GUJARAT STATE JUDICIAL ACADEMY

e-Digest

Compilation of landmark judgments of Hon'ble Supreme Court of India & Hon'ble High Court of Gujarat

(During period between 01/10/2021 and 31/12/2021)

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Note: *Entire Judgment is available on Hyperlink.*

JUDGMENTS IN CIVIL MATTER BY HON'BLE SUPREME COURT OF INDIA

Sr. No.	Details of Case
1.	Chandra @ Chnada @ Chandraram Vs. Mukesh Kumar Yadav Civil Appeal No. 6152 of 2021 Hon'ble Judges : Hon'ble Mr. Justice R. Subhash Reddy & Hon'ble Mr. Justice Hrishikesh Roy Decided on : 01-10-2021 2021-JX(SC)-0-593 **Motor Accident Claim** **ISSUE:** • In absence of salary certificate remaining the income of the deceased husband, whether oral evidence of the wife is sufficient for deciding the income of the deceased? • Whether minimum wage notified for the skilled labour is absolute yardstick to fix the income of the deceased in absence of salary certificate? **HELD:** • No, in absence of salary certificate the minimum wage notification can be considered as a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. • Appellants (PARENTS) are also entitled for parental consortium of Rs.40,000/- each.
2.	National Insurance Company Ltd. Vs Chamundeswari Civil Appeal No. 6151 of 2021 Hon'ble Judges : Hon'ble Mr. Justice R. Subhash Reddy and Hon'ble Mr. Justice Hrishikesh Roy Decided on : 01-10-2021 2021-JX(SC)-0-592; 2021 (0) AIJEL-SC 67797 **Motor Vehicle Act**

	ISSUE: Whether oral evidence which is contrary to the contents of First information Report supersedes over it? **HELD:** Yes, If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.
3.	Korukonda Chalapathi Rao Vs. Korukonda Annapurna Sampath Hon'ble Judges : Hon'ble Mr. Justice K. M. Joseph & Hon'ble Mr. Justice S. Ravindra Bhat Decided on : 01-10-2021 2021-JX(SC)-0-596 **Section 49(1)(c) of the Registration Act** **ISSUE :** • Whether a family arrangement is compulsorily registrable? • Whether unregistered family arrangement deed of previous partition can be used to prove previous relinquishment of rights by reading it for a collateral purpose? **HELD :** • No. Family arrangement having set out the previous transaction is not compulsorily registrable? A collateral purpose that is to say, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. • A family settlement document which merely sets out the existing arrangement and past transaction will not be compulsorily registrable under Section 17(1)(b) of the Registration Act, 1908, if it doesn't by itself creates, declares, limits or extinguishes rights in the immovable properties.
4.	Ashok Kumar Vs Raj Gupta & Ors. Civil Appeal 6153-2021 Hon'ble Judges : Hon'ble Mr. Justice R. Subhash Reddy & Hon'ble Mr.

Justice Hrishikesh Roy
Decided on : 01-10-2021
2021-JX(SC)-0-594

DNA

ISSUE:

- Whether in a declaratory suit where ownership over coparcenary property is claimed, the plaintiff, against his wishes and closing his evidence, can be subjected to the DNA test. ? Test of eminent need.
- Can refusal to undergo DNA test, be considered as adverse?

HELD :

- Yes In circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards legitimacy and frowns upon bastardy.
- The presumption in law of legitimacy of a child cannot be lightly repelled. It was also the view of the Court that normal rule of evidence is that the burden is on the party that asserts the positive. But in instances where that are challenged, the burden is shifted to the party, that pleads the negative.
- Keeping in mind the issue of burden of proof, it would be safe to conclude that in a case like the present, the Court's decision should be rendered only after balancing the interests of the parties, i.e, the quest for truth, and the social and cultural implications involved therein. The possibility of stigmatizing a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy. In such kind of litigation where the interest will have to be balanced and the test of eminent need is not satisfied. Our considered opinion is that the protection of the right to privacy of the Plaintiff should get precedence.
- The respondent cannot compel the plaintiff to adduce further

	evidence in support of the defendant's case. In any case, it is the burden on a litigating party to prove his case adducing evidence in support of his plea and the court should not compel the party to prove his case in the manner, suggested by the contesting party.
5.	K. Karuppuraj Vs. M. Ganesan Civil Appeal 6014-6015 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mr. Justice A.S. Bopanna Decided on : 04-10-2021 2021-AIR(SC)-0-4652 **Specific Relief Act** **ISSUE** • Whether for the purpose of passing decree for specific performance, readiness and willingness both required to be established? **HELD** For the purpose of passing a decree for specific performance, readiness and willingness has to be established and proved and that is the relevant consideration for the purpose of passing a decree for specific performance. If it is found on appreciation of evidence in a suit for performance that the plaintiff had no willingness to perform his part of the contract, then the plaintiff is not entitled to a decree of specific performance.
6.	K. Anusha & Ors. Petitioner(S) Versus Regional Manager, Shriram General Insurance Co. Ltd. Special Leave to Appeal (C) No(s). 14360/2016 Hon'ble Judges : Hon'ble Mr. Justice Hemant Gupta and Hon'ble Mr. Justice V. Ramasubramanian Decided on : 06-10-2021 LL 2021 SC 571 **Motor Vehicle Act** **ISSUE:** Principle regarding contributory negligence under M.V. Act

	HELD: To establish contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. The Supreme Court observed that mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence. To establish contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged,
7.	Estate Officer vs. Colonel H.V. Mankotia (Retired) Civil Appeal 6223 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice A.S. Bopanna Decided on : 07-10-2021 2021-AIR(SC)-0-4894 **Legal Service Authority Act** **ISSUE :** Whether in the Lok Adalat held by the High Court, was it open for the members of the Lok Adalat to enter into the merits of the writ petition and to dismiss the same on merits, in absence of any settlement arrived at between the parties? **HELD:** • Lok Adalat has no jurisdiction at all to decide the matter on merits once it is found that compromise or settlement could not be arrived at between the parties. The jurisdiction of the Lok Adalat would be to determine and to arrive at a compromise or a settlement between the parties to a dispute. • To answer this, the bench referred to Section 19 and 20 of the Legal Services Authorities Act, 1987, and noted the following aspects: • As per sub-section (5) of Section 19, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or a settlement between the parties to a dispute in respect of (i) any case pending 6 before; or (ii) any matter which is falling within the jurisdiction of, and

	is not brought before, any court for which the Lok Adalat is organised. As per sub-section (1) of Section 20 where in any case referred to in clause (i) of sub-section (5) of Section 19- (i) (a) the parties thereof agree; or (i) (b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement or (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat. It further provides that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties. • As per sub-section (3) of Section 20 where any case is referred to a Lok Adalat under sub-section (1) or where a reference is made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. Sub-section (5) of Section 20 further provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law
8.	V. Prabhakara vs Basavaraj K. (Dead) By Lr. Civil Appeal No 1376-1377 of 2010 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice M.M. Sundresh Decided on : 07-10-2021 2021-JX(SC)-0-662; 2021-AIR(SC)0-4830 **Section 63 Indian Succession Act, Section 68 of the Indian Evidence Act** **ISSUE:** • What consideration should be kept in mind by the testamentary Court while deciding the testamentary proceeding? **HELD:** A testamentary court is not a court of suspicion but that of conscience. It

	has to consider the relevant materials instead of adopting an ethical reasoning. A mere exclusion of either brother or sister per se would not create a suspicion unless it is surrounded by other circumstances creating an inference. In a case where a testatrix is accompanied by the sister of the beneficiary of the Will and the said document is attested by the brother, there is no room for any suspicion when both of them have not raised any issue.
9.	Nitaben Dinesh Patel Versus Dinesh Dahyabhai Patel Civil Appeal Nos. 5901-5902 of 2021 Hon'ble Judges: Hon'ble Mr. Justice M.R. Shah & Hon'ble Mr. Justice A.S. Bopanna Decided on : 07-10-2021 2021-JX(SC)-0-664 **Hindu Marriage Act & CPC Order 6 Rule 17** **ISSUE:** Which type of Counter claim can be raised in matrimonial proceeding under section 23A of HMA 1955? Can relief be claimed against third parties under HMA 1955? At which stage amendment application can be granted? **HELD:** • The Supreme Court has held that in a proceeding under the Hindu Marriage Act between a husband and a wife, a relief against a third party cannot be claimed. • The Court held so while rejecting a wife's plea to seek a declaration that the alleged marriage between her husband and another woman was void. • Under the provisions of the Hindu Marriage Act, the relief of divorce, judicial separation etc. can be between the husband and the wife only and cannot extend to the third party. Therefore, by virtue of Section 23A of the Hindu Marriage Act, it is not open for the appellant herein – original defendant to seek declaration to the effect that the marriage between the respondent – original plaintiff and the third party is void. No relief can be prayed by way of counter claim even against the son born out of the alleged wedlock between the

	respondent – original plaintiff and the third party • If some facts have come to the knowledge subsequent to the commencement of trial an application for amendment of written statement can be allowed even after the trial has commenced.
10.	[Vaishno Devi Construction Vs. Union of India] CA 18278 of 2017 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice B.R. Gavai Decided on : 21-10-2021 2021-JX(SC)-0-690; 2021-AIR-(SC)-0-5309 **Order XXI Rule 16 of the Code of Civil Procedure** **ISSUE:** In absence of written assignment *qua* decree, whether a person succeeding the decretal rights from decree holder can execute the decree? **HELD:** We are of the view that the objective of amending Order XXI Rule 16 of the CPC by adding the Explanation was to deal with the scenario as exists in the present case, to avoid separate suit proceedings being filed therefrom and to that extent removing the distinction between an assignment pre the decree and an assignment post the decree. Hence, Explanation to Order XXI Rule 16 of the Code of Civil Procedure, removed the distinction between an assignment pre-the decree and an assignment post the decree. Thus, the court observed that there is no bar under Order XXI Rule 16 against assignee who acquired rights prior to decree from making an application to execute the decree.
11.	[V. Anantha Raju & Anr Vs. T. M. Narasimhan & Ors] Civil Appeal No. 6469 OF 2021 Arising out of Special Leave Petition (Civil) No.14165 of 2015 Hon'ble Judges : Hon'ble Mr. Justices L Nageswara Rao and Hon'ble Mr. Justice Sanjiv Khann and Hon'ble Mr. Justice B. R. Gavai Decided on : 26-10-2021 2021-JX(SC)-0-706; 2021-AIR(SC)-0-5342

Sections 17, 91 and 92 of the Indian Evidence Act, 1872

ISSUE:

Principle regarding difference between section 91 and 92 of Evidence Act i.e. written document *vis-a-vis* oral statement?

HELD:

- It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.
- When persons express their agreements in writing, it is for the express purpose of getting rid of any indefinite-ness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements.
- The court held that if a document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms.
- Sections 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory.
- It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed

	beyond the reach of future controversy, bad faith and treacherous memory. • It has been observed that the written contracts presume deliberation on the part of the contracting parties and it is natural that they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. It has been held that the written instruments are entitled to a much higher degree of credit than oral evidence.
12.	Sughar Singh Hari Singh (Dead) Through LRs. & Ors. Civil Appeal No. 5110 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice A.S. Bopanna Decided on : 26-10-2021 2021-JX-(SC)-0-710 **The Specific Relief Act, 1963 Section 10(a), 20** **ISSUE:** • Whether the Specific Relief (Amendment) Act, 2018 would apply prospectively or retrospectively? • Principles in regards to proving readiness and willingness are discussed. **HELD:** • The 2018 amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Amendment shall be applicable to all pending proceedings.
13.	Jithendran Vs. New India Assurance Co. Ltd. CA 6494 of 2021 Hon'ble Judges : Hon'ble Mr. Justice R. Subhash Reddy and Hon'ble Mr. Justice Hrishikesh Roy Decided on : 27-10-2021 2021-AIR(SC)-0-5382

<table>
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<u>ISSUE:</u>

Test for determining the effect of permanent disability on future earning capacity and physical disability vis a vis the functional disability.
Principle regarding Just compensation.

<u>HELD:</u>

The Courts should be mindful of the fact that even though the physical disability is assessed at 69%, the functional disability is 100% in so far as claimant’s loss of earning capacity is concerned. The loss of earning capacity must be fixed as 100% when a claimant-motor accident victim is incapacitated for life and is confined to home.
A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life altering event.
The Courts should strive to provide a realistic recompense having regard to the realities of life, both in terms of assessment of the extent of disabilities and its impact including the income generating capacity of the claimant. In cases of similar nature, wherein the claimant is suffering severe cognitive dysfunction and restricted mobility, the Courts should be mindful of the fact that even though the physical disability is assessed at 69%, the functional disability is 100% in so far as claimant’s loss of earning capacity is concerned.
The word “just”, as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, inequitable, not just

</td></tr>
<tr><td>14.</td><td><u>Rashid Wali Beg Vs. Farid Pindari</u>
Civil Appeal No. 6336 of 2021
Hon’ble Judges : Hon’ble Mr. Justice Hemant Gupta and Hon’ble Mr. Justice V. Ramasubramanian</td></tr>
</table>

Decided on : 28-10-2021
2021-JX(SC)-0-742

Waqf Act, 1995 Sections 86, 90 and 93

ISSUE:

- Distinction between the jurisdiction of waqf tribunal and civil Court is discussed.

HELD:

A Wakf Tribunal has jurisdiction to adjudicate a dispute even if a property is admitted to be a waqf property.

It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1)

Matters To Be Adjudicated By Waqf Tribunals

The court therefore concluded that 3 types of remedies, namely that of a suit, application or appeal can be filed before the Tribunal, in respect of the following matters:

(i) Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Sections 6(1) & 7(1)];

(ii) A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)];

(iii) Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32(3)];

(iv) Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section

33(4)];

(v) Conditional attachment of the property of a mutawalli or any other person [Section 35(1)];

(vi) Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)];

(vii) Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)];

(viii) Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)];

(ix) Challenge to an order for recovery of money from the mutawalli, as certified by the Auditor [Section 48(2)];

(x) Challenge to an order for delivery of possession of property issued by the Collector [Section 52(4)];

(xi) Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property (Section 54(3)];

(xii) Challenge to the removal of mutawalli from office [Section 64(4)];

(xiii) Challenge to an order superseding the Committee of Management [Section67(4)];

(xiv) Challenge to the removal of a member of the Committee of Management [Section 67(6)];

(xv) Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)];

(xvi) Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)];

(xvii) any dispute, question or other matter relating to a waqf {section 83(1)}

(xviii) any dispute, question or other matter relating to a waqf property {section 83(1)}

(xix) eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property {section 83(1) after its amendment under Act 27 of 2013 }

(xx) Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94].

	No Bar Of Jurisdiction Of Civil Court In A Few Matters The court added that the combined reading of Sections 68(6), 86, 90 and 93 goes to show that the bar of jurisdiction under Section 85 does not apply at least to the following matters, covered by Sections 68(6), 86 and 90: (i) Whenever a District Magistrate passes an order directing the removed mutawalli or removed members of a Committee of Management to deliver possession of the records, accounts and properties of the waqf, to the successor or successor Committee of Management, any person claiming that he has right, title and interest in the properties specified in the order so passed by the Magistrate can approach a civil court; (ii) The Board itself may approach a civil court either to set aside the sale in execution of a decree of civil court, of an immovable property which is a waqf property, or to set aside the transfer of any immovable property made by the mutawalli without the sanction of the Board or to recover possession of the property so sold or transferred, as the case may be; (iii) The mutawalli is also empowered to approach the civil court to recover possession of any immovable property which is a waqf property, but which had been transferred by the previous mutawalli without the sanction of the Board (this is implicit in Section 86); (iv) A waqf property can be brought to sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, but such a proceeding will be void if no notice thereof is given to the Board [this is implicit in Sections 90(2) & (3)].
15.	Badrilal Vs Suresh & Ors Civil Appeal No. 6524 OF 2021 (Arising out of SLP (Civil) No.24886 of 2019) Hon'ble Judges : Hon'ble Mr. Justice Ajay Rastogi and Hon'ble Mr. Justice Abhay S. Oka Decided on : 28-10-2021 2021-JX(SC)-0-744 **Indian Succession Act Section 70**

	ISSUE : Whether unprivileged Will or codicil can be revoked by an agreement? **HELD:** No. Only as per section 70 of Indian Succession Act, a Will cannot be revoked by an agreement and can be revoked only as per the modes specified under Section 70 of the Indian Succession Act. The Court noted that as per S.70, revocation can be made by one of the following methods 1. Execution of another Will or codicil. 2. A writing executed by the testator declaring an intention to revoke the Will and executed in the manner in which an unprivileged Will is required to be executed. 3. By burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. (Para 10)
16.	Ratnam Sudesh Iyer Vs Jackie Kakubhai Shroff Civil Appeal No. 6112 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice M. M. Sundaresh Decided on : 10-11-2021 2021-JX(SC)-0-769 **Section 34 of the Arbitration and Conciliation Act, 1996** **ISSUE:** Whether an arbitration award can be challenged on the grounds of 'patent illegality if the arbitration proceedings had commenced before the 2015 Amendment Award came into force? **HELD:** • The Supreme Court has held that the 2015 amendment to Section 34 of the Arbitration and Conciliation Act 1996 will apply only to Section 34 applications that have been made after the date of the amendment. • Section 34 as amended will apply only to Section 34 applications that

	have been made to the Court on or after 23.10.2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that. • While the plea of the award being vitiated by patent illegality is available for an arbitral award, such an award has to be a purely domestic award, i.e. the plea of patent illegality is not available for an award which arises from international commercial arbitration post the amendment. • The Court held that the pre-2015 legal position would prevail and that the respondent could challenge the domestic award in an international commercial arbitration on the ground of patent illegality.
17.	Kurvan Ansari alias Kurvan Ali & Anr. Vs Shyam Kishore Murmu & Anr. Civil Appeal No.6902 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice R. Subhash Reddy and Hon'ble Mr. Justice Harishikesh Roy Decided on : 16-11-2021 2021-JX(SC)-0-778 **Section 163-A of the Motor Vehicles Act** **ISSUE:** M.V.ACT, 1988, unamended Schedule section 163-A. **HELD:** • That, despite repeated directions, Schedule-II of the Motor Vehicles Act, 1988 has not been amended yet. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable. • In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15', as prescribed in Schedule-II for the claims under Section 163-A of the Motor Vehicles Act 1988, it comes

	to Rs.3,75,000/- (Rs.25,000/- x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation: Rs. 4,70,000-00
18.	Bajaj Allianz General Insurance Company Private Ltd. Vs. Union of India WPC 534/2020 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice MM Sundresh Decided on : 16-11-2021 **Motor Vehicle Act** **ISSUE:** Slew of directions are issued regarding disbursement of compensation and expeditious adjudication of motor accident claims by online mechanism. **HELD:** A. format for payment advised for remittance of compensation has been devised and followed in the Madras High Court and the Rajasthan High Court and the same is extracted from the judgment of the Madras High Court in Divisional Manager vs. Rajesh, 2016 SCC Online Mad. 1913, dated 11.03.2021. We thus direct that the same format will be followed across the country; B. Interest On Disbursement Of Compensation To Beneficiaries To Be Enured To Their Benefit. C. Insurance Company/Depositor To Communicate Factum Of Deposit Expeditiously To MACT With Copy To Beneficiary For putting the insurance company's liability to an end, directions were also issued to the insurance company/depositor to communicate the factum of deposit forthwith/expeditiously to the concerned MACT with a copy to the beneficiary on deposit of amount. D. District Medical Board To Follow Guidelines Issued By Ministry of Social Justice and Empowerment E. Aspect Of Disparity In TDS Certificate Can Be Redressed By Directions To Legal Services Authority Or Any Agency/Mediation Group To Assist

	The Claimant In Obtaining A Pan Card And Amending The Formats Across The Country is income tax assessee or not, and has a Pan Card or not and in case has a Pan Card to provide the PAN No. and in case the application is so pending, to provide the application/Reference No, The bench directed for suitably amending the formats of the applications across the country to facilitate this process. F. Insurance Companies To Develop Common Mobile App Within 2 Months From Date Of Order G. Alternative Mechanism To Ensure Availability Of Sufficient Pool With The State Corporations.
19.	Acqua Borewell Pvt. Ltd. Vs. Swayam Prabha & Ors. Civil Appeal Nos. 6779-6780 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah Decided on : 17-11-2021 2021-JX(SC)-0-788 **Code of Civil Procedure Order 39 Rule 1 & 2** **ISSUE:** Whether an injunction can be issued against the third party without impleading it in suit? **HELD:** The Hon'ble Supreme Court has held that injunction orders with respect to a suit property cannot be passed in detriment to the interest of third parties who are directly affected by it, without impleading them or giving them an opportunity of being heard.
20.	Kewal Krishan Vs Rajesh Kumar & Ors. Etc. Civil Appeal Nos. 6989-6992 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice Abhay S. Oka and Hon'ble Mr. Justice Ajay Rastogi Decided on : 22-11-2021 2021-JX(SC)-0-812 **Section 54 of the TP Act**

	ISSUE: Whether the Sale without price is void or voidable? **HELD:** Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties.
21.	Gyan Prakash Vs M/s Titan Industries Limited C.A. No.-006876-006876/2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah, Hon'ble Mrs. Justice B.V. Nagarathna Decided on : 22-11-2021 2021-JX(SC)-0-809 **Section 33 Arbitration and Conciliation Act, 1996** **ISSUE:** Can arbitrator under section 33 Arbitration and Conciliation Act, 1996 modify original award? **HELD:** No. Only arithmetical or clerical error. The original award was passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made and therefore subsequently allowing the application under Section 33 of the 1996 Act to modify the original award in exercise of powers under Section 33 of the 1996 Act is not sustainable. Only in a case of arithmetical and/or clerical error, the award can be modified and such errors only can be corrected.
22.	Neha Tyagi Vs Lieutenant Colonel Deepak Tyagi Civil Appeal No. 6374 OF 2021

	Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice Sanjiv Khanna Decided on : 01-12-2021 2021-JX(SC)-0-850 **Hindu Marriage Act** **ISSUE:** Liability of and responsibility of parent to maintain child **HELD:** The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority, the Supreme Court observed in a judgment dissolving marriage of a couple. The court added that a child should not be made to suffer due to disputes between his parents. The husband cannot be absolved from his liability and responsibility to maintain his son till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority. It also cannot be disputed that the son has a right to be maintained as per the status of his father."
23.	Bangalore Development Authority Vs N. Nanjappa and another Civil Appeal Nos. 6996-6997 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mrs. Justice B. V. Nagarathna Decided on : 06-12-2021 2021-JX(SC)-0-868 **Section 47 of C.P.C and Order 21 Rule 97, 99, 101** **ISSUE:** Principle regarding Which Question to be determined by executing court under Section 47 of C.P.C and order 21 Rule 97,99, 101 **HELD:** As per Order XXI Rule 101 CPC, all questions including questions

	relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 CPC and relevant to the adjudication of the application shall have to be determined by the Court dealing with the application. For that a separate suit is not required to be filed. Order XXI Rule 97 is with respect to resistance/obstruction to possession of immovable property.
24.	Rasmita Biswal & Ors. Vs Divisional Manager, National Insurance Company Ltd. And Anr. Civil Appeal No. 7549 of 2021 (Arising out of S.L.P.(C)No.23177 of 2018) Hon'ble Judges : Hon'ble Shri Justice S. Abdul Nazeer and Hon'ble Shri Justice Krishna Murari Decided on : 08-12-2021 2021-JX(SC)-0-879 **Motor Vehicle Act Section 166** **ISSUE:** 10% rise in compensation under the conventional heads has to be given every three years. **HELD:** In Pranay Sethi case, this Court has awarded a total sum of Rs.70,000/under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. The said Judgment of the Constitution Bench was pronounced in the year 2017. Therefore, the claimants are entitled to 10% enhancement. Rs.16,500/- is awarded towards loss of estate and conventional expenses and Rs.44,000/- is awarded towards spousal consortium.
25.	Murthy & Ors Vs. C. Saradambal & Ors. CA 4270 Of 2010 Hon'ble Judges : Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mrs. Justice B V Nagarathna Decided on : 10-12-2021 2021-JX(SC)-0-886

	Section 68 of the Indian Evidence Act, 1872 & Section 63 of the Indian Succession Act, 1925 **ISSUE:** Various suspicious circumstances illustrated by the Hon'ble Supreme Court in proving the Will. **HELD:** • The Supreme Court observed that onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. • Merely because Will was a registered one, that by itself would not mean that the statutory requirements of proving the will need not be complied with. • Genuineness of Will must be proved by proving intention of testator to make testament and for that, all steps which are required to be taken for making a valid testament must be proved by placing concrete evidence before Court. While reversing or modifying judgment of a Trial Court, it is duty of Appellate Court to reflect in its judgment, conscious application of mind on findings recorded supported by reasons, on all issues dealt with, as well as contentions put forth, and pressed by parties for decision of Appellate Court. • The court noted that in Bharpur Singh and others v. Shamsher Singh [2009 (3) SCC 687], at Para 23, this Court has noted the following suspicious circumstance (i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature. (ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time. (iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason. (iv) The dispositions may not appear to be the result of the testator's free will and mind. (v) The propounder takes a prominent part in the execution of the will. (vi) The testator used to sign blank papers. (vii) The will did not see the light of the day for long. (viii) Incorrect recitals of essential facts.
26.	Soman Vs. Inland Waterways Authority Of India & Anr. Civil Appeal No. 2825 Of 2011 Hon'ble Judges : Hon'ble Mr. Justice Ajay Rastogi and Hon'ble Mr. Justice

	Abhay S. Oka Decided on : 10-12-2021 2021-JX(SC)-0-895 **Land Acquisition Act Section 18(1)** **ISSUE:** Principle regarding quantum of fixation of market value in Acquisition of land. **HELD:** Fixation of market value in a Reference under Section 18(1) of L.A. Act necessarily involves some guesswork – However, guesswork is required to be made by adopting one of well-recognized methods, such as comparison method or capitalization method.
27.	Beereddy Dasaratharami Reddy Vs V. Manjunath And Another Civil Appeal No. 7037 Of 2021 (Arising Out Of Special Leave Petition (Civil) No. 13853 OF 2021) Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice Sanjiv Khanna Decided on : 13-12-2021 2021-JX(SC)-0-899 **Hindu Succession Act** **ISSUE:** • Whether a coparcener can challenge sale of HUF property made by Karta prior to alienation? • Whether in absence of framing specific issue, can suit trial be considered vitiated? **HELD:** • Omission to frame an issue as required under Order XIV Rule 1 of Code of Civil Procedure, 1908 does not vitiate trial where parties go to trial fully knowing rival case and lead evidence in support of their respective contentions and to refute contentions of other side. • Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the

	interest of all undivided members of the family even when they are minors or widows • A joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. • A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The Karta enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.
28.	IL and FS Engineering and Constructions Company Ltd. Vs M/s. Bhargavarama Constructions & Ors. Civil Appeal No.7639 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mrs. Justice B. V. Nagarathna. Decided on : 16-12-2021 2021-JX(SC)-0-901 **Code of Civil Procedure Order 1 Rule 1** **ISSUE:** Plaintiff is *dominus litis.* Against his will defendant can't be joined. **HELD:** It is required to be noted that as such the suit was filed by the appellant original plaintiff and as per the settled proposition of law, the plaintiff is

	the *dominus litis.* Against the will of plaintiff, defendant cannot join any third party as a party to litigation.
29.	M/S Star Paper Mills Limited Vs M/S Beharilal Madanlal Jaipuria Ltd. & Ors. Civil Appellate Jurisdiction Civil Appeal No. 4102 OF 2013 Hon'ble Judges : Hon'ble Mr. Justice Hemant Gupta and Hon'ble Mr. Justice V. Ramasubramanian Decided on : 16-12-2021 2021-JX(SC)-0-906 **Evidence Act Section 101, 102** **ISSUE:** Principle regarding burden of proof and onus of proof regarding sham, bogus & fictitious claim. **HELD:** • Onus to prove that a transaction is sham, bogus and fictitious is on the person who makes such a claim. • The examination of the author of a document is not required, if they had not denied their signature on the document, but only pleaded duress in execution of the same.

JUDGMENTS IN CRIMINAL MATTER BY HON'BLE SUPREME COURT OF INDIA

<table>
<tr><th>Sr. No.</th><th>Details of Case</th></tr>
<tr><td>1.</td><td>Geo Varghese Vs. State of Rajasthan
Criminal Appeal No. 1164 of 2021
Hon'ble Judges : Hon'ble Mr. Justice S. Abdul Nazeer and Hon'ble Mr. Justice Krishna Murari
Decided on : 05-10-2021
2021-AIR(SC)-0-4764

Indian Penal Code Section 306

ISSUE:
A simple reprimand for indiscipline Act can be considered as abetment to the suicide and attract offence of abetment of suicide under Section 306 of IPC.

HELD:
The Hon'ble Supreme Court said, our answer to the said question is 'No'. A teacher or school authorities cannot shut their eyes to any indiscipline act of a student It is not only a moral duty of a teacher but one of the legally assigned duty under Section 24 (e) of the Right of Children to Free and Compulsory Education Act, 2009 to hold regular meetings with the parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other act or relevant information about the child.</td></tr>
<tr><td>2.</td><td>Goutam Joardar Vs. State of West Bengal
Criminal Appeal No. 1181 of 2019
Hon'ble Judges : Hon'ble Mr. Justice Uday Umesh Lalit, Hon'ble Mr. Justice S. Ravindra Bhat and Hon'ble Ms. Justice Bela M. Trivedi
Decided on : 07-10-2021
2021-JX(SC)-0-717

Indian Evidence Act

ISSUE:</td></tr>
</table>

	Whether the delay in recording the statements of eye-witnesses can be result in rejection of their testimonies? **HELD:** No, It is true that there was some delay in recording the statements of the concerned eye-witnesses but mere factum of delay by itself cannot result in rejection of their testimonies. The material on record definitely establishes the fear created by the accused. If the witnesses felt terrorised and frightened and did not come forward for some time, the delay in recording their statements stood adequately explained. Nothing has been brought on record to suggest that during the interregnum, the witnesses were carrying on their ordinary pursuits.
3.	Sanatan Pandey Vs. State of Uttar Pradesh SLP (Crl) 7358 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mr. Justice A. S. Bopanna Decided on : 07-10-2021 LL 2021 SC 568 BAIL **ISSUE:** Whether the absconding accused can be released on anticipatory bail? **HELD:** The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr.P.C. has been issued, thus while upholding an High Court order refusing anticipatory bail.
4.	Satender Kumar Antil Vs Central Bureau Of Investigation & Anr. Special Leave to Appeal (Criminal) No. 5191 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice M. M. Sundresh Decided on : 07-10-2021 2021-JX(SC)-0-830

ISSUE:

Principles regarding regular bail.

HELD:

CATEGORIES/TYPES OF OFFENCES

A. Offences punishable with imprisonment of 7 years or less not falling in category B & D.
B. Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
C. Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.
D. Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called. (No need to forward such an accused along with the chargesheet ***(Siddharth Vs. State of UP, 2021 SCC online SC 615)***

CATEGORY A

a) After filing of chargesheet/complaint taking of cognizance a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail

	till the bail application is decided. **CATEGORY B/D** On appearance of the accused in Court pursuant to process issued bail application to be decided on merits. **CATEGORY C Same as Category B & D** with the additional condition of compliance of the provisions of Bail uner NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc.? Needless to say that the category A deals with both police cases and complaint cases.
5.	Ashutosh Ashok Parasrampuriya Vs. Gharrkul Industries Pvt. Ltd., Criminal Appeal No(S). 1206 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice Ajay Rastogi and Hon'ble Mr. Justice Abhay S. Oka Decided on : 08-10-2021 2021-AIR(SC)-0-4898 **Section 138, 141 of the Negotiable Instruments Act** **ISSUE:** Whether the role of the accused in the capacity of the Director of the defaulter company makes them vicariously liable for the activities of the defaulter Company as defined under Section 141 of the NI Act? In that perception, whether the appellant had committed the offence chargeable under Section 138 of the NI Act? **HELD:** It is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. if, at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company and and if statutory compliance of Section 141 of the NI Act has been made, the High Court cannot quash the proceedings against the person accused under Section 482 CrPC. The same judgment then went on to explain the requirements under

	Section 141 of the NI Act: (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied. (b) Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases. (c) The managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under subsection (2) of Section 141.
6.	Prashant Singh Rajput Versus The State of Madhya Pradesh and Anr Criminal Appeal No. 1202 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Dr. Dhananjaya Y. Chandrachud and Hon'ble Mrs. Justice B. V. Nagarathna Decided on : 08-10-2021 2021-AIR(SC)-0-5004 **Cancellation of Bail** **ISSUE:** Whether Bail can be cancelled, if court ignored material aspects including the nature and gravity of offence?

	HELD: Anticipatory bail granted ignoring material aspects including the nature and gravity of the offence is liable to be cancelled.
7.	M/s Gimpex Private Limited Vs Manoj Goel Criminal Appeal No. 1068 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Dr. Dhananjaya Y. Chandrachud, Hon'ble Mr. Justice Vikram Nath, Hon'ble Mrs. Justice B.V. Nagarathna Decided on : 08-10-2021 2021-JX(SC)-0-657 **Negotiable Instruments Act 1881 – Section 139** **ISSUE:** Whether a cheque pursuant to a settlement agreement arises out of a legal liability would be dependent on various factors, such as the underlying settlement agreement, the nature of the original transaction? **HELD:** • **Liability arising from the settlement agreement :** Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law • Once the complainant discharges the burden of proving that the instrument was executed by the accused; the presumption under Section 139 shifts the burden on the accused. The expression "unless the contrary is proved" would demonstrate that it is only for the accused at the trial to adduce evidence of such facts or circumstances on the basis of which the burden would stand discharged. These are matters of evidence and trial.
8.	Nasib Singh Versus The State of Punjab & Anr. Criminal Appeal Nos. 1051-1054 of 2021 Hon'ble Judges : Hon'ble Dr. Justice Dhananjaya Y. Chandrachud, Hon'ble Mr. Justice Vikram Nath and Hon'ble Mrs. Justice B.V. Nagarathna Decided on : 08-10-2021 2021-JX(SC)-0-654

ISSUE:

- In what circumstances, appellate Court can direct re-trial? Issue is thoroughly discussed.
- Discussion on joint trial and separate trial

HELD:

Yes, The court observed that re-trial can be directed only in 'exceptional' circumstances to avert a miscarriage of justice. If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out, The following are the principles formulated by the Court on Retrial by Criminal Court :

(i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii)A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv)It is not sufficient if the accused/ prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out;

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :

a) The trial court has proceeded with the trial in the absence of

jurisdiction;

b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade

Three significant principles on joint trials:

(i) A separate trial is not contrary to law even if a joint trial for the offences along with other offences is permissible;

(ii) The possibility of a joint trial has to be decided at the beginning of the trial and not on the basis of the result of the trial; and

(iii) The true test is whether any prejudice has been sustained as a result of a separate trial. In other words, a retrial with a direction of a joint trial would be ordered only if there is a failure of justice.

- **Difference between the joint trial and separate trials, the following principles can be formulated:**

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

(ii) While applying the principles enunciated in Sections 218 - 223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely,

(i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or

(ii) whether conducting a joint/separate trial would cause judicial delay.

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

(iv) Since the provisions which engraft an exception use the phrase 'may' with reference to conducting a joint trial, a separate trial is usually

	not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice; and (v) A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be.
9.	State of Gujarat & Anr. Versus Narayan @ Narayan Sai @ Mota Bhagwan Asaram @ Asumal Harpalani Criminal Appeal No. 1159 of 2021 (Arising out of SLP (Crl.) No. 5699 of 2021) Hon'ble Judges : Hon'ble Dr. Justice D.Y. Chandrachud and Hon'ble Mrs. Justice B.V. Nagarathna Decided on : 20-10-2021 2021-AIR(SC)-0-5096 **Bail & Rules 3 and 4 of the Bombay Furlough and Parole Rules** **ISSUE:** • What consideration should the Court pay while deciding parole and furlough in regards to accused being habitual offender? • The Differences between 'furlough' and 'parole' is discussed. **HELD:** • The Bombay Furlough and Parole Rules were made pursuant to Section 59 of the Prisons Act 1894 and are applicable in the State of Gujarat. Under sub Section 5 of Section 59 of the Prisons Act 1894, the State Government may make rules for the award of marks and shortening of sentences. Sub-Section 28 of Section 59 also grants power to the State Governments to make rules for carrying out the purposes of the Act. • It is evident that the Bombay Furlough and Parole Rules do not confer a legal right on a prisoner to be released on furlough. The grant of furlough is regulated by Rule 3 and Rule 4. While Rule 3 provides the eligibility criteria for grant of furlough for prisoners serving different lengths of imprisonment, Rule 4 imposes limitations. The use of the expression "may be released" in Rule 3

	indicates the absence of an absolute right. This is further emphasised in Rule 17 which states that said Rules do not confer a legal right on a prisoner to claim release on furlough. Thus the grant of release on furlough is a discretionary remedy circumscribed by Rules 3 and 4 extracted above. • The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. • The principles are thus: (i) Furlough and parole envisage a short-term temporary release from custody; (ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason; (iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society; (iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough; (v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.
10.	Prem Shankar Prasad Vs The State Of Bihar Criminal Appeal No.1209 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah & Hon'ble Mr. Justice A. S. Bopanna Decided on : 21-10-2021 2021-AIR(SC)-0-5125 **Code of Criminal Procedure Section 438 Anticipatory Bail** **ISSUE:** Can Anticipatory Bail be granted to absconder accused? **HELD:** If anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr.PC, he is not entitled to relief of anticipatory

	bail.
11.	State of Madhya Pradesh Vs Mahendra Alias Gol CrA 1827 OF 2011 Hon'ble Judges : Hon'ble The Chief Justice, Hon'ble Mr. Justice Surya Kant, Hon'ble Ms. Justice Hima Kohli Decided on : 25-10-2021 2021-AIR(SC)-0-5242 **Section 376(2)(f), 354 read with Section 511 of Indian Penal Code** **ISSUE:** What could be preparation to commit the offence and actual commission of offence is explained in background of the facts of the case filed for rape under Section 376(2)(f) of the IPC? **HELD:** The act of the accused of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the prosecutrix and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the accused were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence. Distinction between penetration and attempt to rape, the court made these observations: • What constitutes an `attempt' is a mixed question of law and facts Attempt' is the direct movement towards the commission after the preparations is over. It is essential to prove that the attempt was with intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime

	stands committed for all intents and purposes. • There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. `Attempt' starts where `preparation' comes to an end, though it Page | 9 falls short of actual commission of the crime. (Para 12) • It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, *mens rea* (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said Act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission. (Para 11) • However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanors shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws. (Para 13)
12.	Shantaben Bhurabhai Bhuriya vs Anand Athabhai Chaudhari & Ors. Crl.A. No.-000967-000967 / 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice

A.S. Bopanna
Decided on : 26-10-2021
2021-AIR(SC)-0-5368

Sections 452, 323, 325, 504, 506(2) and 114 of the Indian Penal Code and under Section 3(1)(x) & section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

ISSUE:
Whether taking cognizance of offence by magistrate for offences under Atrocities Act 1989 would vitiate the proceedings in view of second proviso to Section 14 of the Atrocities Act which was inserted by Act 1 of 2016 w.e.f. 26.1.2016?

HELD:

- No, on fair reading of Sections 207, 209 and 193 of the Code of Criminal Procedure and insertion of proviso to Section 14 of the Atrocities Act by Act No.1 of 2016 w.e.f. 26.1.2016, we are of the opinion that on the aforesaid ground the entire criminal proceedings cannot be said to have been vitiated. Second proviso to Section 14 of the Atrocities Act which has been inserted by Act 1 of 2016 w.e.f. 26.1.2016 confers power upon the Special Court so established or specified for the purpose of providing for speedy trial also shall have the power to directly take cognizance of the offences under the Atrocities Act.
- Merely because now further and additional powers have been given to the Special Court also to take cognizance of the offences under the Atrocities Act and in the present case merely because the cognizance is taken by the learned Magistrate for the offences under the Atrocities Act and thereafter the case has been committed to the learned Special Court, it cannot be said that entire criminal proceedings have been vitiated and same are required to be quashed and set aside.
- The accused is to be tried for the offences under the Atrocities Act by Special Court / Exclusive Special Court constituted under Section 14 of the Atrocities Act. Even those rights are also available to the victim for the offences under the Atrocities Act in which the trial is by the

	Special Court/Exclusive Special Court constituted under Section 14 of the Atrocities Act. Therefore, unless and until those rights which flow from Section 14 of the Atrocities Act are affected, the accused cannot make any grievance and it cannot be said that taking cognizance by the learned Magistrate for the offences under the Atrocities Act and thereafter to commit the case to the Special Court, he is prejudiced.
13.	Sripati Singh (since deceased) ThroughHis Son Gaurav Singh Versus The State of Jharkhand & Anr. Criminal Appeal Nos. 1269-1270 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mr. Justice A. S. Bopanna Decided on : 28-10-2021 2021-AIR(SC)-0-5732 **NI Act Section 138,139** **ISSUE:** • Whether a cheque given towards the security attracts penal action under Section 138 of NI Act? **HELD:** • A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfillment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

	• When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the installment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. • These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.
14.	The State of Jammu and Kashmir Vs Dr Saleem ur Rehman Criminal Appeal No. 1170 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mr. Justice A. S. Bopanna Decided on : 29-10-2021 2021-JX(SC)-0-747 **Section 5(1)(d) r/w 5(2) of the J&K Prevention of Corruption Act, 2006**

	ISSUE: Whether preliminary enquiry under Prevention of Corruption Act before registering FIR is permissible? **HELD:** • The Supreme Court has observed that whatever enquiry is conducted at the stage of Preliminary Enquiry, by no stretch of imagination, can be considered as investigation under the code of criminal procedure which can only be after registration of the FIR. The Court also observed that merely because some time is taken for conducting preliminary enquiry that cannot be a ground to quash the criminal proceedings for an offence under the Prevention of Corruption Act. • There shall not be any prejudice caused to the accused at the stage of holding Preliminary Enquiry which as observed hereinabove shall only be for the purpose of satisfying whether any prima facie case is made out with respect to the allegations made in the complaint which requires further investigation after registering the FIR or not. Therefore, the High Court has materially erred in holding and declaring Clause 3.16 as ultra vires
15.	AT Mydeen Vs Assistant Commissioner, Customs Department CrA 1306 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice D. Y. Chandrachud, Hon'ble Mr. Justice Vikram Nath and Hon'ble Mrs. Justice B. V. Nagarathna Decided on : 29-10-2021 2021-JX(SC)-0-754 **Indian Evidence Act Section 33, Cr.P.C. Section 205, 273, 299** **ISSUE:** Whether the evidence recorded in a separate trial of co-accused can be read and considered by the appellate court in a criminal appeal arising out of another separate trial conducted against another accused, though for the commission of the same offence. **HELD:** • It is fairly well settled that each case has to be decided on its own

merit and the evidence recorded in one case cannot be used in its cross case. Whatever evidence is available on the record of the case only that has to be considered. The only caution is that either the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. However, we are not concerned with cross-cases but are concerned with an eventuality of two separate trials for the commission of the same offence (two complaints for the same offence) for two sets of accused, on account of one of them absconding.

- The evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence.
- Now, merely because the seven witnesses produced by the prosecution were the same in both the cases would not mean that the evidence was identical and similar because in the oral testimony, not only the examination-in-chief but also the cross- examination is equally important and relevant, if not more. Even if the examination-in-chief of all the seven witnesses in both the cases, although examined in different sequence, was the same, there could have been an element of some benefit accruing to the accused in each case depending upon the cross-examination which could have been conducted maybe by the same counsel or a different counsel. The role of each accused cannot be said to be the same. The same witnesses could have deposed differently in different trials against different accused differently depending upon the complicity or/and culpability of such accused. All these aspects were to be examined and scrutinised by the Appellate Court while dealing with both the appeals separately and the evidence recorded in the respective trials giving rise to the appeals
- The provisions of law and the essence of case-laws, as discussed above, give a clear impression that in the matter of a criminal trial against any accused, the distinctiveness of evidence is paramount in light of accused's right to fair trial, which encompasses two important facets along with others i.e., firstly, the recording of evidence in the presence of accused or his pleader and secondly, the

	right of accused to cross-examine the witnesses. These facts are, of course, subject to exceptions provided under law. In other words, the culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross-examination, unless the case falls under exceptions of law • In the Evidence Act, 1872, section 33 provides relevancy of certain evidence for proving, the truth of facts stated therein, in any subsequent proceeding, according to which evidence given by a witness is treated to be relevant in a subsequent proceeding or at a later stage in the same proceeding under certain eventualities.
16.	Hariram Bhambhi Vs Satyanarayan Criminal Appeal No. 1278 of 2021 Hon'ble Judges : Hon'ble Mr. Justice D. Y. Chandrachud and Hon'ble Mrs. Justice B. V. Nagarathna Decided on : 29-10-2021 2021-AIR(SC)-0-5610 **Sub-Sections (3) and (5) of 15A of the SC/ST Act** **ISSUE:** Whether the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A (3) of SC-ST (Prevention of Atrocities) Act at time of bail in order to provide them an opportunity of being heard, is mandatory or directory? **HELD:** • The Hon'ble Supreme Court observed that requirement under Section 15A of SC-ST (Prevention of Atrocities) Act of issuing notice of a court proceeding to a victim or a dependent is mandatory. • The court observed that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. • This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in

	the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.
17.	Ganesan Vs State Rep. By Station House Officer Criminal Appeal No.903 Of 2021 Hon'ble Judges : Hon'ble Dr. Justice Dhananjaya Y. Chandrachud and Hon'ble Mr. Justice M. R. Shah Decided on : 29-10-2021 2021-JX(SC)-0-784 **Section 397 of the Indian Penal Code** **ISSUE:** • Whether offence of robbery/dacoity can be attracted without use of any deadly weapon at the time of committing offence? • Whether to attract offence of robbery/dacoity is it necessary to try five or more offenders together or involvement of five or more offender in commission of offence is sufficient? **HELD:** • The Supreme Court has observed that an offender who had not used any deadly weapon at the time of committing robbery/dacoity cannot be convicted under Section 397 of the Indian Penal Code. The use of deadly weapon by one offender at the time of committing robbery/dacoity cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who has not used any deadly weapon. • Thus, as per the law laid down by this Court in the aforesaid two decisions the term 'offender' under Section 397 IPC is confined to the 'offender' who uses any deadly weapon and use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who has not used any deadly weapon. Even there is distinction and difference between Section 397 and Section 398 IPC. The word used in Section 397 IPC is 'uses' any deadly weapon and the word used in Section 398 IPC is 'offender is armed with any deadly weapon'. Therefore, for the purpose of attracting Section 397

	IPC the 'offender' who 'uses' any deadly weapon Section 397 IPC shall be attracted. • Merely because some of the accused absconded and less than five persons came to be tried in the trial, it cannot be said that the offence under Section 391 IPC punishable under Section 395 IPC is not made out. Once it is found no evidence that five or more persons conjointly committed the offence of robbery or attempted to commit the robbery a case would fall under Section 391 IPC and would fall within the definition of 'dacoity'. Therefore, in the facts and circumstances, the accused can be convicted for the offence under Section 391 IPC punishable under Section 395 IPC.
18.	Irappa Siddappa Murgannavar Vs State Of Karnataka Criminal Appeal Nos. 1473-1474 Of 2017 Hon'ble Judges : Hon'ble Mr. Justice Sanjiv Khanna and Hon'ble Ms. Justice Bela M. Trivedi Decided on : 08-11-2021 2021-JX(SC)-0-764 **Sections 302, 376, 364, 366A and 201 of the IPC** **ISSUE:** Sentencing policy in regards to POCSO Cases (rape) is explained. **HELD:** • The Supreme Court observed that the low age of the rape victim is not considered as the only or sufficient factor for imposing a death sentence. • There is no doubt that the Accused has committed an abhorrent crime, and for this we believe that incarceration for life will serve as sufficient punishment and penitence for his actions, in the absence of any material to believe that if allowed to live he poses a grave and serious threat to the society, and the imprisonment for life in our opinion would also ward off any such threat. We believe that there is hope for reformation, rehabilitation, and thus the option of imprisonment for life is certainly not foreclosed and therefore acceptable.

19.	Bhupesh Rathod Vs Dayashankar Prasad Chaurasia and another Criminal Appeal No.1105/2021 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice MM Sundersh Decided on : 10-11-2021 2021-JX(SC)-0-761 **Section 138, 142, 141 of the Negotiable Instruments Act** **ISSUE :** Whether complaint filed on behalf of a company under Section 138 of the Negotiable Instruments Act is liable to be dismissed for the sole reason that it stated the name of the Managing Director first followed by the company's name? **HELD:** • A complaint filed on behalf of a company under Section 138 of the Negotiable Instruments Act is not liable to be dismissed for the sole reason that it stated the name of the Managing Director first followed by the company's name. • There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the Company. • It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.
20.	Pradeep S. Wodeyar Vs The State of Karnataka Criminal Appeal No. 1288 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Dr. Dhananjaya Y. Chandrachud, Hon'ble Mr. Justice Vikram Nath and Hon'ble Mrs. Justice B. V. Nagarathna Decided on : 11-11-2021

ISSUE:

- Whether in MMDR Act taking of cognizance directly by special Court without case being committed vitiates the trial or it is mere irregularity?

HELD:

The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings.

85. In view of the discussion above, we summarise our findings below:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in Gangula Ashok (supra) was distinguished in Rattiram (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to

prolong proceedings, among others;

(iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;

(v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no failure of justice'under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;

(vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and

(x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence

	as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a prima facie case against A-1, which is sufficient to arraign him as an accused at this stage.
21.	Attorney General for India Vs Satish and another Criminal Appeal 1410 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Uday Umesh Lalit, Hon'ble Mr. Justice S Ravindra Bhat and Hon'ble Ms. Justice Bela Trivedi Decided on : 18-11-2021 2021-JX(SC)-0-793 **Section 7 of the POCSO Act** **ISSUE:** The word "sexual intent" stated in Section 7 of the POCSO Act is explained. **HELD:** • The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin to skin" contact with the child" • On the interpretation of S.7 of the POCSO Act and the meaning of the terms 'touch' and 'physical contact', the judgment refers to the dictionary meaning of the terms and notes that both the said words have been used interchangeably in S.7 by the Legislature. It further holds that the most important ingredient for constituting the offence of sexual assault is 'sexual intent' and not the 'skin-to-skin' contact with child. • Now, from the bare reading of Section 7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the Section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration. • The word "Touch" as defined in the Oxford Advanced Learner's Dictionary means "the sense that enables you to be aware of things and what are like when you put your hands and fingers

	on them”. • The word “physical“ as defined in the Advanced Law Lexicon, 3rd Edition, means “of or relating to body………..” and the word “contact” means “the state or condition of touching; touch; the act of touching……”. Thus, having regard to the dictionary meaning of the words “touch” and “physical contact”, the Court finds much force in the submission of Ms. Geetha Luthra, learned senior Advocate appearing for the National Commission for Women that both the said words have been interchangeably used in Section 7 by the legislature. The word “Touch” has been used specifically with regard to the sexual parts of the body, whereas the word “physical contact” has been used for any other act. Therefore, the act of touching the sexual part of body or any other act involving physical contact, if done with “sexual intent” would amount to “sexual assault” within the meaning of Section 7 of the POCSO Act. • The surrounding circumstances like the accused having taken the victim to his house, the accused having lied to the mother of the victim that the victim was not in his house, the mother having found her daughter in the room on the first floor of the house of the accused and the victim having narrated the incident to her mother, were proved by the prosecution, rather the said facts had remained unchallenged at the instance of the accused. Such basic facts having been proved by the prosecution, the Court was entitled to raise the statutory presumption about the culpable mental state of the accused as permitted to be raised under Section 30 of the said Act. The said presumption has not been rebutted by the accused, by proving that he had no such mental state. The allegation of sexual intent as contemplated under Section 7 of the Act, therefore, had also stood proved by the prosecution. The Court, therefore, is of the opinion that the prosecution had duly proved not only the sexual intent on the part of the accused but had also proved the alleged acts that he had pressed the breast of the victim, attempted to remove her salwar and had also exercised force by pressing her mouth. All these acts were the acts of “sexual assault” as contemplated under section 7, punishable under Section 8 of the POCSO Act.

	• So far as the case of the other accused-Libnus is concerned, the High Court vide its impugned judgment and order, while maintaining the conviction of the accused for the offences punishable under sections 448 and 354-A(1)(i) of the IPC read with Section 12 of the POCSO Act, has acquitted the accused for the offence under Sections 8 and 10 of the POCSO Act. Pertinently the High Court while recording the finding that the prosecution had established that the accused had entered into the house of the prosecutrix with the intention to outrage her modesty, also held that the acts "holding the hands of the prosecutrix" or "opened the zip of the pant" did not fit in the definition of sexual assault.. When the alleged acts of entering the house of the prosecutrix with sexual intent to outrage her modesty, of holding her hands and opening the zip of his pant showing his penis, are held to be established by the prosecution, there was no reason for the High Court not to treat such acts as the acts of "sexual assault" within the meaning of Section 7 of the POCSO Act.
22.	Rishipal Singh Solanki Vs State Of Uttar Pradesh & Ors. Criminal Appeal No.1240 of 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mrs. Justice B.V. Nagarathna Decided on : 18-11-2021 2021-JX(SC)-0-795 **Juvenile Justice (Care and Protection of Children) Act 2015** **ISSUE:** Whether as per the provision of JJ Act 2015, age recorded by the JJB or by the CWC of the person so brought before it will be deemed to be the true age of the person? **HELD:** Yes, Principles of determination of juvenility : (i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of

such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iii) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iv) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(v) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(vi) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(vii) The said presumption is however not conclusive proof of the age

of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(viii) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(ix) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(x) This Court has observed that a hyper technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(xi) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(xii) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(xiii) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and

	authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions. (xiv) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.
23.	Surinder Singh Vs State Criminal Appeal No. 2373 Of 2010, Hon'ble Judges : Hon'ble The Chief Justice, Hon'ble Mr. Justice Surya Kant and Hon'ble Ms. Justice Hima Kohli Decided on : 26-11-2021 2021-JX(SC)-0-838 **Section 307 IPC & Section 27 of the Arms Act** **ISSUE:** Can court consider factum of injury as a mitigating factor while deciding sentence in conviction under section 307 of IPC? **HELD:** • The awarding of just and proportionate sentence remains the solemn duty of the Courts and they should not be swayed by non relevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as 'relevant' or 'non-relevant' will depend on the facts and circumstances of each case, and no straight jacket formula can be laid down for the same. Explaining the principles of sentencing policy, the held that while there are practical difficulties in achieving absolute consistency in regards to sentencing, the awarding of just and proportionate sentence remains the solemn duty of the Courts and they should not be swayed by non relevant factors while deciding the quantum of sentence. • It is significant to note that 'motive' is distinct from 'object and means' which innervates or provokes an action. Unlike 'intention', 'motive' is not the yardstick of a crime. A lawful act with an ill motive

	would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing 'motive' is akin to an exercise of manual brain-mapping. At times, it becomes herculean task to ascertain the traces of a 'motive'. • We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eye witnesses to the occurrence of a malfeasance are on record.
24.	Phool Singh Vs State of Madhya Pradesh CrA 1520 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice Sanjiv Khanna Decided on : 01-12-2021 2021-JX(SC)-0-852 **Section 376 Indian Penal Code** **ISSUE:** Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix? **HELD:** The Supreme Court reiterated that a rape accused can be convicted on sole testimony of prosecuterix if she is found to be credible and trustworthy. The prosecutrix has fully supported the case of the prosecution and has been consistent right from the very beginning. There can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.
25.	Mohd Zahid Vs State through NCB Criminal Appeal No.1457 OF 2021 Hon'ble Judges : Hon'ble Mr. Justice M. R. Shah and Hon'ble Mrs. Justice B. V. Nagarathna

	Decided on : 07-12-2021 2021-JX(SC)-0-892 **Section 427 CrPC** **ISSUE:** In two different trial arise from different offence but against one and same accused, whether sentence imposed run concurrently or consecutively? **HELD:** **Principles summarized under Section 427 CrPC** • If a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. • Ordinarily, the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence. • The general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.PC. • Under Section 427 (1) of Cr.PC the Court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously and there must be a specific direction.
26.	Parveen @Sonu Vs State of Haryana Criminal Appeal No.1571 Of 2021 Hon’ble Judges : Hon'ble Mr. Justice R Subhash Reddy and Hon'ble Mr. Justice Hrishikesh Roy Decided on : 07-12-2021 2021-JX(SC)-0-889 **IPC Section 120 B**

	ISSUE: Principle regarding method of proving the charge of conspiracy under section 120 B of I.P.C. **HELD:** The Hon'ble Supreme Court has observed that in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused.
27.	Gulab Vs State of Uttar Pradesh Criminal Appeal No. 81 of 2021 Hon'ble Judges : Hon'ble Dr. Justice D.Y. Chandrachud, Hon'ble Mr. Justice Surya Kant and Hon'ble Mr. Justice Vikram Nath Decided on : 09-12-2021 2021-JX(SC)-0-875 **Section 302 read with Section 34 of the IPC** **ISSUE:** • Whether Non recovery of the weapon of offence is fatal to the prosecution case? • Principle regarding common intention under section 34 of IPC summarized.

	HELD: Non-recovery of the weapon of offence would not discredit the case of the prosecution which relies on cogent direct evidence. The failure to produce a report by a ballistic expert, who can testify to the nature and cause of injury, is not sufficient to impeach the credible direct evidence. **Emphasizing the fundamental principles underlying Section 34, Supreme Court held that:** (i) Section 34 does not create a distinct offence, but is a principle of constructive liability; (ii) In order to incur a joint liability for an offence there must be a pre-arranged and pre-mediated concert between the accused persons for doing the act actually done; (iii) There may not be a long interval between the act and the pre-meditation and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person; and (iv) The provision is intended to cover cases where a number of persons act together and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime.
28.	Kallu Khan Vs State of Rajasthan Criminal Appeal No. 1605 of 2021 Hon'ble Judges : Hon'ble Ms. Justice Indira Banerjee and Hon'ble Mr. Justice J.K. Maheshwari Decided on : 11-12-2021 **Narcotic Drugs and Psychotropic Substances Act, 1985** **Sections 8 and 21 read with Sections 43 and 50** **ISSUE:** If contraband is seized from vehicle given by the accused, is it mandatory to comply provision of Section 50 of NDPS Act? **HELD:** In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh (supra) that in the case of personal search only, the provisions

	of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case,
29.	Mohan @Srinivas @ Seena @Tailor Seena Vs State of Karnataka Criminal Appeal No. 1420 of 2014 Hon'ble Judges : Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice M.M. Sundresh Decided on : 13-12-2021 2021-JX(SC)-0-897 **Section 378 Cr.P.C.** **ISSUE:** Scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. **HELD:** The Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity. **DUTY OF APPELLATE COURTS** It is pertinent to note that Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. However, at times, courts do have their constraints. Sometimes different decisions are being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. However, the Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial

	court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. The Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal. Hence, indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.
30.	N. Raghavender Vs. State of Andhra Pradesh, CBI Hon'ble Judges : Hon'ble The Chief Justice, Hon'ble Mr. Justice Surya Kant and Hon'ble Ms. Justice Hima Kohli Decided on : 13-12-2021 2021-JX(SC)-0-900 **Section 409, 420 and 477A of the Indian Penal Code** **ISSUE:** Explained the ingredients necessary to prove a charge under Section 409, 420 and 477A of the Indian Penal Code. **HELD:** **Section 409 IPC- Criminal breach of trust by public servant, or by banker, merchant or agent.** The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 is a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied: (i) Entrusting any person with property or with any dominion over

property;
(ii) That person has dishonestly mis-appropriated or converted that property to his own use;
(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.
It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner.
No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that: (i) The accused must be a public servant or a banker, merchant or agent; (ii) He/She must have been entrusted, in such capacity, with property; and (iii) He/She must have committed breach of trust in respect of such property.
Section 420 IPC- Cheating and dishonestly inducing delivery of property
Section 420 IPC provides that whoever cheats and thereby dishonestly induces a person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine.
It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating,

	fraudulent and dishonest intention must exist from the inception when the promise or representation was made. **Section 477A- Falsification of accounts** **In an accusation under Section 477A IPC, the prosecution must, therefore, prove—** (a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it wilfully and with intent to defraud.
31.	Brijmani Devi Vs Pappu Kumar & Anr. Criminal Appeal No. 2021 (Arising Out Of Slp (Crl.) No.6335 Of 2021) Hon'ble Judges : Hon'ble Mr. Justice L. Nageswara Rao, Hon'ble Mr. Justice B.R. Gavai and Hon'ble Mrs. Justice B.V.Nagarathna Decided on : 17-12-2021 Bail **ISSUE:** Whether grant or cancellation of the bail order requires reasons? **HELD:** • That, While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the

	accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence/s alleged against an accused. • We have extracted the relevant portions of the impugned orders above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the afore cited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystallized as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. At the same time, a balance would have to be struck between the nature of the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. • Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other. • Thus, while elaborating reasons may not be assigned for grant of bail, at the same time an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum.

JUDGMENTS IN CIVIL MATTER BY HON'BLE HIGH COURT OF GUJARAT

Sr. No.	Details of Case
1.	Patel Dhanjibhai Ambaram Vs Navinchandra Vrajlal Ved Civil Revision Application No. 122 of 2016; Hon'ble Judges : Hon'ble Mr. Justice Vipul M. Pancholi Decided on : 01-10-2021 2021-JX(Guj)-0-519 Code of Civil Procedure Order 7 Rule 11(D) **ISSUE:** Principle regarding rejection of plaint under Order 7 Rule 11 (D) **HELD:** • It can be said that when the transfer is by registered document, date of registration becomes deemed knowledge and in cases where fact could be discovered by due diligence, plaintiff would be deemed to have the necessary knowledge. • it is evident that if something purely illusory has been stated with a view to get out of Order 7, Rule 11 of the CPC by resorting to clever drafting, it cannot be said that the plaint discloses a cause of action and if a clear right to sue is not shown in the plaint, it is liable to be rejected.
2.	United India Insurance Company Ltd Through Vs Vajabhai Ratabhai Dabhi Since Decd. Through Heirs. First Appeal No. 3345 of 2011 Hon'ble Judges : Hon'ble Mr. Justice Sandeep N. Bhatt Decided on : 03-10-2021 2021-JX(Guj)-0-658 Motor Vehicles Act **ISSUE:** • Principle regarding **Act Policy & Pay and Recover.**

	HELD: • When the deceased person was going on the tractor and sitting on the fan wheel of the tractor and he died due to the accident, and it is an admitted position that the policy of the tractor is an Act Policy, the risk of only one person is covered. It is further found from the record that the risk of the passenger travelling in a goods vehicle is not covered by the insurance policy. It is also further transpired from the record that there is clear breach of the insurance policy as the tractor was used other than the agricultural purpose by the insured and in view of the judgment rendered in United India Insurance Company Limited Vs Manjulaben Purshottamdas Patel & Ors., reported in 1994(1) GLR 269, I found that the Insurance Company cannot be made liable for the compensation to the claimants, however, I am of the opinion that the provisions of the Motor Vehicles Act are beneficial legislation and relying on the decision of Hon'ble Apex Court in the case of Shivraj (supra), the Insurance Company is directed to pay the amount of compensation to the claimants at the first instance and then recover the same from the owner of the offending vehicle, in accordance with law.
3.	Lavariya Devrajbhai Devraj Rayjibhai Vs Charity Commissioner Civil Revision Application No. 228 of 2021 ; 236 of 2021 Hon'ble Judges : Hon'ble Mr. Justice Vipul M. Pancholi Decided on : 06-10-2021 2021-JX(Guj)-0-507 **Code of Civil Procedure Order 23, Rule 3A** **ISSUE:** • Whether a suit can be filed challenging decree arrived under compromise in another suit? **HELD:** It can be said that no suit shall lie to set aside the decree passed under Order 23, Rule 3 of the Code on the ground that the compromise on which the decree is passed, was not lawful in view of the bar contain in Order 23, Rule 3A of the Code. It is further revealed that if the aggrieved

	party was not party to the suit, remedy available to him to challenge the decree passed by the Court on the basis of the compromise between the parties to the suit would be to file an Appeal under Section 96(1) of the Code with leave of the Appellate Court or to file review application before the Court, which has passed the decree as may be permissible under Section 114 read with Order XLVII of Code
4.	Sunil Kennykumar Nihalani Vs Motikumar Harchandrai Nihalani Special Civil Application No. 16692 of 2019 Hon'ble Judges : Hon'ble Mr. Justice B.N.Karia Decided on : 08-10-2021 2021-JX(Guj)-0-543 **Code Of Civil Procedure, 1908 Section - 10** **ISSUE:** Discussion on how to conduct probate proceeding and civil suit arise from the same transaction **HELD** : In the present case, it is not disputed that both the proceedings are pending before the Court of learned Senior Civil Judge, Vadodara. In two proceedings, it can be said that some of the issues which arise in both the proceedings as regards capacity of the testator at the time when he made will and as regards due execution and attestation of the will and as regards consideration of allegedly suspicious circumstances surrounding the Will. Common question of facts would arise in both the proceedings and evidence in both the proceeding would be common. Under the circumstances, when two proceedings, which arise out of the same transaction or where substantial evidence which is to be led is common a joint trial of such proceedings is advisable so that considerable public time and expenses would be saved if the two proceedings are tried jointly and the evidence is recorded in one of the two proceedings. It would also avoid inconvenience to the witnessed figuring in two proceeding as they will not be required to reappear and to give evidence in another proceeding which would also be helpful to avoid multiplicity in the trial of the same issues and to avoid conflict of decision. It is therefore, desirable that suits filed by the present

	petitioners and probate application i.e. **Civil Misc. Application No. 97 of 2015** are jointly tried by recording common evidence in Probate Application. However, it shall be kept in mind the jurisdiction of the Court is contentious. **A probate proceeding is exclusive and limited and for the issues which squarely falls within the jurisdiction of the probate Court the judgment of the probate court would operate as res judicata.** Therefore, it would be just and proper to see that the probate court will proceed with the issues, which exclusively fall within its jurisdiction. Once the evidence is recorded on the issues which exclusively fall within the jurisdiction of the probate court and common issues in Special Civil Suit No. 242 of 2016, the Court shall proceed to record the evidence on remaining issues which arise in Special Civil Suit No. 242 of 2016 which do not fall within the jurisdiction of the probate court. It would be necessary to see that the respondent No.1 in probate proceedings would be called upon to begin evidence and his evidence is recorded on all the issues to the probate proceedings first in point of time. In the result, this petition is hereby allowed and order passed in application below Exh. 54 and 55 in Civil Misc. Application No. 97 of 2015 dated 31st August, 2019 is quashed and set aside. Both the proceedings shall be tried by the Court, wherein probate proceedings are pending. It would be open for the Court to decide the application under Section 10 of C.P.C. independently.
5.	Keshavbhai Gandabhai Vs Urmilaen D/o Of Vallabhbhai Nathubhai And W/o Navinbhai Chimkabhai Patel Civil Revision Application No. 503 of 2019 Hon'ble Judges : Hon'ble Mr. Justice Vipul M. Pancholi Decided on : 20-10-2021 2021-JX(Guj)-0-555; 2021 (0) AIJEL-HC 243343 **Code of Civil Procedure Order 7 Rule 11 (D)** **ISSUE:** • Whether plaint can be rejected on the ground of limitation under Order 7 Rule 11(D) of CPC? • At time of deciding application Order 7 Rule 11, whether court can

	look into document filed along with plaint? **HELD:** • Yes, in present case, this Court is of the view that there is a delay of nine years in filing the Suit after the document is registered before the concerned authority and admittedly, there is a delay of eight months in filing the Suit even after the date of knowledge by the plaintiff about execution of the Sale Deed. 14 Thus, from the statement made in the plaint and from the documents placed along with the plaint, it appears that Suit is barred by law of limitation. • Whenever the document is registered, the date of registration becomes the date of deemed knowledge and in other cases where the fact could be discovered by due diligence, then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge about the transaction. • The plaint can be rejected on the ground of limitation only where the Suit appears from the statement in the plaint to be barred by any law. The words "any law" include the law of limitation as well. From the aforesaid decisions, it is further clear that the documents annexed with the plaint are required to be taken into consideration for disposal of the application filed under Order VII Rule 11 of the Code. • It is not disputed that while considering application under Order 7 Rule 11 (d) of the Code of Civil Procedure, the Court is required to consider the averments in the plaint and the supporting documents produced along with plaint. However, it cannot be disputed that if on the face of it and even considering the averments made in the plaint, it is found that the suit is clearly barred of law of limitation, the plaint can be rejected in exercise of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure.
6.	Tushit Narottam Mapara Vs Avanti Tushit Mapara Civil Revision Application No. 183 of 2021 Hon'ble Judges : Hon’ble Mr. Justice Vipul M. Pancholi Decided on : 24-10-2021 2021-JX(Guj)-0-520 **Section 25 of the Guardians and Wards Act, 1890**

	ISSUE: Issue of territorial jurisdiction for application of custody under G & W Act is discussed. **HELD:** • It is the specific case of the present respondent in the application filed under Section 25 of the Act that she is residing at Gandhinagar and when she was staying at Gandhinagar with her two daughters, on 30.06.2018, her in-laws got the custody of the minor daughters and thereafter custody was not handed over to her. If para 16 of the application is carefully seen, the present respondent has pointed out about the cause of action for filing the application and in para 20 she has specifically stated about the jurisdiction of the concerned Court at Gandhinagar. • When the custody of the minor daughters was obtained by the in-laws of the respondent, they were with their mother i.e. present respondent at Gandhinagar. Further part of the cause of action has also arisen in the local limits of Gandhinagar Family Court. Without making any enquiry and without leading evidence before the concerned Court, at this stage, it cannot be held that the Gandhinagar Family Court has no jurisdiction to try the application filed by the present respondent under Section 25 of the Act.
7.	New India Insurance Co Ltd Vs Mamad Osman Sumra First Appeal No. 563 of 2013 Hon'ble Judges : Hon'ble Mr. Justice Niral R. Mehta Decided on : 26-11-2021 2021-JX(Guj)-0-674 **Motor Vehicles Act, 1988 Section - 173 , 163A** **ISSUE:** • Whether a garage on the roadside can be considered as private place or it is a public place? • Whether it is open for insurance company to plead negligence of the victim in a case filed under Section 163-A of the M.V. Act?

	HELD: • Admittedly, the bus / vehicle were parked in the garage. However, the garage in question, as can be seen from the evidence produced on record, is of a kind of small type of wooden shop, that too on the road side. Thus, while saying that the vehicle in question was parked in garage, it also gives impression that same was parked on a public road itself. Meaning thereby, the garage in question when itself on public road and looking to the size and nature of garage, it appears that the said garage is a small wooden shop, must be used only for the purpose of putting tools and equipments which would not be of that size that entire bus can be parked inside. As per the Panchnama and the deposition of AD Inquiry Officer, it transpires that the bus was on the public road and, therefore, it cannot be said that the bus was parked in a private property. So far as the law discussed herein-above, even a private property is also held to be a public place, if there is no restriction to enter at such place. However, in the instant case, the garage is not on any private property but, is itself on a public road. Therefore, in my view, the contention raised by the learned advocate for the appellant that the bus was not in a public place, is not acceptable and is hereby rejected. • when a claim petition is filed under Section 163-A of the MV Act, it is not open for the insurer to raise any defence of negligence on the part of victim.
8.	Hasmukhbhai Ramchadnra Barot Vs Ramanbhai Mangalbhai Prajapati R/Second Appeal No. 103 of 2020 Hon'ble Judges : Hon'ble Mr. Justice Nikhil S. Kariel Decided on : 20-12-2021 2021-JX(Guj)-0-704 **Order VII, Rule 11 of Code of Civil Procedure & Article 56 of Limitation Act** **ISSUE:** Whether the court materially erred in rejecting plaint of the plaintiffs under Order VII Rule 11 of the CPC? Whether a cause of action is disclosed in the plaint or not and what would be effect of suppression of material facts?

	HELD: **Order VII, Rule 11 (A) of the Code of Civil Procedure.** A. A cause of action being bundle of facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the Suit. B. Cause of action would include some act done by the defendant since in absence of such an act, no cause of action can possibly accrue. C. Cause of action is not limited to the actual infringement of right sued on but also includes all the material facts on which the right is founded. D. Cause of action should be a real cause of action and not an illusory one and while considering the aspect of availability of cause of action the Court should consider whether the plaint is vexatious in the context of not disclosing a clear right to sue. E. The Court should also ensure that right to sue is not illusory created by clever drafting. If any illusion of cause of action is created by clever drafting than the Court should nip such litigation in the bud. F. The Court should also consider the aspect of camouflage or suppression to determine whether the litigation is utterly vexatious and an abuse of process of Court. It would be pertinent to mention that the original plaintiffs were both defendants in Regular Civil Suit No.349 of 1996 and whereas both the plaintiffs had submitted affidavits before the learned Civil Suit confirming the fact of sale and confirmed the act of having received the consideration. It also appears that from the year 1997 till the date of filing of the Suit i.e. on 09.03.2010, the original plaintiffs had not questioned the affidavit as noted by the learned Appellate Court neither the fact of sale which was well within knowledge of the plaintiff nor the facts of having submitted an affidavit in nature of settlement purshis was disclosed by the plaintiffs in plaint. this Court is of the considered opinion that the litigation starting from the Suit to present Second Appeal are nothing but an abuse of process of law and hence, appropriate costs requires imposed upon the appellant.
9.	Jinnat Fatma Vajirbhai Ami W/O Nishat Alimadbhai Polra Vs Nishat Alimadbhai Polra

First Appeal No. 2202 of 2021
Hon'ble Judges : Hon'ble Mr. Justice J. B. Pardiwala and Hon'ble Mr. Justice N. R. Mehta
Decided on : 20-12-2021
2021-JX(Guj)-0-744

Section 19 of Family Courts Act
Section 14 of the Evidence Act
Section 281 of Muhammadan Law

ISSUE :

1. Can a Muslim husband file petition for Restitution of Conjugal rights under Muslim Law?

2. Is it always necessary to pass a decree of Restitution of Conjugal Rights in favour of husband?

HELD :

15. Section 281 of the Muhammadan Law deals with the aspect of the restitution of conjugal rights, but does not throw any light as to in what circumstances, a decree for restitution of conjugal rights can be granted or declined. For the purpose of clarity we quote Section 281 from the Principles of Mohamedan law by Mulla 20th edition at page 367 which reads as under:-

"Where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights."

16. The aforesaid would indicate that there is no such law for seeking the relief of restitution of conjugal rights. The parties will be governed by their personal law.

14. It has to be borne in mind that the decision in a suit for the restitution of conjugal rights does not entirely depend upon the right of the husband. The Family Court should also consider whether it would make it inequitable for it to compel the wife to live with her husband. Our notions of law in that regard have to be altered in such a way as to bring them in conformity with the modern social conditions. Nothing has been shown to us in the form of any rule or otherwise which compel the Courts to always pass a decree in a suit for restitution of conjugal

rights in favour of the husband. As long as there is no such rule, it would be just and reasonable for the Court to deny the said relief to the plaintiff-husband if the surrounding circumstances indicate that it would be inequitable to do so. (See Raj Mohammad Vs Saeeda Amina Begum, AIR 1976 Kant 200).

When restitution may be refused

17. The wife can set up the following defences to a suit for restitution of conjugal rights;

(1) That the marriage between the parties was not a valid marriage or is no longer binding. The existence of a valid matrimonial relationship is an essential condition for a decree in the suit. If the marriage is not valid (i.e., either irregular or void) restitution will not be allowed. So also if subsequently the marriage has terminated, for example by reason of the husband having become an apostate or by the exercise by the wife of the option, on attaining puberty, of repudiating her marriage or of a power to the wife to divorce, restitution will be refused.

(2) That the husband was guilty of legal cruelty. For legal cruelty, "there must be actual violence of such a character as to endanger personal health or safety or there must be reasonable apprehension of it. A simple chastisement on one or two occasions would not amount to such cruelty. The Mohammedan law on the question of what is legal cruelty between man and wife does not differ materially. A good deal of ill-treatment, even if it is short of cruelty, may amount to legal cruelty. If the Court is of opinion that by the return of the wife to the husband, her health and safety would be in danger.

(3) That the husband made a false charge of adultery against the wife. Restitution will not, however be refused if the charge was true.

(4) That there was gross failure by the husband in the performing of the matrimonial obligations imposed upon him for the benefit of the wife. Cruelty is not the sole defence. The Mohammedan wife has got better rights than the English wife. The Court may well admit defences founded on the violation of those rights. Conduct falling for short of legal cruelty (e.g. charges of immorality and heaping of insults) may be a good defence to a suit by the husband. In fact any reprehensible conduct on the part of the husband affords grounds for refusing to him the assistance of the Court. Expulsion of the husband from caste has been held to be sufficient ground for refusing restitution of conjugal rights. But the mere fact that the wife cannot get on with mother of the

husband would not be sufficient ground.
(5) That, where the marriage has not been consummated, her prompt dower has not been paid. This would be a means for securing the payment of dower by the husband.
18. A marriage between Mohammedans is a civil contract and a suit for restitution of conjugal rights is nothing more than an enforcement of the right to consortium under this contract. The Court assists the husband by an order compelling the wife to return to cohabitation with the husband. "Disobedience to the order of the Court would be enforceable by imprisonment of the wife or attachment of her property, or both". Moonshee Buzloor Ruheem v. Shumsoonissa Begum, 11 Moo Ind App 551 (609). Abdul Kadir v. Salima, ILR 8 All 149 (FB).
21. But a decree, for the specific performance of a contract is an equitable relief and it is within the discretion of the Court to grant or refuse it in accordance with the equitable principles. In Abdul Kadir's case ILR 8 All 149 (FB), it was held that in a suit for conjugal rights, the Courts in India shall function as mixed Courts' of equity and be guided by the principles of equity well-established under the English Jurisprudence. One of those is that the Court shall take into consideration the conduct of the person who asks for specific performance.
22. If the Court feels, on the evidence before it, that the husband has not come to the Court with clean hands or that his own conduct as a party has been unworthy, or his suit has been filed with ulterior motives and not in good faith, or that it would be unjust to compel the wife to live with him, it may refuse him assistance altogether. The Court will also be justified in refusing specific performance where the performance of the contract would involve some hardship on the defendant wife which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.
23. It follows, from the aforesaid that in a suit for restitution of conjugal rights by a Muslim husband against his wife, if the Court after a review of the evidence feels that the circumstances reveal that the husband has been guilty of unnecessary harassment caused to his wife or of such conduct as to make it inequitable for the Court to compel his wife to live with him, it will refuse the relief.
26. Even in the absence of satisfactory proof of the husband's cruelty, the Court will not pass a decree for restitution in favour of the husband

	if, on the evidence, it feels that the circumstances are such that it will be unjust and inequitable to compel her to live with him. In Hamid Hussain v. Kubra Begum, ILR 40 All 332: (AIR 1918 All 235), a Division Bench of the Allahbad High Court dismissed a husband's prayer for restitution on the ground that the parties were on the worst of terms, that the real reason for the suit was the husband's desire to obtain possession of the wife's property and the Court was of the opinion that by a return to her husband's custody the wife's health and safety would be endangered though there was no satisfactory evidence of physical cruelty.

JUDGMENTS IN CRIMINAL MATTER BY HON'BLE HIGH COURT OF GUJARAT

<table>
<tr><th>Sr. No.</th><th>Details of Case</th></tr>
<tr><td>1.</td><td>Nileshbhai Natubhai Patel Vs State Of Gujarat
Criminal Misc. Application No. 17697 of 2021; 17700 of 2021
Hon'ble Judges : Hon’ble Mr. Justice Vipul M. Pancholi
Decided on : 14-10-2021
2021-JX(Guj)-0-525

Code of Criminal Procedure, 1973 Section – 438
Gujarat Goods And Services Tax Act, 2017 Section 65, 66,67,73, 74, 39

ISSUE:
Principle regarding anticipatory bail in GST Matters.

HELD:
It is pertinent to note that as per the direction issued by the Hon'ble Supreme Court, the applicants remained present before the concerned officer of the department. However, it is specific case of learned Public Prosecutor that the applicants have not cooperated with the investigation and they have given evasive reply to certain important questions. I have perused the separate confidential papers supplied by learned Public Prosecutor during the course of hearing of these applications, from which, it is revealed that the applicants gave evasive reply to certain important questions. Thus, this Court is of the view that though directed, the applicants have not cooperated with the Investigating Agency.</td></tr>
<tr><td>2.</td><td>Suresh Ramanbhai Patel Vs State Of Gujarat
Criminal Miscellaneous Application No. 5434 of 2017
Hon'ble Judges : Hon’ble Ms. Justice Gita Gopi
Decided on : 29-10-2021
2021-JX(Guj)-0-588

Code of Criminal Procedure Section 195</td></tr>
</table>

	ISSUE: Whether a written complaint by the public servant concerned is necessary for a Court to take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code? **HELD:** • There must be a complaint by the public servant whose lawful order has not been complied with and such complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory in nature and the non-compliance thereof would vitiate the prosecution and all other consequential orders. The Court cannot assume cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction. • In the present cases, apart from invocation of Sections 172 to 188 of IPC, offences under other Sections of the Indian Penal Code as also the Gujarat Police Act and Disaster Management Act have been invoked. The test whether there is non-compliance of the provision of Section 195 Cr.P.C. or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of a public servant is required. The provision of Section 195 Cr.P.C. cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.P.C. In the cases on hand, the facts suggest that the offences, other than one punishable under Sections 172 to 188 of IPC, are inseparable and are related to the offence for which a complaint of the Court or of a public servant is required or is mandatory. In the present cases, admittedly, no such complaint has been given and thus, the provision of Section 195 Cr.P.C. has not been complied with. Under the circumstances, the impugned complaints deserve to be quashed and set aside on this ground alone.
3.	State Of Gujarat Vs Salmabibi W/o Ibrahimbhai Abdulkarim Madhupurvala Chhipa Criminal Appeal No. 627 of 2008 Hon'ble Judges : Hon'ble Dr. Justice Ashokkumar C. Joshi Decided on : 02-12-2021

2021-JX(Guj)-0-659

Code of Criminal Procedure, 1973

ISSUE:

What is the Power & scope of Appellate Court in criminal appeal?

HELD:

Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the trial Court.

- An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved

	guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. • If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.
4.	Dilipkumar Danabhai Rathod Vs State Of Gujarat Special Criminal Application No. 8508 Of 2021 Hon'ble Judges : Hon'ble Mr. Justice Ilesh J. Vora Decided on : 07-12-2021 2021-JX(Guj)-0-680 **Code of Criminal Procedure Section 156(3)** **ISSUE:** Whether an order directing investigation under Section 156(3) can be passed in relation to "public servant" in the absence of valid sanction as contemplated under Section 197 of the Cr.P.C.? **HELD:** • The trial Court thought it fit to enquire the matter by police agency under Section 156(3) of the Cr.P.C. It is settled law that while dealing with the application or passing an order under Section 156(3) of the Code, magistrate does not take cognizance of the offence and apply his mind only for ordering an investigation under Section 156(3) of the Code. • Hon'ble court observed that when the court refers a complaint for investigation under Section 156 (3) of the Code, it does not amount to taking cognizance of an offence by the Court. It is pertinent to note that Section 197 of the Cr.P.C restricts the court for taking cognizance of the offence. In other words, it provides that without sanction, taking cognizance is barred and not the investigation.