [CRL.A.No.587 of 2019]

Date of Judgment: 09.01.2023

Attack with iron rod – appreciation of oral and documentary evidence

A Criminal Appeal was filed against the conviction order under Section 302 IPC by an Additional Sessions Judge, Chennai. The backdrop of the instant case is that, Sheeva (deceased), Keema (injured) and the appellants were working in the same hotel. It is said that, A1 was having an illicit relationship with a woman and often used to bring her to their workplace. The manager of the workplace had somehow learnt about it and consequently had dismissed A1. A1 thought that the deceased and the injured were responsible for his dismissal and thus developed enmity with them.

Meanwhile on the fatal day, A1 entered the hotel room in the midnight where A2, the deceased, the injured and some others were asleep. A1 assaulted the deceased and the injured with an iron rod, A2 knew of the enmity A1 had towards the deceased and injured, hence aided A1 by attacking them with wooden stick. The incident was also witnessed by others who were sleeping, one of who lodged a complaint with the police and the police filed an FIR against the appellants for offences under Sections 326 and 302 IPC.

The Trial Court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has made out a case beyond reasonable doubts and proceeded to convict and sentence the accused persons for the offence under Section 302 IPC.

The counsel for the appellants submitted the best evidence that was available in this case, the CCTV footage. However, CCTV footage was not marked, since no certificate was filed under Section 65-B of the Evidence Act. The Hon’ble High Court noted that, “It is not as if the prosecution attempted to burke the CCTV footage. CCTV footage was not able to be relied by the Court below, on a technical reason

that the same was not accompanied with a certificate under Section 65-B of the Evidence Act. In any case, CCTV footage not forming part of the evidence, does not really weaken the case of the prosecution, in view of the reliable eyewitness account."

The Court had to answer the next issue, whether the 2nd appellant/A2 is liable to be punished for the offence of culpable homicide amounting to murder or the offence of culpable homicide not amounting to murder or to see if the facts of the present case fall under any of the exceptions under Section 300 IPC. The counsel for the appellants contended that the facts of the present case can be brought under exception 4 to Section 300 IPC and also brought to the notice of the High Court the fact that the 2nd appellant/A2 has been suffering incarceration for the past 7 years.

In fine, the Hon'ble Court partly allowed and the conviction and sentence imposed by the trial court by modifying the sentence of A2 by convicting him for culpable homicide not amounting to murder under Section 304(II) IPC. The Court also decided to let A2 at liberty for the period of imprisonment already undergone. The Court also opined not to intervene with the conviction of A1.

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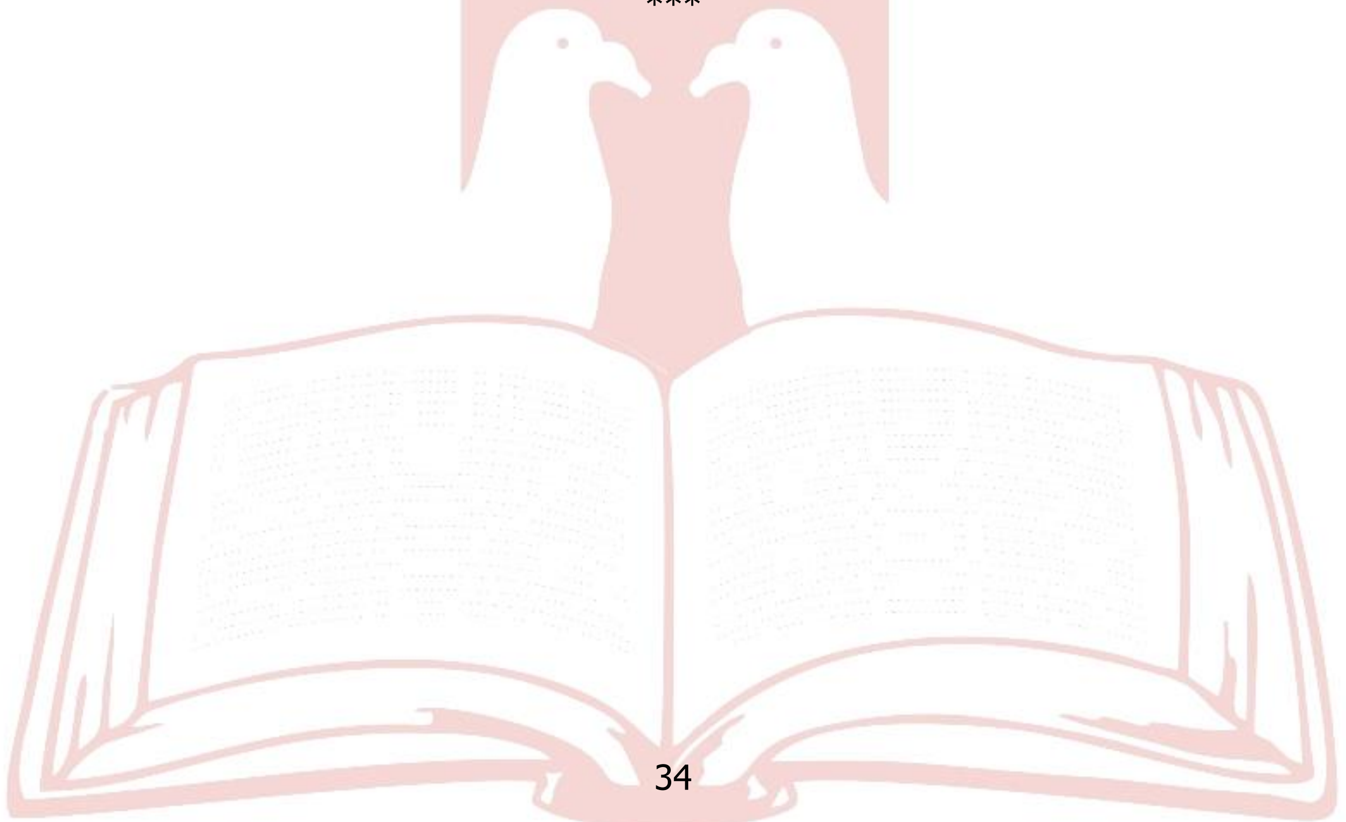

Jeya Sudha and Ors. Vs. The Inspector of Police, Sindhupatti Police Station, Madurai District and Ors. [CRL OP(MD).Nos:5104, 5843, 10854 & 10902 of 2021]

Date of Judgment: 06.01.2023

Petition seeking bail – Statutory bail by Special Court – NDPS Act – Court invoking its inherent powers and in the interest of justice

The petitioners in this present case seek bail under section 439 of Cr.P.C. All the accused were charged under the Narcotic Drugs and Psychotropic Substances Act for the offence punishable under Sections 8(c), 20(b)(ii)(c), 25 & 29(1) Act and have approached the High Court seeking bail. The Hon'ble Court also noted that though the petitioners had moved the High Court seeking bail, they had successively approached the Special Court and obtained statutory bail.

The Hon'ble Court noted that, "The specific provisions under Sections 37 & 36(A) of the NDPS Act were introduced, considering the seriousness of the offence. But the very object is defeated by some police officials or by some Public Prosecutors by allowing the accused to get statutory bail in cases of commercial quantity, without filing the final report in time and without filing a report as contemplated under Section 36(A)(4) of the NDPS Act seeking extension of time for filing the final report."

The Hon'ble High Court, by invoking its inherent powers and in the interest of justice, has raised certain queries and also directed the Registrar (Judicial) to ascertain the same and file a report. The Registrar (Judicial) filed his report and the following were pointed;

- There is a considerable delay in production of samples before the Special Courts.
- Delay in making request on the part of the Investigating Agency to the Court for sending the samples for Chemical Analysis from the date of remand of the accused.
- The process of sending samples to the Laboratory and receipt of report is done only through the concerned police.

- There is also a delay in some cases on the part of the prosecution in handing over the samples to Laboratory for chemical Analysis even after the orders.
- Similarly, there is huge delay in handing over the reports to the Courts.
- The delay is also due to the centralized filing in Special Courts like Madurai and Special Court at Thanjavur.

It was also noted by the Hon'ble Court that, drug problem was being seriously addressed by the government and the Chief Minister assured that the government would make necessary changes to the Narcotic Drugs and Psychotropic Substances Act, 1985, in order to curb drug dealers in and around schools and colleges.

The Hon'ble Court noted that, in all cases involving narcotics and psychotropic substances, the three factors to consider are seizure, storage and disposal. In this regard, the special storage room (Malkanas) equipped with a triple key system were set up and authorities are issued with various guidelines from time to time by the Commissioner of Police directing the police officers to review the characteristics of all cases related to the NDPS Act in Malkanas.

The Court further pointed out that, there are only 7 Special Courts established under the NDPS, Act and possibility for establishing Special Courts covering every 100 km radius or a Special Court for every four Districts may be explored, so that the distance between the police station and the Special Courts are reduced, it will enable the effective follow up by the Investigating Agency.

Based on the orders in the case of *G. Samuel Vs. the Inspector of Police, K-6, T. P. Chatram Police Station, Chennai* and *Raja Elango, City Public Prosecutor Vs. Stat*e certain instructions were also issued to all the Sessions Court that the petitioners were expected to mention in their applications, with regard to the details as to whether this is the first bail application and whether they have already moved High Court or not. In the present case, though bail applications were pending before the Hon'ble High Court, successive bail applications were filed before the Special Courts and statutory bail was obtained.

It was also opined that, since the Director General of Police, through a Circular had already directed the Superintendents of Police to review all the cases in which statutory bail was obtained, the Court refrained from passing any order in this regard. As the petitioners were already on statutory bail, the Hon'ble High Court opined that there was no requirement to pass any further order and thus disposed the Criminal Original Petitions.

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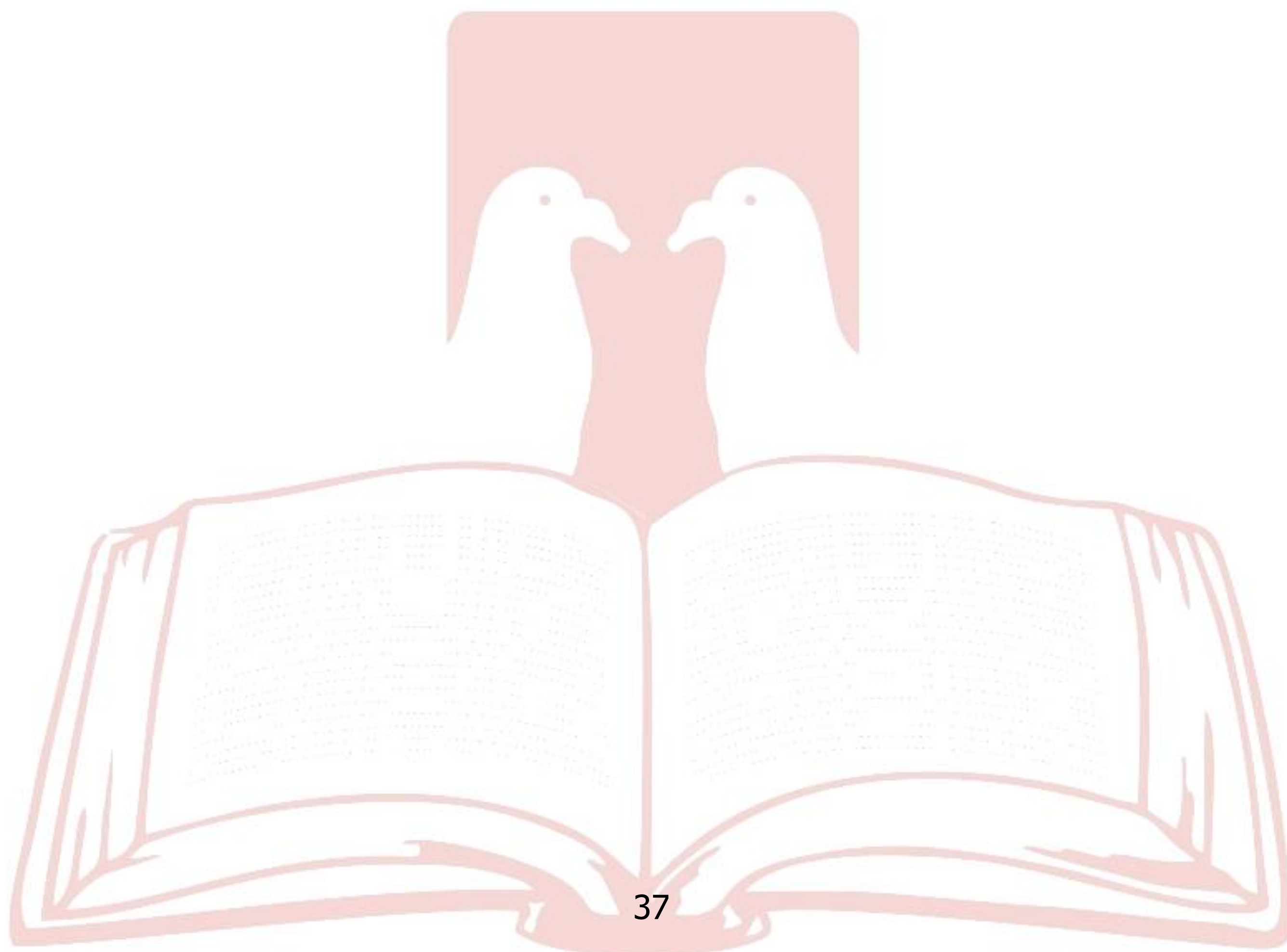

M. Munusamy @ Chinnapaiyan Vs. The Superintendent of Police Tiruvallur District and Anr. [Writ Petition No.592 of 2023]

Date of Judgment: 09.01.2023

Permission for 'Cock Fight' during Pongal festival – conditions imposed for conducting

The Hon'ble High Court in this case dealt with a Writ Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to grant permission and police protection for conducting "Cock Fight" during Pongal festival.

It was submitted by the petitioners that, conduct the birth day celebrations of the late Chief Minister Dr. M. G. Ramachandran, for every year. In order to mark the said function, they organise 'cock fight', which is the traditional game during the Pongal festival. The said 'cock fight' is one of the ancient festival game being organised or conducted in temple festivals and other festivals in the country side. It was also stated that animals or birds will not be harmed and it is simply a traditional event for farmers. Each and every year, they conduct 'cock fight' peacefully. In order to get permission and police protection, for the aforementioned 'cock fight' the petitioner had sent representations dated 28.12.2022 and 02.01.2023 to the respondents. Since the respondents have not passed any order, the petitioner has come out with the present writ petition. The petitioner also relied upon several decisions of the Hon'ble High Court and prayed that permission may be granted for conducting cock fight by imposing certain conditions.

It was submitted by the Government Pleader appearing for the respondents that at the time of event, there should not be any betting, the cocks should not be intoxicated and no knives should be tied around the legs of the cocks. Further, it was also submitted that would consider the representations of the petitioner and pass appropriate orders.

The Hon'ble High Court directed the respondents to consider the representations of the petitioner dated 28.12.2022 and 02.01.2023 taking into consideration the Circular Memorandum dated 09.04.2019 issued by the Director General of Police, Tamil Nadu, Chennai, in Rc.No.007301/Genl-1(1)/2019 enumerating the directions for sports events and grant permission and give police protection for conducting cock fight event during the Pongal festival.

The Hon'ble High Court imposed certain conditions and made clear that the conditions shall be strictly followed during the event and in case of any violation, it is open to the respondent police to take action immediately in accordance with law. Thus, disposed the case.

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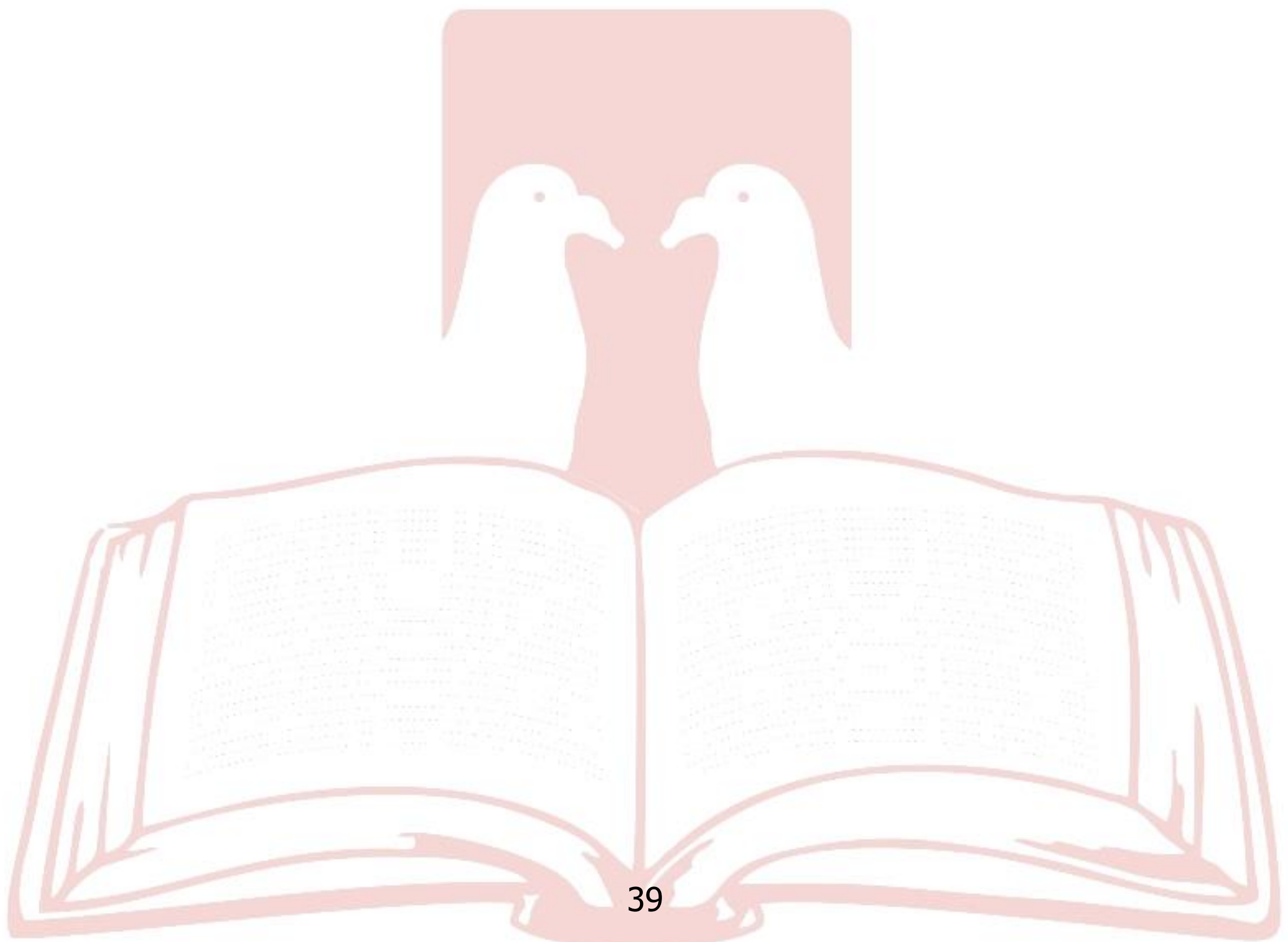

Madesh Vs. State by The Inspector of Police, All Women Police Station, Denkanikottai [Criminal Appeal No.631 of 2022 and Crl.M.P.No.8369 of 2022]

Date of Judgment: 09.01.2023

Appeal under Section 374(2) CrPC – offences under Sections 341, 354 and 376(1) IPC

An appeal was filed under Section 374(2) CrPC against the judgement of conviction and sentence by a Fast Track Mahila Court under Sections 341, 354 and 376(1) IPC. The nub of this case is that, the Appellant had committed penetrative sexual assault by disrobing the prosecutrix who is dumb.

The trial court on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence came to a conclusion that the prosecution has proved the case against the appellant for offence u/ss 341, 354 and 376(1) of IPC beyond reasonable doubts and thus convicted and sentenced him. The trial court had acquitted the appellant from the charge u/s 506 Part II IPC for want of evidence.

The counsel for the appellant argued that there was a material contradiction between the evidence of the Doctors viz., P.W.13 and P.W.16, who examined the victim girl and it is not clear from their evidence as to whether there was any penetrative sexual assault committed against the girl. It was also further pointed out that the evidence of the prosecutrix examined as P.W.3 with the assistance of a Special Educator also does not point to the fact that the appellant had committed penetrative sexual assault upon her. The counsel for the appellant also submitted that the appellant was aged about 19 years at the time of the incident, hence, the life sentence imposed by the trial court was very harsh and prayed for reduction of the sentence.

The Hon'ble High Court observed that, "*In a case of rape the main evidence that has to be taken into consideration by a court is the evidence of the prosecutrix. It is not necessary to search for any corroboration, if the evidence of the prosecutrix*

does not lack any credibility. In view of the same, it is necessary for this court to first consider the evidence of the prosecutrix, who was examined as P.W.3. Since the prosecutrix was incapable of speaking (dumb), the assistance of the Special Educator (P.W.4) was taken and the evidence was recorded."

Upon careful perusal of the evidence of the prosecutrix, the Hon'ble Court opined thus, "*we have no doubt in our mind that the victim girl has identified the appellant since he was residing near the residence of the victim girl and she has explained as to what actually happened on the fateful day. The evidence of P.W.3 is credible and hence, this court is inclined to act upon the evidence of P.W.3."*

Upon considering the facts and circumstances of the case and the age of the appellant at the time of the incident, the Court found it just and reasonable to reduce the sentence of substantive imprisonment alone insofar the offence u/s 376(1) of IPC is concerned to rigorous imprisonment for Ten years. In fine, the Criminal Appeal was partly allowed.

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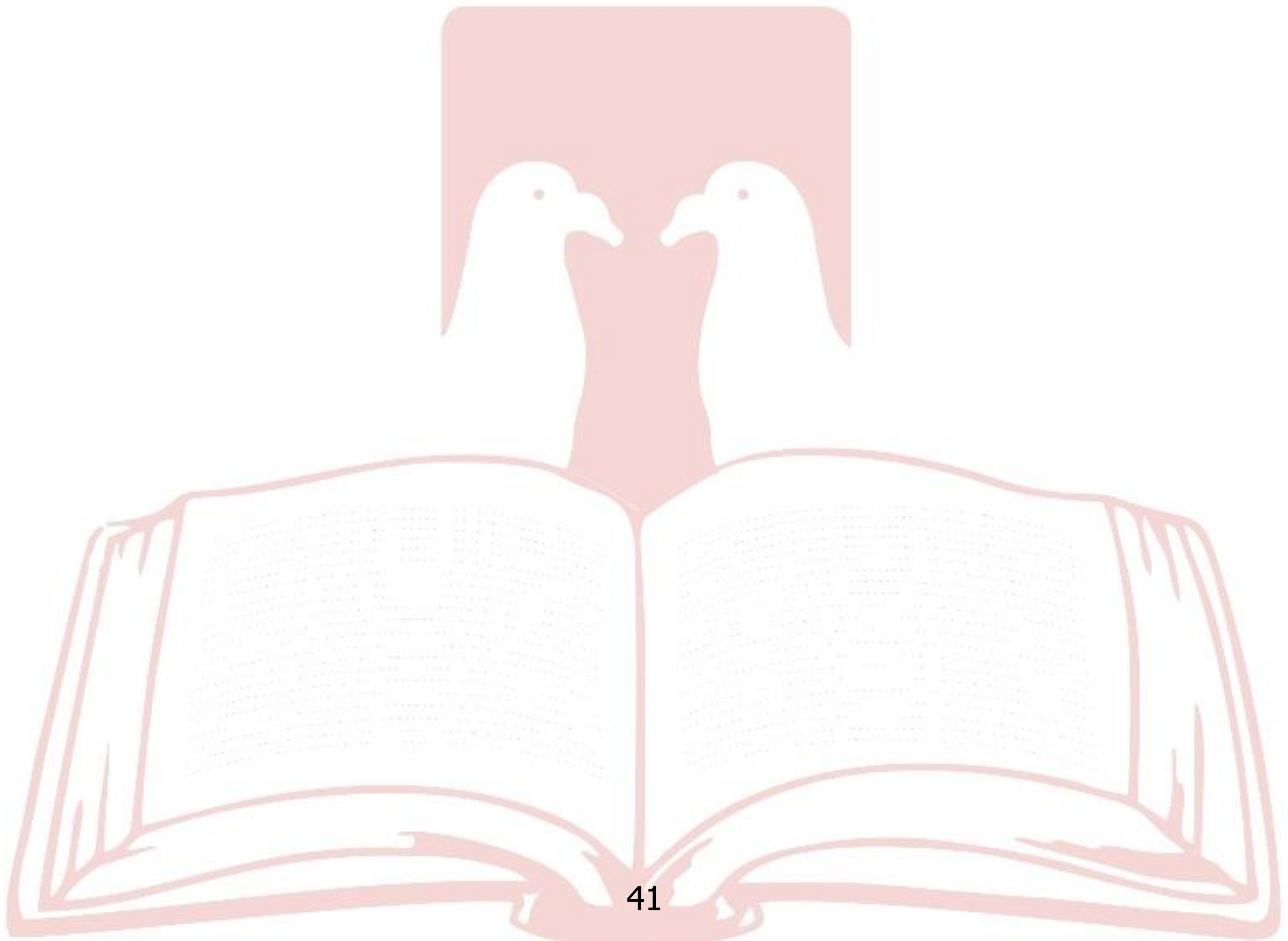

Manikandan Vs. State rep. by The Inspector of Police All Women Police Station Virudhachalam [CRL.A.No.44 of 2021]

Date of Judgment: 21.12.2022

POCSO Act – challenge against conviction – prosecution proved beyond all reasonable doubts

The Hon'ble Madras High Court dealt with a Criminal Appeal filed by an accused against his conviction and sentence under Section 5(m) read with Section 6 of the POCSO Act read with Section 376-AB IPC and Section 506(I) IPC. The nub of this case is that, a child aged about 6 years was playing near a temple when the appellant lured under the pretext of giving her chocolate and took her to a nearby building where he removed her inner garments and committed penetrative sexual assault on her. It is also said that he had threatened the child not tell anyone about the assault.

When the mother of the child learnt about incident, she gave a police complaint and an FIR was registered for offences under Section 5(m) and 6 of the POCSO Act and Section 376-AB, 294(b) and 506(I) IPC against the appellant and his sister. The trial court found that the charges against the appellant were proved beyond reasonable doubt and acquitted the sister of the appellant. The appellant contended that the case was a false one, as he had seen the mother of the child in a compromising position with another man and further contended that even from the statements recorded from the survivor, it would only constitute an offence of sexual assault under Section 7 of the POCSO Act.

The prosecution argued that the evidence of the victim girl was natural and corroborated by the mother, and the court has to presume that the offence has been made out. The Hon'ble High Court found the victim child's evidence to be reliable, as she had identified the appellant and stated that the appellant had placed his penis over her vagina. This evidence satisfied the requirement of Section 3(a) of the POCSO Act, as there is no necessity for the penis to penetrate the vagina.

The Hon'ble High Court disagreed with the appellant's interpretation that the incident only constitutes an offence under Section 7, noting that the purport of Section 7 only applies to touching with hands. The Hon'ble High Court opined that, the prosecution had established the charges against the appellant and there was no need by the High Court to interfere with the decision of the trial court. Thus, the Criminal Appeal was dismissed.

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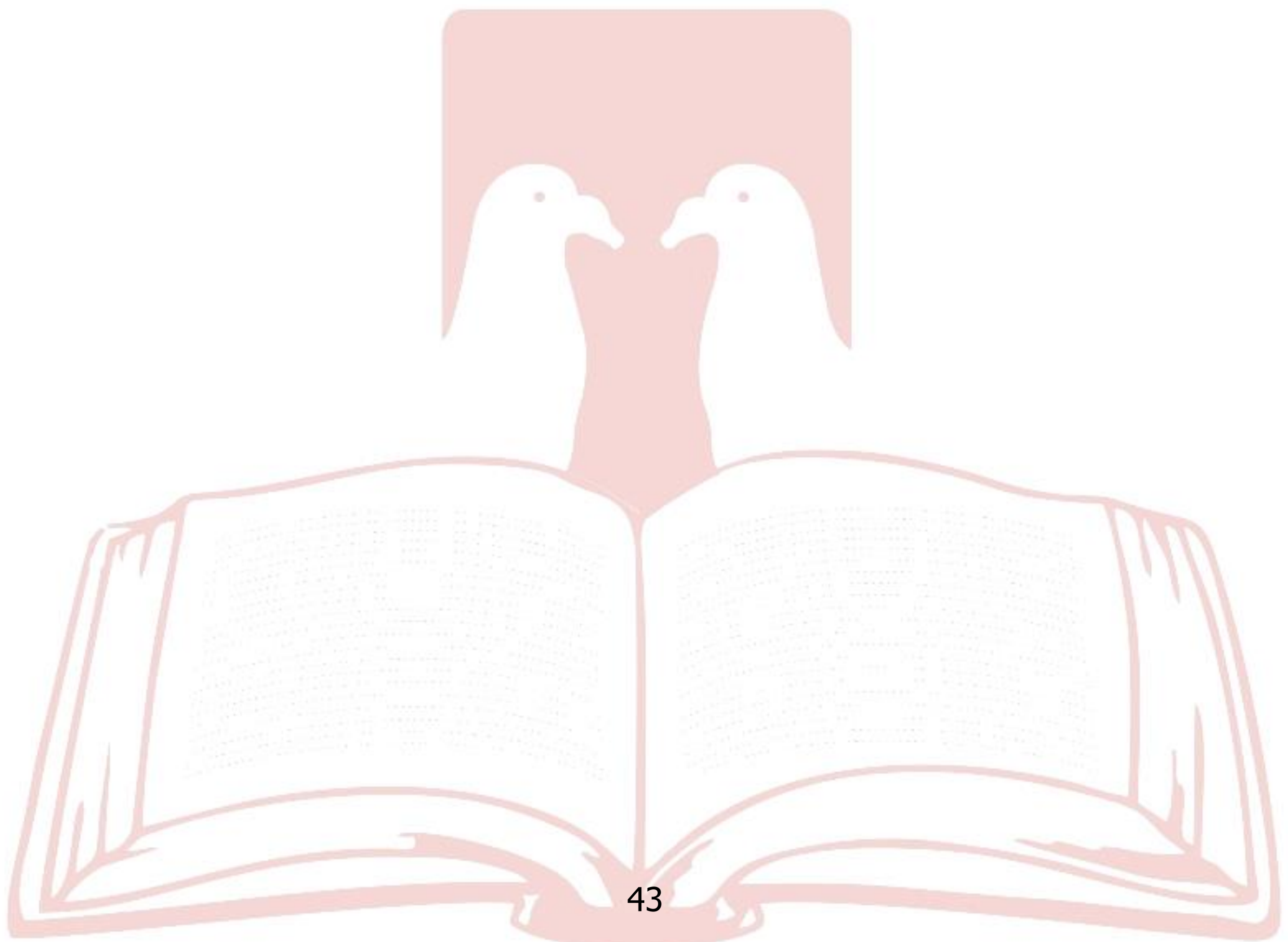

Mir Anas Ali Vs. State rep. by The Inspector of Police, Ambur Town Police Station, Thirupathur District [CRL.A.No.1232 of 2022]
Date of Judgment: 23.12.2022

ISIS – Unlawful Activities (Prevention) Act, 1967 – Prosecution seeking extension of remand – after the statutory period of remand ends

Citing the parable "Can the blind lead the blind? Will they not fall into a pit?", the Hon'ble High Court, while deciding this Criminal Appeal of the Appellant who is alleged to have ties with the terrorist organisation ISIS, observed that the learned Sessions Judge and the learned Magistrate were ignorant of the legal position of jurisdiction under the Unlawful Activities (Prevention) Act, 1967 and had passed illegal and *non-est* orders. Hon'ble High Court relied the decision of the Apex Court in *Bikramjit Singh Vs. State of Punjab [(2020) 10 SCC 616]*, where it was opined that, only the Special Court as defined under Section 13 of the National Investigation Agency Act, 2000 has the jurisdiction to try offences under the Unlawful Activities (Prevention) Act, 1967. The Hon'ble High Court also stated that the investigation should have been transferred to a specialised agency like Q Branch, considering the seriousness of the case.

The Hon'ble High Court held that the Prosecution's delay in seeking extension of the remand period from 90 days to 180 days under Section 43D(1)(2)(b) of the Unlawful Activities (Prevention) Act, 1967 cannot be put against the Appellant, recognising that he will be entitled to default bail as a matter of right once his indefeasible right guaranteed under Article 21 of the Constitution of India buzzes in under the first proviso of Section 167(2) Cr.P.C.

The Hon'ble High Court allowed the Criminal Appeal, granting statutory bail to the Appellant subject to conditions. The Hon'ble High Court also directed the Tamil Nadu State Judicial Academy to conduct a refresher course for the Judicial Officers, by focusing on the special enactments like UAP Act, POCSO Act, SC/ST Act, NDPS Act, etc. and the procedures to be followed under these Acts.

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Rajeshwari Vs. State rep by The Inspector of Police, Kovilpatti West Police Station [Crl. A(MD)No.283 of 2020]

Date of Judgment: 06.01.2023

Woman set daughter ablaze - Conviction reduced

A Criminal Appeal was filed in the High Court of Madras against the judgment and order passed by a Fast Track Mahila Court in Thoothukudi. The case of the prosecution is that, the appellant in this case had set her 13year old daughter on fire by pouring kerosene since her daughter was not good at studies and had run away from her residential school when her husband was fast asleep. The father of the girl was woken up by her hollering.

Subsequently, the father took the child to the government hospital where it was stated that she had 50% burns. Upon information, the sub- inspector of police recorded the statement of the child and thereafter registered a case in Kovilpatti West Police Station under Section 307 IPC against the appellant and the said FIR was received by the jurisdictional Magistrate. The dying declaration of the child was also recorded by a magistrate.

Eventually the appellant was arrested by the police and was remanded to custody. The child was given medical treatment for over four months and since her burns were not healing, she succumbed to the burns thereafter. Pursuant to the above, the case was altered from one under Section 307 IPC to Section 302 IPC filed alteration report and conducted inquest over the body of the deceased. It is also stated that, the prosecution had proven the case beyond all reasonable doubt in the trial court and the appellant was convicted under section 302 IPC.

The Hon'ble High Court taking all the accounts into consideration opined that, "…we afraid that we cannot sustain the conviction of the appellant for the offence under Section 302 IPC and instead, the conviction can be one under Section 304(1) IPC.." In fine, the Hon'ble High Court party allowed the Criminal Appeal and conviction and sentence of the appellant for the offence under Section 302 IPC is set aside instead,

the appellant is convicted for the offence under Section 304(1) IPC and sentenced to undergo 10 years rigorous imprisonment and pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment.

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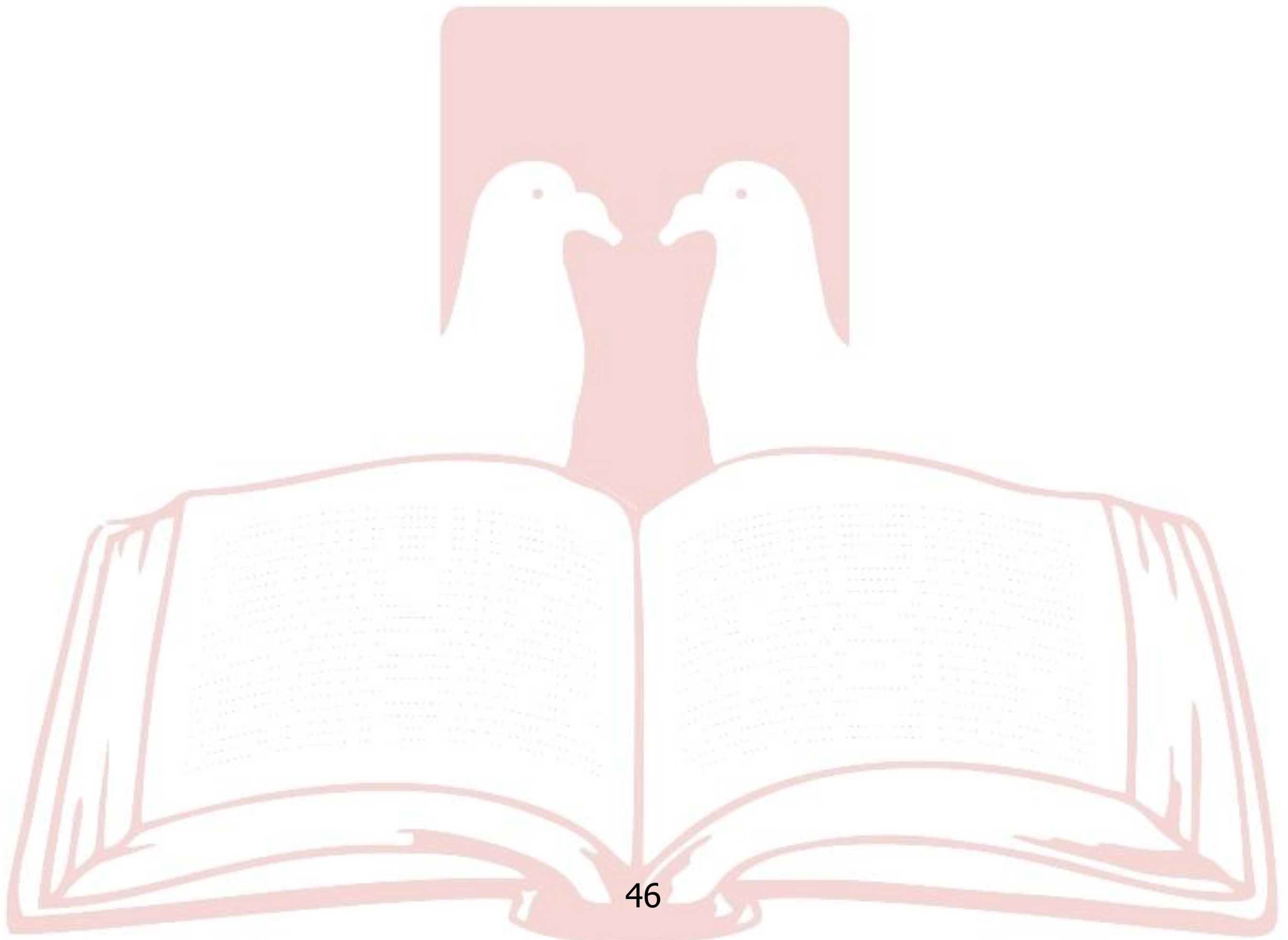

Rasiyappan Vs. The Sub Inspector of Police, District Crime Branch Police Station, Dindigul District [CRL OP(MD). No.22934 of 2022]
Date of Judgment: 23.12.2022

Anticipatory bail – offences under Sections 406, 420, 341, 294(b), 323 and 506(i) IPC and Section 4 of TNPHWA

A petition for anticipatory bail under Section 438 CrPC was filed by the petitioner, arrayed as A2 who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 341, 294(b), 323 and 506(i) IPC and Section 4 of Tamil Nadu (Prohibition of Harassment of Women) Act.

The case as per the complainant is that, the accused persons were running Finance Firms by name "Amman Finance" and "Amman Arul Finance" and had approached the complainant to invest in their firm in order to get better returns. It is said that the complainant and her husband had invested several lakhs in the firm of the accused persons. In the year 2014, the complainant's son-in-law has borrowed a sum of Rs. 40lakhs as loan from the said firm and had executed a mortgage deed of a property worth Rs.1.5crores. Later on in 2019 it is learnt that only for the debt amount, the accused persons got the sale deed of the above mentioned property.

Thereafter, when the complainant approached the accused and demanded the money invested by them, they replied that the amount already deposited to the finance and its interest were adjusted to the loan obtained by their son-in-law. Subsequently in the year 2022, the complainant and her husband demanded accounts for their investment at a meeting of partners and the accused persons told them that they had to pay Rs.17 lakhs to the Firm. It is also said that the accused persons have threatened the complainant and her husband and also abused them with filthy language and thus lodge the present complaint.

The petitioner contended that, the petitioner and the complainant were shareholders in the firm and there was a financial dispute between them. Further the petitioner

submitted that he was innocent and he had been falsely implicated in this case. It was also submitted that A3 was already arrested and released on bail by the Hon'ble Court and prays that he maybe granted anticipatory bail. Taking into consideration the facts and the submissions made by both the counsels and the co-accused was already released on bail by this Court, the Hon'ble High Court opined that the petitioner be granted anticipatory bail with certain conditions.

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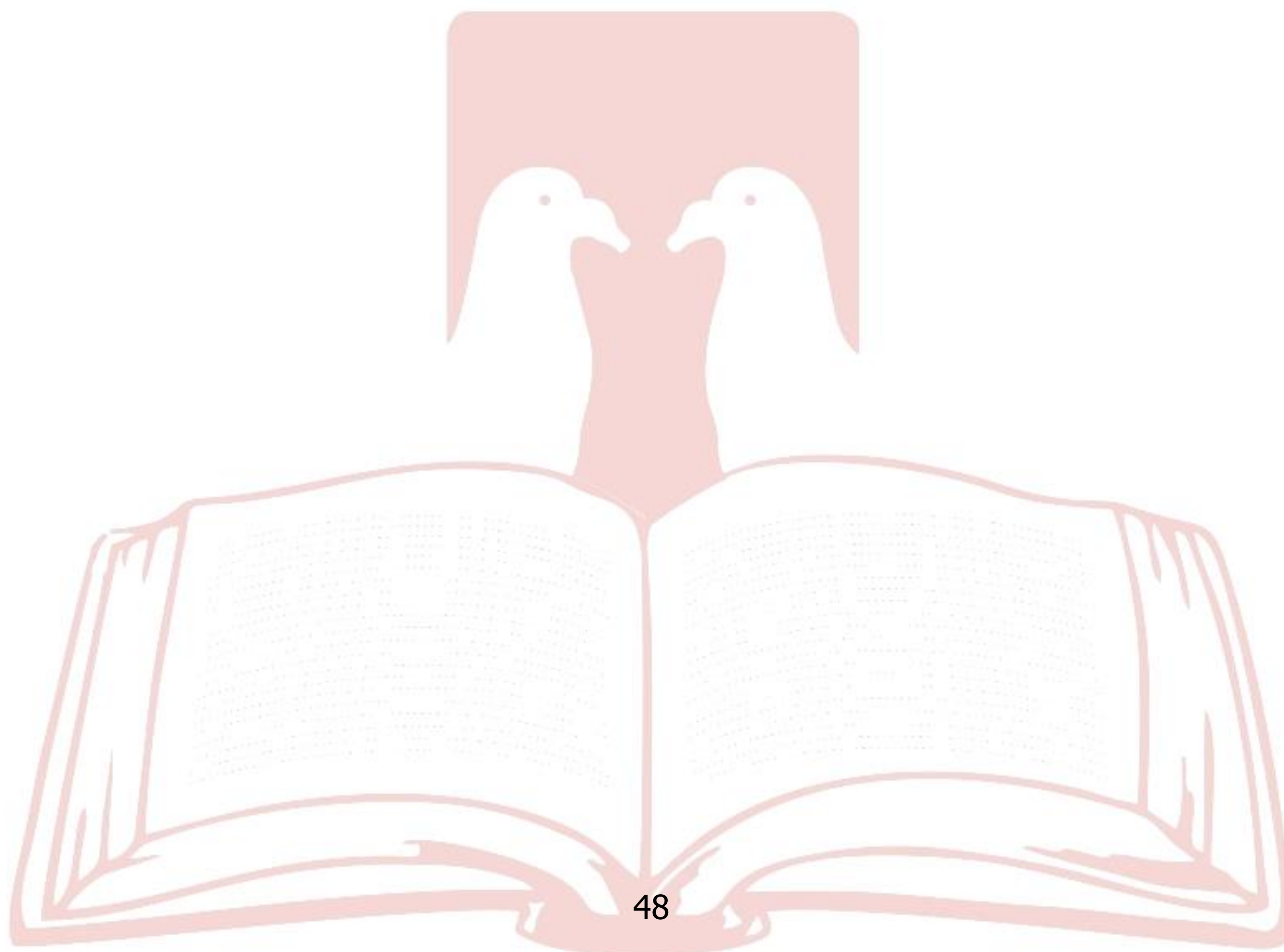

Timothy Donald Archer Vs. The Foreigner Regulation Registration Officer (FRRO) Bureau of Immigration, Government of India and Ors. [W.P.(MD)No.27937 of 2022]

Date of Judgment: 06.01.2023

Penalty levied for Over stay – Government granted Exit permit

The petitioner, a permanent resident of United Kingdom filed a Writ under Article 226 to issue the respondents a Writ of Mandamus directing them to grant him Exit Permit on his renewed Passport to his Country of origin. The brief facts of this case is that, the petitioner had visited India as a tourist and was about to leave the country when the Covid19 outbreak struck, due to which the petitioner was stranded in India. He has now decided to return to his country and the Government is also ready to give him exit permit but the respondents have levied Visa charges and penalty for overstaying. Aggrieved by this the petitioner has approached the Hon'ble High Court. It is also said that, the petitioner is ready to pay the Visa charges but he wants this Court to direct the respondents to waive the penalty.The reasons the petitioner seeks the penalty to be waived are:

i. any payment of penalty by the petitioner would have an adverse impact on him and he may find it difficult to obtain travel documents from other countries later in future
ii. the levy of penalty would mean that the petitioner had committed some wilful default. The petitioner contended that he is not guilty of any deliberate breach of travel visa terms and conditions and was stranded due to the outbreak of Covid-19 pandemic.

The Hon'ble High Court opined that, both the reasons stated by the petitioner are justified and directed the respondents to grant exit permit to the petitioner on his renewed passport, so that he can return to his parent country. Thus, allowing the Writ Petition.

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