TAMIL NADU STATE JUDICIAL ACADEMY

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COMPENDIUM OF CASE LAWS

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SUPREME COURT - CIVIL CASES

Akhilesh Prasad Vs. Jharkhand Public Service Commission [C.A.No.3180 of 2022]

Date of Judgment: 26-04-2022

Promotion – Recruitment– Departmental Examination – Bifurcation of State – Re-organization

The Hon'ble Supreme Court decided a Civil Appeal challenging the decision of the Division Bench of the High Court on non-selection in exam.

The Apex Court referred to the decision in *Pankaj Kumar Vs. State of Jharkhand & Ors. [2021 SCC OnLine SC 616],* and observed that, "It must therefore be relevant to consider the nature of such limited departmental examination and what it seeks to achieve as against direct recruitment from the open market, where a person who was not part of the concerned service, gets a chance to offer his candidature and enter the service under a State for the first time. Limited departmental examination affords an opportunity for 15 persons who are already in service at a lower level to have accelerated promotion depending upon the merit of such candidates."

The Apex Court referred to the decision in *All India Judges' Association & Ors. Vs. Union of India and Ors. [(2002) 4 SCC 247]*, and observed that, "In order to encourage meritorious candidates who may be comparatively junior in service, a window of opportunity is opened through limited departmental examination. Those who pass the examination are entitled to have an accelerated promotion. This process does not change the character of movement to the higher post and it continues to be a promotional channel."

The settled law, in respect of persons going from one state to another is that, the status of "belonging to" a caste or tribe in relation to one state would not apply once a member of that community goes to another.*

The choice which an individual - who belonged to the erstwhile unified State - but who has to agree, for whatever reason, to settle in the bifurcated State, in a place or region where he originally did not reside, is involuntary. It is precisely to cater to

such situations, that a provision was made expressly protecting benefits which such individuals had hitherto been enjoying in the erstwhile unified States.

Each such situation needs to be examined, having regard to the legal regime in question.

The Apex Court thus allowed the Civil Appeal and set aside the Judgment and Order of the Division Bench of the High Court and restored the Judgment and Order of the Single Judge of the High Court.

*See Also

- Marri Chandra Shekhar Rao Vs. Seth G.S. Medical College, [(1990) 3 SCC 130]
- Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India & Anr [(1994) Supp. (1) SCR 714]

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Delhi Airport Metro Express (P) Ltd. Vs. DMRC [C.A.No.3657 of 2022]
Date of Judgment: 05-05-2022

Section 31(7)(a), Arbitration and Conciliation Act, 1996 – Ratio Decidendi

The Hon'ble Supreme Court in a Civil Appeal decided the issue whether the "sum" awarded under Section 31(7)(a), Arbitration and Conciliation Act, 1996 (the Act) would include the interest *pendente lite* or not.

The Apex Court found that the phrase "unless otherwise agreed by the parties" used in Section 31(7)(a) of the Act assumes significance, and when given a plain and literal meaning, the legislative intent would be clear that the discretion with regard to grant of interest would be available to the Arbitral Tribunal only when there is no agreement to the contrary between the parties.

The Apex Court referred to the decision in *Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa through Chief Engineer [(2015) 2 SCC 189]*, and observed that, if there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties.

The Apex Court further observed that the Arbitration and Conciliation Act, 1996 itself emphasises on party autonomy, and that each word/phrase in the provision will have to be given effect to, and that any interpretation which will render the phrase otiose or redundant will have to be avoided.

The Apex Court found that, unlike in the case of *Hyder Consulting (UK) Ltd.* (supra), the present case involved a specific agreement between the parties regarding the rate of interest, and that the Arbitral Tribunal had given effect to the specific agreement, and that the arbitral award had been passed in consonance with Section 31(7)(a) of the Act.

The Court observed that, "every judgment must be read as applicable to the particular facts proved, or assumed to be proved. The generality of the expressions which are found in a judgment cannot be considered to be intended to be exposition

of the whole law. They will have to be governed and qualified by the particular facts of the case in which such expressions are to be found."

The Apex Court referred to the decision in *Regional Manager & Anr. Vs. Pawan Kumar Dubey [(1976) 3 SCC 334],* and observed that, the *ratio decidendi* of a particular decision is the rule which is deduced from the application of law to the specific facts and circumstances of that case. *Ratio decidendi* does not constitute some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

The Apex Court held that there is no error in the impugned Order and thus dismissed the Civil Appeal.

***See Also**

- N.S. Nayak & Sons Vs. State of Goa [(2003) 6 SCC 56]
- Sree Kamatchi Constructions Vs. Divisional Railway Manager (Works), Ors. [(2010) 8 SCC 767]
- RBI Vs. Peerless General Finance and Investment Co. Ltd. & Ors [(1987) 1 SCC 424]
- Union of India Vs. Dhanwanti Devi & Ors. [(1996) 6 SCC 44]

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Maniben M B Vs. District Development Officer & Ors. [C.A.No.3153 of 2022]

Date of Judgment: 25-04-2022

Anganwadi workers (AWW) and Anganwadi helpers (AWH) — Section 3(1)(b), Payment of Gratuity Act, 1972 — Section 11, Right of Children to Free and Compulsory Education Act, 2009

The Hon'ble Supreme Court decided a Civil Appeal on the issue whether Anganwadi workers and Anganwadi helpers appointed to work in Anganwadi centres set up under the Integrated Child Development Scheme are entitled to gratuity under the Payment of Gratuity Act, 1972.

The Apex Court observed that Anganwadi centres have been entrusted with the onerous responsibility of implementing some of the most important and innovative provisions of the 2013 Act, and that they perform a pivotal role in discharging the statutory obligation of the State to provide nutritional support to pregnant women, lactating mothers and children in the age group of 6 months to 6 years.

The Apex Court further observed that the decision in Ameerbi case, which had held that Anganwadi workers did not carry on any function of the State, was rendered at a time when the 2013 Act was not in force.

The Apex Court found that, "In view of the provisions of the 2013 Act and Section 11 of the RTE Act, Anganwadi centres also perform statutory duties. Therefore, even AWWs and AWHs perform statutory duties under the said enactments. The Anganwadi centres have, thus, become an extended arm of the Government in view of the enactment of the 2013 Act and the Rules framed by the Government of Gujarat. The Anganwadi centres have been established to give effect to the obligations of the State defined under Article 47 of the Constitution. It can be safely said that the posts of AWWs and AWHs are statutory posts."

"As far as the State of Gujarat is concerned, the appointments of AWWs and AWHs are governed by the said Rules. In view of the 2013 Act, AWWs and AWHs are no longer a part of any temporary scheme of ICDS. It cannot be said that the employment of AWWs and AWHs has temporary status. In view of the changes

brought about by the 2013 Act and the aforesaid Rules framed by the Government of Gujarat, the law laid down by this Court in the case of Ameerbi will not detain this Court any further from deciding the issue. For the reasons stated above, the decision in the case of Ameerbi will not have any bearing on the issue involved in these appeals."

The Government Resolution dated 25th November 2019, which prescribes duties of AWWs and AWHs, does not lay down that their job is a part time job. Considering the nature of duties specified thereunder, it is fulltime employment.

The Apex Court held that, provisions of the 1972 Act apply to AWWs and AWHs working in Anganwadi centres. The Apex Court further directed that all eligible AWWs and AWHs shall be entitled to simple interest @ 10% per annum from the date specified under Section 7(3A) of the 1972 Act.

The Apex Court thus allowed the Civil Appeal, set aside the impugned judgment of the Division Bench of the Gujarat High Court and restored the judgment of the Single Judge.

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Shankarlal Nadani Vs. Sohanlal Jain [C.A.No.2816 of 2022]
Date of Judgment: 12-04-2022

Section 106, Transfer of Property Act, 1882 — Consumer Protection Act, 2019 — Tenancy

The Hon'ble Supreme Court decided a Civil Appeal challenging the dismissal of a revision petition against a decree for possession.

During the pendency of a suit for possession filed under Section 106 of the Transfer of Property Act, 1882, the Rajasthan Rent Control Act, 2001, became applicable. The issue was that the Civil Court passed the decree for possession against the Appellants even after the applicability of the Act.

The Apex Court observed that the Act does not talk about the validity of any decree of the Civil court but only restricts the jurisdiction of the Civil Court from the date the Act became applicable. After the applicability of the Act to the area in question, the landlord and tenant dispute can be raised only before the Rent Tribunal but not before the Civil Court. However, a suit filed before the Civil Court prior to the applicability of the Act has to be decided by the Civil Court.

The Apex Court found that since the Act came into force after the civil suit was filed, the decree could validly be passed and executed.

The Apex Court further reiterated that the rights of the parties have to be determined on the date when *lis* commences i.e., on the date of filing of the suit. The Plaintiff is entitled to decree on that day when he initiated the proceedings, therefore, rights of the parties have to be examined as on the said day.

The Apex Court held that the Judgment and Decree passed by the Civil Court did not suffer from any illegality, and that there was no error in the judgment of the High Court. Thus, the Apex Court dismissed the Civil Appeal.

***See Also**

- ECGC Ltd. Vs. Mokul Shriram EPC JV [2022 SCC OnLine SC 184]

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Swadesh Kumar Agarwal Vs. Dinesh Kumar Agarwal [C.A.No.2935 of 2022]

Date of Judgment: 05-05-2022

Section 11, Arbitration and Conciliation Act, 1996 [the Act] — Order VII Rule 11, CPC

The Hon'ble Supreme Court decided a Civil Appeal challenging the decision of the High Court of Madhya Pradesh terminating the mandate of the sole arbitrator mutually appointed by the parties, and had also confirmed the Order of the trial Court dismissing the Application under Order VII Rule 11, CPC.

The Apex Court observed that, Section 11(5) of the Arbitration and Conciliation Act, 1996 shall be attracted in a case where there is no procedure for appointment of arbitrator, and Section 11(6) of the Act will be applicable in a case where there is a contract containing an arbitration agreement and the appointment procedure is agreed upon.

The Apex Court observed that there need not be necessarily be a written contract containing any arbitration agreement. In the absence of such an agreement, the parties are free to agree on procedure by mutual consent/agreement and can also opt for arbitration through mutual consent.

The Apex Court observed and held that,

(i) That there is a difference and distinction between section 11(5) and section 11(6) of the Act;

(ii) In a case where there is no written agreement between the parties on the procedure for appointing an arbitrator or arbitrators, parties are free to agree on a procedure by mutual consent and/or agreement and the dispute can be referred to a sole arbitrator/arbitrators who can be appointed by mutual consent and failing any agreement referred to section 11(2), section 11(5) of the Act shall be attracted and in such a situation, the application for appointment of arbitrator or arbitrators shall be maintainable under section 11(5) of the Act and not under section 11(6) of the Act;

(iii) In a case where there is a written agreement and/or contract containing the arbitration agreement and the appointment or procedure is agreed upon by the parties, an application under section 11(6) of the Act shall be maintainable and the High Court or its nominee can appoint an arbitrator or arbitrators in case any of the eventualities occurring under section 11(6)(a) to (c) of the Act;

(iv) Once the dispute is referred to arbitration and the sole arbitrator is appointed by the parties by mutual consent and the arbitrator/arbitrators is/are so appointed, the arbitration agreement cannot be invoked for the second time;

(v) In a case where there is a dispute/controversy on the mandate of the arbitrator being terminated on the ground mentioned in section 14(1)(a), such a dispute has to be raised before the "court", defined under section 2(e) of the Act and such a dispute cannot be decided on an application filed under section 11(6) of the Act.

(vi) At the stage of deciding the application under Order VII Rule 11 of CPC, only the averments and allegations in the application/plaint are to be considered and not the written statement and/or reply to the application and/or the defence.

Thus, the Apex Court allowed the appeals arising from the order of the High Court as unsustainable thereby quashing and setting aside such orders.

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SUPREME COURT - CRIMINAL CASES

Dilip Harriramani Vs. Bank of Baroda [Crl.A.No.767 of 2022]

Date of Judgment: 09-05-2022

Negotiable Instruments Act – Section 141

The Hon'ble Supreme Court decided a Criminal Appeal on the issue of vicarious liability of a partner of a partnership firm under Section 138 of the NI Act.

The Apex court referred Section 141 of NI Act and the decision of *State of Karnataka Vs. Pratap Chand, [(1981) 2 SCC 335]*, to find that, a person cannot be held vicariously liable only on the fact that the person is the partner of a partnership firm. As per Section 141, any person who does not bear out the requirements of 'in charge of and responsible to the company for the conduct of its business' is not vicariously liable. Also, the person liable shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

The court also referred to the case of *Aneeta Hada Vs. M/S Godfather Travels & Tours [(2012) 5 SCC 661]* in which it was held that "unless the company or firm has committed the offence as a principal accused, the persons mentioned in Sub-Section (1) or (2) of Section 141 would not be liable and convicted as vicariously liable". The same was held in other cases like *Sharad Kumar Sanghi Vs. Sangita Rane, [(2015) 12 SCC 781]*, *Himanshu Vs. B. Shivamurthy & Ors, [(2019) 3 SCC 797]* and *Hindustan Unilever Limited Vs. State of Madhya Pradesh [(2020) 10 SCC 751]*. In the present case, the partnership firm wasn't the principle accused.

Thus, the Court allowed the appeal.

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Jagjeet Singh & Ors. Vs. Ashish Mishra & Anr. [Crl.A.No. 2640 of 2022]
Date of Judgment: 18-04-2022

Application of Bail - Section 439 – Criminal Procedure

The Hon'ble Supreme Court decided a Criminal Appeal on the issue whether victim could be heard during bail application of accused.

The court referred to the case of *Mallikarjun Kodagali Vs. State of Karnataka & Ors, [(2019) 2 SCC 752]* where it was held that victim had the right to file an appeal against an order of acquittal. Victim's right are totally independent and presence of the State in the proceedings does not take away the victim's right to be heard. Victim needs to be given fair and effective hearing during grant of bail to the accused.

The apex court referred to the decision of *Kanwar Singh Meena Vs. State of Rajasthan [(2012) 12 SCC 180]*, where the court set aside the bail granted to accused. Court should refrain from evaluating evidence but should look into prima facie issues and any reasonable grounds.

The apex court held that the precedent set out in *Prasanta kumar Sarkar Vs. Ashis Chatterjee & Anr [(2010) 14 SCC 496]* for granting bail is a good law.

Thus, the Apex Court allowed the Criminal Appeal and set aside the impugned judgment of High Court and asked the High court to decide the bail application freshly.

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Ram Chander Vs. The State of Chhattisgrah [W.P.(Crl) No. 49 of 2022]
Date of Judgment: 22-04-2022

Pre-mature Release - Section 432, 433 CrPC - Section 302 I.P.C - Application for Remission

The Hon'ble Supreme Court dealt with a writ petition seeking to grant the petitioner pre-mature release who was convicted for the offences punishable under section 302, IPC.

The court while deciding this case looked into the case of *State of Haryana Vs. Mohinder Singh,[(2000) 3 SCC 394]* where the court held that the discretion vest with government to suspend or remit the sentence but the executive power cannot be exercised arbitrarily. The apex court then took precedent set from the *Rajan Vs. Home secretary, Home Department of Tamil Nadu [(2019) 14 SCC 114]* case where it was held that the court can direct authorities to re-consider the application of convict even though it is exclusive prerogative of the executive. The apex court then analysed the value of the opinion of presiding judge which has been mentioned in the section 432 (2) of Cr.P.C. In the case *Union of India Vs. Sriharan [(2016) 7 SCC 1]* it was held that opinion of presiding judge shouldn't be just another factor which is taken into consideration by government as it might defeat the purpose of section 432(2) of Cr.P.C as the court observed that he would shine a light on the nature of crime. The apex court in this case observed that the government need not follow the opinion of judge mechanically but if he hasn't looked into relevant factors for grant of remission as laid down in the case of *Laxman Vs. Union of India [(2000) 2 SCC 595]*, then the government can ask the presiding judge to reconsider the matter.

The apex court directed that, the special judge to provide opinion along with reasons within a month and further directed the State to take decision of the petitioner's application for remission within a month of receiving special judge opinion.

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State of Uttar Pradesh Vs. Subhash @ Pappu [Crl.A.No.436 of 2019]
Date of Judgment: 01-04-2022

Unlawful Assembly - Section 302, 148 and 149 - Indian Penal Code – Section 464 - Criminal Procedure - Defective Framing

The Hon'ble Supreme Court decided an issue whether the accused can be convicted for the offence punishable under Section 302 with the aid of Section 149 IPC where the prosecution has not established and proved who actually inflicted the knife blow. However, medical evidence on record and even from the deposition of the doctors, it has been established and proved that the deceased sustained an injury by knife blow, which is inflicted by one of the six to seven persons, who participated in commission of the offence.

The prime accused were charged for the offences under sections 147, 149 and 302 IPC. Placing reliance on the dying declaration, the trial Court had convicted the accused for the same offences. The High Court however on the contrary had acquitted the accused on the grounds that the dying declaration did not mention the name of the accused.

The court observed the error in framing of charges as well as the reliability of dying declaration in this case. As per the rule set out in *Fainul Khan Vs. State of Jharkhand, [(2019) 9 SCC 549]*, mere defect in framing does not make the charge unsustainable. On analysing the accusation of murder, even if the role attributed to the respondent-accused was that of hitting the deceased by a hockey stick, he was held to be guilty of committing murder with the aid of Section 149 of I.P.C. While analysing the question of reliability of dying declaration, the court relied upon the decision of *Sanjay Vs. State of Uttar Pradesh, [(2016) 3 SCC 62]*, and held that the respondent was rightly convicted by the trial court for the offense of unlawful assembly. Appeal was allowed and acquittal of the respondent by the high court was quashed and set-aside and the respondent is sentenced to undergo offense punishable under section 304 part II read along with section 149 of I.P.C.

*****

Surendran Vs. State of Kerala [Crl.A.No.1080 of 2019]
Date of Judgment: 13-05-2022

Section 32, Indian Evidence Act, 1872 - Sections 304B and 498A, IPC

The Hon'ble Supreme Court decided a Criminal Appeal on the issue whether the dying declaration by the deceased could be admissible if the High Court had already acquitted the appellants for the charge of causing death to the deceased under section 304B (Dowry Death) of I.P.C.

The Court considered the facts which include that the deceased was constantly harassed by the appellant and his mother soon after the marriage along with threatening that he would marry another beautiful girl if extra dowry was not given. She eventually committed suicide even after a settlement was made between them. The High Court acquitted the appellant and his mother under Section 304B of the I.P.C but confirmed their conviction under Section 498A of I.P.C.

The Court applied the precedent set in the case of *Lalji Dusadh Vs. King Emperor, [AIR 1928 Pat 162]* regarding multiple charges and evidence of the deceased victim. The Court analysed the wordings of Section 32(1) of the Evidence Act and circumstances of the transaction. It listed out conditions for admission of evidence which include that the cause of death must come into question and the prosecution must show that the evidence sought is with respect to Section 498A of I.P.C.

The Apex Court overruled the Judgments of *Gananath Pattnaik Vs. State of Orissa, [(2002) 2 SCC 619]* and *Inderpal Vs. State of MP, [(2001) 10 SCC 736].* With respect to the appeal, the Court found no reason to interfere with the impugned judgment passed by the High Court of Kerala and the appeal was dismissed.

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HIGH COURT - CIVIL CASES

A. Sivasubramaniam Vs. E. Bhuvaneshwari [A.S.No.653 of 2008]
Date of Judgment: 27-04-2022

Specific Performance – Readiness and Willingness to Perform – Agreement of Sale

It is fairly well settled that in the case of suit for specific performance, it is the mandatory requirement of law that the plaintiffs shall plead and prove their readiness and willingness to perform their obligation under the agreement of sale from the date of agreement till the date of decree. It is also obligatory on the part of the trial Court to frame an issue with regard to readiness and willingness and render a finding.

The plaintiffs have to establish their capacity to pay the sale consideration and they need not always carry the money, but the requirement of law as pointed out above, there shall be proper pleading and proof. Readiness and willingness to perform part of contract of the plaintiffs is required to be examined with reference to all the facts and surrounding factors of the given case.

It is settled legal principle that the plaintiff has to succeed or fail on his own case and he will not be permitted to take advantage on the laches if any, in the case of the defendants.

In that view, the Judgment and Decree of the trial Court is set aside and the Appeal is allowed with costs. The plaintiffs are entitled for a decree to recover a sum of Rs. 10,00,000/- from the first defendant with interest at the rate of 12% per annum from the date of agreement i.e., 05.10.2005 to till the date of realization.

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Gopalakrishnan & Ors. Vs. The Union of India [W.P.No.11974 of 2008]
Date of Judgment: 18-04-2022

Section 17 - Land Acquisition Act 1894

The Hon'ble High Court dealt with the issue on invocation of the emergency provision u/s 17 (4) of the Land Acquisition Act for the purpose of acquisition of lands for construction of a reservoir across Koilmalayar to tap the abundant water flowing into the river during the rainy season.

The court considered the decsions of *Laxman Lal & Anr. Vs State of Rajasthan & Ors. [2013 (3) SCC 764], Hamid Ali Khan & Anr. Vs. State of UP & Ors. [2021 SCC OnLine SC 1115] and* held that, the urgency provision u/s 17 (4) can be invoked to dispense with enquiry u/s 5A of the Act, nevertheless it has been held that the exceptional and extraordinary power of doing away with an enquiry under Section 5A in a case where possession of the land is required urgently or in an unforeseen emergency should not be resorted to in a routine manner and the surrounding circumstances warranting immediate possession should considered and the said power should not be lightly invoked for dispensing with the enquiry. The existence of urgency cannot be a matter of judicial review, but, however, total exclusion is not made that no judicial review is permissible. Once the public purpose by invoking the urgency provision is carried on, the public purpose has to be taken through to its logical end. while invoking the urgency provision, the real urgency is a matter of concern, and it is necessary for the State and its agencies/instrumentalities to sustain the case of invocation of the urgency provision, by pointing out that even a delay of even a few weeks or months in the implementation of the project would cause great hardship and prejudice to the public and would defeat the public purpose.

Thus, the Court allowed the Writ Petition by quashing the impugned Notification issued u/s 4 (1) and the consequential Declaration issued u/s 6 of the Act.

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Kiliammal & Ors. Vs. State of Tamil Nadu & Ors. [W.P. Nos. 14418 of 2003 (Batch)]

Date of Judgment: 29-04-2022

Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948 - Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Rules, 1965 - Constitution Of India - Article 226, Constitution Of India - Article 300A

In the prayer for a certiorified Mandamus before the Hon'ble High Court on the issue relating to the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Act was enacted for the purpose of creating an equality among the citizens in and by which the Zamindari and Mirasi system of holdings were sought to be erased and the land holdings belonging to the said Zamin and Miras were taken over by the Government and passed on over to the persons, who were in possession of the said lands and cultivating the same.

In effect, the lands, which vested with the Government on the said enactment coming into force was such of those agricultural lands, which were held by the Zamin over and above the eligible threshold limit. Mainly, the lands under the Zamin, which were termed to be surplus holdings, were taken over by the Government and were assigned to individuals, who were cultivating the said lands under the Zamin. Both under the Hindu Kings and later during the time of the Moghul administration, the status of a cultivating tenant in a village was defined by usage. The cultivating tenant always rendered to the State a portion of the produce of the land varying with the nature of the crop which is called *"melwaram"* while the share left to the cultivator was known as *"kudiwaram"*. The words *"melwaram"* and *"kudiwaram"* were in vogue in the Tamil country.

The Court considered five significant issues in the case about ryoti lands. The Court found that, once a ryotwari patta is applied for and granted, it means that the lands have been declared as ryotwari lands vide the Ryotwari Act. As per the definition of "Ryot" and "Ryoti Lands" provided u/s 3 (15) and (16) of the Tamil Nadu Estate Land Act, 1908, which has been adopted in the Ryotwari Act, ryoti lands means cultivable lands in an estate and that the person holding the said lands should be for the purpose of agriculture. From the above, it is abundantly clear that ryoti lands

are lands which are cultivable and are used for agriculture purposes. Any land in which agriculture is not being done would not fall within the scope of ryoti lands. Further, the person, who claims patta for the ryoti lands, should establish that the lands are being used for agriculture.

It was further pointed out that the Hon'ble Supreme Court in *P.Venkataswami & Anr. Vs D.S.Ramireddy & Anr. [(1976 (3) SCC)]* held that a landholder claiming ryotwari patta must prove that he has been cultivating the land by himself or by his own servants from July, 1945 and is in continuous possession of the said lands. The above view was followed in case of *Tahsildar, Mambalam-Guindy Taluk & anr. Vs Kaneez Fathima & Ors. [(2013 (5) MLJ 263)].*

The lands are to be agricultural lands for the purpose of grant of ryotwari patta. Immediately on the enactment of the Ryotwari Act, all the lands notified in the particular Zamin Village stood vested with the Government under the Ryotwari Act and the said lands are presumed to be ryoti lands. That being the case, in the absence of proof to the contra showing that the lands are private lands, as defined u/s 2 (13) of the Ryotwari Act, the lands are to be treated as ryotwari lands and necessary proof as to cultivation is sine qua non to granting a ryotwari patta.

The Court gave a considered opinion that, all of the Inam Estate Acts requires repealing as it has served its purpose for which it was enacted and the same is no longer required. Thus dismissed the Writ Petition with the following directions.

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Lakshmi Ammal & Ors. Vs. Gejaraj (died) & Ors. [S.A.No.565 of 2015]
Date of Judgment: 29-04-2022

Section 53A - Transfer of Property Act, 1882

The Hon'ble High Court considered whether the suit agreement dated for which relief of specific performance is sought, could be received as evidence as it is not a registered document.

The Court observed that, "when the parties have stipulated time period in agreement, it is not for the court to disregard it just because the court feels it unconscionable." The court referred the case of *P.Ramasubbamma Vs. V.Vijayalakshmi & Others [Civil Appeal No.2095 of 2022]* and on similar lines held that, if the person had established the execution of sale agreement, paid substantial amount towards sale consideration and also conveys his part of performance then he would be entitled for the relief of specific performance.

The Court held that, when protection is sought for under Section 53A of the Transfer of Property Act, law expects that the sale agreement can be acted upon only if it is registered. The plaintiff was ready and willing to perform his part of the contract. Hence, the question would be as to whether, Ex.A3 sale agreement can be acted upon when the same being an unregistered document.

The Court referred the decision of *Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and Others [2018 (5) L.W. 363]* and *K.B. Saha & Sons Private Limited Vs. Development Consultant Limited [(2008) 8 SCC 564]* to observe that, even where the sale agreement is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine itself only to the protection sought for under Section 53A of the Transfer of Property Act. The Court held that, even though the sale agreement was not registered, it can be acted upon as an evidence for deciding the relief of specific performance.

Thus dismissed the Second Appeal.

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Lakshmi Ammal (died) Vs. Ammayi Ammal (died) [S.A.No.337 of 2012]
Date of Judgment: 29-04-2022

Execution of Will — Oral Evidence — Section 91, Indian Evidence Act, 1872

The Hon'ble High Court considered the issue of intestate succession of the property. The Court relied upon two important decisions*.

The Court observed that, a Court is expected to only answer those issues which arise for consideration and a Court is not expected to get into those issues which do not have any impact on the dispute involved in the case. Where a vital finding on an issue by it is enough to dispose of the case, a Court should not be getting into other issues and render its findings. In fact, by rendering such findings on the issues where the Court need not have gone into, those findings cannot even be considered as res judicata in the later suit.

The Court held that, contrary findings rendered by both the Courts below on the genuineness of the Will is liable to be set aside since those findings are not germane to the actual dispute involved in this case. However, the Will and the evidence that has been given to prove the execution and genuineness of the Will and the materials relied upon for the same, can be used as evidence by the parties in any other proceedings between the parties where there is an issue touching upon the genuineness of the Will. The concerned Court will take into consideration the available evidence which should be allowed to be marked in the suit and it will be left open for the Trial Court to render its independent findings on such evidence with regard to the execution and genuineness of the Will. If this safeguard is provided by this Court, it will substantially reduce the burden of the parties to once again undergo the exercise of proving the Will all over again. Thus, the Court Allowed the Second Appeal and upheld the decree passed by the Trial Court.

***See Also**

- Premalata @ Sunita Vs. Naseeb Bee [(Civil Appeal Nos 2055-2056/2022)]
- Srinivasa Row Vs. Kaliaparumal (Minor) and Anr, [AIR 1966 Mad 321]

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M/s. XO Footwear Pvt. Vs. The M D & Tender Inviting Authority, Tamil Nadu Text Book & Educational Services Corporation [W.P. No. 9046 of 2022]

Date of Judgment: 21-04-2022

Tender - Scope of Judicial Review - Tamil Nadu Transparency in Tenders Act, 1998 - Tamil Nadu Transparency in Tenders Rules, 2000

The Hon'ble High Court decided on two seminal issues on the legality of Tender issuing process between Tender Inviting Authority [TIA] and Tender Accepting Authority [TAA].

The technical bids are first opened, the eligibility of the bidders is determined and those that make the cut are short-listed to the second stage, when their financial bids are alone opened. In the second method, the submission of bids is itself staggered, the bidders being required to submit technical bids first, the authorities forming a short list based on their bids and the short listed bidders thereafter submitting financial bids for due consideration of the authority. In the present case, the methodology followed was the former.

The Court held that, the role of the TAA is different and involves engagement with the entirety of the procedures relating to processing of the tender culminating in award of the same. Rule 27 providing for confidentiality does not cover the TAA. This does not mean that TAA is not required to maintain confidentiality, but only means that the rigour of confidentiality imposed under the Act is more specific to the TIA. This understanding will also help in interpreting the processes and procedures under the Act and the roles assigned to the TIA and TAA respectively.

The Court disposed of the Writ Petition by holding that, the tender process shall continue in accordance with law and tender conditions, as proposed and scheduled.

***See Also**

- State of Punjab and Others Vs. Jagdev Singh Talwandi [(1984) 1 SCC 596]
- B.C. Biyani Projects Pvt. Ltd. Vs. State of M.P. and Ors. [(2017(3) AWC 2840 SC)]
- Kulja Industries Limited Vs. Chief Gen. Manager W.T. Proj. BSNL and Ors. [(AIR 2014 SC 9)]

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M/s. Hindustan Fiber Glass Works Vs. Kineco Ltd. [W.A.Nos.194 of 2022 (Batch)]

Date of Judgment: 28-04-2022

Notice Inviting Tender – Stipulated Conditions – Cartel Formation

The Hon'ble High Court in a Writ Appeal dealt with the issue of cartelization and the consequences of cartelization in the process of bidding and discussed the jurisdiction of the Court under Article 226 to deal with the matter of tender.

The Court reiterated the decision of the Hon'ble Supreme Court in *Uflex Ltd. Vs. Government of Tamil Nadu, [2021 SCC Online SC 738]* that, "The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence."

On the question of jurisdiction under Article 226 of the Indian Constitution to deal with tender, the Court found that, in the light of Uflex *supra,* 'interference in commercial matters, especially in regard to the decision to analyse the tender and award the contract, should be minimal".

The Court noted that, "after examination of the allegations, if it is not found proved and yet the parties are eliminated from getting the contract, then there would be consequences. Therefore, based on presumption itself that cartelisation would be proved, a decision cannot be taken in advance to eliminate the contracting party and, that too, when it is not so provided in the NIT [Notice Inviting Tender]."

Thus, the Court allowed the Writ Appeal.

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N.K. Senkaliappan Vs. Sri Chitra Mills [C.R.P. (PD). No. 3750 of 2014]
Date of Judgment: 29-04-2022

Specific Performance — Partnership

It is settled law that the partners of the Firm are principal and agent for each other and one of the partners is sufficient to represent the firm. In case there is any dispute among the partners it is for them to work out the same in the manner known to law in appropriate proceedings. In a suit for specific performance, when a decree is granted for execution of sale deed, the delivery of the property covered by said sale deed is incidental to main relief. Even if there is no prayer by the plaintiff seeking delivery of the property, the executing Court can pass an order for delivery of the property in order to give full effect to the decree for specific performance.

In a suit for specific performance, grant of delivery of possession is incidental to the main relief of specific performance and hence even if there is no specific clause in the decree, the executing Court in order to give full effect to the decree for performance, can direct the judgment debtor to deliver possession to the decree holder. Hence, it cannot be stated that Execution Appeal for delivery of possession is beyond the scope of main Execution Petition, as it is only incidental to the main relief of performance. Further, the perusal of the decree, which is sought to be executed, clearly shows there is a specific clause in the decree directing the defendant to hand over possession of the property to the decree holder.

It is settled law that quoting of wrong provision is not a ground to reject any relief and the Court should not be bound by the procedural technicalities. While, granting a relief to the parties, the Courts are guided by the cause of justice and in order to do complete justice, the Court can take a liberal view by accordingly interpreting the procedural law. The executing Court rightly rejected the plea raised by the revision petitioner regarding the wrong provision of law quoted by the first respondent. Therefore, there is no illegality or irregularity in the order passed by the executing Court and consequently the revision fails.

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Procter & Gamble Hygiene and Healthcare Vs. Reckitt Benckiser (India) Pvt. Ltd. [O.A.No.106 of 2022 in C.S.(Comm. Div.) No.35 of 2022]
Date of Judgment: 20-04-2022

Disparaging Advertisement – Balance of Convenience

The Hon'ble High Court decided an Original Application seeking to restrain the Respondent form using the impugned advertisement in any media, thereby disparaging and denigrating the Applicant's product.

The Court observed that, "… the standard to be applied to judge whether the advertisement is disparaging is by assuming a reasonable person, in contrast to, for instance, an unduly suspicious or hypersensitive person, of average intelligence and imperfect recollection. Therefore, one should not examine the advertisement with a magnifying glass in order to discern possible differences between the applicant's product and the product depicted in the advertisement. Instead, the applicant's product should be examined from a macro perspective by comparing it with the product depicted in the advertisement."

The Court found that when viewed from this perspective, "The self-evident position is that the targeted product is described as an ordinary and ineffective tablet." Hence, the advertisement in Tamil, *prima facie*, is disparaging.

The Court observed that the balance of convenience and hardship is in favour of the Applicant as, if interim injunction is granted, the Respondent has the option to withdraw the advertisement, and tweak it or release a new one in a non-disparaging manner, which will only have a marginal cost impact on the Respondent.

The Court thus held that the Applicant is entitled to succeed and that there shall be an order granting interim injunction as prayed for, with respect to the Tamil advertisement.

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S. Sam Davidson Represented by the Power Holder D. Suresh Vs. Santhakumari [S.A. (MD). No. 218 of 2019]

Date of Judgment: 21-04-2022

Civil Procedure – Order IX Rule 13 – Section 96

The Hon'ble High Court considered a question of law on exparte decree.

The Court held that, it is settled position of law that whenever an *exparte* decree is passed, the trial Court has to consider all the oral and documentary evidence filed on the side of the plaintiff and only after considering the merits of the said evidence, even an *exparte* decree can be passed. Whenever an *exparte* decree is passed, the defendant has got two options, he can either file an application under Order IX Rule 13 C.P.C, to set aside the *exparte* decree or file a regular appeal under Section 96(2) of C.P.C. If the defendant chooses to file an application under Order IX Rule 13 C.P.C, the trial Court can only consider the reason for the non-appearance of the defendant on the said date and whether it was legally acceptable for setting the defendant as *exparte* on the said date.

However, where a regular appeal is filed under Section 96(2) of C.P.C., the powers of the First Appellate Court are much wider. The First Appellate Court will be entitled to consider the merits of the *exparte* decree passed by the trial Court. The First Appellate Court will also be entitled to consider whether the trial Court was right in passing an *exparte* order followed by an *exparte* decree. However, the scope of the said appeal cannot be as wide as an appeal filed under Section 96(1) of C.P.C., The First Appellate Court while dealing with an appeal under section 96(2) of C.P.C, may not be entitled to re-interpret the documents or re-appreciate the oral evidence on the side of the plaintiff especially when the defendant had not even filed a written statement. The First Appellate Court will be entitled to consider the merits of the exparte decree only with regard to the legality of the trial Court decree on the basis of the pleadings and evidence produced by the plaintiff.

Thus, the Court allowed the Second Appeal.

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HIGH COURT – CRIMINAL CASES

Alaguthangamani & Ors Vs. Saravanan [Crl.A.No.7740 of 2019]
Date of Judgment: 29-04-2022

Sections 202 and 204, CrPC

The Hon'ble High Court in deciding a Criminal Appeal, considered the issue whether the right of the complainant to file a regular complaint is taken away after the Magistrate has already passed an order accepting the negative report.

The Court referred to *Kishore Kumar Gyanchandani Vs. G.D. Mehrotra, [(2001) 10 SCC 59]* and *State of Rajasthan Vs. Aruna Devi, [(1995) 1 SCC 1]*, and observed that, "the position of law is well settled that as per the Code of Criminal Procedure, the defacto complainant is entitled to file a private complaint even if the case is lodged with the police is referred or closed. The right of the defacto complainant to proceed with his complaint, even after the acceptance of the negative report of the police by the Judicial Magistrate is very much available."

The Court found that, "… the learned Magistrate, who conducted enquiry under Section 202 Cr.P.C., and passed the impugned order under Section 204 Cr.P.C., has not at all considered the final report filed by the concerned police, the statements recorded under Section 161 Cr.P.C., and the other documents filed along with the final report. … Generally, while taking cognizance of a private complaint, after conducting enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate is expected not to pass any elaborate order, but he is duty bound to record his satisfaction that there are prima facie materials to proceed against the accused."

In fine, the Court held that the cognizance taken by the Magistrate is not good in law, and is liable to be interfered with. Thus, the Court allowed the Criminal Appeal quashed the impugned proceedings.

*****

Manikandan & Ors. Vs. The State of Tamil Nadu [Crl.A.No.115 of 2020]
Date of Judgment: 22-04-2022

Section 34, 302 – Indian Penal Code – Appreciation of Evidence - Discrepancies in Evidence

The Hon'ble High Court decided a criminal appeal challenging the conviction and sentence imposed by the trial court for an offence under Section 302, IPC.

The Court observed that, "in criminal trial each witness's reaction cannot be uniform and court too cannot expect same set of reactions from every witness. The court observed that each witness would differ from other and just because there are minor inconsistencies and discrepancies with regard to nature of injuries and manner in which they were inflicted, such minor discrepancies cannot vitiate the case in any manner in a criminal trial."

The Court further observed that, just because PW1 has turned hostile, it cannot make the court disbelieve the entire case.

The Court took careful consideration of the mistakes committed by police officers to observe that such mistakes which are minor in nature, have no relevance to decide the very charge of murder.

The Court held that, corrections and additions made in the measurements of material objects in the observation Mahazar, though such measurements and alterations create doubt about the documents, it cannot go to root of the case or dent the prosecution since the doctor who conducted the post mortem and witnesses have substantiated that accused had inflicted several injuries on deceased.

Thus, the Court dismissed the criminal appeal.

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Mrs. Noorjahan Vs. The Deputy Commissioner, Income Tax
[Crl.O.A.Nos.2616 of 2020]
Date of Judgment: 26-04-2022

Section 276C (2) - Income Tax Act, 1961 - Rebuttable Presumption As To Existence Of Culpable Mental State – Criminal Procedure

The Hon'ble High Court decided a Criminal Appeal challenging the proceedings of the trial court as against the petitioners under Section 276C (2) of the Income Tax Act, 1961 and to quash it by invoking Section 482 of Cr.P.C.

The Court held that, in order to be subject to Section 276C, the 'assessee' must have concealed their income or provided false information about it. In the instant case, there is no concealment of any source of income or taxable item, inclusion of a circumstance intended to evade tax, or provision of inaccurate information regarding any assessment or payment of tax. In this case, the petitioner only failed to pay the tax on time which was however paid along with interest after 4 and a half months. Hence, it would not fall under the mischief of Section 276C of the Income Tax Act, which requires a deliberate attempt to evade tax.

For the issue of presumption of culpable mental state, the Court held that "The presumption can be applied only when the basic ingredient which would constitute any offence under the Act is disclosed. Then only, the rule of evidence under section 278E of the Act regarding rebuttable presumption as to existence of culpable mental state on the part of accused would come into play".

The court set aside the judgment of the trial court and held that the petitioners cannot be prosecuted under Section 276C of the Income Tax Act. The criminal petition was allowed.

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Murugan Vs. the State [Crl.A(MD) No. 355 of 2020]
Date of Judgment: 29-04-2022

Section 374, CrPC - Dying Declaration - Fingerprint Evidence - Joint Trial of Accused

The Hon'ble High Court considered the issue how the failure on the part of the trial Court in not conducting a joint trial, had affected the trial of the two sessions cases.

The Court opined that, fair trial means a fair trial not only to the accused persons, but also to the victims and the society at large. The accused persons have been charged with very grave offences and the little prejudice that would be caused to them cannot be a ground to avoid a joint trial. Procedural irregularities should not result in an undue advantage to the accused. If it results in undue advantage to the accused, the trial cannot be said to be a fair trial. The trial Court must be directed to conduct a joint trial of the two Sessions cases which would by and large cure technical defects in the trial.

The Court referred to the decision of *K. Thoosimuthu @ Saravanan and others Vs. State of Tamil Nadu [(2019) 4 MLJ (Crl) 589]*, wherein it was held that, the failure on the part of the Sessions Court to conduct a joint trial has resulted in serious illegalities at the trial.

The court looked into the judgment of the Supreme Court in *Nasib Singh Vs. State of Punjab and Anr [(2022) 2 SCC 89],* and analysed the scope of section 223(a) to (g) of Cr. P.C. The Court found that, the present case in hand provides for conduct of joint trials as the different crimes were committed in course of the same transaction.

While interpreting the facts, the court found that as per the decision in *K. Thoosimuthu @ Saravanan and others Vs. State of Tamil Nadu, [(2019) 4 MLJ (Crl) 589],* the conduct of separate trial had resulted in interchanging and non-producing of documents. These irregularities in finger print resulted in undue advantage to the accused. The Court pointed out that, if it results in undue advantage to the accused, the trial cannot be said to be a fair trial.

The Court held that,

[1] Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219 - 221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.

[2] While applying the principles enunciated in Sections 218 - 223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

[3] The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial, based on the result of the trial. The Appellate Court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.

Since the provisions, which engraft an exception, use the phrase 'may' with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.

[4] A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be.

The court made it clear that, the accused persons were at liberty to move to the trial court to seek bail as well as left it open to the trial court to recall or remand them to custody as per the precedent set out in *State of Uttar Pradesh Vs. Shambhu Nath Singh, [AIR 2001 SC 1403]* and accordingly disposed the criminal appeal.

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The Deputy Superintendent of Police, "Q" Branch CID Vs. The Deputy Director, UIDAI [Crl.O.P.No.193 of 2020]

Date of Judgment: 21-04-2022

Section 33 - Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

The Hon'ble High Court dealt with a Criminal Original Petition, praying to direct the respondent to share the Aadhaar Cards information of 35 persons; including genuineness, of the Aadhaar Cards whether they were issued to the same person as found attached with the affidavit details of any updates from the date of issue to till date. The petitioner seeks for information as it is related to crime of holding fake Indian Passports by Sri Lankan Nationals.

The Court considering the Apex Court's judgment in *Justice K. S. Puttaswamy and Another Vs. Union of India (UOI) & Ors. [(2017) 10 SCC 1]* opined that, the intention of the petitioner herein is primarily to ascertain whether the Aadhaar Cards seized by them in the course of the investigation are genuine or not and thereafter to ascertain on what basis those Aadhaar Cards were issued by the respondent, to the Foreign Nationals.

Further, the Court stated that, furnishing the details are not prohibited and does not amount to disclosure of the privacy details of any individuals but to probe whether there is any such individual at all. It was also observed that, Section 33 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, permits disclosure of information in certain cases in the interest of national security.

In fine, the Court directed the respondent to furnish details sought for by the petitioner herein within a period of three weeks, thus, allowing the petition.

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T. Ravichandran Vs. The State [W.A.No.38 of 2022]
Date of Judgment: 29-04-2022

Departmental Enquiry - Voluntary Confession/Admission - Disciplinary Authority - Involuntary Admission

The Hon'ble High Court decided a Writ Appeal wherein the Appellant, who was a Sub Inspector of Police was caught red handed for indulging in corruption, by The Superintendent of Police during a surprise check.

The Court found that, admission is the best piece of evidence against the person making the admission, though it is open to the person making the admission to prove the contrary.

The Hon'ble High Court considered a plethora of decision given by the Apex Court* It is trite law that in a Departmental enquiry any admission/confession made during the course of interrogation, would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. It is left open to the discretion of the authorities conducting the enquiry to either accept the said statement or reject the same. The above discretion would not have been interfered with, unless it is shown to have been exercised in a manner which is manifestly arbitrary.

When a document has been considered by the Labour Court and a different interpretation has been given to the said document, certainly, the Court cannot give another interpretation, as laid down by Apex Court in the case of *W. M. Agnani Vs. Badri Das reported in [(1963) 1 LLJ 684]*.

On the Doctrine of Proportionality, the Court opined that, a Charge of corruption by personnel of uniformed service, it may be relevant to note that Courts have applied rigorous standards and has explained the malaise of corruption and the adverse impact it has on the society.

The Court held that, while examining the nature of punishment imposed on a delinquent, Courts ought to take into consideration the nature of duty performed by the delinquent and the nature of the charge.

- It is trite law that in uniformed services honesty and integrity are inbuilt requirements and any Charge touching upon the integrity would not warrant leniency.
- When misconduct is committed by a person who holds a position of trust and on whom society looks forward as a protector of law, a charge of corruption must be dealt with strictly.
- Quantum of punishment is trite law falls primarily within the domain/jurisdiction of the disciplinary authority. The Writ Court while examining the question of disproportionality of punishment must exercise restraint and would interfere only when the punishment is outrageously disproportionate to be suggestive of lack of good faith that Court would interfere under Article 226.

The Court held that, the findings show the punishment is proportionate and disciplinary authority was actually lenient in awarding the punishment of a reduction in pay in three phases over the course of three years with cumulative impact.

Thus the Court rejected the Writ Appeal.

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Thulasingamoorthy & Ors. Vs. State of Tamil Nadu & Anr.
[Crl.O.P.No.11477 of 2015]
Date of Judgment: 06-05-2022

Sections 415, 420 and 464 of IPC — Cheating — Forgery

The Hon'ble High Court in deciding a Criminal Original Petition, perused through Section 415, IPC, and observed that, In the case before hand, first petitioner had sold the property to the second respondent and then sold the property again to the second and third petitioners.

The Court considered the issue whether the offence of cheating is against the first purchaser or the second purchaser. The Court referred to *Mohammed Ibrahim and Others Vs. State of Bihar and Another [(2009) 8 SCC 751]*, and observed that the second purchaser may claim that the vendor had cheated him/her, but cannot be shown as an accused.

The Court also considered Illustration (h) to Section 464, IPC, which deals with the situation where after conveying an estate to a person, in order to defraud that person, seller executed another conveyance to another person anti-dating it and in that situation, it becomes an act of forgery.

The Court held that in the present case, there is no claim that the sale deed in favour of petitioners 2 and 3 were anti-dated. Therefore, there is no question of making out a charge under Section 464 IPC. When the ingredients of Section 415 are not found, it cannot be said that offences under Section 420 IPC is made out. Similarly, when there is no forgery made out, there is no question of committing forgery for the purpose of cheating and using a genuine document as forged document.

Thus, the Court allowed the Criminal Appeal and quashed the impugned proceedings.

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Vijayakumar Vs. The State of the Tamil Nadu [Crl.A.No.202 of 2015] Date of Judgment: 11-04-2022

Section 304B, 306, 498A, IPC – Section 4B, Tamil Nadu Prohibition of Harassment of Women Act 1998

The Hon'ble High Court decided a Criminal Appeal challenging the imprisonment imposed by the Trial Court for an offence under Section 498A, 304B and 306 IPC and Section 4B of TNPHW Act.

The first step made by the Court was to look whether sufficient evidence is available to prove the charge. The Court found that, demand for dowry is absent and noted that, even though the complaint is not an encylopedia of the entire case, but, the substance of demand of dowry must be alleged in the complaint. In the absence of any allegation with regard to the demand of dowry, the improvement made by the witnesses during the examination make the prosecution case doubtful.

The Court held that, the Hon'ble Supreme Court* has consistently taken the view that, before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of

abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

For attracting the presumption under Section 113A of the Evidence Act, it must be proved that the wife was subjected to cruelty as defined in the Section 498A I.P.C.

Thus Criminal Appeal was allowed.

***See Also**

- M. Mohan Vs. State Represented by the Deputy Superintendent of Police [(2011) 3 SCC 626]
- Randhir Singh Vs. State of Punjab [(2004) 13 SCC 129]
- Kishori Lal Vs. State of M.P. reported in [(2007) 10 SCC 797]

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Moidheen Vs. The State by Inspector of Police [Crl.A.No.173 of 2016]
Date of Judgment: 01-04-2022

Sections 498A, 304B – Indian Penal Code – Criminal Procedure – Dowry Prohibition

The Hon'ble High Court in a Criminal Appeal filed under Section 374(2) Cr.P.C, wherein the Appellants was accused for having caused dowry harassment upon his wife.

The Court considered the meaning of the word 'cruelty' for the purpose of Section 304B IPC. The Court gathered from the language as it appear in the explanation of Section 498A IPC that, "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or endangering the life limb or health whether mentally or physically of the woman are such harassment to coerce her or any other persons related to her to meet any unlawful demand for any property or valuable security".

The Court found that, For the purpose of Sub Section (1) of Section 304B IPC, "dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961".

The court held that, the order of conviction can be based only on legal evidence and not on hypothetical propositions or unwarranted inference. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence as there is no specific allegation of any active role played by the Appellant/Accused for instigating the deceased to commit suicide evidence on record is insufficient in this regard. In the absence of any strong evidence that the Appellant/Accused harassed his wife, to meet the demand of dowry, the charge under Section 304B will not attract".

According to the Court, there was no concrete evidence to support the offence under section 498A and 304B IPC.

Thus the Court allowed the Appeal and the Appellant was Acquitted.

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