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IMPORTANT CASE LAWS

Compiled by

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SUPREME COURT CITATIONS CIVIL CASES

2015 (3) CTC 222

Dhannulal
vs.
Ganeshram

Date of Judgment : 08.04.2015

Hindu Law – Marriage – Presumption as to Marriage – Plea of Concubinage – Plaintiff raised plea of concubinage – Burden of proof – Nature of proof – Rebuttable presumption – Relationship between ‘C’ and ‘P’ not denied and they had lived together as husband and wife in Joint Family – Strong presumption arises in favour of validity of marriage and legitimacy of child – Where man and woman are proved to have lived together as husband and wife, law will presume that they are living together in consequence of valid marriage and not in state of concubinage – Presumption can be rebutted by leading unimpeachable evidence – Heavy burden lies on party, who seeks to challenge validity of marriage.

2015 (1) TN MAC 465 (SC)

Asha Verman
vs.
Maharaj Singh

Date of Judgment : 27.03.2015

INCOME – LOSS OF DEPENDENCY – Assessment – Deceased aged 35 yrs., Technician/Operation Theatre in Hospital earning Rs.4,617 p.m. – Claimants : wife, minor children (2) and parents of deceased – High Court fixing income at Rs.3,500 p.m., not proper, in view of evidence of PW3-Occupation Manager of Hospital that deceased was in permanent job getting salary of Rs.4,617 p.m. – Taking Salary at Rs.4,600 p.m. and adding 50% towards Future Prospects, Apex Court fixed monthly income at Rs.6,900 [Rs.4,600 + 50%] – Deducting 1/4th towards Personal Expenses and applying Multiplier of 16, Apex Court awarded Loss of Dependency at Rs.9,93,600 [Rs.6,900 x 12 – ¼ x 16] as against Rs.4,50,000 awarded by High Court and affirmed in Review Petition.

LOSS OF ESTATE – Award of – Deceased aged 35 yrs., Technician/Operation Theatre in Hospital earning Rs.4,617 p.m. – Claimants : wife, minor children (2) and parents of deceased – Rs.5,000 awarded by High Court, held not proper – Following decision in Kalpanaraj (SC), award of Loss of Estate enhanced from Rs.5,000 to Rs.1,00,000.

LOSS OF CONSORTIUM – LOSS OF LOVE & AFFECTION – Award of – Deceased aged 35 yrs. – Claimants : Wife, 2 minor children and parents of deceased – Award of Rs.5,000 and Rs.20,000 respectively towards Loss of Consortium and Loss of Love & Affection, held, not proper – Following principles in Rajesh (SC), Rs.1,00,000 awarded towards Loss of Consortium – Following decision in Juju Kuruvila, Rs.1,00,000 to each child awarded towards Loss of Love & Affection – Following decision in M. Mansoor, Rs.50,000 each awarded to parents towards Loss of Love & Affection – Thus. Rs.2,00,000 awarded towards Loss of Love & Affection to Children (2) and Rs.1,00,000 awarded towards Loss of Love & Affection of Parents.

MEDICAL EXPENSES – Award of, in fatal accident – Accident took place on 27.11.2006 – Offending vehicle Truck ran over hands of deceased causing grievous injuries – Deceased treated in hospital from 28.11.2006 to 8.12.2006 conducting operations and plastic surgeries – Amputation of left hand advised – However, deceased died in hospital on 8.12.2006 due to severity of injuries – Claim of Rs.1,40,000 as Medical Expenses – Bills for Rs.1,23,630 produced before Tribunal – However, Tribunal as also High Court in Appeal and Review rejected claim –

Not proper – Since, Appellant spent Rs.1,40,000 during period of treatment for medical purpose, Apex Court awarded Rs.1,40,000 towards Medical Expenses.

FUNERAL EXPENSES – Award of Rs.5,000 – Held, not proper – Following decision in Rajesh (SC), same enhanced to Rs.25,000.

INTEREST – Award of – Accident took place on 27.11.2006 – High Court erred in awarding 8% p.a. interest – Following decision in Uphaar Tragedy, interest rate enhanced from 8% to 9% p.a.

MDOTOR ACCIDENT CLAIM – LOSS OF DEPENDENCY - Apportionment – Deceased aged 35 yrs., Technician/Operation Theatre in Hospital earning rs.4,617 p.m. – Claimants : wife, minor children (2) and parents of deceased – Award of Rs.9,93,600 towards Loss of Dependency by Apex Court in Appeal – Claimants though legally entitled to equal share of Rs.1,98,720 out of Compensation awarded at Rs.9,93,600 towards Loss of Dependency, Considering age of parents of parents of deceased and future educational requirements of minor children, held, parents entitled to Rs.1,00,000 each out of award of Loss of Dependency, and remaining amounts of Rs.98,720 each to be added to each child's share – Thus, Loss of Dependency award amount of Rs.9,93,600 apportioned as : Wife : Rs.1,98,720; Children (2) : Rs.2,97,440 each; Parents : Rs.1,00,000 each.

(2015) 4 Supreme Court Cases 573

Ambikapathi Ammal

vs.

Kandaswamy Koil

Date of Judgment : 10.03.2015

- A. Property Law – Ownership and Title – Grant of patta – Determination of title on basis of patta – When cannot be made – Patta on basis of which title was claimed by plaintiff-respondent not exhibited before court – Document produced to show existence of patta in favour of plaintiff was silent on nature and extent of rights conferred on plaintiff by that patta – Further, there was no oral evidence to explain nature of rights granted under patta – In such situation, held, no conclusive determination of title of plaintiff on basis of such patta can be made – Evidence Act, 1872, Ss. 61 to 65, 91 and 92**
- B. Tenancy and Land Laws – Mirasidar – To recognize status of person as mirasidar, there must be some evidence of such status – On facts, acceptance of status of plaintiff-respondent as mirasidar by High Court by solely relying on rent receipts issued by plaintiff wherein plaintiff had described himself as ekabogam mirasidar, held, not proper – Further held, High Court was not correct in accepting position that as mirasidar, plaintiff had been vested with title to suit land – Lastly, document produced by plaintiff to establish title based on patta did not establish the same (see Shortnote A) – Order of High Court hence, set aside – Matter remanded for fresh adjudication as to whether plaintiff was mirasidar and, if so, extent of plaintiff's rights – T.N. Estates Land Act, 1908 (1 of 1908), S. 63**
- C. Tenancy and Land Laws – T.N. Estates Land Act, 1908 (1 of 1908) – S. 6 – Whether suit properties were included in an estate under 1908 Act conferring status of occupancy ryots on defendant-appellants – Whether estate concerned stood abolished under 1948 Act – Matter remanded to High Court – T.N. Estates (Abolition and Conversion into Ryotwari) Act, 1948 (26 of 1948), Ss. 1(4), 11 and 16**

(2015) 2 MLJ 624 (SC)

Roxann Sharma

vs.

Arun Sharma

Date of Judgment : 17.02.2015

Hindu Law – Custody of Minor Child – Visitation Rights – Hindu Minority and Guardianship Act, 1956, Section 6 – Respondent/father filed petition praying that custody of minor child be retained by him and by way of tem-

porary injunction, Appellant/Mother be restrained from taking forcible possession of minor child – Pending petition, Civil Judge granted interim custody of minor child to Appellant and visitation rights to Respondent, same challenged – Single Judge held that custody would continue with Respondent and Appellant would have frequent visitation rights – Appeals – Whether Single Judge justified in holding that custody would continue with Respondent and Appellant would have frequent visitation rights – Held, father’s suitability to custody not relevant, where child whose custody in dispute was below five years, since mother was per se best suited to care for infant during his tender age – Father to plead and prove mother’s unsuitability – Father’s character will become relevant, only when Court strongly and firmly doubts mother’s suitability, such approach not adopted by Single Judge, but properly purchased by Civil Judge – Single Judge incorrectly shifted burden on mother to show her suitability for custody of child, same runs counter to provisions contained in Section 6 – Nothing presented by father or placed on record disclosed that mother was unfit to care for infant – Impugned order set aside – Temporary custody of minor child transferred to mother with direction that both of them shall reside in address given by her and will not leave that territorial jurisdiction of Trial Court without prior leave – Father directed to have visitation rights – Civil Judge should decide pending petition as directed – Appeals allowed.

(2015) 3 MLJ 879 (SC)

Jagdish Chand Sharma

vs.

Narain Singh Saini

Date of Judgment : 01.05.2015

Succession Laws – Will – Indian Succession Act, 1925, Section 63 – Indian Evidence Act, 1872, Sections 68 & 71 – Deceased testator wrote a will favoring appellant – Respondents objected to the validity of will and filed suit – Trial Court held will as legally valid – High Court on appeal reversed finding of trial court on ground of relevant provisions of the Act and Act 1872 had not been proved as per law and that no probate or Letter of Administration could be granted – Whether appellant can be permitted to adduce other evidence under cover of Section 71 of the 1872 Act, if the will is legally valid – Held, evidence of the witness AW 1, AW 3 and AW 5 does not exhibit either denial of the execution of the Will or their failure to recollect the said phenomenon and thus, does not attract the applicability of Section 71 of the Act 1872 – Distinction between failure on part of attesting witness to prove execution and attestation and his denial of said event or failure to recollect same, has to be essentially maintained – Any unwarranted indulgence, permitting extra liberal flexibility to these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose – If testimony evinces as casual account of execution and attestation, and thereby fails to prove these two essentials as per law, the propounder cannot be permitted to adduce other evidence under cover of Section 71 of the 1872 Act – Materials on record, as a whole, do not, present a backdrop in which, in normal circumstances, testator would have preferred the appellant to be the legatee of his property as set out in the Will by denying his wife, children and grandchildren who were alive and with whom he shared warm and affectionate relationship – Bequest is ex facie unnatural, unfair and improbable thus reflecting on the testator’s cognizant, free, objective and discerning state of mind at the time of the alleged dispensation – Suspicious circumstances attendant on the disposition, do impact upon inalienable imperatives of solemnity and authenticity of any bequest to be effected by testamentary instrument – Appeal dismissed.

SUPREME COURT CITATIONS CRIMINAL CASES

2015 (3) CTC 80

Shamima Farooqui

vs.

Shahid Khan

Date of Judgment : 06.04.2015

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Maintenance – Reduction of quantum of, due to retirement of Husband – Whether valid – Respondent-Husband, a salaried employee receiving Salary of Rs.17,654/- on date of disposal of Application for Maintenance filed by Appellant Wife – Family Court granting sum of Rs.2,000 as Maintenance from date of Application till date of Judgment and Rs.4,000/-p.m. from date of Judgment till date of remarriage – High Court in Appeal filed by Husband reduced monthly Maintenance from Rs.4,000/- to Rs.2,000/- on ground that Husband had retired – Order of Family Court, held, a reasoned Order, passed after considering all circumstances – No huge fortune ordered in favour of Wife warranting reduction by 50% by High Court – Interference by High Court, totally unwarranted when substantial justice had been done – Appellant was staying on her own and Respondent took Voluntary Retirement to escape from his liability to pay Maintenance – Respondent received Pension and other Retiral dues even after retirement – Reduction of Maintenance by 50% by High Court, set aside as being unsustainable – Order of Family Court, restored – Appeal allowed.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Maintenance – Right of Wife vis-à-vis Duty of Husband – Able bodied and healthy Husband legally bounden to support his Wife – Right of Wife to Maintenance, held, an absolute right – Excuses of Husband of being jobless, having no means to pay, held, not legally acceptable – Obligation of Husband to maintain his Wife and children – Lawful imposition for grant of Maintenance, held, comes as soothing relief to a Wife, who has been deserted and lost faith in herself and in life – Husband under all circumstances, held, bound to maintain his Wife, unless she has been disqualified for same.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Maintenance for ‘Sustenance’ – Meaning of ‘sustenance’ – Provision aimed at improving financial, mental and social life of a women, who has been deserted from her Matrimonial home – Sustenance sought to be achieved by grant of Maintenance in instant provision, held, does not mean mere survival – Wife even after leaving Matrimonial home, has a right to a dignified life and a life similar to one that she had led in her Husband’s house – Wife, held, cannot be compelled to become a destitute or beggar after being deserted – Maintenance of Rs.2,000/-p.m. awarded by High Court, held, not enough for Maintenance of a woman in today’s world.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Provision whether applicable to divorced Muslim Women – Decision of Apex Court in Shamin Bano v. Asraf Khan, 2014 (12) SCC 636 clearly holding that provision is applicable to Muslim Woman, who has been divorced – Decision of Family Court, in instant case, that provision is applicable to Appellant, a Muslim divorced women, upheld.

Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Application for Maintenance – Delay in disposal of Application for Maintenance, condoned – Emphasis laid on grant of Interim Maintenance and speedy disposal of Application.

Judiciary – Family Courts – Need for pro-active approach of Family Court Judges, emphasized.

2015 (3) CTC 103

Priyanaka Srivastava

vs.

State of U.P.

Date of Judgment : 19.03.2015

Code of Criminal procedure, 1973 (2 of 1974), Section 156(3) – Power of Magistrate to order registration of First Information Report – Jurisdiction of Magistrate – Procedure to be followed by Magistrate – Guidelines – Factors to be considered by Magistrate while entertaining Applications – How Applications/Petitions to be filed before Magistrate – Litigant at his own whim cannot invoke authority of Magistrate – Increasing tendency of pervert litigants actuating Criminal law in motion by adopting illegal methods – Every Application seeking invocation of power of Magistrate under Section 156(3) of Cr.P.C. should be supported by an Affidavit duly sworn by Applicant – Magistrate should verify truth and veracity of allegations before passing any Order – Affidavit filed by Applicant should indicate that he had already preferred Applications under Sections 154(1) & 154(3) before filing Petition under Section 156(3) – Power under Section 156(3) should be exercised judiciously.

(2015) 5 Supreme Court Cases 182

State of Punjab

vs.

Saurabh Bakshi

Date of Judgment : 30.03.2015

- A. Penal Code, 1860 – S. 304-A – Causing death by negligence – Motor vehicle accidents – Sentencing policy – Nonchalant attitude among Indian drivers, driving in a rash and negligent manner (whether in drunken state or not) or youthful adventurous enthusiasm, as if there are no traffic rules or no discipline of law – Response warranted – Nobody should ever get oblivious of fact that in such accidents precious lives are lost or victims who survive are crippled for life, which is worse than death – Hence, there is an urgent need to scrutinize, relook at and revisit sentencing policy under S. 304-A of Penal Code
- B. Penal Code, 1860 – S. 304-A – Causing death by negligence – Motor vehicle accidents – Reduction of sentence – Adequacy of quantum of sentence – Sentencing policy – Deterrence as an imperative necessity – Held, it cannot be said as a proposition of law that whenever an accused offer acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under S. 304-A IPC, there can be reduction of sentence
 - Respondent's speeding Indica car hitting vehicle of deceased dragging it to a considerable distance thereby causing it to fall in a ditch whereby two persons succumbed to death – RI for 1 yr and fine of Rs.2000 with a default clause reduced by High Court to imprisonment of 24 days already undergone while upholding conviction – Payment of compensation by MACT and S. 357 CrPC whether mitigating factor – Sentence modified to 6 months' RI
- C. Criminal Trial – Sentence – Principles for sentencing – Deterrence – Laws can never be enforced unless fear supports them – It can never forgotten that purpose of criminal law legislated by competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect collective interest and save every individual that forms a constituent of the collective from unwarranted hazards – Certain crimes assume more accent and gravity depending on nature and impact of crime on society – No court should ignore that being swayed by passion of mercy – It is obligation of court to constantly remind itself that rights of victim, and, on certain occasions person aggrieved as well as society at large, never be marginalised – Therefore, requisite norm therefore has to be the established principles laid down in precedents – It is neither to be guided by a

sense of sentimentality nor to be governed by prejudices – Penal Code, 1860 – S. 304-A – Penology – Deterrence

(2015) 5 Supreme Court Cases 201

Major Singh

vs.

State of Punjab

Date of Judgment : 08.04.2015

- A. Penal Code, 1860 – Ss. 304-B and 498-A – Dowry death, by poisoning – No evidence as to demand of dowry or cruelty and that deceased was subjected to dowry harassment “soon before her death” by appellant-accused parents-in-law (accused husband having since died) – Conduct of father and brother of deceased, not natural – Conviction reversed
- B. Penal Code, 1860 – S. 304-B – Dowry death – Essential ingredients to be established for sustaining conviction under S. 304-B – Conjoint reading of S. 304-B IPC and S. 113-B, Evidence Act – Principles summarized – Held, to attract conviction under S. 304-B, prosecution should adduce evidence to show that “soon before her death”, deceased victim was subjected to cruelty or harassment – There must always be a proximate and live link between effects of cruelty based on dowry demand and death concerned – Evidence Act, 1872 – S. 113-B – Crimes Against Women and Children – Dowry Prohibition (Amendment) Act, 1986, Ss. 10 and 12

(2015) 2 MLJ (Cri) 547 (SC)

Upendra Pradhan

vs.

State of Orissa

Date of Judgment : 28.04.2015

- A. Murder – Presumption of Innocence – Benefit of doubt – Reversal of acquittal order – Code of Criminal procedure, 1973, Section 379 read with Section 2 of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 – Indian Penal Code, 1860 (Code 1860), Section 302 read with Section 34 – Appellant charged for offence committed under Section 302 r/w Section 34 Code 1860 – Additional Session Judge gave benefit of doubt to Appellant and found not guilty under of Sections 307 and 302/34 of Code 1860 – High Court reversed decision taken by Additional Sessions Judge, and held Appellant is a party to murder, he is guilty for offence punishable under Section 302/34 of Code 1860 – High Court recorded that accused should be awarded appropriate punishment instead of taking any other view, convicted and sentenced under Code of 1860 – Appeal – Whether presence of a view favouring accused Appellant should be considered – Held, in case there are two views which can be culled out from perusal of evidence and application of law, view which favour accused should be taken – Contention of Appellant that High Court erred in reversing acquittal of accused appellant, stands good – Additional Sessions Judge was right in granting Appellant benefit of doubt – High Court should not have interfered with decision taken by Additional Session Judge, as judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice – High Court was wrong in interfering with order of acquittal of Appellant passed by Additional Sessions Judge – Impugned judgment and order passed by High Court set aside – Appellant released on bail – Appeal allowed.
- B. Witness – Testimonies of Prosecution Witnesses – Interested Witnesses – Whether prosecution witnesses/Parents of Deceased children being interest witnesses, should be relied upon – Held, al-

legation of Accused/Appellant that testimonies of P.W.'s/Parents of Deceased children should not have been considered, not accepted as they were interested witnesses – Testimonies of interested witnesses are of great importance and weightage - No man would be willing to spare the real culprit and frame an innocent person.

- C. Juvenile – Plea of juvenility – Conviction and Sentence – Benefit of doubt – Juvenile Justice (Care and Protection) Act, 2000, Sections 2k and 7A – Juvenile Justice Model Rules, 2007, Rule 12 – Whether Accused/Appellant can raise plea of juvenility as per Section 7(A) Act of 2000 – Held, Appellant submitted copy of school certificate to prove that he was minor on the date of occurrence – Appellant raised plea of juvenility under Section 7(A), same can be raised before any Court at any point of time – Appellant falls within definition of “juvenile” under Section 2(k) Act of 2000 – As per Rule 12 age of accused Appellant has been determined following correct procedure and there is no doubt regarding it – In addition to the fact that Appellant was a juvenile at the time of commission of offence, Appellant is entitled to benefit of doubt – Conviction order passed by High Court is not sustainable in law.

HIGH COURT CITATIONS CIVIL CASES

(2015) 4 MLJ 45
Doraisani (deceased)
vs.
J. Murali

Date of Judgment : 02.03.2015

- A. **Succession Laws – Partition – Suit filed by Plaintiff/adopted son of 1st Defendant and 2nd Defendant's son for partition and allotment of 4/6th share in suit properties – Trial Court decreed suit in part granting decree for partition in respect of "A" Schedule property alone and allotting half share to plaintiff and with regard to "B" Schedule, Trial Court dismissed suit – On appeal, lower Appellate Court confirmed decree of Trial Court – Appeals – Whether Plaintiff entitled for partition in suit properties – Held, item No.2 in "A" schedule property jointly purchased by 2nd Defendant and her son – 2nd Defendant and 1st Defendant were legal heirs on demise of 2nd Defendant's son and they sold away item No.2 in "A" schedule to 3rd Defendant and 1st Defendant sold item No.1 to 6th Defendant – When suit filed, those properties were not at hands of family of 1st Defendant and were not available for partition – Plea of Appellants is that sale by 1st Defendant and 2nd Defendant would not bind share of Plaintiff, same rejected – Facts on record show that no proof that Plaintiff was adopted son of 2nd Defendant's son – Suit items 1 and 2 in "A" schedule were not available for partition, when suit filed – Item Nos.3 and 4 sold away and same is also not in dispute and were not available for partition - No pleading to state that purchasers were not bona fide purchasers – Bona fide purchasers for value cannot be deprived of their title for suit property – Decree for partition by Trial Court and as confirmed by Lower Appellate Court interfered with and same set aside – Appeals allowed.**
- B. **Hindu Law – Adoption – Hindu Adoptions and Maintenance Act, 1956 (Act 1956), Section 11(vi) – Whether there was valid adoption of Plaintiff as per Act 1956 – Held, perusal of Section 11(vi) would show that it is not essential that there has to be data homam performed to make adoption valid, but there should have been adoption – Perusal of plaint would show that no evidence to show that natural parents of Plaintiff gave him in adoption and whether such giving was with intention to make him as adopted son is also matter to be pleaded and proved and for that also, there is no pleading – 1st Defendant also disputed said adoption by filing written statement and she also gave oral evidence to that effect – Ex.A2/Transfer Certificate of Plaintiff carries name of 2nd Defendant's son as father of Plaintiff, same will not conclusively prove that there was valid adoption, but can be treated as piece of evidence to prove adoption – Even ex.A3/ affidavit given by 1st Defendant in relation to compassionate appointment for Plaintiff would not conclusively prove that there was valid adoption – Adoption is matter to be pleaded and proved which Plaintiff failed to do so – Lower Courts erred in holding that Plaintiff is legally adopted son of 2nd Defendant's son simply by relying on ex.A2 to Ex.A4, as though those documents would amount to conclusive proof of adoption.**

2015 (3) CTC 259

P. Shyamala
vs.
Ravi

Date of Judgment : 17.03.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 & Order 2, Rule 2 – Rejection of Plaint – Plaintiff filed Suit for Declaration of Title and Mandatory Injunction – Relinquishment of claim – Plaintiff-Vendor earlier filed Suit for bare injunction and omitted to sue for Declaration of Title – Subsequent Suit filed by Plaintiff for Declaration of Title – Bar under Order 2, Rule 2 of Code - Applicability – Difference in cause of action – Common cause of action – Distinction – To attract Order 2, Rule 2, Plaintiff averment should disclose that Plaintiff deliberately omitted to make claim in earlier dispute, existence of cause of action for seeking such claim at time of filing earlier Suit – Plaintiff averment disclosed that Plaintiff was not aware of earlier proceedings between his Vendors and original owners – Contention of Plaintiff that cause of action for present Suit and earlier Suit is not one and same – Genuineness of averments made in Plaintiff can be decided only at time of trial and Suit cannot be rejected at threshold – Bar under Order 2, Rule 2 can be effectively adjudicated by framing specific issue at time of trial – Application to reject Plaintiff is liable to be dismissed.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11: Order 9, Rule 9 & Order 9, Rule 8 – Rejection of Plaintiff – Suit for Declaration of Title – Earlier Suit filed by Plaintiff-Vendor dismissed for default – Application filed for restoration was allowed with condition to pay Cost – Due to non-payment of Cost, Suit filed by Plaintiff-Vendor dismissed - Bar to maintain subsequent Suit by Plaintiff – Applicability – Suit was dismissed for default under Order 9, Rule 3 – Bar under Order 9, Rule 9 will not apply to Suit filed by Plaintiff – When earlier Suit filed by Plaintiff-Vendor was dismissed for non-appearance of both parties, it would not preclude Plaintiff to file subsequent Suit on different cause of action.

Code of Civil Procedure, 1908 (5 of 1908), Order 23, Rules 1(4) & 2 – Rejection of Plaintiff – abandonment of claim – Relinquishment of claim – Bar thereunder to maintain subsequent Suit – Plaintiff-Vendor earlier filed Suit for bare injunction and omitted to sue for Declaration of Title – Earlier Suit filed by Plaintiff-Vendor dismissed for default – Plaintiff filed subsequent Suit for declaration of title – Maintainability – Bar under Order 23, Rule 1(4) will not apply to Suits dismissed for default.

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Rejection of Plaintiff – Applicability of Doctrine of res judicata – Contention of Defendant that Suit filed by Plaintiff is barred by res judicata – Whether Plaintiff can be rejected on plea of res judicata – Plea of res judicata is mixed question of law and facts – Issue of res judicata can be decided only at time of trial by framing appropriate issues – Plaintiff cannot be rejected at threshold.

(2015) 4 MLJ 316

Special Tahsildar

vs.

V. Navanathan

Date of Judgment : 10.03.2015

Property Laws – Land Acquisition – Enhancement of Compensation – Fixation of Market Value – Land Acquisition Act, Sections 4(1) and 23(1) – Land of Respondent/claimant acquired for house sites – Land Acquisition Officer fixed compensation, same enhanced on appeal – Government filed revision petition on ground that enhancement by Court higher and disproportionate to actual land value available in vicinity – Whether enhancement awarded by Court justified or disproportionate to actual land value available in vicinity - Held, for fixation of market value of land acquired, Land Acquisition officer considered one data sale land and based on same, fixed market value at specific rate – But, perusal of records would show that date land is infertile and situated away from acquired land and Highways, said document could not be considered for fixation of market value – But, Lower Court found that Exs. C.2 to C.4/sale deeds can be considered and arrived at average sale value, which is correct and same could be taken as sample for assessing value of acquired land – Considering escalation of price and also fact that alleged lands acquired long back, Judge rightly fixed value further granting solatium and interest on additional amount, same warrants no interference – Materials on record show that lands acquired are potential house sites and surrounding area is residential area and acquired land is on midst of developed area – Respondent lost heavily on account of compulsory acquisition of potential house sites, as lands already developed – Deduction towards development charges can be set off with corresponding increase in price of acquired land –

Lower Court rightly granted solatium and also right in not deducting amount towards development charges – Judgment of Lower Court not interfered – Petition dismissed.

(2015) 4 MLJ 462

Ambika

vs.

M. Shamshad

Date of Judgment : 21.04.2015

Property Laws – Eviction - Maintainability of – Permission of Prescribed Authority - Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (Act 1971), Sections 29 and 57 – Suit properties acquired by Slum Clearance Board for allotting houses to landless poor – Respondent/Plaintiffs filed suit for recovery of possession alleging that suit property allotted to them and Appellants/Defendants encroached into it – Trial Court found that Plaintiffs did not follow procedure as per Act 1971 and dismissed suit as not maintainable, same set aside on appeal by First Appellate Court – Second appeal – Whether Plaintiffs can maintain suit for eviction in view of bar under Section 29 of Act 1971 – Whether Lower Appellate Court justified in decreeing suit, when Defendant are in possession of property anterior to letter of allotment produced by plaintiffs – Held, once properties declared as slum area by Board, prior written permission of Board is must and mandatory requirement as per Section 29 of Act 1971 and no proceedings can be instituted against occupants in property owned by Board – When Plaintiffs did not establish that they were in possession of suit property on date of letters of allotment under Exs.A-17 and A-18, their allotment cannot be valid – But, Defendants established their possession and to evidence same, they filed Exs.B-4 and B-5/judgment and decree passed in earlier original suit which is binding of Plaintiffs – Appellants demonstrate that pending earlier lis, documents created by Respondents for purpose of present suit – After specific finding by Trial Court, First Appellate Court cannot enter contrary finding, when Respondents admitted that suit property acquired by Slum Clearance Board and they did not obtain permission from prescribed authority prior to institution of suit – Finding of First Appellate Court directing Appellants to surrender possession of property to respondents cannot be sustained, same set aside – Judgment and decree of Trial Court restored – Appeal allowed.

2015 (1) TN MAC 633

Tamil Nadu State Transport Corporation

vs.

S. Sundaram

Date of Judgment : 28.04.2015

NEGLIGENCE – Determination – Proceedings before Claims Tribunal being summary in nature, strict proof of evidence not required – Tribunal to arrive at finding of Negligence on Principles of Preponderance of Probabilities – In instant case, evidence of PWs.1 & 2/Claimants that while they were travelling in a Motorcycle, Transport Corporation Bus driven in rash and negligent manner dashed against Motorcycle causing accident – FIR lodged against bus driver marked as Ex.P.1 – Police after investigation filed charge-sheet – Oral testimony of RW1/Bus driver that accident took place due to negligence of Motorcycle rider/PW1 not supported by any evidence – Contention of Appellant/Transport Corporation that testimony of PW 1 having not been supported by any independent witness, mere registration of FIR against driver not sufficient to hold him negligent – Rejected – No perversity in finding of Negligence.

MOTOR VEHICLES ACT, 1988 (59 OF 1988), Sections 173 & 168 – Appeal questioning quantum of Compensation – Amputation of leg below knee – Disability assessed by Doctor at 70% - Tribunal fixed disability at 60% having regard to extent of disability as provided under WC Act – Injured/Claimant, who is Salesman in Cooperative Society, walking with Artificial Limb and rejoined duty after 4 months – Since injured continued in

service as Salesman, Tribunal taking Rs.3,000 per percentage of disability awarded Rs.1,80,000 [60% x Rs.3,000] towards Permanent Disability – Rs.1,00,000 awarded towards Pain & Suffering – Further awarding Rs.93,874 towards Medical Expenses, Rs.20,100 towards Loss of Earning Capacity during Treatment Period, and Rs.25,000 towards Extra-Nourishment, Tribunal awarded Total Compensation at Rs.4,28,974 as against claim of Rs.5,00,000 – Contention that Tribunal erred in awarding Rs.3,000 per percentage of disability – Rs.1,00,000 towards Pain and Suffering also contended as excessive – Rejected – Tribunal even in case of amputation failed to award Compensation towards Loss of Amenities, Attender Charges, Future Medical Expenses, Transportation, etc. – Therefore, even if award under Permanent Disability and Pain & Suffering slightly on higher side, same could be adjusted towards heads under which no awards made – Claimant though continued in his Job, possibility of his losing prospect cannot be ruled out – Therefore, quantum of compensation as awarded by Tribunal, held, sustainable – Appeal dismissed.

PERMANENT DISABILITY – Compensation – Assessment – Injured/Claimant, a Salesman in Cooperative Society suffered grievous injuries in left leg – Bones in foot protruding due to loss of muscles – Skin grafting done – Disability assessed by Doctor at 35% - Since injured continued to work as Salesman in Cooperative Society, Tribunal taking Rs.3,000 per percentage of disability awarded Rs.1,05,000 towards Permanent Disability – If excessive – Award under Permanent Disability even if excessive, same could be adjusted towards other head under which no award made by Tribunal – No interference warranted.

PERMANENT DISABILITY – Assessment – amputation of leg below knee – 70% disability assessed by Doctor – Tribunal fixing disability at 60% as provided under WC Act – Reduction in extent of disability by applying provisions of WC Act, held, not proper – Case law discussed.

MOTOR ACCIDENT CLAIM – Compensation – Determination – Parameters to be considered for awarding just and reasonable Compensation – Case law discussed – Award of Compensation by Tribunal under certain heads slightly on higher side – Same could be adjusted towards other heads under which no awards made by Tribunal.

2015 (3) CTC 734

M. Mohammed Ismail (died)

vs.

K.P. Subbiah (died)

Date of Judgment : 23.02.2015

Code of Civil Procedure, 1908 (5 of 1908), Section 11 – Doctrine of Res judicata – Suit for Specific Performance – Defendant contended that Sale Agreement is forged and fraudulent – Trial Court held that Sale Agreement is genuine but declined to grant relief of Specific Performance and granted alternative relief of refund of money – Plaintiff filed First Appeal challenging Decree of Trial Court and Defendant has not chosen to file any Appeal – First Appeal filed by Plaintiff was allowed and Decree of Specific Performance was granted – Second Appeal by Defendant – Defendant raised plea that Sale Agreement is not genuine – Tenability – Applicability of Doctrine of res judicata – When Decree is based on finding, person against whom such finding is rendered and Decree is passed, ought to have challenged it by filing an Appeal or Cross-Objection in event of Decree-holder filing an Appeal against disallowed portion of claim – When no Appeal or Cross-Objection is filed, then such finding will attract Principle of res judicata in later part of proceeding – Defendant is not entitled to raise and re-agitate question of genuineness of Sale Agreement in Second Appeal.

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Readiness and Willingness – Trial Court failed to frame issue on readiness and willingness – Consequences thereof – Plaintiff has made sufficient pleadings in Plaint with regard to requirement of readiness and willingness – Trial Court adjudicate issue of genuineness of Sale Agreement and held Sale Agreement as genuine – Trial Court declined relief of Specific Performance – First Appellate Court granted relief of Specific Performance – Plea of non-framing of issue raised for first time in Second Appeal – Where parties have led evidence knowing full well rival contentions of parties, Second Appellate court can go into said question based on evidence adduced by parties with consciousness that such issue was to be

addressed in Suit and render finding – In instant case, Plaintiff has proved readiness and willingness – Second Appeal dismissed.

2015 (3) CTC 801

Jayaraj
vs.
Chockalingam Chettiar

Date of Judgment : 16.04.2015

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rules 11 & 17, Order 6, Rule 17 & Section 151 – Execution – Amendment of Execution Petition - Permissibility – Money Decree – Execution Petition filed for arrest of Judgment-debtor – Decree-holder filed Application for amendment to incorporate prayer for attachment and sale of Judgment-debtor's property – Revision – Contention of Revision Petitioner that Execution Court has no power to direct amendment of Execution Petition, as such Execution Petition is not in nature of pleading – Legislature is not expected to incorporate provisions to meet contingencies that would arise in future – Procedural law is handmaid of justice and provisions of procedural law should assist parties to enjoy fruits of Decree – When unprovided contingency arises, Civil Court can take recourse to Section 151 to render substantial justice – Amendment of Execution Petition is maintainable

2015 (3) CTC 831

Sree Vadivambigai Ginning Industries Pvt. Ltd
vs.
T.N. Mercantile Bank Ltd

Date of Judgment : 28.04.2015

Contract Act, 1872 (9 of 1872), Section 171 – General Lien – Applicability – Plaintiff availed loan from Defendant-Bank by depositing Original Title Deeds – Plaintiff discharged entire loan amount and Bank has also issued “No Due Certificate” – Bank refused to return original documents on ground that sister concern of Plaintiff failed to discharge loan availed in another branch - Banker's right to lien to hold Original Deeds – Right of general lien available for Banker is only to recover their legitimate dues – Title Deeds deposited with Bank for security cannot be held as bailment of goods – General lien can be exercised when there is existence of Banker & Customer relationship – Relationship of Banker & Customer ceases to exist once Loan Accounts are liquidated and “No Due Certificate” issued – Action of Defendant-Bank refusing to release Title Deeds is illegal.

Limitation Act, 1963 (36 of 1963), Article 113 & Section 10 – Suit for Mandatory Injunction to direct Bank to return Original Title Deeds – Suit against trustees and their representatives – Contention of Defendant that Suit has not been filed within three years from date of cause of action – Bank is only custodian of documents deposited for security purpose – Retention of documents by Bank each day, is continuous of cause of action – Suit is not barred by limitation.

2015 -2- L.W. 845

Nagoor Kaniammal and Others
vs.
Tenkasi Vangaru Muthu

Date of Judgment : 30.04.2015

Wakf Act (1995), Section 3(4), 'wakf', what is, section 5' publication of, list of wakfs', 37 'Register of wakfs',

C.P.C., Order 1, Rule 8, worshipper, whether can file a suit.

'Wakf' property, determination of, suit for declaration – scope.

held: dedication of a property to a Mosque cannot be presumed – Absence of proof of dedication to wakf, publication of list of properties and absence of register – No evidence to show that suit 1st schedule has become wakf by user.

When wakf board cannot file a suit for declaration and recovery of possession, plaintiffs – worshippers cannot maintain such suit – on dates when the suit were filed, the wakf act was not in force – Jurisdiction – Issue of – Scope.

2015 -2- L.W. 889

New India Assurance Company Ltd

vs.

M/s. Dewa Properties Ltd

Date of Judgment : 13.02.2015

Specific relief act (1963), Section 16, Ready and willing, specific performance, to execute lease deed, draft, effect of.

Contract act, Sections 2, 6, 7, 29, 37, 38, specific performance, to execute lease deed, draft, effect of.

Transfer of property act (1882), Sections 108, 109, lease agreement, specific performance.

Suit was filed for specific performance of lease agreement as per draft approved by defendant, concluded contract, whether exists.

It was contended 'draft' itself indicates that it is liable to be changed and it cannot be treated as a concluded agreement.

Under draft lease deed, which has been signed by defendant, no date has been fixed for performance – starting point of limitation would be date when plaintiff had knowledge that defendant has refused specific performance – Non-denial of execution of lease deed, effect of.

Acceptance need not be express and it can be implied also –several clauses under agreement was given life by performance on both sides – consensus ad idem, evidenced by performance, estop defendants from contending that there is no agreement – last act to be completed is registration of documents..

Agreement, though not signed by the plaintiff, remains as a supplement to the performance, which is not the usual way of concluding the agreement – Performance is to pay the lease amount, which was done – contention that plaintiff is guilty of non-performance cannot be accepted.

Communication of acceptance in several ways, including by performance.

Contention that there is no consensus ad idem, no concluded contract rejected.

HIGH COURT CITATIONS CRIMINAL CASES

(2015) 2 MLJ (CrI) 385

Sunitha Venkatram

vs.

Ms. Divya Rayapati

Date of Judgment : 30.03.2015

- A. **Criminal Procedure – Power of Sessions Judge – Transfer of Appeals – Maintainability of – Code of Criminal Procedure, 1973 (Code 1973), Sections 406, 407, 408 and 409(2) – Protection of Women from Domestic Violence Act, 2005 (Act 2005), Section 29 –** Petitioners filed revision cases challenging dismissal of petitions filed to transfer pending appeals in relation to offence under Act 2005 before Additional Sessions Judge to some other Court of competent jurisdiction – Whether, Sessions Judge, in exercise of his power under Section 408 of Code 1973, has power to transfer appeal from one Criminal Court to another in his Sessions Division – Whether Sessions Judge empowered under Section 408 of Code 1973 to transfer case or appeal after commencement of trial or appeal – Held, matter sought to be transferred from file of Additional Sessions Judge is not case, but appeal arising out of Act 2005 filed under Section 29 of Act 2005 – No ambiguity in Section 408 of Code 1973 and it has only mentioned about case and not appeal – As per Section 408 of Code 1973, “case” cannot be stretched to mean appeal, when no ambiguity or uncertainty in provision – Transfer applications by Petitioners to transfer appeals not maintainable – No illegality in impugned orders warranting intervention – Petitions dismissed.
- B. **Transfer – Transfer of Appeals – Proceedings – Domestic Violence – Criminal Procedure Code, 1973 (Code 1973), Sections 406 to 409 – Protection of Women from Domestic Violence Act, 2005 (Act 2005), Sections 12, 18, 19, 20, 21, 22, 23, 28 and 31 –** Whether proceedings under Section 12 of Act 2005 is case within meaning of Sections 406 to 409 of Code 1973 – Held, proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of Act 2005 and offence under Section 31 of Act 2005 shall be governed by provisions of Code 1973 – Nothing in Sub-Section (1) shall prevent Court from laying down its own procedure for disposal of application under Section 12 of Act 2005 or under Sub-Section (2) of Section 23 of Act 2005 – In light of definitions, proceeding under Section 12 of Act 2005 may not fall under caption, offence, under Penal provisions of statute – But, in light of definitions to word, “trial”, proceeding instituted under provisions of Act 2005 should be construed as ‘case’ and decisions made in case can be appealed.
- C. **Judgment – Judgments of High Courts – Binding Effect of – Criminal Procedure Code, 1973 (Code 1973), Sections 397, 401, 406 and 407 –** Whether judgments of other High Courts, larger in composition binding on Subordinate Courts within territorial jurisdiction of High Court – Held, qualifying expressions for exercise of power under Section 407 of Code 1973 are that it should be Criminal Court subordinate to its authority and it may act either on report of Lower Court or on application of party interested or on its own motion – High Court of any State cannot exercise its powers under Sections 397, 401, 407 of Code 1973 over Court outside its territorial jurisdiction and Court, to which it issues order, under Section 407 of Code 1973 should be subordinate – Courts in Tamil Nadu are not subordinate to other High Court, except Madras High Court and they are bound to respect and follow decisions of Madras High Court – Decisions of other High Courts may have persuasive value, but not binding precedent.
- D. **Per Incuriam – Code of Criminal Procedure, 1973, Sections 10(3), 193, 194, 374, 381(2), 400, 407 to 410 –** Whether judgment in Devarasu v. State, rep. by Station House Officer is per incuriam – Held, reading of judgment in Devarasu v. State, rep., by Station House Officer shows that important questions of law considered, Public Prosecutor, counsel for accused and Amicus Curie heard – Several provisions in

Code 1973 dealing with appointment of Sessions, Additional and Assistant Sessions Judges, powers under Section 10(3) of Code 1973, power under Sections 193 and 194 of Code 1973 to make over session case dealt – Powers under Sections 374 and 381(2) of Code 1973 in making over appeal to Additional Sessions Judges, powers on Additional Sessions Judge under Section 400 of Code 1973, administrative and judicial powers under Sections 407 to 410 of Code 1973 also dealt – Judgment in Devarasu v. State, rep., by Station House Officer cannot be construed and argued as per incuriam and plea of Petitioner that said decision is per incuriam is rejected.

- E. Interpretation of Statutes – “Criminal Court” – Code of Criminal Procedure, 1973, (Cr.P.C) Sections 408(1) and 408(2) – The words “Criminal Court” in Sub-Section (1) of Section 408 Cr.P.C., must be read in the context in which it is explained in sub-Section (2) of the same Section, i.e., Lower Court and in such circumstances, it can comprehend that, that the words, Criminal Court, refers only to a Lower Court and not to a Court of equal jurisdiction – Though the words “Criminal Court” at the first blush, may appear to mean all the Criminal Courts, within the Sessions Division of a Sessions Judge, but a close scrutiny of sub-Section (2) of Section 408 Cr.P.C., would make it clear that there is no obscurity and vagueness – If both sub-Sections (1) and (2) of Section 408, are con-jointly read, it applies only to the Lower Court – If the intention of the Legislature was to expand the power of the Sessions Judge to transfer a case from a Criminal Court to another, then the words, “Lower Court” need not to have been specifically stated – Legislature could have simply used the word, “Court”, instead of the words “Lower Court” – First portion of sentence, occurring in sub-Section (2) of Section 408 Cr.P.C., cannot be isolated, to mean that any party interested, can seek for transfer of a case from one Criminal Court to another, even if the Sessions case is dealt with by an Additional Sessions Judge of equal jurisdiction.
- F. Words and Phrases – “Per Incuriam” – ‘Per incuriam’ means of decision of its own or of Court of co-ordinate or higher jurisdiction or in ignorance of terms of statute or of rule having force of law – Ruling making specific reference to earlier binding precedent may or may not be correct, but cannot be said to be per incuriam.

(2015) 2 MLJ (Cri) 483

Katturaja

vs.

Inspector of Police, N.I.B.

Date of Judgment : 25.02.2015

Narcotics - Chemical analysis report – Arrest and seizure - Compliance of - NDPS Act, Sections 8C r/w 20(b) (ii) (b) and 57 – PW/Head Constable alleged to have found accused persons in possession of contraband goods and arrested them – Appellant/Accused charged for commission of offence under Section 8C r/w 20(b) (ii) (b) of NDPS Act – Trial Court convicted Appellant – Appellant alleged report under Section 57 of NDPS Act not been sent and though PW/Head Constable had deposed that he did send such report, same was not corroborated by PW who completed preliminary investigation – Appeal – Whether Section 57 of NDPS Act is complied with and if it is not so, whether it vitiates conviction and sentence recorded by Trial Court – Held, though PW/Head Constable deposed that he sent report, testimony of PW/Investigation Officer did not support his version and same contradicts testimony of PW/Head Constable – Arrest and seizure become doubtful and it would not be safe to sustain conviction recorded by Trial Court against Appellant/Accused – Conviction and sentence set aside – Appellant acquitted – Appeal allowed.

(2015) 2 MLJ (Cri) 490

Valli

vs.

Muniasamy

Date of Judgment : 02.03.2015

Maintenance – Order of Maintenance – Award of Lok Adalat – Competent Civil Forum – Code of Criminal Procedure, 1973, Section 125 – Legal Services Authorities Act, Section 21 – Revision Petitioner and Respondent are husband and wife - Revision Petitioner filed petition under Section 125 Code 1973 for maintenance from respondent – Case referred to Lok Adalat – Upon compromise, District Legal Services Authority passed award by consent, that Respondent is ready and willing to pay sum towards maintenance – Respondent failed to adhere to award – Revision Petitioner filed petition under Section 125(3) Code 1973 – Respondent resisted petition as not maintainable on ground that as per Section 21 Legal Service Authority Act, award could be executed as a civil Court decree – Trial Court dismissed petition – Revision – Whether Revision Petitioner can enforce award passed by Lok Adalat under Section 125(3) Code of 1973 – Held, right of Revision Petitioner to execute award of Lok Adalat before competent civil forum is also having right to invoke Section 125(3) Code of 1973 to enforce award, granting maintenance, interpretation of same would satisfy benevolent provisions of both Acts – Impugned order of Judicial Magistrate set aside – Matter remanded to Trial Court for fresh adjudication – Revision allowed.

(2015) 2 MLJ (CrI) 513

Kokila
vs.
Kalpana

Date of Judgment : 06.05.2015

Bail – Grant of – Validity of – Code of Criminal Procedure, 1973, Sections 167(2), 173(2) and 173(5) – Accused along with two others strangulated deceased/practicing advocate and caused his death – Accused remanded to judicial custody – Accused filed bail petition before Magistrate – Investigating Officer submitted final report, same returned for want of chemical report – After obtaining chemical report, final report resubmitted on later date – Magistrate granted bail to accused under Section 167(2) on ground that final report not filed within statutory period – Defacto complainant filed petition to cancel bail granted by Magistrate – Accused also filed petition to modify condition imposed in bail order and permit her to furnish sureties or pay cash sureties to satisfaction of some other Magistrate – Whether bail granted by Magistrate under Section 167(2) sustainable – Held, necessary particulars as required under Section 173(2) furnished by Investigating Officer on date of filing of final report, which would suffice to take cognizance by Magistrate – Return of final report for want of chemical report would not amount to non-filing of final report on date on which final report filed without chemical report – Only if final report filed without necessary particulars as required under Sections 173(2) and 173(5), it would not amount to filing of final report – But, even without chemical report, Magistrate can take cognizance of final report – Question of granting bail under Section 167(2) on ground that final report not filed within statutory period does not arise and bail granted by Magistrate on that ground not sustainable – Bail order granted to accused liable to be cancelled, same cancelled – Petition by defacto complainant allowed – Petition by accused dismissed.

(2015) 2 MLJ (CrI) 526

Nandakumar
vs.
State

Date of Judgment : 24.03.2015

Custody – Custody of Crime Property – As complaint preferred by Petitioner/defacto complainant for stealing crime property, case registered against 2nd Respondent/ accused – 2nd Respondent arrested and specific sum recovered from him – Along with Form-95, money produced before Court – Magistrate acquitted accused – Defacto complainant had no grievance over acquittal – But, being aggrieved by portion of judgment of Magistrate treating crime property recovered from accused as Government property, defacto complainant filed present revision case – Petitioner alleged that when accused in his confessional statement admitted that he stole crime property from Finance Company, Lower Court, after conclusion of trial, ought to have returned cash to Petitioner – Whether Petitioner entitled to custody of remaining crime property – Held, material on record discloses that Lower Court categorically recorded that money stolen only from finance company – Also, discloses that pending trial, interim custody given to defacto complainant and accused did not claim either ownership or custody from

inception till conclusion of trial – Lower Court after conclusion of trial, ought to have ordered custody of remaining cash to defacto complainant from whom property stolen – Portion of judgment by magistrate declaring that remaining cash belongs to Government and forfeiture of amount liable to be set aside – Finding by Magistrate reversed – Petitioner entitled to custody of remaining crime Property – Direction issued to Magistrate to order custody of crime property to Petitioner – Petition allowed.

(2015) 2 MLJ (Crl) 531

A. Parthasarathy
vs.
State

Date of Judgment : 05.03.2015

Discharge – Framing of Charge – Code of Criminal Procedure, 1973 (Code 1973), Section 239 – Indian Penal Code, 1860 (Code 1860), Sections 120B, 420, 468 and 471 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) – Petitioners/accused Nos.3 and 4 with other accused charged under Section 120B read with Sections 420 and 468 read with Section 471 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988 – Discharge application filed by Petitioners under Section 239 of Code 1973 dismissed – Petitioner filed revision to set aside impugned order – Whether there was prima facie material before Court to frame charges against accused – Held, in documents/LD-7 and LD-8, name of subject written in bold letters in order to identify answer script – With regard to other documents/LD-3, LD-4, LD-5, LD-6, they were sent to forensic department and for hand-writing expert opinion – Only after obtaining expert opinion, charge sheet levied against accused Nos.1 and 2 – Accused No.3 is beneficiary, as per 161 statement of LW.5 and documents/LD-7 and LD-8 along with LD-3 to LD6, there is prima facie material to frame charges – Prima facie case made out to frame charges - Trial Court rightly considered facts in impugned order and came to correct conclusion that there was enough materials to frame charges – Petition dismissed.

(2015) 2 MLJ (Crl) 541

Kumaravel
vs.
State

Date of Judgment : 30.03.2015

Conspiracy – Kidnapping – Test Identification Parade – Conviction and Sentence - Indian penal Code, 1860, Sections 120B, 147, 324, 506(ii), 364, 395, 352 and 279 - Accused persons alleged to have formed unlawful assembly to conspire murder of Prosecution Witness(PW)/Victim – Trial Court convicted 1st to 4th Accused under sections 120B, 147, 324, 506(ii), 364, 395, 352 and 279 Code of 1860 – Appeal by Appellants – PW/Victim filed revision against impugned judgment on ground that sentence imposed on Appellants was inadequate and Trial Court ought to have imposed maximum sentence for offence committed – Whether order of conviction and sentence passed against Accused/Appellant justified – Held, evidence of PW's are cogent – 2nd to 4th Accused identified during test identification parade - 1st to 4th Accused were also identified by Manager – No reason to reject evidence of prosecution witness – Evidence of PW/Victim was corroborated by recovery of iron rod and recovery of bloodstained cloth from PW/Victim – Doctor deposed that injuries sustained by victim have been caused in manner alleged by victim – Judicial Magistrate gave evidence that Test Identification Parade was conducted in manner how accused were identified by PW's – PW's proved offences committed by 1st to 4th Accused persons – Trial Court rightly acquitted 1st and 2nd Appellants for offence under sections 341, 279, 352 (1 count), 307 and 386 and 3rd Appellant was acquitted for offence under sections 352 (2 counts) r/w 34, 307, 386 as there is no evidence to that effect – Allegation of Revision Petitioner not accepted as there was no intention on part of 1st to 4th Accused to kidnap PW/Victim with an intention of committing murder or get ransom – Act of 1st to 4th Accused would come

under Section 365 for kidnapping with an intention to confine secretly and wrongfully – Appeal dismissed against 1st to 3rd Appellants and impugned judgment sustained in respect of 1st to 3rd Appellants – Appeal allowed in respect of 4th to 8th Appellants and impugned judgment set aside and acquitted for charges.

2015-1- LW. (Crl.) 657

Babitha Surendran

vs.

State rep by Inspector of Police

Date of Judgment : 03.06.2015

Constitution of India / Article 20(3), signatures of accused, obtaining of, self incrimination, whether

IPC., Sections 417, 420, 467, 471, 506(i) r/w 34

Criminal Procedure Code Section 311A, Section 162, signature, of accused obtaining of, scope

Held: no constitutional bar for the police to obtain specimen handwritings and signatures from an accused – Power of police to obtain handwriting, signatures during course of investigation from witnesses, suspects and accused never questioned – It cannot fasten any criminal liability – It has to be compared by an expert with the disputed one for fastening criminal liability

Introduction of section 311A, effect of – scope.

2015-1- LW. (Crl.) 690

Iyyappan

vs.

State represented by The Inspector of Police

Date of Judgment : 18.02.2015

Narcotics drugs and psychotropic substances Act (1985)/Sections 8(c) r/w.20(b)(ii)(B)

Accused pleaded guilty during trial – Effect of – counsel engaged by appellant/ accused during trial did not cross-examine any of the prosecution witnesses and advised him to plead guilty – whether proper – Trial court rightly recorded conviction and sentence for the commission of the offence – Sentence reduced

2015-1- LW. (Crl.) 708

S. Balasubramanian

vs.

Krishnan

Date of Judgment : 12.02.2015

Criminal Procedure code Section 200,

Negotiable instrument act Section 138,

I.P.C., Section 406, 420

Complaint alleging respondent committed criminal breach of trust and fraudulently induced the petitioner by issuing the cheque in order to repay the amount due to him, knowing bank account was closed

Learned Magistrate declined to take cognizance holding no offences under Sections 405, 420 was made out.

Held: Learned Magistrate has not given any reasons nor considered the objections raised by the petitioner regarding the police report, while rejecting the complaint. – Order set aside. – Option when private complaint is filed what are, stated
