TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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SUPREME COURT – CIVIL CASES

(2021) 1 L.W. 177

Shakti Bhog Food Industries Ltd. vs. The Central Bank of India & Another

Date of Judgment: 05.06.2020

C.P.C. Order 7 Rule 11, Limitation Act (1963), Articles 58, 113

It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the Regional Office and the Regional Office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 08.05.2002 followed by another letter dated 19.09.2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent-Bank could trigger the right of the appellant to sue the respondent-Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28.11.2003 and again on 07.01.2005 and then filed the suit on 23.02.2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

Taking overall view of the matter, therefore, we are of the considered opinion that the decisions of the trial Court, the first appellate Court and the High Court in the fact situation of the present case, rejecting the plaint in question under Order VII Rule 11 (d) of the CPC, cannot be sustained. As a result, the same are quashed and set aside.

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(2021) 1 L.W. 97

Shivakumar & others vs. Sharanabasappa & others

Date of Judgment: 24.04.2020

Will – Execution – Suspicious circumstance Preparing and recitals in Will – Effect

Much emphasis is laid on behalf of the appellants on the submissions that execution of the Will in accordance with the requirements of Section 63 of the Succession Act and Section 68 of the Evidence Act has been duly established on record with the testimony of the attesting witnesses as also the witness with whom the Will along with the handwritten draft of the Will had been deposited by the testator. The submissions so made on behalf of the appellants cannot be accepted for the reason that mere proof of the document in accordance with the requirements of Section 68 of the Evidence Act is not final and conclusive for acceptance of a document as a Will. When suspicious circumstances exist and the suspicions have not been removed, the document in question cannot be accepted as a Will.

The present case had clearly been the one where the parties had adduced all their evidence, whatever they wished to; and it had not been the case of the plaintiff-appellants that they were denied any opportunity to produce any particular evidence or if the trial was

vitiated because of any alike reason. As noticed, there had been several suspicious circumstances surrounding the Will in question, some of which were noticed by the Trial Court but were brushed aside by it on untenable reasons. The High Court has meticulously examined the same evidence and the same circumstances and has come to a different conclusion that appears to be sound and plausible, and does not appear suffering from any infirmity. There was no reason or occasion for the High Court to consider remanding the case to the Trial Court. The contention in this regard is required to be, and is, rejected. For what has been discussed hereinabove, we are satisfied that the High Court has rightly interfered with the decision of the Trial Court and has rightly held that the document in question cannot be accepted as the genuine Will.

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(2021) 1 L.W. 1

M/s Edelweiss Asset Construction Company Limited vs. R. Perumalswamy and others

Date of Judgment: 06.02.2020

Tamil Nadu Patta Pass Book Act (1983), Tamil Nadu Patta Pass Book Rules (1987), Rule 4 – The Tamil Nadu Patta Pass Book Rules 1987 provide for the procedure to be adopted to deal with enquires with respect to the entries made in the patta pass book. Rule 4 provides for the procedure on recipient of an application or information with respect to an entry in the patta pass book. The DRO issued summons to the appellant to prove its legal ownership and possession. By an order dated 28 December 2015, the DRO solely relied on the report of the Revenue Divisional Officer and ordered deletion of the appellant's name from the land records and replaced it with first respondent's name. The revenue officer had no jurisdiction to adjudicate upon title. A dispute with respect to the title of land is a mixed question of fact and law, which needs to be raised before a competent civil court.

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(2021) 1 L.W. 129

Ramnath Agrawal & others vs. Food Corporation of India & others

Date of Judgment: 13.05.2020

Transfer of Property Act, Section 105, Lease, agreement to lease, distinction – The sole question which arises for consideration before us is whether the agreement dated 16.12.1976 was a lease agreement under Section 105 of the Transfer of Property Act, 1882 or an agreement for giving rise to only obligations arising out of the said contract. It is evident that for an agreement to be considered as a lease and not as an agreement to lease it is important that there must be an actual demise of property on the date of the agreement. A perusal of the terms and conditions quoted herein above and the legal position discussed clearly demonstrates that the agreement dated 16.12.1976 was not a lease but simply an agreement giving rise to contractual obligations. The terms and conditions clearly demonstrate that the execution of the lease deed was contingent upon the construction of godowns being completed and the same being approved by issuance of completion certificate by the Competent Authority of FCI.

The suit preferred by the appellants is a suit for damages arising out of breach of agreement dated 16.12.1976. It is well settled law that the rights and obligations of the parties have to be decided in accordance with the terms and conditions of the contract.

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(2021) 1 L.W. 84

Triloki nath Singh Vs. Anirudh Singh(D) Thr. Lrs. & Ors.

Date of Judgment: 06.05.2020

The appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6th January, 1984, which was purchased by him from Sampatiya- Judgment debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6h January, 1984, allegedly executed by one of the party (Sampatiya) to the proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial court in any case would not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15th September, 1994 passed by the High Court in the partition suit.

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SUPREME COURT – CRIMINAL CASES

2021 (1) TLNJ 85

Murali Vs. State rep. by the Inspector of Police

Date of Judgment: 05.01.2021

Criminal Procedure Code, 1973, Section 320 – The record of the case elicit that the findings of all three preceding forums are concurrent and without fault. Not only have the appellants been unable to mount an effective challenge founded upon a question of law, their learned Counsels, given the subsequent events and change in circumstances, have very fairly restricted their prayer qua reduction of sentence only.

A perusal of the applications for impleadment and compounding makes it clear that the parties have on the advice of their elders entered into an amicable settlement. The appellants have admitted their fault, taken responsibility for their actions, and have maturely sought forgiveness from the victim. In turn, the victim has benevolently acknowledged the apology, and considering the young age of the appellants at the time of the incident, had forgiven the appellants and settled the dispute. Learned Counsel for the victim applicant has reiterated the same stance during oral hearings also.

There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("Cr.P.C") does not encapsulates Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320 (9) Cr.P.C., which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences.

Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.

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2021 (1) TLNJ 92

Asharam Tiwari Vs. State of Madhya Pradesh

Date of Judgment: 12.01.2021

Indian Penal Code, 1860, Section 302, 324, 325 r/w 34 and 323: It is held that, PW1 and PW4 are both injured witnesses. They have both been found to be reliable and truthful. We see no reason why they would falsely implicate another, when the deceased was their own minor son. Similarly, PW2 is the son of the second deceased, an eye witness to the killing of his father at home. The failure to examine any available independent witness is inconsequential. It is nobody's case of the accused that PW1 and PW4 were not injured in the same occurrence or that PW2 was not an eye witness.

It is held that quality of evidence is relevant and important and not number of witnesses examined.

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(2021) 1 MLJ (Crl) 517 (SC)

N. Vijayakumar vs. State of Tamil Nadu

Date of Judgment: 03.02.2021

Illegal gratification – Appeal against acquittal – Prevention of Corruption Act, 1988, Section 7 and 13 – Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under

Section 7 and not the offences under Sections 13 (1) (d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent"

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "Possible view" as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

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(2021) 1 MLJ (Criminal) 170 SC

Dr. Naresh Kumar Mangla vs. Anita Agarwal and others

Date of Judgment: 17.12.2020

Anticipatory Bail – Transfer of Investigation – Code of Criminal Procedure, 1973, Section 438, Indian Penal Code, 1860 Section 498A, 304-B, 323, 506 and 313 – Dowry Prohibition Act, 1961, Section 3 and 4 – Thus Section 439 of the Code Confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration.

While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to

cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

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(2021) 1 MLJ 38

Shatrughna Baban Meshram Vs. State of Maharashtra

Date of Judgment: 02.11.2020

Rape and Murder – Death Sentence – Indian Penal Code, 1860, Section 299, 300, 302 and 376 – If the present case is so considered, the discussion must broadly be classified under following two heads:-

(A) Whether the circumstantial evidence in the present case is of unimpeachable character in establishing the guilt of the Appellant or leads to an exceptional case.

(B) Whether the evidence on record is so strong and convicting that the option of a sentence lesser than a death penalty is foreclosed.

Going by the circumstances proved on record and, more particularly the facets detailed in paragraph 19 hereinabove as well as the law laid down by this Court in series of decisions, the circumstances on record rule out any hypothesis of innocence of the Appellant. The circumstances are clear, consistent and conclusive in nature and are of unimpeachable character in establishing the guilt of the Appellant. The evidence on record also depicts an exceptional case where two and half years old girl was subjected to sexual assault. The assault was companied by bites on the body of the victim. The rape was of such intensity that there was merging of vaginal and anal orifices of the victim. The age of the victim, the fact that the appellant was a maternal uncle of the victim and the intensity of the assault make the present case an exceptional one.

However, if the case is considered against the second head, we do not find that the option of a sentence lesser than death penalty is completely foreclosed. It is true that the sexual assault was very severe and the conduct of the appellant could be termed as perverse and barbaric. However, a definite pointer in favour of the Appellant is the fact that he did not consciously cause any injury with the intent to extinguish the life of the victim. Though all the injuries are attributable to him and it was injury No.17 which was cause of death, his conviction under Section 302 IPC is not under any of the first three clauses of Section 300 IPC. In matters where the conviction is recorded with the aid of clause fourthly under Section 300 of IPC, it is very rare that the death sentence is awarded. In cases at Serial Nos.10, 11, 16, 24, 40, 45, and 64 of the Chart tabulated in paragraph 30 hereinabove, where the victims were below 16 years of age and had died during the course of sexual assault on them, the maximum sentence awarded was life sentence. This aspect is of crucial importance while considering whether the option of a sentence lesser than death penalty is foreclosed or not.

We therefore, find that though the appellant is guilty of the offence punishable under Section 302 IPC, since there was no requisite intent as would bring the case under any of the first three clauses of Section 300 IPC, of offence in the present case does not deserve death penalty.

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MADRAS HIGH COURT – CIVIL CASES

2020 (6) CTC 270

Sri Saranga Desikendra Swamigal Matt Vs. Commissioner, Hindu Religious and Charitable Endowment (Administration Department)

Date of Judgment: 18.09.2020

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22of 1959), Sections 6(7) & 59 – Proceedings to remove Head of Math Appropriate Court. Whether assailable in Second Appeal. "Court" in relation to Math defined in Section 6 (7) as Sub-Court or District Court having jurisdiction over area where situate. Suit rightly instituted before Sub-Court, Kumbakonam, but wrongly transferred to District Munsif Court due to mistake on part of Court. Held, consent of parties cannot confer jurisdiction on Court Judgment and Decree passed by Trial Court patently null and void. Second Appeal allowed. Matter remanded to file of Principal Sub Court, Kumbakonam.

Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 3. Relief sought is removal of pontiff from Headship of Math. Pontiff not impleaded as Defendant. Not only Math, but concerned Pontiff should be specifically arrayed as Defendant. Plaintiff at liberty to file Amendment Petition. Impleaded defendant at liberty to file independent written statement raising all defences open to him.

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2020 (6) CTC 303

Kaliyamurthy Vs. Thangamani and others

Date of Judgment: 12.12.2019

Hindu Succession Act, 1956 (30 of 1956), Section 6 – Evidence Act, 1872 (1 of 1872), Section 115 – Doctrine of Cy-pre's – Applicability of – Estoppel – Property originally gifted to great-grandfather in 1901 with condition to feed poor pilgrims. Right to administer property as Trust property sought based on Doctrine of Cy-pre's. Partition sought by another Legal Heir. Character of Suit property determined as Private property and not Trust property in earlier litigation between predecessors in 1957. Held, suit properties being private properties, Appellant not entitled to declaration qua administration of properties on Doctrine of Cy-pre's. Trial Court Order dismissing Suit for Declaration and decreeing Suit for Partition, confirmed.

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2021 (1) TLNJ 53

Ammavasai .C. Vs. The District Collector, Madurai District & Others

Date of Judgment: 15.07.2020

Civil Procedure Code, 1908, Section 100 – Be that as it may, during UDR, patta was issued to the plaintiff by the Tahsildhar sometime in 1996 and that came to be cancelled in 1999. This was challenged by the appellant/plaintiff in revision before the Revenue Court on the ground that he was not heard before cancellation of the patta and the same was dismissed. The plaint avers about a second revision preferred by the appellant/plaintiff before the Commissioner of land administration and its outcome is not known. During trial, the respondents/defendants have filed village A Registrar to show that the property in Sy. No.92

was a water body. This would imply that the plaintiff is in occupation of a water body and this is impermissible in terms of the ratio in T.K. Shanmugam Vs. The State of Tamil Nadu and others [2015 (5) L.W. 397]. Mere occupation of the plaintiff on a water body cannot be countenanced or can it be appreciated. That cannot vest him with any right.

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2021 (1) TLNJ 57

Malayathal and Others Vs. Chandrasekaran and Others

Date of Judgment: 15.07.2020

Indian Evidence, 1872, Section 68 –

The Law on proof of will is well settled. Even, if the Will is not denied, the propounder has to prove the same by examining at least one attesting witness. The proviso to Section 68 of the Evidence Act, which dispenses with examination of attesting witnesses in case of registered instruments, the execution of which is not denied, does not apply to testamentary instruments.

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2021 (1) TLNJ 41

M/s Reliance General Insurance Company Ltd., Salem District Vs. Devi & Others

Date of Judgment: 03.03.2020

Motor Vehicle Act, 1988, Section 173. When the rider of the motor vehicle who had caused the accident, did not possess a valid driving license at the time of accident and not appeared even after notice. Hence, the present case, the award of the Tribunal in fixing the liability on the appellant/Insurance company and directing the insurance company to pay the award amount, is liable to be set aside. Accordingly, the same is set aside. Therefore, the Insurance company is directed to pay the award amount to the respondents 1 to 4 /claimants at the first instance and then recover the same from the owner of the motor cycle bearing Registration No.TN 24 R 3577.

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2021 (1) TLNJ 61

Lakshmi .T. Vs. Ganesan. K.

Date of Judgment: 22.12.2020

Constitution of India, 1950, Article 227. Revision under to set aside the order in IA and restore the counter claim. Suit is for permanent injunction. Counter claim filed by the revision petitioner exceeded the pecuniary jurisdiction of the court. Exclusion of counter claim is proper. Defendant in her counter claim valued the property as Rs.5 Lakhs, which exceeds the pecuniary jurisdiction of the trial Court. Where the counter claim filed by the defendant exceeded pecuniary limits of jurisdiction of the court, it cannot be allowed. Trial Court rightly not allowed the counter claim but failed to order return of written statement. prayer for transferring the suit is also not maintainable, because the defendant had not filed any separate suit. While filing counter claim along with written statement, it cannot be transferred to competent Court. Only written statement alone to be returned. Trial Court directed to return the written statement along with counter claim C.R.P. (P.D.) is dismissed.

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2021 (1) TLNJ 87

Arulmigu Subramaniaswamy Koil, Kurumbur Rep. by the Hereditary Trustees and Others Vs. Karupiah V. and others

Date of Judgment: 08.01.2021

Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948 –

Such view of the matter, once the property is classified as temple land under-A Register, though patta has not been issued in the name of the temple, the said properties cannot be permitted to be encroached by third parties under the pretext of some documents, which did not create any title to them. Such view of the matter, this Court is of the view that the plaintiff is entitled to recover the possession from the defendants and it is also made clear that the plaintiff also cannot deal with the properties in any manner without the permission of either the Government or the authorities under the Hindu Religious and Charitable Endowment Board.

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2020 5 L.W. 830

Natchiyappan Vs. Periyakaruppan

Date of Judgment: 20.11.2020

Transfer of Property Act, Sections 58(d) & 60 – Usufructuary mortgage, limitation, redemption – **Limitation Act, (1908), Section 3, 27 Article 61** – Mortgage, redemption schedule.

C.P.C, Order 2 Rule 2 – To apply the principle of Order 2 Rule 2 CPC, it must be established that the second suit is based on the same cause of action as in the earlier suit. The limitation for filing a suit for redemption in the case of usufructuary mortgage. Time prescribed in mortgage deed. Therefore, the suit filed in the year 2013 is hopelessly barred by limitation. Though the trial Court has applied different provisions of the Limitation Act, the decision of the Lower Appellate Court dismissing the suit on the ground of limitation is sustained not for the reasons stated by the lower appellate Court but for the reasons stated in this judgment.

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2020 5 L.W. 661

Saradhammal & others Vs. Sankaralingam

Date of Judgment: 24.11.2020

C.P.C. Section 64, private alienation, Order 21 Rule 54, Proclamation of attachment, Order 38 Rule 5, Order 41 Rule 27.

When the Court at any stage of a suit is satisfied by affidavit or otherwise, that the defendant with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property may order for attachment before judgment under Order 38 Rules 5 of C.P.C. The spirit behind this provision is very obvious. Precisely for the same reason, section 64 of C.P.C. says, any private alienation after attachment is void. The plain object of these provisions is to prevent the successful perpetration of fraud by the debtor against the just claims of the creditor. Section 64 of C.P.C. strictly restricts the right of alienation of the property.

The provision of proclamation of the order of attachment has been made in sub-rule (2) of Rule 54 of Order 21 of C.P.C is with the object to prevent the judgment debtor from

transferring or charging the property in anyway and all other persons taking any benefit thereunder. This provision is for the innocent buyers benefit to prevent them from falling prey to any debtor alienating his encumbered property to gullible buyer suppressing the fact of attachment. This provision cannot be taken advantage by parties whose knowledge of ABJ expressly stated in the deed. It is obvious from Ex.B.4, the buyer had wagered on the promise of his vendor who was pursuing the money suit. Therefore, neither Subramani and Krishnan nor any other person through him can claim that for want of proclamation the order of attachment is unenforceable.

Order 38 Rule 5 of C.P.C provides to prevent the Act of deceit by alienating the property pending suit. Section 64 of C.P.C declares any private alienation when attachment in force as a void transaction. Section 52 of Transfer of property Act, prohibits transfer of property affecting the right or interest of the other parties pending suit. If one read section 64 of C.P.C and Section 52 of the Transfer of Property Act, along with Order 38 of C.P.C will invariable come to the conclusion that, in the instant case, the transfer of an immovable property under attachment with knowledge about the attachment has to fall.

The Trial Court has admitted Ex-B.6 as additional document after hearing both sides. It has given cogent reason for admitting it in evidence. Ex.B.6 is the suit register extract of the previous proceedings in respect of the suit property. Being a record of the Court, even without marking it, the Court is empowered to call for the Court records and take judicial notice of the content. There is no procedural error or illegality found in marking the additional document in the appeal exercising the power under Order 41 Rule 27 of C.P.C.

There is specific prohibition in Order 21 Rule 54 of C.P.C to create charge or alienation of the property under attachment. Therefore, the First Appellate Court is right in holding the transfer of attached property by private sale through Ex.B.4 followed by Ex.A.1 as nullity.

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2020(2) TN MAC 597

G. Prakasam (Died) & Others Vs. G. Ramesh & Others

Date of Judgment: 10.09.2020

Motor Accident Claims. Non-possession of valid Driving License – Whether the Tribunal can exonerate Insurer from its liability completely ?

The Tribunal has exonerated the liability of the Third Respondent only on the ground that the Driver of the insured vehicle was not possessing a valid Driving License at the time of the accident. Admittedly, in the case on hand, the Driver of the insured vehicle was possessing a LMV Driving License but the insured vehicle is a Heavy Vehicle for which a separate HMV license is required. It is now settled law that if a Driver of the insured vehicle was not possessing a valid Driving License, the Insurer will have to compensate the Claimant and recover the same from the Owner of the vehicle (insured). Therefore, the Tribunal under the impugned Award has not followed the settled position of law by granting Pay and Recovery rights to the Third Respondent but instead has erroneously exonerated the liability on the Third Respondent Insurance Company absolutely. Therefore, this Court in accordance with the settled position of law, directs the Third Respondent Insurance Company to pay the assessed Compensation to the Appellants/Claimants and recover the same from the Second Respondent by filing an Execution Application before the same Tribunal.

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MADRAS HIGH COURT – CRIMINAL CASES

(2021) 1 L.W. 213

Dr.P. Pathmanathan & Others vs. Tmt. V. Monica & another

Date of Judgment: 18.01.2021

Domestic violence act (2005), Section 2 (d) 'Complaint' 2(a) 'aggrieved person', section 10, 28, 29, 31. Criminal Procedure Code, Section 6, 482, Section 190(1)(a), 200 to 204 Domestic Violence Rules (2006), Rules 6, 12 Constitution of India Article 227 challenge to proceedings under DV Act – The following directions are, issued to the Magistrates.

i. An application under Section 12 of the D.V. Act is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1) (a) & 200 to 204 Cr.P.C. as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot, therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

ii. An application under Section 12 of the Act shall be as set out in Form II of the D.V. Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.

iii. The Magistrate shall not issue a summon under Section 61, Cr.P.C. to a respondent(s) in a proceeding under Chapter IV of the D.V. Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V. Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13of the Act and Rule 12(2) of the D.V. Rules, and shall be accompanied by a copy of the petition and affidavit, if any.

iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V. Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See Siladitya Basak vs. State of West Bengal) (2009 SCC online Cal 1903).

v. If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex-parte.

vi. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

vii. As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in that a process, under Section 204, Cr.P.C., once issued cannot be reviewed or recalled, will not apply to

a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress. This would stem the deluge of petitions challenging the maintainability of an application under Section 12 of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution.

viii. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorizes the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.

ix. In Kunapareddly, the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.) to permit the amendment of an application under Section 12 of the D.V. Act. Taking a cue there from, it would be open to any of the respondents(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order 1 Rule 10(2) of the C.P.C,. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.

x. The Magistrate must take note that the practice of mechanically issuing notice to the respondents named in the application has been deprecated by this Court nearly a decade ago in Vijaya Baskar, Precedents are meant to be followed and not forgotten, and the magistrates would, therefore, do well to examine the application at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.

xi. In Satish Chandra Ahuja (Cited Supra) The Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

xii. While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (See Lakshman vs. Sangeetha, 2009 3 MWN (Cri) 257) The Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See Muhammad Sulaiman Khan vs. Muhammad Ya Khan, 1888 11 All 267).

xiii. A Petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in

favour of the petitioner. (See Abdul Razak v. Mangesh Rajaram Wagle 2010-2-L.W. 177) (2010 2 SCC 432) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society, (2019) 9 SCC 537). In normal circumstances, the Power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.

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(2021) 1 L.W. 82

M.Kishore, S/o Murugan vs. The Inspector of Police, Kaaramadai Police Station, Coimbatore District.

Date of Judgment: 06.01.2021

Criminal Procedure Code, Section 267, 269, Prisoner on transit warrant (PT) effect of, Section 167(2) – Whether the delay caused by the respondent Police in producing the petitioner before the Court below after formally arresting him through a P.T. warrant, will vitiate the remand order passed by the Court below?

It is clear from the above judgments that where the investigating officer decides to arrest the accused person through a formal arrest, the accused person does not come into the physical custody of the police and for the purpose of calculation the period of 60 days or 90 days as contemplated under the proviso to Section 167(2) of Cr.P.C., it can be computed only from the date of detention as per the orders of Magistrate and not from the date of formal arrest by the Police. A P.T. Warrant cannot be used for the purpose of keeping a person in detention without producing him before the concerned Court and such non-production before the Court with an inordinate delay and thereafter if he is remanded to judicial custody, the custody of the accused person in the concerned case will be calculated only from the date of his remand and the period prior to it where he was kept under detention on the strength of the P.T. Warrant, will not be taken into consideration. Such a practice has been deprecated by this Court and such delay in producing the accused person before the Court after a formal arrest through a P.T. Warrant, will certainly violate the liberty guaranteed under Article 21 of Constitution of India.

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(2021) 1 MLJ (Crl) 485

In re: Additional Registrar General, Madurai Bench of Madras High Court, Madurai

Date of Judgment: 30.09.2020

Jurisdiction of Special Court. Bail Application, Code of Criminal Procedure 1973 (Cr.P.C.) Section 438. Protection of Children from Sexual Offences Act 2012 (POCSO), Section 28 and 31. It is clear that the Special Court designated under the POCSO Act is empowered to deal with the application filed under Section 438 of Cr.P.C., and the Sessions court is excluded from entertaining the application filed under Section 438 of Cr.P.C.

The next issue raised by the Referring Judge is as to whether the Special Court is empowered to deal with the anticipatory bail application relating to the offences under the POCSO Act, even before registering a First Information Report, or lodging a complaint before the Court concerned, on an apprehension of arrest.

As already held, the Special Court is exclusively empowered to deal with the offences under the POCSO Act and thereby, the normal Criminal Courts constituted under Section 6 of Cr.P.C., are excluded from dealing with the offences under the POCSO Act. When the Special Court exercising the exclusive jurisdiction to deal with the offences under the POCSO Act, the same Court also has the power to deal with the application under Section 438 of Cr.P.C., even before registering the First Information Report.

Thus, we answer the reference as follows:

(i) The Special Court designated under Section 28 of the POCSO Act alone is empowered to exercise power under Section 438 of Cr.P.C. in view of Section 31 of the POCSO Act, and the Sessions Court cannot entertain any application seeking pre-arrest bail in respect of offences under the POCSO Act.

(ii) Even in cases where pre-arrest bail is sought before registering the First Information Report, only the Special Court designated under the POCSO Act can entertain the application and the regular Sessions Court cannot exercise its power under Section 438 of Cr.P.C."

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(2021) 1 MLJ (Crl) 164

Thiruvasagam Vs. State by Inspector of Police, All women Police Station, Jayankondam, Ariyalur District

Date of Judgment: 09.12.2020

Rape, Consent - Indian Penal Code, 1860, Section 376 – The evidence given by PW1 alone is sufficient to hold that at the time of giving promise to the Prosecutirx, the Accused herein did not have any intention for not marrying the Prosecutrix. Therefore, it cannot be said that consent given by the Prosecutrix is not under the misconception of fact. The failure to keep the promise at a future uncertain date, due to reasons not very clear on the evidence, does not always amount to a misconception of fact at the inception of the Act itself. Therefore, the considered opinion of the court the consent given by the Procecutrix is nothing but free consent. Further, at the time of getting consent, the Accused herein never intended to avoid marriage with the Prosecutrix. Only due to the other circumstances, now the promise made by the Accused was broken and resultantly, the accused is before this Court. Therefore, the findings arrived by the Trial Court as the Accused is guilty under Section 376 of the Indian Penal Code is not correct and thereby, the conviction and sentence awarded to the Accused is liable to be set aside.

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(2021) 1 MLJ (Crl) 25

R. Poornalingam and Others Vs. Prof. P. Kadhirvel

Date of Judgment: 24.11.2020

Quashing of complaint, Defamation – Code of Criminal Procedure, 1973, Section 482. Indian penal Code, 1860, Sections 499 and 500 – The annual report containing the allegations against Complainant was placed before the General Body of Members, who had all become members of the Association after agreeing to submit and adhere to the rules, regulations and by-laws of the association. An annual report is required to contain only the resolutions passed by the executive Committee and not the explanations of the individual members. In this case, the resolution cannot be termed as "defamation" as defined under Section 499 Code 1860,

because, it was not done by the officer bearers with the intent to harm him, but, with the intention of placing all the resolutions that were passed by the Executive Committee, to the General Body, for its approval. The resolution was only to indict Complainant and conduct an enquiry on the indictments and nothing more. It was not a conclusion of guilt arrived at by the Executive Committee of the indictments because, it is only the Enquiry Officer who can arrive at the conclusion and not the Executive Committee. The President of the Association as duty-bound to read the annual report and a reading of it in the presence of Complainant will undoubtedly be inconvenient to him. All this cannot be termed as "defamation" as defined under Section 499 Code 1860.

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(2021) 1 L.W. (Crl) 304

N. Dhanraj Kochar & Others Vs. State Rep. By the Inspector of Police,

Central Crime Branch –I, Chennai

Date of Judgment: 15.02.2020

Indian Penal Code, Section 408, 420, 468, 120-B – Criminal Procedure Code, Section 220, 221, 300 – It will be relevant to extract Section 300 of the Code of Criminal Procedure, 1973 herein under: Section 300 Person once convicted or acquitted not to be tried for same offence. The above provision is based upon the general principle of ***autrefois acquit*** and ***autrefois convict***, which means that a person cannot be put twice in jeopardy for the same offence. The second trial is barred for the same offence or for an offence based on the same facts for which an accused has been: a) tried by a court of competent jurisdiction; and b) convicted or acquitted by the said competent court. It is here the significance of Sections 220(1) and 221(1) and (2) of the Code of Criminal Procedure, 1973 gains a lot of significance. Therefore, the same transaction cannot again be revived after the death of the father of the 2nd Respondent since his death does not give rise to a fresh cause of action. It is now a well-settled principle of law that a second complaint on identical facts is not maintainable where the first complaint has already been dealt with on merits. Useful reference can be made to the judgment of the Hon'ble Supreme Court in Prem Chand Singh v. the State of U.P., reported in (2020) 3 SCC 5 (paragraphs 11 to 13).

The 2nd Respondent has virtually reignited a failed attempt of his father after 11 years and the same is clearly barred by law. In view of the above discussion, the complaint given by the 2nd Respondent against the Petitioners is a clear abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

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(2021) 1 MLJ (Crl) 464

Prabaharan Vs. State Rep. by Its Sub Inspector of Police Kangeyam

Date of Judgment: 23.12.2020

Indian Penal Code, Section 408, 420, 468, 120-B – Criminal Procedure Code, Section 220, 221, 300 – Under Section 323 Cr.P.C. a Magistrate can commit a case if it appears to him that the case is one which ought to be tried by the Court of Session. The word "appear" should not be given a pedestrian interpretation by Magistrate for committing cases, just

because, someone weaves a story. The trial Court is required to analyse the totality of the facts and circumstances from the standpoint of a prudent man before acting upon the deposition of a witness to commit a case.

This is not a fit case in which the Magistrate should have exercised his powers under Section 323 Cr.P.C., to commit the case to the Court of Session and accordingly.

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(2021) 1 L.W. (Crl) 74

Saravanan S/o Palanisamy Vs. The State Rep. by the Inspector of Police, All Women Police Station, Perur, Coimbatore

Date of Judgment: 22.12.2020

Evidence Act, Section 32, Reliance of dying declaration, Indian Penal Code, Section 498A, 306 – It is a case that during the time of occurrence, the appellant herein did not provoke or instigate or urge the deceased to commit suicide. The dying declaration itself is very clear that during the time of occurrence, the appellant instigated her son only for getting nose stud from the deceased. The said circumstances show that the appellant did not abet the deceased for committing suicide. In fact, abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court are clear that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act much have been intended to push the deceased into such a position that he/she committed suicide.

In the cruelty within the meaning of Section 498-A IPC has been explained in the Explanation to Section 498-A. It consists of two clauses viz., Clauses (a) and (b). To attract Section 498-A IPC, it must be established that the cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide.

Applying the said meaning with the case in our hand, the dying declaration given by the deceased is clear that only due to the act committed by the appellant, she was forced to commit suicide. Therefore, I am of the considered opinion that the findings arrived by the trial Court is found correct that the appellant herein has committed the offence under Section 498-A IPC.

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(2021) 1 MLJ (Crl) 494

Vijayalakshmi and Another Vs. State Rep. by the Inspector of Police,

All Women Police Station, Erode

Date of Judgment: 27.01.2021

Quashing of Proceedings, Public Interest Cr.P.C. 1973, Section 482. Indian Penal Code 1860, Section 366. Prevention of Child from Sexual Offences Act 2012, Section 6. Prohibition of Child Marriage Act 2006, Section 9 – Whether the Court can quash the criminal proceedings involving non-compoundable offences pending against the second respondent, the Hon'ble Supreme Court in the case of Parabathbhai Aahir @ Parabathbhai vs. State of Gujrath (2018) 1 MLJ (Crl) 262, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C., to quash non-compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

In the present case, the offences in question are purely individual/personal in nature. It involves 2nd Petitioner and the 2nd Respondent and their respective families only. It involves the future of two young persons who are still in their early twenties. The second respondent is working as an Auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the victim girl and her mother and not to forget the 2nd Respondent as well.

In view of the above, this Court inclined to quash the criminal proceedings in Special S.C. No.24 of 2018 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code, 1973.

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(2021) 1 MLJ (Crl) 528

Kaviyarasan Vs. Superintendent of Prison, Central Prison,

Cuddalore and Others

Date of Judgment: 29.01.2021

Set-Off – Pre-trial detention, Code of Criminal Procedure, 1973, Sections 428 and 482 –The interesting question entreating an answer in the present case is whether the Petitioner will be entitled to claim the benefit of set-off under Section 428 of Cr.P.C. for the entire period from 25.03.2014 till date, against the sentence imposed in S.C. No.7 of 2017? The fundamental question that would require consideration of this Court to find an answer for the main issue would be as to whether the Petitioner who is in pre-trial detention in the other 2 cases pending in S.C. Nos. 401 of 2015 and 05 of 2014, can claim the benefit of detention in those cases and seek a set-off towards the sentence imposed in S.C. No.07 of 2017?

A plain reading of Section 428 of the Cr.P.C., makes it very clear that the period of set-off contemplated is case-specific. However, when there are multiple convictions, such as set-off can be resorted to as held by the Hon'ble Supreme Court in State of Maharashtra v.

Najakat Alia Mubarak Ali, since when the convict who is undergoing a sentence in a particular case is also convicted in another case and starts undergoing the sentence in the second case, the sentence undergone by him merges with the same period during which he is undergoing the sentence in the first case. This will be the effect of a combined reading of Sections 427 and Section 428 of the Cr.P.C.

By no stretch Section 428 of the Cr.P.C. will have an application in such a scenario and to apply the said provision will amount to causing violence to the plain language used in the said provision. The pre-trial detention in every case will apply only to that case for the purpose of a set-off, and that period can never be used towards set-off in any other case. This scenario will change once there is a conviction and sentence in the second and subsequent cases also, in which event the merger of sentence will start operating. Even in such a scenario, the pre-trial detention will be case-specifically adjusted towards the sentence in that case and what actually gets merged is the ultimate conviction in those cases when it is running concurrently during the same period.

In view of the above discussion, the petitioner who is in pre-trial detention in the other two cases pending in S.C. Nos. 401 of 2015 and 05 of 2014, cannot claim the benefit of detention in those cases and seek for a set-off towards the sentence imposed in S.C. No.7 of 2017. In view of this finding, the Petitioner will not be entitled to claim the benefit of set-off under Section 428 of Cr.P.C. for the entire period from 25.03.2014 till date, against the sentence imposed in S.C. No. 07 of 2017. The period of set-off as granted by Sessions court in S.C. No.07 of 2017 for period from 25.04.2014 to 04.09.2014 is perfectly in order. This Court is not inclined to grant the relief claimed by the Petitioner in this petition, and the petitioner has to necessarily serve the remaining portion of the sentence after taking into account the set-off period granted by the Sessions Court.

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