TAMIL NADU STATE JUDICIAL ACADEMY

** VOL. XVII — PART 09 — SEPTEMBER 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.nic.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 1

Anil Kumar Modi Vs. Tarsem Kumar Gupta [C.A.Nos. 4736-4737 of 2011]............................1

Deepika Singh Vs. Central Administrative Tribunal & Ors. [C.A.No.5308 of 2022]................2

ONGC Vs. Afcons Gunanusa JV [Arbitration Petition (Civil) No. 05 of 2022] 3

State Tax Officer (1) Vs. Rainbow Papers Ltd. [C.A.No.1661 of 2020] 4

Sundaresh Bhatt Vs. Central Board of Indirect Taxes and Customs [C.A.No.7667 of 2021]...6

SUPREME COURT - CRIMINAL CASES 8

Barun Chandra Thakur Vs. Master Bholu & Anr. [Crl.A.No.950 of 2022]..............................8

Dauvaram Nirmalkar Vs. State of Chhattisgarh [Crl.A.No.1124 of 2022]..............................11

Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey & Ors. [S.L.P. (Crl) No.4599 of 2021]..12

Vijaya Vs. State Rep By The Inspector Of Police [Crl.A.No.1573 of 2022]............................14

HIGH COURT - CIVIL CASES...15

All India Adi Saiva Sivacharyargal Seva Sangam Vs. State of Tamil Nadu [W.P.No.17802 of 2021]..15

C. Jayanthi Vs. M. Saravanan [A.S.No.1071 of 2019] 16

Janaki Ammal @ Pattammal & Ors. Vs. Premchand (Died) & Ors. [S.A.No.137 of 2000]....17

Kota(k) Mahindra Bank Ltd. Vs. Chief Controlling Revenue Authority & Inspector General of Registration [W.P.No.14500 of 2009] 18

M/s. Micro Labs Ltd. Vs. A. Santhosh, Proprietor, M/s. Life Gain Pharma [C.S. (Comm. Div.) No.185 of 2022]...19

M/s. Saravana Global Holding Ltd. Vs. N. Jayamurugan [O.S.A.(CAD)No.123 of 2021]......20

Periyasamy & Ors. Vs. Santhi Krishnan [S.A.No.778 of 2005] 21

Renganathan (died) & Ors. Vs. Loganathan & Ors. [S.A.No.574 of 2014] 22

Sunitha Giridharidas & Ors. Vs. Sub Registrar & Ors. [W.P.No.10657 of 2015]...................23

Venkatachala Maistry (died) & Ors. Vs. Pandan @ Ramar Maistry & Ors. [S.A.No.690 of 1997]........24

HIGH COURT – CRIMINAL CASES 25

Anandam Gundluru Vs. Inspector of Police........25

Aravinth and Ors. Vs. The State Rep.by Inspector of Police, B2, Esplanade Police Station, Chennai 26

B. Ramkumar Adityan Vs. District Collector, Thoothukudi District, Thoothukudi-628 101 and Ors. 27

Irfana Nasreen Vs. The State, Represented by, The Inspector of Police, All Women Police Station, Thallakulam, Madurai City. 29

Jegan @ Ellamaran & Ors. Vs. State represented by The Inspector of Police & Ors. 31

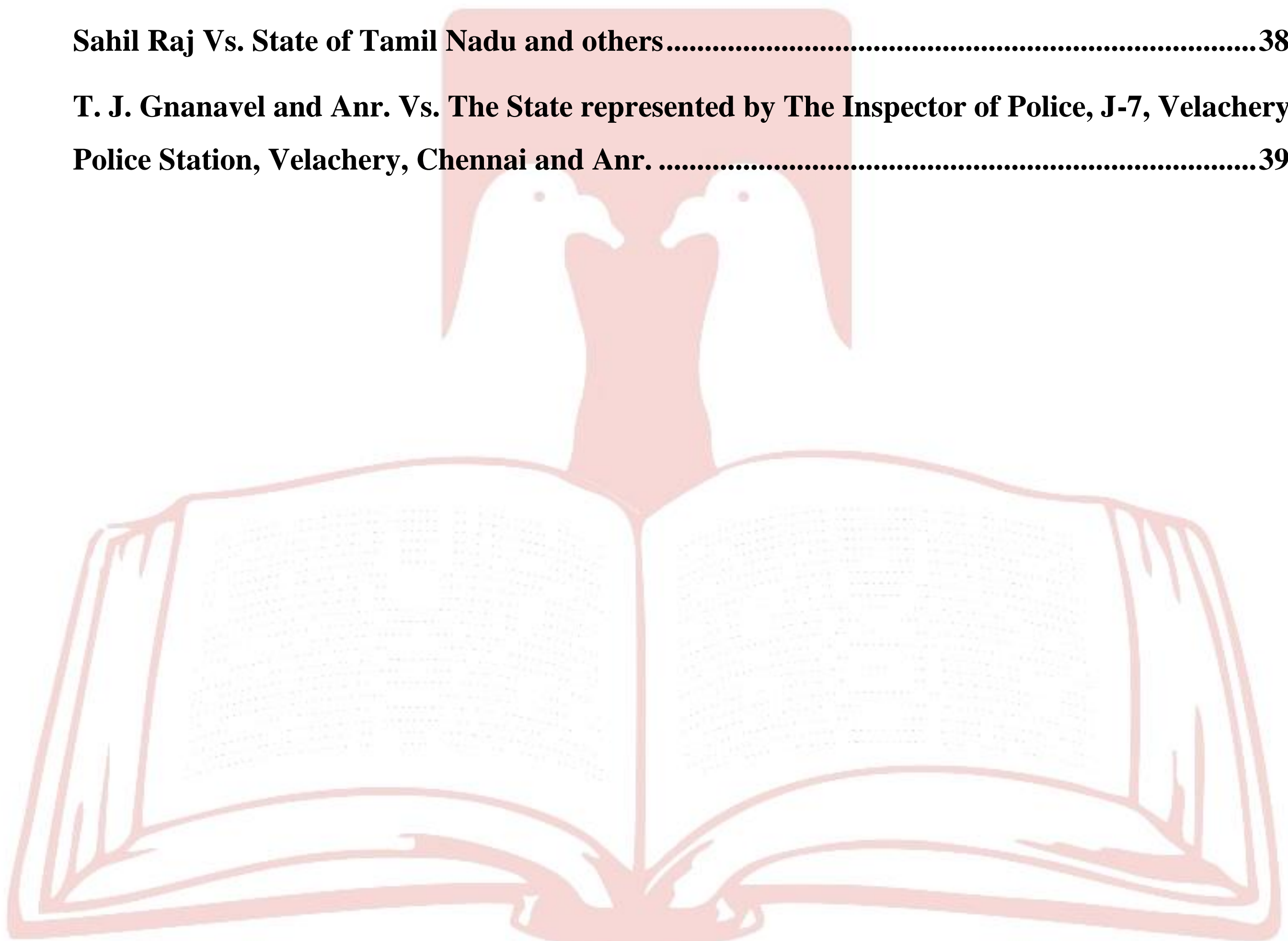
K. J. Suriyanarayanan Vs. State By, Inspector of Police, Crime Branch CID-Metro Wing II and Anr........32

Kanthan Vs. The State of Tamil Nadu and Ors. 34

S. Pongulali Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and Ors. 36

Sahil Raj Vs. State of Tamil Nadu and others........38

T. J. Gnanavel and Anr. Vs. The State represented by The Inspector of Police, J-7, Velachery Police Station, Velachery, Chennai and Anr. 39



SUPREME COURT – CIVIL CASES

Anil Kumar Modi Vs. Tarsem Kumar Gupta [C.A.Nos. 4736-4737 of 2011]

Date of Judgment: 14-09-2022

Civil Procedure

The Hon'ble Supreme Court decided on a point arising from easementary right. In the first round, the only question that fell for consideration before the High Court was as to whether the respondent-plaintiff was entitled to construct the latrine in the passage. The finding of the Trial Court was that, though the respondent-plaintiff was entitled to possession thereof, he could not construct latrine in as much as it adversely affected the easement rights of the appellants-defendants.

The Apex Court considered the issue whether the respondent-plaintiff was entitled to exclusive possession of the said passage fell for consideration. The Trial Court dismissed the suit. The First Appellate Court, on the basis of the interpretation of the sale deed, came to a finding that the respondent-plaintiff was entitled to exclusive possession of the said passage and the right of the appellants-defendants was limited only to opening of windows and ventilators in the said passage. The High Court in Second Appeals affirmed the said findings of the First Appellate Court.

The issue in the first suit was limited only as to whether the respondent-plaintiff has a right to construct the latrine in the passage. The issue as to whether the respondent-plaintiff was exclusively entitled to possession thereof did not fall for consideration in the earlier round, whereas in the third round, the said issue directly fell for consideration.

The Apex Court took a distinguished view from its previous decisions in *R. Unnikrishnan & Anr. Vs. V.K. Mahanudevan and Ors. [(2014) 4 SCC 434]* and *K. Arumuga Velaiah Vs. P.R. Ramasamy & Anr. [(2022) 3 SCC 757]*, that the findings in an earlier proceeding could operate as res judicata in subsequent proceedings. The Apex Court thus didn't interfere with the concurrent orders of the First Appellate Court and the High Court and dismissed the appeal.

*****

Deepika Singh Vs. Central Administrative Tribunal & Ors. [C.A.No.5308 of 2022]

Date of Judgment: 16-08-2022

Maternity Leave

The Hon'ble Supreme Court discussed the interpretation of Rule 43 of The Central Civil Services (Leave) Rules 1972, pertaining to maternity leave. The Apex Court observed that the provisions of Rule 43(1) must be imbued with a purposive construction. The Parliament envisages to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that matter for the period during which she should be granted leave in order to look after her child after the birth takes place.

The Maternity Benefit Act, 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire, and to facilitate the continuance of women in the workplace. The Central Civil Services (Leave) Rules 1972, are also formulated to entrench and enhance the objects of Article 15 of the Constitution and other relevant constitutional rights and protections.

Rule 43 (1) of the Rules of 1972 contemplates the grant of maternity leave for a period of 180 days. Independent of the grant of maternity leave, a woman is also entitled to the grant of child care leave for taking care of her two eldest surviving children whether for rearing or for looking after any of their needs, such as education, sickness and the like.

Child care leave under Rule 43-C can be availed of not only at the point when the child is born but at any subsequent period as is evident from the illustrative causes which are adverted to in the provisions, which have been extracted in the earlier part of the judgment. Both constitute distinct entitlements.

Thus, the Appeal was allowed.

*****

ONGC Vs. Afcons Gunanusa JV [Arbitration Petition (Civil) No. 05 of 2022]

Date of Judgment: 30-08-2022

Arbitration and Conciliation Act, 1996

The Hon'ble Supreme Court in deciding an Arbitration Petition, held that, party autonomy is paramount in arbitrations. Arbitrators, therefore, cannot decide their fees unilaterally.

In a partially dissent, the Apex Court observed that "arbitrator's fee, being a component of cost, can be fixed by the arbitral tribunal when it is not already predetermined by way of an agreement between the parties, or by a court order. This is because the arbitral tribunal has the power to fix and direct the parties to make payment of deposits in advance and during the course of the arbitration proceedings, subject to the arbitral tribunal rendering an account on termination of the arbitration proceedings. … The principle would apply where the parties have fixed the fee payable to the arbitral tribunal, either as a term in the arbitration agreement or otherwise by an agreement, either before or after the appointment of the arbitral tribunal. This principle will apply equally where the court fixes the fee as a term of appointment. However, this principle will have no application where the parties or the court has left it to the arbitral tribunal to fix its own fee."

The Apex Court held that, "If while fixing costs or deposits, the arbitral tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators. The arbitral tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under Section 39(1). The party can approach the court to review the fees demanded by the arbitrators if it believes the fees are unreasonable under Section 39(2)."

Thus, the Arbitration Petition was disposed of.

*****

State Tax Officer (1) Vs. Rainbow Papers Ltd. [C.A.No.1661 of 2020]
Date of Judgment: 06-09-2022

Insolvency and Bankruptcy Code 2016

The Hon'ble Supreme Court of India considered the issues whether the Government could claim first charge over the property of the Corporate Debtor, as Section 48 of the Gujarat Value Added Tax Act, 2003, which provides for first charge on the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty etc. under the said GVAT Act, would prevail over Section 53 of the Insolvency and Bankruptcy Code 2016 (IBC). The fundamental short issue discussed by the Constitution bench of the Apex Court was whether the provisions of the IBC, in particular, Section 53 thereof, could override Section 48 of the GVAT Act.

The Books of Accounts of the Corporate Debtor reflects the liability of the Corporate Debtor to all the Stakeholders in respect of its statutory dues. Ignoring books of accounts is abdication of a mandatory duty. The Resolution Professional owes a mandatory duty to examine the books of accounts, verify and include statutory dues in the information memorandum and make provision of the same in the resolution plan.

A resolution plan which does not meet the requirements of Sub-Section (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor, the Apex Court observed.

If a Resolution Plan is ex facie not in conformity with law and/or the provisions of IBC and/or the Rules and Regulations framed thereunder, the Resolution would have to be rejected. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan. If a company is unable to pay its debts, which

should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.

The Apex Court took a considered view that, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues.

The Apex Court reversed the Orders passed by the Adjudicating Authority and the Appellate Authority for being erroneous in law and held that, delay in filing a claim cannot be the sole ground for rejecting the claim thus allowed the appeal setting aside the impugned orders and the resolution plan.

See also

- Swiss Ribbons (P) Ltd. Vs. Union of India [(2019) 4 SCC 17]
- Vishal Saxena & Anr. Vs. Swami Deen Gupta Resolution Professional [(2020) SCC Online NCLT 2734]
- Assistant Commissioner of Customs Vs. Mathur Sabhapathy Vishwanathan [IBA/578/2019 NCLT, Chennai]
- Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [(2021) 9 SCC 657]
- Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Ltd. & Anr. [(2022) 2 SCC 401] @ Para 147

*****

Sundaresh Bhatt Vs. Central Board of Indirect Taxes and Customs [C.A.No.7667 of 2021]

Date of Judgment: 26-08-2022

Insolvency and Bankruptcy Code 2016

The Hon'ble Apex Court considered a civil appeal arising from the order of the National Company Law Appellate Tribunal where the ABG Shipyard ("Corporate Debtor") was in the business of shipbuilding prior to the initiation of corporate insolvency proceedings against it. As a part of its business enterprise, it used to regularly import various materials for the purpose of constructing ships which were to be exported on completion. Some of these goods were stored by the Corporate Debtor in Custom Bonded Warehouses in Gujarat and Container Freight Stations in Maharashtra. Bills of entry for warehousing were submitted at the relevant time. The Corporate Debtor also took the benefit of an Export Promotion Capital Goods Scheme ("EPCG Scheme") and was granted a license under the said scheme ("EPCG License") with respect to the said warehoused goods.

Two primordial issues arose from the order passed by the National Company Law Appellate Tribunal,

[1] Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

[2] Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

The apex Court observed that,

[1] The Customs Act and the IBC act in their own spheres. In case of any conflict, the IBC overrides the Customs Act.

[2] The Customs Act and IBC can be read in a harmonious manner wherein authorities under the Customs Act have a limited jurisdiction to determine the quantum of operational debt.

[3] The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the customs authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The customs authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

[4] After such assessment, the customs authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

[5] In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.

The apex Court conclusively held that, the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium. The customs authority could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal, and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

Thus the appeal was allowed and the order of NCLAT is set aside.

*****

SUPREME COURT - CRIMINAL CASES

Barun Chandra Thakur Vs. Master Bholu & Anr. [Crl.A.No.950 of 2022]

Date of Judgment: 13-07-2022

Juvenile Justice Act, 2015 — preliminary assessment

The Hon'ble Supreme Court was called upon to examine the proceedings arising out of preliminary assessment made under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The apex Court discussed pertinent points on effect of an order of preliminary assessment, timelines, fair opportunity, and, social investigation report (SIR).

[1] where the Board is not comprising of a practicing professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to Section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psychosocial workers or other experts.

[2] The individualized assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment

[3] The assessment regarding the circumstances in which the offence is alleged to be committed is again an attribute which could have many factors to be considered before such an assessment could be made.

[4] The lack of experience coupled with the child's limited ability to deeply understand the long term consequences of their actions can lead to impulsive / reckless decision making.

[5] A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence.

[6] The language used in section 15 is "the ability to understand the consequences of the offence". The expression used is in plurality i.e., "consequences" of the offence and, therefore, would not just be confined to the immediate consequence of

the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far reaching consequences in future.

[6] Further assessment ought to have been carried out once the psychologist had recommended so and had also suggested the name of the institute.

[7] Cognitive maturation is highly dependent on hereditary factors.

[8] While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies.

[9] Section 15 and rule 10A provide that the Board may take the assistance of psychologists, psychosocial workers, or other experts who had experience of working with children in difficult circumstances.

[10] In the absence of any such framework or guidelines, the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing the four attributes.

[11] The timeline given under the various provisions as referred to above, has a rationale.

[12] Concept of confidentiality used in section 99 is to prevent the reports from coming in public domain or shared in public.

[13] Preparation of SIR is a statutory requirement for every child in conflict with law, which is to be prepared by the Probation Officer or any other agency as may be directed by the Board.

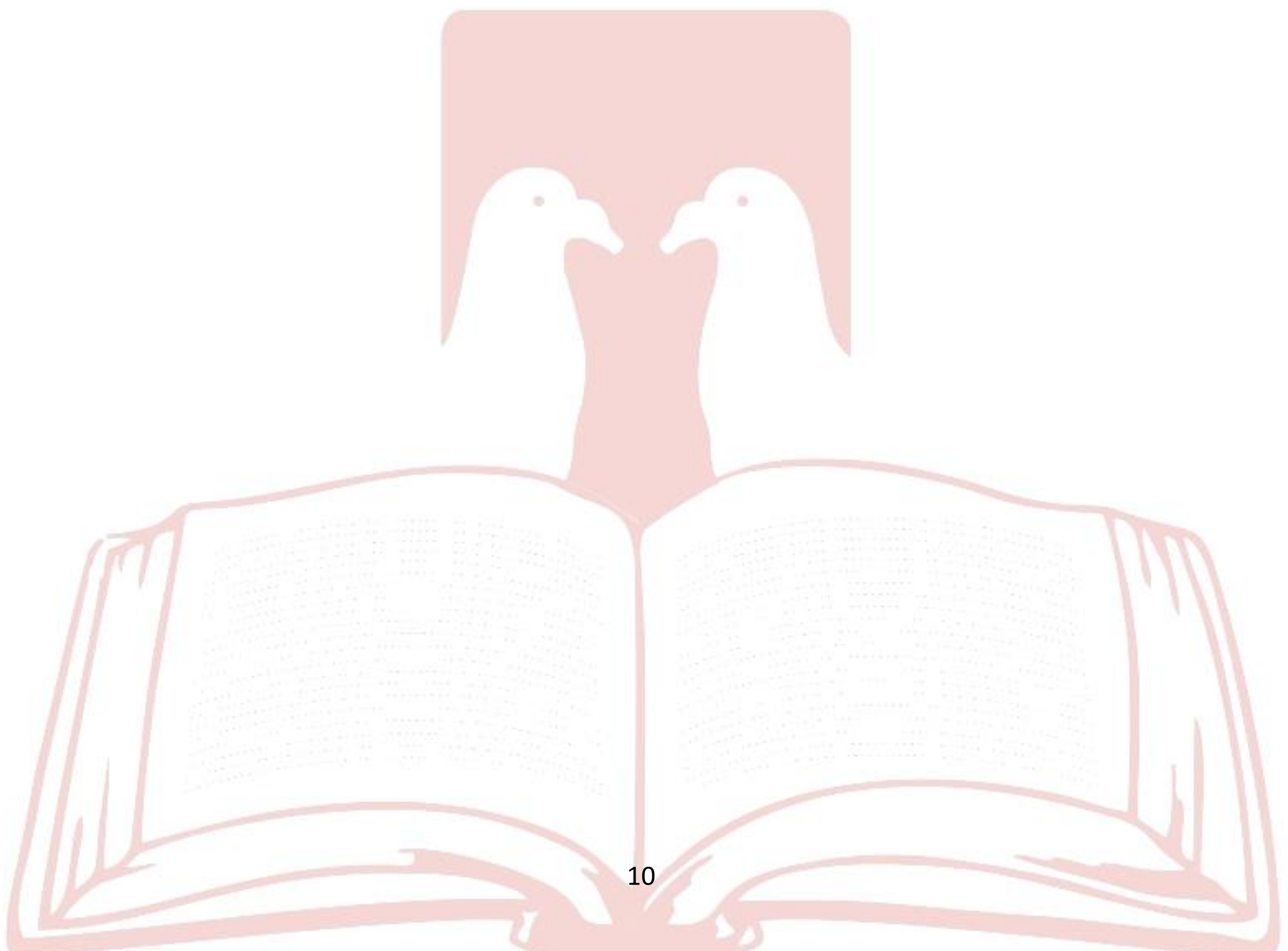
[14] The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children’s Court or by the Board itself, treating him to be a child.

The apex Court reiterated the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child.

The Apex Court held that, "the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015."

Thus, the Appeals were dismissed.

*****



Dauvaram Nirmalkar Vs. State of Chhattisgarh [Crl.A.No.1124 of 2022]

Date of Judgment: 02-08-2022

Grave and Sudden Provocation

The Hon'ble Supreme Court discussed about the relevancy and admissibility of the conduct of the accused under Section 8 of the Indian Evidence Act 1872.

The Apex Court held that, the cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

The Apex Court also clarified that, the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court.

Thus, the Appeal was partly allowed.

*****

Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey & Ors. [S.L.P. (Crl) No.4599 of 2021]

Date of Judgment: 26-07-2022

Discharge of Accused, Appreciation of Evidence

The Hon'ble Supreme Court affirmed that, as per Section 226, CrPC, before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution.

The Apex Court highlighted that a *prima facie* case must be made out before a charge can be framed. The Apex Court referred to its decision in *Bhawna Bai Vs. Ghanshyam [(2020) 2 SCC 217]*, that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The Apex Court also referred to the decision of *Amit Kapoor Vs. Ramesh Chander [(2012) 9 SCC 460]* giving a detailed explanation about the meaning of "presumption" under Section 228.

The Apex Court observed that, a medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination.

The Apex Court further observed that, a post mortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. A doctor's statement in court is alone the substantive evidence. The post mortem repot can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872.

The Apex Court held that, the prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject matter of the charge against him. He need not cross examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

Thus, the Appeal was allowed.

*****

Varsha Garg Vs. State of Madhya Pradesh & Ors. [Crl.A.No.1021 of 2022]
Date of Judgment: 08-08-2022

Criminal Procedure

The Hon'ble Supreme Court examined the scope of Section 311, CrPC which provides that the Court "may" (i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and (ii) Recall and re-examine any person who has already been examined.

The Court observed that, the statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth. The first part of the statutory provision which uses the expression "may" postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression "shall". Essentiality of the evidence of the person who is to be examined, coupled with the need for the just decision of the case constitutes the touchstone which must guide the decision of the Court.

The power of the court is not constrained by the closure of evidence. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

In *Zahira Habibullah Sheikh (5) Vs. State of Gujarat [(2006) 3 SCC 374]*, which was more recently reiterated in *Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd. [(2008) 11 SCC 108]*, the Court observed that "the resultant filling of loopholes on account of allowing an application under Section 311 is merely a subsidiary factor and the Court's determination of the application should only be based on the test of the essentiality of the evidence".

Thus, the Appeal was allowed.

*****

Vijaya Vs. State Rep By The Inspector Of Police [Crl.A.No.1573 of 2022]
Date of Judgment: 15-09-2022

Criminal Procedure – Section 304(1) – Section 309 Indian Penal Code – Section 32 – Indian Evidence Act, 1872

The Hon'ble Supreme Court dealt with two significant issues.

[1] Whether the statement made by the Appellant, which does not qualify as a dying declaration under Section 32 of the Evidence Act but, rather, as a statement under Section 164 of the CrPC, may be treated as a confession statement.

[2] Whether there is corroborative evidence that supports the prosecution's case.

The Apex Court noted that, "When considering the Appellant's guilt, the Sessions Judge and the High Court did not satisfactorily consider the effect and impact of PW1's & PW'5's failure to support the prosecution. When considering the disputed confession by the Appellant, the bedrock on which the prosecution's case stood was undone. The Sessions Judge and the High Court proceeded on what *prima facie* appeared to be an almost unqualified acceptance that the confession remained unassailable. This was in spite of the fact that only PW8 remained to provide some degree of corroboration regarding the prosecution's story."

The reasons for why PW1 & PW5 turned hostile may be numerous and as compelling as each other. While the lower courts have considered them to be interested witnesses concerned with the acquittal of the Appellant, the Apex Court could not ascertain why that is a more likely reason for their noncooperation than the fact that they believed that the Appellant was being wrongly accused and that their initial statements were taken under duress.

The Apex Court discussed the ambit of "reasonable doubt" in a criminal proceeding and held that, the focus for us when ascertaining reasonable doubt is not merely the possibility of doubt or of another version of events but rather a version that survives the scrutiny of an honest and conscientious judicial mind.

Thus, the Appeal was allowed.

*****

HIGH COURT - CIVIL CASES

All India Adi Saiva Sivacharyargal Seva Sangam Vs. State of Tamil Nadu [W.P.No.17802 of 2021]

Date of Judgment: 22-08-2022

Appointment of Archakas

The Hon'ble High Court dealt with a Writ Petition arising from a challenge to Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020.

The Court found that the definition of "appointing authority" under Rule 2(c) of the Rules does not offend the constitutional provisions or the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and further clarified that the ultimate management of the temple remains with the trustees of the temple and for that even exercise of powers for appointment of Archakas.

The Court found that Rules 7 and 9 of the Rules of 2020 cannot be held to be unconstitutional as such, but would not apply for the appointment of Archakas/Poojaris, as it would otherwise offend Articles 25 and 26 of the Constitution of India. The Court observed that the ratio propounded by the Apex Court in the case of *Seshammal & Ors Vs. State of Tamil Nadu [(1972) 2 SCC 11]*, and *Adi Saiva Sivachariyargal Naia Sangam & Ors. Vs. Government of Tamil Nadu & Anr. [(2016) 2 SCC 725]*, would apply for the appointment of Archakas in the temples, which were constructed as per Agamas.

The Court found that Rule 2(g) of the Rules of 2020 does not offend any constitutional provision because Section 28(1) of the Act of 1959 directs the trustees to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution. Hence, the inclusion of the word "Executive Officer" would not be any person other than who can administer the religious institution.

The Court directed the State Government to constitute a committee to identify those temples constructed in accordance with the agamas, and if the appointment of Archaka is not made as per the Agamas, the individual would be at liberty to challenge it. The Writ Petition was thus disposed of.

*****

C. Jayanthi Vs. M. Saravanan [A.S.No.1071 of 2019]

Date of Judgment: 17-08-2022

Specific performance — Readiness and willingness

The Hon'ble High Court decided an Appeal Suit arising from a suit for specific performance.

The Court observed that when the Respondent/Plaintiff had proved before the Court below through the attesting witness that the sale agreement was executed by the appellant, the appellant ought to have insisted the Court below to examine her disputed signature by comparing it with her admitted signatures, under Section 73 of the Indian Evidence Act, 1872.

The Court further observed that the Trial Court had not framed any issues about the readiness and willingness on the part of the Plaintiff, before choosing to grant the relief of specific performance.

The Court found that no document or no evidence was produced in order to substantiate the readiness and willingness on the part of the Plaintiff, as he had not chosen to send any legal notice before filing the suit. The Court noted that the Plaintiff had filed the suit on the expiry of the time limit, having waited for whole of the year.

The Court held that though the Plaintiff had failed to prove his willingness, it will not preclude the Plaintiff from getting the alternate remedy of refund of advance money paid by him, and that the rule of equity has to be applied equally to both the parties based on their respective conduct.

The Court partly allowed the Appeal Suit and modified the Judgment and Decree of the Trial Court to the extent the respondent/plaintiff is entitled to get the decree for refund of the advance money together with interest at the rate of 7.5% per annum from the date of sale agreement till the date of decree and thereafter at the rate of 6% till the date of realisation and with cost.

*****

Janaki Ammal @ Pattammal & Ors. Vs. Premchand (Died) & Ors. [S.A.No.137 of 2000]

Date of Judgment: 23-08-2022

Appreciation of evidence — Agreement — execution of agreement — burden of proof

The Hon'ble High Court decided a Second Appeal pertaining a suit for specific performance.

The Court found that the Trial Court had given cogent reasons for holding that the agreement of sale was shrouded with suspicions and was therefore invalid. The Court noted that the First Appellate Court had brushed aside these observations by claiming that they would not affect the validity of the agreement.

The Court referring to Section 101, Indian Evidence Act, 1872 and to the decisions in *Rao Saheb v. Rangnath Gopalrao Kawathekar [(1972) 4 SCC 181]*, *Ramji Dayawala & Sons (P) Ltd. Vs. Invest Import [(1981) 1 SCC 80]*, and *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal [(2003) 8 SCC 745]*, noted that the agreement had been denied and disputed, and that the Plaintiff had not taken any effective steps to prove the signature of the executant of the agreement and *consensus ad idem.*

The Court held that the First Appellate Court had erred in its appreciation of evidence available over the suspicious circumstances pointed out by the District Munsif relating to the agreement of sale and its execution. The burden to prove the agreement of sale was overwhelmingly on the Plaintiff, particularly since the suit was instituted well after the death of executant of the agreement of sale."

The Court further held that the agreement of sale had not been proved in manner known to law by the "evidence of those persons who can vouchsafe for the truth of the facts in issue." The Court allowed the Second Appeal, set aside the Judgment and Decree of the First Appellate Court and restored & confirmed the Judgment and Decree of the Trial Court.

*****

Kota(k) Mahindra Bank Ltd. Vs. Chief Controlling Revenue Authority & Inspector General of Registration [W.P.No.14500 of 2009]

Date of Judgment: 17-08-2022

Articles 62(c) and 23, Indian Stamp Act, 1899 — assignment of NPA

The Hon'ble High Court decided a Writ Petition, on the issue whether the transaction in question is covered by Article 62(c) or under Article 23(a) of the Stamp Act and if so, whether the duty must be levied based on the total consideration paid by the petitioner or based on the total debts transferred in favour of the petitioner.

The Court referred to *ICICI Bank Ltd. Vs. Official Liquidator [(2010) 10 SCC 1]* and *Golden Star Assets [MANU/TN/6056/2021]*, and found that the requirements of Article 62(c) of the Stamp Act are satisfied namely, a transfer with a transferor and transferee, and the transfer of interest secured under mortgage deed from a transferor mortgagee to the transferee mortgagee, with or without consideration. The Court observed that if a transfer is charged under Article 62, Article 23 of the Stamp Act will not apply and both these articles are mutually exclusive.

The Court relied on *The Chief Controlling Revenue Authority Vs. K.S. Dwarakanathan [(1980) 93 LW 127]* and found that "if the transaction involved in the document is treated as a conveyance under Article 23 of the Stamp Act, the stamp duty leviable will only be on the basis of the total consideration paid by the petitioner."

The Court held that the Petitioner has paid the necessary stamp duty and the registration fees and the deficit stamp duty, penalty and registration fees claimed by the 2nd Respondent and confirmed by the 1st Respondent is illegal and beyond the scope of the relevant provisions of the Stamp Act.

The Court confirmed the impugned proceedings of the 1st Respondent and quashed the impugned proceedings of the 2nd Respondent. Thus, the Court allowed the Writ Petition and directed the Respondents to refund the amounts collected form the Petitioners by way of deficit stamp duty, penalty and registration fees.

*****

M/s. Micro Labs Ltd. Vs. A. Santhosh, Proprietor, M/s. Life Gain Pharma [C.S. (Comm. Div.) No.185 of 2022]

Date of Judgment: 14-09-2022

Section 12A, Commercial Courts Act, 2015

The Hon'ble High Court decided a Civil Suit pertaining to a commercial dispute of deceptive trademark and copyright infringement, on the issue whether adhering to Section 12A of Commercial Courts Act, 2015 is mandatory or directory.

The Court reiterated the decision in *Patil Automation Pvt. Ltd. & Ors. Vs. Rakheja Engineers Pvt. Ltd. [2022 SCC OnLine SC 1028]*, that Section 12-A of the Commercial Courts Act is mandatory, and found that the present case is non-compliant with the provision, since the suit has been presented nearly four months after the service of cease and desist notice and no steps qua Section 12-A, Commercial Courts Act had been taken during this period.

The Court observed that the Apex Court had made it clear that rejection of plaint for non-compliance with Section 12A can be done *suo motu* by the Court without waiting for the Defendant to take out an application in this regard.

The Court further observed that merely because the plaintiff is *dominus litis*, an application claiming that urgent interim relief is required, would not by itself become compliance with Section 12A, and that the Court should be convinced that interim relief is 'urgent' and a product of contemplation in every sense of the terms.

The Court held that the interim relief sought for was not urgent and was not a product of contemplation, and rejected the suit with preserving the rights of the Plaintiff to sue again after compliance with Section 12A.

*****

M/s. Saravana Global Holding Ltd. Vs. N. Jayamurugan [O.S.A.(CAD)No.123 of 2021]

Date of Judgment: 29-08-2022

Sections 34(4) and 37, Arbitration and Conciliation Act, 1996 — Section 13(1A), Commercial Courts Act, 2015

The Hon'ble High Court decided an Original Side Appeal arising from an arbitral award.

The Court delved into the issue of maintainability of the Appeal and observed that Section 37, Arbitration and Conciliation Act, not only enumerates the orders against which an appeal would lie, but, clearly specifies that no appeal shall lie from any other order. Thus, an order passed under Section 34(4) of the Arbitration Act, is not appealable under Section 37 of the Arbitration and Conciliation Act.

On the issue whether the order passed under Section 34(4) by the Commercial Division of the High Court is appealable by virtue of Section 13(1A) of the Commercial Courts Act, the Court referred to *Kandla Export Corporation & Anr. Vs. OCI Corporation & Anr. [(2018) 14 SCC 715]* and *Noy Vallesina Engineering SPA Vs. Jindal Drugs Ltd. & Ors. [(2021) 1 SCC 382]*, and reiterated the holding that the Parliament added only to emphasize the proviso to Section 13(1A) that the amended Section 37 would have precedence over the general provisions contained in Section 13(1) of the Commercial Courts Act.

The Court referred to *Hindustan Unilever Limited Ponds House Vs. S. Shanthi [2021 SCC OnLine Mad 5428]*, and found that unless either the Arbitration Act or the CPC provides for an appeal, no appeal shall lie under Section 13 of the Commercial Courts Act.

The Court held that no intra-court appeal would lie against the order passed under Section 34(4) of the Arbitration Act by the Commercial Division of this Court.

Thus, the Court dismissed the Original Side Appeal as not maintainable.

*****

Periyasamy & Ors. Vs. Santhi Krishnan [S.A.No.778 of 2005]
Date of Judgment: 18-08-2022

Adverse possession

The Hon'ble High Court decided a Second Appeal arising from a suit for permanent injunction to protect possession of agricultural lands. The case involved to separate suits for injunction, wherein the first suit had been dismissed for non-prosecution.

The Court observed that where the Defendants had claimed adverse possession, a suit for bare injunction is not maintainable, and noted that the Plaintiff should have also sought for declaration of title.

The Court found that in the absence of prayer for declaration of title, both the Trial Court and First Appellate Court had travelled beyond the scope of the *lis* by entering into a discussion on title.

The Court referred to *Anathula Sudhakar Vs. P. Buchi Reddy (dead) by Lrs. & Ors. [(2008) 4 SCC 594]* and *T. Anjanappa & Ors. Vs. Somalingappa & Anr. [2006 7 SCC 570]*, and observed that adverse possession contemplates hostile possession denying title of the true owner.

The Court held that the second suit for injunction is valid in law, but that the Courts should have relegated the parties to seek declaration of title and the evidence adduced will have to be examined only in a separate suit seeking declaration of title. The Court further held that the parties are relegated to file a separate suit for declaration of title and seek consequential reliefs.

The Court allowed the Second Appeal and set aside the impugned Judgements and Decrees.

*****

Renganathan (died) & Ors. Vs. Loganathan & Ors. [S.A.No.574 of 2014]
Date of Judgment: 10-05-2022

Suit for bare injunction — dispute over title

The Hon'ble High Court decided a Second Appeal arising from a suit for injunction.

The Court referred to *Ananthula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs. & Ors. [2009 1 MLJ 1001]* and *Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam, rep.by its Trustees Vs. G.K. Kannan (Deceased) & Others [2020 2 LW 317]*, and observed that wherever there is a real controversy on the title to the property, a suit for bare injunction can never be sustained.

The Court found that both the Courts below had lost sight of the crucial fact that the Defendant had directly questioned the title in the suit property and that the Plaintiff has not even established as to where she got the title for an extent of 20 cents.

The Court further found that since the case involved vacant land, the patta and kist receipts filed by the Plaintiff cannot decide the title over the property and that it has to be necessarily decided only based on the title documents.

The Court applied the principle of *nemo dat quod non habet*, and held that both the Courts below had not been right in decreeing the suit even without the Plaintiff seeking for the relief of declaration of title and without proving her possession over the entire extent of the suit property since she did not have title over the same.

The Court allowed the Second Appeal and set aside the impugned judgments and decrees of the Trial Court and the First Appellate Court.

*****

Sunitha Giridharidas & Ors. Vs. Sub Registrar & Ors. [W.P.No.10657 of 2015]

Date of Judgment: 02-09-2022

Revocation of settlement deed

The Hon'ble High Court decided a Writ Petition challenging the registration of revocation of a settlement deed.

The Court observed that "a person gets a vested interest in a property when he acquires a proprietary right in it and the right of enjoyment alone is deferred to a future date, till the lifetime of the settlor. In the same way, such postponement of the right of the power to transfer the property by the settlee, does not take away the vested interest of the settlee. The only test to be applied is to see if a right has been created in praesenti."

The Court referred to *Usha Subbarao Vs. B.N. Vishveswaraiah [(1996) 5 SCC 201]*, and observed that, "Insofar as the vested interest is concerned, it can either be an immediate right of present enjoyment or a present right for future enjoyment and further the right or enjoyment is not made dependent upon some event or condition which may or may not happen."

The Court found that the Petitioners had acquired vested interest in the subject property on the date of execution of settlement deed in their favour, and noted that the reason that had been stated in the revocation deed does not talk about any non-fulfilment of condition by the petitioners, and merely states that the settlor was made to execute the document under coercion and undue influence.

The Court held that such a reason can never justify unilateral cancellation of a settlement deed, and that such cancellation or revocation can be carried out only by approaching a competent Civil Court and seeking for an appropriate relief.

Thus, the Court allowed the Writ Petition and held that the registration of the revocation deed is null, void and *non-est*, and was therefore quashed.

*****

Venkatachala Maistry (died) & Ors. Vs. Pandan @ Ramar Maistry & Ors. [S.A.No.690 of 1997]

Date of Judgment: 11-08-2022

Cancellation of settlement deed — Sec.126, Transfer of Property Act, 1882

The Hon'ble High Court decided a Second Appeal concerning the execution and revocation of a settlement deed.

The Court observed that the First Appellate Judge had travelled beyond the scope of appreciation of evidence, since taking a stand which had not been taken during the written statement, during the course of evidence, should not have been permitted and even if evidence had been adduced and recorded, it should not have been considered while analysing the evidence.

The Court further observed that, "a gift deed or a settlement deed cannot be cancelled or revoked unless and until, there is a specific clause in the settlement deed permitting such revocation. … One of the basic ingredients of a settlement deed or a gift deed is that possession is granted on the date of the document. By the execution of the document, there is not only transfer of title, but also transfer of possession". The Court referred to *E.R. Kalaivan Vs. The Inspector General of Registration & Anr. [2009 (4) CTC 618]*, and found that the cancellation of the settlement deed is violative of Section 126 of the Transfer of Property Act.

The Court referred to *Ponnusamy Vs. Govindan & Anr. [(2022) 2 CTC 770]*, and found that the principles of *non-est factum* would not apply in the instant case, as the settlor had not pleaded in the written statement that she was not aware of the nature of the document, though she had stated so during evidence.

The Court directed the Trial Court to proceed further with passing final decree under Order XX Rule 18 of CPC in accordance with the directions given by the Apex Court in *Kattukandi Edathil Krishnan Vs. Kattukandi Edathil Valsan [2022 SCC OnLine 737]*. Thus, the Court upheld the Judgment and Decree of the First Appellate Court and set aside the Judgment and Decree of the Trial Court.

*****

HIGH COURT – CRIMINAL CASES

Anandam Gundluru Vs. Inspector of Police
Criminal Appeal No.118 of 2017
Date of Judgment: 01.09.2022

NDPS – not aware of the content in the parcel

The Hon'ble Madras High Court in this case dealt with a Criminal Appeal filed under Sections 8(c) r/w 21(c), 22(b), 23(c) and 29 of Narcotic Drug and Psychotropic Substances Act, tried before the Special Court for NDPS Act, to set aside the order of conviction passed by Special Court.

The court observed that the appellant was not aware of the content in the parcel was 1.5 kg Heroin given by absconding accused, further the call records produced by the prosecution could not be accepted as electronic evidence, as it was not accompanied with certificate under Section 65 B of the Evidence Act, 1872. Further no document was produced to prove that the cellular number belonged to the appellant.

The court also noted that no effort had been taken to produce the absconding offender and the appellant has no culpable mental state as he carried the materials believing it to be wheat flour and tamarind given by the absconding accused.

Thus, the Hon'ble High Court held that the prosecution could not prove that the appellant was conscious of the presence of heroin in the parcel given to him. Thus, as a result criminal appeal is allowed and the accused is set at liberty in this case.

*****

Aravinth and Ors. Vs. The State Rep.by Inspector of Police, B2, Esplanade Police Station, Chennai

Crl.O.P.No.17853 of 2022 and Crl. MP. Nos.11375 & 11379 of 2022
Date of Judgment: 01.08.2022

Protest by students – unlawful assembly – quash petition

The Hon'ble High Court in this case dealt with Criminal Original petition filed under Section 482 of the Code of Criminal Procedure to quash the report filed against the petitioners pending on the file of Metropolitan Magistrate.

The brief of this is that, on 17th March 2014, few law college students gathered outside the Chennai Ambedkar Government Law College and raised slogans against 'Sri Lankan Government demanding their Tamil Eelam issues' and blocked the roads. They were accused of wrongfully restraining the public movement and were thus charged under Sections 143, 145 of IPC and Sec.7(1) (a) Criminal Law Amendment Act, 1932 and 41 CP Act 1988.

It was argued that the petitioners protested in a democratic manner, and even if the entire prosecution case is considered, no offence would be made out. Hence, sought for quashing the proceedings.

The Hon'ble High Court noted that, even if the Court's interference is limited under Section 482 of CrPC, yet, when it is satisfied that the entire materials collected by the prosecution would not constitute to any offence as alleged, if the parties were directed to undergo trial, the same would be a futile exercise and it will infringe the right of the persons. Further, the Court discussed the definition of the term "Unlawful Assembly" and held that the petitioners had not committed any acts that would fall within the meaning of unlawful assembly.

In fine, the Criminal Original Petition was allowed the final report filed against the petitioners pending on the file of Metropolitan Magistrate was quashed.

*****

B. Ramkumar Adityan Vs. District Collector, Thoothukudi District, Thoothukudi-628 101 and Ors.

W.P(MD)No.21756 of 2022 and W.M.P(MD)No.15922 of 2022
Date of Judgment: 14.09.2022

Writ of Mandamus – to obtain a declaration from the organisers of all Dasara Groups and Sound Hire Service Providers not to sing and play any non-Devotional Songs and *Kuthu Paattu* during Dasara festival

The Hon'ble High Court dealt with a Writ of Mandamus to direct the second and third respondents to obtain a declaration from the organisers of all Dasara Groups and Sound Hire Service Providers not to sing and play any non-Devotional Songs and *Kuthu Paattu* during Dasara festival in connection to the Arultharum Mutharamman Thirukovil, Kulasekarapattinam, in order to stop Vulgar and Obscene Dance performances.

The petitioner submitted that, Arultharum Mutharamman Thirukovil located at Kulasekarapattinam which is a Coastal village in the Tiruchendur Taluk in Thoothukudi District, comes under the control of the Tamil Nadu Hindu Religious Endowment Department. The Dasara festival is the most auspicious celebration in the said temple. It is a 12 days celebration as a big festival in the month of September or October every year, second to that of Mysore. Goddess Arultharum Mutharamman bejewelled in grandeur is taken in procession on these days in different disguise. Further, it is submitted that, initially the Dasara Festival was associated with processions and folk music and dance, now these Dasara groups have started to hire cine/television actors who without observing any virudham would perform obscene and vulgar dance performances.

The Hon'ble High Court perused some photographs produced by the petitioner and was convinced that the same made a mockery of the traditional culture and observed that, "*While photographs from page Nos.22 to 27 relating to Dasara celebration in other places in India show traditional culture and customs, photographs from pages 28 to 37 relating to devotees who are observing viradham and watching dances at Kulasekaranpatinam Dasara celebration, conspicuously*

show that such dances are performed by paid dancers exhibiting obscene and vulgar postures making mockery of the traditional culture and customs to be followed in Dasara festival and denigrating the Hindu religious sentiments."

It was submitted by the Additional Public Prosecutor that pursuant to the orders of the court, the Director General of Police had issued a circular in 2018 to all Commissioners of Police in Cities and all the Superintendent of Police in Districts, instructing them to ensure compliance with the orders of the court and Inspectors were further directed to obtain an undertaking from the organisers that there will not be any obscenity or vulgarity in the cultural programs or any disturbance to the public peace and tranquility. In case any violation was noticed, the authorities were directed to take stringent/criminal action against those concerned.

Subsequently in 2019, another circular was issued with consolidated instructions with regard to the procedures to be followed while granting permission to conduct cultural events, sports events, procession/meeting etc.

The Hon'ble High Court in view of the above submissions by the Additional Public Prosecutor, disposed the Writ Petition directing the respondents to ensure that Circular Memorandum issued in 2019 and the he directives of the Division Bench in 2017 are followed in letter and spirit in the forthcoming Dasara festival. In addition to that, the Hon'ble High Court also directed that the obscene and vulgar dance performance should be specifically prohibited by the Police authorities in the forthcoming festival and if any one violates the same, appropriate action to be taken against them in line with the abovesaid Circular Memorandum.

*****

Irfana Nasreen Vs. The State, Represented by, The Inspector of Police, All Women Police Station, Thallakulam, Madurai City.

Crl.O.P(MD)No.11840 of 2022
Date of Judgment: 20.07.2022

Petition to alter FIR – Sec. 482 Cr.P.C

The Hon'ble High Court is this case dealt with a Criminal Original Petition filed under Section 482 Cr.P.C., directing the respondent police to alter the FIR on the file of the respondent police station by including the Sections 420, 417 and 379 IPC therein.

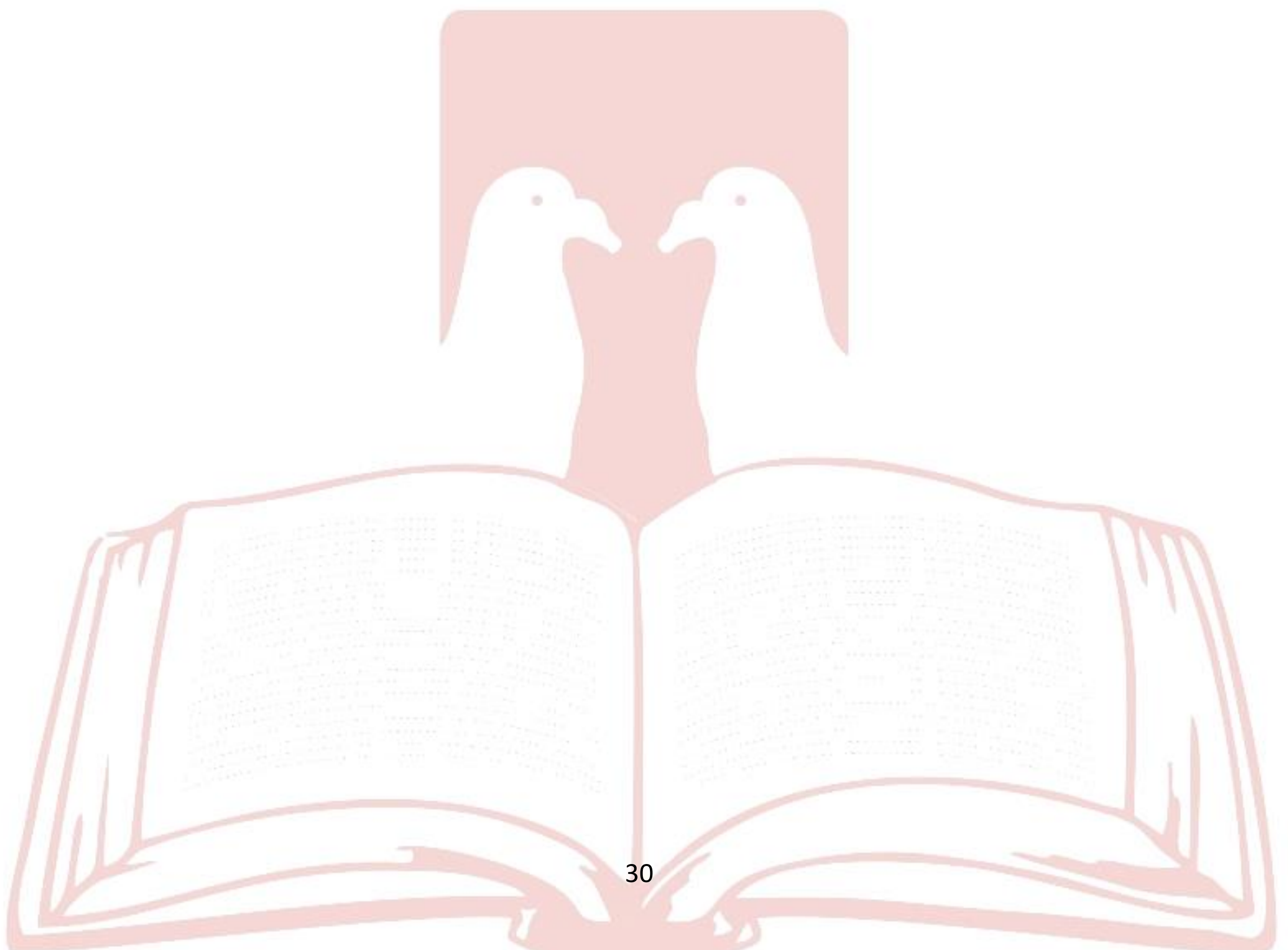
The brief facts of this case is that, the petitioner is the wife and the accused is the husband. The marriage between the petitioner and the accused was solemnized on 04.04.2021. The petitioner claims that it was only after their marriage she learnt that the spouse is impotent and his first marriage failed because of his impotency. Further, it was contended that, the husband and his family had defrauded the petitioner by concealing the facts. In order to end this predicament, the husband declared talak and left for the US.

Aggrieved by this, the petitioner filed a complaint, under Sections 498-A and 406 I.P.C.,. Although allegations of cheating were made, crimes punishable by Sections 417 and 420 I.P.C. were not included initially and hence the present petition was filed to seek the same. It was submitted by the Respondent that, after receiving the complaint, the matter was sent to the Social Welfare Department for preliminary enquiry and the alteration of FIR could be considered only after receiving the report from the department.

Upon perusal of records, the Hon'ble Court observed that, "*the complaint given by the complainant clearly stated about the non-disclosure of the impotency of the husband at the time of marriage and he made the complainant to believe that he is a competent person to live ordinary life as husband and wife without disclosing his incapacity and thereby, the accused husband deceived the complainant and made her to marry him, as though he is competent to consummate the marriage.*"

In fine, Court directed the respondent Police to add the offences under Sections 417 and 420 and to investigate and file the final report within four months, after receiving the report from the Social Welfare Department.

*****



Jegan @ Ellamaran & Ors. Vs. State represented by The Inspector of Police & Ors.

Crl.O.P No.19152 of 2022 & Crl.M.P.Nos.12669 of 2022
Date of Judgement: 25.08.2022

Quash under Sec. 482 Cr.P.C – unlawful assembly – no sufficient material to support case

The Hon'ble Madras High Court in this case had to decide on a Criminal Original Petition seeking to quash the application filed under Section 143, 188 of IPC by invoking the provision under Section 482 CrPC.

The Crux of the case is that the members of the May-17 Organization along with its Leader and 100 participants indulged in the protest/agitation against the Prime Minister, for announcing Demonetization as void and thereby First Information report has been registered. The court observed that it is not the case of the prosecution that the petitioners along with other accused had unlawfully assembled and used force or violence and hence, the Court held that the offences under sections 143 or 353 of IPC is not applied.

The Court pointed out that the mere registering of FIR by the prosecution itself is not sufficient to reach the conclusion that offences are made out and the materials collected by the prosecution do not support the case and continuing the prosecution without any materials is a clear abuse of process of law.

In fine, the Hon'ble High Court allowed proceedings against the petitioners on the file of the Metropolitan Magistrate to be quashed.

*****

K. J. Suriyanarayanan Vs. State By, Inspector of Police, Crime Branch CID-Metro Wing II and Anr.

Crl.OP.No.19154 of 2020 and Crl.MP.No.7675 of 2020
Date of Judgment: 02.09.2022

Sec. 482 Cr.P.C – FIR under Ss. 468, 471 and 420 I.P.C

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 FIR registered by the respondent police for offences under Sections 468, 471 and 420 of IPC.

The crux of the case is, the petitioner served as the Secretary of one of the units under St. John Ambulance until 2012. Despite being removed from the organisation, he continued to use its name fraudulently by obtaining an email address and using a bank account in the organization's name. In order to provide first aid training, he approached various businesses, institutions of higher learning, etc. under the guise of M/s. St. John Ambulance Association. The petitioner's trainer licence expired in February 2018, but he continued to provide first aid instruction through his colleagues even after the expiry of his license.

Likewise, the Petitioner approached one, Mr. J. K. Siva Kumar, Head-HR, M/s. Leo Prime Company Private Limited for getting the first-aid certificate for 39 employees of his concern. The petitioner collected an amount of Rs.12,250/- by concealing the above facts and misusing the name of St. Johns Ambulance with a view to secure illegal gain. An FIR was subsequently filed against him in the year 2015, however the High Court had quashed the FIR. The second respondent once again had preferred another complaint with the same set of allegations and another FIR was registered against the petitioner.

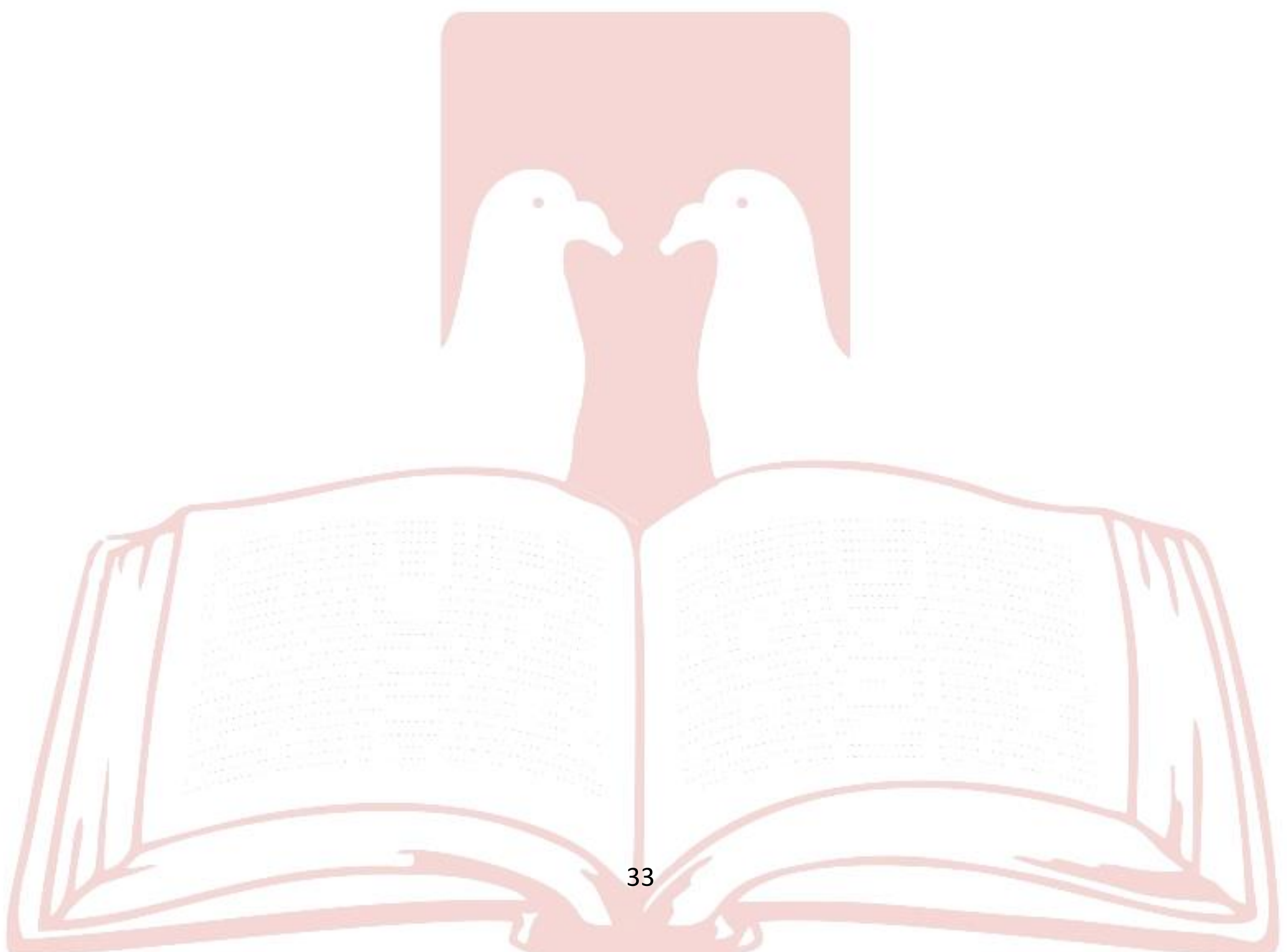
The petitioner argued that he is very much eligible for organizing and conducting the said courses as he is a certified trainer and an authorized lecturer for conducting First-Aid and Home Nursing Courses with the approval of St. John Ambulance. It was also contended that when an FIR had already been registered against him,

which was subsequently quashed then why subsequent FIRs had been registered on the same set of allegations?

The Hon'ble High Court observed that sometimes it so happens that several pieces of information are given to a police officer in charge of a police station in respect of the same incident involving one or more cognizable offences. In such cases, the investigation officer need not enter all such information in the FIR and subsequent FIR's not being a counter case, filed in connection with the same or connected cognizable offence be sustained and not permissible under law.

In fine, the Criminal Original petition was allowed to quash the entire proceedings against the petitioner.

*****



Kanthan Vs. The State of Tamil Nadu and Ors.
H.C.P.(MD)No.1655 of 2021
Date of Judgment: 06.09.2022

Habeas Corpus – Order of District Magistrate – detenue as 'Sexual Offender'

The Hon'ble High Court in this case dealt with a Habeas Corpus Petition filed by the father of a detenu, challenging the order of District Magistrate. The detenue was detained by the District Magistrate as a 'Sexual Offender' under Section 2(ggg) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act 1982.

The challenge of the petitioner was that, there was gross violation of procedural safeguards as the representation made by the petitioner was not considered on time and there was inordinate and unexplained delay. It was submitted that there was a delay of 5 days in submitting the remarks by the Detaining Authority and a delay of 21 days in considering the representation. It was argued by the prosecution that, no prejudice was caused to the detenue and there was no violation of fundamental rights under Article 21 and 22 of the Constitution.

The Hon'ble Bench opined that, the information technology is posing a great challenge and it has a lot of impact on the mind of the teenagers. The Hon'ble High Court noted that, "*The teenagers, who are easily exposed to pornography even from their mobile phones, get confused and mislead at an age where they are in the grips of hormonal changes and they indulge in activities without understanding its consequences. Once these teenagers are arrested and kept inside the prison, efforts must be taken to attend to their mental perversion. The purpose of confining a teenager in the prison is not to abandon him and throw him out of the main stream of the society and all steps must be taken to reform such a person.*"

Further, the Hon'ble High Court suggested the State Government to come up with some mechanism where, offenders of this nature are being properly counselled

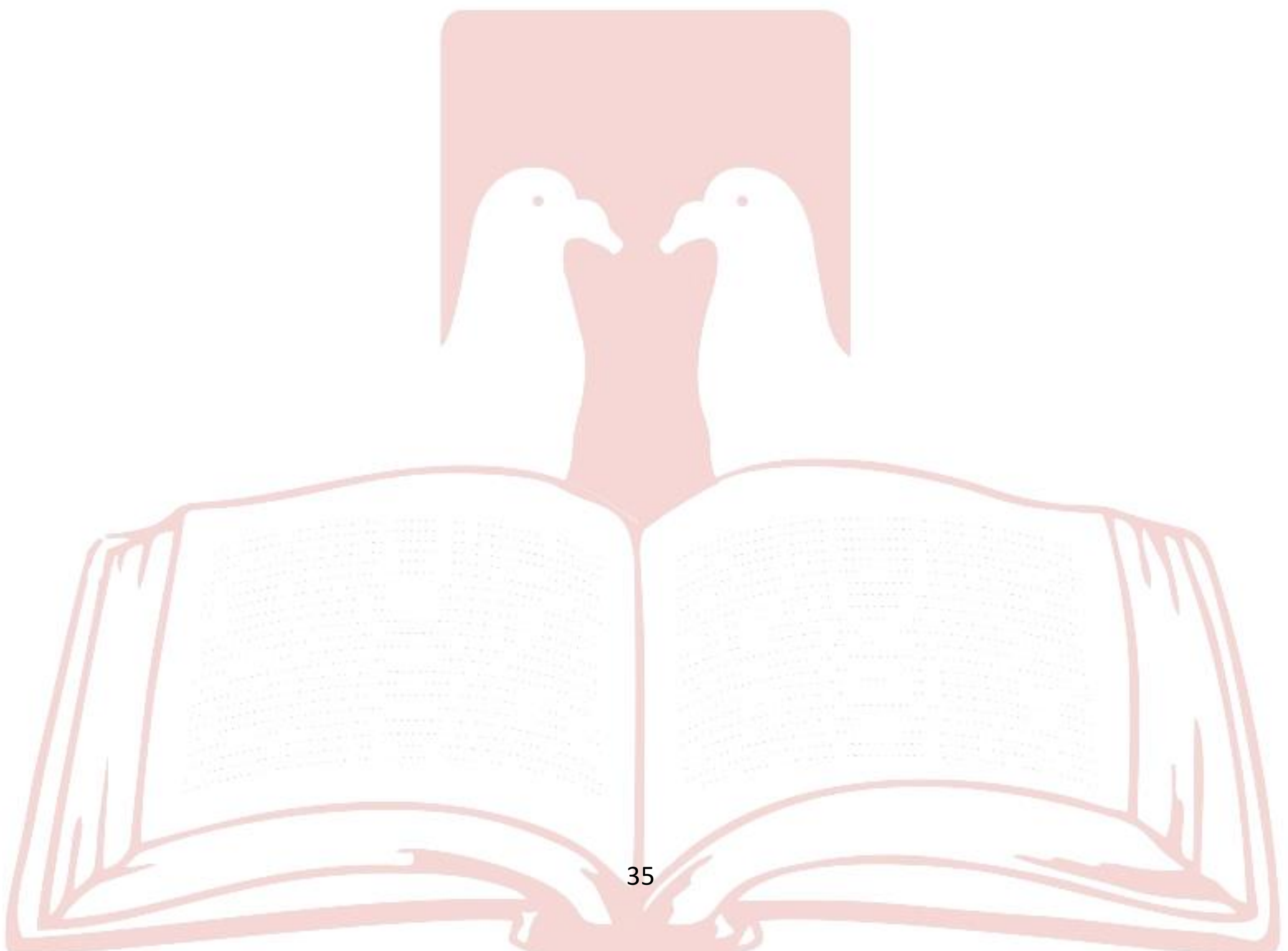
when they are in prison and when they come out of the prison, they are reformed and they are able to lead a normal life.

Thus, the Bench of the Hon'ble High Court allowed the Habeas Corpus Petition.

See Also:

- Rekha vs. State of Tamil Nadu (2011 (5) SCC 244)
- Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145)
- Tara Chand vs. State of Rajasthan and others, 1980 (2) SCC 321

*****



S. Pongulali Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and Ors.

W.P.No.10249 of 2020 and W.M.P.Nos.12462 of 2020 & 21089 of 2021
Date of Judgment: 18.07.2022

Writ of Mandamus – Register FIR under Sec. 302 I.P.C – Custodial death

The Hon'ble High Court in this case dealt with a Writ of Mandamus directing the respondent-State of Tamil Nadu to register a case under Section 302 of IPC against the respondent No.6 and all other police personnel responsible for the death of the petitioner's son Nithya @ Nithyaraj and to hand over the investigation of the case on the file of the respondent No.8 to the Central Bureau of Investigation and further directing the respondent – State to award appropriate compensation to the petitioner for the death of her son.

The petitioner contended that her son (deceased son) was taken to the police station on 11.01.2012, though she went to the police station next day, she was not allowed to see her son. The petitioner claimed that when her son was brought before the magistrate, he was found to have suffered injuries all over his body and he was also threatened by the police not to disclose the torture given by them. It was also contended that further remand order was made without verifying the alleged injuries.

Immediately after the remand, the deceased informed that he suffered pain and was taken to jail hospital and thereafter he was referred to the Government Royapettah Hospital. It is alleged that he was not given proper treatment and was sent back to prison hospital. Due to condition of the deceased, he was once again taken to the Government Royapettah Hospital, Chennai on 16.01.2012, unfortunately, he died on the way to hospital. Upon the death of the deceased a FIR was registered under Section 176 of Cr.P.C., on the file of the Inspector of Police, M3 Puzhal Police Station. The petitioner submitted that due to custodial torture her son had died and there was a gross violation of one's fundamental rights under

Article 21 of the Constitution. Thus, she sought for alteration of the offence into one under Section 302 of the IPC.

Per Contra, it was argued by the government that all injuries on the deceased's body occurred prior to death and may have been accidental, according to the autopsy report. Only one injury was sufficient to cause death in the ordinary cause of nature. The respondent relied on the second opinion of the Professor and Head of the Forensic Medicine and Toxicology Department at a Government Medical College in Chennai who submitted that the injury could be caused due to the effect of the pinnacle over the blunt surface, item, throughout fall or effect of any item or weapon over that a part of the pinnacle. It was further informed that after enquiry, the CB-CID had altered the charges under Sections 342, 343, 348, 324 & 304(ii) of IPC. The alteration report was filed before the Judicial Magistrate also.

The Hon’ble High Court opined that the deceased was tortured and subjected to third decree treatment due to which he died. The Hon'ble Supreme Court of India repeatedly held that when the death taken place inside the police station, the accused persons should be punished for the offence under Section 302 of IPC. The Court placed reliance on the Apex Court’s decision in *Rudul Sah Vs. State of Bihar & Anr* AIR 1983 SC 1086 where the Hon’ble Supreme Court held that the petitioner was also eligible for compensation. The court noted that compensation was a palliative for the unlawful acts of the instrumentalities.

The Hon’ble High Court noted that, even though compensation can be paid at the end of the trial, the dependents are still entitled for interim compensation when a prima facie case was made out as per the provisions of Section 357 A of CrPC. Thus, the Court allowed the petition.

*****

Sahil Raj Vs. State of Tamil Nadu and others

WP No.21344 of 2022
Date of Judgement: 14.09.2022

Writ – bank account frozen by police – mis-interpretation by police

The Hon'ble High Court considered the Writ Petition under Article 226 of the Constitution of India, wherein the bank account of the petitioner had been frozen by the Police. The High court considered the issue that police have no jurisdiction to freeze bank accounts while issuing summons under Section 91 of CrPC.

The crux of the case is that original complainant was cheated by an anonymous person who offered a part time job to the complainant. In order to get the job, he was made to make payments to the tune of Rs. 5,58,749 in several instalments. The petitioner herein was engaged in the business of trading crypto currency, he received an order for purchase and sale of virtual assets i.e., crypto currency on different exchanges. Alleging that the money was collected fraudulently, the police directed the bank authorities to freeze the petitioner's account.

The court noted that petitioner was not even an accused in the main crime and that it was only during investigation that the details regarding bank transfer was brought to light. The court held that Inspector of Police, Cyber Crime can issue summons under sec 91 of Cr.P.C to produce the document, but cannot freeze the accounts. Thus, disposed the writ petition.

*****

T. J. Gnanavel and Anr. Vs. The State represented by The Inspector of Police, J-7, Velachery Police Station, Velachery, Chennai and Anr.

Crl.O.P.No.16677 of 2022 and Crl.M.P.No.9785 of 2022
Date of Judgment: 11.08.2022

FIR registered against Producer and Director of the film 'Jai Bhim' – Quashing of the FIR

The Hon'ble High Court in this case dealt with Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records pending on the file of the first respondent police and to quash the same.

The crux of the case is that an FIR was registered based on a complaint by *defacto* complainant / second respondent. It is alleged that the *defacto* complaint and his friend watched a movie by name "Jai Bhim" acted and produced by Mr. Suriya (A2) and directed by Mr. T. J. Gnanavel (A1) and released in OTT platform. Further, it is alleged that the movie projected the *defacto* complainant's community in a tarnishing manner and incited communal violence, and also that the story has been projected as if a Irular community man was killed by a Sub Inspector of Police belonging to the *defacto* complainant's community.

The petitioners submitted that after receiving the complaint under Section 156(3) of CrPC, the Magistrate had mechanically forwarded the complaint without even observing that proper sanctions had been obtained from the Statutory Body for screening the movie. Therefore, the FIR was only an abuse of process of law and liable to be set aside.

The Hon'ble High Court observed that, although the *defacto* complainant claimed that the movie was projected in a manner that incited violence and enmity between two communities, no specific incident was recorded. Further it was observed that, the entire FIR was based only on the findings and conjectures of the *defacto* complainant.

The Hon'ble High Court opined that, the Magistrate had only observed that the complaint discloses some cognizable offence but had failed to state the cognizable offence made out. In fine, the court ordered for quashing the FIR thus, allowing the Criminal Original Petition.

See Also:

- S. Rangarajan Vs. P. Jagjivan Ram, (1989) 2 SCC 574
- Prakash Jha Productions Vs. Union of India, (2011) 8 S.C.C 372
- Srishti School of Art, Design & Technology Vs. Chairperson, Central Board of Film Certification, 2011 (123) D.R.J.
- LYCA Productions Pvt Ltd Vs. Government of Tamil Nadu, 2014 S.C.C. Online Mad. 1448
- Ajay Gautam Vs. Union of India, 2015 S.C.C. Online Del 6479
- S. Khushboo Vs. Kanniammal, 2010 (5) S.C.C. 600
- Sony Pictures Vs. State, 2006 (3) L.W. 728
- Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another, (2017) 7 SCC 760

*****