

# Court Diary

## Court fee

**T**HE Subcourt, Thrissur, was satisfied that Mr and Mrs Mathew Thekkekara of Aranattukara had no means to pay the court fee in a suit filed by them for the recovery of possession of a property of theirs. But still the court did not permit them to sue as indigent persons because the affidavit accompanying their application for permission to sue as indigent persons did not contain a statement that they had not disposed of any property within two months immediately prior to the filing of the application. A statement that they had not entered into any agreement with reference to the subject matter of the proposed suit, under which any other person obtained an interest in such subject matter, was also lacking in the affidavit.

Order XXXIII Rule 5 provides for the rejection of an application for permission to sue as an indigent person. Disposal of any property within two months immediately prior to the filing of the application and entering into an agreement etc are matters, if proved, which would entail the dismissal of the application.

But in this case, the opposite parties had no case that the applicants had disposed of any property or entered into an agreement with others. They had also no case that the application was not in accordance with Rule 2 which lays down the particulars required to be stated in an application.

In this circumstance, the Subcourt was wrong in rejecting their application, according to Justice K.G. Balakrishnan of the Kerala High Court. In the absence of any allegation or proof that the applicants had disposed of any property etc, their application was not liable to be rejected. Though they are supposed to incorporate such averments in the affidavit, it is not necessary for them to state such facts initially. It is for the respondents to allege and prove that the applicants are not entitled to sue as indigent persons for the reasons stated in Rule 5.

Therefore, the High Court set aside the Subcourt's order.

## Rape case

**A** DELAY of two days in reporting to the police a case of rape does not militate against the

prosecution case, according to a three-member bench of the Supreme Court consisting of Justice A.M. Ahmadi, Justice Kuldip Singh and Justice B.P. Jeevan Reddy.

Indian society being what it is, the victims of such a crime ordinarily are hesitant to approach the police since it involves the question of their morality and chastity. A woman or her relatives often find themselves in a fix in such situations to approach the police, more so when the culprit happens to be a relation. In such cases the delay is understandable, and the prosecution case cannot be doubted merely on that ground.

The delay of two days in lodging the complaint was the main reason that prompted the Rajasthan High Court to disbelieve a rape case and acquit the accused who had been found guilty and sentenced to rigorous imprisonment for two years and fined Rs 1,000 by the lower court.

The High Court had other reasons too. In this case, the accused was a distant relative of the victim. The judge thought it inconceivable that a relative would commit rape after about six years without any rhyme or reason and that too during daytime in a cat-shed which was very close to the highway frequented by people. The judge disbelieved the two eyewitnesses in the case, stating that it was easy to procure such witnesses in a village within a period of two days. The injuries on her back, elbows and private parts were explained away saying that there was a possibility of her receiving the injuries while cohabiting with her husband. The Supreme Court said the High Court had rejected her testimony for wholly unacceptable reasons. There is nothing unbelievable in it. A woman who is a victim of rape is in the same position as an injured witness and her evidence should receive the same weight. She cannot be put on a par with an accomplice. She is in fact a victim of the crime. Nowhere does the Evidence Act say that her evidence cannot be accepted unless it is corroborated in the material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured witness in cases of physical violence.

There is nothing surprising in the conduct of a man who is lust-ridden in behaving in a carefree manner trying to make most of the situation of the victim being alone and helpless. There is nothing improbable in a man committing rape with a woman who is a distant relative. It is not possible to believe that when a married woman having sex with her husband in the privacy of their bedroom would suffer abrasions on her body and private parts. There was no reason to disbelieve the eyewitnesses who are natural witnesses being neighbours who had no axe to grind, the bench said.

## Land Tribunal

**W**HEN a question regarding the right of a tenant or a kudikidappukaran (including the question as to whether a person is a tenant or a kudikidappukaran) arises in a suit or other proceedings, the civil court dealing with it automatically loses its power to decide the question. In other words, the jurisdiction of the civil court ceases with the arising of the question.

Under Subsection (1) of Section 125 of the Kerala Land Reforms Act, no civil court has jurisdiction to settle, decide or deal with any question which is required to be settled by the Land Tribunal under the provisions of the Act. As per Subsection (3), in case any such question arises in any suit, the court shall stay the suit and refer the question to the Land Tribunal for its decision on the question.

That is why Justice P.A. Mohammed of the Kerala High Court ruled that the Subcourt, Vadakkara, had gone wrong when it refused to refer such a question to the Land Tribunal concerned, holding that it had jurisdiction to decide the matter by itself.

When there is ouster of power by the operation of the provisions of a statute no court can assume power either inherently or otherwise. The court cannot defeat the purpose of a statute by dealing with it in a manner as it likes. When the court has no power to do a thing directly, it cannot do it indirectly. Therefore the assumption of power by the subcourt was improper. The High Court, therefore, set aside the order of the subcourt.

- Scaria Meledam