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IMPORTANT CASE LAWS

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INDEX

TABLE OF CASES WITH CITATION

SUPREME COURT CITATION OF CIVIL CASES

SUPREME COURT CITATION OF CRIMINAL CASES

HIGH COURT CITATION OF CIVIL CASES

HIGH COURT CITATION OF CRIMINAL CASES

SUPREME COURT CITATIONS
CIVIL CASES

2011(6) SCALE 28

Prema
vs
Nanje Gowda and others

HINDU LAW – HINDU SUCCESSION ACT, 1956 [AS AMENDED BY HINDU SUCCESSION (KARNATAKA AMENDMENT) ACT, 1990] – SECTION 6A – Partition suit – Claim of enhancement of share in final decree proceedings in terms of Section 6A – Suit for partition and separate possession of share filed by respondent 1 decreed by Munsiff vide judgment dated 11.8.1992 – Trial Court held that plaintiff respondent 1 and defendant 3 were entitled to 2/7th share and defendants 1,4,5 and 6 were entitled to 1/28th share each – Appeal filed dismissed by the High Court as barred by limitation – Respondent 1 instituted final decree proceedings – Appellant filed application for amendment of preliminary decree and for grant of declaration that in terms of Section 6A inserted in the Act by the State Amendment, she was entitled to 2/7th share in the suit property – Whether appellant could claim higher share by relying upon Section 6A which came into force in 1994 – Allowing the appeal, Held,

With a view to achieve the goal of equality enshrined in Articles 14 and 15(1) of the Constitution and to eliminate discrimination against daughters, who were deprived of their right to participate in the coparcenary property, the Karnataka legislature amended the Act and inserted Sections 6A to 6C for ensuring that the unmarried daughters get equal share in the coparcenary property. This is evident from the preamble and Sections 1 and 2 of the Karnataka Act No.23 of 1994.

In the present case, the preliminary decree was passed on 11.8.1992. The first appeal was dismissed on 20.3.1998 and the second appeal was dismissed on 1.10.1999 as barred by limitation. By the preliminary decree, shares of the parties were determined but the actual partition/division had not taken place. Therefore, the proceedings of the suit instituted by respondent No.1 cannot be treated to have become final so far as the actual partition of the joint family properties is concerned.

It was open to the appellant to claim enhancement of her share in the joint family properties because she had not married till the enforcement of the Karnataka Act No.23 of 1994.

(2011) 5 Supreme Court Cases 65

Siddamurthy Jayarami Reddy (Dead) by Lrs
vs
Godi Jayarami Reddy and Anr

Family and Personal Laws – Succession and Inheritance – Will – Construction of - Conditional bequest provision in will – Whether a defeasance provision in regard to absolute grant in main bequest in will or a provision repugnant to said absolute grant and hence void – Determination of – Primacy of

testator's intention – Principles stated in Rameshwar Kuer case, AIR 1935 Pat 401, adopted – Succession Act, Ss. 120, 128, 131, 132, 133 & 136 or Ss. 138 & 139.

Family and Personal Laws – Succession and Inheritance – Will – Defeasance provision in regard to absolute grant in will – Defeasance provision containing a conditional bequest – Non-operation of defeasance provision or failure of conditional bequest thereunder – When obtains – Primacy of testator's intention – Drawing of necessary inference by court as to testator's intention – When warranted – Facts that executor was beneficiary under the defeasance provision, had failed to discharge duties as executor, had acted so as to frustrate testator's will, and hand abandoned the conditional legacy – Effect – Relevance of principle under S. 141, Succession Act, 1925 even though will not governed by 1925 Act.

Held: The court must put itself as far as possible in the position of a person making a will in order to collect the testator's intention from his expressions; because upon that consideration must very much depend the effect to be given to the testator's intention, when ascertained. The will must be read and construed as a whole to gather the intention of the testator and the endeavour of the court must be to give effect to each and every disposition. In ordinary circumstances, ordinary words must bear their ordinary construction and every disposition of the testator contained in the will should be given effect to as far as possible consistent with the testator's desire.

The distinction between a repugnant provision and a defeasance provision is sometimes subtle, but the general principle of law seems to be that where the intention of the donor is to maintain the absolute estate conferred on the done but he simply adds some restrictions in derogation of the incidents of such absolute ownership, such restrictive clauses would be repugnant to the absolute grant and therefore void; but where the grant of an absolute estate is expressly or impliedly made subject to defeasance on the happening of a contingency and where the effect of such defeasance would not be a violation of any rule of law, the original estate is curtailed and the gift over must be taken to be valid and operative. In the present case, the clause in question is not a repugnant condition, but a defeasance provision.

(2011) 5 Supreme Court Cases 142

Chairman-Cum-Managing Director, Coal India Limited and Ors
vs
Ananta Saha and Ors

Service Law – Departmental enquiry – De novo/Fresh enquiry – Initiation of - Application of mind and a speaking order by disciplinary authority – Requirement of - Non-compliance with – Effect – CMD, disciplinary authority only putting his signature to a note/proposal for initiation of de novo enquiry prepared by Officer on Special Duty (earlier enquiry having been quashed by High Court) – There being nothing on record to show that CMD had put his signature after applying his mind – Hence, held, order of CMD was not sufficient to revive the disciplinary proceedings – Moreover, for initiating a de novo enquiry, a fresh charge-sheet was required to be served, which had not been done – Enquiry thus not having been initiated properly, entire proceedings stood vitiated, and hence set aside – Therefore, appellants given liberty to initiate fresh disciplinary proceedings within 6 months by issuance of a valid charge-sheet – Maxims – Sublato fundamento cadit opus i.e. in case a foundation is removed, the superstructure falls – Applied – Disciplinary proceedings – Duty to record reasons.

Service Law – Departmental enquiry – De novo/Fresh enquiry – Fresh charge-sheet – Need for – Court quashing earlier proceedings and directing fresh enquiry – Effect and implications – For a fresh enquiry, a fresh charge-sheet, held, is mandatory – When earlier proceedings are quashed, charge-sheet in quashed proceedings also stands quashed.

Service Law – Departmental enquiry – Ex parte enquiry – When valid – If delinquent does not participate or cooperate in enquire (as he had done in earlier proceedings in present case), ex parte enquiry, held, would be valid.

Held: The order of CMD, ECL was not sufficient to initiate any disciplinary proceedings. To initiate or revive a proceedings, the law requires that the disciplinary authority should pass some positive order taking into consideration the material or record. The authority has to give some reason, which may be very brief, for initiation of the enquiry and conclusion thereof. It has to pass a speaking order and cannot be an ipse dixit either of the enquiry officer or the authority.

2011(6) SCALE 161

Rangammal
vs
Kuppuswami & Anr.

PARTITION – EVIDENCE ACT, 1872 – SECTION 101 – Burden of proof – Validity of sale deed executed by minor – Partition suit between two brothers – When plaintiff's case was that minor's share was sold for legal necessity by her uncle it was then the plaintiff who should have discharged the burden to prove that minor's share had been sold of by the de facto guardian without permission of court – Suit for partition filed by plaintiff against his brother, defendant 1 – Plaintiff also included property of appellant in the schedule to the plaint pleading that the share which originally belonged to appellant was transferred to father and uncle of plaintiff and defendant 1 by a sale deed executed in their favour by guardian of appellant when appellant was a minor – Appellant impleaded as defendant 2 in the suit pleaded that the partition suit filed by plaintiff against his brother was collusive in nature as this was clearly to deprive appellant from her share – Suit decreed in favour of plaintiff holding that appellant's deceased mother was owing certain debts and for discharge of the same legal guardian of appellant, a minor executed a sale deed in favour of plaintiff's father in respect of entire property of plaintiff – Appellant submitted that the sale deed executed by the de facto guardian cannot be held to be binding on her – High Court held that the present suit which was filed in 1982, was after 31 years of execution of sale deed and that the appellant should have assailed the sale deed and could not do so after 31 years of its execution – Whether judgment of the High Court was legally sustainable – Allowing the appeal with costs, Held,

Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof' which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party. In view of this legal position of the Evidence Act, it is clear that in the instant matter, when the plaintiff/respondent No.1 pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24.2.1951, then it was clearly for the plaintiff/respondent No.1 to prove that it was executed for legal necessity of the appellant-while she was a minor. But, the High Court clearly took an erroneous view while holding that it is the defendant/appellant who should have challenged the sale deed after attaining majority as she had no reason to do so since the plaintiff/respondent No.1 failed to first of all discharge the burden that the sale deed in fact had been executed for legal necessity of the minor's predecessor mother was without

permission of the court. It was not the defendant/respondent who first of all claimed benefit of the sale deed or asserted its genuineness, hence the burden of challenging the sale deed specifically when she had not even been dispossessed from the disputed share, did not arise at all.

2011 (5) SCALE 531

M/S. L.K. Trust
vs
EDC Ltd. & Ors

TRANSFER OF PROPERTY – TRANSFER OF PROPERTY ACT, 1882 – SECTION 54 & 60 – STATE FINANCIAL CORPORATIONS ACT, 1951 – SECTION 29 – Right of redemption of mortgage – Available to the mortgagor unless it has been extinguished by the act of parties or by decree of a court – In India it is only on execution of the conveyance and registration of transfer of mortgagor's interest by registered document that the mortgagor's right of redemption will be extinguished – Respondent 1, an investment company granted term loan to respondent 3 company, against mortgage of hotel property – When respondent 3 was not able to repay the loan amount, respondent 1 attached property of respondent 3 company – Respondent 1 allegedly accepted proposal of appellant trust to sell the property in question for a sum of ₹12.99 crores – Respondent 3 filed writ petition for directing respondent 1 to consider and accept proposal of ₹14 crores made by a third party and to restrain respondent 1 from proceeding to sell the property attached to appellant – Respondent 3 exercised its right of redemption and requested respondent 1 to confirm the exact amount due from respondent 3 – Respondent 3 sent an amount of ₹ 9,72,00,690/- to respondent 1 – Whether right of redemption of mortgaged property was defeated by mere agreement to sell the property between respondent 1 and appellant – Held, No – Whether respondent 3 had subsisting right to redeem the property – Held, Yes – Dismissing the appeal, Held,

On analysis of arguments advanced at the Bar, this Court finds that the proposition that in India it is only on execution of conveyance and the registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption stands extinguished is well settled. Further it is not the case of the appellant that a registered Sale Deed had been executed between the appellant-trust and the respondent No.1 pursuant to the Resolution passed by the respondent No. 1 and, therefore, in terms of Section 54 of the Transfer of Property Act 1882 no title relating to the disputed property had passed to the appellant at all.

In India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction.

(2011) 4 Supreme Court Cases 575

State of Uttarakhand and Ors
vs
Harpal Singh Rawat

Stamp Act, 1899 – S. 2(16)(c) r/w Sch. I-B Art. 35(b) or Art. 57 – Agreement arising out of auction for grant of lease for collection of toll tax levied on bypass road and bridge – Security deposit given for due performance of the contract – Deposit of stamp duty as condition for execution of lease – Stamp duty payable thereupon – Document whether lease or security bond – Determination of – Held, auction notice and lease agreement clearly mentioned that monthly amount payable by respondent was lease money

and not a security for due performance of the contract – Such agreement falls within ambit of "lease" and not under Sch. I-B Art. 57 – Hence, demand for stamp duty not illegal – Transfer of Property Act, 1882 – S. 105 – Contract and Specific Relief – Specific contracts – Indemnity – Security bond or lease – Determination of – Contract Act, 1872, S. 124.

Stamp Act, 1899 – S. 2(16)(c) – Lease – Definition of –Words "includes also" in – Scope – Held, definition of "Lease" under S. 2(16)(c) is a very wide definition – Even if transaction does not amount to a lease under S. 105, TP Act, same may nonetheless be a lease for purpose of Stamp Act – Transfer of Property Act, 1882 – S. 105 – Interpretation of Statutes – Internal Aids – Definition clause – Use of "includes also" – Effect.

The respondent participated in the auction held for grant on lease collection of toll tax for using Haldwani Bypass Road, 14 km (Kathgodam) Gaula bridge. The bid of ₹22 lakhs given by the respondent was accepted by the competent authority. Thereafter the lease agreement was executed between Appellant 1 and the respondent whereby the latter was given exclusive right to collect toll from the vehicles using the road and Gaula bridge. As a condition for execution of lease, a communication was sent by Appellant 2 to the respondent requiring him to deposit stamp duty of ₹2,20,400. However, instead of depositing the stamp duty, the respondent filed a writ petition for quashing the notice issued by Appellant 2. The Division Bench of the High Court held that the contract executed between the parties was only a security bond and stamp duty was payable as per Article 57 of Schedule I-B of the Stamp Act, 1899 in terms of the judgments of the High Court in Tajveer Singh case, (1997) 29 All LR 687 and in Naresh Agarwal case, Writ Petition No. 1020 of 2004(M/B).

Held:

The definition of "lease" contained in Section 2(16) of the Stamp Act, 1899 consists of two parts. The first part is applicable to any lease with respect to immovable property. The second part, which is inclusive, applies to various kinds of instruments by which a title, or other rights may be conferred upon the lessee for a specified period in respect of immovable property or otherwise. The use of the words "includes also" implies that the definition of lease contained in Section 2(16)(c) is very wide and even if the transaction does not amount to a lease under Section 105 of the Transfer of Property Act, the same may nonetheless be a lease for the purpose of the Act.

2011 (5) SCALE 596

Vimaleshwar Nagappa Shet
vs
Noor Ahmed Sheriff & Ors

SPECIFIC RELIEF – SPECIFIC RELIEF ACT, 1963 – SECTION 20 – PARTITION ACT, 1893 – SECTION 4 – C.P.C. – SECTION 96(3) – Dwelling house – Partition suit by transferee of share – Original owner 'AMS' died leaving behind his wife and three sons, defendants 1, 2 and 4 and three daughters, defendants 5 to 7 and defendant 3 , son of deceased son of 'AMS' – After his demise, each of the surviving sons succeeded to an extent of 2/11th share and each of the daughters succeeded to 1/11th share in the property – As the division in the scheduled property was impractical, defendants, 1, 2 and 4 to 7 desired to sell the schedule property – They agreed to sell the property to plaintiff appellant for a consideration of ₹3,10,000/-, executed agreement of sale and received advance consideration of ₹ 10,000/- - Till 15.6.1989, plaintiff paid a sum of ₹1,53,000/- in all, on various dates – As the defendants did not execute the sale deed, the plaintiff filed a suit for specific performance – Trial Court decreed the suit in favour of the plaintiff and directed defendants to execute the sale deed in terms of agreement of sale

dated 2.5.1988 – On appeal, High Court determined total market value of the property as ₹13,96,500/- - Defendant 3, not being a party to the agreement of sale proposed to purchase 9/11th share by paying value of the plaintiff – Counsel for plaintiff agreed to the said proposal on condition that defendant 3 would pay the said amount within three months – Plaintiff was aware that defendant 3 who was a minor had a share in the property but his share remained unsold to plaintiff – Whether this court can interfere with the consent order of the High Court – Dismissing the appeal, Held,

It is not in dispute that the property in question belonged to Abdul Momin Sheriff. After his death, each of the surviving sons succeeded to an extent of 2/11th share and each of the daughters succeeded to 1/11th share. It is also not in dispute that the agreement of sale was executed only by Defendants Nos. 1, 2 and 4 to 7. The total share of Defendant Nos. 1, 2 and 4 to 7 is 9/11 and the share of the Defendant No. 3 who did not join the execution of agreement of sale would be 2/11. Inasmuch as the Defendant No. 3 was not a party to the agreement, he is not bound by the agreement executed by other defendants to the extent of his share.

From the evidence and the materials, it is clear that the suit property is dwelling house. In that event, Section 4 of the Partition Act, 1893 is relevant.

In view of the above provision, Defendant No. 3 has right to purchase to exclude the outsider who holds an equitable right of purchase of the shares of other defendants.

It is pertinent to point out that plaintiff was aware that Defendant No. 3 who was a minor has a share in the property and the application made by the other defendants before the Civil Court for appointment of Defendant No. 2 as guardian of the said minor was not pursued and in fact it was dismissed, consequently, his share remained unsold to the plaintiff.

2011 (3) CTC 663

Neha Arun Jugadar & Anr
vs
Kumar Palak Diwan Ji

Code of Civil Procedure, 1908 (5 of 1908) – Law of Transfer – Transfer of a case filed in a Court which has no jurisdiction - Transfer order can be passed where both Transferor and Transferee Courts have jurisdiction to hear case and party seeking transfer alleges reason convenient to parties to have case heard by Transferee Court.

Facts: Transfer of a case pending in District Court at Gautam Budh Nagar, UP to competent Court in Pune is sought. It is an admitted case that the District Court in Gautam Budh Nagar has no Jurisdiction in the matter.

Held: An order of transfer of a case can be passed where both the Courts, namely, the Transferor Court as well as the Transferee Court, have jurisdiction to hear the case and the party seeking transfer of the case alleges that the Transferee Court would be more convenient because the witnesses are available there or for some other reason it will be convenient for the parties to have the case heard by the Transferee Court. There is no question of transfer of a case which has no jurisdiction at all to hear it.

2011 (3) CTC 665

Kokkanda B. Poondacha & Ors
vs
K.D. Ganapathi & Anr

Code of Civil Procedure, 1908 (5 of 1908), Order 16, Rule 1(1) & (2) and Section 151 – List of Witnesses – Advocate representing Appellant was cited as Witness in List filed under Order 16, Rule 1(1) & (2) for purpose of summoning him in future – Propriety – Parties should not be allowed to file List of Witnesses without indicating purpose for summoning particular person as witness – Litigant bound to indicate relevance of Witness to subject matter of Suit – Party to proceedings cannot cite Advocate representing other side as Witness and thereby deprive services of Advocate without disclosing as to how his testimony is relevant.

Facts:

Respondents filed a list under Order 16, Rule 1(1) & (2) of Code, citing Appellant's Advocate as Witness without giving an iota of indication about the purpose of summoning him in future. Trial Court dismissed the Application. High Court allowed the Application. Hence, Appeal before Supreme Court.

Held:

The Respondents challenged the order of the Trial Court by filing a Petition under Articles 226 and 227 of the Constitution insofar as their prayer for citing Shri N. Ravindranath Kamath as a Witness was rejected. The learned Single Judge allowed the Petition and set aside the order of the Trial Court by simply observing that reasons are not required to be assigned to justify the summoning of a particular person as a witness. Mrs. Kiran Suri, learned Counsel for the Appellants relied upon the judgment of this Court in Shalini Shyam Shetty v. Rajendra Shankar Patil, 2011 (1) CTC 854 (SC) : 2010 (8) SCC 329 and argued that the order under challenge is liable to be set aside because the High Court committed serious error by interfering with the order of the Trial Court without recording a finding that the said order is vitiated due to want of jurisdiction or any patent legal infirmity in the exercise of jurisdiction and that refusal of the Trial Court to permit the Respondents to cite Shri N. Ravindranath Kamath as a witness had prejudiced their cause. She further argued that the Respondents are not entitled to cite and summon as a Witness the Advocate representing the Appellants because in the Application filed by them, no justification was offered for doing so. In support of this argument, Mrs. Suri relied upon the judgment of this Court in Mange Ram v. Brij Mohan, 1983 (4) SCC 36.

2011 (5) SCALE 838

DR. Shehla Burney and Ors
vs
Syed Ali Mossa Raza (Dead) By Lrs. & Ors

CIVIL PROCEDURE – C.P.C. – ORDER VII RILE 5 & 7 – Relief to be specifically stated – Defendant's interest and liability to be shown – Where prayer is not made against a particular defendant, no relief possibly can be granted against him – Suit filed by respondents plaintiffs that plaintiffs' father was the Pattedar and landlord of land – It was further alleged that after transfer, the plaintiff's mother remained in continuous and exclusive possession of the same till her death on 24.7.1973 – Allegations that on her death, respondents no.4/1 and 4/2, legal heirs of defendant 1 illegally occupied the suit land –'RB', predecessor-in-title of respondent 4/1 and 4/2, filed her written statement pleading that she was a bona fide purchaser of the suit and – She also pleaded that she transferred on 20.6.1973, the property in

favour of defendant 2 , appellants – On filing of written statement, defendant 2 was impleaded by an order of the Court dated 4.11.1982 – Suit dismissed by trial Court – On appeal, High Court came to a finding that the plaintiffs were entitled to a decree for possession in the suit – No prayer for a decree of possession was made against original defendant 2 – Whether suit was liable to be dismissed as against defendant 2 – Allowing the appeal, Held,

The submissions of the learned counsel for the appellant that there is no prayer for decree of possession either in the original or amended plaint against original defendant no. 2 stands proved. The prayers in the original plaint and the amended plaint were placed before us.

It is clear that in the amended plaint the prayer is against the defendant, therefore, the prayer is only against defendant no.1 and not against defendant no.2. In a case where prayer is not made against a particular defendant, no relief possibly can be granted against him. Reference in this connection can be made to the provisions of Order VII of the Code of Civil Procedure.

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2011 CIJ 161 IPJ

Prakash Kadam & etc.
vs
Ramprasad Vishwanath Gupta & Anr,

Code of Criminal Procedure, 1973(2 of 1974)-Sec.437, 439-Police-Eoncounter-Contract killing-Bail-Cancellation-Consideration-Penology-Sentencing-Death sentence-Appellants, the policemen were accused of abducting a businessman and killing him at the behest of a third party and also threatened the witnesses-After their arrest, the Sessions Court enlarged them on bail which was reversed by the High Court-In the SLP, appellants contended that once they were enlarged on bail, unless they had misused their liberty, the bail granted to them should not be cancelled which plea was resisted by the state-Held, encounter killing by the policemen was a very serious offence-In case of commission of serious offences, the principle that bail granted would not be cancelled unless it was misused was not applicable-When the appellate Court examined the bail granted, the principle that "bail granted would not be cancelled unless it was misused" was not applicable-In case of fake encounter killing by the policemen, death sentence would be the proper sentence-Order cancelling the bail was confirmed and the appeal was dismissed.

Code of Criminal Procedure, 1973(2 of 1974)-Sec.437, 439-Bail-Cancellation-Consideration-If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him-There is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail.

In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for canceling the bail. It will not apply when the order granting bail is appealed against before an appellate/ revisional Court.

Code of Criminal Procedure, 1973 (2 of 1974)-Sec. 354-Police-Encounter-Contract killing-Penology-Sentencing-Death sentence-Fake encounter by the policemen are the rarest of rare cases for which death sentence would be the proper sentence.

In cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties.

Indian Penal Code, 1860(45 of 1860)-Sec.76-police-Encounter-Obedience-Duty-If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order.

If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death.

2011 CIJ 233 ALJ

Rajendra Harakchand Bhandari & Ors.
vs
State of Maharashtra & Anr.,

Code of Criminal Procedure, 1973(2 of 1974)-Sec.320 – Indian Penal Code, 1860 (45 of 1860) – Sec.307 – Criminal trial – Attempt to murder compounding Permissibility – Penology – Sentencing – Delay – Compromise – Antecedents – Appellants were charged of attempting to commit murder and convicted and their appeals were also dismissed In SLP, they argued that the parties had entered into compromise and their relationship had become cordial and sought for reduction of sentence – Held, as the offence under Sec.307 was non-compoundable, it could not be compounded-Since the occurrence took place long back, relationship between the parties had become cordial, the accused had no criminal background and they had already undergone imprisonment for more than 2 years, sentence was reduced to the period already undergone-Appeal was ordered accordingly.

We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

(2011) 2 MLJ (Crl) 429 (SC)

Sou. Sandhya Manoj Wankhade
vs
Manoj Bhimrao Wankhade and Ors

Protection of Women from Domestic Violence Act (43 of 2005), Section 2(q) – Inclusion of female members as parties in proceedings as 'respondents' – 'Respondent' – Definition of – Filing of complaint against "relative" of husband or male partner – No restrictive meaning to "relative" – Female relatives of husband or male partner not excluded from ambit of a complaint.

FACTS IN BRIEF: Appeal has been filed against the judgment and order of the High Court in the criminal writ petition directing the appellant/wife to vacate her matrimonial house and confirming the order of the Sessions Judge deleting the names of the female members of her husband's family as respondents from the proceedings under the Domestic Violence Act, 2005.

QUERY: Whether a female member of the husband's family can be made a party to a proceeding under the Protection of Women from Domestic Violence Act, 2005?

Held: From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the provisio widens

the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

2011 (5) SCALE 464

Murugan @ Settu
vs
State of Tamil Nadu

CRIMINAL LAW – I.P.C. – SECTION 366, 376 & 363 r/w 109 – EVIDENCE ACT, 1872 – SECTION 35 – REGISTRATION OF BIRTH AND DEATHS ACT, 1969 – SECTION 17 – Kidnapping and rape – Age of prosecutrix – Determination of – Birth certificate issued by Municipality – Admissibility – Prosecution case that on 11.02.1998, A-1 with an intention to marry the minor girl (PW.4), aged 14 years studying in 8th standard, kidnapped her from school, by stating that her mother was seriously ill and had been admitted to hospital – Prosecutrix (PW.4) took permission to leave the school from her teacher – Prosecutrix was taken by A-1 in an auto to a temple where A-2 also came and both of them took her to a place stating that they were going to the hospital – On being questioned by the prosecutrix, she was threatened by A-1 and A-2 and was taken to the house of grand mother of A-2 – They stayed there at night – A-3 came there and all the accused compelled prosecutrix to get married with A-1 and accordingly A-1 tied 'Thali' on her neck – A-1 and A-3 took prosecurtrix and went to house of sister of A-3 and stayed there for about 12 days and during this period A-1 raped the prosecurtrix many times – Trial Court convicted A-1 u/s 366 and 376, IPC – A-2 and A-3 were convicted u/s 366 r/w 109, IPC and Section 376 r/w 109, IPC – On appeal, High Court convicted A-1 u/s 366 and 376, IPC – Other appellants were convicted u/s 366 r/w 109, IPC – In the birth certificate issued by the Municipality, birth of prosecutrix was shown to be as on 30.3.1984, registration was made on 5.4.1984 – School certificate issued by the Head Master on basis of the entry made in the school register corroborated contents of certificate of birth issued by the Municipality – Whether finding recorded by courts below on minority of the prosecutrix was sustainable – Held, Yes – Whether conviction of appellants as recorded by courts below was sustainable – Held, Yes – Dismissing the appeal , Held,

It is a matter of common knowledge that the birth certificate issued by the Municipality generally does not contain the name of the child, for the reason, that it is recorded on the basis of the information furnished either by the hospital or parents just after the birth of the child and by that time the child is not named.

Documents made ante litem motam can be relied upon safely, when such documents are admissible under Section 35 of the Indian Evidence Act, 1872.

While considering such an issue and documents admissible under Section 35 of Evidence Act, the court has a right to examine the probative value of the contents of the document. Authenticity of entries may also depend on whose information such entry stood recorded and what was his source of information, meaning thereby, that such document may also require corroboration in some cases.

In the instant case, in the birth certificate issued by the Municipality, the birth was shown to be as on 30.3.1984; registration was made on 5.4.1984; registration number has also been shown; and names of the parents and their address have correctly been mentioned. Thus, there is no reason to doubt the veracity of the said certificate. More so, the school certificate has been issued by the Head Master on the basis of the entry made in the school register which corroborates the contents of the certificate of birth issued by the Municipality. Both these entries in the school register as well, as in the Municipality came much before the criminal prosecution started and those entries stand fully supported and corroborated by the evidence of Parimala (PW.15), the

mother of the prosecutrix. She has been cross examined at length but nothing could be elicited to doubt her testimony. The defence put a suggestion to her that she was talking about the age of her younger daughter and not of Shankari (PW.4), which she flatly denied. Her deposition remained un-shaken and is fully reliable.

2011 (5) SCALE 552

Dharmatma Singh
vs
Harminder Singh & Ors

CRIMINAL LAW - Cr.P.C. – SECTION 173,190 & 482 – I.PC. – SECTION 452, 324, 323, 506 & 326 r/w 34 – Cognizance of offences by Magistrate – Quashing of criminal proceedings – Scope of powers of High Court – Prosecution case that respondent 1 and his mother were on their plot of land for erecting walls on the plot when appellant with others came armed with weapons and started beating respondent 1 and his mother – Appellant filed a cross case alleging that when he along with his father reached the plot, they saw respondents 1 and 2 along with others erecting walls on the plot and when they stopped the mason saying that the plot was a disputed one, respondent 2 gave a lalkara and all others attacked appellant's father and appellant caused injuries on them – Police filed two challans before the Magistrate – Appellant and his father were charged sheeted for offences u/s 452, 323, 326, 506 r/w 34, IPC and respondents were charge sheeted for offences u/s 342, 323, 324, 148, IPC – On further investigation, it was reported that respondent 1 gave some injuries to appellant and others for his self defence – Whether the High Court was justified in quashing criminal proceedings against respondent 1 – Allowing the appeal, Held,

A reading of provisions of sub-section (2) 173, Cr.P.C. would show that as soon as the investigation is completed, the officer in charge of the police station is required to forward the police report to the Magistrate empowered to take cognizance of the offence stating inter alia whether an offence appears to have been committed and if so, by whom. Sub-section (8) of Section 173 further provides that where upon further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall also forward to the Magistrate a further report regarding such evidence and the provisions of sub-section (2) of Section 173, Cr.P.C., shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2). Thus, the report under sub-section (2) of Section 173 after the initial investigation as well as the further report under sub-section (8) of Section 173 after further investigation constitute "police report" and have to be forwarded to the Magistrate empowered to take cognizance of the offence. It will also be clear from Section 190 (b) of the Cr.P.C. that it is the Magistrate, who has the power to take cognizance of any offence upon a "police report" of such facts which constitute an offence. Thus, when a police report is forwarded to the Magistrate either under sub-section (2) or under sub-section (8) of Section 173, Cr.P.C., it is for the Magistrate to apply his mind to the police report and take a view whether to take cognizance of an offence or not to take cognizance of offence against an accused person.

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HIGH COURT CITATIONS
CIVIL CASES

2011 (2) - TLNJ 10 (Civil)

N. SenthilKumar
vs
V. Tamilselvi

Civil Procedure Code 1908 as amended, Order 16, Rule 1 & 5 – Petition filed by husband seeking dissolution of marriage under section 13(1)(iii)(a) of Hindu Marriage Act – No petition filed for representing wife by guardian on the allegation – interim application filed under order xvi rule 1 & 5 to examine psychiatrist or doctor as witness on his side – rejected by trial court on the view that without taking steps to represent wife by guardian and without verifying about the mental condition of wife by the court such application is not maintainable – on revision High Court held that the witness may be examined and there is no hindrance for the court to hold enquiry under Order 32 Rule 15 subsequently and witness of the doctor may be kept on record – trial court order set aside and Revision allowed.

Civil Procedure Code 1908 as amended, Order 32, Rule 15 – See Order Hindu Marriage Act 1955, Section 13(1)(iii)(a) – See CPC 1908 as amended, Order 16, Rule 1 & 5.

2011 (2) TLNJ 17 (CIVIL)

Rajamanickam
vs
Balasubramanian

Civil Procedure Code 1908 as amended, Section 47 – Suit filed for partition claiming 1/3 share – D1 and D2 set ex parte – Preliminary decree passed on 13.10.97 – Petition filed for passing a final decree – Petition allowed – Petition to set aside preliminary decree filed by D2 was allowed – written statement filed by him stating property in survey No. 55/1 is available for partition – petition for amendment was filed to include the property – fresh preliminary decree passed – petition for final decree was filed – first respondent filed counter statement, stating no notice was served on him in the amendment petition – contention rejected – final decree passed as against the said order no further proceedings – execution petition was filed – execution proceeding petition was filed under Section 47 CPC - execution court held that the decree is in-executable – revision petition was filed in High Court – held, the first respondent having failed to set aside the ex parte decree passed in the suit, by resorting to the procedure under Order 9, Rule 9, CPC cannot now be permitted to say that the decree is nullity that too by way of application under Section 47 CPC in the course of executing a decree – no steps were taken by the first respondent to set aside the ex parte decree same was allowed to attain a finality – first respondent allowed the order passed in the final decree application to attain a finality – the order passed by the executing court is sustainable and is set aside – CRP allowed.

2011 CIJ 109 REJ

Nagore Dargha, Nagore
vs
M.I. Raheem

Specific Relief Act, 1963(47 of 1963)-Sec.39-Transfer of Property Act,(4 of 1882)-Sec.108(b)(e)-Property-Lease- Destruction-Specific performance-Injunction-Mandatory injunction-A building belonging to the appellant was fully destroyed in fire-When the appellant had put up a new building, respondent stated that he was a tenant in a shop previously and sought for mandatory injunction against the appellant for handing over a shop to him-While the respondent contended that he was a tenant previously and the appellant had agreed to hand over the shop to him after construction, appellant contended that there was no such agreement between them and in the absence of clear terms, it could not be enforced and on the destruction of the building, the earlier tenancy had become void at the option of the appellant-When both the Courts below had held in favour of the respondent, appellant challenged the same-Parties stood by their stands-Held, in the absence of specific terms of tenancy agreed, it could not be enforced by the Courts-To enforce the terms of contract, suit for specific performance should have been filed-On the should have been filed-On the destruction of the building, tenancy had become void at the option of the tenant-Agreement for fresh lease between the parties were not proved-Appeal was allowed and the decrees passed by the lower Courts were set aside.

Specific Relief Act, 1963(47 of 1963)-Sec.39-Transfer of property Act, (4 of 1882)-Sec.108(b)(e)-Property-Lease-Destruction-Continuance-Specific performance-Injunction-Mandatory injunction-For issuing mandatory injunction, there must be an obligation to be performed by the other side and that obligation must be clear and should not be vague-When a person claims possession of a newly constructed property as a tenant, to succeed in the suit, he must also spell out specifically the terms and conditions agreed and in the absence of terms and conditions he cannot succeed.

2011 CIJ 115 REJ

Veerasekaran & Anr
vs
Devarasu & Anr

Specific Relief Act, 1963 (47 of 1963)-Sec.34-Indian Limitation Act, 1963(36 of 1963)-Sec.27 Property-Title-Declaration-Adverse possession-Animus-Plaintiffs / respondents sought for declaration of title and injunction by pleading that the earlier owner was mentally retarded and it was sold to them and alternatively, they had perfected title by adverse possession-Defendants denied it and contended that they had purchased it by registered sale deed-When both the Courts below had held in favour of the plaintiffs, defendants preferred appeal-While the defendant/appellant contended that mere payment of kist by the plaintiffs would not prove their possession and adverse possession which was resisted by the defendants / appellants-Held, mere payment of kist by the plaintiffs would not raise an inference of their title to the suit property-A party pleading title by adverse possession cannot get a relief prayed for merely because of the failure of the opposite party in filing his document of title – Mere possession of the land, however long it may be, would not ripen into possessory title, unless the possessor has animus possidendi to hold the land adverse to the title of the true owner-Appeal was allowed and the decree and judgment passed by the lower Court were set aside.

Specific Relief Act 1963(47 of 1963)-Sec.34-Indian Limitation Act, 1963(36 of 1963)-Sec.27-Property-Title-Adverse possession-Kist-Mere long possession of a property by a person would not make his possession adverse to given him title over that property-Mere payment of kist for a property by a person would not conclusively prove his title to that property.

2011 CIJ 124 REJ

Farhath
vs
Noorunissa Begum

Specific Relief Act, 1963 (47 of 1963)-Sec.38-Property-Possession-Permissive possession-Injunction-Appellant pleaded title to a property and sought for declaration and injunction which was denied by both Courts below against which he preferred appeal-While the appellant argued that as he was in possession of the property, his possession had to be protected whereas, the respondent contended that as the claim of title was refused and as he was a permissive occupant, appellant was not entitled for injunction-Held, when the possession of the appellant was admitted by the respondent, though it was permissive, the appellant was entitled to save his possession from forcible dispossession-Appeal was partly allowed and injunction to save the possession of the appellant was granted.

Specific Relief Act, 1963(47 of 1963)-Sec.38-Property-Possession-Permissive possession-injunction-Even a person in permissive possession of a property is entitled for an order of injunction to save himself from forcible dispossession from the property-A person who permitted another to occupy a property as a licencee cannot evict that person from that property by force.

After the expiry of the permission or cancellation of the permission, the true owner is expected to resort to legal measures and only by approaching the Court, the erstwhile permissive occupier could be ejected or evicted as the case may be.

(2011) 4 MLJ 269

Union of India represented by the General Manager, Southern Railway, Chennai – 600 003
vs
R.S. Venkataraman, Engineering Contractor, Erode

Indian Contract Act (9 of 1872), Sections 70, 73(3) – Work Contract – Principle of restitution – Work done beyond terms of contract – Dispute as to rate of payment for additional work – No written agreement therefor – Held, contractor completed additional work not gratuitously and Railway benefited by said work – Hence, although there is no contract regarding additional work, contractor entitled to compensation at negotiated rate accepted by Railway's Executive Engineer and Contractor.

FACTS IN BRIEF:

A contract was entered into by the Southern Railway and the contractor, respondent plaintiff for construction of a Diesel loco shed and additional work was also entrusted to the same contractor but without any contract therefor. When the additional work was also completed, dispute arose as to the rate of payment. The trial Court decreed the suit filed by the contractor and Also directed the Railway to pay interest. Aggrieved by the judgment and decree of the trial Court, the Railway appellant defendant has preferred the present appeal.

QUERIES:

1. Was the appellant-defendant right in refusing to pay the contractor at the negotiated rate, on the basis that there was no written contract stipulating a rate of payment for the additional work?

2. Was the appellant-defendant right in refusing to pay the contractor at the negotiated rate when the appellant's Executive Engineer and Deputy Chief Engineer had compelled the contractor to accept the said negotiated rate, after which the contractor completed the work?

3. Was the appellant-defendant right in asserting that the payment made was in full settlement of the claim made by the contractor, when the said payment had been received by the contractor under protest?

4. Whether the suit filed by the contractor respondent plaintiff is hit by Section 79 of the Code of Civil Procedure and hence liable to be dismissed?

5. Whether the suit filed by the contractor respondent plaintiff is opposed to Article 299 of the constitution of India?

6. Whether the appellant defendant could object to the production of a document/letter claiming privilege, invoking Section 124 of the Indian Evidence Act, 1872?

7. Whether the trial Court's order directing the appellant defendant to pay the contractor plaintiff interest @ 12% p.a., in the absence of a written contract for the additional work done by the contractor plaintiff, correct?

Held:

This Court pertinently points out that Section 70 of the Indian Contract Act, 1872, speaks of 'Obligation of person enjoying benefit of non-gratuitous Act'. It is to be borne in mind that a claim for compensation by one individual against another as per Section 70 of the Act is not based on any subsisting contract between the parties and its basis is that something has been done by one party for the other, which the other side has accepted voluntarily. Indeed, Section 70 and part 3 of Section 73 of the Indian Contract Act are based on the principle of Restitution which prevents unjust enrichment by retaining anything received by a party which does not belong to him and he should return it to the person from whom he received it and if action is not possible, pay him in its money value.

(2011) 4 MLJ 410

Marudakkal and Anr
vs
K. Prakash and Anr

Suit for specific performance – Cancellation of sale agreement by seller – Suit for specific performance decreed - In second appeal, held, although time was granted, plaintiffs respondents' conduct shows they were not ready and willing to conclude agreement – Decree granted by lower Courts set aside – Appellants directed to refund advance amount to respondents plaintiffs.

Facts in Brief:

The appellant defendant, absolute owner of the suit property entered into an agreement of sale on 9.9.1991, with the respondents plaintiffs real estate agents, to sell the suit property to the plaintiffs for ₹1,85,000/- and received ₹ 30,001/- as advance. The time for completion of the sale was one year from the date of the agreement. The plaintiffs ostensibly wanted to convert the suit property into house sites to be sold to third parties. On 30.9.1991, the defendant owner, cancelled the sale agreement and sent a notice thereof to the plaintiffs, who then filed the suit which was decreed which decree and judgment were affirmed in appeal. The respondents, legal representatives of the deceased defendant have filed the present second appeal challenging the decree and judgment passed by the learned Additional District Judge.

QUERY:

Were the respondents plaintiffs ready and willing to perform their part of the contract?

Held:

The circumstances would show that right from the beginning, the respondents, were not ready and willing to perform their contract. Though it is not necessary for the respondents to prove their financial status, the fact that whether the plaintiff was ready and willing to buy the property could be informed from his conduct. On two occasions, time was granted to conclude the agreement, but the respondents had not shown their readiness to do so. Moreover, according to the respondents, the agreement was entered into only for the purpose of laying out the plots and selling the same to third parties; but P.W.1 has admitted that he has not obtained permission to lay out the plots, which would show that right from the beginning, the respondents were not willing to perform their part of the obligation. The findings arrived at by the Courts below are not legally sustainable.

2011 (3) CTC 433

Govindaraj
vs
Ramadoss

Evidence Act, 1872 (1 of 1872), Sections 68, 69 & 90 – Proof of Will – Applicable provision – Held, Section 90 is not applicable relating to proving of Will, even if Will might be 30 years old and produced from proper custody – Will should be strictly proved in accordance with Sections 68 and 69.

Facts:

Suit filed for partition by the Respondent herein partly allowed by Trial Court in respect of properties in Schedules I, II and III except for items 1 to 3 of the Schedule I. Judgment and decree of Trial Court came to be confirmed by Appellate Court. Aggrieved by the orders of lower Courts, the instant Second Appeal has been preferred by the original Defendant.

Held:

At this juncture, I would like to point out that the latest and the recent decision of the Hon'ble Apex Court reported in Bharpur Singh and others v. Shamsher Singh, 2009 (3) SCC 687 should necessarily be adhered into as under: Certain excerpts from it would run thus:

"19. The provisions of Section 90 of the Evidence Act, 1872 keeping in view the nature of proof required for proving a Will have no application. A Will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. In the event of the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relating thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witnesses, if an attesting witness is alive and subject to the Court and capable of giving evidence."

It is therefore crystal clear from the decision of the Hon'ble Apex Court that Section 90 of the Indian Evidence Act is not applicable relating to proving of the Will is concerned; even though the Will like Ex.B4 might be of 30 years old and produced from proper custody, yet strictly in accordance with Sections 68 and 69 of the Indian Evidence Act, the Will should be proved.

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 33 – Exercise of power under – When warranted – Suit filed for partition of suit property – Prayer in respect of items 1 to 3 of Schedule properties rejected and half share allotted in remaining items of Schedules I, II and III to both Plaintiffs and Defendants – Decree to Trial Court confirmed in Appeal – Second Appeal filed by Defendant – Order 41, Rule 33 invoked by Plaintiff at stage of Second Appeal to claim right over items 1 to 3 of Schedule I property as same was rejected by lower Courts due to misconception – Held, although findings of lower Court cannot be challenged before higher forum without filing Cross-Appeal, certain exceptions exist to consider certain facts under Order 41, Rule 33 – Courts to ensure that there is no any piece-meal partition in a partition Suit and multiplicity of proceedings is to be protected – Judge is expected to decide lis finally without paving way for off shoot litigation thereafter – Held, in interest of justice, judgment and decree of lower Courts warranted to be interfered with under Order 41, Rule 33 – Perusing facts of case, Items 1 to 3 of Schedule I divided equally between Defendants and Plaintiffs.

2011 (3) CTC 444

N. Srinivasan and Anr
vs
Vidya Durai

Code of Civil Procedure, 1908 (5 of 1908), Order 16, Rule 1(2) – Issue of summons to witness is not automatic – Court has got power to consider request and pass orders – Trial Court, held, rightly dismissed Application when evidence of witness, is not necessary to decide issues involved in Suit.

Facts:

In a Suit for recovery of possession, the Defendant takes out an Application to issue subpoena to examine a witness who was aware of the lease terms. The Trial Court dismissed the Application.

Held:

In Revision, Therefore, issuance of summon is not automatic. The Court has got power to consider the request and pass appropriate orders. As the evidence of Mrs. Bama Ravi is not necessary to decide the issue

involved in the Suit, the Court below has rightly dismissed the Application. I do not find any ground to interfere with the order of the Court below.

In the result, the Civil Revision Petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

2011 (3) CTC 446

Karuppaiya Muthuraja
vs
V. Karuppaiya Muthuraja and Anr

Limitation Act, 1963 (36 of 1963) – Filing of Execution Petition – Decree for mandatory injunction – Judgment and decree of Trial Court merges with judgment and decree of Appellate Court and limitation for execution will start running from date of decree passed by Appellate Court.

Facts: The order passed by the Executing Court dismissing the Execution Petition on the ground that it is not maintainable as it is barred by limitation, is under challenge in the Revision.

Held: from the conjoint reading of the said decisions, the Court can deduce the following factual as well as legal aspects:

a. Appeal is nothing but continuation of Original Suit.
b. Judgment and decree passed by the Trial Court have become merged with the Judgment and decree passed by Appellate Court.
c. Starting point of limitation would commence from the date of decree passed by Appellate Court.

2011 -2 - TLNJ 451 (Civil)

M. Inayadulla
vs
P. Palanisamy and Anr

Specific Relief Act 1963, Section 20 – Suit filed for specific performance of agreed to sell and suit for permanent injunction – dismissed by trial court – appeal filed in High Court – held, no explanation by the appellant as to why judgment and decree in dismissing the suit for permanent injunction was not appealed against – time limit has been fixed in the agreement – even after filing the suit, appellant had not deposited the amount before the court immediately but extending the date and it was deposited only after four years Appeal Suit dismissed.

2011 -2 - TLNJ 458 (Civil)

Kanniappan and Anr
vs
Ekambaram

Civil Procedure Code 1908 as amended, Order 32, Rule 5 – The executing Court cannot go behind the decree – Likewise, the Executing Court cannot enlarge the scope of the decree to give a different relief which was not granted by the Court after full-fledged trail – no doubt, the Court below granted relief of

permanent injunction, however by virtue of this order of injunction, the petitioners cannot seek for a larger relief, which was specifically denied by the trial Court as well as 1st appellate Court – CRP dismissed.

2011 (3) CTC 470

Sebasthian and Anr
vs
Shakul Hameed & Anr

Specific Relief Act, 1963 (47 of 1963), Section 22 – Transfer of Property Act, 1882 (4 of 1882), Section 55 – Suit for Specific Performance – Relief of possession, partition and separate possession can also be sought for – Duty is cast upon vendor to handover possession of property which is involved in a particular sale, as its nature admits – Even if relief of possession has not been sought for, it can be granted – Second Appeal dismissed.

Facts:

Second Appeal arose out of Suit Specific Performance. Both Suits were decreed and confirmed in Appeal. The Second Appeal filed before the High Court were also dismissed, after it was held that there was no perversity in the judgment of the First Appellate Court.

Held:

From the close reading of Section 22 of the Specific Relief Act, 1963 it is made clear that in a Suit for specific performance, relief of possession, partition and separate possession can also be sought for. As per the provision of Section 55 of the Transfer of Property Act, 1882, a bounden duty is cast upon the seller to hand over possession of the property which involved in a particular sale as its nature admits.

2011 -2 - TLNJ 483 (Civil)

Gomathy (Died) and Ors
vs
Rajeswaran

Civil Procedure Code 1908 as amended, Order 21, Rule 37 – It is not the province or domain of a court of Law much less as Executing court to say or point out that the Decree holder should have opted to seek a particular kind of relief instead of other relief and this kind of observation by the Executing Court is not palatable one – petition allowed.

2011 -2 - TLNJ 526 (Civil)

Krishnan
vs
G. Joseph and Ors

Civil Procedure Code 1908 as amended, Order 47, Rule 1 read with Section 114 – Applicant raised the main grievance of the review is that while allowing the second appeal, this Court has placed reliance on the compromise memo entered into between the purchasers to use the rear side as the common lane

under circumstances High Court does not find any scope for allowing the review application – assuming that there is any error in the judgment, such error can be discovered only by entering upon a long drawn process of reasoning, which is not contemplated in the review application – there is no error of law or even of fact apparent on the face of record, requiring review of judgment High Court held having failed to make factual submissions and legal arguments before the Division Bench, it is not open to the Review Applicants to raise all those factual and legal submissions in the Review Applications – scope of review is only a limited purpose and cannot be allowed to be appeal in disguise – Review Application dismissed.

2011 (3) CTC 567

Pappammal (Died) and Ors
vs
Sarojini and Anr

Transfer of Property Act, 1882 (4 of 1882), Section 53-A – Part Performance – Claim of Adverse Possession – Whether person, who claims to be in possession of property pursuant to Agreement of Sale under Section 53-A can claim adverse possession – Held, plea of adverse possession and retaining possession by operation of Section 53-A are inconsistent with each other – Person obtaining possession of property in pursuance of Sale Agreement is not entitled to claim adverse possession.

Facts:

Plaintiff filed Suit for declaration and recovery of possession and damages against Defendants. Pleaded case of the Defendant that his father was put in to possession of property by virtue of Sale Agreement executed by the Plaintiff-father. Plaintiff purchased the suit property from the Fourth Defendant-Society. Trial Court dismissed Suit for damages and decree the Suit for all other reliefs. Appellate Court confirmed decree of Trial Court. Hence, Second Appeal.

Held:

It is well settled that a person, who claims to be in possession of the suit property pursuant to agreement of sale under Section 53-A of the Transfer of Property Act cannot claim adverse possession. In the instant case, the Defendants 1 to 3 admittedly entered into possession pursuant to the agreement of sale Ex.B2 and it is rightly held by the Courts below that the Defendants 1 to 3 cannot claim adverse possession and rejected the said plea.

2011 (3) CTC 616

Elumalai
vs
Subbaramani

`Negotiable Instruments Act, 1881 (26 of 1881), Sections 118(a) & 139 – Expert Evidence – Age of Ink – Whether age of ink can be ascertained by forensic expert – Suit for Recovery of Money – Defendant filed an Application to send suit pro-note to expert to ascertain difference between inks which were utilized for signing his signatures in suit pro-note and other signatures contained in printed form which is filled up pro-note – Presumption under Section 118(a) of Act is rebuttable presumption – Accused should be provided with sufficient opportunity before inferring presumption under Section 118 (a) of Act – Experts can be directed to ascertain age of ink as scientific avenues are available for such test – Ratio laid down in Kalyani Bhaskar's case and T. Nagappa's case followed and Court referred disputed

document to expert for their opinion – If expert considers that examination would destruct part of documents or document itself, they may report Court – Civil Revision Petition allowed.

Facts:

Plaintiff filed Suit for recovery of money on the basis of pro-note executed by the Defendant. Defendant filed an Interim Application to ascertain the age of ink contained in other printed format of pro-note. Application filed by the Defendant was dismissed. Hence, Civil Revision Petition before High Court of Madras.

Held:

The authoritative methodologies recommended in the authorities supra are self-explanatory.

The aforenoted opinions of the reputed authors on this subject as narrated above would make it abundantly clear that it is not impossible to discover age of the ink. Hence, the plea that the procedures have not evolved so far in this country is no longer available and it cannot be acceded to. Going by the above clippings in the authorities, it transpires that it is not at all difficult task to step into the experiments under the guidelines of illustrious experts in this field. The authorities and the officials concerned have to take initiatives to evolve procedures for experiments with latest technology for achieving improvement on the subject.

2011 (3) CTC 650

Tamil Nadu Housing Board, rep. by the Chairman, No.493, Anna Salai, Nandanam and Anr
vs
Master Crafts. Partnership Firm, rep. by Power Agent

Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Constitution of India, Article 227 – Plaint in a Suit for injunction was sought to be struck off on ground that suit property was subject matter of Land Acquisition proceedings, in respect of which an award was passed on 1.9.1986 itself – Present Suit is not maintainable since suit property was acquired under Land Acquisition Act – Courts should not be used to entertain vexatious Suits – Such proceedings should be nipped in bud - Plaint liable to be struck off – Civil Revision Petition allowed.

Facts:

Civil Revision Petition was filed under Article 227 of the Constitution to strike off a Plaint, in a Suit for injunction. High Court held that the suit property was acquired under the Land Acquisition Act and therefore, the Civil Court had no jurisdiction to entertain the Suit, which was vexatious in nature. Accordingly the Plaint was truck off.

Held:

Therefore, as per the observation of this Court, the earlier Writ Petition was dismissed on the ground that the Petitioner has not proved his title and therefore, this Court cannot interfere with the Notification, but, however, a liberty was given to work out his remedy in the manner known to law including filing of the Suit. In this Suit also, the Respondent herein based his cause of action on the basis of the Notification issued by the Second Petitioner calling for Applications for allotment of HIG houses in the suit property. Therefore, even assuming that the Suit was filed as per the direction of this Court in W.P. No.26067 of 2009, the Respondent, without filing a Suit for

declaration of his title, as held in the above Writ Petition, cannot file a Suit for injunction to protect his possession. When the land was acquired under the Land Acquisition Act by following the procedure, a Suit for declaration or for injunction will not lie in a Civil Court and it has been held in the judgments relied upon by the learned Senior Counsel for the Revision Petitioners, as stated above.

2011 -2 – L.W. 894

M/s. Pan Resorts Limited, Rep by its Director Sarath Kakamanu
vs
H.H. Karthika Pooyam Thirunal Gourj Parvathi Bayi and Ors

C.P.C., Order 18, R. 17, R.17(A) (omitted by CPC Amendment Act, 2002) Order 13, Rule 10, Order 6, Rule 14, Order 7, R.14(2)(3), Madras High Court Original Side Rules, Order 17, R.7. Prayer to reopen the evidence of PW 1 and to recall and permit PW 1.

All the documents which are sought to be produced through PW 1 by way of reopening the evidence of PW 1 after recalling him are within the knowledge of the applicant even prior to the filing of his proof affidavit.

Though those documents were well within the possession and knowledge of the applicant, he has not exercised his due diligence to produce the same.

While exercising the power under Order 18 Rule 17, the Court is competent to recall any witness, who had already been examined and he may be put questions as the Court thinks fit – It includes cross-examination as well.

Held:

From the averments of the affidavit it can easily be presumed that all the documents which are sought to be produced through PW 1 by way of reopening the evidence of PW 1 after recalling him were/are within the knowledge of the applicant even prior to the filing of his proof affidavit. It is also apparent that neither his father Mr. K. Subbiah nor the applicant has taken due diligence to produce those documents along with the plaint or after filing of the suit by seeking permission of this Court to produce those documents.

It is not the case of the applicant that those documents were not in his possession at the time of filing of the suit. If it is so, he should have stated wherever possible as to whose possession or power those documents were; as contemplated under Sub Rule (2) to Rule 14 of Order 7 of CPC.

2011 -2 – L.W. 921

E. Vanaroja and Ors
vs
S.K. Krishnan & Ors

C.P.C., Order 1, Rule 10(2)/' proper party', 'necessary party', impleading of,

Constitution of India, Article 227.

Point is whether Petitioners are entitled to be impleaded in the appeal under Order 1 Rule 10(2) CPC.

Suit was filed in 1979 by the plaintiffs seeking for a declaration of title – It went up to the second appeal and this Court, allowed the second appeals and gave directions – Though, E, through whom the petitioners are claiming right died on 21.11.2000, as per their affidavit, had not chosen to file any applications to implead him as a party either before the trial court or in the first appellate court or the second appeal, though he was alive for about 21 years – It cannot be said that the petitioners had no knowledge about the suit, appeal and the pendency of the second appeal, after filing of the suit in 1979, more than 31 years having lapsed.

Impleading the persons would certainly cause prejudice to the rights of other contesting parties – As petitioners are not parties to the suit, first appeal and the second appeal the decision rendered without impleading them would not bind the petitioners and accordingly, there would be no prejudice caused against the petitioners.

The petitioners herein / proposed parties are third parties to the suit and the appeal. The suit was filed by one Eliiah Reddiar, the second respondent herein and one Chakrapani against the respondents 1, 8, 9 and 10 herein and two others, seeking declaration of title of the suit schedule property and other consequential reliefs. After contest, the suit was dismissed without costs. Aggrieved by which, appeal was preferred by the plaintiffs 2 and 3 and the legal representatives of the first plaintiff. Reversing the Judgment of the trial court, the appellate court decreed the suit by its Judgment and Decree, dated 13.04.1989 in A.S.No. 158 of 1988. Aggrieved by which, second appeal was preferred by the first respondent herein, who was the second defendant in the suit.

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HIGH COURT CITATIONS
CRIMINAL CASES

2011 CIJ 224 ALJ

G. Murugan
vs
Inspector of Police, Manali New Town P.S.

Indian Penal Code, 1860 (45 of 1860) – Sec. 324 – Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 436, 437 – Code of Criminal Procedure (Amendment) Act, 2005-Sec. 42(f)(iii)-Offence–Bailable – Magistrate – Duty – Petitioner sought for anticipatory bail for an offence under Sec.324 IPC which was objected by the respondent by contending that it was only bailable and anticipatory bail could not be granted-Held, the provision of Sec.42(f)(iii) of the Code of Criminal Procedure (Amendment) Act, 2005 which made Sec.324 as non-bailable was not brought into force and so, it was only bailable-Conduct of the Magistrate in refusing bail to coaccused was condemned and the order was directed to be circulated to all the Magistrates-Petition was dismissed.

Indian Penal Code, 1860 (45 of 1860) – Sec.324-Code of Criminal Procedure, 1973 (2 of 1974) – Sec. 436, 437 – Code of Criminal Procedure (Amendment) Act, 2005-Sec.42(f)(iii)–Offence-Bailable-Offence punishable under Sec.324 IPC is a bailable offence.

The above notification shows that Section 42(f)(iii)…. of the Code of Criminal Procedure (Amendment) Act, 2005 has not come into force and as such, the offence under Section 324 IPC remains as bailable.

In view of the above, as the offences alleged against the petitioner are only bailable in nature, the petition for anticipatory bail is dismissed.

2011 CIJ 226 ALJ

Mr. K. Panchatcharam
vs
State

Code of Criminal Procedure, 1973-Sec. 212, 218-Indian Penal Code, 1860 (45 of 1860) – Sec.409-Criminal trial-Framing of charges-Joint trial – Misappropriation – Petitioner and the few other persons were accused of committing misappropriation of the funds of the Government during the period of about five years – Though a single FIR was registered, after investigation, the respondent filed six different final reports for six consecutive years which were taken on file by the Magistrate-Petitioner filed a petition before the Magistrate praying for joint trial of all the cases which was rejected against which he preferred revision – Petitioner contended that the accused was having liberty to seek for joint trial of all the cases – Since only one FIR was registered and the transaction was a continuous transaction six different cases for the same nature of offences during a particular period would prejudice him and he was willing for joint trial-Respondent objected the plea by contending that as the offences of misappropriation took place during a span of more than five years, single trial could be permitted only if the misappropriations were committed during the period of one year – Held, when the misappropriations were committed by a person

during the span of more than one year, for the act of misappropriation committed during each year a separate trial had to be conducted – As the petitioner alone had sought for joint trial and there were other accused also, prayer of the petitioner could not be granted – Order of the Magistrate was confirmed and the revision was dismissed.

Code of Criminal Procedure, 1973-Sec. 212, 218-Indian Penal Code, 1860 (45 of 1860) – Sec.409 – Criminal trial – Framing of charges – Joint trial – Misappropriation – If the acts of misappropriations were committed by the accused during the span of more than one year, for the act of misappropriation committed during each year a separate trial had to be conducted.

Therefore, the filing of separate charge-sheets for each spell was completely in tune with Section 212 sub clause (2) proviso. Hence the investigating Officer cannot be found fault with for filing separate final reports in respect separate periods of one year duration and the court below also cannot be found fault with for taking cognizance of the said cases as separate calendar cases.

2011 CIJ 274 ALJ

Ganesan etc.
vs
State

Code of Criminal Procedure, 1973 (2 of 1974)-Sec.193, 209, 407- Criminal trial-Joint trial-Evidence-Recording-Adoption-Committal-Absence-Effect-A girl aged 14 years was molested on two occasions and on other two occasions raped by her stepfather for which the respondent registered one FIR on the report of the girl-After investigation, respondent filed four different final reports for four different incidents-Two cases were exclusively triable by the Court of Sessions and other two cases were by the Magistrate-Magistrate committed the Sessions cases to the Sessions Court and also forwarded the other two cases to the Court of Sessions-While the Court of Sessions conducted four separate trials, it simply adopted the evidence recorded in one case in the rest of the three cases without any fresh examination of those witnesses in those other cases-After trial, the accused were convicted by the Sessions Court against which the appellants preferred appeal-While the appellants contended that they were innocent, the de facto complainant changed her version later on and the cases against them were was not genuine, it was resisted by the respondent-Held, in criminal trials, evidence recorded in one case could not be simply copied or adopted in another case-In each and every case, there had to be separate judgment-The trial court had committed illegality in simply adopting the evidence recorded in one case in the rest of the cases – Conducting trial by the Sessions Court in a case without committal was an irregularity-As the accused had not raised any objection in that regard till the conclusion of the trial, he could not raise any objection in that regard in the appeal-As the principal witness had changed her version at a later stage and apart from her evidence, there was no other evidence supporting the prosecution, no useful purpose would be served by ordering retrial-Appeals were allowed and the appellants were acquitted-Guidelines were issued regarding the committal and the joint trial of the cases.

Indian Evidence Act, 1872(1 of 1872)-Sec.33- Code of Criminal procedure, 1973(2 of 1974)-Sec.244-Criminal trial-Evidence-Recording-Adoption-Legality-Judgment-Common judgment-The evidence let in, in one case in respect of one occurrence cannot be made use of against the accused in the other case-Delivering a common judgment in respect of different occurrences making out different offences on different occasions and at different places is illegal.

When that be so, the evidence let in, in one case in respect of one occurrence cannot be made use of against the accused in the other case. But the trial court has committed very serious illegality in considering the evidences in all cases together and in delivering a common judgment. In my considered opinion, delivering a common judgment in respect of four different occurrences making out four different offences on four different occasions and at a four different places is illegal and the same is a procedure unknown to criminal law. Therefore, on this account, the entire judgment of the trial court is vitiated.

(2011) 2 MLJ (Crl) 328

Jeeva, S/o. Krishnan, Tirur Village, Sevvapettai, Tiruvallore District
vs
State rep by Inspector of Police, Sevappet Police Station, Tiruvallore District

Code of Criminal Procedure, 1973 (2 of 1974), Section 311 - Summoning a person as witness - Material witnesses - Scope of Section 311 Cr.P.C.

Held: From the language coined in Section 311 of Cr.P.C., it is obvious that the scope of Section is very wider and it need not be taken into a narrow one. In order to enable the Court to find out the real truth which is hidden or invisible and to take a just decision the salutary provisions of Section 311 are enacted where under any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. It must be borne-in-mind that opportunity of rebuttal shall be given to other party.

In the case on hand, from the context of the petition in Crl.M.P.No.244 of 2010 on the file of the trial Court, the evidence of Mr.S.P.Ayush Mani Tiwari, the then Superintendent of Police, Tiruvallore is very much essential to take just decision in this case and the circumstances narrated in this petition imposing the duty on the trial Court to examine the then Superintendent of Police, Tiruvallore as a material evidence on the part of the defence side so as to clarify the position as aforementioned. If the trial Court fails to summon and examine him as a material witness he would not be otherwise brought before this Court at any stage at the later point of time.

(2011) 2 MLJ (Crl) 343

N. Padmanabhan
vs
State rep by Inspector of Police, All Women Police Station

Dowry Prohibition Act (28 of 1961), Section 4 – Indian Penal Code (45 of 1860), Section 498-A – Cruelty and harassment – Complaint by wife after 3 months of marriage – Wrong allegations by husband – Proof of mental cruelty sufficient for sustaining conviction under Section 498-A – Acquittal of accused from offence under Dowry Prohibition Act do not rule out the possibility of commission of offence under Section 498-A – Conviction confirmed.

Held: The mere fact that within three months after the marriage, she had to give a complaint, which lead to a compromise resulting in the submission of an undertaking by the petitioner to set up a separate residence for himself and his wife, shall not be enough to disbelieve her testimony that even during that three months period she was subjected to cruelty and harassment. No prudent wife will venture to shut the possibility of reunion by lodging a complaint alleging cruelty and harassment within three months from the date of marriage, with the intention of prosecuting her husband for criminal offence. The natural course of action that shall be taken by a

prudent wife is to keep open the chances of settlement. In this case what P.W.1 did was nothing but the same. At the first instant, she gave complaint alleging harassment, but requested the police not to take any drastic action so as to shut the doors of settlement and reunion. That is the reason why the enquiry in the previous complaint dated 6.1.2007 resulted in a compromise on the petitioner's giving a statement containing an undertaking that he will set up a separate residence for himself and his wife. The petitioner has also subjected P.W.1 to medical examination on the alleged premise that she was suffering from loathsome disease. Soon after P.W.1 received a legal notice from the petitioner containing untenable allegations, she realized the colour of the petitioner and submitted the complaint leading to the prosecution of the petitioner along with the other co-accused. Therefore, the contention of the learned counsel for the petitioner that there was suppression of the earlier complaint and a fresh complaint with concoction was given after deliberation has got to be rejected, which the Courts below have rightly done.

2011 CIJ 349 CTJ (1)

P. Amalraj & Anr
vs
State

Indian Evidence Act, 1872(1 of 1872)-Sec. 3-Code of Criminal Procedure, 1973(2 of 1974)-Sec.164-Prevention of Corruption Act, 1988(49 of 1988) – Sec.17, 19-Corruption-Investigating officer-Sanction-Competent authority-Confession-Retraction-Corroboration-Appreciation of evidence-Appellants were accused of fabrication documents to falsely show that a work was carried out and appropriated the money-When the trial Court convicted them, they preferred appeal-Appellants contended that the evidence of the witnesses were not believable, on the retraction of the confession recorded, it had to be corroborated on material aspects, conducting investigation by the officer who registered FIR prejudiced them and the sanction was not given by the competent authority which plea was resisted by the State-Held, as the sanctioning authority did not know the officer who was competent to remove the appellant, sanction given by him was bad-On the retraction of the confession, it had to be corroborated on material aspects-Though the investigation was conducted by the officer who registered FIR, the accused could not point out any prejudice to him as a result of such flaw-As many of the witnesses turned hostile and the retracted confession was not corroborated on material aspects, the charge was not proved-Appeal was allowed and appellants were acquitted.

Indian Evidence Act, 1872 (1 of 1872)-Sec.3-Code of Criminal Procedure, 1973(2 of 1974)-Sec.164-Confession-Retrgction-Corroboration-Appreciation of evidence-Retracted confession of the accused has to be corroborated on material aspects if it is to be relied on.

Indian Evidence Act, 1872(1 of 1872)-Sec.3-Prevention of Corruption Act, 1988(49 of 1988)-Sec.17-Corruption-Investigation – Investigating officer-Prejudice-Appreciation of evidence-Unless substantial prejudice is shown to the accused as a result of final investigation conducted by the officer who conducted preliminary investigation, it cannot be a ground for acquittal of the accused.

(2011) 2 MLJ (Crl) 357

Pritish Tewari
vs
Vista Security Technics Private Limited, Chennai, rep. by its authorised signatory Dharma Raj

Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque – Proceedings challenged on graound of territorial jurisdiction – Cheques drawn in New Delhi – Returned unpaid by drawee bank in New Delhi and statutory notice paid served at New Delhi – New Delhi Courts alone possess jurisdiction – No territorial jurisdiction for Courts in Chennai.

Held:

The complainant would ever in the complaint that they had supplied various materials to the Pyroguard Engineering Pvt Ltd' having Office at New Delhi in respect of which the said Company had issued cheques drawn on HDFC Bank, Greater Kailash New Delhi, There is no averment to show that the transaction was carried on at Chennai and the cheques were issued at Chennai. Following the ratio laid down in K. Bhaskaran v. Sankaran Vaidhyan Balan and Another AIR 1999 SC 3762 and Harman Electronics Private Limited and Another v. National Panasonic India Private Limited (2009) 1 MLJ (Crl) 889 (SC) case. This Court is of the considered view that the Courts at New Delhi alone is having territorial jurisdiction for the trial of the alleged offence under Section 138 of the Act as the cheques were drawn at New Delhi and they were returned unpaid by the drawee bank at New Delhi and the statutory notice was served on the drawer demanding payment at New Delhi.

2011 -1 – L.W. (Crl) 421

Rajasekaran & Ors
vs
State by Inspector of Police, Mayiladuthurai Police Station

I.P.C., Sections 332, 506 (i), Evidence/Duty of the Prosecution to explain the injuries, Scope.

It was contended for accused –appellant in this case that the prosecution has not come forward with true version of the accused in as much as the prosecution failed to prove the injuries; that P.Ws.1, 2 and the deceased are interested witnesses; their evidence requires close scrutiny and the injuries sustained by P.Ws. 1, 2 and the injuries sustained by P.Ws 1, 2 and the deceased are minor injuries while comparing to the multiple injuries sustained by the accused; thus the accused totally contradict of the appeal not distinctively and, hence conviction is liable to the set aside.

Held: It is not in every case where the injustice to the accused has not been explained by the prosecution that the guilty should be acquitted – Similarly it is not the law that there is no duty cast upon the prosecution to explain the injuries on the accused – Court has to have a over all view.

In this case, the prosecution is bound to have explained the injuries sustained by the accused – Since P.Ws 1 , 2 and 4 have not stated any thing about the injuries sustained by the accused, it goes without saying that the prosecution witnesses are suppressing the material facts and they have not come forward with the true version of the occurrence.

It is unsafe to sustain the conviction – Conviction imposed on the accused are liable to be set aside – Appeal allowed and the conviction set aside.

2011 -1 – L.W. (Crl) 460

Jayapal & Ors
vs
The State rep. by Inspector of Police, L & O, B-2 Esplanade Police Station, Chennai

I.P.C., Section 324, Criminal P.C., Section 357/Compensation, Jurisdiction of court to award compensation, Scope, Evidence/Rule as to corroboration, Scope, Non examination of the injured, whether fatal to the case of the prosecution – In a case where the evidences of interested witnesses do not inspire the confidence of the court, as a rule, the court would look for corroboration from independent sources – It is also the rule that in a case where the evidences of the interested witnesses inspire the confidence of the court absolutely there is no need for any other evidence from independent sources to corroborate – In the case on hand, the evidence of P.W. 1 coupled with other evidences would clearly establish the case of the prosecution beyond any iota of doubt. Therefore, the non-examination of any independent witness cannot be held to have caused any doubt much less reasonable doubt in the case of the prosecution.

Compensation can be ordered only in favour of a victim, who has suffered some loss due to the occurrence – In this case "Kaligamabl Temple" is in no way connected with the crime and no damage was caused to the temple – Compensation cannot be equated with a donation to be given to a deity – Compensation, in the legal sense, is to make good the loss sustained by the victim in the occurrence – Trial court has travelled beyond its jurisdiction and has wrongfully directed payment of ₹20,000/- as compensation to the temple – Direction of the trial court set aside – Appeal partly allowed.

Criminal P.C., Section 357/Compensation, Jurisdiction of court to award compensation, Scope – See I.P.C., Section 324.

Evidence/Rule as to corroboration, Scope, Non examination of the injured whether fatal to the case of the prosecution – See I.P.C., Section 324, Criminal P.C., Section 357/Compensation, Jurisdiction of court to award compensation, Scope.

2011 -1 – L.W. (Crl) 493

S.S. Karikalan
vs
State rep. by The Inspector of Police, Economic Offences Crime, Investigation Branch, Cuddalore & Anr

Criminal P.C., Section 319, I.P.C., Sections 467, 471, 420/Revision against order of issue of summons to the petitioner under Section 319 Cr.P.C. as an additional accused.

Held: Since the charges have been framed against the second respondent/A1 for the offences under Sections 467, 471 and 420 I.P.C., there must be an intention of forgery of valuable security and using it as genuine a forged document – There is no prima facie evidence to show that the petitioner herein falsifies the record (i.e) Demand Drafts and forged the record as (Valuable security) – P.w.3's evidence is also not sufficient to conclude that the petitioner herein is having an intention to forge the Demand Drafts and used it as a genuine and encashed the same.

Ingredients of Sections 467, 471 and 420 I.P.C. have not been prima facie made out – No sufficient evidence or possibility for conviction.

There is no evidence to prove that at the instigation of the petitioner/accused, the second respondent has cheated the Bank official and fabricated the Demand Drafts and handed over the same to the petitioner – Revision allowed.

I.P.C., Sections 467, 471, 420/Revision against order of issue of summons – See Criminal P.C., Section 319.

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