TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XVII — PART 10 — OCTOBER 2022 **

COMPENDIUM OF CASE LAWS

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

C.S. Ramaswamy Vs. V.K. Senthil & Ors. [C.A.No.500 of 2022]

Date of Judgment: 30-09-2022

Order VII Rule 11, CPC — rejection of plaint — barred by limitation

The Hon'ble Supreme Court in deciding a Civil Appeal, discussed the exercise of powers under Order VII Rule 11 of CPC.

The Apex Court found that most of the cause of actions alleged are much prior to the execution of the registered Sale Deeds. The Apex Court further observed that merely stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation.

The Apex Court referred to *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives [(2020) 16 SCC 601]*, on exercise of powers under Order VII Rule 11 of CPC, and found that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d), CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that in one suit was filed by the minor in 2006, in which some of the plaintiffs were also party, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in 2014 and immediately thereafter the present suits have been filed.

The Apex Court referred to *T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467* and *Raghwendra Sharan case* and held that, as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 of CPC.

Thus, the Apex Court allowed the Civil Appeal and set aside the impugned Judgement and Order refusing to reject the plaint.

***

Rajasthan State Road Transport Corporation Vs. Bharat Singh Jhala, through Legal Heirs & Anr. [C.A.No.6942 of 2022]

Date of Judgment: 30-09-2022

Industrial Dispute Act, 1947 – Employer – Employee – departmental enquiry - Section 33(2)(b) - Industrial Dispute Act, 1947

The Hon'ble Supreme Court considered a Civil Appeal arising out of an Order of termination passed against the worker by the Rajasthan State Road Transport Corporation.

The Court observed that, The Order passed by the Industrial Tribunal which is a higher forum than the Labour Court had attained finality. The High Court has not at all considered and/or appreciated the same and has confirmed the judgment and award passed by the Labour Court for setting aside the order of termination which as such was approved by the Industrial Tribunal.

The Apex Court observed that the decision in *John D'Souza Vs. Karnataka State Road Transport Corporation [(2019) 14 SCALE 5]* is not applicable to facts of the present case, as in the present case by specific order the Industrial Tribunal permitted the management to lead the evidence and prove the misconduct before the Court which as such was permissible. That thereafter the Industrial Tribunal approved the order of termination. Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal.

The Apex Court set aside the impugned judgment and order of the High Court confirming the judgment and award passed by the Labour Court, setting aside the order of termination and the judgment and award passed by the Labour Court setting aside the order of termination. Thus, the Apex Court allowed the Civil Appeal.

***

Ram Kumar Vs. State of Uttar Pradesh & Ors. [C.A.No.4258 of 2022]

Date of Judgment: 28-09-2022

Fair Price Shop License – suppression of material fact

The Hon'ble Supreme Court decided a Civil Appeal preferred by the Appellant who was a subsequent allottee of a Fair Price Shop, challenging the decision of the Allahabad High Court setting aside the cancellation of Fair Price Shop license of Respondent No.9.

The Apex Court referred to *Pawan Chaubey Vs. The State of Uttar Pradesh & Ors. [Civil Appeal No.3668 of 2022, decided on May 6, 2022]*, and found that the even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation, and that the Appellant is a 'necessary party' to the proceedings before the High Court.

The Court found that Respondent No.9 has not only suppressed the fact about the subsequent allotment of the fair price shop to the appellant herein but has also tried to mislead the High Court that the fair price shop of Respondent No.9 (the writ petitioner before the High Court) was attached to another fair price shop holder.

The Apex Court referred to *S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs & Ors. [(1994) 1 SCC 1]*, which had held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity, and found that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court.

Thus, the Apex Court allowed the Civil Appeal, set aside the impugned Order of the High Court and affirmed the Orders cancelling the Fair Price Shop license of Respondent No.9.

***

The Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran & Ors. [C.A.No.6776 of 2022]

Date of Judgment: 23-09-2022

Departmental Inquiry — principles of natural justice

The Hon'ble Supreme Court decided a Civil Appeal challenging the judgment and order of the Madras High Court confirmed the order passed by the learned Single Judge directing the appellant to reinstate the respondent/original writ petitioner into service and pay arrears payable to him.

The Court observed that the learned Single Judge had set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. The respondent/delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

The Court referred to *State of Uttar Pradesh & Ors. Vs. Rajit Singh [2022 SCC Online SC 341]*, which had referred to *Chairman, Life Insurance Corporation of India Vs. A. Masilamani [(2013) 6 SCC 530]* and observed that as per the law laid down by the abovementioned precedents, as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.

Thus, the Apex Court allowed the Civil Appeal, and set aside the judgements and orders of the Division Bench and Single Judge of the High Court ordering reinstatement with back wages, and remitted the case to the Disciplinary Authority.

***

X Vs. The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr. [C.A.No.5802 of 2022]

Date of Judgment: 29-09-2022

The Medical Termination of Pregnancy Act, 1971

The Hon'ble Supreme Court decided a Civil Appeal concerning the issue of barriers to accessing safe and legal abortions.

The Apex Court observed that, in the evolution of the law towards a gender equal society, the interpretation of the MTP Act and MTP Rules must consider the social realities of today and not be restricted by societal norms of an age which has passed into the archives of history. The Apex Court affirmed that the whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women and it is a beneficial legislation intended to be given a purposive construction.

The Apex Court found that, Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks. They have been included in the list of special categories of women because adolescents who engage in consensual sexual activity may be unaware that sexual intercourse often results in pregnancy or be unable to identify the signs of a pregnancy, due to lack sexual health education and taboos surrounding pre-marital sex. The same taboos mean that young girls who have discovered the fact that they are pregnant are hesitant to reveal this to their parents or guardians, who play a crucial role in accessing medical assistance and intervention.

The proscription contained in the POCSO Act does not prevent adolescents from engaging in consensual sexual activity. The legislature was no doubt alive to this fact when it included adolescents within the ambit of Rule 3B of the MTP Rules.

When a minor approaches an RMP for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged under Section 19(1), POCSO Act to provide information pertaining to the offence committed, to the concerned authorities. Failure to report, as mandated by Section 19, is a punishable offence under Section 21, POCSO Act. Minors and their guardians are likely faced with two

options – one, approach an RMP and possibly be involved in criminal proceedings under the POCSO Act, or two, approach an unqualified doctor for a medical termination of the pregnancy.

As opposed to consensual sexual activity among adolescents, minors are often subjected to sexual abuse by strangers or family members. In such cases, minor girls may (due to their tender age) be unaware of the nature of abuse the abuser or rapist is subjecting them to. In such cases, the guardian of minor girls may belatedly discover the fact of the pregnancy, necessitating the leeway granted by Rule 3B.

The Apex Court opined that, to ensure that the benefit of Rule 3B(b) is extended to all women under 18 years of age who engage in consensual sexual activity, it is necessary to harmoniously read both the POCSO Act and the MTP Act. For the limited purposes of providing medical termination of pregnancy in terms of the MTP Act, we clarify that the RMP, only on request of the minor and the guardian of the minor, need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. The RMP who has provided information under Section 19(1) of the POCSO Act (in reference to a minor seeking medical termination of a pregnancy under the MTP Act) is also exempt from disclosing the minor's identity in any criminal proceedings which may follow from the RMP's report under Section 19(1) of the POCSO Act. Such an interpretation would prevent any conflict between the statutory obligation of the RMP to mandatorily report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution.

***

SUPREME COURT - CRIMINAL CASES

Anju Garg & Anr. Vs. Deepak Kumar Garg [Crl.A.No.1693 of 2022]

Date of Judgment: 28-09-2022

Section 125 – Criminal Procedure – Maintenance of wife and children

The Hon'ble Supreme Court considered a Criminal Appeal on the issue of maintenance under Section 125, CrPC.

The Apex Court referred to *Bhuwan Mohan Singh Vs. Meena [(2015) 6 SCC 353]* and *Chaturbhuj Vs. Sita Bai [(2008) 2 SCC 316]*, and reiterated that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. The Apex Court observed that Section 125, Cr.P.C. is a measure of social justice and is specially enacted to protect women and children, and that it also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

The Apex Court found that the Family Court had over-looked and disregarded the aforesaid settled legal position. The Apex Court noted that the Respondent failed to appear before the Family Court despite the issuance of warrants, thereby closing the right of the Respondent to cross-examine the witnesses of the Appellant. The allegations made by the appellant-wife before the Court had remained unchallenged and, therefore, there was no reason for the Family Court to disbelieve her version, and to believe the oral submissions made by the learned counsel appearing for the respondent which had no basis.

Thus, the Apex Court allowed the Criminal Appeal and held that, it is the duty of an able-bodied man to earn by legitimate means and maintain wife and children.

See Also

- Dukhtar Jahan Vs. Mohd. Farooq [(1987) 1 SCC 624]
- Vimala (K.) Vs. Veeraswamy (K.) [(1991) 2 SCC 375]
- Kirtikant D. Vadodaria Vs. State of Gujarat [(1996) 4 SCC 479]
- Capt. Ramesh Chander Kaushal Vs. Veena Kaushal [(1978) 4 SCC 70]
- Nagendrappa Natikar Vs. Neelamma [(2014) 14 SCC 452]

***

Chotkau Vs. State of Uttar Pradesh [Crl.A.No.361362 of 2018]

Date of Judgment: 28-09-2022

Criminal Procedure - Section 157(1) – Indian Penal Code - Section 302 and 376

The Hon'ble Supreme Court considered an appeal from the sole Accused convicted of offences punishable under Sections 302 and 376, IPC.

The Apex Court affirmed that Courts are duty bound to see the effect of delay on the investigation and even the creditworthiness of the investigation. The Apex Court noted that, the mandate of Section 157(1) of the Code being clear, the prosecution is expected to place on record the basic foundational facts, such as, the Officer who took the FIR to the jurisdictional court, the authority that directed such a course of action and the mode by which it was complied. Explaining the delay is a different aspect than placing the material in compliance of the Code.

The Apex Court further observed that, in cases where the victim is dead and the offence is sought to be established only by circumstantial evidence, medical evidence assumes great importance. The failure of the prosecution to subject the appellant to medical examination is certainly fatal to the prosecution's case especially when the ocular evidence is found to be not trustworthy.

The Apex Court found that by not conducting the investigation properly, the prosecution has done injustice to the family of the victim. By fixing culpability upon the appellant without any shred of evidence which will stand the scrutiny, the prosecution has done injustice to the Appellant. Court cannot make someone a victim of injustice, to compensate for the injustice to the victim of a crime. The Apex Court further noted that the Appellant could not afford to engage a lawyer, and that in cases of such nature, the responsibility of the Court becomes more onerous.

The Apex Court held that the guilt of the Appellant was not established beyond reasonable doubt. Thus, the Apex Court allowed the Criminal Appeal and set aside the conviction and penalty.

***

In Re: Framing Guidelines Regarding Potential Mitigating Circumstances to Be Considered While Imposing Death Sentences [Suo Motu W.P. (Crl.) No.1 of 2022]

Date of Judgment: 19-09-2022

Section 235 - Code of Criminal Procedure 1973

The Hon'ble Supreme Court in this case acknowledged the need for a uniform framework regarding the necessity of working out the modalities of psychological evaluation, the stage of adducing evidence in order to highlight mitigating circumstances during the sentencing hearing post-conviction.

The Apex Court referred to several precedents and observed that meaningful, real and effective hearing must be afforded to the accused, with the opportunity to adduce material relevant for the question of sentencing, as opposed to a formal hearing. The Apex Court referred to *Manoj Pratap Singh v. State of Rajasthan* wherein it was concluded that the trial court had "scrupulously carried out its duty in terms of Section 235(2), CrPC" since the sentence was awarded 3 days after the conviction, after considering both the aggravating and mitigating circumstances.

The Apex Court referred to *Manoj Vs. State of Madhya Pradesh*, wherein the Court had adjourned the matter for submissions on sentencing, with directions eliciting reports from the probation officer, jail authorities, a trained psychiatrist and psychologist, etc., to assist the accused in presenting mitigating circumstances. The final judgement in this case also suggested that the social milieu, age, educational levels, past trauma, family circumstances, psychological evaluation of a convict and post-conviction conduct, were relevant factors at the time of considering whether the death penalty ought to be imposed upon the accused.

The Apex Court opined there is a clear conflict of opinions and that a reference to a larger bench of five Hon'ble Judges is necessary, and requested that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.

***

Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat [Crl.A.No.1656 of 2022]

Date of Judgment: 23-09-2022

Section 20(2), Gujarat Control of Terrorism and Organized Crime Act, 2015 — Section 167(2), CrPC

The Hon'ble Supreme Court considered a Criminal Appeal on the issue of failure to produce accused before Special Court at the time of considering the application for extension of detention of accused.

The Apex Court referred to *Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors. [(1994) 4 SCC 602]*, and *Sanjay Dutt Vs. State through CBI, Bombay (II) [(1994) 5 SCC 410]*, and observed that the requirement of the report under proviso added to Section 167(2)(b), CrPC is to set out the progress of investigation and disclose specific reasons for continuing the detention of the accused. The Public Prosecutor has to apply his mind before he submits a report/ an application for extension. The Court must apply its mind to the contents of the report before accepting the prayer for grant of extension.

The Accused may not be entitled to know the contents of the report but is entitled to oppose the grant of extension of time on the grounds available to him in law. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality violating the rights of the accused under Article 21.

The Apex Court held that the Orders passed by the Special Court, extending the period of investigation are rendered illegal due to failure of the respondents to produce the accused before the Special Court either physically or virtually when the prayer for grant of extension was considered. Moreover, the oral notice, as contemplated in the case of *Sanjay Dutt*, was also not given to the accused.

Thus, the Apex Court allowed the Criminal Appeals, set aside the impugned orders and enlarged the Appellants on default bail with conditions.

***

Nitu Kumar Vs. Gulveer & Anr. [Crl.A.No. 1547 of 2022]

Date of Judgment: 16-09-2022

Criminal Procedure – Bail

The Hon'ble Supreme Court decided a Criminal Appeal challenging the grant of bail to the 1st Respondent/Accused, who had been charged for the offence punishable under Section 302, IPC.

On an appeal preferred by the original complainant on the impugned order of the High Court the Apex Court noted that, nothing has been discussed by the High Court on the role attributed to the 1st Respondent/Accused and his overt act in commission of the offence. The High Court has not appreciated that there is an eyewitness, who has categorically stated that the 1st Respondent caught hold of the deceased. The High Court ought to have appreciated that if the 1st Respondent would not have caught hold of the deceased it would not have been possible for the co-accused to cause injuries on the deceased. Therefore, the High Court ought to have appreciated that the role attributed to the 1st Respondent can be said to be very serious like co-accused.

The Apex Court observed that grant of bail without considering the gravity of offence and nature of allegations particularly as to the role played in the commission of the crime is important.

The Apex Court held that, as per the settled position of law, gravity and seriousness of the offence is a relevant consideration for the purpose of grant of bail. The High Court was required to consider the gravity and the seriousness of the offence and the nature of the allegations against the 1st Respondent/Accused. Under the circumstances, the impugned judgment and order passed by the High Court releasing the 1st Respondent on bail for the offence punishable under Section 302 IPC is unsustainable.

Thus, the Apex Court allowed the Criminal Appeal.

***

HIGH COURT - CIVIL CASES

Ayisha Begum Vs. M. Sulaiman Ali [O.S.A.No.182 of 2022]
Date of Judgment: 29-09-2022

Custody of child — best interest of child

The Hon'ble High Court decided an Original Side Appeal challenging the transfer of custody of a child from the mother to her former husband.

The Court observed that, the first reasoning of learned Single Judge that one cannot expect the second husband to take care of the child born through the first husband, is based on general opinion and not on any evidence as to the facts of the case. There is nothing on record in the present case that he did not take proper care. Considering the tender age of the child, it will spend more time with the mother and in that situation, if the concern expressed by the learned Single Judge has to be taken into consideration, even then the custody with the natural mother and step father is preferable to that of the natural father and step mother.

The Court found that, the second reasoning given by learned Single Judge regarding the conduct of the mother in violating the agreement between herself and her husband in the marital affair, though is a consideration, cannot be of paramount consideration, when it comes to the custody of the child. The child normally and in the usual course, is living with the mother. Therefore, mere violation of any agreement before the jamaat, cannot result in the uprooting of the normal place of residence and environment in which the child is comfortably living in.

The Court held that, the Order of learned Single Judge results in uprooting the child from its the ordinary place of living and handing over the child from the custody of the mother to the father, as it is not proper in the best interests of the minor child. More than the rights of the father, the interests of the tender child have to weigh in.

Thus, the Court allowed the Original Side Appeal.

***

Dr. E. Chitra Vs. Bharat Petroleum Corporation Ltd. [WP.No.8928 of 2013]

Date of Judgment: 14-10-2022

Continuous occupation after expiration of lease

The Hon'ble High Court decided a Writ Petition seeking delivery of vacant possession of premises leased by the Petitioner to the Respondents.

The Court referred to *M. Ashrafunisa & Anr. Vs. Bharat Petroleum Corporation & Anr. [2016 SCC OnLine Mad 26422]* and held that the Writ Petition maintainable as continuous occupation of premises after expiration of lease is violation of statutory right of the Petitioner. The Court observed that the Respondent cannot insist on intimation of transfer of title to a third party since registration of sale deed is itself a public notice. The Court further observed once inducted as a tenant by the landlord, the Respondent is estopped from denying the title of the landlord as per mandate of Section 116 of the Indian Evidence Act.

The Court found that no materials have been produced to show that the Respondent had continued to pay rent, and that the Respondent cannot claim protection under Section 9, City Tenants Protection Act, since the Respondent was not in actual possession of the leased premised but had licensed it to a dealer.

The Court referred to *Jaspal Kaur Cheema Vs. Industrial Trade Links [(2017) 8 SCC 592]*, *Bharat Petroleum Corporation Ltd. Vs. R. Ravikrishnan [2011 (5) CTC 437]*, and *National Company rep. by its Managing Partner Vs. Territory Manager, Bharat Petroleum Corporation Ltd. & Anr. [2021 SCC OnLine SC 1042]*, and found that As the Respondent Corporation is squatting in the property without paying any rent after expiry of lease in the year 1998, they cannot continue in possession of the property as their possession is nothing but illegal as that of a trespasser and they are bound to vacate the premises.

The Court allowed the Writ Petition and directed the Respondent to handover vacant possession of the premises.

***

Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust Vs. The Tahsildar [W.P.No.15003 of 2016]

Date of Judgment: 13-10-2022

Validity of Legal Heirship Certificate

The Hon'ble High Court decided a Writ Petition challenging the order of the 1st Respondent issuing Legal Heirship Certificate to the 2nd Respondent. The challenge to the Legal Heirship Certificate was based on a claim of invalidity of the adoption of the 2nd Respondent.

The Court referred to Section 10, Hindu Adoptions and Maintenance Act, 1956, and observed that there is no absolute bar for adopting a person who completed the age of 15 years, if there is custom or usage applicable to the parties, and whether such custom is prevalent in a particular community is a matter of evidence to be proved before the competent Civil Court and not in the Writ Petition before the High Court.

The Court found that if at all the Will claimed by the Petitioner is established and probated as per law, the Petitioner's status will be only as the beneficiary under the Will and will not be elevated to that of a legal heir to the original executor.

The Court referred to *P. Venkatachalam Vs. The Tahsildar [W.P.No.25247 of 2021]*, and observed that mere issuance of Legal Heirship Certificate, expressing the opinion as to the relationship of the parties, will not take away the rights of the parties, particularly the petitioner and the second respondent. The right independent has to be established before competent Civil Court.

The Court observed that it is well settled that testamentary instruments can be challenged only by the members of the family and strangers to the family are not competent to challenge the said documents, and therefore the Petitioner being a stranger to the family cannot question the documents declaring that the 2nd Respondent was an adopted son.

The Court held that the question of setting aside the impugned Legal Heirship Certificate does not arise, and thus dismissed the Writ Petition.

***

J. Selvakumar Vs. Rajeswari (Deceased) [C.R.P.No.2820 of 2022]
Date of Judgment: 12-09-2022

Sections 4(2) and 21(2)(a), Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 (TNRRRLT Act, 2017)

The Hon'ble High Court decided a Civil Revision Petition filed by the tenant aggrieved by the Order of the Rent Tribunal concurring with the Order of the Rent Court granting the relief of eviction sought for by the landlord.

The Court referred to *S. Muruganandam Vs. J. Joseph [2022 (1) LW 752]*, and reiterated the view that in cases where tenancy created and expired before coming into force of TNRRRLT Act, 2017, the landlord is entitled to seek re-possession by invoking Section 21(2)(a) of said Act.

The Court consequently found that as per the admitted case of both the parties, no written agreement was entered into within 575 days, as per the mandate under Section 4(2) of TNRRRLT Act, 2017. Therefore, the respondent/landlord is entitled to seek re-possession under Section 21(2)(a) of TNRRRLT Act, 2017.

The Court further found that "in view of the employment of non-obstante clause in Section 4 of TNRRRLT Act, 2017, the said Act will prevail over common law and mere issue of notice by landlord under Section 106 of Transfer of Property Act, 1882 will not take away his right available under the special enactment. There is no estoppel by conduct as against statute."

The Court held that there is no illegality or infirmity in the finding of the Courts below that in view of failure of the parties to enter into a written agreement as mandated by Section 4(2) of the TNRRRLT Act, 2017, the Petitioner/tenant is liable to be evicted and the Respondent/landlord is entitled to re-possession of the demised premises.

Thus, the Court dismissed the Civil Revision Petition.

***

K. Palanichamy Gounder Vs. Kandasamy Gounder & Ors. [S.A.(MD) No.1145 of 2011]

Date of Judgment: 30-09-2022

Section 47 and Order XXI Rule 95, CPC — right of auction purchaser

The Hon'ble High Court decided a Second Appeal arising from a suit for partition and recovery of possession.

The Court observed that the Supreme Court has held both before and after its judgement in *K.R. Lakshminarayana Rao Vs. New Premier Chemical Industries [(2005) 9 SCC 354]*, that a suit for recovery of possession is maintainable, and that the remedy under Order XXI Rule 95 only provides for a speedier mechanism for obtaining possession to the auction purchaser. The Court found that the predominant judicial view is to preserve and sustain the substantial right of the auction purchaser to take delivery of the property through a regular suit, with an exception in *K.R. Lakshminarayana Rao case*.

The Court supplemented the view in *Danish Varghese Vs. Jancy Danish [(2021) 1 KLJ 755]* which had negotiated the view in *K.R. Lakshminarayana Rao case*, and observed that "Order XXI Rule 95, CPC cannot be construed as the exclusive repository of options available to the auction purchaser to take delivery of the property, and that it is merely one of the options. Hence, the phraseology employed in Explanation II(b) to Sec.47 CPC can do no damage to the common law remedy to seek possession which is inherent in, and incidental to the ownership of an auction purchaser. And, the questions that would fall within the purview of Explanation II(b) and Sec. 47(1) CPC are those questions of which the Execution Court has taken cognizance of while dealing with an application under Order XXI Rule 95 CPC, and has actually dealt with it, and not any other. Necessarily, the bar under Sec.47(1) taken along with Explanation II(b) CPC cannot be extended to cases where the Execution Court's jurisdiction is neither invoked, or having invoked, the Court refuses to take cognizance due to bar of limitation under Article 134 of the Limitation Act, or where it dismisses an application for default."

The Court found that the suit for recovery of possession is maintainable, however, it was laid beyond 12 years from the date of both the confirmation of auction sale and the sale certificate. The Court found that this will not impact the right of the Plaintiff to obtain possession unless the Defendants had pleaded and proved adverse possession, and that the Plaintiff need not navigate through Section 14, Limitation Act.

On the maintainability of the suit for partition, the Court found that the ratio in *V.C. Thani Chettiar (Died) & Anr. Vs. Dakshinamurthy Mudaliar & Ors. [(1955) 68 L.W 166 (FB)]*, that limitation for filing a suit for partition by a purchaser of a fractional share of a coparcenary property will commence from the date of purchase, would not be good law in view of the decision in *M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470]*, that the terminus quo for the purpose of Article 144, Limitation Act, 1908 (now Article 65) is only upon allotment of specific share to the plaintiff.

The Court held that Article 65, Limitation Act, 1963 depends for its application on the quality of defence and not on the facts constituting the cause of action for the suit. The onus is on the defendant to prove non-maintainability of the suit and it does not impact the plaintiff's right to sue.

The Court allowed the Second Appeal, set aside the Judgment and Decree of the First Appellate Court and restored the Judgment and Decree of the Trial Court.

See Also

- Nazarath Co-operative Building Society Ltd. Vs. Kanakaraj (died) [2003 (3) CTC 217]
- Vaenda Vs. D.G. Nrasimhan [2009 (2) TNLJ 465]
- S. Sivasubramanian Vs. N. Chinnasamy & Anr. [2012-2-LW 839]
- Vedanthipillai & Ors. Vs C. Kaja Mohideen [2016 SCC Online Mad 20422]
- T. Muthukumarasamy Vs. J Selvasundarraj [2017 (6) CTC 602]

***

M/s. Macro Marvel Projects Ltd. Vs. J. Vengatesh & Ors. [O.S.A.No.341 of 2019]

Date of Judgment: 28-09-2022

Section 34, Arbitration and Conciliation Act, 1996 — grounds for interference

The Hon'ble High Court decided an Original Side Appeal arising from the setting aside an arbitral award by the Single Judge.

The Court referred to *Project Director, National Highways No.45E & 220, National Highways Authority of India Vs. M. Hakeem & Anr. [(2021) 9 SCC 1]*, and found that the Single Judge had not been right in modifying the award in ordering a sum of Rs.50,00,000/- to the Appellant as the same was beyond the scope of powers under Section 34, Arbitration and Conciliation Act, 1996.

The Court reiterated the decision in *Ratnam Sudesh Iyer Vs. Jackie Kakubhai Shroff [2021 SCC OnLine SC 1032]* that the amendment to Section 34 of the Act is prospective in nature and will not be applicable to the application for setting aside, which is prior to the amendment.

The Court then dealt with the grounds for challenge of arbitral award under the unamended Section 34 of the Act, as enlisted in *Associate Builders Vs. Delhi Development Authority [(2015) 3 SCC 49]*, and found that the arbitral award did not warrant any interference by the learned Single Judge.

The Court held that, "When the parties have chosen the arbitration as their forum by a valid arbitration clause, the autonomy of the parties has to upheld and the award of the Arbitral Tribunal shall be final unless it can be set aside under any one of the specific grounds available under Section 34 of the Act and the Courts will not interfere or set aside the award, merely because an alternative view is possible and have to adopt an hands-off approach."

The Court allowed the Original Side Appeal and set aside the impugned Orders.

***

M/s. Portman Overseas Traders Vs. M/s. P.M.S. Traders [A.S.No.343 of 2015]

Date of Judgment: 02-09-2022

Proof of special business practice

The Hon'ble High Court decided an Appeal Suit arising from a suit for recovery of money.

The Court observed that when there is documentary evidence to show that the respondent received advance payment, the onus is on the respondent/plaintiff to show that he had not received any advance payment. The Court noted the proprietor of the Respondent concern failed to appear before the Court, and that his Power of Attorney, who had no special knowledge about the business transaction of the Respondent was the sole witness examined on his behalf. The Court found that the evidence of the Power of Attorney of the Respondent was not sufficient to displace the documentary evidence. Further, it is settled law that no amount of oral evidence is sufficient to exclude the documentary evidence.

The Court referred to *S. Kesari Hanuman Goud Vs. Anjum Jehan [(2013) 12 SCC 64]*, and *Mohinder Kaur Vs. Sant Paul Singh [(2019) 9 SCC 358]*, and observed that the special business practice, namely preparing the invoice as if advance payment was received but without actual payment and receiving payment only after the delivery of the goods, pleaded by the Respondent/Plaintiff cannot be accepted.

The Court found that the Respondent/Plaintiff failed to prove that he dispatched the goods without receiving the cost of the goods mentioned in the invoice raised by him, and is not entitled to recover any amount towards the price of the consignment covered by the invoice.

Thus, the Court allowed the Appeal Suit and dismissed the Original Suit.

***

M/s. Shriram Chits T.N.(P) Ltd. Vs. The Registrar General, High Court, Madras [W.P.No.13633 of 2017]

Date of Judgment: 10-10-2022

Rules 161 and 162, Civil Rules of Practice

The Hon'ble High Court decided a Writ Petition seeking a direction to the Subordinate Courts to follow the rule 161 and 162 of Civil Rules of Practice for the payment out cheques and order for issue of payment out cheques.

The Court referred to Rules 161 and 162 of the Civil Rules of Practice and observed that, "unless the advocate is specifically authorized either by an affidavit or by Power of Attorney the cheques cannot be issued in the name of advocate. On the other hand, the cheques will be issued only in the name of Decree Holder concerned."

In order to avoid misappropriation of money, the Court directed the District Judiciary to follow Rules 161 and 162 of Civil Rules of Practice strictly.

The Court held that in civil cases except in cases involving Motor Vehicles Compensation, the cheque should be issued only in the name of the Decree Holder, and unless specifically authorized by the Decree Holder by way of an affidavit or by way of Power of Attorney no cheques could be issued in the name of the advocates. In cases involving Motor Vehicles Compensation, the payment has to be made as per the direction of the Court.

Thus, the Court disposed of the Writ Petition.

***

Namassivayane Vs. The District Collector-Cum-Appellate Authority Under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [W.P. No.26238 of 2022]

Date of Judgment: 13-09-2022

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [Welfare Act] — Citizenship Act

The Hon'ble High Court decided a Writ Petition challenging the Order of the Respondent denying protection under the Welfare Act, 2007, for the Petitioner who was an Overseas Citizen of India and a French national residing in Puducherry.

On the question of limitation concerning the applicability of Limitation Act, 1963 and Article 535 of the Portuguese Civil Code., the Court referred *to Gautam Chand Jain Vs. Arumugam alias Tamilarasan, [(2013) 10 SCC 472]*, and observed that even on the anvil of uniformity, it stood to reason that it must be the local law or the law of the land, that must apply.

The Court referred to the Agreed Process – Verbal, and observed that the agreement has been entered into between two delegations comprising high ranking officials and crystallises the rights that flow to persons who have opted for French Nationality but to continue as residents of India on a life-long Visa, and that therefore, the assurances and promises extended under the agreement must be honoured to the fullest.

The Court observed that Section 7B of the Citizenship Act with Notification dated 04.03.2021 makes it clear that the benefits of the Welfare Act have not been expressly extended to overseas OCI Card Holders, who are non-citizens, equated to foreigners.

The Court then referred to the object and reasons of the Welfare Act, as well as the definitions of 'parent' and 'senior citizen', and observed that the definition of 'parent' is far wider and encompasses a mother and father, in all the hues and colours that those terms may assume, whether or not the mother and father are senior citizens. The Court found that the status of the Petitioner as a parent is unquestioned, and rejected the limited interpretation and application of the Welfare Act.

The Court held that on a combined reading and understanding of the provisions of the Welfare Act with the relevant provisions of Agreed Process-Verbal, both in letter and spirit, the benefit under the Welfare Act is to be extended to the Petitioner.

The Court observed that that once a particular interpretation of a Central Act has been accepted by the authorities in one State/UT, such an interpretation must be, in the interests of uniformity and consistency, be applicable throughout the Country.

Thus, the Court allowed the Writ Petition, restored the application filed before the 2nd Respondent, and directed that the Petitioner shall be heard and orders passed on merits in line with the procedure under the Welfare Act and the Rules.

***

T.R. Pachamuthu Vs. E. Babu (died) [O.S.A.No.380 of 2012]

Date of Judgment: 13-12-2022

Order VII Rule 11, CPC — power and scope to reject plaint

The Hon'ble High Court decided an Original Side Appeal on the issue whether the plaint is liable to be rejected on the ground of limitation.

The Court summed up the principles on the scope and power of the Court to reject the plaint as follows:

(i) The Courts can entertain an application filed under Order VII Rule 11 of C.P.C. at any stage of the suit namely after registering the suit, after filing written statement and framing of issues, but before deliverance of judgment. The Court has power to reject the plaint even before registering the suit on the ground of limitation.

(ii) While considering the application filed under Order VII Rule 11 of C.P.C., the Courts can take into account only the averments in the plaint and documents filed along with the plaint.

(iii) The defence taken by the defendants, averments in the written statement and the affidavit filed in support of the application are not relevant in deciding the application and Court cannot consider the same while deciding the application.

(iv) The averments in the plaint and documents filed along with the plaint must be read as a whole and nothing can be added or deducted from the averments made by the plaintiffs.

(v) The plaint must be read in a meaningful manner.

(vi) The plaint cannot be compartmentalized or read only in part. The plaint cannot be rejected in part. Considering the entire averments in the plaint and documents filed along with the plaint, the plaint can be rejected either wholly or application has to be dismissed.

(vii) The Court has to consider whether the cause of action as stated in the plaint is genuine and not illusory.

(viii) The Court has to consider whether the plaintiff by clever drafting has created a cause of action.

(ix) The averments in the plaint must be taken as correct and decide whether on the face of which any one of the conditions of Order VII Rule 11 of C.P.C is made out or not.

(x) The question of limitation is mixed question of law and fact and the same can be decided only by letting in evidence and considering the same, it has to be decided whether the suit is barred by limitation or not.

(xi) If on the face of the averments in the plaint, it is seen that the suit is barred by limitation, the plaint shall be rejected.

(xii) The purpose of incorporating Rule 11 in Order VII of C.P.C. is to reject the frivolous suit and prevent abuse of process of law and Court.

The Court found that "In view of the fact that the appellant has mentioned in cause of action paragraph various correspondence and demand of additional amount, notice dated 23.04.2001 and reply dated 13.06.2001, the question of limitation can be decided only after trial by considering the evidence let in by the parties.

The Court held that a reading of the plaint and documents filed along with the plaint shows that, the claim of the Respondents that the suit is barred by limitation is a mixed question of facts and law which cannot be decided in the Application filed under Order VII Rule 11 of C.P.C.

Thus, the Court allowed the Original Side Appeal, set aside the impugned Order and restored the plaint on file.

***

HIGH COURT – CRIMINAL CASES

Balamurugan Vs. State Rep. by Inspector of Police, Thirumangalam Police Station, Thirumangalam Taluk Police Station, Madurai District [Crl.A.No. (MD) No. 174 of 2020]

Date of Judgment: 17-10-2022

Sections 302 and 342, IPC — Appreciation of Evidence

The Hon'ble High Court decided a Criminal Appeal challenging the conviction and sentence of life imprisonment passed by the Sessions Court for an offence under Section 302 and 342 of IPC. The crux of this case is that, the Petitioner who was 28 years at the time of offence, killed the deceased who was studying 9th standard, by pouring kerosene and lighting her on fire, for rejecting his love proposal.

The Court found that the eyewitness account was trustworthy, unimpeachable and had not been discredited in any manner. The Court further found that the contradictions in the testimonies of P.W.1 to P.W.9 did not affect the root of the case and that they can be safely disregarded. The Court referred to the test laid down in Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra [2022 SCC Online SC 883], that whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. Upon applying this test, the Court found that it is convinced of the evidence of the eyewitnesses supported by the dying declaration of the deceased.

The Court found that the injuries of the Appellant did not impact the case of the Prosecution or discredit the version of the eyewitnesses or the dying declaration given by the Accused. The Court held that the prosecution had proved the case beyond reasonable doubt with abundant evidence.

In fine, the Court dismissed the Criminal Appeal and confirmed the conviction and sentence passed by the Sessions Judge.

***

Gokul Ajith & Ors. Vs. State rep. by Inspector of Police, Avaniyapuram Police Station, Madurai [Crl.O.P. (MD) No.14855 of 2022]

Date of Judgement: 01-09-2022

'Heartful' regret, must be accepted by this court by giving opportunity to correct themselves.

The Hon'ble High Court considered a Criminal Original Petition seeking anticipatory bail for offences punishable under Sections 147, 294(b), 341, 353, 355, 506(2) IPC and Section 2 of Prevention of Insult to National Honour Act, 1971.

The Court observed that political ideologies may differ and by that process democracy thrives. But at the same time, while exercising the democratic right, when the same turn violent and ugly, then causality will not be the political opponent, but the society at large which every political party intends to serve and evolve. The Court went on to observe that the Petitioners have thrown decency, morality and ethics to the wind.

The Petitioners had contended that there was no intention to insult the finance minister, due to some sort of provocation by the finance minister, the tension arose in that place.

The Court considered the fact that the incident was not a pre-planned one, took into account the affidavits of regret filed by the Petitioners, and observed that the Petitioners had expressed their heartful regret. The Court observed that, "when the petitioners come forward with 'heartful' regret, that must be accepted by this court by giving opportunity to correct themselves. No purpose is going to be served by arresting the petitioners and getting regular bail."

Thus, the Court allowed the Criminal Original Petition and granted anticipatory bail to the Petitioners upon execution of bond and sureties.

***

Manokaran Vs. State of Tamil Nadu [H.C.P.No.297 of 2022]

Date of Judgement: 21-09-2022

Article 21, Constitution of India — revocation of detention — delay in release of detenue

The Hon'ble High Court decided a Habeas Corpus Petition seeking to set aside the detention of two women were detained as Bootleggers in the Special Prison for Women, on the basis of an order by District Magistrate, the 2nd Respondent.

The Court referred to the Order of the Advisory Board for revocation of detention, and the Tamil Nadu Bootleggers Act, 1982, and observed that the State government is required to revoke the detention order and release the person forthwith.

The Court observed that the Order of the Advisory Board for revocation of detention was received on March but the detenue was detained till September which is beyond reasonable date and thus it is not only violative of Article 19(d) but also Article 21 of Constitution of India. The court sought a report on the reason for such delay in passing the revocation order, the government in response said the delay was caused due to failure on the part of the Assistant Section Officer.

The Court stressed that personal liberty guaranteed under Article 21 of the Constitution, is extended to all persons regardless of the circumstance in which the person is placed. It extends even to a person undergoing imprisonment as a convict and the person does not lose his fundamental right merely because of a preventive detention order.

The Court found that the detenue had been kept in illegal detention for 128 days, and directed the State to provide the detenue, a compensation amount of Rs.5,00,000/-, within 6 weeks.

The Court held that it is the foremost duty of the courts to uphold the dignity of personal liberty, and thus closed the Habeas Corpus Petition.

***

Murali Vs. Inspector of Police, NIB-CID Police Station, Chennai
[Crl.O.P.No.4980 of 2019]
Date of Judgment: 26-09-2022

Section 482, CrPC — contents of seized contraband not tested for over 5 years

The Hon'ble High Court in this case dealt with a Criminal Original Petition seeking to quash the FIR on the file of the Respondent, for offences Section 8(c) r/w 20(b)(ii)(A) of the Narcotics Drugs and Psychotropic Substances Act, 1985.

It was brought to the notice of the court that the police had already completed investigation and had filed the final report. However, the same was yet to be taken on file and numbered.

The Court also directed the police to get the final report numbered within two weeks' time. The contention of the Petitioner was that, though the Court had passed this direction in 2018, till date the final report and the seized contraband have not seen the light of day.

The Court noted that, the contraband which was seized had not been tested for its content even after 5 years and moreover, the Investigating Officer had not taken steps to number the final report.

The Court observed that, the attitude of the Investigating Officer who has registered the case, clearly indicated that the case is not registered based on true facts, and that it is for the Senior Official to look into the case and take appropriate action for registering the complaint and not proceeding further in accordance with law.

In fine, the Court allowed the Criminal Original Petition and quashed the FIR against the Petitioner.

***

P. Senthil Vs. State Rep. by Inspector of Police, W-8, AWPS Chennai [Crl.A.No.41 of 2020]

Date Of Judgement: 26-09-2022

Section 498, IPC — Evidence of woman's family members not to be brushed aside merely because they are interested parties

The Hon'ble High Court dealt with a Criminal Appeal challenging the conviction of the Appellant under Section 498A of IPC, passed by the trial court.

The Appellant had contended that there were contradictions in the evidence of Prosecution Witnesses. It had also been submitted that there was no medical certificate to prove the injuries caused to complainant and the complaint was also not lodged immediately after the occurrence.

The Court observed that, mere non-production of a medical certificate or not lodging the complaint soon after the occurrence was not fatal to the case of the prosecution, especially in matrimonial disputes. This was because a newly married girl will not immediately rush to the police station to lodge a complaint in a quarrel as she would take time to settle the issues instead.

The Court emphasized that, in matrimonial disputes, only the family members can notice the incidents, which occurred in home i.e., within the four wall and they can only come forward to give evidence and the third party, even if they also know, will not be ready to give evidence and they would think that it is a family dispute and it is unnecessary for a third person to interfere in family dispute issues.

The Court held that, the criminal appeal stands dismissed as devoid of merit and substance. The Court directed the trial Court to secure the Appellant to undergo remaining period of sentence.

***

Ravichandran Vs. State Rep. by, The Inspector of police, AWPS, Tirupur, District [Crl.A.No.65 of 2020]

Date of Judgement: 22-09-2022

Section 119, Indian Evidence Act — Principles for examining witnesses who are unable to speak.

The Hon'ble High Court decided a Criminal Appeal challenging the conviction of Appellant for offences under Section 307 and 506(ii) of IPC.

The Court referred to Section 119 of the Indian Evidence Act, if a witness cannot speak, he/she can give evidence in any manner which can make it intelligible, such as by writing or by signs made in open Court, such evidence shall be deemed to be oral evidence. The provision further stipulates the Court shall take the assistance of the interpreter or a special educator in recording the statement and such statement shall be video-graphed.

The Court observed the fact that victim is suffering from speech and hearing impairment and the trial Court noted the injuries shown by her through gestures, in the absence of an interpreter or a special educator.

The Court held that the trial Court shall take the assistance of the interpreter or a special educator in recording the statement and such statement shall be video-graphed. The court laid down the following principles:

1. The Court must record the evidence, by giving questions in writing and seeking answers in writing, if the witness is able to read and write. Only if the witness is unable to read and write, the courts should record the evidence by signs.
2. If the evidence is recorded by signs, the signs must be recorded so that there may not be any misinterpretation of the signs. However, the Apex court, in a judgment in the case of *State of Rajasthan Vs. Darshan Singh @ alias Darshan Lal [(2012) 5 SCC 789]*, held that an interpreter is necessary while recording the evidence of witnesses who give evidence by signs.

Thus, the Court allowed the Criminal Appeal.

***

S. Kaushik & Ors. Vs. State rep. by Inspector of Police, E-3, Teynampet Police Station, Chennai [Crl.O.P.No.19887 of 2022]

Date of Judgment: 15-09-2022

Unlawful association — Section 3, Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992

The Hon'ble High Court dealt with a Criminal Original Petition filed under Section 482, CrPC, to call for the records pertaining to the FIR for offences punishable under Sections 143, 147, 153A, 353 of IPC and Section 3 of TNPPDL Act on the file of the respondent police and quash the same.

The case involved about 35 students belonging to the Akil Bharathi Vidyarthi Parishad (ABVP) party, tried to move towards the official residence of Hon'ble Chief Minister of Tamil Nadu. These students were prevented by the *defacto* complainant and her police team, the students raised slogans seeking justice for the death of one student Lavanya, who committed suicide in the case of forceful conversion to Christianity and also raised slogans that the main culprit involved in the said Lavanya's death has come out from the jail and there must be a proper action besides, they also demanded prevention of Voluntary Conversion of Religious Act.

The students sought for quashing of FIR contending that, no offence could be made out under the offences under Section 153A, 143 or 147 or any other penal law would not be made out for exercising fundamental rights guaranteed under Article 19(1)(a) and 19(1)(b) of the Constitution. Further it was submitted that they were unarmed and gathered to only draw the attention of the CM.

The Court found that all the petitioners belonged to Akil Bharathi Vidyarthi Parishad (ABVP) party members in the age group of 18 to 28 years from various places all over India and came down to Chennai with a pre-mediated plan to indulge in religious riots and to enter into the official residence of Hon'ble Chief Minister of Tamil Nadu and cause a security breach. It was also submitted that, the petitioners had not obtained any permission for holding of *dharnas*, processions and rallies.

Thus, the Court dismissed the Criminal Original Petition.

***

Seeman & Ors. Vs. State by Inspector of Police, T4 Maduravoyal Police Station, Chennai & Anr. [Crl.O.P.No.23044 of 2022]

Date of Judgment: 23-09-2022

Section 188, IPC — bar on taking cognizance

The Hon'ble High Court decided a Criminal Original Petition filed under Section 482, Cr.P.C to quash the proceedings of the trial court. The petitioners had assembled in front of the 1st Petitioner's house, without obtaining prior permission, and had raised slogans against condemning the implementation of National Education Policy, 2020. The petitioners contended that, the Hon'ble Supreme Court of India has held that, the right to freely assemble and the right to freely express one's view are constitutionally protected rights under Part III and their enjoyment can be restrained only in a proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. Further, it was submitted that as per Section 195(1)(a), Cr.P.C., no Court can take cognizance of an offence under Section 188, IPC unless the public servant has written order from the authority. It was also contended that the petitioner or any other members had never been involved in any unlawful assembly and there was no evidence that the petitioner or others restrained anybody.

The Government Advocate contended that, Section 188, IPC is a cognizable offence and therefore police are duty bound to register a case. It was further contended that though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance of the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. The Hon'ble High Court observed that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has the power to take cognizance. The Court observed that since the complaint did not state how the protest formed by the petitioners was an unlawful protest and did not satisfy the requirements of Section 143 of IPC, the final report was liable to be quashed.

***

.T. Keeniston Fernando and Anr. Vs. State By The Deputy Superintendent of Police, Q Branch CID, Chennai City & Anr. [Crl.A.No.393 of 2022]

Date of Judgment: 28-09-2022

Extension of remand - Criminal Procedure

The Hon'ble High Court in this case dealt with Criminal Appeals filed under Section 21 of NIA Act challenging the extension of remand period from 90 days to 180 days on the petition filed by the police and further seeks grant of bail. The case involved funding a terrorist organisation. The appellants sought for default bail under Section 167(2) on the ground that the extension of time period for completing the investigation, ordered by the Sessions Court was illegal.

The Court observed that, "When a requestion for remand under Section 167 of Cr.P.C. with a report is filed by the Special Public Prosecutor under the proviso to sub section (2) of Section 43D of UAP Act for extending the period of remand, materials have to be placed before the court to show progress of the investigation and reasons for the remand / extension of remand. For this, several material particulars and trajectory of the investigation would be disclosed including the names of some suspects whom the investigation agency would have to nab. If the copies of these documents are furnished to the accused, then, it would be easy for those who are in the radar to just escape from the clutches of law. "

Relying upon the decisions of the Hon'ble Apex Court, the Hon'ble High Court noted that notice to the Accused does not mean a written notice. The accused being informed that the question of extension of the period for completing the investigation is being considered would suffice for a notice. Further, the Court observed that, "indefeasible right" of the accused to be enlarged on bail is enforceable only from the time of default till the filing of the challan.

The Court therefore, dismissed the Appeal as being devoid of merits as the appellant's indefeasible right to bail stood extinguished.

***

Vikas Rambal & Ors. Vs. State Rep. by, Drugs Inspector [Crl.O.P.No.11184 of 2019]

Date Of Judgement: 12 -10-2022

Section 34 of Drugs and Cosmetics Act

The Hon'ble High Court in this case dealt with a Criminal Original Petition filed under Section 482 of Cr.P.C to quash the criminal complaint.

In this case the petitioners were accused of manufacturing sub-standard drugs. Thus, the petitioners were prosecuted under Section 34 of Drugs and Cosmetics Act. The petitioners contended that out of the five directors of the company, only one was involved in day-to-day affairs of the Company. The rest of the Directors, who are the petitioners herein are not directly involved in the affairs of the Company. Hence, they submitted that they would not be vicariously liable for the alleged act.

The government on the other hand, submitted that the directors will be vicariously liable. Since the offence is committed against the society, the directors, who accrued benefits out of the act of crime ought to be prosecuted.

The court observed that the decision to manufacture drugs was a collective decision of the board of directors and thus all the directors will be made liable. The directors could not merely claim that they were not involved in the production of the drugs.

Thus, the Court held that the contentions of the Petitioner are totally unsustainable as it is against the objective of the Drugs and Cosmetics Act. Thus, the Criminal Original Petition was dismissed.

***