TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XX— PART 3 — MARCH 2025**

IMPORTANT CASE LAWS

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

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

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

TABLE OF CONTENTS

SUPREME COURT – CIVIL CASES

V.Ravikumar Vs. S.Kumar [Special Leave Petition (Civil) No. 9472 of 2023]

Date of Judgment: 03.03.2025

Order VII Rule 11 of CPC - Cancellation of power deed does not affect the prior conveyances and 0have no effect on the conveyances carried out under the valid power and it would not confer any cause of action - Cannot challenge the valid exercise of the power vide a subsequent cancellation document.

This appeal was filed against the order of reversal of order of rejection of plaint on the ground of limitation. Respondent filed suit for declaration that sale deeds executed on the strength of power of attorney are null and void and for injunction. General power of attorney was dated 15-10-2004. Based on that power of attorney sale deeds were executed from 2004 to 2006 and 2009. Plaintiff cancelled the power of attorney on 22-09-2015 and the suit was filed on 20-09-2018. Power agent filed application for rejection of plaint as the suit was barred by limitation. Plaintiff contented that the suit was filed within 3 years from the date of knowledge of the sale deeds. Trial court based on a document enclosed with the plaint i.e. patta transfer order dated 10-01-2015, allowed the application holding that plaintiff had knowledge about transactions during 2015 and rejected the plaint as barred by limitation. The Hon'ble High Court of Madras, reversed the order on the ground that the power of attorney was cancelled on 22-09-2015 and the limitation has to commence from the date of cancellation of power of attorney and concluded that the suit was filed within 3 years limitation period and directed the trial court to restore the suit. Aggrieved by that order, appellant filed the present appeal.

The Hon'ble Supreme Court observed that cancellation of POA does not affect the prior conveyances made on the strength of the power conferred on the appellant. Further the Hon'ble Apex Court held that cancellation of the power of

attorney will have no effect on the conveyances carried out under the valid power and it would not confer any cause of action and cannot challenge the valid exercise of the power when it existed vide a subsequent cancellation document. Holding that there cannot be any cause of action on the basis of the cancellation of the power of attorney, after more than 11 years, the Hon'ble Apex Court allowed the appeal and set aside the order of the Hon'ble High Court and affirmed the order of the trial court rejecting the plaint.

***

Ram Lal Vs. Jarnail Singh (Now Deceased) through its Lrs & Ors. [Civil Appeal No. 3245 of 2025]

Date of Judgment: 25.02.2025

Section 28 (1) - Court does not become a *functus officio* after the grant of the decree for specific performance – Court retains its power and jurisdiction to deal with the decree till the sale deed is executed.

This appeal arises from the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision Application No.3723/2019 by which the Revision Application filed by the respondents came to be allowed, thereby setting aside the order passed by the Executing Court. The plaintiff filed execution petition seeking to execute the decree of specific performance. The plaintiff also sought permission of the executing court to allow him to deposit the balance sale consideration.

The Hon'ble Supreme Court has observed that merely because a suit was filed within a period of three years prescribed by Article 54 of the Limitation Act, 1963, that did not absolve the vendee-plaintiff from demonstrating that he was ready and willing to perform the agreement and it has to be seen as to whether the non-performance was on account of obstacles placed by the vendor or otherwise. In deciding application under Section 28(1), the court has to see all the attendant circumstances including the conduct of the parties. Rule 12A makes it obligatory for the court to specify in the decree for specific performance of contract for sale or lease of immovable property, the date by which purchase money or other sum should be paid by the vendee or lessee. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time.

***

Raju Naidu Vs. Chenmouga Sundra & Ors. [Civil Appeal No(s). 3616/2024]

Date of Judgment: 19.03.2025

Doctrine of merger – When decree was modified by the Appellate Court the doctrine of 'merger' came into effect and therefore the question of executing the decree immediately would not arise.

Section 53A Transfer of Property Act - Section 53A will not be applicable when a party had knowledge about the suit while entering into sale agreement - Limited rights of the transferee *pendent lite* cannot be stretched to obstruct and resist the full claim of the decree holders to execute the decree in their favour.

The present appeal arises from the judgment of the Hon'ble Madras High Court dismissing the revision and confirming the order of delivery passed by the executing court.

Father of respondent no 1 to 8 purchased 1/2 share in A schedule property. Mother of respondent no 1 to 8 purchased 1/2 share in A schedule property. Father donated 1/2 share in favour of mother. After demise of Mother, father purchased B schedule property. 2nd Respondent filed suit for injunction restricting his father from alienating the properties. Appellant entered into a sale agreement in respect of B Schedule property with father of Respondent no. 1 to 8. A sum of Rs. 40,000/- was paid as advance and appellant was put in possession. The suit filed by the 2nd respondent was decreed with a direction not to alienate 7/8 share in that property. Father executed will in respect of A schedule property in favour of 9th respondent. Suit was filed by respondent no. 1 to 8 to declare that will as void. The suit was decreed declaring the will as void and unenforceable in respect of 7/8th share and the respondents no 1 to 8 are owners of 7/8 share of A schedule property and are absolute owners of the B schedule property and directing the respondent no 1 to 8 to refund the advance amount of Rs. 40,000/- to appellant and respondent no 1 to 8

were held entitled to possession of the B schedule property. Both parties filed appeal. Appeal filed by the appellant was dismissed and the appeal filed by the respondents was partly allowed holding will is valid to the extent of 1/9th share in A schedule property and 1/4 share in the B schedule property. Respondent no. 1 to 8 filed EP for delivery with an EA seeking enlargement of time for depositing Rs. 40,000/-. They were allowed and Respondent No. 1 to 8 deposited the amount and delivery was ordered. Aggrieved by the order of delivery appellant filed CRP before the Hon'ble High Court of Madras. Against that order, the present appeal was filed.

The contention of the appellant was that EP was filed after 12 years i.e. inordinate delay and executing court had gone beyond the decree.

The Hon'ble Apex Court upheld the decision of the Hon'ble High Court and held that the limited rights of the transferee pendent lite cannot be stretched to obstruct and resist the full claim of the decree holders to execute the decree in their favour. The Hon'ble Supreme Court reiterated the principle laid down in the case of Chandi Prasad versus Jagdish Prasad in regard to the doctrine of 'merger'. Resultantly, the Hon'ble Apex Court affirmed the Hon'ble High Court decision that decree was modified by the Appellate Court and hence the doctrine of 'merger' came into effect and therefore the question of executing the decree immediately would not arise and that Section 53A will not be applicable as the appellant had knowledge about the suit while entering into sale agreement and dismissed the appeal.

***

SUPREME COURT – CRIMINAL CASES

Gyanendra Singh @ Raja Singh Vs. The State Of Uttar Pradesh [Diary No. 36334 of 2024]

Date of Judgment: 07.03.2025

Section 3/4, 42, 42A of The Protection of Children from Sexual Offences (POCSO) Act, 2012, 376(2)(f) and 376(2)(i) of IPC - when the alleged acts or omissions constitute offence both under the IPC and the POCSO Act then, the law which prescribes the punishment of greater degree would have to be applied as contemplated u/s. 42 of the POSCO Act.

The appeal was preferred by the Appellant against the judgment of the Hon'ble High Court of Allahabad dismissing the Appeal and confirming the judgment passed by the Additional Sessions Judge imposing life imprisonment along with Rs. 25 ,000/- fine.

Appellant is the father of the victim. Appellant's wife lodged FIR alleging that appellant enticed minor victim and took her to the rooftop and committed sexual assault and detained her on the roof by threatening her. After investigation, final report was filed against the appellant u/s. 376(2)(f) and 376(2)(i) of IPC and u/s 3/4/5 of the POCSO Act. The trial Court framed charges and the appellant was tried for the said offences and was convicted. The appeal filed by the appellant before the Hon'ble High Court of Allahabad was rejected and stipulated that the life term will ensure till the natural life of the appellant. Hence the appellant filed this appeal.

The question arose for adjudication was whether the conviction of the appellant ought to have been recorded under the IPC or whether the provisions of the Special law, i.e., Section 42A of POCSO Act enhancing the sentence awarded to the appellant for the offences punishable u/s 376(2)(f) and 376(2)(i) of IPC.

The Hon'ble Apex Court held that when the alleged acts or omissions constitute offence both under the IPC and the POCSO Act then, the law which

prescribes the punishment of greater degree would have to be applied as contemplated u/s 42 of the POSCO Act. The Hon'ble Supreme Court further observed that fields of operation of Section 42 and Section 42A of POSCO Act are in different spheres and that section 42 deals with quantum of punishment mandating that when a particular act or omission constitutes an offence, both under the POCSO Act and also under the provisions of the IPC or the Information Technology Act, the offender found guilty of the offence would be liable to be punished under the POCSO Act or under the provisions of the IPC whichever provides a punishment of a greater degree and that section 42A of POSCO Act deals with the procedural aspects and gives an overriding effect to the provisions of the POCSO Act over any other law for the time being in force where, the two acts are inconsistent with each other and hence provisions of Section 42A of POSCO Act cannot be interpreted so as to override the scope and ambit of enabling provision, i.e., Section 42 of POCSO Act. Resultantly the Hon'ble Apex Court held that conviction of the appellant for the offences punishable under Sections 376(2)(f) and 376(2)(i) of IPC and Sections 3/4 of POCSO Act is wholly justified and upheld that trial Court judgment for imprisonment for life to the appellant while convicting him for the offences punishable u/s 376(2)(f) and 376(2)(i) of IPC as above sections of IPC provides for a higher sentence as compared to Sections 3/4 of POCSO Act in terms of Section 42 of POCSO Act. In fine, the Hon'ble Apex Court partly allowed the appeal and restored the judgment of the trial Court without the stipulation that the life term will ensure till the natural life of the appellant and with a fine of Rs. 5,00,000/-.

***

Lok Mal @ Loku Vs. The State Of Uttar Pradesh [Criminal Appeal No. 325 of 2011]

Date of Judgment: 07.03.2025

Section 323 , 377 IPC - Absence of major injury marks in the medical certificate cannot be a reason to discard the otherwise reliable evidence of the prosecutrix which is trustworthy, unshaken during cross examination and inspires confidence - It is not necessary in each rape case there has to be an injury to the private parts of the victim - Question of conviction of the accused for rape is independent and distinct and it has got no connection with the character of the mother of the prosecutrix.

The present appeal was filed against judgement of Hon'ble High Court of Judicature at Allahabad, Lucknow Bench confirming the conviction judgment of the Trial Court u/s 323, 376 of IPC.

Case of the prosecution was that the appellant gagged the victim with a piece of cloth and committed rape and threatened her family and hence FIR was registered u/s 376, 323, 504, and 506 of IPC. Charges were framed against the accused u/s 323, 376 and 506 of IPC. Accused pleaded not guilty. After trial accused was found guilty u/s 323, 376 of IPC and was awarded imprisonment for 5 years. The same was upheld by the Hon'ble High Court. Aggrieved by that this appeal was filed.

Appellant contended that there was no evidence against appellant, oral evidences are interested witnesses, FIR was lodged with delay and conviction was based on unacceptable evidences and the medical evidence does not corroborate and no injury found in private parts of the victim.

The Hon'ble Apex Court rejected the contention of interested witness as the testimony of prosecutrix was trustworthy, unshaken during cross examination and inspired confidence. The Hon'ble Apex Court has held that absence of major injury marks in the medical certificate cannot a be a reason to discard the otherwise

reliable evidence of the prosecutrix and that it is not necessary in each rape case there has to be an injury to the private parts of the victim .

The Hon'ble Supreme Court opined that delay in registering FIR has been sufficiently explained and is not fatal to the case of the prosecution. The Hon'ble Supreme Court further held that the question of conviction of the accused for rape is independent and distinct and it has got no connection with the character of the mother of the prosecutrix. In fine, the appeal was dismissed affirming the judgment of the Hon'ble High Court.

***

Suresh Vs. State Rep. By Inspector of Police [Criminal Appeal No. 540 of 2013]

Date of Judgment: 04.03.2025

Section 32 Indian Evidence Act - Relying solely on a dying declaration alone as it holds immense importance in criminal law - Such reliance should be placed after ascertaining the quality of the dying declaration and considering the entire facts of a given case.

The appellant has challenged the Judgment dated 28.02.2012 by which the High Court of Madras has upheld the appellant's conviction and awarding of life sentence for an offence under Section 302 of the IPC. Before the death of the deceased, a Judicial Magistrate recorded a statement of the deceased and this statement was used by the prosecution as dying declaration. In this statement, the deceased stated before the Judicial Magistrate that it was the appellant who had poured kerosene on her and set her on fire. If a dying declaration is surrounded by doubt or there are inconsistent dying declarations by the deceased, then Courts must look for corroborative evidence to find out which dying declaration is to be believed. This will depend upon the facts of the case and Courts are required to act cautiously in such cases. The variances in deceased's statements cast serious doubts on the veracity of her subsequent statement. The deceased tried to explain her conduct by stating that she made false statements on the day of the incident as she could not tell the truth in the presence of her husband. It is very difficult to believe this version of the deceased because no other evidence corroborates the deceased's statement that the appellant had poured kerosene on her and then set her on fire. In cases where the dying declaration is suspicious, it is not safe to convict an accused in the absence of corroborative evidence. In the present case the deceased gave two different statements one to the Police and another to Judicial Magistrate which creates suspicion as both are totally contradictory. Thereby the Hon'ble Supreme Court deemed it fit as to not rely upon the dying declaration alone for convicting the accused.

***

Patel Babubhai Manohardas & Ors Vs. State of Gujarat [Criminal Appeal No. 1388 of 2014]

Date of Judgment: 05.03.2025

Section 114 IPC - Explanation or clarification of Section 107 IPC - Whenever any person is absent but was present when the act or offence for which he would be punishable in consequence of the abetment is committed - Shall be deemed to have committed such an act or offence - Liable to be punished as an abettor.

The appellants preferred Criminal Appeal before the High Court of Gujarat and the State of Gujarat also filed Criminal Appeal for enhancement of sentence. By common judgment and order the High Court dismissed the appeal of the appellants and affirmed the conviction and sentence imposed on the appellants by the learned Additional Sessions Judge, Mehsana. The point for consideration is that whether the accused persons had abetted the suicide of the deceased.

As per Section 107 IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing or if he engages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission to the doing of that thing. To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then 'instigation' may be inferred. 'Instigate' means to goad, urge, provoke, incite or encourage doing 'an act'. To satisfy the requirement of 'instigation', it is not necessary that actual words must be used to that effect or that the words or act should necessarily and specifically be suggestive of the consequence. Where the accused by his act or omission or by his continued course of conduct creates a situation that the deceased is left with no other option except to commit suicide, then 'instigation' may be inferred. No act is attributed to the

appellants proximate to the time of suicide which was of such a nature that the deceased was left with no alternative but to commit suicide. In such circumstances, it cannot be said that any offence of abetment to commit suicide is made out against the appellants.

***

Sita Ram & Anr. Vs. The State Of Himachal Pradesh [Criminal Appeal No. 228/2013]

Date of Judgment: 06.03.2025

Section 32 India Evidence Act - Medical science says that at times due to head injury if sufficient oxygen does not reach the brain that may lead to asphyxia - Once dying declaration is held to be believable, the questions that no oath was administered and that the dying declaration was not tested by cross-examination cannot arise - If dying declaration is believed, it requires no corroboration - Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible u/s 32 of the Indian Evidence Act.

This appeal arises from the judgment passed by the Hon'ble High Court of Himachal Pradesh setting aside the Judgment of acquittal passed by the Trial court. Case of the prosecution was that 1st appellant hit a blow in the forehead of the deceased with Darat (sickle like agricultural tool). Other co-accused assaulted the deceased with fist and kick blows. Deceased went to police station and lodged FIR u/s 451, 324, 504, 506 r/w 34 of IPC. After 9 days deceased passed away. Medical certificate mentioned the cause of death as asphyxia. Section was altered and section 302 was included. After investigation final report was filed and accused denied the charges. After trial all 3 accused were acquitted. Hence the State went for Appeal wherein the Hon'ble High Court found the 1st appellant guilty of culpable homicide not amounting to murder punishable u/s 304 IPC. The Hon'ble High Court found the second appellant guilty u/s 323 and 451 of IPC and acquitted the other accused. Hence the present appeal against the conviction.

Appellants contented that cause of death has no proximate connection with the *actus reus* of the accused, the statement of the deceased in the form of an FIR cannot be considered to be a dying declaration in terms of Section 32 of the Indian Evidence Act as allegation is infliction on head but whereas post-mortem report

suggested asphyxia as the cause of death and there is nothing in his statement as to asphyxia.

The questions that arose for consideration are whether the injury on the fore head could have caused the death by asphyxia and whether Section 32 of the Indian Evidence Act requires an expectation of death and FIR lodged by the deceased could be treated as dying declaration or not?

The Hon'ble Supreme Court observed that medical science says that at times due to head injury if sufficient oxygen does not reach the brain that may lead to asphyxia. After deliberation about asphyxia in detail and medical causes and condition, the Hon'ble High Court held that the cause of death of the deceased would be the wound in the head leading to a fissured fracture in the skull which led to asphyxia and ultimately the death of the deceased by phenomenon namely hypoxic brain injury.

The Hon'ble Apex Court further held that once the dying declaration is held to be believable, the questions that no oath was administered and that the dying declaration was not tested by cross-examination cannot arise and it would not be held to be unbelievable merely because of absence of oath and cross-examination. If the dying declaration is held to be unbelievable, it must be done on the basis of other circumstances. If dying declaration is believed, it requires no corroboration. Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible u/s 32 of the Indian Evidence Act.

Holding thus, the Hon'ble Supreme Court affirmed the conviction judgment and reduced the sentence of 1st appellant to 1 year R.I. The period already undergone for the 2nd appellant based on other mitigating circumstances.

***

HIGH COURT – CIVIL CASES

N.Marithoppai (died) & Ors. Vs. Alamelu & Anr. [S.A. No. 100 of 2021 and CMP. No.2141 of 2021] [2025 (1) MWN (Civil) 130]

Date of Judgment: 30.10.2024

Tamil Nadu Court Fees and Suits Valuation Act, 1955 (TN Act 14 of 1955), Section 37: Partition Suit. Court fee paid under Section 37(2) is incorrect. Plaintiff and First Defendant became Co-Owners of Suit properties. First Defendant, Plaintiff is in deemed possession of Suit Properties. Valuation of Suit under Section 37(2) is perfectly correct – First Appellate Court committed error in non-suiting Plaintiff on ground that he failed to prove his possession over Suit properties to value Suit under Section 37(2), especially in absence of plea of ouster. Plaintiff is entitled to half share. Appeal Suit allowed.

The Suit Properties originally belonged to one Angammal, wife of Chinnappa Gounder. She died leaving behind her two daughters, namely Periya Mallammal and Chinna Mallammal as her Legal Heirs. Chinna Mallammal died issueless leaving behind her sister Periya Mallammal as her sole Legal Heir. Periya Mallammal died leaving behind her husband (Plaintiff) and her daughter (First Defendant) as her Legal Heirs. The Plaintiff and the 1st Defendant are jointly enjoying the Suit Properties without Partition. Due to some misunderstanding between the Plaintiff and the 1st Defendant, the 1st Defendant executed a Power of Attorney in favour of the 2nd Defendant in respect of the Suit Properties on March 31, 2010. On the same day, the 2nd Defendant sold the Suit Properties to the 1st Defendant by way of sale deed. The said sale deed will not bind the Plaintiff. Hence, the Plaintiff after legal notice filed the Suit for partition. The Defendants filed their written statement denying the averments made in the Plaint and put forth their claim to suit property through a registered will dated 30.08.1978. Appeal preferred by the defendant was allowed and suit was dismissed.

The Hon'ble High Court has observed that it is settled law that even if one co-owner is not in actual possession, the Law presumes that he/she is in constructive possession of the Suit Properties along with the other co-owners, unless ouster or exclusion is proved. Thus, even while assuming the moment that the Plaintiff is not in actual possession in the Suit Properties along with the 1st defendant, the Plaintiff is in deemed possession of the Suit Properties. Hence, this Court is of the considered view that the valuation of the Suit under Section 37(2) of the T.N.C.F. Act, is perfectly correct.

Further, the Hon'ble High Court is of the view that the findings of the First Appellate Court that the Plaintiff is not in joint possession of the Suit Properties and that, consequently, the Court Fee paid under Section 37(2) of T.N.C.F. Act is incorrect, are perverse and erroneous. The First Appellate Court in a sympathetic manner has rendered these findings. Hence, the said findings deserve to be interfered with by this Court.

Further, the Hon'ble High Court has held that this Court decides that the First Appellate Court has committed an error in non-suiting the plaintiff on the ground that he failed to prove his possession over the Suit Properties to value the Suit under Section 37(2) of the T.N.C.F. Act, especially in the absence of plea of ouster. Further, the First Appellate Court erred in not following the position of Law that a co-owner/co-sharer is presumed to be in constructive possession and enjoyment of the Suit Properties along with other co-heirs or co-owners. The Substantial Questions of Law are answered accordingly in favour of the appellants and against the respondents. This Second Appeal is allowed.

******

S.Gomathi & Anr. Vs. S.Balasubramanian [S.A.No. 854 of 2023 and C.M.P. No.27071 of 2023] [2025 (1) MWN (Civil) 139]

Date of Judgment: 16.04.2024

Limitation Act, 1963 (36 of 1963), Article 59: Suit for cancellation of Document, viz., unilaterally cancelling Settlement Deed. Plaintiff pleads knowledge of said document 3 years prior to instituting Suit. Suit beyond period of limitation. First Appellate Court found Suit maintainable in view of Article 58. Held, Suit for cancellation of an instrument irrespective of whether valid or void, would squarely fall within four corners of Article 59, whereas Article 58 only applied to declaratory Suits. Second Appeal allowed.

The defendant is the father of the plaintiff and he had purchased the suit property from the Tamil Nadu Housing Board on 05.12.1984 and a construction was put up with the help of the Plaintiffs contribution. It is the plaintiff's case that, on account of the love and affection and the fact that the plaintiff was taking care of the defendant, the defendant had executed an irrevocable settlement deed dated 14.07.2004 in respect of the suit schedule property in favour of the plaintiff. The plaintiff would submit that he has mutated the revenue records in his name and he has also permitted the defendant to occupy the premises along with him.

On 08.02.2006, the defendant had cancelled the settlement deed without the knowledge of the Plaintiff. The Plaintiff issued a legal notice to the defendant on 27.12.2009. On 17.01.2010, the defendant had sent a reply containing false allegations and also stating that the settlement deed was executed as a collateral security and not voluntarily out of the free will of the defendant as alleged by the plaintiff. The plaintiff would further submit that in May 2011, the defendant, in the presence of the well-wishers, had undertaken to cancel the revocation deed and execute a settlement deed in favour of the plaintiff, subject to the condition that the plaintiff would alienate a part of the vacant site measuring 6 acres in Thakolam Village, Arakonam and to give Rs.10,00,000/- from out of the sale consideration to

the defendant. The plaintiff had kept his promise and paid Rs.10,00,000/- to the defendant. However, the defendant went back on his words and refused to cancel the revocation deed. Once again, a panchayat was convened where the defendant flatly refused to revoke the cancellation deed. Hence the suit. The defendant had filed a written statement inter-alia denying the allegations contained in the plaint and raising the issue of limitation.

The Hon'ble High Court has observed that once a suit is filed by the Plaintiff for cancellation, then it would be governed by Article 59 of the Limitation Act irrespective of whether the document is a valid or a void one. Therefore, once Article 59 becomes applicable, then the suit could have been filed within 3 years from the date of knowledge, which in the instant case is December 2009. The principle underlining the above observation is that Section 31 of the Specific Relief Act forms the basis for cancelling an instrument and Section 31 does not make a distinction between a void and voidable document, since the language used is for both void and voidable written instrument. Since there is a specific provision relating to the cancellation of instruments, the necessity to fall back on Article 58 would not apply. The lower appellate Court had observed that the trial Court had not framed any issue with reference to the Limitation. However, from a perusal of the judgment of the trial Court, it is clearly evident that the parties had taken up the issue of limitation and argued the said issue, which has led to the learned Judge decreeing the suit.

Therefore, the appellate Court is not correct in stating that the issue had not been raised, particularly when parties have gone to trial Court, submitted documents and argued on the point of limitation. The lower appellate Court's observation that Article 58 would apply to the instant case is without any basis. Article 58 relates to declaratory suits, whereas Article 59 specifically deals with the suits filed for cancelling/setting aside an instrument. The relief claimed in the above suit is one for cancelling the revocation deed, which squarely falls within the four corners of Article 59. Therefore, the finding of the lower appellate Court that Article

59 would not apply and only the provision of Article 58 would apply is without any basis. The instant case is governed under the provisions of Article 59 of the Schedule to the Limitation Act. As held by the trial Court for the reasons stated above, the substantial questions of law are answered in favour of the Defendants and allowed the second appeal.

******

Pattammal & Anr. Vs. Hariharan & Ors. [C.R.P.(PD) Nos.5038 & 5240 of 2024 & C.M.P. No.28249 of 2024] [2025 (1) CTC 570]

Date of Judgment: 21.01.2025

Civil Rules of Practice, Rule 79: Marking of a Document (as Exhibit) by showing to Registry and to be returned to party. Document to be received by Court and exhibited by Presiding Officer. After completion of trial, plaintiff filed Applications to reopen case and to recall witness for reception of Original Sale Deed. Trial Court allowed former Application and rejected later with a direction to produce Original Sale Deed to Registry for comparison with certified copy already marked and return to Plaintiff. Procedure adopted by Munsif, *held,* alien to code and order is set aside. Trial Court directed to recall witness and mark Sale Deed. Revision allowed.

Plaintiff filed Suit for Declaration of Title and for other consequential reliefs. During evidence Plaintiff produced registration copy of Sale Deed executed by Defendant's father and the same was marked as Ex. A2. Plaintiff thereafter filed Application to reopen the case by recalling a Witness and to mark Original Sale Deed. Trial Court directed the Plaintiff to produce the Original Sale Deed with the Registry for the purpose of comparing the same with Registration copy which was already marked as Ex.A2 and later to be returned to Plaintiff. Revision against the same.

The Hon'ble High Court has observed that marking of a document by showing the same to the Registry is unknown to the Code of Civil Procedure. A document, if it has to be received in evidence, it has to be supported by a proof affidavit and the deponent in the proof affidavit has to enter into the witness box and depose on the document. Thereafter, the document would be received by the Court and exhibited by the learned Presiding Officer. The procedure which has been evolved by the learned District Munsif in the impugned order is alien to the Code of Civil Procedure and, therefore, it deserves to be set aside and accordingly, it is set aside.

The Hon'ble High Court has ordered as follows:

(i) The orders passed in I.A.Nos.4 and 5 of 2023 in O.S.No.1619 of 2011 dated 12.06.2024 are set aside and leave is granted to the petitioners to produce the original of the sale deed.

(ii) (ii) The plea of the first plaintiff that she should be recalled to mark the sale deed is also permitted.

(iii) (iii) The document should be filed along with the additional proof affidavit and the contesting defendant will be entitled to cross-examine the first plaintiff on the said proof affidavit.

Hence, the Civil Revision Petitions stand allowed.

*****

N.Dharmalingam Vs. N.Ayyavoo (Died) & Ors. [A.S. No.643 of 2008 & C.R.P. No.1962 of 2013] [2025 (1) CTC 673]

Date of Judgment: 14.12.2023

Hindu Succession Act, 1956 (30 of 1956), Section 6; Evidence Act, 1872 (1 of 1872), Sections 101 to 103: "Burden of Proof" Presumption of Joint Family Property (Nucleus Theory). Generally property acquired by Kartha or Coparcener with aid or assistance of Joint Family assets has character of Joint Family property. Burden is on person asserting Joint Family nature of property to establish use of Ancestral Nucleus. If Nucleus is established, burden shifts to opposite party to prove that he purchased property with his own funds and not out of Joint Family Nucleus that was available.

Business started by Coparcener with strangers does not automatically become Joint Family business. Coparcener can conduct independent business while remaining in Joint Family. Principles drawing presumption as to character of properties of undivided Hindu Joint Family not applicable to business. No evidence to show that 1st Defendant was made as Partner on behalf of family out of funds provided by family. Business held to be separate business of 1st Defendant.

Non-Joinder of necessary parties. Father died in 1952, Suit for Partition by son dismissed on ground of non-joinder of daughters born through first wife. *Held,* Daughters not entitled to any share in ancestral property under Hindu Law prior to 1956. No right of inheritance for Step Daughters under Section 15. Daughters not being necessary parties, Suit held to be maintainable.

Partition Suit was filed by the Plaintiff / Appellate, seeking a 1/3rd share in the Suit properties, claiming they were joint family properties acquired from the income of the family business managed by his elder brother, after the death of their father in 1952. The Defendants, including the Plaintiff's brother (1st Defendant) and other

family members, contended that the properties were self-acquired and not joint family assets. The Trial Court dismissed the Suit, holding that the Plaintiff failed to prove the properties were acquired from Joint Family funds and also found the Suit defective due to the non-joinder of certain Legal Heirs. Hence, Plaintiff preferred this Appeal.

The Hon'ble High Court has summarized the following points as the general principles acknowledged by Courts in relation to the Joint family business:

(a) A male member of a Joint Undivided Family can on his own do business either individually or in partnership with strangers. Unless it is shown that the business was started with joint family funds and the earnings were blended with joint family estates, they remain the separate business of individual member.

(b)There can be no presumption that a business carried on by a coparcener in partnership with stranger is a family business.

(c) Substantial assistance and contribution of other members of family may lead to an inference that the business was treated as a family business.

(d)Where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not become partners.

(e) There can be a valid partnership existing between the Hindu Undivided Family and one of its members.

(f) The principles drawing presumption as to the character of properties of undivided Hindu Joint family cannot be applied to business.

(g)Members of Joint family, without disturbing the status of the joint family or the coparcenery may acquire separate property or independent business for themselves.

The Hon'ble High Court has observed that the details of tenancy also is not available. Having regard to the nature of property which is located in a prime locality in Erode, the quantum of rent appears to be very low. The title to the property has now been decided in favour of the petitioner even in the appeal. Though the

property is the exclusive property of the petitioner, this Court is unable to interfere with the findings of the Appellate Authority. When this is not a case of tenancy, this Court, as necessary corollary, holds that the petition before Rent Controller is not maintainable. Accordingly, the Civil Revision Petition stands dismissed.

******

Ashim Sahib (died) & Ors. Vs. Kamalbi (died) & Ors. [S.A. No.184 of 2018 & C.M.P. No.4698 of 2018] [2025(1) MWN(Civil) 306]

Date of Judgment: 18.12.2024

Specific Relief Act, 1963 (47 of 1963), Section 34: "Declaration of Title" Trial Court dismissed Suit for Declaration holding Suit property as Joint Family property. The First Appellate Court allowed Appeal holding that Suit property is absolute property of Vendor, as classification of properties as Joint Family properties and separate properties unknown to Muslim Law. Whether First Appellate Court failed to consider material evidence presented by Defendants and misread Sale Deed in favour of Plaintiffs. Burden of proof lies on person asserting Joint property. Sale Deed executed by one family member does not automatically bind other family members unless it is shown that he has absolute ownership over property. Properties acquired partly through inheritance and partly through joint purchases establishes joint ownership. Plaintiffs failed to prove exclusive ownership of Vendor over Suit property. Plaintiffs not entitled to Declaration of Title and Suit dismissed and Sale deed was held not binding on defendants. First Appellate Court's Judgment set aside and Trial Court Judgment restored.

This Second Appeal is directed by the defendants in the Original Suit. Challenging the Judgment and Decree dated September 14, 2017 passed in A.S.No.3 of 2016 on the file of 'Principal Subordinate Court, Tindivanam' whereby the Judgment and Decree dated December 3, 2015 passed in O.S.No.156 of 2008 on the file of 'Additional District Munsif Court, Tindivanam' was reversed.

Suit Property originally belonged to one Johny Basha as his separate property. He acquired it through the income derived from his mat weaving business. Since then the first plaintiff has been in possession and enjoyment of the same.

The Defendant Nos.1, 3 and 4 are brothers of Johny Basha and second defendant is first defendant's son. Johny Basha and his brothers are all divided and living their life separately. While so, one week after the first plaintiff purchased the

Suit Property i.e., on February 20, 2008, the defendants caused a notice stating that the Suit Property is their joint family property and that they have right in it. They attempted to interfere with the first plaintiff's peaceful possession and enjoyment of the Suit Property. Hence the Suit for declaration and permanent injunction.

The defendants filed a written statement, denying the plaint averments except those specifically admitted. It belonged to the joint family consisting of Johny Basha and defendants 1, 3 and 4, who are all sons of Nane Sahib, as their joint family property. When joint family properties were sold before, all the brothers joined together and executed Sale Deed. This Suit has been filed by the plaintiff in collusion with Johny Basha. The Sale Deed executed by Johny Basha will not bind the defendants. Further the Suit is bad for non-joinder of necessary party viz., Johny Basha. Accordingly, they sought to dismiss the Suit.

The Hon'ble High Court has observed that it is clear that (i) joint family properties are not unknown to Muslim Law, (ii) joint family properties in Muslim Law are not akin to Hindu joint family properties and (iii) in cases of similar factual matrix, the burden is upon the person who contends that Suit Properties are not joint family properties to prove the same. In this case, Johny Basha was the eldest son. The plaintiff purchased the Suit Property from him and hence, the plaintiff steps into his shoes. The burden is upon the plaintiff to prove his assertion that the Suit Property is separate property of Johny Basha and not joint family property/ common property.

Further, Johny Basha has established his title and exclusive possession over the properties covered thereunder by examining P.W.1 to P.W.5 and marking Ex-A.1 to Ex-A.25. But that is not the case in the present Suit. Hence, Ex-A.6 will not bind the present Suit and the principle of res judicata would not come into picture in this case. Moreover, the plaintiffs whose case is that the Suit is barred by the principle of res judicata, ought to have pleaded and filed the pleadings, issues, Judgment and Decree of the earlier Suit. Except Ex-A.6 - Judgment, no other such documents, even the Decree, were filed by the plaintiffs. In these circumstances, this Court is of

the view that the plaintiffs failed to satisfactorily establish their case. On the other hand, as narrated above, the defendants have prima facie established their case.

The Hon'ble High Court while allowing the second appeal has observed that this Court is of the view that Ex-A.1-Sale Deed would not bind the defendants and hence, the plaintiffs are not entitled to declaration of title in respect of the entire Suit Property. Though the reasons assigned by the Trial Court are not sufficient, its final decision is correct. The finding of the First Appellate Court that joint family properties are unknown to Muslim Law is not sustainable. It is true that in Muslim Law there is no concept of joint family akin to Hindu Law. But in view of the Aminaddin Munshi's Case (cited supra), it is permissible for members of a joint Muslim family to purchase properties out of joint exertions and hold them jointly. In such cases, each member would be entitled to equal share. Accordingly, the Suit is liable to be dismissed. Substantial Questions of Law is answered accordingly in favour of Defendants.

*****

Sri Siddheswari Peedam, Courtallam Vs. Pon Durai Samy [S.A.(MD) No.168 of 2007] [2025(1) MWN(Civil) 328]

Date of Judgment: 02.12.2024

Tamil Nadu Cultivating Tenants' Protection Act, 1955 (T.N. Act 25 of 1955), Section 2(aa): "Cultivating Tenant" Meaning of Practicing Advocate cannot contribute physical labour. Not eligible to claim rights of Cultivating Tenant. No evidence to substantiate that Advocate's brother acted as Cultivating Tenant. Bar Council of India Rules, Part VI, Chapter II, Section VII, Rule 47, Restriction on Advocate to take other employments. Carrying on Agriculture is a profession. Advocates barred from carrying out Agriculture as full time job. Cultivating Tenant, a full time job and Advocates are barred from being one. Contract Act, 1872 (9 of 1872), Section 23, Contract forbidden by law. Tenancy Contract entered into by Advocate for cultivating Agricultural land forbidden by law and therefore, void.

The 1st and 2nd schedule of properties belongs to the plaintiff's Srimadam and the plaintiff is in possession of the lands for more than 80 years (now 100 years). The defendant had become cultivating tenant which is against his legal profession and he is having money power and political power and the defendant has planted cash crops instead of paddy, which is against the agreement between the parties. Further the defendant had failed to pay the lease amount and separate action has been initiated against the defendant. The defendant deliberately quarrelled as if he has right in the suit properties and had filed a Suit and obtained interim injunction. The plaintiff Srimadam had filed written statement in the said suit by stating the true facts, thereafter the defendant felt that on the true facts the said suit could not be sustained and would be dismissed and hence left the suit without contesting and the said suit was dismissed for non-prosecution. Therefore, the defence is hit by principles of estoppel and res-judicata. The defendant had encroached the 1st schedule property and from 08.03.2002 trying to use the Well water situated in the 1st schedule for agricultural activity carried in the 2nd schedule

property. The defendant is capable of doing anything. Hence the suit is filed inter alia praying to declare that the defendant is not having any right to the Well and Nerkalam situated in the 1st schedule property and consequently restrain the defendant from using the Well water to irrigate the 2nd schedule property.

The defendant had filed a written statement wherein it is stated that the suit is filed to create loss to the defendant. The plaintiff had failed to mention in which schedule the Well and the Nerkalam is situated, the survey number mentioned in first schedule of property is incorrect, the suit is bad since the same is against the provisions of Code of Civil Procedure. The Hindu Undivided Family of the defendant is in possession and enjoyment of the property. The defendant filed additional written statement on 21.10.2003. The suit was filed in individual capacity by the erstwhile Madathipathi and he died on 17.12.2002. Hence, the present suit cannot be conducted and continued by the present Madathipathi. The new Peedathipathi should be added in the suit. Since the same is not added, the suit is liable to be dismissed.

The Hon'ble High Court has observed that the agricultural activities if carried out as a profession and carried out as full time job, then the Rules bar an advocate from carrying the said full time job/profession. When the category of 'cultivating tenant' is a full time job, then the BCI Rules indirectly bars defendant to be a cultivating tenant. Consequently, the cultivating tenancy agreement entered in the year 1993 in the name of the defendant while he was an advocate is against section 23 of Indian Contract Act.

The Hon'ble High Court while allowing the second appeal held that the contract entered by the defendant/advocate is against the provisions of section 23 of Indian Contract Act, then the transfer of such illegal contract in the name of the defendant brother Pon Arivalagan is void.

*****

HIGH COURT – CRIMINAL CASES

Dr. Jenbagalakshmi Vs. The State of Tamil Nadu rep. by its Inspector of Police, All Women Police Station, Srirangam, Tiruchirappalli District [Crl. OP (MD) No.15947 of 2024 and Crl. M.P.(MD) No.10056 of 2024] [2025-1-MLJ(Crl.) 327]

Date of Judgment: 20.12.2024

Protection of Children from Sexual Offences Act, 2012, Section 21(1); Indian Penal Code, 1860, Section 312; Medical Termination of Pregnancy Act, 1971, Section 3: "Quashing of FIR". Petitioner-Doctor of Hospital where victim pregnant girl died sought to quash proceedings registered against him under Section 21(1) of Act 2012 and under Section 312 of Code. *Held,* Apex Court noted that Petitioner bore no responsibility to verify victim girl's age or ascertain whether offences committed thus provision of Section 21(1) of Act 2012, inapplicable. No abortion performed on victim girl instead treatment given. Postmortem certificate concluded victim died from hemorrhagic shock and no allegation that Petitioner or staff performed action. Investigating officer registered FIR solely based on Respondent no. 2's hearsay statement. Prosecution failed to establish *prima facie* case against Petitioner under Section 312 of Code. Despite Petitioner's genuine intention to save victim girl repeated investigations inflicted mental cruelty. Section 3 of Act 1971 provides immunity to registered medical practitioners from prosecution. FIR liable to be quashed against Petitioner. Petition allowed.

On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.1 of 2024 on 28.02.2024 against three persons including the petitioner for the alleged offences under Sections 5(l), 5(j)(ii), 6(1) and 21(1) of Protection of Child from Sexual Offences Act, 2012 (hereinafter called as 'POCSO Act') and Section 312 of IPC.

The case of the prosecution is that the victim girl is the younger sister of the second respondent/defacto complainant, and that the victim girl, who was aged 17 years, was admitted in Trichy Government Hospital by her maternal aunt Meenakshi and she had called the second respondent to come to Trichy Government Hospital, that when the second respondent had gone to the hospital, it was informed by her maternal aunt that the victim girl was pregnant as she was having a relationship with one Ramkumar, that the maternal aunt, in order to abort the fetus, had taken the victim girl to Sudharsana Hospital at Woraiyur on 24.02.2024 and scan was taken and they came to know that she was 9 weeks pregnant then and that on 26.02.2024, the victim girl was brought to Sudharsana Hospital by her maternal aunt to abort the fetus and at the time of abortion, since the victim girl failed to co-operate, there was profuse bleeding, she was taken to Trichy Government Hospital on 27.02.2024 at about 02.00 a.m. in a serious condition and hence, the second respondent has lodged a complaint.

The Hon’ble High Court has stated that the precedents set by the Hon'ble Supreme Court are directly relevant to the present case. As the Hon'ble Apex Court has astutely noted, the petitioner bore no responsibility to verify the victim girl's age or ascertain whether offences had been committed. In light of this, this Court has no hesitation in concluding that the provision of Section 21(1) of the POCSO Act are inapplicable to the petitioner.

The Hon’ble High Court has observed that in the case of Dr.Chanda Rani Akhouri and others Vs. Dr.M.A.Methusethupathi and others reported in 2022 LiveLaw (SC) 391, the Hon'ble Supreme Court has held that a medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field and he cannot be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to other.

The Hon’ble High Court has further observed that the Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab and another reported in (2005) 6 SCC 1

emphasized the need to shield Doctors through unjust punishment, recognizing the essential services they provide to humanity. The Court has directed the Medical Council of India to advise the Government on developing guidelines for future cases involving medical professionals. Furthermore, the Court stressed that before taking action against Doctors accused of negligence, investigating officers must obtain unbiased and expert medical opinions, preferably from Government Doctors with relevant expertise. In the present case, a 70 year old Senior Doctor / Gynecologist underwent multiple enquiries including a police investigation, and was compelled to obtain anticipatory bail before the Sessions Court. The investigating officer registered the FIR solely based on the second respondent's hearsay statement, without conducting a preliminary enquiry. Such treatment of medical professionals may discourage them from taking necessary risk to save lives, instead adopting a "play-it-safe" approach, ultimately harming patient care.

Further, the Hon'ble High Court while allowing the Criminal Original Petition held that Section 3 of the Medical Termination of Pregnancy Act, 1971 provides immunity to registered medical practitioners from prosecution under the Indian Penal Code or any other law and that this immunity applies when a pregnancy is terminated in accordance with provisions of the Act. Specifically, Section 3(2) permits termination up to 12 weeks without additional approvals and between 12 and 20 weeks with concurrence of two registered medical practitioners, if they determine that the pregnancy poses a risk to the woman's life or health or that child would be born with severe physical or mental abnormalities.

******

Jeevan Vs. The State Rep by its The Inspector of Police, D-2, Chengalpet Taluk Police Station, Chengalpet District [Crl. R.C. No.1658 of 2024] [2025-1-MLJ(Crl.) 397]

Date of Judgment: 09.01.2025

Petition filed by Petitioner-owner of mobile phone being relative of accused from whom such mobile was seized along with contraband article. Trial court dismissed petition. Whether, Petitioner could be entitled to return of his mobile phone during pendency of proceedings. *Held,* Petitioner is the owner of mobile and not an accused in this case. Accused being relative of Petitioner had taken the mobile phone for some urgency. Through online almost all transactions carried out and hence Petitioner needs his mobile. Lower Court directed to take account photographs, record features of such mobile phone before returning such mobile phone to Petitioner. Impugned order, set aside. Petition allowed.

Challenging the order of dismissal dated 15.03.2024 in Crl.M.P.No.452 of 2024, passed by the learned Principal Special Judge under NDPS & EC Act at Chennai, the petitioner, who is the owner of the mobile phone, is before this Court with the present Revision.

The Hon'ble High Court has observed that as per the guideline given in the case of *Union of India vs. Mohanlal and another* that jurisdictional Special Court under the NDPS Act has power to consider the grant of interim custody of the article under the Act by invoking powers under Section 457 of Cr.P.C.

Further, the Hon'ble High Court has referred the Supreme Court Judgment, in *Sainaba vs State of Kerala*, and the Full Bench of Kerala High Court in *Pradeep B vs The District Drug Disposal Committee represented by its Chairman, Kasargod and others* and held that this Court finds the objection of the learned State Public Prosecutor that there is total embargo in entertaining the petition for return of property under the relevant provision of Cr.P.C., is no more *res intergra*. In view of the same, this Court is inclined to entertain and consider the grant of interim

custody of Mobile Phone seized under the NDPS Act by invoking the power under Sections 451 and 457 of Cr.P.C consequently under Section 497 and 503 BNSS, subject to the confiscation proceedings.

In view of the foregoing reasons, the order of dismissal dated 15.03.2024 in Crl.M.P.No.452 of 2024, passed by the learned Principal Special Judge under NDPS & EC Act at Chennai, is set aside and this Revision is allowed with a direction to the learned Principal Sessions Judge, to return the Mobile Phone in favour of the petitioner, on the petitioner submitting an undertaking on the terms and conditions as stated.

******

Suhail Ahamed & Ors. Vs. The State Rep. By its The Inspector of Police, H-5, Thiruvottiyur Police Station, ChennaiL.W.(Crl.) 206]

Date of Judgment: 29.01.2025

Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c) r/w 18(b), 22(c), 25 and 29(1). Madras High Court E-Filing Rules, 2020, rule 12.2, computation of time. Criminal Rules of Practice, 2019, Rule 25 NDPS – Statutory Bail – Grant of – Scope.

Case of petitioners is that they were arrested on 19.01.2024 and remanded on 20.01.2024 on the allegation that they were found in possession of 4.620 kgs of methamphetamine and 1.425 kgs of abin and the respondent did not file the final report within the statutory period of 180 days and sought for extension of time and the trial court had granted 90 days for completion of investigation. The respondent ought to have filed the final report before 270 days and the 270th day fell on 14.10.2024 but that the respondent filed the final report only on 15.10.2024 hence are entitled to statutory bail.

The Hon'ble High Court dismissed the criminal revision case holding that the general Rule framed by the High Courts that if a document is filed on a holiday, it should be construed as if it is filed on the next working day would not be applicable to a final report filed on a holiday. That apart, the final report could be filed before 12 midnight in order to claim that it was filed on a particular date. Yet another aspect which requires clarification is that the petitioners had sought to compute the statutory period from the date of arrest. However, the Hon'ble Supreme Court in Chaganti Satyanarayana's case, which was reiterated in Kapil Wadhawan's case, had held that the period of detention has to be computed from the date of detention authorised by the Magistrate and not from the date of arrest.

******

M/s. Ultimate Computer Care & Anr. Vs. S.M.K. System, Authorized Signatory and Proprietor R.Saravanakumar [Crl. O.P.(MD) Nos.19778, 19790, 19621, 19459, 19575, 19403, 19563, 19614 & 19620 of 2020 and Crl. M.P.(MD) Nos.13428, 13371, 13597, 13435, 13606, 13189, 13233 & 13389 of 2022] [2025 (1) MWN (Cr.) DCC 72 (Mad.)]

Date of Judgment: 12.02.2025

Madras High Court Issues Directions To Resolve Issue Of Pending Cheque Dishonourment Cases In Magistrate Courts

The Respondent in each of the quash petition had filed a private complaint against the petitioners for offence under Section 138 of the "Negotiable Instruments Act, 1881" on the ground that the respondent has supplied materials to the petitioners and there was an enforceable liability towards which cheques were issued and when these cheques were presented, it was dishonored with endorsement "exceeds arrangement". Thereafter, legal notice was issued and in some cases it was refused and in other cases, it was received and no reply notice was given nor the cheque amount was paid. The same resulted in the filing of individual private complaints which have been put to challenge in these quash petitions.

The Respondent contended that in none of these cases, the petitioners issued a reply notice and that apart, the various payments that were made by the petitioners was not relatable to any particular cheque and therefore, the operation of Section 56 of the Negotiable Instruments Act will not come into play.

The Hon'ble High Court, while referring to the judgment in *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*, [2022 (6) CTC 467], held that when part-payment of the amount due under a cheque is made by the drawer, it must be endorsed on the cheque as required under Section 56 of the Negotiable Instruments Act. Only the balance amount, after such endorsement, can be negotiated. It is necessary that such part-payments are directly relatable to the specific cheque relied upon by the complainant.

In the present case, the Court observed that although certain payments were made between 11.01.2022 and 22.02.2022, the cheques in question were issued between 03.01.2022 and 27.04.2022. Since there was no direct correlation between the payments and the individual cheques, Section 56 of NI Act does not apply. Regular business payments that cannot be clearly attributed to any specific cheque do not fall within the purview of Section 56. Furthermore, the Court emphasized that determining whether any cheque liability was discharged requires factual adjudication, which can only be carried out during trial.

While dismissing the Petitions, the Court took note of the pendency of cases under Section 138 of the Negotiable Instruments Act and issued a slew of directions concerning issuance of summons, grant of interim compensation, appearance of the accused, and conduct of trial in such cases. The following are the directions relating to Section 138 of the Negotiable Instruments Act, which will take effect from 03.03.2025. These directions will remain in force until the High Court frames appropriate practice directions, in line with the Supreme Court's Judgment in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re* [(2021) 16 SCC 116].

I) ENTERTAINING COMPLAINTS

- Upon filing of the complaint and supporting documents, the Court shall scrutinize the complaint under Section 138 of the Negotiable Instruments Act, 1881 and the accompanying affidavit and documents.
- The Registry of the Court shall ensure that the complaint and documents are also accompanied by a process memorandum under Rule 29(13) of the Criminal Rules of Practice, 2019 with sufficient number of copies of complaint for service on each accused together with duly stamped envelopes and acknowledgement cards/proof of delivery bearing the address of the accused persons as shown in the complaint for the purpose of dispatching the same by

Speed Post with proof of delivery or Registered Post with Acknowledgment Due.

- At the stage of numbering the complaint, scrutiny must be limited to examining whether the complaint is as per the prescribed format with necessary averments to constitute an offence under Section 138, and is accompanied by the requisite documents and process memorandum. The Court is not required to conduct a roving enquiry into any other aspect(s).
- The practice of receiving complaints and adjourning the same for long periods under the pretext of "check and call" shall be strictly avoided. If scrutiny cannot be completed by the next working day, it should be completed in no more than 7 working days thereafter.

II) ISSUANCE OF PROCESS

- Before issuing process, the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath. As a rule, the Magistrate may rely upon the verification in the form of affidavit filed by the complainant in support of the complaint, which shall be treated as a sworn statement, to issue process. In exceptional cases, such as where the Court entertains a genuine doubt about the veracity of the statements made in the complaint etc., it may summon the complainant and witnesses, if any and examine them on oath.
- Where the accused or some of them reside outside the territorial jurisdiction of the Court, the Magistrate shall conduct an inquiry as mandated by Section 225 BNSS, 2023 and proceed against such accused only upon being satisfied that there are sufficient grounds to proceed against him/them. The requisite satisfaction must be demonstrable from the order issuing process.
- Section 225(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on

behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 225.

- The Court should adopt a pragmatic and realistic approach while issuing process. In cases of juristic entities, except in cases where the Director/Partner etc is a signatory to the cheque, in respect of other accused who are sought to be roped in with the aid of Section 141 of the N.I Act, 1881, the Magistrate shall not issue process unless he is satisfied about the complicity of such accused having regard to the express averments in the complaint as to how and in what manner such person/accused is involved in the day to day affairs/Management of the company.
- Having regard to the fact that the N.I Act has prescribed a special procedure, it is a special law within the meaning of Section 5 of the BNSS, 2023. Hence, the procedure of hearing the accused at the stage of taking cognizance as prescribed in the proviso to Section 223 BNSS shall not apply to complaints under Section 138 of the N.I Act, 1881

III. SUMMONS

- Upon issuance of process, summons shall be issued through RPAD. In addition, the Court may issue summons to the email address of the accused and witness, if available, as contemplated under Rule 29(20) of the Criminal Rules of Practice, 2019.
- In exceptional cases, the Court may direct service of summons through the police. Where the Police is not able to serve summons, it shall be returned to the Court on the date mentioned in the summons together with an affidavit sworn by the police concerned detailing the steps taken by him for effecting

service on the witness or accused, as the case may be, as required by Rule 29(11) of the Criminal Rules of Practice, 2019.

- For notice of appearance, a short date, no later than 4 weeks must be fixed. If the summons is received unserved, immediate followup action must be taken by directing the complainant to pay the process charges afresh within one week. If no steps are taken, the complaint shall be dismissed under Section 226 BNSS.
- If summons is returned with the endorsement that the accused or the witness refused to take delivery of summons, the Court issuing the summons may declare under Section 144 (2) of the N.I Act that the summons has been duly served.
- Where multiple complaints forming part of a transaction are filed against the same accused in the same Court, the Court may treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonor of cheques issued as part of the said transaction. The Court must ensure that all such cases are tagged and posted together on the same day for every hearing.
- On the administrative side, the High Court may explore the possibility of extending the N-STEP facility for service of summons which is currently used for civil cases to cases under the Negotiable Instruments Act, 1881 having regard to the fact that the offence has been held to be quasi-criminal in character.

IV. INTERIM COMPENSATION

- Where interim compensation is sought for, the Court shall consider the same expeditiously keeping in mind the guidelines issued in *Rakesh Ranjan Shrivastava v. State of Jharkhand, [(2024) 4 SCC 419].*

V. APPEARANCE OF THE ACCUSED

- Upon appearance of the accused, the Court shall obtain a bond under Section 91 of the BNSS for his appearance.
- In view of Section 145(1) of the N.I Act, 1881, the evidence of the complainant, tendered on affidavit may, subject to all just exceptions, be read in evidence in any enquiry, trial or other proceeding.
- The Court may inform the accused on the first date of hearing that he has the option of settling the dispute with the complainant by tendering the cheque amount, provided that the complainant is willing for such settlement. If the accused person opts for such settlement, the Court shall fix a date and time and refer the case to the nearest Mediation Centre. If the dispute remains unresolved for a maximum of 30 days after the date of first hearing before the Mediation Centre, the matter shall be referred back to Court to be decided on merits. If any offer for settlement is given thereafter, the terms of settlement shall be given to the Court and the parties shall not be relegated to the Mediation Centre all over again.
- If the matter is settled before the Mediation Centre or before the Court, an order compounding the offence shall be passed in terms of Section 147 of the N.I Act, 1881.

VI. TRIAL

- Procedure for trial of cases under Chapter XVII of the Act must, in the first instance, be summary in nature. Under the first proviso to Section 143, the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and impose a fine exceeding five thousand rupees. However, the Magistrate may also exercise discretion under the second proviso to Section

143, to hold that it is undesirable to try the case summarily. This course of action is, however, the exception and the Magistrate may bear in mind that apart from the sentence of imprisonment, the court has jurisdiction under Section 395 BNSS to award suitable compensation. As such, a sentence of more than one year may not be required in all cases. (*See Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560*).

- While following the summary trial procedure, where the accused does not plead guilty, the Court is only required to record the substance of the evidence followed by a judgment containing a brief statement of the reasons for the finding. Copious extracts from judgments on well settled aspects like presumption under Section 139 NI Act etc. must be avoided.
- The statutory scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of more than one year may have to be awarded and compensation under Section 395 BNSS is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other attendant circumstances.
- Should it become necessary to convert a summary trial into a summons case, the Magistrate must record an order to that effect as required by the second proviso to Section 143 of the N.I Act.
- Upon the appearance of the accused, the Court shall pass an order fixing dates for examination of defense witnesses, if any, after hearing the parties or their counsel. Such order will be furnished to the counsel or the parties free of cost and must be simultaneously uploaded by the trial courts. It will be the duty of all concerned to stick to the schedule, and adjournments/re-scheduling of dates shall not be granted unless for strong and exceptional reasons, and that too upon imposition of costs.

- The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months from the date of commencement of trial.
- As pointed out by the Supreme Court in *V. Baharuni v. State of Gujarat, [(2014) 10 SCC 494]* "all the subordinate courts must make an endeavour to expedite the hearing of cases in a time-bound manner which in turn will restore the confidence of the common man in the justice-delivery system. When law expects something to be done within prescribed time-limit, some efforts are required to be made to obey the mandate of law." Accordingly, every effort shall be taken to complete the proceedings within the time frame fixed under Section 143(3) of the Negotiable Instruments Act, 1881.

******