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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS
CIVIL CASE

2011-1. L.W. 1

Shyamrao Maroti Korwate
vs
Deepak Kisanrao Tekam

Guardians and Wards Act (25 of 1890), Sections 4, 7, 8, 17/Persons entitled to apply for order as to guardianship, Welfare of minor is the paramount consideration, Hindu Minority and Guardianship Act (6 of 1956), Sections 6, 13/Definition of "Minor", Guardian.

In a matter of custody of a minor child, the paramount consideration is the 'welfare of the minor', and not rights of the parents or relatives under a statute which are in force.

Respondent-father got married within a year after the death of his first wife and also having a son through the second marriage, residing in a rural village, working at a distance of 90 kms – Though father is the natural guardian in respect of a minor child, Child was all along with the maternal grand-father and his family since birth, residing in a Taluka Centre where the child is getting good education-District Judge was justified in appointing the appellant maternal grandfather as guardian of the minor child (as on date age 8 years) till the age of 12 years.

On attaining the age of 12 years by the minor, the father is free to make a fresh application and depending on the welfare and wish of the child, further order has to be passed in the matter of custody.

Hindu Minority and Guardianship Act (6 of 1956), Sections 6, 13/Definition of "Minor", Guardian – See Guardians and Wards Act (25 of 1890), Sections 4, 7, 8, 17/Persons entitled to apply for order as to guardianship, Welfare of minor is the paramount consideration.

(2011) 1 Supreme Court Cases 158

D.R. RATHNA MURTHY
vs
RAMAPPA

Transfer of Property Act, 1882 – Ss. 54 and 58(c) – Sale whether absolute or conditional – Determination of – Factors to be considered – Reconveyance clause inserted in unusual manner at foot of deed above signatures – Interlineations were not signed or attested by appellant vendor, the executants – On facts, held, interlineations were made

after execution of document but before registration – Reconveyance clause was inserted without consent and knowledge of respondent buyer – Respondent buyer's mind did not go with his hand at time of registration when he put his thumb impression – Thus, held, such additions are not binding – Further, contract being severable, such additions being void cannot take effect – Contract Act, 1872 – Ss. 2(b), (h), 10 13 and 14 – Contract and Specific Relief – Formation Defects – Void and Voidable Contracts – Formation Defects Rendering Contracts Void – Mistake – Non est factum – Defence of – When may be claimed – In case of thumb impression – Registration Act, 1908 – S. 20 – Karnataka Registration Rules, 1965 – R. 42.

Registration Act, 1908 – S. 20 – Attestation of interlineations – Necessity of – No signatures attesting interlineations – Held, attestation of sale deed is imperative – Attestation and execution are different acts – Karnataka Registration Rules, 1965 – R. 42 – Contract and Specific Relief – Formation of contract – Consensus ad idem – Deeds and Documents – Formal requirements - Attestation distinguished from execution – Evidence Act, 1872 – Ss. 64, 65 and 68 – Words and Phrases – "Attest", "execute".

The appellant sold the land by registered deed the very next day of purchase for the same consideration for what he had purchased. Allegedly, the appellant had a right to repurchase the land for the same consideration within ten years from the execution of sale deed, it being a conditional sale. The respondent contested the suit of specific performance instituted by the appellant herein alleging manipulation in sale deed after its execution and before registration. Contended the insertion of reconveyance clause was without the consent and knowledge of the respondent; therefore, he cannot be bound by the said terms. The High Court allowing the second appeal instituted by the respondent herein, holding that it was absolute sale, upheld the trial court's order of dismissal of suit. Hence the present appeal.

Held:

After examining the certified copy of the said sale deed, it is found that the provisions of Rule 42 of the 1965 Rules have not been complied with. Nothing has been endorsed at the foot of the sale deed, nor it bears signatures of the appellant executant. The word "avadhi" has been inserted at three places in the margin of the sale deed. It has not been attested by the executant. The part Ext. D-2 had been inserted in Ext. P-4 in an unusual manner. The entire sale deed has been scribed in double space while the part Ext. D-2 is in single space. It was necessary to do so as the parties had already signed the document. Had it been written in ordinary course, it could have gone below the signatures of the parties in the sale deed. Therefore, it is crystal clear that such insertion had been made to convert the absolute sale deed into a conditional sale deed. The manner in which interlineations have been made in the document itself reveals that addition was made subsequent to the execution of the document otherwise there was enough space to insert such a clause in the same manner in which the entire sale deed had been scribed.

Had it been a case of conditional sale, the appellant executor could have asked the respondent buyer to wait for mutation or raise the objection before the Revenue Authorities in spite of the fact that mutation is a revenue entry and does not refer to the title of the land. Had it been the case of conditional sale enabling the appellant to repurchase the land any time within ten years, the respondent could not have spent a huge amount of his life savings for improving the land, nor would he have dug a well in the suit land spending twenty thousand of rupees. The aforesaid circumstances make it clear that the respondent buyer had never agreed for reconveyance.

2011-1. L.W. 385

Indian Oil Corporation Ltd. & others
vs
Subrata Borah Chowlek, etc

Limitation Act, Section 5/"Sufficient cause", Service, Regularisation of appointments.

Division Bench of the Gauhati High Court, rejected appellants' application seeking condonation of delay of 59 days in preferring the appeal and their writ appeal was dismissed in limine as being barred by limitation.

It was pleaded that the delay of 59 days was occasioned because of time taken by the company's consultant at Delhi, mainly on account of summer vacation.

In the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same – It is trite that in construing sufficient cause, the Courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed to the party.

Though Section 5 envisages explanation of delay to the satisfaction of the Court, and makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependant on the actions of its officials, who often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases.

2011-1. L.W. 394

T.G. Ashok Kumar
vs
Govindammal & Another

Transfer of Property Act (1882), Section 52/Lis Pendens, Principle, Registration Act (1908), Section 57, Desirability of Alienation by co-owner, Considerations, Equity, Registration of Sale Agreements compulsory suggested to discourage generation and circulation of black money in real estate matters, as also undervaluation of documents for purposes of stamp duty.

Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical.

If the title of the pendent lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion.

A suit for partition filed by the 1st respondent against the second respondent which included the suit property, was pending in a court of competent jurisdiction on the date of

sale by the 2nd respondent in favour of the appellant – Partition suit was not collusive – Sale by the 2nd respondent in favour of the appellant did not in any way affect the right of the 1st respondent (plaintiff in the partition suit) or the decree made in her favour in the said partition suit – Sale by 2nd respondent in favour of the appellant though not void, did not bind the 1st respondent who was the plaintiff in the partition suit – Sale pendente lite would be subject to the decree passed in the partition suit – In the final decree passed in the partition suit, the major portion of the suit property was allotted to the share of the 1st respondent and to that extent, the sale in favour of the appellant would be ineffective - But in regard to the remaining portion of the suit property – It is effective, valid and binding on the 2nd respondent and to that extent, the appellant is entitled to a declaration of title and consequential injunction.

Suit Ought not to have been dismissed in entirety even if the sale by the second respondent in favour of appellant was hit by the doctrine of lis pendens – Courts below ought to have decreed the appellant's suit in part, in regard to the portion of the suit property that fell to the share of second respondent.

Held:

The principle underlying Section 52 is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any part to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the pendent lite transferor is upheld in regard to the transferred property, the transferee's title will not be affected. On the other hand, if the title of the pendent lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transfer property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion. If the property transferred pendent lite, is allotted in entirely to some other part or parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred pendent lite, to the share of the transferor, so that the bonafide transferee's right and title are saved fully or partially.

2011-1. L.W. 402

Har Narain (Dead) by LRs.
vs
Mam Chand (Dead) by LRs. & Others

Transfer of Property Act (1882), Section 54 / Sale, When effective, date of execution, Registration, Scope, Section 52/Doctrine of Lis Pendens,

Registration Act (1958), Section 47, Registration of the sale deed relating back to the date of the execution of the document, Scope.

Specific Relief Act (1963), Section 19(b).

In spite of the fact that the registration of the sale deed would relate back to the date of execution, the sale cannot be termed as complete until its registration, and it becomes effective only once it stands registered – Fiction created by Section 47 does not come into play before the actual registration of the document takes place.

Respondent Nos. 2 to 6 could not be held to be bona fide purchasers for value paid in good faith without notice of the original contract and the sale in their favour was subject to the doctrine of lis pendens.

Held:

Section 54 of the Act, 1882, mandatorily requires that the sale of any immovable property of the value of hundred rupees and upward can be made only by a registered instrument. Section 47 of the Act, 1908, provides that registration of the document shall relate back to the date of the execution of the document. Thus, the aforesaid two provisions make it crystal clear that sale deed in question requires registration. Even if registration had been done subsequent to the filing of Suit, it related back to the date of execution of the sale deed, which was prior to institution of the suit.

However, all these cases are related to right to preemption though the legal issue involved therein remained the same. In view of the above, we are of the considered opinion that in spite of the fact that the registration of the sale deed would relate back to the date of execution, the sale can not be termed as complete until its registration and it becomes effective only once it stands registered. Thus, the fiction created by Section 47 of the Act, 1908, does not come into play before the actual registration of the document takes place.

2011-1. L.W. 416

Ramjas Foundation and another
vs
Union of India and others

Land Acquisition Act (1894), Section 4, 6, Wakf Act/Dedication by a non-muslim, Effect of.

Concurrent finding that what was created was a Public Charitable Trust and not a Wakf and the property acquired vide notification was not a Wakf property does not call for interference.

Wakf owes its origin to a rule laid down by the prophet of Islam.

It means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings – Divine approbation being the essential in constitution of a Walf if the object for which a dedication is made is sinful, either according to the laws of Islam or to the creed of the dedicator it would not be valid.

A non Muslim can also create a Wakf for any purpose which is religious under the Mohammedan Law.

Principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and such person is not entitled to any

relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums.

Wakf Act/Dedication by a non-muslim, Effect of – See Land Acquisition Act (1894), Section 4, 6.

(2011) 1 Supreme Court Cases 466

MOTI RAM (DEAD) THROUGH LRS **AND ANOTHER**
vs
ASHOK KUMAR AND ANOTHER

Civil Procedure Code, 1908 – S. 89(1)(d) and Or. 10 R. 1-C – Reported of mediator under- Proper report – What is, stated – Need for confidentiality, pointed out – In case of failure of mediation, report, held, should only state that mediation was unsuccessful – Discussion and proposals should not be disclosed – Legal Aid and ADR – Mediation.

Civil Procedure Code, 1908 – S. 89(1)(d) and Or. 10 Rr. 1A to 1-C – Mediation – Nature of mediation proceedings, stated – Legal Aid and ADR – Mediation.

Civil Procedure Code, 1908 – S. 89(1)(d) and Or. 10 R. 1-C – Unsuccessful mediation – Contractual rights and obligations under – Held, an unsuccessful mediation would not amount to a concluded contract - Contract Act, 1872 – Ss. 4 to 7, 10 and 2(e), (a) and (b) – Contract and Specific Relief – Formation of contract – Offer and acceptance – Unsuccessful mediation.

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SUPREME COURT CITATIONS
CRIMINAL CASE

(2011) 2 Supreme Court Cases 36

HIMANSHU ALIAS CHINTU
vs
STATE (NCT OF DELHI)

Criminal Trial – Witnesses – Hostile witness – Evidence of – Admissibility – Extent of – Corroboration by some other reliable evidence – Need of – Held, evidence of hostile witness remains admissible evidence and it is open to court to rely upon dependable part of the evidence, which is found to be acceptable and duly corroborated by some other reliable evidence available on record – Herein, courts below did not err in acting on evidence of PW 11 (eyewitness and brother of victim, who turned hostile), which was duly corroborated by other reliable evidence on record – Evidence Act, 1872 – S. 154 – Criminal Trial - Witnesses – Related witness – Turning hostile – Instance of.

Penal Code, 1860 – Ss. 302/34 – Murder trial – Appreciation of evidence – Conviction confirmed based principally on testimony of hostile eyewitness corroborated by other reliable evidence – Appellant-accused (A-2 and A-3), along with others, shot deceased dead, on account of some previous enmity – Conviction of appellants under Ss. 302/34, upheld by High Court – Sustainability – Held, presence of PWs 7, 8 and 11 (eyewitnesses) at the time and place of occurrence, not doubtful – Evidence of PW 11 (Eyewitness and brother of deceased) clearly nails appellants for murder of deceased – He is a truthful witness who can be safely relied upon, though he had turned hostile – His evidence is corroborated, insofar as A-2 is concerned, by PWs 7 and 8 – His evidence also gets corroborated from evidence of PWs 5 and 24 (doctor conducting post-mortem of deceased and SI, respectively) – Complicity of A-3 is also established by evidence of PW 11, which is duly corroborated by medical and other evidence, although PWs 7 and 8 have not specifically named him – Concurrent finding of courts below, that prosecution evidence is sufficient to establish guilt of A-3 as well, beyond any reasonable doubt, reliable – Fact that PW 11's statement was taken down by PW 24 (SI) at the place of occurrence within 20-25 minutes of incident, clearly established – Although defence pointed out certain discrepancies and omissions in PW 11's deposition, but, such discrepancies and omissions are only minor and not very material and do not shake his trustworthiness – Conclusions recorded by trial court and confirmed by High Court, concerning appellants, do not suffer from any factual or legal error – Hence, conviction of appellants, confirmed – Criminal Trial – Appreciation of evidence – Minor contradictions or inconsistencies immaterial.

Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in lodging/filing FIR – Sufficiently explained – Effect, if any – Held, on facts, delay of two hours in filing FIR, stood sufficiently explained – Therefore, defence submission that time of two hours was used to falsely implicate accused due to previous enmity, rejected.

2011-1.L.W.(Crl.) 38

Chirra Shivraj
vs
State of Andhra Pradesh

I.P.C., Section 304/Part II, Criminal Trial/F.I.R., Second F.I.R., Plea as to legality, Dying Declaration, Criminal P.C., Sections 158,162, 173.

Dying declaration which is trustworthy and which can be shown that the person making the statement was not influenced by any exterior factor and made the statement which was duly recorded can be made basis for conviction – In the instant case there was no doubt with regard to the truthfulness of the dying declaration – It cannot be therefore said that on the sole basis of dying declaration the order of conviction could not have been passed.

First Information Report (FIR) is a report which gives first information with regard to any offence – There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the First Information Report.

In this case, by virtue of the second FIR, further development which had taken place had been recorded – The said development was with regard to the death of the deceased and, therefore, an offence under the provisions of Section 302 of the IPC has been registered.

FIR No.46/99 was recorded on the basis of the statement made by the deceased when the deceased was alive and upon her death, which had nexus with the injuries – Further information was given on 2nd August, 1999, and that was recorded as FIR No.152/99- It was not necessary to record another FIR as the death was result of septicemia which was due to the burn injuries – In fact the second FIR was nothing but a consequence of the event which had taken place on 21st April, 1999 – In the circumstances, the contents of the so called second FIR being FIR No.152/99, could have been incorporated in the police diary as a result of further information or event which had been taken place – As a matter of fact, it was not necessary to note the same as a new FIR but simply because the S.H.O made a mistake by recording it as a fresh FIR, it would not make the case of the prosecution weak especially when no prejudice had been caused to the appellant or any other person because of the aforestated further information with regard to the death being recorded as a new FIR – It cannot be said that merely because second FIR was filed, the entire investigation was defective and that should result into acquittal of the accused – Appeal dismissed.

2011-1.L.W.(Crl.) 43

Thanu Ram
vs
State of M.P.

I.P.C., Section 498-A, 306, 107/Suicide by wife/Abetment, Evidence Act (1872), Section 113-A/Presumption, Scope, Criminal Trial/Dying declaration.

In this case, there is no getting away from the fact that Hirabai committed suicide in the 4th year of her marriage when she was six months' pregnant – Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty – It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life – There is o ambiguity or irregularity as far as the dying declaration is concerned and it has been stated in clear and simple language that the victim had been treated with both mental and physical cruelty and the victim has stated quite candidly how she poured kerosene on her body and set herself on fire.

Element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Indian Evidence Act, 1872, which provides for a presumption to be arrived at regarding abetment of suicide by a married woman and certain criteria are also laid down therein – If the degree of cruelty is such as to warrant a conviction under Section 498-A IPC, the same may be sufficient for a presumption to be drawn under Section 113-A of the Evidence Act in harmony with the provisions of Section 107 IPC.

Evidence Act (1872), Section 113-A/Presumption, Scope – See I.P.C., Section 498-A, 306, 107/Siicide by wife/Abetment.

Criminal Trial/Dying declaration – See I.P.C., Section 498-A, 306, 107/Suicide by wife/Abetment, Evidence Act (1872), Section 113-A/Presumption, Scope.

Section 107 IPC clearly defines abetment to mean that a person abets the doing of a thing who instigates a person to do that thing. The question with which we are confronted is whether there is sufficient evidence on record to indicate that by any of the acts of cruelty attributed to the Petitioner there was an intention to instigate Hirabai into committing suicide. There is no getting away from the fact that Hirabai committed suicide in the 4th year of her marriage when she was six months' pregnant. Ordinarily, a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. It is only in extreme circumstances that a woman may decide to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life.

2011-1.L.W.(Crl.) 64

Vijaysinh Chandubha Jadeja
vs
State of Gujarat

Narcotic Drugs and Psychotropic Substances Act (1985), Section 50/"Substantial compliance" with Section; Section whether casts a duty on the empowered officer to 'inform' the suspect of his right to be searched in the presence of a Gazetted Officer or a Magistrate, if he so desires.

Question raised whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer can be said to be due compliance with the mandate of the said Section? Divergence of opinion between the decisions – Reference answered by Five Judges Bench.

Held:

Concept of 'substantial compliance' being read into Section 50 of the NDPS Act, whether lays down the correct proposition of law.

Held:

The concept of "substantial compliance" with the requirement of Section 50 of the NDPS Act introduced and read into the mandate of the said Section in Joseph Fernandez case and *Phabha Shankar Dubey* **case is neither borne out from the language of sub-section 1) of Section 50 nor it is in consonance with the dictum laid down in** *Baldev Singh's case* **case –Question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial – It would neither be possible nor feasible to lay down any absolute formula in that behalf – In order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer – It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.**

The NDPS Act was enacted in the year 1985, with a view to consolidate and amend the law relating to narcotic drugs, incorporating stringent provisions for control and regulation of operations relating to narcotic drugs and psychotropic substances. The object of the said legislation has been explained time and again by this Court in a plethora of cases and, therefore, we feel that it is not necessary to delve upon this aspect all over again, except to re-emphasise that in order to prevent abuse of the provisions of the NDPS Act, which confer wide powers on the empowered officers, the safeguards provided by the Legislature have to be observed strictly.

2011 (1) SCALE 124

SURENDERA MISHRA
vs
STATE OF JHARKHAND

CRIMINAL LAW – I.P.C. – SECTION 84 & 302 – Unsoundness of mind – Burden of proof – Appellant though suffering from certain mental instability even before and after the incident, from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of commission of the offence did not know the nature of his act – Accused who seeks exoneration from liability of an act u/s 84, IPC is to prove legal insanity and not medical insanity – Prosecution case that deceased was going in a car driven by PW.1 and when he asked the driver to stop the car and call PW.2, owner of auto parts shop – Allegations that all of a sudden the appellant, owner of a nearby Medical Hall came there with a country made pistol, pushed PW.2 aside and fired at point blank range at the deceased – Driver fled away from the place of occurrence and informed family members of the deceased, leaving the deceased in the car itself – Immediately after the appellant had shot dead the deceased, threatened his driver PW.1 of dire consequences - He ran away from the place of occurrence and threw the country made pistol, weapon of crime, in the well in order to conceal himself from the crime – However, it was recovered later on – Appellant was psychiatric with paranoid features – Only medicine was advised for sleep – Whether appellant was entitled to the benefit of Section 84, IPC – Dismissing the appeal, Held,

From a plain reading of the aforesaid provision it is evident that an act will not be an offence, if done by a person who, at the time of doing the same by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But what is unsoundness of mind?

An accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "Unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental aliments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities. The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, his conduct at the time or immediately after the offence with reference to his medicalcondition by production of medical evidence and other relevant factors. Even if the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behaviour preceding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him.

The first evidence in regard to the unsoundness of mind as brought by the appellant is the medical prescription dated 18th October, 1987 (Ext. A-1) in which symptom of the appellant has been noted as psychiatric with paranoid features and medicine was advised for sleep. Other prescriptions are dated 9th January, 1988 (Ext. A) and 5th of September 1998 in which only medicines have been prescribed. Other prescriptions (Exts. A-5 to A-7) also do not spell out the disease the appellant was suffering but give the names of the medicines, he was advised to take. The occurrence had taken place on 11th of August 2000. From these prescriptions, the only inference one can draw is that the appellant had paranoid feeling but that too was not proximate to the date of occurrence. It has to be borne in mind that to establish that acts done are not offence and come within general exception it is required to be proved that at the time of commission of the act, accused by reason of unsoundness of mind was incapable of knowing that his acts were wrong or contrary to law. In the present case the prosecution has proved beyond all reasonable doubt that immediately after the appellant had shot-dead the deceased, threatened his driver PW.1, Vidyut Kumar Modi of dire consequences. Not only that, he ran away from the place of occurrence and threw the country-made pistol, the weapon of crime, in the well in order to conceal himself from the crime. However, it was recovered later on. The aforesaid conduct of the appellant subsequent to the commission of the offence clearly goes to suggest that he knew that whatever he had done was wrong and illegal. Further, he was running a medical shop and came to the place of occurrence and shot dead the deceased. Had the appellant been a person of

unsound mind, it may not have been possible for him to run a medical shop. We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. In our opinion, the plea of the appellant does not come within the exception contemplated under Section 84 of the Indian Penal Code.

2011 (1) SCALE 143

DAYA NAND
vs
STATE OF HARYANA

JUVENILES – JUVENILE JUSTICE ACT, 1986 – SECTION 2(h) – juvenile justice (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – SECTION 2(k), 20 & 69 – I.P.C – SECTION 376 r/w 511 – Plea of juvenility – On date of occurrence, age of appellant was 16 years 5 months and 19 days – Appellant cannot be kept in prison to undergo the sentence imposed by the Sections Judge as affirmed by the High Court – Appellant was convicted u/s 376 r/w 511, IPC and sentenced to rigorous imprisonment for five years – Plea of juvenility was raised at an early stage of proceedings – Juvenile Justice Court observing that the date of birth of appellant was 14.8.1981 and reckoned on that basis, he was not a juvenile on 2.2.1998, the date of the occurrence – Plea of juvenility was again raised in appeal, but the High Court rejected it – On 2.2.1998, age of appellant of appellant was 16 years, 5 months and 19 days – Whether appellant would be treated as juvenile – Allowing the appeal, Held,

In the Juvenile Justice Act, 1986, a 'juvenile' was defined under Section 2(h) to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. On the basis of the finding of the Sections Judge that on the date of occurrence, the appellant was over 16years or a girl who has not attained the age of 18 years. On the basis of the finding of the Sections Judge that on the date of occurrence, the appellant was over 16 years of age, he did not come within the definition of 'juvenile' under the 1986 Act.

The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined 'juvenile or child' in section 2(k) to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in section 20 also contained a provision in regard to cases that were pending when it came into force and in which the accused at the time of commission of offence was below 18 years of age but above sixteen years of age (and hence, not a juvenile under the 1986 Act) and consequently who was being tried not before a juvenile court but a regular court.

The above quoted provision came up for consideration before a Constitution Bench of this Court in Pratap Singh vs. State of Jharkhand and Anr., (2005)P 3 SCC 551. In Pratap Singh, this Court held that section 20 of the 2000 Act would apply only to cases in which the accused was below 18 years of age on April 1, 2001, the date on which the 2000 Act came into force but it would have no application in case the accused had crossed the age of 18 years on the date of coming into force of the 2000 Act.

Applying the ratio of the Constitution Bench decision, the appellant would not be entitled to the protections and benefits of the provisions of the 2000 Act, since he was over 18 years of age on April 1, 2001, when the 2000 Act came into force. But the matter did not stop at that

stage. After this Court's decision in Pratap Singh (and presumably as a result of that decision) a number of amendments of a very basic nature were introduced in the 2000 Act w.e.f. August 22, 2006 by Act 33 of 2006.

The effect of the amendments in the 2000 Act were considered by this Court in Hari Ram v. State of Rajasthan and Another reported in (2009) 13 SCC 211. In Hari Ram this Court held that the Constitution Bench decision in Pratap Singh's case was no longer relevant since it was rendered under the unamended Act.

Later on, the decision in Hari Ram (supra) was followed by this Court in Dharambir v. State (NCT of Delhi) and Another, (2010) 5 SCC 344 and also in Mohan Mali & Another v. State of M.P., AIR 2010 SC 1790.

In view of the Juvenile Justice Act as it stands after the amendments introduced into it and following the decision in Hari Ram and the later decisions the appellant can not be kept in prison to undergo the sentence imposed by the Additional Sessions Judge and affirmed by the High Court. The sentence imposed against the appellant is set aside and he is directed to be released from prison. He is further directed to be produced before the Juvenile Justice Board, Narnaul, for passing appropriate orders in accordance with the provisions of the Juvenile Justice Act.

(2011) 1 Supreme Court Cases 694

SIDDHARAM SATLINGAPPA MHETRE
vs
STATE OF MAHARASHTRA AND OTHERS

Constitution of India – Arts. 21, 22 and 19 – Anticipatory bail – Role of, in protection of right to personal liberty – Sense in which S. 438 CrPC is described as being "Extraordinary", clarified – Held, S. 438 CrPC is not extraordinary in the sense that it should be invoked only in exceptional or rare cases – A great ignominy, humiliation and disgrace is attached to arrest – In cases where court is of considered view that accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event custodial interrogation should be avoided, and anticipatory bail should be granted, which after hearing Public Prosecutor, should ordinarily be continued till end of trial – Criminal Procedure Code, 1973, S. 438.

Constitution of India – Arts. 21 and 22 – Bail – Role of, in protection of right to personal liberty – Essence of function involved in grant of bail, and measures to ensure proper performance thereof – Held, exercise of said jurisdiction requires maintaining of perfect balance between two conflicting interests viz., sanctity of individual liberty and interest of society – Hence, it should be entrusted to judicial officers with some experience and good track record – High Courts advised to periodically organise (through their Judicial Academies) workshops, symposiums, seminars and lectures for orientation of judicial officers and police officers in respect of importance of, and method of balancing of, said conflicting interests – Direction given for periodical evaluation of performance of judicial officers concerned on the basis of cases decided by them - Criminal Procedure Code , 1973 – Ss. 438, 437 and 439 – Criminal Trial – Bail – Generally.

Held:

Just as liberty is precious to an individual, so is the society's interest in maintenance of place, law and order. Both are equally important.

A large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench is Sibbia case, (1980) 2 SCC 565 clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in CrPC, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases.

According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.

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HIGH COURT CITATIONS
CIVIL CASE

2011 (1) TLNJ 1 (Civil)

M/s. Anglo French Textiles (A Unit of Puducheri Textiles Corporation)
vs
M/s. Sivaram Agencies Rep. By partner Mr. Srikantan and others

Arbitration and Conciliation Act 1996, Section 8 – (Petition to refer arbitration – when to be filed) – Suit filed for recovery of dues – defendant filed written statement and took active part in the proceedings – filed petition just prior to trail to dismiss the suit under order 7 Rule 11 CPC in view of the arbitration clause in the agreement between the parties – trial court dismissed the application – on revision by the defendant the High Court held theat defendant having taken part in the proceedings not entitled to seek arbitration at the time of trial – further relying upon 2003(2)CTC 431(SC) the petition has to be filed before filing the written statement in the suit – CRP dismissed.

Civil Procedure Code 1908 as amended, Order 7, Rule 11 – see Arbitration and Conciliation Act 1996, Section 8.

2011 (1) TLNJ 20 (Civil)

New Era Engineering Company represented
by its partner J.S. Desai and others
vs
Ghyaz Hashim and others

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 4- Petition filed for fixation of fair rent – to establish value of the site, a sale deed executed five years relating to nearby property was produced by the land lord – rent controller accepted the value as bases value and determined and appreciated value – finding confirmed by appellate authority – on revision High Court expressed that whenever there is no current document to show the market value of any property lying with municipal area and if earlier document is available to show such a value adding 10% of appreciation to said value per annum will be proper mode of determination of market value – Civil Revision Petition Allowed in part.

2011-1. L.W. 21

Arafathunnisa
vs
T.I. Zeeyavudeen and others

Muslim Personal Law/Custody of Female child, Guardianship, Welfare of child.

Guardians and Wards Act/Mother of female child after her second marriage whether entitled to custody of child in preference to the father, Scope.

Question for consideration in the appeal is, whether the appellant/mother is entitled to have the custody of the minor female child after her second marriage – It was contented for the appellant that under the Muslim Personal law, the mother of the female child is entitled to have the custody of the minor child till she attains puberty.

Held:

If a woman marriages a person not related to the child within a prohibited degree i.e. a stranger, it is a disqualification under the Mohammedan Law to have the custody of the child – Though under the Mohammedan Law she is entitled to have the child till she attains puberty, since the mother had married a stranger secondly she is not entitled to have the custody of the child – Moreover, the paramount interest and the welfare of the child are criteria to have the custody of the child.

Court observed that the minor child appeared to be normal; but subsequent to the second marriage when she was produced before this Court on 08.11.2010, it is found that she was psychologically upset and was continuously crying – Presently the minor child is with the appellant/wife and under such circumstances, the appellant/wife is directed to hand over the custody of the child forthwith to the 1st respondent/father, however, the appellant is entitled to visit the child during the first week-end of every month – Directions passed.

Appeal (CMA) is filed by he wife as against the order and decretal order passed by the learned Subordinate Judge, Tiruvrur, in G.W.O.P.No.9 of 2008, whereby the original petition filed by the 1st respondent/husband, seeking the custody of the minor female child, was allowed.

2011 (1) CTC 26

Annam Ramji
vs
Bajaj Enerprises, rep. by its Proprietor, Sri Chand Bajaj

Specific Relief Act, 1963 (47 of 1963), Section 34 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1955), Section 25 – Suit for bare declaration maintainable under Section 34 of Specific Relief Act – At time of presentation of Suit, Court has to go only by Plaint averments and cannot direct Plaintiff to seek for consequential relief and value Suit Section 25(b) instead of Section 25(d) of Court Fees Act.

Facts:

The Court returned the Plaint on the ground that the relief for a bare declaration was not maintainable and that the valuation under Section 25(d) was not proper.

Held:

At the stage of presentation of the Plaint, the Court has to go through the averments of the Plaint and to come to a conclusion about the nature of relief sought for by the

Petitioner/Plaintiff. The necessity of asking for further relief than mere declaration of status or right, can be decided only after issuing summons to Defendants and after going through the contentions of the Defendants in answer to the claim of the Petitioner/Plaintiff. At the stage of presentation of the Plaint itself, the Court cannot decide the right of the Petitioner/Plaintiff and direct her to go for further reliefs also along with the declaration of his status or right in the suit property. On the fact of the allegations made in the Plaint, it is found to be in order for a Suit for the relief of status declaration under Section 34 of the Specific Relief Act. Therefore, it has to entertain the Suit and to value the Suit only under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. In case, the Suit is subsequently attracted under the Proviso to Section 34, it has to be converted into that a Suit for declaration and for consequential reliefs and at the said contingency only it will be covered under Section 25(b) of the Tamil Nadu Court Fee and Suit Valuation Act.

2011 (1) TLNJ 37 (Civil)

M. Kiliammal and others
vs
Venugopal and others

Civil Procedure Code 1908 as amended, Order 2 Rule 2 – Prior suit for bare injunction by the agreement holder/purchaser – later second suit filed for specific performance without leave of the court in the first suit – Petition filed in the second suit for Specific performance, to reject the plaint under order 7 rule 11 CPC – trial court dismissed the application – on revision High Court held that when plaintiff filed earlier suit on the allegation of dispossession he has a definite cause of action to enforce sale agreement – as t he same was sought and as no leave was obtained for filing fresh suit for omitted relief, he can not file another suit for omitted relief – trial court order set aside and Civil Revision Petition allowed.

2011-1. L.W. 48

Ganesan
vs
Sivaperumal @ Arjunan and other

Easements Act (5 of 1882), Section 60/Expres or Implied Licence, Irrevocable licence, what is, Conduct and Acquiescence – Terms and the nature of the nature of the license can be gathered from the purpose for which the license is granted coupled with the conduct of the parties and the circumstances which led to the grant of the license – License is irrevocable under Section 60(b), if the following three conditions are fulfilled:-namely (i) The licensee executed work of a permanent character, (ii) He did so acting upon the license and (iii) He incurred expenses in doing so.

In this case defendants have admitted the existence of pipeline beneath the lands for nearly 17 years, but they claim that the same was laid by them – Admittedly, they have purchased those lands only in the year 1993 and the pipelines are in existence for about 17 years and so, it could be easily inferred that the permission to lay pipelines through the lands has been granted only by the vendor of the defendants.

There was no objection from the vendor of the defendants and there is no material to infer any such objection raised by the defendants vendor – Therefore, it is clear that the

pipelines have been laid by the plaintiff with the permission of the defendants' vendor – The right so conferred is license – The grant of license may be express or implied.

In this case, the appellant has laid pipelines which are permanent in nature and has incurred expenses in execution thereof acting on the license – If the vendor of the defendants did not grant any license, then they would not have permitted the appellant to lay pipelines beneath their land and would have certainly raised objections – They would have taken steps to remove those pipelines once they come to know that the pipelines are laid in their land – Their conduct of acquiescence to the pipelines laid in their land is sufficient to show that the license was irrevocable – There is also nothing on record to show that the licensor had retained right to revoke the license.

The findings of the lower appellate court cannot be sustained as it is against the import of Section 60(b) – Second Appeal allowed.

2011 (1) CTC 55

P.K. Vasudevan Pillai and other
vs
Manikandan Nair and others
and
P. Sadasivam Nair
vs
Manikandan and others
and
P. Sadasivam Nair
vs
The District Collector and others

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Sections 6(18), 6(20), 63 & 108 – Code of Civil Procedure, 1908, Section 9 – Ouster of Jurisdiction – Section 108 has two limbs – First limb relates to administration and management of religious institution – Second relates to any other matter or dispute for determination of which provision is made in TNHR & CE Act – Question arising in Suit is whether or not particular temple is public or private temple – Section 63 of TNHR & CE Act empowers Joint Commissioner or Deputy Commissioner to enquire into and decide dispute whether institution is religious institution or not – Question involved in Suit would fall under Second limb of Section 63 as machinery under said Section has power to decide such dispute – Civil Court would have jurisdiction if such dispute which falls under second limb of Section 108 is only incidental or ancillary – Issue involved in Suit as to whether temple is public or private is substantial and Civil Court's jurisdiction is barred.

Facts:

Three Suits were filed in respect of a temple. The first Suit was between group of persons claiming to be hereditary trustees of a private temple on the one hand and the members of the general public on the other hand. The prayer in the Suit was for declaration that right of the Plaintiffs to administer the temple and its properties and for injunction. The question of jurisdiction of Civil Court to try the Suit was decided by Courts below and confirmed in Second Appeal.

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 31 – First Appellate Court framed only one point for consideration viz. whether Appeal deserved to be allowed or not – Failure to frame points for determination would not affect judgment of First Appellate Court in view of the total bar of jurisdiction of Civil and concurrent findings of Courts below.

Order 41, Rule 31, C.P.C. requires the judgment of the Appellate Court to state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the Appellant is entitled. Unfortunately, in the case on hand, the only point for determination framed by the Appellate Court was whether the Appeal deserved to be allowed or not. Therefore, there is no doubt that there was a failure on the part of the Appellate Court to frame appropriate points for determination.

Code of Civil Procedure, 1908 (5 of 1908), Order 14, Rule 1 – Framing of issues – Issues are framed when material proposition of fact or law is affirmed by one party and denied by other party – Material propositions are those propositions of law or facts which Plaintiff must allege to show right to sue or which Defendant must allege to constitute his defence – Code does not define or deal with main and/or ancillary issues – Observations made in this regard.

As a matter of fact, the Code of Civil Procedure does not talk about main issues and ancillary or incidental issues. Order 14 speaks only about two types of issues viz., (i) issues of fact and (ii) issues of law. Order 14, Rule 1(1) states that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Sub-Rule (2) of Rule 1 of Order 14, makes it clear that "material propositions are those propositions of law or fact which a Plaintiff must allege in order to show a right to use or a Defendant must allege in order to constitute his defence". Sub-Rule (3) of Rule 1 of Order 14 makes it mandatory for the Court to frame a distinct issue in respect of every material proposition affirmed by one party and dined by the other.

2011-1. L.W. 66

Mr. K. Santhanam
vs
Ms. S. Kavitha through her sub.power agent others

C.P.C., Order III, R.2, High Court Amendment (Madras)/Pleadings, Order VI, Rr.14, 15, Order 7, R.11 and Section 26/Power of Attorney to prosecute suit on behalf of principal, permissibility, Ratification of acts by Principal, Institution of suits, Scope of.

Civil Rules of Practice, Rules 16, 17,

Contract Act (1872), Section 190,

Practice and Procedure/Pleadings, institution and prosecution of suits by power agents, Effect of,

Constitution of India, Article 227.

Application seeking permission to prosecute the suit on behalf of the plaintiff, on the basis of the rectified deed of power of attorney was allowed by the lower court –

Challenging the said order, the defendant in the suit has come up with the above civil revision petition.

Plaintiff has a right to rectify the defect in the presentation of the plaint – A defective presentation of a plaint, cannot result in the rejection of the plaint – Trial Court was justified in allowing the application filed under Order III, Rule 2, CPC, since the principal has specifically ratified the acts – CRP dismissed.

While Order III, enables 'the holder of a power of attorney' to appear, apply and act on behalf of a party to a suit, as his 'recognised agent', Order VI, Rule 14, enables 'any person duly authorized by a party to sign the pleading' if the party pleading is, by reason of absence or for other good cause, unable to sign the pleading. Thus, it appears from Order VI, Rule 14, that even in the absence of a power of attorney, a party to a suit is entitled to have the pleading signed on his behalf, by any person duly authorized by him to sign. This inference is inevitable on account of the difference in the expression used in Order III, Rule 2, vis-à-vis-Order VI, Rule 14. While Order III, Rule 2, uses the expressions "recognised agents" and "persons holding powers of attorney", Order VI, Rule 14, uses the phrase 'any person duly authorised by him". Rule 15(1) of the Order VI, goes one step further and empowers "some other person" to verify the pleadings, if it is proved to the satisfaction of the Court that he is acquainted with the facts of the case.

2011 (1) CTC 80

M. Lakshmanan
vs
ICICI Bank Employees' Union, rep. by its Secretary,

Words and Phrases – " Moral Turpitude" – What is –Phrase "Moral Turpitude" cannot be accurately defined – Act of baseness, vileness or depravity in private and social duties which every man owes to another man and to society can be termed as acts involving moral turpitude – Test that should be employed to find out whether particular offence involves moral turpitude or not is to find out (a) whether act leading to conviction was such as would shock moral conscience of society in general (b) whether motive behind act was base one and whether perpetrator could be considered to be of depraved character or person who was looked-down upon by society – Expression means anything contrary to honesty, modesty and good morals – Question of offence of moral turpitude will depend on facts of case.

Facts:

A Bank employee, while in service, entered into a partnership business with third parties and had borrowed sums of monies from them and another person. He had borrowed monies on the strength of the promise that he would sell the lands to them. He issued three cheques to them in discharge of the debt. The cheques were dishonoured and the employee was convicted for offence under Section 138 and sentenced to imprisonment. The employee was also subsequently dismissed from service. Section 21-A Trade Unions Act prohibits such employee from being a member of the executive or any other office bearer of a Trade Union. Injunction was granted against such employee. Appeal dismissed.

Fact : "Moral turpitude" is a phrase which can hardly be accurately defined. It can have various shades of meaning in the various sets of circumstances. The concept of moral turpitude escapes from precise definition, but has been described as "an act of baseness, vileness or

depravity in private and social duties which a man owes to fellow men and to the society in general." In Criminal law, the expression "moral turpitude" is used to describe the conduct that is considered contrary to community standards of justice, honesty and good morals. The expression "moral turpitude" can also be described as the criminal behaviour that is inherently bad, which is known as "malum in se" in contrast to the behaviour that is bad merely because it is forbidden in law, known as "malum prohibitum."

2011-1. L.W. 92

Vinod M.Patel, S/o. Mavji Patel, Proprietor, Sri Meenakshi Stores, SIDCO Industrial Estate, Mangalapuram and other
vs
The Branch Manager, SIDCO, Tirunelveli -10, Tirunelveli District.

Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Act, Section 4/Notice, 15/Bar of Civil Court's jurisdiction, Transfer of Property Act (1882), Section 106.

Section 4 of the Act envisages only a notice to quit giving a time of not less than ten days for vacating – Appellants were given thirty days time – Section 15 provides a bar to entertain any suit or proceedings in respect of eviction of any person, who is in occupation of any unauthorised public premises – Suit filed by the appellants/plaintiffs to prempt the authorities from taking proceedings under the above said Act is clearly barred – Second Appeal dismissed.

2011 (1) CTC 92

S.K. Jeyarhaaj
vs
Baby @ Rohini and others

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Hindu Marriage Act, 1955 (25 of 1955), Section 16 – Plaint – Rejection of – Revision against dismissal of Application to reject Plaint – Plaint in a Suit for partition and separate possession sought to be rejected on ground that children born through bigamous marriage are entitled to inherit in respect of properties of father but not in ancestral properties – For striking off Plaint, averments in Plaint can be considered – Prima facie, Plaintiffs are entitled to claim share in suit properties – There are necessary allegations in Plaint to sustain Suit – Civil Revision Petition dismissed.

Facts:

In a Revision against dismissal of Application seeking to reject the Plaint, High Court held that Plaint can be rejected only on the basis of averments contained therein and found that there wee necessary allegations to sustain the Suit and dismissed the Revision.

Held:

I am not able to accept the contention of the learned Senior Counsel. It is the settled law that for striking down a Plaint, we will have to go by the averments made in the Plaint and the documents filed in support of the Plaint. In this case, as stated supra, the case of the Plaintiffs is

that Veeraboyan settled the properties giving vested reminder to the male grandchildren and the Plaintiffs, being the grandchildren of Veeraboyan, are entitled to a share along with the Second Defendant, who is the son of late S.V. Kumaresan through his first wifle Kamalam Kumaresan, the First Defendant in the Suit. It is further stated in the plaint in para 4 that the suit properties were the self-acquired properties of late Veeraboyan. Therefore, as per the averments made in the Plaint, the properties are the self-acquired properties of Veeraboyan and the question whether the properties are ancestral properties in the hands of Veeraboyan or not can be decided by the Court below during trial and that cannot be presumed at this stage. Further, the Plaintiffs claim to be the children of S.V. Kumaresan through his second wife and they are also claiming right over the suit properties on the basis of the Settlement Deed executed by Veeraboyan. In the Settlement Deed, it has been stated that the sons shall enjoy the properties without any power of alienation and thereafter their male Santhathis shall enjoy the properties absolutely.

2011 (1) CTC 96

T.K.T. Garments, Proprietor, T.K. Thangavel
vs
The Manager, Sri Balaji Transport Lines

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 17 – Amendment of Plaint after lapse of limitation period of 3 years – Permissibility of – Original Suit was filed against Manager and Branch Manager leaving out establishment – Later Plaint was sought to be amended to effect that establishment was being impleaded as Defendant represented by its Managing Partners – Claim is barred by time and order of Trial Court allowing amendment from date of Application alone, held, proper.

Facts:

The Suit was filed for recovery of money on a concluded contract. The Plaintiff sought to amend the Plaint to implead the establishment represented by its Managing Partners. The same was resisted on the ground that originally no claim was made against the establishment and thereof it was barred by time. The Trial Court allowed the Application in part, taking effect from the date of the Amendment Application and not relate back to the date of Suit.

Held:

At the outset, the Manager s of the three Transport Companies were impleaded as the Defendants. When the description of the Defendants mentioned in the small cause title and long cause title are considered, it appears that only the Manager of the First Defendant and Branch Managers of the Second and Third Defendants have been impleaded as parties and the claim has been made against them as if they are liable to pay the money. Presently, the Petitioners sought to amend the Plaint so as to make the Transport Companies themselves liable to pay the money and prayed that they have to be represented through their Managing Partners. The Suit was filed on 06.11.2002 and the Written Statement was filed on 4.12.2003. The Amendment Application was filed on 25.8.2006, admittedly after the lapse of over three years. Hence, it is the vehement contention of the learned Counsel for the Respondents Mr. I.C. Vasudevan that the Amendment Application is time barred and no relief could be granted to the Plaintiff.

2011 (1) CTC 111

Bhabani Prasad Jena
vs
Convenor Secretary, Orissa State Commission for Women & Anr.

Medical Jurisprudence – Indian Evidence Act, 1872 (1 of 1872) Section 112 – DNA Test – When to be directed by Court – Conditions governing – Use of DNA test to determine paternity of a child, an extremely delicate and sensitive aspect – Apparent conflict exists between right to privacy of a person not to submit himself forcibly to medical examination and duty of Court to reach truth – One view that when modern science gives means to ascertaining paternity of a child, such means to be used without hesitation whenever occasion arises – However, another view that Courts to be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual – Such tests may have devastating effect on child and may bastardise an innocent child even though his/her parents were living together during conception – Thus, Courts not to direct DNA tests as matter of course or in a routine manner – Courts to consider diverse aspects including presumption under Section 112 of Evidence Act, pros and cons of such order and test of 'eminent need' whether it is not possible for Court to reach truth without use of such test – Order of DNA test to be made only when a strong prima facie case is made out.

Facts:

Complaint filed by Respondent herein before the Orissa State Commission for Woman alleging that she was married to the Appellant herein and due to torture meted out by him and his family members she got separated, has no source of income and is pregnant. The Commission upon enquiry issued directions for payment of maintenance and ordered the DNA test of the Appellant herein.

Held:

In a matter where paternity of a child is in issue before the Court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the Court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the Court to reach the truth without use of such test.

2011 (1) CTC 122

Malayalam Plantations Ltd.
vs
State of Kerala & another

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27 – Production of additional evidence at Appellate stage – If any Petition is filed under Order 41, Rule 27, it is incumbent on part of Appellate Court to consider as to whether document sought to be adduced has any relevance to issues involved – Additional evidence cannot be permitted to be adduced to fill up lacunae in case – Court is required to take a decision one way or other, when an Application is filed under Order 41, Rule 27.

Facts:

In Civil Appeals, the Supreme Court held that when an Application is filed for reception of additional evidence of under Order 41, Rule 27 of the Code of Civil Procedure, it is the duty of the Court to deal with same on merits and that additional evidence cannot be permitted to enable the party fill up the lacunae.

Held:

In view of the above provision, in our opinion, when an Application for reception of additional evidence under Order 41, Rule 27 of C.P.C. was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in Jatinder Singh & Anr. v. Mehar Singh & Ors. 2008 (5) CTC 374 (SC) : AIR 2009 SC 354 and Shyam Gopal Bindal and Others v. Land Acquisition Officer and another, 2010 (2) SCC 316.

If any Petition is filed under Order 41, Rule 27, in an Appeal, it is incumbent on the part of the Appellate Court to consider at the time of hearing the Appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under order 41, Rule 27, additional evidence could be adduced in on of the three situations, namely, (a) whether the Trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.

2011 (1) TLNJ 169 (Civil)

Rajendran
vs
A. Saminathan

Civil Procedure Code 1908 as amended, Order 18, Rule 3A – Suit declaration – Plaintiff was examined and exhibits marked – case adjourned for further examination but plaintiff had paralytic attack – wife sought permission to be examined and file proof affidavit – defendants resisted as without completion of PW1 further evidence can not be taken – trial court rejected contention and allowed petition – on revision High Court

modified the order holding that Court shall ascertain from plaintiff about his availability for examination and in case, plaintiff not available for further evidence, statement already reordered to be eschewed and Court may examine plaintiff's wife - Civil Revision petition partly allowed.

2011 (1) TLNJ 177 (Civil)

Tamil Nadu State Transport Corporation (Kumbakonam) Division IV Limited
vs
The Tiruchirappalli Consumer Co-operative Wholesale Stores, Trichy

Civil Procedure Code 1908 as amended, Order 9, Rule 3 – Suit against three defendants – 2nd defendants contested the suit – Suit dismissed against 2nd defendant – suit decreed against 1st and 3rd defendant – even though defendant 1 and 3 were set ex parte, the judgment of the court below cannot be termed as an ex parte decree as it was passed after full trial – Civil Revision Petition dismissed.

2011 (1) TLNJ 180 (Civil)

K. Sekar S/o.Late R. Kuppusamy and other
vs
N.V.G.B.Rajaram and others

Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 – Application to bring on record the legal representatives of the tenant filed under Order 22, Rule 3 CPC – instead of under 25 of Rent Control Rules – filing of petition under wrong provisions is not a ground to refusing impleading of the legal representatives – filing Rent Control appeal and petition to bring on record legal representatives are collateral proceedings delay in filing petition deserves to be condoned or otherwise the land lord would be subjected to great prejudice and hardship – Civil Revision Petition dismissed.

2011 (1) TLNJ 210 (Civil)

Ganga Krishnan
vs
M/s.Bajaj Enterprises Rep. By its proprietor Mr.Sri Chand Bajaj,
having office at Hardevi Chamber

Specific Relief Act 1963, Section 34 – See Tamil Nadu Court Fees and Suit valuation Act 1955, Section 25 (b) & (d).

Tamil Nadu Court Fees and Suit Valuation Act 1955, Section 25(b) & (d) – Plaint filed for declaration alone without – office returned plaint as suit fall under section 25 (b) – on revision High Court declared that declaration shall not be issued if plaintiff is able to seek further relief than mere declaration and omitted to seek – at the stage of presentation court has to go through plant averment alone – further relief can be decided after issue of summons and on the basis of averments in the written statement – return of plaint held is incorrect – direction given to represent plaint – Civil Revision Petition ordered with directions.

2011 (1) TLNJ 213 (Civil)

Muniappan
vs
Ponni

Evidence Act 1872, Section 112 – See Hindu Marriage 1955, Section 13(ia) & 13(1) (i) (ib).

Hindu Marriage Act 1955, Section 13 (ia) & 13(1)(i)(ib) – Petition for dissolution of marriage by husband – IA filed seeking direction for blood test of wife to find out biological father of child – trial court dismissed as wife cannot be compelled to subject herself to blood test – on revision High Court expressed that examination of a party to a matrimonial litigation not violative of personal liberty – Civil Revision Petition allowed.

2011-1. L.W. 436

P. Senthil kumar
vs
R. Sunitha

Guardians and Wards Act, Section 7, Hindu Minority and Guardianship Act (1956), Section 6.

Petitioner has not made any payment towards maintenance of his wife and minor child and failed to discharge his moral and legal obligations – All of a sudden, after nearly fourteen years, he has come out with an application under the Act, for custody and guardianship of the minor son.

Father, who fails to discharge his moral and legal obligations under law to provide even the basic needs to the child, has no moral conscience to content that he was always ready and willing to provide the best that the child required – Such a person is dis-entitled to seek for custody and guardianship of the child, for the simple reason that the moral fibre is totally absent in his conduct.

Merely because the father is the natural guardian, he is not entitled to have priority over the mother of the child in the mater of custody and guardianship – Paramount welfare of the child alone is the consideration.

Conduct of the petitioner in treating the respondent cruelly, by the doubting the parentage of the child, at the time of adjudicating the divorce proceedings, inter-se, is a relevant factor, for the purpose of a sessing the character of the person, who seeks custody and guardianship of the child.

Just because, one of the contenders is affluent than the other, but does not possess moral standards, which is expected of, custody and guardianship of the child cannot simply be entrusted ignoring the paramount welfare of the child.

Child has been enquired and has expressed happiness and desire to be with the respondent-mother.

It could be seen if there is no defect in the personal character or if he is not shown to be otherwise, undesirable, he may have an edge over the mother, in claiming custody and guardianship of the minor children, in view of the stationary provision. But ultimately, it is the paramount welfare of the minor child, which has to be considered by the Court, taking into consideration, various factors.

2011 (1) CTC 438

C. Madhu
vs
K. Vajravel

Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 13 & Order 17, Rules 2 & 3 – Effect of provisions discussed – Respondent filed a Motor Accident Claim Petition for compensation – Respondent led evidence and closed his side – Case posted for Petitioner's evidence – Petitioner did not appear despite adjournments – Trial Court decreed claim – Petitioner filed Application to set aside ex parte decree - Respondent filed objection contending that decree was passed on merits – Trial Court upholding contention dismissed Application – Revision filed – Record shows that Petitioner did not lead evidence and was absent during hearing date – Only Order 17, Rule 2 applicable and not Rule 3 – Order of Trial Court, held, erroneous and set aside – Revision Petition allowed.

Facts:

Respondent sustained Injury in a motor accident. He filed a Claim Petition seeking compensation. The Respondent gave evidence on his side and the case was posted for Petitioner's evidence on 12.3.2003. The Petitioner did not produce evidence on that day and the case was adjourned to 25.3.2003. Even on that day, the Petitioner did not appear. Trial Court, therefore, decreed the claim. Thereafter, the petitioner came up with an Application under Order 9, Rule 13 to set aside the ex parte Decree. The Trial Court dismissed the Application holding that the Claim Petition was decided on merits. Aggreived by that Order, the Petitioner preferred this Revision. The Hon'ble High Court allowed the Revision on the following lines:

Held:

The only point to be considered in the present Revision us as to whether the Petition filed by the Petitioner under Order 9, Rule 13, C.P.C. is maintainable. The records of the Tribunal were called for and perused and it is seen that the evidence on the side of the Claimant was closed on 26.2.2003 and the matter was posed on 12.3.2003 for the evidence on the side of the Petitioner/Respondent. On 12.3.2003, since the Petitioner herein did not produce any evidence, once again the matter was posted on 25.3.2003 as a last chance. Even on 25.3.2003, since no evidence was let in on the side of the Petitioner/Respondent, the evidence on the Petitioner's side was closed and the matter was posted for orders on 8.4.2003. On 8.4.2003, the Tribunal passed Judgment and order. A perusal of the order reveals that the Tribunal decided the matter on merits and awarded compensation.

2011 (1) CTC 458

S. Kamatchi and others
vs
G. Saraswathy and others

Specific Relief Act, 1963 (47 of 1963), Section 39 – Tamil Nadu Public Health Act, 1939 (T.N. Act 3 of 1939), Section 32 – Suit for mandatory injunction to remove septic tank – Commissioner report shows septic tank is situate within 50 feet from Plaintiff's well and contravenes provisions of Act – Contention that provision only means cesspools and not septic tank, not tenable – Words cesspool and septic tank are synonymous – Concurrent findings as to removal of septic tank, held, justified – Decree confirmed.

Facts:

Plaintiff filed a Suit for mandatory injunction for removal of the septic tanks situate on the west and east of his property and for other reliefs. The Plaintiff contended that drainage/sewage water will be soaked in the septic tank and his well water will be contaminated and may cause health hazard. He further contended that the distance between the well and the septic tanks is less than 50 feet and is against the provisions of Section 32 of the Tamil Nadu public Health Act. The Defendant while denying the Plaintiff's contention pleaded that the Act only mentions that a cesspool should not be constructed and does not mention about septic tank. The Trial Court as well as the Appellate Court decreed the Suit holding that the two terms are synonymous and the Defendants' contentions are untenable. While approving the concurrent decision, the Hon'ble High Court dismissed the Second Appeal on the following lines:

Held:

Form the above meanings of "cesspool" and septic tank", it is clear that both the words are synonymous to each other. Hence, I do not find any merit in the argument advanced by learned Counsel for the Appellants/D3 to D9 regarding the interpretation given by the Courts below for "cesspool". The First Respondent/Plaintiff has come forward with the Suit, on the ground that as the drainage/sewage water will be soaked in the septic tank, the Well water will be contaminated by the bacterial infection, which causes health hazard to the inmates of the house of the First Respondent/Plaintiff. In such circumstances, I am of the view that even though Section 32 of the Tamil Nadu Public Health Act, deals with "cesspool", it would also include "septic tanks", as both are synonymous to each other.

While considering Section 32 of the Tamil Nadu Public Health Act along with the learned Advocate Commissioner's report and plan, I am of the view that the word "cesspool" is synonymous to the word "septic tank". Further, the Appellants/D3 to D9 have never let in any evidence in respect of the maintenance of septic tanks. But as per Section 32 of the Tamil Nadu Public Health Act, the distance between the water course and the cesspool should be minimum 50 feet. Admittedly, in this case, the alleged septic tanks are constructed by the ten First Defendant (deceased) within 50 feet of the Well of the First Respondent/Plaintiff and hence, it has to be held that the septic tanks are constructed in violation of Section 32 of the Tamil Nadu Public Health Act. In such circumstances, there is also no necessity to give any finding as to whether the septic tanks have been properly maintained or not, and it is also not necessary to give a finding that if the septic tanks have been properly maintained, it will not affect the Well water.

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HIGH COURT CITATIONS
CRIMINAL CASE

(2011) 1 MLJ (Crl) 31

O.C. Periyasamy
vs
D. Venkatesan @ Ravi

Negotiable Instruments Act (26 of 1881), Section 138 – Code of Criminal Procedure, 1973 (2 of 1974), Section 203 – Scope – Non-appearance of complainant before Court – Complaint dismissed – Held, no illegality committed by Magistrate – But, in interests of justice, complainant given chance to put forth his case – Impugned order set aside.

FACTS IN BRIEF:

The complaint, who had filed the complaint under Section 138, Negotiable Instruments Act, did not appear before the Court on two successive dates and thus, his sworn statement could not be recorded. The Magistrate dismissed the complaint which led the complainant to file the present revision against the above said dismissal order.

QUERY:

Can the complaint be dismissed under Section 203, Cr.P.C., for the absence of the complaint, before recording the sworn statement of the complainant?

Held:

After filing the complaint and the Magistrate, on receiving the complaint, fixes any date for recording the sworn statement of the complainant and the complainant is absent on the date and also on the subsequent dates fixed for the same, though there is no specific provision for discharging the accused, it would not be proper and justifiable to say that the Court has to wait compulsorily and indefinitely for the appearance of the complainant. In such a situation the Magistrate may close the complaint, which would not amount to acquittal of the accused. Therefore in this case, the learned Magistrate, by closing the complaint, has not committed any illegality.

(2011) 1 MLJ (Crl) 191

S. Nanda Gopi
vs
State by Inspector of Police, Chennai

Code of Criminal Procedure, 1973 (2 of 1974), Sections 451 and 452 – Order for disposal of property pending trial in certain cases and at conclusion of trial – Permitting return of vehicles and sale thereof – Same should be general norm rather than exception.

Held:

This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefore is highly contested, resort sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

(2011) 1 MLJ (Crl) 197

Kumar and Others
vs
State rep. by Forest Range Officer, Vellore District

Probation of Offenders Act (20 of 1958) – Tamil Nadu Forest Act (5 of 1882), Sections 36-A, 36-E, 41 – Seizure of property – Conviction confirmed – Release of acused as probation offender – No bar on applicability of Probation of Offenders Act – To be released on probation of good conduct.

FACTS IN BRIEF:

Aggrieved by the order of conviction and sentence by the Fast Track Court though the seized property were not produced before the Court, the Criminal revision has been filed by the accused.

QUERY:

Whether the accused convicted under the Tamil Nadu Forest Act can be released by the High Court under Probation of Offenders Act?

Held:

The petitioners being the first time offenders and the petitioners had to face the protracted criminal proceedings for more than 15 years, this Court feels that it is not necessary to send the petitioners to jail. As this Court does not find any provision under the Tamil Nadu Forest Act, barring the applicability of the probation of offenders Act, the petitioners could be released on probation of offenders Act.

(2011) 1 MLJ (Crl) 339

K. Murugasamy
vs
Inspector of Factories, Villupuram

Code of Criminal Procedure, 1973 (2 of 1974), Section 319 – Factories Act (63 of 1948), Sections 105, 2 (11) – Violation of Factory Rules – Addition of petitioner as accused – Previous Sanction not necessary to take cognizance.

FACTRS IN BRIEF:

Aggrieved by the order of the Magistrate in allowing the application filed by the prosecution for adding the petitioner as an accused, criminal revision petition was filed.

QUERY:

Whether a person under the category of occupier of a factory could be added as an accused in the absence of sanction to prosecute?

Held:

A Plain reading of Section 105 (1) of the Act shows, if an Inspector files the complaint, no previous sanction is necessary wherein if the complaint is filed by any other person, previous sanction is necessary. Even if it is to be held that previous sanction is necessary for the Court to take cognizance of any offence under the Act, as already sanction has been obtained in this case, no further sanction is necessary while proceeding against another accused in the same case.

Under Section 19 of the Prevention of Corruption Act, sanction has to be obtained to prosecute a public servant wherein under the Factories Act, as per Section 105, previous sanction has to be obtained for taking cognizance of the offence under the Act. As per Section 19 of the Prevention of Corruption Act, to prosecute against a public servant sanction is necessary for taking cognizance of the offence as well as to proceed against the person. Only in the said circumstance, the Hon'ble Supreme Court has held that existence of a sanction is sine qua non for taking cognizance of the offence qua that person. Therefore, under Factories Act to proceed against the revision petitioner as per Section against the revision petitioner as per Section 319 of Cr.P.C., no sanction is necessary.

(2011) 1 MLJ (Crl) 385

Maruthayee W/o. Veemarasu
vs
State, rep. by Inspector of Police, Orathanadu Police Station, Thanjavur

Indian Penal Code (45 of 1860), Section 302 – Indian Evidence Act (1 of 1872), Section 32 – Dying declaration – 3 dying declarations inconsistent with one another – Judicial Magistrate satisfied, victim in fit state of mind at time of giving dying declaration – Dying declaration recorded by Judicial Magistrate, true, genuine, inspires confidence of Court - Trial Judge right in acting upon same and finding accused guilty.

FACTS IN BRIEF:

A1 and A2 were charged under Section 302, IPC, for having committed the murder of the victim, A2's wife, by setting her on fire. A1 who was charged under Section 302, read with Section 34, IPC, was found not guilty and acquitted. A1 was imposed life sentence and a fine of Rs.500/-. The present appeal has been preferred by A1, the alleged paramour of A 2, against the above said judgment and order of the sessions Court.

QUERIES:

1. When there were 3 dying declarations, inconsistent with one another, should they be rejected in toto?

2. When the victim died 9 days after the occurrence, of complications arising from extensive burn injuries, would the act of the accused who set her on fire, attract the penal provision under Section 302, IPC?

Held:

It is true that Exhibit P-8 has been recorded by the Judicial Magistrate after obtaining a certificate from the doctor that the victim was in a fit state of mind to give declaration. The doctor has also certified at the end of the statement as to the state of mind of the patient at the time of her giving the declaration. Now it is well settled principle of law that in such cases even the presence of doctors or their certificate in not necessary if the Magistrate is satisfied that before/during the time of recording the declaration, the victim was in a fit state of mind and oriented and it would satisfy the requirement of law. In the instant case, Doctor Elangovan was present all along and he has certified about the fitness and state of mind of the victim before recording the declaration and after the recording of the declaration was over and the same is found in Exhibit P-8 and the Judicial Magistrate has also deposed before the Court to that effect. No question or suggestion was made to the Magistrate denying that part of the evidence and hence, the evidence has got to be accepted. So long as Exhibit P-8 is true, genuine and inspires the confidence of the Court, the Court has to act upon the same. Therefore, the trial Judge was perfectly right in acting upon Exhibit P-8 and recording a finding that accused No. 1 was guilty.

(2011) 1 MLJ (Crl) 470

A. Loganathan and Others
vs
State rep. by, Inspector of Police (L&O), S-11, Tambaram Police Station

Code of Criminal Procedure, 1973 (2 of 1974), Section 145(4) – Possession of premises in dispute – Oral and documentary evidence to be adduced by parties – Magistrate to follow mandatory procedure.

FACTS IN BRIEF:

The petitioner/tenant seeks a direction to the first respondent to ensure the removal of locks put on the ground and first floor of the premises in dispute and restore possession of the premises to the tenant, pursuant to the order passed by the Revenue Divisional Officer confirming the tenancy of the petitioner.

QUERY:

Whether the question of possession can be decided by the Magistrate merely on the basis of affidavits filed before him?

Held:

In the instant case, the order of the RDO does not meet the requirements informed in the decision referred to herein above and accordingly would have to be set aside. However, the would not be the end of the matter. Both the petitioner as also his father had preferred complaints before the 1st respondent who has recorded the same in the Community Service Register on the same date under numbers 118 and 120 of 2008 respectively, While the complaint of the petitioner is brief, that of his father is more detailed and the allegations therein, if true, would make out commission of cognizable offences. As the dispute between the parties has been dealt with under Section 145 Cr.P.C., there has been no investigation whatsoever regards the occurrence. In the opinion of this Court, an investigation is called for upon the complaint of the petitioner's father dated 22.5.2008. As the petitioner apprehends unfair treatment at the hands of the 1st respondent and given the nature of the case and such respondents conduct therein, this Court considers it appropriate that the investigation be conducted by a senior police official.

(2011) 1 MLJ (Crl) 480

Mookaiah
vs
Kannika and Others

Indian Penal Code (45 of 1860), Section 306 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 397 and 401 – Abetment of suicide – Suicide by self immolation – Reliability of dying declaration – Maintainability of revision against acquittal – Scope of.

FACTS IN BRIEF:

Criminal Revision Petition has been filed by the father of the deceased to quash and set aside the judgment of the Fast Track Court acquitting the accused of all charges and to restore the judgment of conviction of the accused passed by the trial Court.

QUERY:

1. Whether dying declaration can be treated as a corroborative piece of evidence in the conviction of an accused?

2. Whether the High Court is entitled in revision to set aside an acquittal and order a retrial when the appeal is preferred by a private person?

Held:

A person who records dying declaration must satisfy himself with the declarant's mental and physical fitness and when it is shown that he is a disinterested person, then there is no impediment for the Court to place reliance upon the evidence emerging from dying declaration. The Supreme Court has also observed that for non-examining the doctor, the dying declaration recorded by the Executive Magistrate and the declaration orally made need not be doubted. Hence,

even if the doctor was not examined as to his certificate regarding physical and mental fitness to the injured, it would not in any way hamper the Court's decision to accept such evidence.

2011- 1-L.W. (Crl.) 204

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

I.P.C., Section 498-A /Section is not confined to cruelty and harassment demanding dowry – If the act alleged falls under Explanation (b), then only, the act should be with the intention of extracting dowry – If it falls under Explanation (a), it need to be with the object of getting any dowry or valuable security – Therefore, the mere fact that an accused is acquitted of the offence under Section 4 of the Dowry Prohibition Act, shall not be enough to come to the conclusion that he could not have committed an offence punishable under Section 498-A explanation (a) – No defect or infirmity in the concurrent findings of the Courts below holding the petitioner guilty of the offence under Section 489-A IPC and hence, no interference with the same is warranted – Revision dismissed.

Held:

No case has been made out be the petitioner for interference with the concurrent findings of the Courts below holding the petitioner guilty of the offence under Section 498-A IPC. The reasons are furnished in the succeeding paragraphs.

Clear allegations have been made against the petitioner in the said complaint narrating the ways and means by which PW1 was treated with cruelty (both mental and physicial) and harassment.

2011- 1-L.W. (Crl.) 227

Pale Horse Designs, No.20, Locust Street, Suite 105, Danvers, Essex County, Massachusetts Represented by its President Ms. Karen Chansky and others
vs
Natarajan Rathnam No.3, Parkway Drive, Roselyn Heights, New York.
Respondent in all Crl.O.Ps.

Negotiable Instruments Act (1881), Section 138 and Section 12/Definition of "Foreign Instrument"/Dishonour of cheque issued by a Non-Resident Indian on a Foreign Bank, and presented in Chennai, Criminal P.C., Sections 177, 482.

Complaint was laid by the respondent, a Non-Resident Indian living in the United States of America before the 9th Metropolitan Magistrate, Chennai in respect of cheques dishonoured which was presented for collection through the banker of the respondent, namely M/s. ICICI Bank Limited, Annanagar, Chennai – Averments were made to the effect that the said cheques drawn on Danvers Savings Bank, One Conant Street, Danvers, MA 01923, USA, were issued in favour of the respondent herein/complainant in discharge of a liability in part of the petitioners herein towards the respondent herein/complainant – Magistrate has ordered issuance of summons to the petitioners/accused, pursuant to which summons were served on them in the United States of America – Original Petition

(Crl.O.P.) invoked the inheren powers of the High Court under Section 482 Cr.P.C., for quashing all the three complaints.

Held:

It is an admitted fact that the first petitioner is a company incorporated and registered in the United States of America and the second petitioner is the President of the said company and is a resident of the United States of America – It is nobody's case that either the first petitioner or the second petitioner is a resident of India – It is also not the case of the respondent that the petitioners are doing business or carrying on business in India – Original contract giving rise to the liability of the petitioners to make payment to the respondent arose at New York, United States of America – It is not the case of the respondent that the cheques, though payable at Danvers, Massachusetts, United States of America, were issued at Chennai within the jurisdiction of the court below to make a contention that the place of drawal of the cheque will give jurisdiction to the court below to entertain the complaints.

Cheque made/drawn in a foreign country on a drawee bank functioning in the foreign country and made payable therein shall be a foreign instrument and the law of the country wherein the cheque was drawn or made payable shall be the law governing the rights and liabilities of the parties and the dishonour of the cheque – As such the payee cannot select a country and present it though a bank therein for collection to confer jurisdiction on a court functioning therein – If the payee is given such a right to proceed criminally against the drawer by selecting the jurisdiction, the same will encourage forum shopping.

2011- 1-L.W. (Crl.) 241

Chitti alias Chittibabu
vs
The State Represented by its Inspector of Police, Gummidipoondi Police Station

I.P.C., Sections 392, 397, r.w.34, Practice, Framing of charge, Evidence Act, Sections 114, 27/Recovery of robbed properties from the accused within few hours of occurrence, Presumption, Applicability.

Revision arose against judgment of Sessions Judge passed in appeal, convicting petitioner-third accused under Section 392 r/w 34 IPC and confirming the sentence also, but acquitting the accused under Section 397 r/w 34 IPC – Distinction between the offences in these Sections pointed out.

Section 397 IPC is only a rider to Sections 392 IPC and 395 IPC – 'Punishment for robbery' and 'punishment for dacoity' respectively, no substantive charge can be framed under Section 397 IPC; The substantive charges can be only under Section 392 IPC or 395 IPC and in cases where the deadly weapon is used.

Though the petitioner ought to have been sentenced not less than seven years, as he had used knife while committing robbery, the appellate Court having set aside the sentence of seven years, this Court does not want to further reduce the sentence of imprisonment imposed on the petitioner – Revision dismissed.

Practice, Framing of charge – See I.P.C., Sections 392, 397, r.w.34.

<u>Evidence Act</u>, Sections 114, 27/Recovery of robbed properties from the accused within few hours of occurrence, Presumption, Applicability – See. I.P.C., Sections 392, 397, r.w. 34, Practice, Framing of charge.

Held:

Though in the test identification parade, it was only P.W.1 who had identified the petitioner/third accused, as it was admitted by P.Ws.1 to 3 that they had seen the accused in the early morning in the police station, to some extent, it is to be accepted that test identification parade losses its value. But at the same time, it does not exclude the involvement of the accused in the occurrence.

As the robbed properties have been recovered from the accused within a few hours from the time of occurrence, it is very clinching material to draw the presumption under Section 114 of the Indian Evidence Act and to conclude that the accused have committed the offence of robbery, especially in the absence of any explanation from the accused for the possession of the robbed properties. Hence the conviction on the petitioner under Section 392 r/w 34 IPC is confirmed.

The lower appellate Court had acquitted the petitioner from the offence under Section 397 r/w 34 IPC observing that no separate conviction could be made under Section 397 r/w 34 IPC, and no separate charge ought to have been framed under Section 397 IPC.

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