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# IMPORTANT CASE LAWS

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# SUPREME COURT CITATIONS
# CIVIL CASES

**2011 (13) SCALE 84**

**National Insurance Company Ltd**
**Vs**
**Sinitha & Ors**

**MOTOR VEHICLES – MOTOR VEHICLES ACT, 1988 – SECTION 140, 144, 163A & 166 – Accident claim u/s 163A – Section 163A is founded on the 'fault' liability principle – It is open to the owner or insurance company, as the case may be to defeat a claim under Section 163A of the Act by pleading and establishing a 'fault' ground – Deceased, aged 27 years, was riding a motorcycle and while giving way to a bus coming from the opposite side, side, the motorcycle hit a big laterite stone lying on the tar road – On impact, the motorcycle overturned and resultantly, the rider as also the pillion-rider suffered injuries – Deceased, rider of motor cycle, succumbed to his injuries on the following day while pillion-rider survived – Motorcycle was inured with the petitioner Company – Claimants, wife, children and parents of deceased, filed a claim petition u/s 166 of the Act, claiming compensation of ₹ 8,20,500/- - Claim petition was subsequently amended and claim was sought u/s 163A of the Act – Tribunal awarded compensation of ₹ 4,26,650/- - On appeal, High Court held that ₹ 5,000/- awarded for plain and suffering was impermissible u/s 163A of the Act – Petitioner challenged the award alleging that the claimants were not entitled to raise any claim for compensation because the accident had occurred solely and exclusively on account of the negligence of the deceased – Whether the issue of 'wrongful act', 'neglect' or 'fault', at the hands of deceased, was relevant for determination of a claim made u/s 163A of the Act – Held, Yes – Whether the petitioner Insurance Company had discharged the onus to prove guilt of deceased – Held, No – Dismissing the petition, Held.**

**2011 (6) CTC 102**

**Ganduri Koteshwaramma & Anr**
**Vs**
**Chakiri Yanadi & Anr**

**Hindu Succession Act, 1956 (30 of 1956), Section 6 (as amended by Amendment Act 2005) – Section 6 was amended in 2005 to bring in parity of rights in coparcenary property among male and female members – As per amendment daughter of coparcener becomes coparcener by birth in her own rights and liabilities in same manner as son – Exceptions carved out are: (a) where, disposition of alienation of or such property including partition, has taken place on or before 20.12.2004 (b) where, testamentary disposition of property, has been made on or before 20.12.2004 – Property would be said to have been partitioned only when partition is effected by registered Deed of Partition or decree of Civil Court.**

**Hindu Succession Act, 1956 (30 of 1956), Section 6 (as amended by Amendment Act 2005) – Coparcenary Property – Intestate Succession - Inheritance Right of female member of joint family – In Suit filed by male member of Hindu for partitioning coparcenary property and mother's property preliminary decree was passed by Trial Court on 19.3.1999 treating male members alone as coparceners – Final Decree Application was pending as on 20.12.2004 – Whether daughters of male Hindu are entitled to benefits of amended Act – Whether preliminary decree passed prior to amended act can be modified or altered and whether daughters of such family could seek amendment of preliminary decree and seek parity – Held, declaration in Section 6 that daughter of coparcener shall have same rights and liabilities in coparcenary property as she would have been a son is unambiguous and unequivocal – There is no impediment to pass more than one preliminary decree if after passing of preliminary decree events have taken place necessitating the readjustment of shares as declared in preliminary decree – Court has always power to revise preliminary decree or pass another preliminary decree if situation in changed circumstances so demand – Suit for partition continues after passing of preliminary decree and proceedings in Suit get extinguished only passing of final decree – Respondent/Sisters are entitled to claim share in coparcenary property even after passing of preliminary decree in Suit for partition.**

**Code of Civil Procedure, 1908 (5 of 1908), Section 2(2) – Preliminary decree – Preliminary decree determines rights and interests of parties – Preliminary decree does not dispose of Suit for partition and only disposed of only then – Preliminary could be amended or even another preliminary decree passed until final decree is passed.**

**2011 (13) SCALE 232**

**K.N. Govindan Kutty Menon**
**Vs**
**C.D. Shaji**

**LOK ADALATS – LEGAL SERVICES AUTHORITIES ACT, 1987 – SECTION 21 – NEGOTIABLE INSTRUMENTS ACT, 1881 – SECTION 138 – Award passed by Lok Adalat recording the settlement – It would be a decree of a civil court and as such it is executable by the court – Appellant complainant filed a complaint against respondent u/s 138 of the NI Act – Magistrate referred the said complaint to the District Legal Service Authority for trying the case for settlement between the parties in the Lok Adalat – Both parties appeared before the Lok Adlat and the matter was settled and an award was passed on the same day – As per the award, out of ₹6,000/- respondent paid ₹500/- on the same day and agreed to pay the balance amount of ₹5,500/- in five equal instalments – As the respondent did not pay any of the instalments as per the settlement, appellant complainant filed execution petition – Principal Munsiff Judge dismissed the petition holding that the award passed by the Lok Adalat on reference from the Magistrate Court cannot be construed as a 'decree' executable by the civil court – Writ petition filed by appellant dismissed by the High Court – Whether, when a criminal case filed u/s 138 of the NI Act, referred to by the Magistrate Court to Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable – Allowing the appeal, Held.**

**2011 (12) SCALE 306**

**Dayanandi**
**Vs**
**Rukma D. Suvarna and Ors**

**WILLS – INDIAN SUCCESSION ACT, 1925 – SECTION 63 & 71 – Execution of Will – Alteration, interlineation or obliteration made in an unprivileged Will after its execution has no effect unless such alteration has been executed in the same manner in which the Will is executed – Suit property was owned by 'SG', father of respondent1, appellant and respondents 2 to 6 – About 3 months and 10 days before his death, 'SG' executed Will dated 25.5.1987 – He bequeathed the property specified in item No. 1 of the Schedule attached to the Will to one of his four daughters, namely, 'K' (respondent 3) and property specified in item No. 2 jointly to other daughters (appellant, respondent 1 and respondent 2) – After execution of the Will, alterations were made thereby disinheriting respondent 1 – After one year of the demise of 'SG' respondent 1 filed suit for partition and separate possession of her share in plaint Schedule 'B' property pleading that appellant and respondent 2 manipulated execution of another Will dated 25.8.1987 depriving her of share in the property – Appellant and respondent 2 pleaded that the testator executed second Will dated 25.8.1987, in which respondent 1 was not given any share because she did not attend funeral of the mother and she did not come to meet her father when he visited Bombay in May, 1987 – Trial Court dismissed the suit while holding that execution of Will dated 25.5.1987 was proved but by alterations made in that Will, the testator consciously disinherited respondent 1 – On appeal, High Court decreed the suit holding that alterations were not there when the Will dated 25.5.1987 was executed and that the testator had not voluntarily executed the second Will – Whether the High Court committed an error by reversing the finding recorded by the trial Court – Dismissing the appeal, held.**

**2011-5-L.W. 322**

**Parimal**
**Vs**
**Veena @ Bharti**

**C.P.C., Order 9, Rule 13 / Application for setting aside ex parte decree of divorce passed under Section 13, H.M. Act was preferred on the ground of fraud and collusion and absence of notice served by substituted service, Expression "prevented by any sufficient cause", Scope.**

**C.P.C., Order 41, Rule 31, Section 104 / Procedure for deciding the appeal, Substantial compliance, Duty of the first appellate court as a final court of fact.**

**Hindu Marriage Act (1955), Section 13(1)(1-a), (1-b) / Ex parte decree of divorce, Application for setting aside, filed after 4 years of the passing of the decree under O.9, Rule 13, C.P.C., "Sufficient Cause", Considerations,**

**Evidence Act (1872), Sections 101, 103 / Burden of Proof, Section 114(f), read with General Clauses Act (1897), Section 27 / Presumption as to letter sent by registered post.**

**General Clauses Act (1897), Section 27 and Evidence Act (1872), Section 101, 103, 114(f).**

**First appellate Court should not disturb and interfere with the valuable rights of the parties which stood crystallised by the trial Court's judgment without opening the whole case for re-hearing both on question of facts and law – In case the matter does not fall within the four corners of Order 9, Rule 13 CPC, the court has no jurisdiction to set aside ex-parte decree.**

**Manner in which the language of the second proviso to Order 9, Rule 13 CPC has been couched by the legislature makes it obligatory on the appellate Court not to interfere with an ex-parte decree unless it meets the statutory requirement.**

**The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts.**

**Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue.**

**While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing substantial justice to all the parties concerned – Technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it.**

**Sufficient cause is the cause for which the defendant could not be blamed for his absence – Therefore, the application must approach the court with a reasonable defence – Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand – There cannot be a strait-jacket formula of universal application.**

**Second proviso in Order 9, rule 13, mandatory in nature – It is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.**

**2011 (12) SCALE 328**

**Sanjay Batham**
**Vs**
**Munnalal Parihar and Ors**

**MOTOR VEHICLES – MOTOR VEHICLES ACT, 1988 – SECTION 166 – Accident claim – Grievous injuries – Award of compensation for future treatment – Accident occurred when the scooter on which the claimant was travelling along with his friend was hit by a truck – Appellant-claimant aged 20 years, sustained grievous injuries on the head, right shoulder, back bone and other parts of the body – He was operated for fracture on his head but left part of his body was paralyzed – Prospects of his marriage had been considerably reduced – Tribunal awarded compensation holding that appellant had suffered 45% temporary disability – On appeal, High Court applied the multiplier of 16 and concluded that the appellant was entitled to a sum of ₹1,44,000/- in lieu of loss of earning – High Court also awarded ₹50,000/- for treatment and ₹56,000/- for pain and suffering – At the time of accident, appellant was earning ₹50/- per day by doing the work as an unskilled labourer – Whether High Court should have awarded compensation for future treatment – Held, Yes – Appellant held entitled to total compensation of ₹5,62,000/- with interest @ 9% p.a. – Allowing the appeal, Held.**

**2011 (12) SCALE 658**

**Sri Laxman @ Laxman Mourya**
**Vs**
**Divisional Manager, Oritl. Ins. Co. Ltd & Anr**

**MOTOR VEHICLES – MOTOR VEHICLES ACT, 1988 – SECTION 166 – Accident claim – Permanent disability – Award of compensation for future treatment – Appellant, aged 24 years, sustained grievous injuries in a road accident – He was admitted in a hospital and was discharged after about 15 days – Appellant, a carpenter, suffered 26% disability of right lower limb, 25% disability due to urethral injury and 38% disability to the whole body – Appellant filed petition u/s 166 of the Act claiming compensation of ₹5,00,000/- - Tribunal awarded compensation of ₹45,000/- - On appeal, High Court held that appellant was entitled to total compensation of ₹76,000/- - Whether appellant was entitled to higher compensation – Held, Yes – Award of total compensation of ₹8,37,640/- with interest at the rate of 8% from the date of filing the petition – Allowing the appeal, Held.**

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# SUPREME COURT CITATIONS
# CRIMINAL CASES

**2011 (13) SCALE 75**

**Shiv Shankar Singh**
**Vs**
**State of Bihar & Anr**

**CRIMINAL LAW – Cr.P.C. – SECTION 154, 156 & 203 CHAPTER XV – I.P.C. – SECTION 395 & 302 – Second Protest Petition – Maintainable only under exceptional circumstances – Prosecution case that a dacoity was committed in the house of appellant and his brother 'KS' on 6.12.2004 wherein son of 'KS' was killed allegedly by dacoits and lots of valuable properties were looted – FIR lodged by appellant naming some persons u/s 396/398, IPC – However, 'KS' brother of appellant and father of deceased, approached the court by filing a case u/s 156(3), Cr.P.C. and FIR was lodged in respect of the same incident with the allegations that the appellant and others had killed deceased as the accused wanted to grab the immovable property – When the investigation in pursuance of both the FIRs was pending, the appellant filed Protest Petition but did not pursue the matter further – Court did not pass any order on the said petition – After completing investigation in the report dated 6.12.2004, the police filed final report on 9.4.2005 to the effect that the case was totally false and that the deceased had been killed for property disputes – After investigating in the other FIR filed by father of deceased, charge sheet was filed u/s 302, 302/34, 506, IPC against the appellant and others – Appellant filed a second Protest Petition in respect of the Final Report dated 9.4.2005 – Magistrate took cognizance and issued summons to respondent and others – On challenge, High Court held that second Protest Petition was not maintainable and the appellant ought to have pursued the first Protest Petition – Whether the law prohibits filing of entertaining of second Protest Petition – Allowing the appeal, Held.**

**2011 (13) SCALE 132**

**Dinesh Kumar**
**Vs**
**Chairman Airport Authority of India and Anr**

**PREVENTION OF CORRUPTION – PREVENTION OF CORRUPTION ACT, 1988 – SECTION 13(2) r/w 13(1)(d) & 13(1)(a) – Sanction to prosecute – Legality and validity – Where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial – Appellant being prosecuted for offences punishable u/s 13(2) r/w 13(1)(d) and 13(1)(a) of the P.C. Act – Sanctioning authority granted sanction to prosecute appellant for the offences – After the sanction order was challenged by appellant in the High Court, the charge sheet had been filed by the CBI against appellant in the court of Special Judge – Court of Special Judge took cognizance against the appellant – Single Judge of the High Court dismissed appellant's writ petition – In intra-court appeal, Division Bench held that it was open to the appellant to question the validity of the sanction order during trial on all possible grounds – Whether, since the cognizance had already been taken against the appellant by the trial Judge, the High Court erred in leaving the question of validity of sanction order for consideration by the High Court – Dismissing the appeal, Held.**

**2011 (13) SCALE 212**

**Bangaru Laxman**
**Vs**
**State (Through CBI) & Anr**

**CRIMINAL LAW – Cr.P.C. – SECTION 306 & 307 – PREVENTION OF CORRUPTION ACT, 1988 – SECTION 5(2) – Tender Of Pardon to accomplice – Under Section 5(2) of the Prevention of Corruption Act, power of the Special Judge to grant pardon is an unfettered power subject to stipulation made in the Section itself – Power of granting pardon, prior to filing of the charge sheet, is within the domain of judicial discretion of the Special Judge – Confessional statement of respondent 2 recorded his involvement and involvement of appellant in the incident – Special Judge granted pardon to respondent 2 – Charge sheet in the case was filed next day against the appellant – Order granting pardon challenged by the appellant alleging that pardon could not be granted by the Special Court prior to the filing of the charge sheet – High Court dismissed the challenge – Whether power of granting pardon, prior to the filing of the charge sheet, was within the domain of judicial discretion of the Special Judge – Dismissing the appeal, Held.**

**(2011) 9 Supreme Court Cases 234**

**Santosh Kumari**
**Vs**
**State of Jammu and Kashmir and Ors**

**Criminal Procedure Code, 1973 – Ss. 228, 240 and 211 and 214 – Proper framing of charge – Requirements of – Accused should be informed with certainty and accuracy the exact nature of charge brought against him – Accused person must be able to know substantive charge he will have to meet and to be ready for it before evidence is given – Particulars necessary to be ready for it before evidence is given – Particulars necessary to be given in charge depends upon facts and circumstances of each case – Criminal Trial – Charge.**

**Penal Code, 1860 – Ss. 34, 114 and 149 – Nature of charge, when any of these sections is involved – Reiterated, in such a case charge is a rolled-up one involving direct liability and constructive liability without specifying who are directly liable and who are sought to be made constructively liable – Criminal Procedure Code, 1973, Ss. 211 to 215.**

**Criminal Procedure Code, 1973 – Ss. 211 to 215, 226 to 228 and 464(1) – Framing of charge – Particulars to be stated – Description of offences, if required beyond what is stated in Ss. 211 to 214 – Prejudice – Whether caused – Stage to which trial had progressed - Relevance of – Charges framed against accused for committing rioting and murder – Particulars required by law stated by trial court while framing charge – Nature of charge was clearly understood by accused, which was evident from: (i) finding recorded by trial court while framing charge that nature of charge was very well understood by accused, (ii) averments made in accused's revision petition challenging order framing charges, and (iii) nature of cross-examination of eyewitnesses by accused – There was nothing to suggest or indicate that accused was misled or failure of justice was occasioned by any error or omission in charge – Five witnesses had already been examined and supported prosecution – Fact that trial against accused has / had made considerable progress inasmuch as material evidence of eyewitnesses to occurrences was recorded by trial court could not have been ignored while deciding question whether proper charge against each accused was framed or not – Held, High Court's order setting aside order framing charge deserves to be set aside – Trial Court directed to complete trial as expeditiously as possible – Ranbir Penal Code, 1989 (2 of 1989 Smvt.) (1932 AD) – Ss. 302, 109, 147, 148 and 149 – Criminal Procedure Code, 1989 Smvt. (1933 AD) – Ss. 267, 268 and 269, Ch. XIX, Ss. 561-A and 225 – Penal Code, 1860, Ss. 302, 109, 147, 148 and 149.**

**Criminal Trial – Practice and Procedure – Generally – Procedural Laws – Mere technicalities not to frustrate ends of justice – Irregularity is curable unless accused is prejudiced – Errors in charge, or even a total absence of a charge is curable – Criminal Procedure Code, 1973, Ss. 211, 215 and 464.**

**Criminal Procedure Code, 1973 – S. 439 – Bail – Grant of bail – Sustainability of – High Court set aside order passed by trial court framing charge and directed release of accused persons pending consideration of prosecution case for framing charge by trial court – High Court granted temporary bail on ground that accused were facing trial over a period of three years – Record does not show that prosecution was responsible in any manner at all for so-called delay – Accused are involved in commission of a heinous crime like murder – Witnesses were physically assaulted and threatened in court premises – They were also warned that if they gave depositions against accused they would be killed – Trial court rightly refused bail considering gravity of offence and apprehending that accused would tamper with evidence – Held, High Court while granting bail to accused has completely ignored and overlooked relevant factors which weigh heavily against accused – Release of accused on interim bail deserves to be set aside – Ranbir Penal Code, 1989 (2 of 1989 Smvt.) (1932 AD) – Ss. 302, 109, 147, 148 and 149 – Penal Code, 1860, Ss. 302, 109, 147, 148 and 149.**

**(2011) 9 Supreme Court Cases 257**

**Ramachandran and Ors**
**Vs**
**State of Kerala**

**Penal Code, 1860 – Ss. 149 and 141 – Scope and object of S. 149 – Principles summarised - Penal when vicariously liable for acts of unlawful assembly – Where general allegations are made against large number of persons, with vague evidence – Duty of court in such circumstance – Inference which needs to be drawn by court in such cases.**

**Penal Code, 1860 – Ss. 302, 307, 143, 147, 323, 324, 449 and 427 r/w S. 149 – Murder trial – Appreciation of evidence – Applicability of second part of S. 149 – Establishment of individual overt act, not needed – Conviction upheld – PWs 1, 2 and 4, all relatives, had inimical terms with appellant-accused (17 in number) and several criminal cases were pending between them – In order to take revenge, appellants formed unlawful assembly for purpose of committing murder of PW 2 – They gathered at residence of A – 1, on last day of festival conducted in temple nearby, and waited for appropriate time for PW 2 to return from there – Immediately after seeing him along with his son, on exhortation of A – 1 to chase PW 2, they chased him, who in order to save his life, ran away and tried to enter house of PW 3 – However, before he could enter PW 3's house, he was inflicted injury by A-1 with sword stick – But he succeeded in entering house and closing door from inside – Then appellants broke open the door and caused injuries of very serious nature to PW 2 and left him, under impression that he had died – In such melee, a large number of household articles were destroyed – On hearing hue and cry, K (father of PWs 2 and 1) reached there, who was also inflicted with cut injury on his head with sword stick by A-1, while other accused inflicted injuries on him with their respective weapons, because of which he died on the spot – When PWs 1 and 4 attempted to save him, they were also injured – PW 2 miraculously survived the serious injuries suffered by him – Appellants were having one sword stick, two choppers, on knife and twelve iron rods - All these weapons were used by appellants for committing offences and causing injuries to their victims – K (deceased) received as many as 34 injuries.**

**Held, taking all circumstances into consideration, it cannot be held that appellants had not participated to prosecute a "common object" – Even if it was not so, it had developed at the time of incident – Courts below correctly applied provisions of S. 149 – Facts were properly analysed and appreciated – There is enough evidence on record to establish that appellants were present, armed with sword stick, choppers, knife and iron rods – As all appellants were very well known to witnesses, so their identification, etc., was not in issue – As appellants' participation is governed by second part of S. 149, overt act of an individual lost significance – In facts and circumstances, conviction of appellants, as recorded by High Court, upheld – However, out of tow set of appellants, where first set convicted under Ss. 302/149, etc., with life imprisonment etc, and second set convicted under Ss. 307/149, etc., with 10 years' RI, etc., sentence of second set of appellants reduced to that already undergone.**

**Penal Code, 1860 – S. 307 r/w S. 149 – Sentence of 10 years' RI of a number of accused reduced to that already undergone, varying from 4.5 to 8 years.**

**Criminal Trial – Appreciation of evidence – Minor contradictions or inconsistencies immaterial – Murder trial – Large number of assailants (17) – Meticulous exactitude of individual acts of accused - Cannot be expected from eyewitnesses – Penal Code, 1860, Ss. 302, 307, 143, 147, 148, 323, 324, 449 and 427 r/w S. 149.**

**2011-2-L.W.(Crl.) 361**

**Bhagwan Dass**
**Vs**
**State (NCT) of Delhi**

**I.P.C., Section 302 / Murder of daughter by her father, "Honour Killing", Circumstantial Evidence, Conviction and sentence of life imprisonment upheld – Observations made that "Honour Killings" come within the category of "rarest of rare cases" deserving death punishment – Copy directed to be circulated to all Judges of the Courts, Chief Secretaries, DGPs, etc.**

**I.P.C., Section 302/Circumstantial Evidence, Extra Judicial Confession, Admissibility,**

**Evidence Act, Section 27/Statement of accused leading to Discovery, Admissibility.**

**2011-2-L.W.(Crl.) 513**

**Rafiq Ahmed @ Rafi**
**Vs**
**State of U.P.**

**Criminal P.C., Sections 211 to 224 / Framing of charge, Chapter XVII / Alternate charge, non-framing of, Cognate charge / Alternative Charge, what is, Scope, Effect of Section 313,**

**I.P.C., Sections 391, 396 / 'Dacoity'; 'Robbery', Ingredients of, Sections 299, 300, 302, 201 / Cognate offence', Principle of, what is, Alternate charge, effect of, Case of circumstantial evidence,**

**English Jurisprudence / 'Alternative verdict' Concept; what is,**

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**Criminal Trial / rights of Accused, what are.**

**Held: It is admittedly a case of circumstantial evidence – Charge being under Section 396 alone whether the accused could have been convicted for an offence under Section 302 IPC without alternation of charge is the short question.**

**Deceased was a regular trader – Certain circumstances clearly indicate towards the involvement of the appellant in the commission of the crime.**

**No prejudice has been caused to the appellant by his conviction for an offence under Section 302 IPC though he was initially charged with an offence punishable under Section 396 IPC read with Section 201 IPC – Nature of injuries indicate that the accused knew that the injury inflicted would be sufficient in the ordinary course of nature to cause death – Circumstances which constitute an offence under Section 302 were put to him, as Section 302 IPC itself is an integral part of an offence punishable under Section 396 IPC – Conviction of the appellant under Section 302 IPC cannot be set aside merely for want of framing of a specific / alternate charge for an offence punishable under Section 302 IPC – On the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant.**

**To constitute an offence of 'dacoity', robbery should be committed by five or more persons – To constitute an offence of 'dacoity with murder' any one of the five or more persons should commit a murder while committing the dacoity.**

**Distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder noticed – Another distinction between Sections 302 and 396 is that under the latter, wide discretion is vested in the courts in relation to awarding of punishment – While under Section 302, the cannot, in its discretion, award sentence lesser than life imprisonment.**

**To attract Section 396, the offence of 'dacoity' must be coupled with murder – Ingredients of Section 302 become an integral part of the offences punishable under Section 396.**

**Wherever an accused is charged with a grave offence, he can be punished for a less grave offence finally, if the grave offence is not proved – Accused has to be charged with a grave offence which would take within its ambit and scope the ingredients of a less grave offence.**

**Purpose of framing of a charge is to put the accused at notice regarding the offence for which he is being tried before the court of competent jurisdiction – Alike or similar offences can be termed as 'cognate offences' Criminal Appeal dismissed.**

**2011 (12) SCALE 528**

**Tilaknagar Industries Ltd & Ors**
**Vs**
**State of A.P. & Anr**

**CRIMINAL LAW – Cr.P.C. – SECTION 156(3), 155(2) & 482 – High Court, by a detailed order, dismissed the appellants' case for quashing, inter alia, on the ground that the complaint disclosed a prima facie case – Disposing the appeal, Held, We are of the opinion that the statutory safeguard which is given u/s 155(2) of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation – The order of the Magistrate dated 21.6.2010 does not disclose that he has taken cognizance – However power u/s 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence – Since in the instant case the complaint does not do so, the order of Magistrate stated above cannot be sustained in law and is accordingly quashed – We do not make any observation on the merits of the allegations made in the complaint – However, we make it clear that the complaint which has been filed against respondent No. 2 may be treated in accordance with law.**

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# HIGH COURT CITATIONS
# CIVIL CASES

**(2011) 8 MLJ 12**

**N. Rajendran**
**Vs**
**Shriram Chits Tamil Nadu Pvt. Ltd. Rep. By its Branch Manager/Foreman, Tiruvarur**

**Code of Civil Procedure (5 of 1908), Order 21 Rules 104 to 106 – Amendment Act 104 of 1976 – Limitation Act (36 of 1963), Section 5 – Execution proceedings – Ex parte order of attachment – Application to condone delay in seeking to set aside ex parte order – Same dismissed – Revision – Applicability of Section 5, Limitation Act – Court in Tamil Nadu need not, nay cannot invoke Section 5 of Limitation Act by taking recourse to Rule 105(4) as sub-rule (4) was deleted way back in 1972 – It is enough if proviso to sub-rule (3) of Rule 105 is invoked – So long as proviso under sub-rule (3) not shown to be inconsistent with any of amendments, it cannot be stated to have been repealed under Central Amendment Acts – Order of Court below refusing to entertain application set aside.**

**RATIO DECIDENDI: When a Court need not draw power to condone the delay from Section 5 of the Limitation Act, but could draw such a power from the very provisions of the enactment under which a case is decided, the said power cannot be obliterated except by any express or implied repeal, in terms of any amendment made specifically.**

**2011 (6) CTC 21**

**K. Gopalan (died) and Ors**
**Vs**
**Muthulakshmi**

**Possession – Suit for Recovery of Possession – Defendant claimed title and also claimed adverse possession – Trial Court decreed Suit – Appellate Court reversed finding on ground that Defendant proved possession beyond statutory period – Second Appeal filed – Record shows that plaintiff proved title – Mere length of possession will not entitle Defendant to claim adverse possession – Conduct and attitude of person claiming adverse possession regarding possession being hostile to knowledge of true owner is more relevant – No pleading by Defendant that she is adversely enjoying property to knowledge of Plaintiff - Held, adverse possession not made out – Decree of Trial Court, upheld.**

**2011-4–TLNJ 269 (Civil)**

**Dharmapura Adhinam Mutt, rep by its Adhinakartha Sri-la-ari Shanmugha Desika Gnanasampanda Paramachariya Swamigal, Dharmapuram Mayiladuthurai Taluk, Nagapattinam District**
**Vs**
**Raghavan and Anr**

**Land Encroachment Act 1905, Section 2 – (Meaning of the term "Grama Natham & Natham Prompoke") – Suit for eviction and recovery of possession – defendant claimed suit property as Natham and a mania patta issued by revenue authorities – further claimed as kist paid to land and tax paid to municipality for building – in possession as absolute owner not liable to be evicted – trial court dismissed suit as plaintiff to file appeal or revision before revenue authorities and civil suit has no jurisdiction – on appeal High Court clarified that "Gramanatham" is the village habitation where land holders may build house and reside and known as house sites – Gramanatham is not property of government – patta obtained under UDR scheme to enforce tax on natham land is Thoraya patta and is not a patta under Land encroachment Act – no bar of jurisdiction of civil court to entertain suits – Appeal Suit allowed.**

**2011 (6) CTC 282**

**Ella Ammal**
**Vs**
**Kothambu Ammal**

**Transfer of Property Act, 1882 (4 of 1882), Section 3 – Evidence Act, 1872 (1 of 1872), Section 115 – Estoppel – Attestation – Attestation of an instrument does not buy itself fix said Attestor or witness with knowledge of contents of document – Evidence must be led to effect that contents of document and that with such knowledge he attested document.**

**2011-4–TLNJ 289 (Civil)**

**P. Devendiran**
**Vs**
**P. Rajendran and Anr**

**Civil Procedure Code 1908, Order 2, Rule 2 – Suit for declaration and injunction – Earlier suit filed and with drawn with liberty to file fresh suit – second suit opposed as time bared under or 2 rule 2 CPC – trial court decreed suit and first appellate court confirmed trial court decree – on further appeal High Court held that as permission of court was obtained in the earlier the second suit is not bared – further held that a will executed by a testator not in sound state of mind is not a valid will – Second Appeal dismissed.**

**2011-4–TLNJ 291 (Civil)**

**Durairaj**
**Vs**
**Sri Kaliamman Koil, Velipalayam rep. by its Trustees, and Ors**

**Civil Procedure Code 1908 as amended, Section 11 & 47 – Suit for eviction – In earlier proceedings for eviction defendant not a party – during execution of decree defendant objected execution and filed petition under section 47 CPC – delivery order executed – defendants re-gained possession – second suit filed against defendant for possession – dismissed by trial court and reversed by appellate court – on second appeal High Court held that decision made in section 47 application in earlier execution proceedings not res judicata – second suit for recovery of possession against illegal act of committing trespass held proper – Temple entitled to decree and not open to defendant to question title – second appeal dismissed.**

**2011-4–TLNJ 295 (Civil)**

**Muthuvenkatasalam**
**Vs**
**Bhaskarane**

**Specific Relief Act 1963, Section 16(c) and Section 20 – Suit for specific performance – trial court and first appellate court decreed suit – the High Court on second appeal held that in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract – Second Appeal Dismissed.**

**2011-5-L.W. 341**

**K. Natarajan**
**Vs**
**Mrs. Gopalasundari & Ors**

**Hindu Law / Stridhana property,**

**Hindu Succession Act (1956), Section 14 applicability of Stridhana Property, what is, Succession, when opens, Benami, nature of,**

**C.P.C.,** Order 41, Rule 20 / Suit for declaration and recovery of possession – Impleading of party respondent at appeal / Non-joinder, Effect of,

Since 'LA' died prior to the coming into force of the Hindu Succession Act, being the only daughter, her daughter 'MA' had inherited the same and had become the absolute owner of the said property – Plaintiff, being the daughter of MA became the absolute owner of the suit property – There can be no doubt that the plaintiff is entitled for declaration of title as prayed for.

**Held:** Irrespective of the fact that the property was purchased by a Hindu female out of her own funds, the said property shall only be her stridhana property – Such stridhana property shall devolve upon her female heirs namely her daughters on her demise and not on her sons.

Unless the party before the lower Court is a necessary party, there is no need to implead him in the appeal simply because he happened to be a party before the lower Court – This appeal is not bad for non-joinder of defendants 3 to 6.

**2011-5-L.W. 378**

**R. Ravindran**
**Vs**
**M. Rajamanickam**

**C.P.C.,** Order 9, Rule 9, Order 17, Rule 3, Maintainability of Petition for restoration of suit dismissed for default – Lower court dismissed the suit on 10.8.2004 stating "No stay order produced from Hon'ble High Court. Plaintiff present. Not willing to continue his evidence. Hence the suit is dismissed for default with costs." – Petition under Order 9, Rule 9, CPC for restoration of suit was dismissed by lower court accepting the objection to its maintainability raised on behalf of the defendant that the dismissal of suit effected on 10.08.2004 was one under the provisions of Order 17 Rule 3 CPC, and as such the remedy for the appellant / Plaintiff would be by way of moving an appeal against the order of dismissal and not by was of an application to set aside – CMA was preferred from the said order – **Held:** setting aside the order; it is apparent that the decision of the trial Court in the order dated 10.08.2004 was only one of dismissal for default, and not one on the merits of the case – Lower Court ought to have allowed the application for restoration – Accordingly, the CMA shall stand allowed.

**2011-4 –TLNJ 393 (Civil)**

**T.R.K. Saraswathy**
**Vs**
**R. Kandasamy and Ors**

**Specific Relief Act 1963, Section 20(2)** – Suit for Specific performance of the Sale Agreement dated 20.01.2005 – the suit was dismissed by the Addl. District Judge, Coimbatore and the property was sold to the 8th Respondent – the Appeal was allowed since the contract of the Respondents was not blemishless and the Appellant was ready and willing to performa her part of the contract and has got the necessary means to raise the funds to complete the sale transaction – further since the 8th Respondnet has purchased the property waving full knowledge about the Appeal, the said sale is not by Lis Pendens and the sale is set aside – the Appellant is directed to deposit the amounts to the credit of the suit in O.S.No.420 of 2006 within 4 weeks and on such deposit the Respondents 1 to 7 are directed to execute the sale Deed in favour of the Appellant – further which the Addl. Direct Judge is directed to execute the Sale Deed – Appeal Suit allowed.

**2011 CIJ 393 REJ**

**Dharmapura Adhinam Mutt**
**Vs**
**Raghavan**

**Tamil Nadu Land Encroachment Act, 1905(3 of 1905) – Sec.2-Transfer of Property Act, 1882(4 of 1882) – Sec.106-Indian Evidence Act, 1872(1 of 1872) – Sec.115-Land-Natham-Grama natham-Patta-Title-Lease-Denial of title-Eviction-Appellant had leased out the suit land to the father of the respondents for running vedic padasalai and directed to pay lease rent-When the respondents committed default in paying the rent, appellant terminated the lease and sought for eviction which was resisted by the respondents – Respondents contended that the suit land was natham for which patta was given to one of them and on the issue of patta, they had become the owner and so the appellant could not seek eviction – Trial Court held that on the issue of patta to one of the respondent, the appellant lost its title and so dismissed the suit against which appellant preferred appeal – Appellant contended that grant of patta would not deprive it of its title over the suit land which was resisted by the respondents – Held, grama natham land did not vest with the Government and patta was granted only to levy tax and it would not confer title to the person in whose name patta was granted – As the respondents' father was a lessee, the respondents were stopped from denying the title of the appellant – Denial of title itself was a ground for seeking eviction of the respondents – Appeal was allowed and the respondents were directed to be evicted.**

**Tamil Nadu Land Encroachment Act, 1905(3 of 1905) – Sec.2 – Land-Natham-Grama natham-Patta-Title-UDR patta issued by the Government is not a document of title and by itself would not make the holder of such patta the owner of the land covered by it.**

**Transfer of Property Act, 1882(4 of 1882) – Sec.106-Indian Evidence Act, 1872(1 of 1872) – Sec.115 – Lease-Denial of title – Eviction – Estoppel – Lease is estopped from denying the title of the landlord.**

**Ratios:**

a. **UDR patta issued by the Government is not a document of title and by itself would not make the holder of such patta the owner of the land covered by it.**

b. **Lessee is estopped from denying the title of the landlord.**

**2011 (6) CTC 477**

**Chinnu Padayachi and Anr**
**Vs**
**Dhanalakshmi W/o. Thangavel and Ors**

**Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Limitation Act, 1963 (36 of 1963), Article 113 – Amendment of Plaint – Relief of mandatory injunction sought to be introduced – Suit was filed on 26.4.2005 for declaration of title and permanent injunction – Advocate Commissioner had filed his interim report on 28.4.2005 and final report on 30.9.2005, mentioning construction put up by Defendants over common lane – Defendants filed Written Statement on 30.9.2005, stating about construction made, before filing of Suit – On 9.7.2010, Plaintiffs filed Application to incorporate prayer for mandatory injunction to remove constructions – Application was allowed – Order challenged in Revision – Application for amendment was admittedly filed after five years from date of filing of report by Advocate Commissioner – There is no disputed question of fact regarding limitation – Prayer for mandatory injunction, is clearly barred by limitation – If prayer for mandatory injunction is permitted, it would prejudice Defendants and cause grave injustice to them – Impugned order set aside – Civil Revision Petition allowed.**

**2011 (6) CTC 485**

**Haji B. Pakkir Mohammed, President, Madrasha-E-Merajul-Uloom @, Islamia Kalvi Sangham, 77/21 Mohammed Ali Club Road, Dharmapuri – 636 702**

**Vs**

**The Secretary to Government, Department of Backward, Most Backward Classes and Minority Welfare Govt. of Tamil Nadu, Fort St. George, Chennai – 9 and Ors**

**And**

**Madrase-e-Mazhiral-ul-Uloom @ Islamia Kalvi Sangam Society, rep. by its Secretary, D.S. Khalander, 77/21, Mohammed Ali Club Road, Dharmapuri – 636 702**

**Vs**

**I. Basheer Ahamed and Ors**

**Muslim Law – Wakf – Once a Wakf is always and it cannot be altered ever – A Scheme based on consent of all parties for clubbing together all four Wakfs which form part of Madrasa and Kalvi Sangam run by Society on Walkf land – New Wakf was established – When part of Wakf property was directed to be retrieved with other component for better administration of Wakf by consent of Society, it is too late in day to claim control over such property by Society – In law, Wakf Bord alone should deal with exclusively.**

**Wakf Act, 1995 (43 of 1995), Section 3(r) (iii) – Wakf – Wakf-alal-aulad – Property dedicated to Wakf – Right to control by dedicator – One Wakf is always a Wakf, it cannot be altered ever – Petitioner-Association being a Society dedicated property to Wakf and made improvement – Consent scheme for administration was framed by Special Officer on 22.9.1992 – In earlier litigation, validity of scheme was upheld – Presently, Petitioner-Society claims exclusive right over property – Held, once Wakf is always a Wakf and it cannot be altered – And further Wakf once created cannot be ceased – Society has no case to succeed at all.**

**Administrative Law – Wakf Act, 1995 (43 of 1995) – Special prevails over general – Wakf Act, 1995, being special enactment, would prevail upon Tamil Nadu Societies Registration Act – Societies Registration Act – Societies Registration Act confines itself to institution referred to therein – Wakf Act provides for better administration and supervision of movable and immovable properties dedicated permanently to serve religion and community – Wakf Act ousts applicability of general Law (Societies Registration Act) particularly in matter relating to administration, supervision, management and control over Wakf properties.**

**Code of Civil Procedure, 1908 (5 of 1908), Section 80 – Wakf Act, 1995 (43 of 1995), Section 89 – Pre-Suit notice – When mandatory – When provision beginning in negative sense, it is imperative and mandatory – Section 89 of Wakf Act mandates pre-Suit notice – Non-compliance of such vital mandatory requirement renders Suit itself nugatory.**

**Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaint – Want of pre-Suit notice – Section 89 of Wakf Act starts with negative sense – "No Suit shall be instituted" – Held, if a Suit has been instituted without complying with such vital requirement, Court would only reject Plaint under Order 7, Rule 11, C.P.C.**

**Interpretation of Statues – Wakf Act, 1995 ( 43 of 1995), Section 89 – Provision starting with negative sense – Mandatory requirement of pre-Suit notice – Section 89 begins with negative sense "no Suit shall be instituted" – Held, requirement of pre-Suit notice is imperative and mandatory – Non-compliance would render Suit liable to be rejected under Order 7, Rule 11, C.P.C.**

**2011 CIJ 588 ALJ**

**A.Dharmaraj**

**Vs**

**Kasturi**

**Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (18 of 1960) – Sec. 10(3)(c), 25-High Court Appellate Side Rules O.IV, R.21-Rent control-Eviction-Own occupation – Hardship-Proof-Burden of proof – Revision-Certified copy-Filing-Failure-Irregularity-Maintainability – Petitioner had sought for the eviction of the respondents on**

**the ground that he needed the shops for his own occupation which was resisted by the respondents by contending that they would suffer irrepairable injury-When both the lower Courts accepted the stand of the tenants, landlord / petitioner filed revision-Respondents sought for rejection of the revision by contending that at the time of filing of the revision, the order copy of the Rent Controller was not filed which was mandatory and so the revision was not maintainable and further contended that the relative hardship of the tenant because of eviction would be more and justified the orders under challenge-Petitioner contended that the tenant could not perpetually plead their hardships and the non filing of the order copy of the Rent Controller was not material defect and only irregular which was cured later and sought for allowing the revision – Held, non filing of the certified copy of the order of the Rent Controller would not entitle the respondent to take it as a ground for rejection of the revision when it was later represented in proper form – Both the parties had to prove their respective hardships to enable the Court to decide it – As the landlord had let in evidence in that regard and the tenants had not let in evidence and they had been occupying the premise for more than 10 years from the date of filing of eviction petition, they had not proved their hardship because of eviction – Revisions were allowed and the respondents were directed to be evicted.**

**Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (18 of 1960) – Sec.25-High Court Appellate Side Rules – O.IV, R.21 – Rent control-Eviction-Revision-Certified copy-Filing-Failure-Irregularity – Maintainability-Non filing of the certified copy of the trial Court along with the revision papers would not be a ground for the rejection or dismissal of the revision and the defect would be a curable one.**

**Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (18 of 1960) – Sec.10(3)(c) – Rent control-Eviction-Own occupation-Hardship-Proof-Burden of proof-In an eviction petition on the ground of own requirement, the party pleading hardship has to let in evidence to prove his hardship.**

**Ratios:**

a. **Non filing of the certified copy of the trial court along with the revision papers would not be a ground for the rejection or dismissal of the revision and the defect would be a curable one.**

b. **In an eviction petition on the ground of own requirement, the party pleading hardship has to let in evidence to prove his hardship.**

**2011 (6) CTC 619**

**Kuppusamy Gounder and Anr**
**Vs**
**Palaniappan**

**Evidence Act, 1872 (1 of 1872), Sections 73 & 45 – Comparison of admitted signature and disputed signature – Section 73 empowers Court to compare disputed thumb impression and admitted thumb impression on document – Such comparison made in open Court in presence of Counsel appearing for either side and it showed that Suit document is forged as characteristics of thumb impressions were capable of being identified by such comparison – Decree for Specific Performance by Courts below set aside.**

**(2011) 7 MLJ 901**

**Bhuvaneswari @ Sharmila**
**Vs**
**M. Prabakaran**

**Hindu Marriage Act (25 of 1955), Sections 9, 13(1) (i), (1-a) and (1-b) – Dissolution of marriage – Cruelty and desertion – Husband claims restitution of conjugal rights – Wife under constant surveillance – Servant maids stopped after marriage and burdened wife with household chores – Wife left at maternal home – No steps taken by husband to visit or care wife and child – "Cruelty" – Concept of – Injury to health or life of person not necessary in case of cruelty – Neglect or indifference to spouse or ill-treatment or cessation of marital intercourse amounts to mental cruelty – Obtaining wife's salary certificate through detective agency and constant surveillance amount to**

**cruelty – Desertion and cruelty established – Wife entitled to decree of divorce – Husband not entitled to claim restitution of conjugal rights.**

**RATIONES DECIDENDI:**

I. **Any injury to health of a person or life of a person not necessary to constitute an act of cruelty.**

II. **Mental cruelty by means of a studied neglect or indifference of one spouse to the other or even a continued ill-treatment of one spouse by the other and cessation of marital intercourse amounts to acts of cruelty.**

**(2011) 7 MLJ 969**

**Venkatesan and Ors**
**Vs**
**Ramagounder and Ors**

**Suit for partition – Suit property, ancestral property of plaintiffs and defendants – First defendant is Kartha and defendants 2 to 4, his sons – Second defendant, father of plaintiffs – Dismissal of suit by Courts below Second Appeal – Renunciation by 2nd defendant / father of plaintiffs in favour of first defendant / Kartha – Said renunciation enures to benefit of other coparceners and relinquishment valid – By virtue of renunciation, 2nd defendant lost his right over suit property – Plaintiffs 1 and 2 born on date of execution of relinquishment deed – Shares of plaintiffs 1 and 2 would not have been relinquished by 2nd defendant – Renunciation does not bind plaintiffs 1 and 2 – Courts below ought to have decreed suit in respect of plaintiffs 1 and 2, 1/12 share each in suit property – Plaintiffs 1 and 2 entitled to decree of partition in respect of their 1/12 share in suit property.**

**RATIO DECIDENDI: A renunciation, when made by one coparcener in favour of another coparcener, it enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made.**

**(2011) 7 MLJ 1110**

**J. Venkatraman @ Venkatramanan and Anr**
**Vs**
**K. Velu**

**Suit for Permanent Injunction – Suit filed for purpose of safeguarding enjoyment of plaintiffs over suit passage – Proposition that one co-owner cannot get injunction as against another co-owner-Same not applicable – Suit decreed to said limited extent.**

**RATIONES DECIDENDI:**

I. **Once the passage happens to be the common passage for the occupants of that property, then one occupant of that property should not prevent the other occupant of the said property arbitrarily without finally getting their respective rights decided and adjudged by the competent Court in appropriate proceedings.**

II. **The broad proposition that "one co-owner cannot get injunction against another co-owner" is not applicable, if the suit filed by one co-owner is for enjoyment of common passage of the suit property.**

**(2011) 7 MLJ 1132**

**Govindaraj**
**Vs**
**Ramadoss**

**Indian Evidence Act (1 of 1872), Section 90 – Proving of 'Will' – Section 90 of Evidence Act – Not applicable – Will should be proved in accordance with Section 68 and 69 of Evidence Act.**

**RATIO DECIDENDI: Section 90 of the Evidence Act is not applicable relating to proving of the Will is concerned; even though the Will might be of 30 years old and produced from proper custody, yet strictly in accordance with Section 68 and 69 of the Indian Evidence Act, the Will should be proved.**

**(2011) 7 MLJ 1144**

**I. Subramanian**
**Vs**
**C. Kuppammal**

**Divorce – On ground of cruelty – Serious allegations of adultery made by wife against husband – Said allegations not proved by wife by acceptable evidence and stands unsubstantiated – Unfounded allegations made by wife against her husband by itself shows prima facie failure of marriage – Wife / respondent's baseless allegation of adultery is an act of cruelty – Husband/appellant entitled to get decree for divorce.**

**RATIO DECIDENDI: When serious allegations of adultery is made by the wife against the husband and the same stands unsubstantiated, that would amount to mental cruelty as far as the husband is concerned and the husband is entitled to get a decree for divorce.**

**(2011) 7 MLJ 1177**

**Revathy and Ors**
**Vs**
**Savarimuthu**

**Code of Civil Procedure (5 of 1908), Order 6, Rule 17 – Amendment of pleadings – Application for amendment filed before trial has commenced – Reasons set out in affidavit filed in support of application that such amendment necessitated in view of happenings after filing of suit – Trial Court justified in allowing application for amendment – Revision petition dismissed.**

**RATIO DECIDENDI: The proviso to Order 6 Rule 17 C.P.C shall have an effect only in case an application has been filed for amendment after the trial has commenced.**

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# HIGH COURT CITATIONS
# CRIMINAL CASES

**2011-2- L.W. (Crl.) 257**

**The State represented by The Home Secretary, The Government of Tamil Nadu,
Fort St. George, Chennai and Anr
Vs
Yesu @ Velaiyan, S/o. Soosaiappar, Life Convict, Central Prison,
Palayamkottai, Tirunelveli District.**

**Tamil Nadu Suspension of Sentence Rules (1982), Chapter XIX, Rule 36, 40, Rule 340, 341, Form 130, Parole; 'Suspension of sentence', Difference between the two expressions.**

**Tamil Nadu Prison Manual,**

**Constitution of India, Articles 162, List II, Entry 4, 226.**

**Criminal P.C., Section 433.**

**Writ Appeal was preferred by the State – Petitioner (wife of the life convict) in the Writ Petition out of which this Writ Appeal arose, sought a direction to respondents therein (-appellants herein) to include the period of parole availed of, by petitioner's husband in his total period of imprisonment undergone, and to release the petitioner's husband from the jail custody – Division Bench in the Writ Appeal referred the question to Full Bench : "Whether the period spent on parole by a convict shall be counted as sentence period or not?"**

**Held: In view of the express provision in the form of Rule 36 of the Tamil Nadu Suspension of Sentence Rules, there can be no manner of doubt that any period spent on either emergency leave or ordinary leave, shall not be counted as sentence period – By grant of leave, the period of sentence is suspended, the suspension period is not counted as period of sentence undergone.**

**Contention of the respondent was that in parole the sentence is not disrupted whereas in suspension of sentence, the sentence undergone by the prisoner is disrupted temporarily.**

**Parole is a temporary release which is an administrative action – Thus, parole and suspension of sentence are of different connotations operating in different manners. The former does not disrupt the sentence undergone by the prisoner, whereas, the later disrupt the sentence undergone for a temporary period.**

**Tamil Nadu Prison Rules do not contain any provision regulating the release of prisoners temporarily on parole.**

**Neither the Government nor any other statutory authority has power to grant parole for want of rules or a statute – The Government and the Authorities under the Tamil Nadu Suspension of Sentence Rules, have got power only to grant suspension of sentence and not parole.**

**Until a legislation is made or appropriate rules are issued by the Tamil Nadu Government regulating the grant of parole [temporary release], there shall be no temporary release of any prisoner on parole at all.**

**Release of prisoners granted hitherto shall be treated only as suspension of sentence and therefore the same shall not be counted towards the sentence period.**

**Reference to Full Bench answered.**

**2011-2-L.W.(Crl.) 313**

**G. Murugan**
**Vs**
**The State rep. by the Inspector of Police, Manali New Town Police Station,**
**Ponneri Taluk, Thiruvallur District,**

**Criminal P.C., Section 42(f)(iii), as amended by Act 25 of 2005, dated 23.6.2005, Notification 21.6.2006, Offence under Section 324, IPC, whether is bailable,**

**Criminal P.C., Section 436 / Anticipatory Bail.**

**I.P.C., Sections 324, 294(b) and 506(ii) / Anticipatory bail.**

**2011-2- L.W.(Crl.) 340**

**Govinder R. Chordia**
**Vs**
**Shanti Lal. P.**

**Negotiable Instruments Act (1881), Section 138,**

**Criminal P.C., Section 202 / Postponement of issue of process,**

**Criminal P.C., Section 465/Finding or sentence when reversible by reason of error, omission or irregularity.**

**Criminal P.C., Section 202 / Accused residing at a place beyond the area in which Magistrate exercises his jurisdiction – Postponement of issue of process against the accused – Considerations,**

**Criminal P.C., Section 482.**

**Contention was urged in Crl.O.P. that accused in this case is a resident of Bangalore and the complaint is filed against him in Chennai and as such, the Magistrate ought to have followed the mandatory procedure contemplated under Section 202 Cr.P.C.**

**Scope of Requirement under the amended Section 202 Cr.P.C. is that the Magistrate ought to have enquired the case himself or directed an investigation to be made by a police officer or by such person as he think fit for the purpose of deciding whether or not there is sufficient ground for proceeding – Held: in this case, the offence being under Section 138 of Negotiable Instruments Act, it is certain that the Magistrate cannot send the case for investigation and it should be treated only as private complaint – Learned Magistrate recorded the sworn statement of the complainant and thereafter only has taken cognizance of the offence – Question is whether cognizance taken by the learned Magistrate without enquiring the complainant is illegal –Court agrees with the view taken by the Honourable Calcutta High Court – No merit in the contention raised.**

**Presentation of the cheque for second time permissibility, Cause of action, considerations – No notice was issued by the complainant to the accused when the cheque was returned for insufficient fund for the first time, and as such the cause of action did not arise – Cause of action arose after the cheque being presented and returned for the second time, statutory notice being sent to the accused, when the accused failed to make payment within the stipulated period – There is no defect in the complaint.**

**There is no valid ground for quashing the proceedings. – Crl.O.P. dismissed.**

**2011-2- L.W. (Crl.) 345**

**Vijay & Ors**
**Vs**
**State represented by, The Inspector of Police, All Women Police Station, Tambaram, Chennai and Ors**

**Criminal P.C., Section 314 / Oral arguments and Memorandum of arguments, Failure to follow proceedings, Violation of Article 14, Transfer of case directed after setting aside conviction, Section 482,**

**Criminal Trial / Arguments, Posting of case for arguments mandatory,**

**Criminal P.C., Sections 482, 407 / Transfer of case,**

**Constitution of India, Article 14 / Arguments, Posting of criminal case for arguments mandatory.**

**In this case, it is apparent that no opportunity was given to the learned counsel for the accused to make the oral arguments and Judgment was pronounced – Procedure adopted by the learned Magistrate is against the law and gross injustice has been caused to the first accused, violating Article 21 – Judgment rendered by the learned Judicial Magistrate, not sustainable and is set aside – Case is transferred from the file of the learned Judicial Magistrate, Tambaram, to the learned Judicial Magistrate No.I, Chengalpattu.**

**2011-2-L.W.(Crl.) 579**

**State by Inspector of Police, Anti Land Grabbing Special Cell, City Crime Branch, Trichy**
**Vs**
**K.N. Nehru and Ors**

**Code of Criminal Procedure, Sections 46, 57 / Arrest, Constitution of India, Article 22(2) / Custody, Distinction between two expressions.**

**Concept of "formal arrest", as developed in Anupam Kulkarni's case, Remand, Considerations.**

**Petition (Criminal O.P) filed by the State (namely State by Inspector of Police, Anti Land Grabbing Special Cell, City Crime Branch, Trichy) against the order of Judicial Magistrate negativing the request of the petitioner for remanding the accused to custody.**

**Questions raised as to (i) whether the accused will be in the custody of the police, as embodied in Section 57, Crl.P.C. and Article 22(2), when the accused is in judicial custody in connection with one case, and if formal arrest is effected in prison in connection with a different case,**

**(ii) as to legality of detention beyond 24 hours of detention.**

**(iii) Powers of Magistrate to authorise detention either in police custody or in judicial custody.**

**(iv) whether such remand order will cure / legalise illegal detention.**

**Criminal P.C., Section 167(1) / Physical production of Accused before the Magistrate,**

**Criminal P.C., Section 267 / Conditions for issue of P.T. Warrant,**

**Constitution of India, Article 22(1) / "Detention", Authorisation of Court for physical production as to requirement, Scope.**

**It is too well settled that while passing an order of remand, either judicial custody or police custody, as mandated in Section 167(1) of Cr.P.C., since the said detention deprives the personal liberty guaranteed under Art-**

**icle 21, such order of remand shall not be passed in a mechanical fashion – Magistrate is required to apply his mind into the entries in the Case Diary, representation of the accused and other facts an circumstances, and only on satisfaction that such remand is justified, the Magistrate shall pass such order of remand.**

**Procedure to be adopted where the police officer deems it necessary to arrest when the accused is already in judicial custody in connection with a different case: (i) instead of making a formal arrest he can make an application before the Jurisdictional Magistrate seeking a P.T. Warrant for the production of the accused from prison (and proceed as stated in Para 31), or (ii) effect a formal arrest in prison, as stated in Anupam Kulkarni's case and thereafter, make a request to the Jurisdictional Magistrate for issuance of P.T. Warrant for the production of the accused.**

**When an accused is involved in more than one case and has been remanded to judicial custody in connection with one case, there is no legal compulsion for the Investigating Officer in the other case to effect a formal arrest – Discretion.**

**Police officer shall not arrest the accused in a mechanical fashion.**

**Investigating Officer can go over to the prison where the accused is already in judicial remand in connection with some other case and effect a formal arrest (as held in Anupam Kulkarni case).**

**When such a formal arrest is effected in prison, the accused does not come into the physical custody of the police at all; instead, he continues to be in judicial custody in connection with the other case – Application before the Jurisdictional Magistrate for issuance of P.T. Warrant has to be made without delay – If the conditions required in Section 267, Crl.P.C. are satisfied, the Magistrate shall issue P.T. Warrant for the production of the accused on or before a specified date before the Magistrate – Procedure to be followed.**

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