TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XVII — PART 07 — JULY 2022 **

COMPENDIUM OF CASE LAWS

TAMIL NADU STATE JUDICIAL ACADEMY
HEADQUARTERS, CHENNAI
No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028
Phone Nos. 044– 24958595 / 96 / 97 / 98 **Fax:** (044) 24958595
Website: www.tnsja.tn.nic.in **E-Mail:** tnsja.tn@nic.in/tnsja.tn@gmail.com

REGIONAL CENTRE, COIMBATORE
No.251, Scheme Road, Race Course,
COIMBATORE,
Tamil Nadu, India. PIN: 641 018
Telephone No: **(0422) 2222610, 710**
E-Mail: **tnsja.rc.cbe@gmail.com**

REGIONAL CENTRE, MADURAI
Alagar Koil Road, K. Pudur,
MADURAI,
Tamil Nadu, India. PIN: 625 002
Telephone No: **(0452) 2560807, 811**
E-Mail: **tnsja.rc.mdu@gmail.com**

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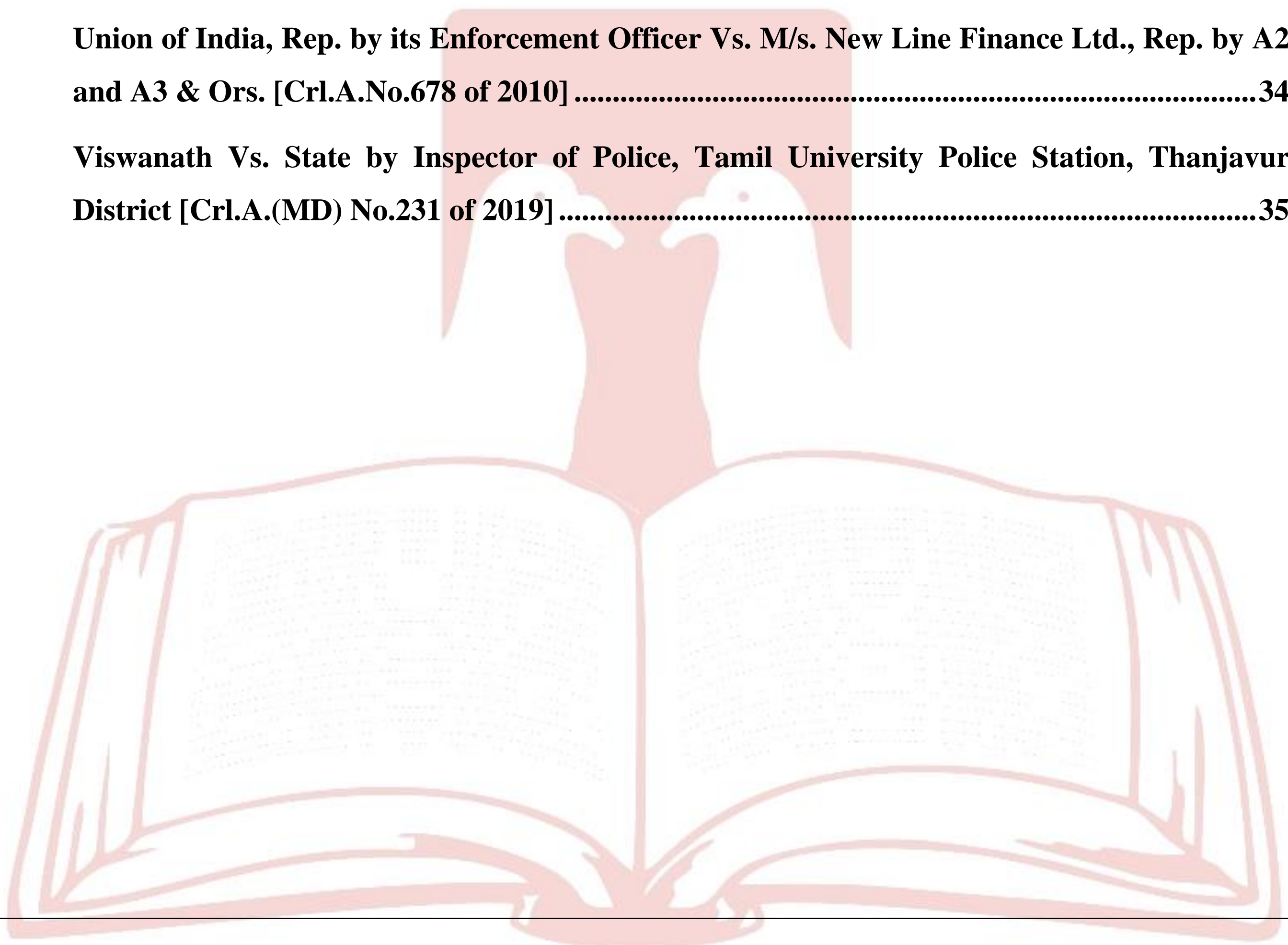

SUPREME COURT – CIVIL CASES

Asset Reconstruction Co. (India) Ltd. Vs. S.P. Velayutham [C.A.No.2752 of 2022]

Date of Judgment: 04-05-2022

Section 32, 33 and 34(3)(c), Registration Act, 1908

The Hon'ble Supreme Court deciding a Civil Appeal observed that, while the Registering Officer under the Registration Act, 1908, may not be competent to examine whether the executant of a document has any right, title or interest over the property which is the subject matter of the document presented for registration, he is obliged to strictly comply with the mandate of law contained in various provisions of the Act.

The Apex Court analysed Section 32, Registration Act, 1908 and observed that, in cases where a document is presented for registration by the agent, (i) of the executant; or (ii) of the claimant; or (iii) of the representative or assign of the executant or claimant, the same cannot be accepted for registration unless the agent is duly authorized by a PoA executed and authenticated in the manner provided in the Act. The Apex Court considered Sections 32 and 33, Registration Act, 1908 and observed that, that the word "authenticated" is not to be understood to be the same as "registered". In fact the distinction between "authentication" and "registration" is spelt out very clearly in the Tamilnadu Registration Rules.

The Apex Court observed that Section 34(3)(c), Registration Act, 1908, imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. Where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted, as the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law.

In fine, the Apex Court allowed the appeal.

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Nanda Dulal Pradhan & Anr. Vs. Dibakar Pradhan & Anr. [C.A.No.4151 of 2022]

Date of Judgment: 11-06-2022

Civil Procedure – Order IX Rule 13 – Setting aside ex parte judgment and decree

The Hon'ble Supreme Court in deciding a Civil Appeal, considered the order passed by the First Appellate Court setting aside the exparte judgment and decree, observing that on restoration of the suit the same be disposed of after affording opportunities to the parties to adduce their respective evidence and rebuttal evidence, found that the same was absolutely in consonance with the law laid down by this Court in the case of *Sangram Singh Vs. Election Tribunal [AIR1955 SC 425]* and *Arjun Singh Vs. Mohindra Kumar [AIR 1964 SC 993]*.

The Apex Court noted that, as such the First Appellate Court gave specific findings while setting aside the exparte judgment and decree that the Defendant Nos. 2 & 3 have made out a sufficient cause for setting aside the exparte judgment and decree. But while passing the impugned Judgment and Order, the High Court had not considered the findings recorded by the First Appellate Court, and had set aside the order passed by the First Appellate Court solely on the ground that as the Defendant Nos. 2 & 3 did not file the written statement and contested the suit, the reopening of the suit would become futile.

The Apex Court held that, the parties to the suit shall be put to the same position as they were at the time when the exparte judgment and decree was passed and the defendants may not be permitted to file the written statement as no written statement was filed. However, at the same time they can be permitted to participate in the suit proceedings and cross examine the witnesses.

Thus, the Apex Court allowed the appeal partly.

*****

National Highway Authority of India Vs. Transstroy (India) Ltd. [C.A.No.6732 of 2021]

Date of Judgment: 11-07-2022

Section 34 - Arbitration and Conciliation Act, 1996

The Hon'ble Supreme Court while deciding a Civil Appeal observed that, When there is a provision for filing the counter claim – set off, which is expressly inserted in Section 23, Arbitration Act, 1996, there is no reason for curtailing the right of the appellant for making the counter claim or set off.

The Apex Court observed that "Clauses 26.1 and 26.2 have to be interpreted in a pragmatic and practical manner, as they require that the parties must at first try to settle, resolve and even try conciliation but when that procedure fails to yield desired result, in the form of settlement within the period specified in the clause, the Dispute can be resolved through arbitration in terms of Clause 26.3."

The Apex Court found that both the Arbitral Tribunal as well as the High Court have failed to appreciate the difference between the expressions "claim", which may be made by one side and "Dispute", which by its definition has two sides.

The Court held that, as such there was no delay on the part of the NHAI initially praying for extension of time to file the counter claim and/or thereafter to file application under Section 23(2A) permitting it to place on record the counter claim. Not permitting the NHAI to file the counter claim would defeat the object and purpose of permitting to file the counter claim/set off as provided under Section 23(2A) of the Arbitration Act, 1996. Without appreciating the aforesaid aspects, the High Court has by the impugned judgment and order, and on narrow interpretation of Clause 26 has seriously erred in rejecting the application under Section 34/37 of the Arbitration Act, 1996 and confirming the order passed by the Arbitral Tribunal in not permitting the NHAI to file the counter claim.

Thus the Court allowed the Civil Appeal.

*****

Principal Commissioner of Income Tax-III, Bangalore & Anr. Vs. M/s Wipro Ltd. [C.A.No.1449 of 2022]

Date of Judgment: 11-07-2022

Income Tax

The Hon'ble Supreme Court considered the question whether, for claiming exemption under Section 10B (8) of the IT Act, the assessee is required to fulfill the twin conditions, namely, (i) furnishing a declaration to the assessing officer in writing that the provisions of Section 10B (8) may not be made applicable to him; and (ii) the said declaration to be furnished before the due date of filing the return of income under sub-section (1) of Section 139 of the IT Act.

The Apex Court observed that both the conditions to be satisfied are mandatory. It cannot be said that one of the conditions would be mandatory and the other would be directory, where the words used for furnishing the declaration to the assessing officer and to be furnished before the due date of filing the original return of income under subsection (1) of section 139 are same/similar. It cannot be disputed that in a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee.

Thus the Court allowed the Civil Appeal.

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Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. [C.A.No.4633 Of 2021]

Date of Judgment: 12-07-2022

Section 7, Insolvency and Bankruptcy Code, 2016

The Hon'ble Supreme Court in a Civil Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 observed that, the object of the IBC is to first try and revive the company and not to spell its death knell. This objective cannot be lost sight of, when exercising powers under Section 7 of the IBC or interpreting the said Section.

The Apex Court noted that, when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation.

The Court held that, the existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the overall financial health and viability of the Corporate Debtor under its existing management.

The Apex Court, thus, set aside the Orders of the NCLAT and NCLT and directed the NCLT to re-consider the application of the Appellant for stay of further proceedings on merits in accordance with law.

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SUPREME COURT - CRIMINAL CASES

Manoj & Ors. Vs. State of Madhya Pradesh [Crl.A.No.248-250 of 2015]

Date of Judgment: 20-05-2022

Death Sentence - Section 25(1-B) (B), Arms Act, 1925 - Section 253(2), CrPC

The Hon'ble Supreme Court decided a Criminal Appeal seeking to set aside the sentence given by the concerned High Court, which had upheld the death penalty.

The Apex Court held that though the prosecution's version of how arrest took place had to be disbelieved, it did not taint the subsequent disclosure, which led to the seizure and recovery of stolen articles.

The Apex Court referred to *C. Muniappan Vs. State of Tamil Nadu, [(2010) 9 SCC 567]*, and observed that though there are lapses in recollection of testimonies of witnesses, they are not fatal as the test identification parade proceeded without any difficulties in spite of the lapses. Thus, the court made it clear that the submissions remain unshaken as long as that fact is deposed to or spoken about by other witnesses, whose testimonies are to be seen in their own terms which holds true in this case. The Apex Court held that the premeditated concert and common intention of the appellants was proved by relying on the case of *Ramashish Yadav Vs. State of Bihar [(1999) 8 SCC 555]*.

Coming to the question of death sentence by considering the circumstance as rare of the rarest case, the Apex Court looked into Section 253(2), CrPC, the 35th and 262nd Law Commission Reports and the decisions in *Bachan Singh Vs. State of Punjab, [(1980) 2 SCC 684]* and *Jagmohan Singh Vs. State of Uttar Pradesh, [(1973) 1 SCC 20]*. Owing to the fact that the conduct of the three appellants was good during the prison time, young age of the appellants at the time of committing the crime the death sentence was held to be unwarranted.

The Apex Court further emphasized on the reformative goal of criminal justice and observed that mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the judge to decide between the death penalty or life imprisonment.

The Apex Court observed that the sentencing hearing contemplated under Section 235(2), CrPC, is not confined merely to oral hearing but intended to afford a real opportunity to the prosecution as well as the accused, to place on record facts and material relating to various factors on the question of sentence and to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty.

The Apex Court reiterated the observation in *Rajesh Kumar Vs. State [(2011) 13 SCC 706]*, that the very fact that the state had not given any evidence to show that the convict was beyond reform and rehabilitation was a mitigating circumstance, in itself. The Apex Court issued practical guidelines for courts to collect mitigating circumstances from the trial stage, and implemented uniformly, for conviction of offences that carry the possibility of death sentence. These guidelines included

- seeking information from both the Accused and the State
- conducting psychiatric and psychological evaluation of the Accused,
- collecting information on the socio-economic and educational background, behaviour and criminal antecedents of the Accused. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.
- information regarding the accused's conduct, behaviour and activities in jail, include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.

Further, the Court noted that that public opinion has categorically been held to be neither an objective circumstance relating to crime, nor the criminal, and the courts must exercise judicial restraint and play a balancing role.

Thus, the Appeal was partly allowed and the death sentence of the appellants was commuted to a life imprisonment, without the possibility of remission for 25 years.

*****

Ms. P Vs. State of Uttarkhand & Anr. [Crl.A.No.903 of 2022]
Date of Judgment: 16-06-2022

Series Of Acts Connected Together To Form The Same Transaction

The Hon'ble Supreme Court decided a criminal appeal challenging the Order of the High Court declining to interfere with the Order of the Sessions Judge discharging the Accused on the ground of lack of territorial jurisdiction and challenging the segregation of charges.

The Apex Court referred to *Mohan Baitha & Ors. Vs. State of Bihar & Anr. [(2001) 4 SCC 350]*, and *Anju Chaudhary Vs. State of Uttar Pradesh & Anr. [(2013) 6 SCC 384]*, and observed that even though the question as to whether a series of acts are so connected together as to form the same transaction is purely a question of fact, there are core elements like proximity of time, unity or proximity of place, continuity of action and community of purpose or design, which are of relevant considerations and when these factors are applied to common sense and ordinary use of language, the vexed question of 'same transaction' could be reasonably determined.

The Apex Court also observed that there is no allegation of such completed activity of rape to have continued later or even any kind of threat been extended to submit to such activity. So, the offence of sexual exploitation (Section 376 IPC) and another of offences of insult and intimidation (Sections 504, 506 of IPC) cannot be connected together so as to form the same transaction on the facts in this case. Since there has been no error in the segregation of charges, the validity of proceeding before the learned Judicial Magistrate remains baseless.

Thus, the Apex Court dismissed the Appeal and held that the alleged offence under Section 376, IPC and the other offences under Sections 504, 506 of IPC do not fall within the ambit of "one series of acts so connected together so as to form the same transaction" for the purpose of trial together in terms of Section 220, CrPC, and that the learned Sessions Judge had rightly discharged the Accused/Respondent No.2 of the offence under Section 376, IPC for want of territorial jurisdiction.

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Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra [Crl.A.No.739 of 2017]

Date of Judgment: 14-07-2022

Criminal Procedure — Section 27, Indian Evidence Act, 1872

The Apex Court decided a Criminal Appeal challenging the conviction and sentence for an offence under Section 302, IPC.

The Apex Court referred to *H.P. Admn. Vs. Om Prakash [(1972) 1 SCC 249]*, *State of Madras Vs. A. Vaidyanatha Iyer [(1958) SCR 580]*, and *Balak Ram Vs. State of U.P. [(1975) 3 SCC 219]*, and observed that "the power of this Court under Article 136 of the Constitution of India is exercisable even in cases of concurrent findings of fact and such powers are very wide but in criminal appeals, this Court does not interfere with the concurrent findings of fact save in exceptional circumstance".

The Apex Court further found a serious infirmity with regards to the discovery of a weapon used in committing the offence, under Section 27, Evidence Act. The Apex Court observed that in appreciating the evidence of the discovery of the weapon used in committing the offence, reliance may be placed on panchnama, i.e. the statement of the panch witness. The panchnama cannot be used as corroborative evidence if the Trial Court fails to establish if the police officer read the contents of the panchnama to the panch witness to ensure that the witness was aware of such contents and that nothing has been left out in the panchnama.

The Apex Court observed that the flaws, omissions, and errors in the evidence are to be examined as a whole, to see if they are inconsistent with the main points of the witness's testimony. A witness cannot be expected to recall every detail of a conversation or have a photographic memory of what occurred or the sequence of events leading up to the offence and also suggested that there may be a chance that they will feel disturbed by the atmosphere of the court.

Thus, the Apex Court held the accused guilty of murder and upheld the High Court and Trial Court Judgments and thereby, dismissed the Appeal.

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Shispal Vs. The State (NCT of Delhi) [Crl.A.No.1053 of 2015]

Date of Judgment: 11-07-2022

Appreciation of Evidence And The Reliability On The Testimony Of The Witnesses

The Hon'ble Supreme Court decided a Criminal Appeal arising from an appeal to set aside the conviction of the accused for an offence under Sections 302 and 34 of IPC.

The Apex court observed that the accused were already exposed to the witnesses who were brought before the court, and the test identification were just part of the investigation and it cannot be relied wholly. Also, the apex court observed that the sessions court have convicted based on the evidence of PW3, but unfortunately the court did not take into consideration that the witness has to be corroborated with other evidence in order to maintain fair trial.

The Apex Court referred to *Rajesh Yadav & Anr. Vs. State of Uttar Pradesh [2022 SCC OnLine SC 150]* and *Vadivelu Thevar Vs. State of Madras [1957 SCR 981]*, regarding the appreciation of evidence and when the testimony has to be wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable.

The Apex court referred to *Jasdeep Singh alias Jassu Vs. State of Punjab [(2022) 2 SCC 545]*, and stated that "Both the appellants have been charged only based upon the rule of evidence available under Section 34, IPC. Section 34 does not constitute an offence by itself, but creates a constructive liability. The foundational facts will have to be proved by the prosecution. Not only the occurrence, but the common intention, has to be proved beyond reasonable doubt".

The Apex court held that the stated offence Section 302, IPC was not made out after examining the statement of the witnesses since the testimony of the witness was not wholly reliable and there has to be adequate material to fasten the appellants on the basis of constructive liability, as Section 34, IPC is nothing but a rule of evidence.

Therefore, the Apex court allowed the appeal, set aside the conviction and set the appellants at liberty.

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Virendra Vs. State of Madhya Pradesh [Crl.A.No.466 of 2018]
Date of Judgment: 11-07-2022

Appreciation of Evidence

The Hon'ble Supreme Court decided a Criminal Appeal seeking to set aside the conviction which was confirmed by the High Court of Madhya Pradesh.

The Apex court referred to *Raja Ram Vs. State of Rajasthan [(2005) 5 SCC 272]* and *Javed Masood Vs. State of Rajasthan [(2010) 3 SCC 538]*, and observed, that while assessing the evidence produced by the defence, courts discarded them without appreciating the fact that it has to be seen only on the degree of probability.

The Apex Court found that there is inadequate evidence on record to implicate the appellant, also, the recovery has not been proved in the manner known to law. The Apex court observed that, the prosecution had failed in its attempt to prove beyond reasonable doubt that the appellant has committed the offence.

The Apex Court also observed that the testimony of PW15 was not corroborated by all the prosecution witnesses. Even his presence is doubted as he was seen at the place of occurrence much after the incident. The Apex court decided that this witness certainly cannot be relied upon as the reputation and conduct of a man is a fact under Section 3 of the Indian Evidence Act and thus, becomes relevant.

The Apex Court pointed out that the evidence of PW15 cannot be relied upon as against the other prosecution witnesses themselves, which stood uncontroverted. Along with that, "The evidence of PW16, having the characteristics of an opinion, cannot be put against the appellant in the light of the assessment of the other evidence available on record, there is absolutely no evidence to show as to how the recovery was made".

Thus, the Apex Court allowed the Criminal Appeal, set aside the conviction and set the appellant at liberty.

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HIGH COURT - CIVIL CASES

Agila Munnal Pond's Employees Nalasangam Vs. Ponds Employees Welfare Trust [O.S.A.No.303 of 2019]

Date of Judgment: 23-06-2022

Welfare Trust – Civil Procedure – Beneficiaries

The Hon'ble High Court in deciding a Original Side Appeal observed that, the Trust in question cannot be considered as a public trust or the association which was constituted by the retired employees cannot be allowed to say that they have got any interest much less clear or substantial interest in the trust in question.

The Court observed that, "Even assuming that the retired employees were taken care of by the Trust, it cannot confer a right on them calling the Trust as a public trust or they are the persons having interest over the same, in as much as a perusal of the clauses in the entire trust deed nowhere indicates to hold that the employees would include the retired persons also, because the beneficiaries who can seek for the benefit can only be the spouse, children and dependants of the employees."

The Court dismissed the appeal and held that, When the Trust Deed says that the Trust has been created for the beneficiaries who are in the employment of the Company at the date of these presents or who will be in employment of the Company after the date of these presents and who have been in the continuous service of the company upto a date not earlier than two years from the date of these presents and the expression "dependants" in relation to an employee clearly means the parents, brothers and sisters of the supervisory staff or any of them who are mainly depending on the employee, should also include the retired employees, is beyond the scope of the Trust Deed.

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All India State Bank Officers Federation & Ors. Vs. State Bank of India & Ors. [W.P.No.11991 of 2014]

Date of Judgment: 24-06-2022

Rule 44 - State Bank of India Officers, Service Rules, 1992 – Leave Travel Concession / Home Travel Concession (LTC/HTC) – Circular

The Hon'ble High Court considered a challenge over a 'Circular' which unilaterally withdrew the Leave Travel Concession 'LTC' covering overseas travel for SBI officers, and the officers were not entitled to visit overseas countries/ centers as part of LTC or HTC (Home Travel Concession) with immediate effect.

The Court held that, Concessions or facilities extended by way of Administrative Instructions beyond the scope of the rules cannot be construed as an absolute right to the employees. An Administrative Instruction cannot have statutory force and it is an additional facility extended without any statutory backup.

The Court considered a plethora of decisions rendered by the Supreme Court* and affirmed that, when the concession to travel abroad has been permitted without entering into bipartite agreement or through a Statute, question of granting an opportunity to the officers does not arise. Such an additional facility to travel abroad is a policy decision taken by the respondent / Management and such a policy has been withdrawn, taking note of the memorandum issued by the Government of India, Ministry of Finance and also based on the decision taken by the Indian Bank Association. Thus, the decision taken without providing an opportunity to the petitioners would not constitute violation of principles of natural justice nor their service rights are infringed. The service rights and the conditions of service alone is to be considered as an absolute right and the withdrawal of such service rights or the service conditions cannot be done unilaterally by the employer without affording opportunity to the employees.

Thus dismissed the Writ Petition.

***See Also**

- Director General of Foreign Trade & Ors. Vs. Kanak Exports & Ors. [(2016) 2 SCC 226]
- State of U.P. Vs. Sudhir Kumar Singh & Ors. [C.A.No.3498 of 2020, dated 16.10.2020]

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B.C. Mohankumar Vs. Superintendent of CGST [W.P.No.13272 of 2022]

Date of Judgment: 16-06-2022

Section 22, Section 25 - Central Goods and Service Tax - Rule 8 of CGST Rules

The Hon'ble High Court considered the rejection of a registration application filed under Section 22 read with Section 25 of Central Goods and Service Tax ('CGST Act') and Rule 8 of CGST Rules, without assigning proper reasons and adhering to proper procedure.

The court took a considered view that, an order of this nature is indefensive insofar as it is non-speaking, arbitrary and evidently has not taken into account the explanation furnished by the petitioner.

The Court observed that, the word 'may' only refers to the discretion to reject and not to blatantly violate the principles of natural justice. "If the assessing authority is inclined to reject the application, which he is entitled to, he must assign reasons for such objection and adhere to proper procedure, including due process."

The Court thus set aside the impugned Order and allowed the writ petition.

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C.B. Panchakshara Mudaliar (died) & Ors. Vs. Valliammal (died) & Ors. [S.A.Nos.1166 & 1167 of 1994]

Date of Judgment: 15-07-2022

Civil Procedure – Adverse Possession – Title

The Hon'ble High Court considered the following substantial questions of law. [1] Whether in the case of vacant site, possession should follow title? [2] Whether the defendants as a co-sharer cannot prescribe title by adverse possession?

On the first issue, the Court found that the property is not vacant land, as the house of the plaintiff and defendants are there, along with other small construction. Even though as a principle, possession follows title with respect to vacant land, in the instant case, the said substantial question of law has become otiose, since the plaintiff's title is upheld under Exs.A1 and A2. The Court answered the issue accordingly, giving liberty to the Trial Court to examine the issue of possession during final decree proceedings, and if required, the ratio have to be readjusted to pass a further preliminary decree in accordance with the dictum laid down in *Ganduri Koteshwaramma Vs. Chakiri Yanadi [(2011) 9 SCC 788]*.

On the second issue, the Court found that payment of house tax would not be a ground to hold that the defendants had prescribed title by adverse possession. Adverse possession must be hostile to the true owner. Such hostility is not evident on the basis of the oral and documentary evidence adduced by the defendants. The possession of a co-sharer is considered as possession of all cosharers. In order to constitute adverse possession, it is not enough to show exclusive possession and enjoyment of the properties. The co-sharer out of possession must have notice of assertion of hostile possession ousting him.Thus, the Court held that co-sharers cannot claim adverse possession as against another co-sharer.

See Also

- P. Lakshmi Reddy Vs. L. Lakshmi Reddy [AIR 1957 SC 314]
- Maharajadhiraj of Burdwan, Udaychand Mahatab Chand Vs. Subodh Gopal [(1970) 3 SCC 681]
- MD. Mohammad Ali Vs. Jagadish Katila [(2004) 1 SCC 271]
- T. Anjanappa Vs. Somalingappa [(2006) 7 SCC 570]
- Pappayammal Vs. Palanisamy [(2005) 3 Mad LJ 32]

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Lalchand Bhimraj Vs. CESTAT [W.P.Nos. 34308 and 34309 of 2004]

Date of Judgment: 30-06-2022

Section 28, Customs Act, 1962 — Doctrine of Substantial Compliance

The Hon'ble High Court decided a Writ Petition on this issue whether the show cause notices in respect of the two bills of entry, issued by Respondent 4 were barred by limitation as per Section 28(1) of the Customs Act.

The Court referred to Sections 28 and 153 of Customs Act, and observed that if the date of dispatch of notices is taken into consideration, the notices served on the petitioner are within the period of limitation. The Court further found that the CESTAT, on appreciation of the factual aspects, had rightly held that the show cause notices were issued well within the period of limitation and had dismissed the appeals filed by the petitioners.

The Court and found that the date of dispatch of notice alone, will be taken into account for limitation. The Court further referred to *Kanubhai M. Patel (HUF) Vs. Hiren Bhatt [(2011) 334 ITR 25 (Gujarat)]*, and *Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal & Ors. [(2011) 1 SCC 236]*, wherein the doctrine of 'substantial compliance' was described as "a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted on some minor or in consequent aspects which cannot be described as the "essence" or the "substance" of the requirements." In order to invoke this defence, "a mere attempt at compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

The Court held that the notices issued by the fourth respondent are not hit by limitation, and that there is no reason to interfere with the findings so rendered by the CESTAT. Thus, the Writ Petitions were dismissed.

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Mrs. Kantha Bai Vs. The Competent Authority Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act & Ors. [W.P.Nos.22098 of 2003 (Batch)]

Date of Judgment: 06-07-2022

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [SAFEMA] - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

The Hon'ble High Court considered a Writ of Certiorari filed for calling for records involving the decision of the Competent Authority under SAFEMA subsequently affirmed by the Appellate Tribunal by dismissing the Appeal.

The Court observed that, it may be true that the Hon'ble Supreme Court had held that it is mandatory to produce the reasons in writing which made the Competent Authority believe that the properties are illegally acquired properties. This is a ground which can be raised only by the detenue since he has to satisfy the Competent Authority that the properties were legally acquired. A subsequent purchaser can never undertake this exercise and hence, even if the reasons had been provided in writing to the petitioners, nothing much could have been done by them.

The Court further observed that, the ground of acquiescence raised by the petitioners is unsustainable, since the authority cannot be following up on the transfer of property done by the detenue after the issuance of Section 6(1) notice and it is almost impossible for the competent authority to keep watching as to who is putting up a construction in the forfeited property.

The Court referred to *Aamenabai Tayebaly Vs. Competent Authority [(1998) 1 SCC 703]* and *Gulshan Ahuja and Ors. Vs. Union of India and Ors. [2005 Criminal LJ 1667]* and observed that it must weigh two factors in mind i.e., [1] delay of 18 years in passing the forfeiture order, and [2] the petitioners being bona fide purchasers for value and that they had no occasion to become aware of the proceedings under SAFEMA.

The court considered whether the interest of both the sides can be balanced. Ultimately, even if the forfeiture proceedings are upheld, the property will be put on auction sale and the amount will go to Central Government. What has been forfeited in the present case is 75% of the land that was purchased by the petitioners. The petitioners have spent money in demolishing the old structure and for putting up a new structure, after getting necessary sanction.

The Court directed to remand the matter back to the file of the 2nd Respondent for the limited purpose of exercising its jurisdiction under Rule 20 of the Forfeited Property (Procedure) Rules, 1986 in order to enable the 2nd Respondent to determine the amount and direct the petitioners to pay the same to the Central Government within the stipulated period. On the petitioners making such payment of the amount, the property can be released from forfeiture. If the amount is not paid, the order of forfeiture can be confirmed and further action can be taken under the provisions of SAFEMA. The 2nd respondent shall pass appropriate orders in this regard within a period of twelve weeks from the date of receipt of copy of this Order.

Thus, the Court modified the impugned Order on the above condition and disposed the Writ Petitions.

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R. Barathbaran (Died) & Ors. Vs. R. Nallathambi [SA Nos. 142 of 2012]

Date of Judgment: 2-3-2022

Section 118 - Negotiable Instruments Act

The Hon'ble High Court considered the scope of Section 118 of the Negotiable Instruments Act and the legal presumptions arising under it.

The Court found that, in the case of mandatory presumption, the burden of proof on the defendant in such a case would not be as light. As the presumption is raised under Section 114 of the Indian Evidence Act and cannot be held to be discharged merely on the fact that the explanation offered by the defendant is reasonable. When there is a statutory presumption in favour of the plaintiff, it has to be rebutted by proof and not by a bare explanation. Unless the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Presumption under Section 118 of the Negotiable Instruments Act is one of law, and thereunder, the Court below shall presume *inter alia* that the promissory notes were made for consideration. Once statutory presumption is raised, onus of proving absence of consideration is on the executant.

Thus, the Court allowed the Second Appeal.

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S. Jeevalakshmi Vs. The Principal Accountant General [W.P. (MD) No.800 of 2020]

Date of Judgment: 14-07-2022

Dual Pension - Freedom Fighters Pension Scheme (Swatantrata Sainik Samman Yojana)

The Hon'ble High Court considered a question of law arising from denial of family pension in the Freedom Fighters Pension Scheme on the following grounds,

[1] The Government Letter No.43105/Pen/2013 dated 02-12-2013, clarifies that all incomes are to be considered as income for fixation of the ceiling limit of Rs.7,850/-.

[2] The pension drawn, exceeds the income limit fixed vide the G.O.Ms.No.327 Finance Department dated 30-08-2001 and G.O.Ms.No.337 Finance Department dated 14-11-2017.

[3] G.O.Ms.No.290 Public (Ex-Servicemen) Department dated 05-04-2017 does not permit granting of dual pension.

The Court observed that, the main objective of Freedom Fighters Pension Scheme (Swatantrata Sainik Samman Yojana) is to honour the services and the sacrifices rendered by the freedom fighters for the nation in the freedom struggle and also in recognition of the services and sacrifices and it is not a charity.

The Court further opined that, the freedom fighters' pension cannot be brought under the meaning of income, as it has been held to be in honour for and in recognition of the services and the sacrifices of the freedom fighters.

The Court held that, freedom fighter pension is not considered as an income and hence not to be calculated for total income to deny family pension. Denial of family pension was found unsustainable in law and the Court thus closed the Petition.

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S Krishnamurthy Vs. Manivasan [Cont.P.No.515 of 2018]
Date of Judgment: 30-06-2022

Doctrine of *Parens Patriae* - Welfare of Senior Citizens

The Hon'ble High Court considered a batch of Writ Petitions concerning the validity of a Government Order safeguarding the interests of elderly and senior citizens.

The Court referred to various decisions from the Apex Court* and observed that, the State has executive power under Article 162 of the Constitution to issue any executive instruction/order with respect to privately managed old age homes. The Court found that the impugned G.O. is constitutionally valid and there are no grounds to interfere with the same. "Senior citizens being one of the vulnerable sections of society need utmost care and protection by the State … The Societies and Trusts managing these private retirement homes must work in tandem with the State Government … Therefore, the restrictions imposed by the impugned order cannot be said to be violative of Article 19(1)(g)."

On the issue of inconsistency with RERA Act, the Court observed that, the effect of sections 88 and 89 of RERA is that all laws that are not inconsistent with the RERA will continue to operate in their own sphere, while the ones that are inconsistent will not prevail over the RERA. The Court held that, the provisions of the RERA Act and the impugned G.O. must be read harmoniously as the object of the laws are obviously different and have been made pursuant to different fields of legislation, with no apparent conflict or repugnancy between the two.

The Court upheld the validity of the impugned G.O. and the Court issued the guidelines for the regulation and maintenance of the old age/retirement homes, as well as for welfare of senior citizens. Thus, the Court dismissed a set of Writ Petitions, gave directions in another set of Writ Petitions.

***See Also**

- Ashwani Kumar Vs. Union of India [(2019) 2 SCC 636]
- Forum for People's Collective Efforts Vs. State of West Bengal [(2021) 8 SCC 599]
- Government of NCT of Delhi Vs. Union of India [(2018) 8 SCC 501]

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S.K. Sujatha Vs. The State of Tamil Nadu [W.P.No.23805 of 2014]

Date of Judgment: 06-07-2022

Judicial Review – Competent Authority – Administrative Law

The Hon'ble High Court considered a Government Order issued by the Personnel and Administrative Reforms Department which declared that degree qualification of B.Sc (Biochemistry) will not be equivalent to B.Sc in Chemistry.

The High Court held that, High Court is not an expert body for the purpose of forming an opinion regarding the equivalence between the degrees. An academic exercise is required in these issues and such an exercise was deliberated by the equivalence committee constituted under the Rules in force. When the Committee has made certain recommendations and such recommendations were accepted by the Government and an order was issued, then there is no reason to exercise the powers of judicial review under Article 226 of Constitution of India to undo the exercise done by the expert body. Such an exercise is required to be done only if any unconstitutionality or violation of statutory Rules is established, but not otherwise.

The Government Order under challenge in the present Writ petition was issued by the Personnel and Administrative Department, therefore the Higher Education Department specifically constituted Equivalence Committee and the said Committee submitted its recommendations with reference to the various degrees and a comprehensive order was passed by the Government in G.O.Ms.No.72, Higher Education Department. After the issuance of the impugned order, when the Higher Education Department itself has passed an order categorically declaring that the B.Sc (Bio Chemistry) is not equivalent to B.Sc (Chemistry), there is no reason for the Court to interfere with the decision taken by the Government in this regard.

Thus, the Court dismissed the Writ Petition.

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HIGH COURT – CRIMINAL CASES

Bapuji Murugesan Vs. Mythili Rajagopalan [Crl.R.C.No.766 of 2019]
Date of Judgment: 21-06-2022

Section 148, Negotiable Instruments Act

The Hon'ble High Court decided a Criminal Revision Case on the issue whether the impugned order is an interlocutory order and whether a revision would lie against the same. The Court referred to *Madhu Limaye Vs. State of Maharashtra [(1977) 4 SCC 551]* and *S. Kuppuswami Rao Vs. King [AIR 1949 FC 1]*, and observed that the impugned order though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Section 397(2), CrPC. In our opinion it must be taken to be an order of the type falling in the middle course.

The Court observed that, payment of deposit is not a pre-condition in the appeal to be taken on file and therefore will not result in a final order of deciding the appeal. Applying the test of deciding the rights of the parties, it has been held that it is only a direction to deposit, subject to the final outcome in the appeal and therefore is only a matter of procedure without finally determining the rights of parties. Applying the test as to whether non-passing of such order or accepting of any plea by the accused or the complainant, whether it would result in culmination of proceedings, the answer is again in the negative. Therefore, applying any of the tests advocated by the Hon'ble Supreme Court, still the order, which is passed in exercise of power under Section 148, Negotiable Instruments Act, is neither a final order nor an intermediate order so as to hold that the revision as against the same is maintainable.

The Court held that, in a case where the direction of deposit is made coupling it as a condition for grant of suspension of sentence, that the order for grant of suspension of sentence or bail are all interlocutory orders and are not revisable under Section 397, CrPC. Thus, the Court dismissed the Criminal Revision Case.

*__See Also__

- Samuel George, Maliyekkal Bunglow Vs. State of Kerala [Crl.Rev.Pet. No. 2752 of 2009]

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B. Gokila Vs. Murugesan R. & Anr. [Crl.A.No.638 of 2015]
Date of Judgment: 27-06-2022

Sections 195 and 340 of CrPC — perjury

The Hon'ble High Court decided a Criminal Appeal on the issue whether the Reference Court had followed the procedure laid under the Section 340, CrPC, and whether it is expedient in the ends of justice to initiate penal action against the Appellant for perjury.

The Court observed that, to exercise the power under Section 340 of Cr.P.C., the Court before entertaining the complaint to proceed further should satisfy itself, whether it is expedient in the interest of justice that an enquiry should be made into the offence referred to in Section 195(1)(b), CrPC. Mere extract of the expression in the order is not expected under law.

The Court found that the Referral Court had failed to take note of the fact that the petition filed after inordinate delay and laches without any satisfactory explanation for the delay and it ought to have been subjected to the litmus test, whether the petition is filed on personal vendetta or to ensure the interest of justice not been done. The Referral Court has superficially approached the case without due judicial deliberation.

The Court held that, no doubt, perjury is caused by the Appellant, but to prosecute her after delay of 12 years will neither secure the ends of justice, nor is it expedient in the interest of justice. The Court relied on the decision in *Chjoo Ram Vs. Radhey Shyam & Anr. [(1971) 1 SCC 774]*, and considering the multiple-litigations between the Appellant and the first respondent, held that in the interest of justice as well as in the interest of the parties in order to avoid perpetual precipitation of ill-will among them, it is not expedient to entertain the complaint under Section 340(1) of Cr.P.C.

Thus, the Court allowed the Criminal Appeal.

See Also
Amarsang Nathaji Vs. Hardik Harshadbhai Patel & Ors. [(2017) 1 SCC 113]

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Chellamuthu Vs. State rep. by The Inspector of Police, Maraneri Police Station, Maraneri, Virudhunagar District [Crl.A.(MD)No.83 of 2022]

Date of Judgment: 14-07-2022

Sections 302 and 304(I) of IPC — Accident Register

The Hon'ble High Court decided a Criminal Appeal challenging the conviction and sentence for offences under Section 302 and 324 of IPC.

The Court found that though the Accident Registers noted that five persons had attacked the deceased, it was not confronted to the prosecution witnesses as required under Section 145, Evidence Act. The Court referred to *P. Babu & Ors. Vs. State of Andhra Pradesh [(1994) 1 SCC 388]*, *B. Bhadriah & Ors. Vs. State of Andhra Pradesh [(1995) Supp 1 SCC 262]* and *P. Venkaiah Vs. State of Andhra Pradesh [AIR 1985 SC 1718]*, and reiterated the holding of the Supreme Court that, entries in the Accident Registers cannot be given much significance because Accident Registers are mainly intended for the doctors to note down the injuries noticed by them during the examination of the victims.

The Court observed that a quarrel had taken place between the deceased and the Appellant, in which the Appellant's son appears to have suffered injuries and the Appellant had caused injuries to P.W.1 and the deceased.

The Court took into consideration the nature of the injury and the weapon used, and held that, though the conviction and sentence of the appellant cannot be sustained for the offence under Section 302 IPC, the Appellant could be convicted under Section 304(I), IPC and sentenced to undergo ten years rigorous imprisonment.

Thus, the Court partly allowed the Criminal Appeal, set aside the conviction and sentence of the Appellant under Section 302, IPC, convicted the Appellant under Section 304(I), IPC and retained the conviction and sentence for offence under Section 324, IPC.

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Ganesan Vs. SHO, District Crime Branch [Crl.R.C.No.654 of 2022]
Date of Judgment: 01-07-2022

Section 173(8), CrPC — Criminal Procedure

The Hon'ble High Court considered two important questions [1] Whether or not the Revision filed by the de-facto complainant against the order of the learned Magistrate dismissing the application filed by the prosecution under Section 173(8) of Cr.P.C., is maintainable? And [2] Whether the learned Magistrate was right in rejecting the application for further investigation on the ground that the trial is commenced?

The Court found that, [1] by filing the revision, the defacto complainant is only brining to the notice of this court of his perception that an erroneous order is passed which according to him will lead to injustice and therefore, would not amount to taking over of the prosecution; [2] second, there is no express embargo in Section 372 of Cr.P.C., for the defacto complainant to invoke the jurisdiction of this Court and therefore the principle of private lawyer taking over the prosecution cannot be extrapolated to the situation on hand. The Court held that the Revision filed by the de-facto complainant is maintainable and is in order.

The Court further held that, Section 173(8) of Cr.P.C., does not place any fetter on the Police to conduct further investigation in the case after commencement of trial and whenever they come across any additional information it is just and necessary that the same be brought to the notice of the Court.

The Court referred to *Vinubhai Haribhai Malaviya Vs. the State of Gujarat [(2019) 17 SCC 1]* and reiterated that the purpose of further investigation is that any person who has wrongly been prosecuted cannot suffer the same and any person, who was actually committed the offence, should not escape punishment.

Thus the Court allowed that Criminal Revision Case.

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Kunnamkulam Paper Mills Ltd. Vs. SEBI [Crl.A.No.626 of 2019]
Date of Judgment: 05-07-2022

Criminal Procedure – Section 24 – SEBI Act

In deciding a Criminal Appeal, the Hon'ble High Court observed that, on a perusal of both the unamended and amended Section 24, SEBI Act, it would be clear that there are two distinct offences under Sections 24(1) and 24(2), SEBI Act. Under Section 24(1), SEBI Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of the Act or of any rules or regulations made thereunder, then he is liable for punishment. Under Section 24(2), SEBI Act, if any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of the direction, then he is liable for punishment.

In this case, there are two different acts. One, is the violation of the rules and regulations under the Act by issuing 1,73,995 equity shares i.e., that was on 28.03.2001. Therefore, the punishment imposable was as per the provision of Section 24(1) as it stood prior to the amendment. As far as the second violation is concerned, i.e., punishable under Section 24(2) of the SEBI Act i.e., the same is after the amendment and therefore, the appellants will be liable for the punishment as per the amended Act.

Further, the Court referred to *Anil Vs. Admn. Of Daman & Diu, Daman [(2006) 13 SCC 36]* and *Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259]*, and held that, this is a case where the charge is complaining of both Section 24(1) and 24(2) and the only error of the Trial Court was not to mention Section 24(2) expressly. However, Section 24(2) being an offence of the same genus, no prejudice was caused to the appellants.

Thus, the Court allowed the Criminal Appeal and affirmed that the second act committed by the appellants after coming into force of the amendment, would amount to an offence under Section 24(2), SEBI Act as amended and therefore, the Sessions Court was right in trying the offence.

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Y (name concealed) Vs. The State of Tamil Nadu, Rep by the Inspector of Police, AWPS, Polur, Tiruvannamalai [W.P.No.18043 of 2022]

Date of Judgment: 15-07-2022

Section 3, Medical Termination of Pregnancy Act, 1971 — Section 6, POCSO Act, 2012

The Hon'ble High Court decided a Writ Petition seeking the medical termination of a 27-week pregnancy of a 13-year-old child, who was a survivor of offence under Section 6, POCSO Act, 2012.

The Court referred to several judicial precedents* where the Courts have granted permission to terminate pregnancy beyond the gestation period prescribed in the statute. The Court observed that while exercising powers under Article 226, Constitution of India, the Court has got wider powers than that of a registered medical practitioner under Section 3(2), Medical Termination of Pregnancy Act, 1971, to the terminate the pregnancy of a child survivor on the ground of grave danger to her physical and mental health.

The Court considered the medical report which recommended the termination of the child's pregnancy, found that the child is not physically and mentally strong enough to withstand the pregnancy.

The Court directed the First Respondent to appoint a team of doctors to terminate the pregnancy of the child, and to preserve the foetus for carrying out the medical test for the purpose of criminal case pending against the accused for offence under Section 6, POCSO Act, 2012. The Court further directed the Child Welfare Committee to render all possible assistance to the child and her parents.

Thus, the Court disposed off the Writ Petition.

***See Also**

- A Vs. Union of India [(2018) 4 SCC 75]
- Murugan Nayakkar Vs. Union of India [2017 SCC Online SC 1092]
- Sarmishtha Chakrabortty Vs. Union of India [(2018) 13 SCC 339]
- Meera Santosh Pal Vs. Union of India [2017 3 SCC 462]
- Neethu Narendran Vs. State of Kerala [2020 (3) KHC 157]
- Mahalakshmi Vs. District Collector & Ors. [W.P.(MD).No.659 of 2021, dated 19.01.2021]

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Mohandass Vs. State rep.by The Inspector of Police, NIB/CID Police Station, Coimbatore District [Crl.A.No.204 of 2018]

Date of Judgment: 13-07-2022

Section 54, NDPS Act, 1985

The Hon'ble High Court decided a Criminal Appeal challenging the conviction for offence Section 8(c) r/w 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

The Court found that the prosecution had not proved the fundamental fact that the contraband was seized from the accused, while it was transported in the Maruthi Alto Car. The Court also found that the alleged seizure is doubtful as the independent witness had turned hostile and other prosecution witnesses had also turned hostile. The fact that the Maruthi car was really in possession of the accused at the relevant point of time was also not proved. Further, the Court observed that the unexplained 51 days delay in forwarding the seized contraband to the Special Court gains significance as Section 52, NDPS Act mandates safe custody of the contraband and if there is any violation, it will lead to suspect tampering.

The Court observed that if the possession itself is not proved, the presumption under Section 54, NDPS Act will not apply. The presumption under Section 54 of the NDPS Act is not for possession but for illegitimacy. If the possession is proved, unless and otherwise the possessor proves that his possession is licit. Under this Act, the possession of psychotropic substance and narcotic drugs by certain persons is permissible under certain circumstances. For the said reason, Section 54 of the Act gives a presumption which could be rebutted by the possessor that his possession of the said article is legal.

The Court held that since the prosecution had failed to prove the recovery of contraband from the appellant, by applying Section 54 of the NDPS Act, he cannot be convicted. Thus, the Court allowed the Criminal Appeal, set aside the judgment of the Trial Court, and set the Appellant at liberty.

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S. Srinivasan Vs. M/s. Premier Energy & Infrastructure Ltd. (PEIL) [Crl.A.No.394 of 2022]

Date of Judgment: 06-07-2022

Section 138 r/w 142, Negotiable Instruments Act, 1881 - Legally Enforceable Debt or Liability

The Hon'ble High Court decided a Criminal Appeal on the issue whether the cheque is issued for any legally enforceable debt or liability.

The Court found that the cheque had been issued post-dated towards the consideration payable on merger, which had not taken place, and that therefore, the cheque was not issued towards any existing debt or liability, but towards a future contingency of merger.

The Court referred to *M/s. Indus Airways Pvt. Ltd. & Ors. Vs. M/s. Magnum Aviation Pvt. Ltd. & Anr. [(2014) 12 SCC 539]*, wherein the Apex Court observed that, "for a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque". The Court observed that, if the cheque is only presented as an advance payment of towards a purchase, which the purchaser does not want to go ahead, then, there is no existing liability.

The Court further referred to *Sunil Todi & Ors. Vs. State of Gujarat & Anr. [2021 SCC OnLine 1174]*, wherein the Apex Court had held that the cheque should be issued for the existing liability as on date of drawal of the cheque or future liability which should have actually arisen as on date of presentation.

The Court held that, so long as there was no liability as on drawal of the cheque and the commercial transaction between the parties having failed to fructify even as on date of presentation, the cheque was not mature for presentation.

Thus the Court held that the finding of the Trial Court holding that there was no legally enforceable liability is in order, and thus dismissed the Criminal Appeal.

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Union of India, Rep. by its Enforcement Officer Vs. M/s. New Line Finance Ltd., Rep. by A2 and A3 & Ors. [Crl.A.No.678 of 2010]

Date of Judgment: 23-06-2022

Section 40, Foreign Exchange Regulation Act, 1973 — Section 80, Evidence Act

The Hon'ble High Court decided a Criminal Appeal challenging the Order of acquittal in a case of unauthorised sale of foreign exchange.

The Court referred to *Reg Vs. Shivaya & Ors. [ILR 1876 (1) Bom 219]*, and found that the statements which the appellant/complainant wants to rely on, falls under two categories i.e., [1] statements of the accused which were later retracted, and [2] statement of persons who were neither arrayed as accused nor examined as witnesses. To draw presumption under Section 80 of the Evidence Act, such statements must satisfy three conditions. First, it must have been recorded in a judicial proceeding. Second, the maker of the statements must have been witnesses in the said proceedings and third, the statements must fall within the definition of 'evidence'.

The Court found that since the statement had been made soon before arrest and retracted soon after the release from jail, it is clouded with suspicion, and therefore the trial Court had rightly concluded that for want of independent corroboration, the prosecution fails.

The Court held that, the investigation done by the Enforcement Directorate leading to the launching of criminal prosecution is not a judicial proceeding, except for the purpose of invoking Sections 193 and 228 of I.P.C., as against the maker of the statement. The deeming provision for limited purpose cannot be extended to the general rule of evidence. The Court further found that the statements made before the Enforcement officer without administering oath and behind the back of the accused persons cannot be taken as evidence unless the maker of the statement appeared before the Court of law and subjected himself for examination on oath.

Thus the Court upheld the finding of the trial Court and dismissed the Appeal.

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Viswanath Vs. State by Inspector of Police, Tamil University Police Station, Thanjavur District [Crl.A.(MD) No.231 of 2019]

Date of Judgment: 14-07-2022

Sections 302 and 201, IPC — extrajudicial confession statement

The Hon'ble High Court decided a Criminal Appeal challenging the conviction and sentence for an offence under Sections 302 and 201 of IPC.

The Court referred to *Govinda Reddy Vs. State of Mysore [AIR 1960 SC 29]* and *Shaik Mustan Vali Vs. State of Andhra Pradesh [(2007) 9 SCC 342]*, and accepted the contention of the Appellant that it is the duty of the prosecution to prove each circumstance satisfactorily and the proved circumstances should establish the guilt of the Accused.

The Court observed that the extrajudicial confession statement would not be vitiated, merely because the Village Administrative Officer had sent the requisition letter to the Inspector of Police. The Court further referred to *Sivakumar vs. State [(2006) 1 SCC 714]*, and observed that there is no rule of law that a person should confess only to a person known him previously. The Court found that unlike in the case of *Anwar Ali & Anr. Vs. State of Himachal Pradesh [(2020) 10 SCC 166]*, there were no good reasons to disbelieve the evidence of the Village Administrative Officer, to whom the Appellant had given the extrajudicial confession statement.

The Court referred to *Sayarabano Vs. State of Maharashtra [(2007) 12 SCC 562]*, and the phrase 'under the circumstances of the particular case', used in the definition of the word 'proved', under Section 3, Evidence Act, and observed that, each case has to be determined based on the evidence adduced therein and that the law of precedents would have little application in criminal cases.

Thus, the Court upheld the impugned conviction and sentence, cancelled the suspension of sentence of the Accused and dismissed the Criminal Appeal.

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