TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XV **Part: 6** **June, 2020**

IMPORTANT CASE LAW

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MADRAS HIGH COURT – CRIMINAL CASES

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SUPREME COURT – CIVIL CASES

2020 (2) CTC 118

Atma Ram vs. Charanjit Singh

Date of Judgment:10.02.2020

Code of Civil Procedure, 1908(5 of 1908), Section 149 – Specific Relief Act, 1963(47 of 1963), Section 20 – Suit for mandatory injunction – claim for relief of Specific Performance – Deficit Court-fee – Payment of – whether an escape route to avoid limitation – suit for mandatory injunction with respect to agreement of sale – objection with respect to maintainability – trial court permitting plaintiff to pay deficit court-fee by treating prayer made as one for specific performance -– dismissal of suit upheld.

As a matter of fact, if the suit was actually one for Specific Performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for Mandatory Injunction(which it actually was), the only recourse open to the Petitioner was to seek an amendment under Order 6, Rule 17, C.P.C. If such an application had been filed, it would have either been dismissed on the ground of limitation ***(K.Raheja constructions Ltd., Vs. Alliance Ministries, 1995 Suppl(3) SCC 17)***, or even if allowed, the prayer for Specific Performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the Plaint:***Tarlok Singh vs. Vijay Kumar, 1996(1) CTC 738(SC) : 1996(8) SCC 367; Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit vs. Ramesh Chander, 2010 (14) SCC 596***. Therefore, a short-cut was found by the Petitioner/Plaintiff to retain the Plaint as such, but to seek permission to pay deficit Court-fee, as though what was filed in the first instance was actually a suit for Specific Performance. Such a dubious approach should not be allowed especially in a suit for specific Performance, as the relief of Specific Performance is discretionary under Section 20 of the Specific Relief Act, 1963.

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2020(3) CTC 111

BhagwatSharan (Dead) thr.LRs.

Date of Judgment:03.04.2020

Hindu Succession Act, 1956(30 of 1956), Section 6 – Indian Evidence Act, 1872(1 of 1872), Section 103 – Joint Family Property – Proof of - on Whom burden lies.

Normally, an HUF can only comprise of all the family members with the head of the family being Karta. Some property has to be the nucleus for this Joint Family. There is cleavage of opinion as to whether two brothers or a larger group can form a Joint Family. But assuming that such a Joint Family could have been formed by Madhav Prashad and UmraoLal the burden lies heavily on the Plaintiff to prove that the two of them joined together to form an HUF. To prove this, they will have to not only show jointness of the property but also jointness of family and jointness of living together. It is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a Joint Family to prove that the property belongs to the Joint Hindu Family unless there is

material on record to show that the property is the Nucleus of the Joint Hindu Family or that it was purchased through funds coming out of this Nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a Joint Hindu Family.

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2020 (1) TLNJ 471(Criminal)

Jagmail Singh & another vs. Karamjit Singh & others

Date of Judgment:13.05.2020

Indian Evidence Act, 1872, Section 65 & 66 – application under – seeking permission to prove the copy of the Will by way of secondary evidence as the original Will which was handed over to the village patwari for mutation could not be retrieved – to establish the right to give secondary evidence was laid down by the appellants – and thus the High court ought to have given them an opportunity to lead secondary evidence.

Needless to observe that merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with the law.In view of the aforesaid legal and factual position, we are of the considered opinion that the impugned judgment of the High Court suffers from material irregularity and patent errors of law and not liable to be sustained and is thus, hereby set aside. The appeal accordingly stands allowed.The appellants would be entitled to lead secondary evidence in respect of the Will in question. It is, however, clarified that such admission of secondary evidence automatically does not attest to its authenticity, truthfulness or genuineness which will have to be established during the course of trial in accordance with law.

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SUPREME COURT – CRIMINAL CASES

2020 (1) CTC 579

Amir HamzaShaikh and others vs. State of Maharashtra and another

Date of Judgment:07.08.2019

Code of Criminal Procedure, 1973 (2 of 2974), Sections 302 & 301- Scope of – Right of Victim/Complainant to take over enquiry – Tenability of – Under Section 301, any person may assist Public Prosecutor and submit written submissions with permission of Court – Rights of Victims to participate in Criminal Proceedings, under Sections 301 & 302 Code, recognized in various Judgments.

It may be noticed that under Section 301 of the Code, the Public Prosecutor may appear and plead without any authority before any Court in which that case is under inquiry, trial or Appeal and any person may instruct a Pleader, who shall act under the directions of the Public Prosecutor and may with the permission of the Court to submit written submissions. In view of such principles laid down, we find that though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities, which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant permission to the victim to take over the inquiry of the pendency before the Magistrate.

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2020(1) TLNJ 294 (Criminal)

Santosh Prasad @ Santosh Kumar vs. State of Bihar

Date of Judgment:14.02.2020

Indian Penal Code, 1860, Section 376(1) and 450 – Complaint of rape against the brother-in-law of prosecutrix – conviction and sentence – appeal – Not only there are material contradictions, but even the manner in which the incident said to have been taken place is not believable – appeal allowed.

There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL Report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix – PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.

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2020 (2) CTC 326

Shiv Kumar alias JawaharSaraf vs. RamavtarAgarwal

Date of Judgment:19.02.2020

Negotiable Instruments Act, 1881(26 of 1881), Sections 138 & 139 – For complaint under Section 138 of Act, presumption drawn under Section 139 of there being debt/liability of drawer to holder of instrument – presumption is rebuttable - Rebuttal can be made with reference to the evidence of the Prosecution as well as of Defence.

It is held by the High Court that it would be open for him to raise all these grounds at the stage of leading evidence including the defence of existence of legally enforceable debt or liability. However, there can be no doubt that at the time of filing of complaint there was always initial presumption which would be in favour of the complainant. We are in full agreement with the opinion of the High Court expressed in the above noted paragraphs which has been referred by learned counsel for the appellant. It is well settled that the rebuttal can be made with reference to the evidence of the prosecution as well as of defence.

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2020(2) CTC 740

SanjeevKapoor vs. ChandanaKapoor& others

Date of Judgment:19.02.2020

Code of Criminal Procedure, 1973(3 of 1974), Sections 125 & 362 – Maintenance Petition – disposal on terms and conditions – recall of order – whether permissible – petition for maintenance filed by wife under Section 125 – settlement arrived between parties and petition disposed on mutual terms and conditions – as husband failed to perform obligations as per settlement, order under Section 125 recalled and petition restored.

We need to first examine as to whether the orders passed in present case are covered by the exception i.e., "save as otherwise provided by the code". Section 362, Cr.P.C., thus, although put embargo on the criminal court to alter or review its judgment or final order disposing the case but engrafted the exceptions as indicated therein. The legislature was aware that there are and may be the situations where altering or reviewing of criminal court judgment is contemplated in the code itself or any other law for the time being in force. We the present we case are concerned only with Section 125 Cr.P.C. We need to examine as to whether Section 125, Cr.P.C., in any manner relaxed the rigour of Section 362, Cr.P.C., The order passed in present case by Family Court reviving the maintenance application of the wife under Section 125, Cr.P.C., by setting aside Order, dated 06.05.2017 passed on settlement is not hit by the embargo contained in Section 362, Cr.P.C.,

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2020 (1) TLNJ 364 (Criminal)

K.Virupaksha& another vs. State of Karnataka & another

Date of Judgment:03.03.2020

Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, 13, 17 & 32 – Proceeding under – assets of appellants kept under NPA by bank – Auction sale fixed initially for Rs.2.28 crores – no bids received – auction sale fixed initially for Rs.1.10crores – complaint against bank officials for the offence under Sections 511,109,34,120 B, 406, 409, 420 405 417 and 426 of IPC – not maintainable.

The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance as already taken note by the High Court in writ proceedings if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, the DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of SARFAESI Act.We reiterate, the action taken by the Banks under the SARFAESI Act is neither unquestionable nor treated as sacrosanct under all circumstances but if there is discrepancy in the manner the Bank has proceeded it will always be open to assail it in the forum provided. In a circumstance where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the Investigating Officer or the criminal court would not be justified.

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MADRAS HIGH COURT – CIVIL CASES

2020(1) CTC 398

Ramesh Venkat, Rep by Power of Attorney Holder, Subbulakshmi vs. Narashimhan& others
Date of Judgment: 04.04.2019

Code of Civil Procedure, 1908(5 of 1908), Order 21, Rule 35(3) & Order 21, Rule 97 – Delivery of possession – who can resist.

The Judgment-debtor or a person who claims derivative title from the Judgment-debtor would be bound by the Decree and they cannot resist execution. In other words, if the person in possession sets up independent title himself, it was open to him to resist execution. Therefore, the learned counsel's reliance on the above judgment is misconceived.

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2020(2) CTC 805

Arumugham& another vs. Ramalingam (Decd) & 7 others

Date of Judgment:23.05.2019

Code of Civil Procedure, 1908(5 of 1908), Order 6, Rule 4 – Plea of fraud – Whether established – suit for permanent injunction decreed exparte – suit for setting aside said decree on ground that same was obtained by fraud – requirements to establish fraud.

In the Plaint, the Plaintiff has stated that the first defendant has obtained a decree by making false endorsement in the summons as he refused to receive the same. Apart from the said allegation he has not given any other particulars as contemplated under Order 6, Rule 4, C.P.C., At this juncture, it would be relevant to refer to the decision in ***BishundeoNarain and another vs. SeogeniRai and Jagernath, AIR 1951 SC 280***, wherein the Hon'ble Supreme Court has held that if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. It was further held that general allegations are insufficient, even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion.

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2020 (1) CTC 548

K. Soundaram vs. R. Srinivasan

Date of Judgment:17.07.2019

Limitation Act, 1963 (36 of 1963), Section 65 – Adverse Possession – Suit for Declaration – Title claimed by Adverse Possession – Plaintiff pleaded that his father was put in possession by Defendant's father in 1952 – Such possession is Permissive Possession – No averment in Plaint to show as to when such Permissive Possession became Hostile Possession and when Plaintiff started asserting hostile title to the knowledge of Defendant - – Plaint rejected.

From the facts narrated supra, it could be seen that the Plaintiff has specifically pleaded in the Plaint that his father was put in possession in the year 1952 by the father of the Defendant. Then the possession of the Plaintiff/Respondent could at best be termed as Permissive Possession. There is no averment in the Plaint to show, as to when, the said Permissive Possession became Hostile Possession and as to when, the Plaintiff started asserting a hostile title to that of the Defendant to the knowledge of the Defendant. The entire Plaint is silent on the said aspect. It is settled law that a person, who claims Adverse Possession should plead and prove the date on which his possession became adverse to the original Owner. Such a pleading is totally absent in this case on hand.

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2020(1) CTC 515

B.Rajeswari& another vs. B.Vinayagam& 2 others

Date of Judgment:06.09.2019

Evidence Act, 1872(1 of 1872), Section 45 - Expert opinion – scope of – expert opinion not final – court can accept or reject expert opinion - while rejecting opinion of expert, especially one who deposed in Court, Court must give cogent and convincing reasons for such rejection.

The Lower Appellate Court has ignored the expert opinion by citing certain judgments, wherein it has been held that expert opinion is very weak evidence unless it is proved by examination of the expert. The lower appellate court had totally overlooked the fact that the expert has been examined as DW3. It has not considered the evidence of the expert and reached a conclusion that the report of the expert is not reliable. No doubt the expert's opinion is not final and it is for the court to accept or reject the expert opinion. While rejecting the opinion of the expert that too an expert, who has deposed in court, the court must give cogent and convicting reasons for such rejection. The lower appellate court has not even attempted to examine the evidence of DW3 in order to find out whether his report could be relied upon or not. The opinion of the expert was simply brushed aside. I find that the procedure adopted by the lower appellate court is totally unconvincing.

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2020 (1) CTC 799

LathaIlangovan vs. UshaRajaram and others

Date of Judgment:27.09.2019

Constitution of India, Article 227 – Code of Civil Procedure, 1908 (5 of 1908), Order 39, Rule 3 - *Ex parte* Interim injunction – recording of reasons mandatory**.**

When a Court proposes to grant an Interim Order of Injunction, without giving Notice of the Application to the Opposite Party, being of the opinion that the object of granting Injunction itself would be defeated by delay, it shall record the reasons as to why an *ex parte* Order of Injunction is being passed. Therefore, it is Mandatory for a Court to record reasons for granting an *ex parte* Interim Order. A bare perusal of the impugned Order shows that though the Court below granted an *ex parte* Order of Interim Injunction for a limited period, it has failed to assign reasons for granting such an Order. The requirement for recording reasons for grant of *ex parte* Injunction cannot be held to be a mere formality. Failure to give reasons in a case of this nature amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. If the Statue requires a thing to be done in a particular manner, it should be done in that manner. But, in this case, the Court below has failed to do so. The Opposite Party against whom such an *ex parte* Order passed without even put on Notice must know the reasons on, which such an Order is passed.

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2020 (3) CTC 799

A.R.Indira vs. N.Kadappan

Date of Judgment:24.10.2019

Hindu Marriage Act, 1955 (25 of 1955), Section 13 – Desertion – Divorce sought by Husband on ground of desertion after undue delay of nearly 17 years – Articles of wife remained in custody of Husband – Wife admitted to be having key for Matrimonial home – relationship of husband and wife not severed.

As regards the ground of desertion, it is seen that the Respondent/Husband has not taken any steps to recall the Appellant/Wife. From the evidence, it appears that jewelry and other articles belonging to the wife continued to remain in the custody of the husband and the husband has in fact given evidence to the effect that the wife has a key of his house where she could come and take the jewelry. Therefore, it is very clear that the relationship of the husband and wife has not been severed completely and the wife has given the evidence that she has been discharging her Matrimonial duties. Of course, it is only the word of the Appellant/Wife as against the word of the Respondent/Husband. However, the fact that the wife still has an access to the husband's house coupled with the delay in seeking Divorce on the ground of desertion would only go the show that the wife has not completely left her Matrimonial home and that the relationship continued between the two.

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2020 (2) CTC 504

T.S.Prem Kumar & another vs. S.Karpagam& 5 others

Date of Judgment:04.11.2019

Tamil Nadu Court Fees and Suits Valuation Act, 1955(T.N. Act 14 of 1955), Sections 11 & 37 - Suit for Partition – Court-fees payable – Joint possession not averred or claimed in Plaint – Constructive joint possession averred for purpose of computing court-fees payable – Plaintiff must value the suit at market value of the share claimed and to pay Ad-valorem Court Fees .

Section 37 of the Act, makes it clear that, once it is a suit for Partition, where joint possession has not been claimed or averred in the Plaint, the Plaintiffs are not entitled to pay Fixed Court-fee, as has been contemplated under Section 37(2)(iii) of the Act, therefore, if a Partition Suit is filed before this Court, the Plaintiffs would not be entitled to invoke Section 37(2)(iii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, unless and until, he pleaded for joint possession of the suit property including the share of the Plaintiffs. In the absence of such averments in the Plaint and claim made therein about the joint possession of the Suit property, the Plaintiffs would have to value the suit at the market value of the share claimed by the Plaintiffs in the Suit and accordingly Ad-Valorem Court-fee has to be paid.

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2020(3) CTC 742

K.R.Arumugam (Died) & 3 others vs. P.Semmalar& 2 others

Date of Judgment: 05.11.2019

Hindu Law - Joint Family – Karta – Trust and confidence of Family Members – Significance of – Sale of undivided interest of minor in Joint Family property – Whether valid – Father did not enjoy confidence or faith of Daughter – cannot act as Karta of family.

From the evidence available on record, it is absolutely clear that the relationship between the First Respondent/Third Defendant and the second Respondent/First Defendant is strained and the First Respondent/Third Defendant does not have any confidence on her father, the Second Respondent/First Defendant. This being the case, it can be conclusively inferred that the second Respondent/First Defendant can never act as as Karta for the Hindu Undivided Family in, which the First Respondent/Third Defendant is a member. Unless and until, there is mutual trust and confidence between the members of the Hindu Undivided Family, a head of the family cannot act as a Karta. The Trial Court has not taken note of this crucial factor before decreeing the Suit against the First Respondent/Third Defendant also, who was a minor at the time of execution of the Sale Agreement – Ex.A1.

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2020(1) CTC 321

Bharathidasan vs. Shanmugavel

Date of Judgment:15.11.2019

Code of Civil Procedure, 1908(5 of 1908), Orders 6 & 7- Transfer of Property Act, 1882(4 of 1882) – Pleadings not explained how Plaintiff's predecessors-in-title obtained title to suit property – Court in earlier round of litigation observed that no explanation found with reference

to documents in pleadings – courts below erred in Decreeing Suit based on presumption and probabilities.

The Plaintiff has not come out with a clear case as to how the Plaintiff's predecessors-in-title had obtained title to the suit property.In the instant case though the earlier round, this Court has observed that there is no explanation with reference to the documents in the pleadings, the Plaintiff has not taken any steps to amend the pleadings. The courts below have clearly erred in decreeing the Suit based on presumption of probabilities. The Plaintiff has not come to the Court with a specific case and had developed the pleadings during the course of evidence. Therefore, on this ground also the Judgment and Decree of the Courts below deserve to be reversed.

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2020 (2) CTC 65

Paneerselvam& another vs. Ramalingam& another

Date of Judgment:19.11.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 10 – Impleading of parties to suit – only necessary or proper party to proceedings to be impleaded.

It is now a settled Principle of Law that insofar as the impleading of parties to the suit is concerned, he has to be a necessary party or a proper party to the proceedings. Necessary party is one without whom no effective Order can be made. Proper party is one, whose presence is necessary for a complete and final decision. Unless these requirements are satisfied, the Plaintiff cannot be forced to add anyone as a party, since he is the dominuslitis.

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2020 (2) CTC 57

ShivajiRaoGaikwad @ Rajinikanth vs. S.MukunchandBothra, Rep by his Power of Attorney, M.GaganBothra

Date of Judgment: 18.12.2018

Indian Penal Code, 1860(45 of 1860), Sections 499 & 500 – Imputations in Civil Court Pleadings – Criminal Defamation proceedings against – Maintainability of.

It is important to carefully see whether the allegations made by the accused person in the civil proceedings, are relevant to the issues and are absolutely necessary to be pleaded to substantiate the case of the accused in the Civil proceedings. Sometimes the character and conduct of the person may also become necessary and important to be pleaded to substantiate the case. Ultimately what is required to be seen is whether the allegation made is totally unconnected or unwarranted to decide the issues involved in the Suit. After all in a Civil Proceeding, averments made in the Pleadings/Affidavit becomes very essential, since no amount of evidence can be let in without necessary averments in the Pleadings/Affidavit. The above findings make it very clear that the averment made by the Petitioner in the Affidavit filed in support of the rejection of the Petition, had a major bearing while deciding the Petition. It is also clear that the averment was not unconnected or unwarranted for deciding the issue involved in the Petition. This Court has gone to the extent of finding that the entire suit was a speculative one. In view of the above, this Court is of the considered view that the averment made in the affidavit by the Petitioner is not per se defamatory, and the same was made as a necessary averment in order to project the **conduct/character of the respondent. The same has been sanctified by the Final Orders passed by t**his Court, which has been referred supra. Therefore, the continuation of the criminal complaint against the petitioner will amount to an abuse of process of Court.

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2020 (1) CTC 593

I Additional District and Sessions Judge vs. Arumugam

Date of Judgment:28.03.2019

Code of Criminal Procedure, 1973 (2 of 2974), Sections 366 – Indian Penal Code, 1860 (45 of 1860), Sections 302, 307 & 506(ii)- Murder of Child – Death Sentence – Facts and Circumstance of case – Rarest of Rare case – Principle of – Interference, whether warranted.

The severity or brutality with which the crime was perpetrated by the Accused certainly outweighs the fact that the Accused is not a person, who can be adjudged as a menace to the society or he has a history of similar antecedents to his credit. At the same time, having regard to the brutal manner with which the crime was committed by the Accused against a young child, we cannot rule out that he is a person, who is likely to be reformed and on that ground, he must be shown leniency. Thus, taking into account the totality of the circumstances of the case, the aggravating circumstances appear against the Accused in unleashing act of terror on an innocent child in a most barbaric and inhuman manner in front of his mother and grandmother, causing 24 cut injuries on the deceased, we deem it necessary to set aside the Death Sentence awarded to the Accused, instead he must be imprisoned throughout the rest of his biological life, which, in our opinion will be the appropriate sentence to be imposed on the Accused.

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2020(1) CTC 162

Nalankilli vs. State, rep by the Inspector of Police, All Women Police Station, T.Nagar, Chennai – 600 017.

Date of Judgment: 22.08.2019

Protection of Children from Sexual Offences Rules, 2012, Rule 7 – compensation payable to victim – Determination of – NALSA Compensation Scheme gives detailed procedure for fixing compensation payable to victims of sexual abuse – Supreme Court in ***NipunSaxena vs. Union of India,*** gave directions as to guidelines for determining compensation for victims – Such directions to be followed in letter and spirit.

Petitioner filed application seeking compensation under POCSO Rule 7, for his daughter, who is minor and victim of sexual assault. The NALSA compensation scheme was taken note of by the Hon'ble Supreme Court while passing the above judgment and the said scheme has given a detailed procedure for fixing the compensation payable to the victim of a sexual abuse. The Hon'ble Supreme Court took the pains to give such a direction only with a view to take care of the victims of sexual abuse and to give them sufficient compensation to tide over the situation. The Courts are required to be sensitive to these issues and the directions given by the Hon'ble Supreme Court will have to be followed in letter and spirit. In the considered view of this Court, the court below has mis-directed itself. The language used under Rule 7(1) & 7(2) of the POCSO Rules, are unambiguous. Rule 7(1) of the POCSO Rules, deals with payment of Interim Compensation and Rule 7(2) of the POCSO Rules, deals with payment of final compensation. At the time of payment of final compensation, the interim compensation already paid to the child will be adjusted from the final compensation.

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2020 (1) TLNJ 231

Dr. R.Krishnamurthy& another vs. The City Public Prosecutor City Civil Court Buildings, Chennai – 600 104.

Date of Judgment: 13.02.2020

Criminal Procedure Code, 1973, Section 199 – Defamation complaint – Publication in daily newspaper the proposals and discussion in the Government official meeting relates to increase in fares of Transport Corporation and Privatization – published in the print media shows that what transpired in the meeting has been taken to print and this in no way could be imputed as defamatory statements against the office of the said individual or tarnishing the name of the individual.

It is clear that what the media has carried are the conduct of the meeting and the discussions and decisions that have taken place in the said meeting, as spoken to by the higher officials of the Government/Transport Corporation. As has been time and again held by the Apex Court, it is not necessary for the Press/Media to ascertain the truthfulness or the veracity of the statements made. However, in the present case, the statements have been made by the higher officials of the Government/Transport Corporations. Further, a careful analysis of what has been published in the print media shows that what transpired in the meeting has been taken to print and this in no way could be imputed as defamatory statements against the office of the said individual or tarnishing the name of the individual. Section 199 (2) Cr.P.C. clearly and unequivocally mandates that the Sessions Court can take cognizance of the

complaint by the Public Prosecutor, on appropriate sanction, only when such defamatory statements are made about the conduct of the individual in the discharge of his/her public functions. The sum and substance of the publication clearly reveal that what had transpired in the meeting has been taken to print and in fact, there is no criticism or mala fide intent showcased in the said publication. Rather, the Press, true to its readership, has delivered to its readers, what has taken place in the meeting and, therefore, it cannot be said that the material published is against the discharge of the public functions of the authority. The petitioners have not imputed any allegations or made false accusations against Mr.SenthilBalaji nor against the public office held by the individual. Rather, it is clear not only from a reading of the news item published by the petitioners, but also the extracted portion of the complaint, which was in culmination of the sanction orders, that no defamatory or derogatory statement, much less, statements tarnishing the public functions of the authority has been made. Therefore, the initiation of the prosecution for defamation u/s 199 (2) Cr.P.C.is not sustainable.

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020 (1) TLNJ 217 (Criminal)

R.Sundaram vs. D.Jayaraman

Date of judgment:17.02.2020

Negotiable Instrument Act, 1881, Section 138 & 139 – conviction and sentence ordered – Revision – Once the accused admits the issuance of the impugned cheque, the burden under Section 139 of the Negotiable Instruments Act would fall upon him – accused not discharged the burden by preponderance of probability – merely suggesting to the complainant that, the cheques were issued only as security and not towards any loan, would not be sufficient to hold in favour of the accused.

Once the accused admits the issuance of the impugned cheque, the burden under Section 139 of the Negotiable Instruments Act would fall upon him. Though the accused can discharge the burden under Section 139 of the Negotiable Instruments Act by preponderance of probability, as held by the Supreme Court in ***Rangappa Vs. Sri Mohan (2010 (4) CTC 118)***, even that has not been done in this case. Merely suggesting to the complainant(P.W.1) that, the cheques were issued only as security and not towards any loan, would not be sufficient to hold in favour of the accused, especially in the light of the marking of the two promissory notes as Ex.P1 and P2. In such view of the matter, this court does not find any infirmity in the findings of fact arrived at by the two Courts below, warranting interference.

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2020(1) TLNJ 327 (Criminal)

Ganesan vs. Paramasivam& 2 others

Date of judgment:02.03.2020

Indian Penal Code, 1860, Section 306 and 498(A)-Offence under – acquittal of accused/R1 & R2 – there were matrimonial disputes between the spouses – law enforcing agency also not received any complaint with regard to alleged dowry harassment – outcome of marriage is matrimonial dispute, which lingers in every family and mere matrimonial dispute between the spouses alone cannot be exaggerated and stated to be a harassment meted out by one spouse on the other.

A cumulative reading of the entire evidence available on record coupled with the complaint and the dying declaration leads this court to the irrefutable conclusion that the accused were not the aggressors, who had instigated the deceased to commit suicide. True it is that there were quarrels between the spouses, but definitely that was not the root cause for the suicidal act of the deceased. Even the evidence of P.W.1 reveals that there were frequent quarrels between the spouses. That being the case, the harassment alleged to have been meted out on the fateful day had resulted in the suicide of the deceased is too large to ask of this Court to set aside the acquittal. Seeing from all angles of the prosecution theory, this Court is of the considered view that there is neither any perversity nor any illegality in the decision arrived at by the Court below.

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2020 (1) TLNJ 499 (Criminal)

L.Rajkumar vs. The State, Rep by the Inspector of Police, Alandurai Police Station, Coimbatore & another

Date of judgment:05.03.2020

Indian Penal Code, 1860, Section 306 – Abatement of suicide of son-in-law of R.2's Sister committed suicide by jumping into the well – absolutely no iota of evidence to attract the offence under Section 306 of IPC – Petitioner cannot be held responsible for the commission of suicide committed by the deceased as there was no instigation or abetment on the part of the petitioner in the commission of suicide by the deceased.

By applying the case of ***SashiPrabha Devi Vs. State of Assam [2006-Cri.LJ-1762],NettaiDutta Vs. State of will be [2005-2-SCC-659] and Sonti Ramakrishna Vs. SontiShanthi Shree and another [2009-1-SCC-554]***, well settled principles guided by the Hon'ble Supreme Court of India, in a catena of decisions cited to the present case, the petitioner cannot be said to be instigated the deceased. In the said circumstances, certainly it cannot be said that the petitioner had in any way instigated the deceased to commit suicide or was responsible for the commission of suicide by the deceased.Taking into consideration of the totality of the materials on record and facts and circumstances of the case, this Court is of the view that the petitioner cannot be held responsible for the commission of suicide committed by the deceased as there was no instigation or abetment on the part of the petitioner in the commission of suicide by the deceased.

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2020 (1) TLNJ 272 (Criminal)

Kathiravan vs. State, Rep. by the Inspector of Police, Thallakulam Police Station, Madurai & another.

Date of judgment:06.03.2020

Open Places (Prevention of Disfigurement)Act, 1959, Section 4(1) – A cutout decorated with serial bulbs was erected near a Statue in a public place – It is found that informant as well as the investigation officer are one and the same – informant cannot be an investigating officer and filing of a charge sheet before the Court by him is illegal.

In this case, the fact that the informant as well as the Investigation Officer are one and the same, has certainly caused prejudice to the Petitioner. This is because there is nothing on record to indicate that it was the petitioner who actually erected the cutout. Since there is no material to connect the petitioner with the aforesaid erection of cutout, if an independent investigation officer had conducted the investigation, certainly the outcome could have been different also. If the investigation officer also happens to be an informant he is bound to file the final report in such a way that would be in accord with the First Information Report. The informant cannot be an investigation officer and filing of a charge sheet before the court by him is illegal.

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2020 (1) TLNJ 352(Criminal)

Durai @ SappaniMuthu vs. State, Rep by The Inspector of Police, Murappanadu Police Station, Thoothukudi District.

Date of judgment: 10.03.2020

Indian Penal Code, 1860, Section 376 & 511 – Rape complaint – accused acquitted from the charges under S.376 but convicted under S.511 – merely because the hymen is intact, the same will not sufficient to disprove the evidence of victim girl – trial Court held that there was an attempt of rape and therefore, awarded punishment, under Section 511 of IPC – No interference required – appeal dismissed.

In the present case, though the doctor has stated that the hymen is intact, the victim girl narrated the entire incident happened on the said date. Merely because the hymen is intact, the same will not sufficient to disprove the evidence of victim girl.The trial Court after consideration had arrived at a conclusion that there was an attempt of rape and therefore, awarded punishment, which is half of long term punishment as stated under Section 511 of IPC, in which this Court does not call for any interference.

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