



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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(2016) 10 SCC 676

State Bank of Travancore vs. R. Sobhana

Date of Judgment : 02.09.2016

A. Property Law – Transfer of Property Act, 1882 – Ss.67 and 60 – Nature of interest acquired by purchaser of mortgaged property sold for recovery of dues of mortgagee – Merger of interest of mortgagor and mortgagee upon such sale

B. Constitution of India – Arts.142 and 136 – Ex gratia payment to respondents ordered in order to do complete justice

(2016) 9 SCC 720

Union of India vs. Indusind Bank Ltd.

Date of Judgment : 15.09.2016

A. Contract and Specific Relief – Contract Act, 1872 – S.28 (as it stood prior to its amendment in 1997 and finally after its amendment in 2013) and Ss.128 & 129 – Bar under S.28 as it stood prior to its amendment in 1997 – When attracted – Ingredients of bar under unamended S.28, explained

- *Assertion of right and enforcement of right* – Distinguished – Agreement restricting/limiting period within which right may be asserted, held, does not fall within umbrage of unamended S.28

- Clause neither seeking to *absolutely* restrict enforcement of rights under the agreement, nor purporting to limit time within which such rights could be *enforced* – It only seeking to restrict period within which *assertion* of rights/claim or demand raised under the agreement was to be done, which, held, can be construed as a condition precedent for filing a suit, which assertion/claim/demand should have been raised within period agreed to by the parties – Hence, clauses concerned in present case, only restricting period within which rights under agreement could be asserted, held, not hit by bar under unamended S.28

- Tentative view expressed also on how amended S.28 might apply

B. Contract and Specific Relief – Contract Act, 1872 – S.28 (as it stood before 1997) – Essential ingredients of – Held, essential ingredients are: (i) party should be restricted absolutely from enforcing its rights; (ii) such absolute restriction should be to approach, by way of legal proceeding, courts or tribunals; (iii) such absolute restriction may also relate to limiting of time within which party may thus enforce its rights before a court or tribunal.

C. Contract and Specific Relief – Contract Act, 1872 – S.28 (as amended in 1997) – Nature, and temporal operation of – Held, S.28 is substantive law and operates prospectively – Language used in S.28 does not make it operative retrospectively – As it is remedial in nature, it is neither clarificatory

or declaratory – Interpretation of Statutes – Amendatory or Clarificatory – Determination of – Principles summarized

D. Jurisprudence – Rights – Assertion of right and enforcement of right – Distinguished – Agreement restricting/limiting period within which right may be asserted, held, does not fall within umbrage of unamended S.28 of Contract Act, 1872 – Words and Phrases – “Assertion of right”, “enforcement of right”

(2016) 10 SCC 424

State of Karnataka vs. Ragini Narayan

Date of Judgment : 20.09.2016

A. Trusts and Trustees – Succession to trusteeship – Donor trustee’s power under trust deed to nominate his wife as member of Council of Trustees after his lifetime – Interpretation of trust deed

B. Registration Act, 1908 – S.47 – Document registered on a date subsequent to its execution – Operates from date of execution and not from date of registration

(2016) 9 SCC 627

Reliance General Insurance Co. Ltd. vs. Shashi Sharma

Date of Judgment : 23.09.2016

A. Motor Vehicles Act, 1988 – Ss.166 and 173 – Compensation – Determination of – Principles therefor, summarised

- Held, general principles under common law for estimating damages cannot be applicable for determination of compensation under Motor Vehicles Act – “Pecuniary advantage” from whatever source must correlate to injury or death arising out of motor vehicle accident – View taken in *Helen C.Rebello*, (1999) 1 SCC 90 applies independently in determination of compensation under Motor Vehicles Act, 1988

B. Motor Vehicles Act, 1988 – Ss.166 and 173 – Compensation – Meaning of – Determination of compensation – Principles therefor – Compensation must be just – Meaning and origin of word “just” – Traced

C. Motor Vehicles Act, 1988 – Ss.166, 167 and 173 – Compensation – Determination of – Amounts that may be deducted and those that may not be deducted, clarified – Role of Tribunals, where dependants have already received benefit under another law/Rules like R.5(1) of Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006

- Ex gratia amount received under Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 – Deductibility thereof under head “loss of pay and wages”

(2016) 10 SCC 315

Syeda Rahimunnisa vs. Malan Bi

Date of Judgment : 03.10.2016

A. Civil Procedure Code, 1908 – Or.41 Rr.23, 23-A & 25 and Ss.96, 100 and 107 – Power to remand case – Exercise of – Principles explained – Remand power – When may be exercised in second appeal – Remand of matter to trial court for de novo trial without there being express pleadings before lower appellate court or High Court, in present case – Held, remand not permissible in such circumstances

B. Civil Procedure Code, 1908 – S.100 – Second appeal – Concurrent findings of fact by trial court and lower appellate court – Cannot be reopened in second appeal in absence of perversity – High Court reappreciating entire evidence as if it was exercising power of first appellate court, without there being any finding by High Court as to perversity of the findings of courts below – Impermissibility of

C. Civil Procedure Code, 1908 – S.100 – Second appeal – Decision required to be confined to only substantial question of law so framed – Any finding without framing substantial question of law in that regard would amount to decision without jurisdiction

D. Civil Procedure Code, 1908 – S.100 – Second appeal – “Question of law” and “Substantial question of law” – Meanings of – Tests for determination of whether a question of law is substantial or not – Paramount consideration before High Court while hearing second appeal and exercise of power of High Court under S.100, reiterated – Roving enquiry about factual aspects of appeal – Impermissibility of

**SUPREME COURT CITATIONS
CRIMINAL CASES**

(2016) 10 SCC 378

Dhariwal Industries Ltd. vs. Kishore Wadhvani

Date of Judgment : 06.09.2016

Criminal Procedure Code, 1973 – Ss.301 and 302 – Distinction between explained, S.301 CrPC applying to Sessions trials and S.302 CrPC to Magisterial trials – Role of informant or private party is limited during prosecution of a case in Sessions Court – Under S.301 CrPC, counsel engaged by informant or private party is required to act under the directions of Public Prosecutor – Regarding S.302 CrPC, power is conferred on magistrate to grant permission to complainant to conduct the prosecution independently

- Proper mode of seeking permission under S.302 CrPC, held, is only by written application

(2016) 10 SCC 519

Jose vs. Sub-Inspector of Police

Date of Judgment : 03.10.2016

A. Penal Code, 1860 – S.302 – Murder trial – Wife allegedly strangled to death by husband and then hanged, in his house – Appreciation of evidence – Circumstantial evidence – Links in the chain of – Not established – Benefit of doubt – Entitlement to – Conviction reversed

B. Criminal Trial – Medical Jurisprudence/Evidence – Suicide – Possibility of – When reinforced – Absence of characteristic attributes attendant on death due to homicidal hanging following strangulation – Murder trial – Wife strangled to death by husband and then hanged, in his house – However, unchallenged expositions of doctor performing post-mortem examination, highlighting absence of characteristic attributes attendant on death due to homicidal hanging following strangulation – Possibility of suicide, held, is reinforced – Conviction of appellant-accused under S.302 IPC, set aside – Penal Code, 1860, S.302

C. Evidence Act, 1872 – S.106 Burden of proving fact especially within knowledge – Placing of, on accused – When not permissible – Murder trial – Wife strangled to death by husband and then hanged, in his house – However, absence of any persuasive evidence to hold, that at the relevant time, appellant was present in his house – Held, it is impermissible to cast any burden on him under S.106 – Penal Code, 1860 – S.302 – Criminal Trial – Proof – Presumptions – Adverse inference/Failure to explain incriminating circumstances

D. Criminal Trial – Proof – Suspicion – Held, suspicion, however grave, cannot take the place of proof – Prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”

E. Criminal Trial – Proof – Benefit of doubt – When may be extended – Held, court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to accused – Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense – If two views are possible on evidence available, one pointing to guilt of accused and the other to his innocence – Effect of – Held, in such case, one favourable to the accused ought to be adopted

(2016) 10 SCC 307

Benson vs. State of Kerala

Date of Judgment : 03.10.2016

Criminal Procedure Code, 1973 – S.427(1) – Person already undergoing a sentence of imprisonment – Subsequent conviction and sentence – running of – Subsequent sentence, held, would normally commence at the expiration of imprisonment to which he was previously sentenced – However, such normal rule is subject to a qualification, and it is within the powers of court to direct that subsequent sentence shall run concurrently with the previous sentence, and not consecutively

(2016) 10 SCC 506

Raja vs. State of Karnataka

Date of Judgment : 04.10.2016

A. Penal Code, 1860 – Ss.376(2)(g)/366/392 r/w S.34 – Gang rape after abduction – Appreciation of evidence – Inconsistent testimony of prosecutrix – Her conduct after alleged rape, dubious – Medical opinion belies allegation of gang rape – Plea of false implication cannot be discarded – Seizures effected by investigating agency also do not inspire confidence – Charge not proved beyond reasonable doubt – Benefit of doubt – Entitlement to – Reversal of acquittal by High Court, set aside – All accused acquitted

B. Criminal Trial – Witnesses – Hostile Witness – Testimony of – When admissible

C. Penal Code, 1860 – Ss.375 and 376 – Rape – Evidence of prosecutrix – How to be construed – False implication of accused – Protection against – Necessity of – Principles summarized – Evidence Act, 1872, Ss.114-A, 113-A and 113-B

D. Criminal Procedure Code, 1973 – Ss.378 and 386(a) – Appeal against acquittal – Interference by appellate court – When warranted – Principles reiterated

(2016) 4 MLJ (Crl) 618 (SC)

Nathiya vs. State

Date of Judgment : 08.11.2016

Murder – Benefit of Doubt – Indian Penal Code, 1860 (Code, 1860), Section 302 read with Section 34 – Appellants were convicted and sentenced under Section 302 read with Section 34 of Code 1860 – High Court upheld their conviction and sentence – Appeal against conviction – Whether conviction of Appellants for murder which was upheld by High Court justified – *Held*, chain of circumstantial evidence relied upon by prosecution to prove charge was visibly incomplete and incoherent to permit conviction of Appellants on basis thereof without any trace of doubt – Prosecution failed to elevate case from the realm of “may be true” to the plane of “must be true” as is indispensably required in law for conviction on a criminal charge – In criminal trial, suspicion, howsoever grave, cannot substitute proof – Prosecution failed to bring home guilt of Accused person – Materials on record admit of substantial doubt *vis-a-vis* complicity of Appellants in crime – It would be wholly unsafe to sustain their conviction in regard to evidence adduced – Appellants entitled to benefit of doubt and succeed – Appeals allowed.

**HIGH COURT CITATIONS
CIVIL CASES**

2016-5-L.W.76

Dhanalakshmi vs. Muniammal @ Senthamarai and others

Date of Judgment : 22.08.2016

Practice/Xerox copies, marking of, objection to

Registration act, Section 17, Xerox copies, marking of, objection to

Suit for partition and separate possession – Documents marked are Photostat copies of unregistered release deeds and partition deed, admissibility has been objected

Petition to eschew filed – held: xerox copy cannot be marked

(2016) 7 MLJ 571

Parvathy Thilagam vs. Rengasamy Nadar (died)

Date of Judgment : 23.08.2016

(A) Property Laws – Adverse Possession – Permissive Possession – Limitation Act (Act), Section 65(b) – Appellants/Plaintiffs filed suit against Respondents/Defendants for suit for declaration of title and recovery of possession – Trial Court decreed suit – Appeal preferred by defendants was allowed by stating that permissive possession was not proved and Respondents have proved that they have prescribed title by adverse possession – Second Appeal by Plaintiffs – Whether finding of lower appellate Court that Plaintiffs have no subsisting interest in suit property for reversing judgment of trial Judge is vitiated in law on account of absence of materials to sustain such finding – Whether finding of lower appellate court on adverse possession in favour of Defendants is supported by any legal evidence on record – *Held*, merely because first appellate court has not framed appropriate points for consideration is not reason for setting aside its judgment and decree – Each and every issue has been considered in proper and perspective manner by first appellate court and it has rightly come to conclusion that even though ownership is admitted, permissive occupation pleaded by Appellants/plaintiffs was not proved – Respondents/defendants has pleaded that they have entered into oral sale which is illegal – Respondents/defendants have proved that they are in possession openly, continuously, uninterruptedly much adverse to interest of the true owner till her death – Respondents/defendants prescribed title adverse possession – True owner lost her right in property – Article 65(b) of Limitation Act is not applicable to facts of present case – Appellants not entitled to any decree – Substantial Questions of Law answered against Appellants/plaintiffs – Appeal dismissed.

(B) Evidence – Additional Documents – Reception – Code of Civil Procedure 1908 (Code 1908), Order 41 Rule 27 – Whether application filed by Plaintiffs under Order 41 Rule 27 of Code 1908 for reception of additional documents is liable to be allowed – *Held*, while perusing affidavit filed in support of petition along with list of documents furnished, all are came into effect, after filing of this Second Appeal – Documents are not necessary for disposal of appeal – First two ingredients have not been applicable – Third ingredient is as to whether documents are necessary for disposal of appeal and thus application liable to be dismissed – Application dismissed.

2016 (2) TN MAC 590 (DB)

New India Assurance Co. Ltd. vs. Archana

Date of Judgment : 18.10.2016

INCOME – Fixation of – Deceased aged 45 yrs., highly educated (B.Sc. & M.Phil degree holder), an Industrialist as also Agriculturist earning Rs.4,00,000/-p.a. – IT Returns Ex.P15 to P18 marked – Tribunal considering evidence on record rightly fixed Annual Income at Rs.2,00,000/- p.a. – Confirmed in Appeal.

MULTIPLIER – Proper Multiplier – Deceased aged 45 yrs. as per Post-mortem Report and IT Returns – Application of Multiplier of 15 as per Second Schedule to MV Act – Not proper – Following *Sarla Verma (SC)*, correct Multiplier held to be 14 and not 15.

LOSS OF INCOME – Determination – Deceased aged 45 yrs. – *Claimants* : Daughters (2), mother and husband of deceased – Tribunal fixing Income at Rs.2,00,000/-p.a. and applying Multiplier of 15 arrived at Rs.30,00,000/- Following Unit System, Tribunal awarded Rs.15,00,000/- as two units for two daughters (1st & 2nd Claimants) towards Loss of Income – *Held*, not proper – Applying correct Multiplier of 14 and deducting 1/4th towards Personal Expenses, High Court awarded Rs.21,00,000/- [Rs.2,00,000 x 14 = Rs.28,00,000 – ¼ = Rs.21,00,000/-] towards Loss of Income.

MOTOR ACCIDENT CLAIM – Compensation – Just and reasonable Compensation – Claim of Compensation by daughters and mother of deceased – Tribunal awarding Rs.1,00,000/- towards Dowry for 1st Claimant/daughter and Rs.1,00,000/- towards Pilgrimage Expenses to 3rd Claimant/Mother – *Held*, not sustainable, set aside.

INTEREST – Rate of Interest – Accident took place on 06.01.2001 – Award of Interest at 9% p.a. – Held to be excessive – Reduced to 7.5% p.a.

(2016) 8 MLJ 532

Sekar vs. Ganesan

Date of Judgment : 18.10.2016

Property Laws – Possession of Title – Permanent Injunction – After death of Plaintiff's grandfather, suit property belonged to Plaintiff's grandmother inherited to – Before leaving for foreign country, Plaintiff's grandmother executed Will in favour of Plaintiff and after her death, Plaintiff inherited to suit property as per Will – When Defendant interfered with possession of Plaintiff, Plaintiff filed suit for permanent injunction, same decreed – On appeal, Lower Appellate Court confirmed judgment and decree of Trial Court – Being aggrieved, present second appeal filed – Whether impugned orders passed by Lower Courts sustainable – *Held*, Lower Courts proceeded on footing that Plaintiff established death of his grandmother on basis of alleged VAO's Certificate – When Defendant disputed factum of death of Plaintiff's grandmother, Plaintiff should have adduced acceptable and reliable evidence to establish that his grandmother died – But, Plaintiff did not disclose as to when and where Plaintiff's grandmother died either in plaint or during course of evidence – No documentary evidence filed by Plaintiff to establish that she died – Plaintiff also did not care to establish through other heirs of his grandmother to hold that she died – Plaintiff is duty bound to produce death certificate of his grandmother issued by Singapore Authorities and in absence of same, plea that Court should draw adverse inference against Plaintiff is acceptable – Only on death of Plaintiff's grandmother, Plaintiff would be entitled to claim title to suit property on basis of alleged

Will – In absence of proof of death of Plaintiff’s grandmother, question of alleged Will coming into force does not merit acceptance – In absence of Will, Plaintiff would not be entitled to lay claim over suit property – Having failed to establish that he has title over suit property and suit property is in his possession and enjoyment, Plaintiff would not be entitled to obtain relief of Permanent injunction – Lower Courts erroneously proceeded to decree suit on footing that Plaintiff’s grandmother died – Judgment and decree passed by First Appellate Court set aside – Appeal allowed.

2016 (6) CTC 424

A. Sankariah vs. V. Ravichandran

Date of Judgment : 18.10.2016

Contract Act, 1872 (9 of 1872), Section 2(h) – Contract – Concluded Contract – Evidence Act, 1872 (1 of 1872), Section 3 – Purchaser sought Specific Performance of Agreement to Sell immovable property – Vendors are siblings – One Vendor, who is brother-in-law of Purchaser, remained *ex parte* – Siblings locked in Suit for Partition of Family properties – Vendors refuting execution of Agreement – Attesting Witness examined by purchaser was Interested Witness – Description of property in Agreement incomplete – Agreement to Sell not established – No concluded Contract.

Specific Relief Act, 1963 (47 of 1963), Section 20 – Sale Agreement without signature of Purchaser – Relief of Specific Performance – Grant of – *Held*, even in absence of signature of Purchaser, if Sale Agreement is duly executed by Owner of property, Purchaser of property would be entitled to relief of Specific Performance – Decision in *Muthukrishna vs. Gowri*, 2014 (1) CTC 603, relied upon.

2016 (6) CTC 237

M. Kamala vs. Uma Ravichandran

Date of Judgment : 20.10.2016

Transfer of Property Act, 1882 (4 of 1882), Sections 5 & 6(a) – Indian Evidence Act, 1872 (1 of 1872), Section 115 – *Spes successionis* – Renunciation of expectant right of Succession for consideration – Binding nature on Legal Heirs – Estoppel – Law of Precedents – Binding precedents – Conflicting view expressed by two different Judges – Procedure – *Held*, though Release Deed executed by heir apparent would be invalid in terms of Section 6(a), same would be valid and binding on Legal Heirs of heir apparent, if same is for consideration – Legal Representatives cannot claim share applying Principles of Estoppel – Two conflicting opinions expressed on this issue by two Judges of High Court – In identical circumstances, High Court in *Neyveli Lignite Corporation Ltd. vs. Special Tahsildar No.3, Land Acquisition, Lignite Project, Neyveli*, 1988 (2) LW 79, following Full Bench of Patna High Court in *Amar Singh Yadav vs. Shanthi Devi*, AIR 1987 Pat.191, has held that when there is direct conflict between two decisions of Supreme Court, High Court must follow Judgment which appears to state law more elaborately and accurately – Ratio expressed by Single Judge in S.A.(MD) 342 of 1998 dated 19.11.2009, though earlier in point of time is more elaborate and is based on Three-Judges Bench decision of Apex Court in *Gulam Abbas vs. Haji Kayyum Ali*, AIR 1973 SC 554, than Judgment reported in *R.Santhi alias Gowthami vs. Nallammal (Deceased)*, 2014 (4) LW 176 – Accordingly Release Deed executed by father of Respondents 4 & 5 would be valid and binding on said Respondents – Order of Trial Court modified – Appeal partly allowed.

Indian Evidence Act, 1872 (1 of 1872), Sections 64, 65 & 115 – Admissibility, marking & due execution of Photo copy of Document – Estoppel – Photo copy of Release Deed produced – Defendant admitted due execution of same in evidence – Photo copy of certified copy of Release Deed obtained

by Defendants was marked through PW1 without any objection – Objections based on Sections 64 & 65 not sustainable.

2016-5-L.W.509

S. Settu and others vs. Krishnan and others

Date of Judgment : 21.10.2016

Constitution of India, Article 227, preliminary issue deciding of, scope

C.P.C., Order 7 Rules 10 and 11, valuation, pecuniary jurisdiction as preliminary issue, deciding of

Application to frame preliminary issue regarding valuation and pecuniary jurisdiction dismissed – challenge to

Held: whenever an issue of pecuniary jurisdiction arises, it should be decided first – 1st Additional Subordinate Judge, Salem is directed to try issue regarding pecuniary jurisdiction of the court as preliminary issue

2016 (6) CTC 433

Kalyanasundaram vs. M. Kumaravel

Date of Judgment : 24.10.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 14 – Issues – Non-framing of particular issue – Consequence of – Suit for Recovery of Money based on Pro-Note filed in 1995 – Endorsement on back of Pro-Note alleged to be made by Defendant in 1997, disputed – Suit allowed by Trial Court but dismissed by Appellate Court on ground that endorsement was not proved and Suit was time-barred from date of execution – Contention of Appellant that when no issue was raised with regard to genuineness and validity of endorsement, reversal of Decree of Trial Court by Appellate Court on said issue, erroneous – *Held*, parties went to Trial being aware that genuineness of endorsement was issue between them – Both oral and documentary evidences were produced to that effect – Failure of framing of issue not leading to any miscarriage of justice – Non-framing of issue by Trial Court, *held*, not fatal to case of Defendant especially when Plaintiff failed to produce Ledger maintaining record of alleged endorsement – Dismissal of Suit by First Appellate Court, upheld – Second Appeal dismissed.

(2016) 8 MLJ 588

S. Thirumalai vs. S. Govindarajan (Died)

Date of Judgment : 07.11.2016

Registration – Unregistered and Unstamped Document – Admissibility – Indian Stamp Act (Act), Sections 33, 35, 36 and 38 – Appellant filed suit for partition of his ½ share in suit properties – Trial Court found that suit properties were jointly purchased by Plaintiff and Defendant – Trial Court however held that there was partition between Plaintiff and Defendant mainly relying upon unregistered and unstamped partition deed – Whether partition that was pleaded by Defendant as per unregistered and unstamped document is proved or not – *Held*, partition deed document Ex.B7 is certified copy of Ex.B1 which was original instrument namely the unregistered and unstamped partition deed in another suit – Term “instruments” in Section 36 of Act confined only to original – Having regard to Sections 35 and 36 of Act, no secondary evidence which is produced to prove

contents of the document, can be dealt with under Section 35 or Section 36 – Document Ex.B7 filed by Defendant neither admissible nor can be acted upon to prove actual partition – Instrument is unregistered – Case of prior partition pleaded by Defendants by means and bounds cannot be accepted relying upon document Ex.B7 – Alleged partition under Ex.B7 or on any subsequent date not proved by Defendant – Trial Court failed to follow legal principles and settled law on legal implications of attestation and admissibility of document which is neither registered nor stamped – Subsequent conduct of Plaintiff and Defendant by enjoying suit properties in common prove case of Plaintiff – Partition as spoken to by Defendant held unbelievable and not proved – Plaintiff/Appellant entitled to decree for partition – Appeal allowed.

2016 (6) CTC 225

Rajammal vs. M. Senbagam

Date of Judgment : 11.11.2016

Specific Relief Act, 1963 (47 of 1963), Section 16(1)(c) – Readiness and willingness – Relevant factors – Suit for Specific Performance of Agreement of Sale – Execution of Agreement admitted by parties – Total consideration under Agreement determined as Rs.2,00,000/- - Plaintiff paid Rs.1,65,000/- on date of Agreement – Plaintiff seeking three years to pay balance Sale consideration of Rs.35,000/- - *Held*, especially when brother of Plaintiff was Money Lender, three years' time to pay small consideration of Rs.35,000/-, unreasonable – Suit Notice issued by Plaintiff only two years after execution of Agreement – *Held*, right to claim execution of Sale Agreement does not commence from end of period of limitation prescribed in Agreement, but commences from date of Execution of Agreement itself – Time limit fixed in Agreement only upper limit and not exact time to perform Contract – Suit filed within limitation does not entitle Plaintiff to relief of Specific Performance even in case of admitted Agreement, Plaintiff ought to prove that he was ready and willing to perform his part of Contract in manner known to law – No explanation offered from Plaintiff for not paying balance sale consideration and seeking execution of Agreement of Sale – Plaintiff, *held*, not willing and ready to perform his part of Agreement – Decree of Specific Performance granted by Courts below, set aside – Appeal allowed.

Deeds & Documents – Agreement of Sale – Nature of – Intention of parties – Suit for Specific Performance based on Agreement of Sale – Execution of Agreement of Sale admitted by defendants – Stand of Defendants that Agreement not intended to be acted upon as it was a Security towards a Loan transaction between parties – Fact that brother of Plaintiff, one 'V' was a Money Lender – Several Agreements entered into by Defendants with said 'V' periodically – Attesting Witnesses and Scribe in said Agreements and Suit Agreement, one and the same – All Agreements executed and cancelled subsequently – *Held*, said periodical execution and cancellation of Agreement would prove that Agreements were entered into with intention to act as a security for Loan transaction and not for purpose of sale of property – Considering conduct of parties in entirety, same presumption, *held*, to be applied to Suit Agreement – Suit Agreement, *held*, a Security towards Loan transaction.

Indian Evidence Act, 1872 (1 of 1872), Section 92 – Admission to Execution of Sale Agreement – Bar under Section 92 – Whether operates – Bar under provision applicable only when party relies upon Agreement and simultaneously attempts to vary and contradict its terms – Attempt of Appellants not to vary or contradict terms of Suit Agreement – Evidence let in by Appellants to establish that in spite of existence of Agreement, intention of parties was not to act upon same – Such stand of Appellants, *held*, not prohibited under Section 92 – No legal impediment for Appellants to raise a plea with regard to intention of parties.

**HIGH COURT CITATIONS
CRIMINAL CASES**

2016-2-L.W. (CrI.) 693

Tmt. T. Subbulakshmi and another

vs.

The Commissioner of Police, Egmore, Chennai-08 and others

Date of Judgment : 18.02.2016

Criminal Procedure Code, Section 102 bank account, freezing of, challenge to

Indian Penal Code, Sections 120-B, 420, 465, 467, 468, 471, bank account, freezing of, challenge to

Contempt of courts Act, Section 11, bank account, freezing of, challenge to

Freezing bank account – Delay in sending intimation by investigation officer to magistrate – whether proper

Investigation officer sent requisition to Bank manager to freeze bank accounts – Intimation to learned Magistrate, with delay of 12 days – Explanation given by Investigating officer is not reasonable – Order to freeze the bank account vitiated

(2016) 4 MLJ (CrI) 540

Muthu @ Vembadu Muthu vs. State

Date of Judgment: 22.06.2016

Robbery – Murder – Circumstantial Evidence – Indian Penal Code, 1860 (Code 1860), Sections 120B, 302, 392, 397, 449 and 34 – Indian Evidence Act, 1872 (Act 1872), Section 114 – After trial, Trial Court convicted accused Nos.1 to 3 Sections 120B read with Section 392, 449 and 392 read with Section 397 of Code 1860, accused Nos.2 and 3 under Section 302 of Code 1860 and accused No.1 under Section 302 read with Section 34 of Code 1860 – Challenging their conviction, accused Nos.1 and 3 filed present appeals – Whether based on circumstantial evidences, prosecution proved its case against Appellants beyond reasonable doubts – *Held*, death of deceased and removal of M.Os.1 to 8 occurred in same occurrence – Presumption arising there from is that persons who committed robbery caused death of deceased also – Accused Nos.1 to 3 who were found in possession of stolen properties did not explain their possession and it is presumed under Section 114 of Act 1872 that they only committed murder of deceased and robbery of M.Os.1 to 8 – Such presumption is rebuttable, but there is no evidence to rebut same – Such unrebutted presumption coupled with evidence of PWs.1 and 4 proved guilt of accused Nos.1 to 3 beyond reasonable doubt – With regard to accused Nos.1 and 2, no infirmity found in their conviction, same liable to be confirmed – Regarding accused No.3, no charge framed against him under Section 392 read with Section 397 of Code 1860 – Trial Court also did not give finding that he was guilty under Section 392 read with Section 397 of Code 1860 – When accused No.3 questioned in respect of sentence, there was no such question put to him that there was finding that he was guilty under Section 392 read with Section 397 – Though evidences let in by prosecution establish that accused Nos.1 to 3 conjointly committed offence of robbery armed with deadly weapons

and since no charge for said offence against accused No.3, conviction imposed on accused No.3 under Section 392 read with Section 397 of Code 1860 not sustained – But, for other offences, conviction imposed on accused No.3 liable to be confirmed – Further, conduct of accused in going twice to house of deceased ensuring that deceased was alone and she wore gold jeweleries and moving to house of deceased to commit murder and to rob gold jeweleries would prove that there was conspiracy by accused Nos.1 to 3 – Prosecution proved charges made against accused and Trial Court right in convicting them – Trial Court imposed only proportionate punishments which are just and reasonable – No reason found to interfere with quantum of sentence imposed – Conviction imposed on accused Nos.1 and 2 confirmed – Conviction imposed on accused No.3 under Section 392 read with Section 397 alone set aside, but conviction for other offences confirmed – Appeal by accused No.2 dismissed – Appeal by accused Nos.1 and 3 partly allowed.

(2016) 4 MLJ (CrI) 558

Sam vs. State

Date of Judgment: 23.06.2016

Rape – Consent of Prosecutrix – Indian Penal Code, 1860 (Code), Sections 366, 376 and 417 – Trial court convicted and sentenced Appellant/accused under Sections 366, 376 and 417 of Code – Appeal against conviction and sentence – Whether conviction of Appellant for offence of rape justified – *Held*, it was in evidence of P.W.1 that the Appellant and P.W.1/Prosecutrix were in love for long time and visited many places of amusement – She was not minor and mature enough to know consequences of her going with Appellant – Her version that Appellant had sexual intercourse without her knowledge was difficult to be believed – She stayed with Appellant without raising any objection and thus, was a consenting party – Narration of events, as spoken to by P.W.1 would go to show that P.W.1 was consenting party for all occurrences – No offence of abduction committed by Appellant as P.W.1 went out along with him for purpose of marriage and returning happily – There was no cheating because Appellant married P.W.1, in presence of Pastor and lived with her as her husband – It appeared that they got separated because of some matrimonial dispute – Conviction and sentence imposed on Appellant by Trial Court can't be sustained and set aside – Prosecution failed to prove charges against Appellant – Appeal allowed.

(2016) 4 MLJ (CrI) 603

Felix Suresh Peter vs. Inspector of Police

Date of Judgment : 30.06.2016

Warrant – Non-Bailable Warrant – Recall – Indian Penal Code (IPC), Sections 342 and 323 – Code of Criminal Procedure (Code), Sections 317 and 482 – Private complaint filed under Sections 342 and 323 of IPC against Petitioner/Accused by Second Respondent were pending for disposal – Judicial Magistrate issued Non-Bailable Warrant (NBW) against Petitioner despite filing of condonation of delay application – Petition filed to recall NBW issued against him – Whether issuance of NBW only way to get presence of Accused – *Held*, insisting appearance of accused on day when his appearance had nothing to do with progress of case would result in unnecessary harassment, especially when he had some inconvenience and his counsel was prepared to represent him – Court expected to take into account factors such as nature, seriousness of offence, character of evidence, possibility of accused absconding, circumstances peculiar to accused under which accused was not likely to abscond and larger interest of society – Petitioner being Government servant, there was no likelihood of accused fleeing away from justice – When lawful process had been resorted to by accused explaining

circumstances under which he was unable to appear and more especially when his appearance on that date was not indispensable, issuance of NBW was not justified – NBW issued by Judicial Magistrate set aside – personal appearance of Petitioner need not be insisted for future hearing, unless his presence was indispensable, having regard to nature of public/official duty being performed by Petitioner – Petition disposed of.

(2016) 4 MLJ (CrI) 720

P. Saravanan vs. State

Date of Judgment : 13.07.2016

Summons Cases – Violation of Procedure – Code of Criminal Procedure, 1973 (Code 1973), Sections 251 and 252 – Indian Penal Code, 1860 (Code 1860), Section 294(b) – Revision Petitioner/accused alleged to have committed offence under Section 294(b) of Code 1860 was arrested and released on station bail – Magistrate took cognizance – Revision Petitioner filed admission petition admitting offence – Judge convicted accused under Section 294(b) of Code 1860 and sentenced him – Whether procedure under Code 1973 for trial of summons cases has been followed correctly – *Held*, no records to show that accusation as alleged against Revision Petitioner by the Police Station has been put to the accused – No statement in case records indicating that details of accusation as found in final report filed by Sub-Inspector of Police has been explained to accused – As per Section 251 of Code 1973, trial Court is bound to put accusation to accused – Nothing in trial Court records to show that plea of accused has been recorded as nearly as possible in words of accused – In column of STC register, what was stated in vernacular language does not show that Section 251 of Code 1973 has been complied with – column of S.T.C. Register does not reveal that the details of accusation has been made against the accused has been put to accused and plea of accused given by him, in his words as nearly as possible has been recorded – Provisions under Section 251 of Code 1973 has been completely violated – Conviction recorded under Section 252 of Code 1973 which has to follow plea recorded under Section 252 of Code 1973 itself is vitiated – Conviction and sentence set aside – Revision Petition succeeds.

(2016) 4 MLJ (CrI) 743

N. Bhuvaneswari vs. State of Tamil Nadu

Date of Judgment : 30.08.2016

Sentence – Punishment – Suspension of Sentence – Tamil Nadu Suspension of Sentence Rules, 1982 (Rules) Rule 35, Section 20(iv) – Indian Penal Code (Code), Section 302 – Constitution of India, Article 21 – Petitioner’s husband was life convict undergoing imprisonment for life pursuant to his conviction and sentence for offence under Section 302 of Code and other offences – Representation made to Government for granting ordinary leave to Petitioner’s husband under Rules was rejected on ground that he would not be entitled to leave as he was facing trial before II Additional District and Sessions Court – Writ petition filed seeking direction to Respondents to grant ordinary leave to Petitioner’s husband under Section 20(iv) of Rules – Whether rule 35 of Rules impinges on fundamental right guaranteed under Article 21 of Constitution of India and also right of life convict to be granted ordinary leave – *Held*, convict prisoner does not have fundamental right to be released on leave and it was only statutory right which was governed by Rules – Word prisoner used in Rule 35 of rules meant only convict prisoner, for, remand prisoners were not governed by Rules – Remand prisoners were those who were kept in prison on orders of Court, pending decision on their culpability – Court could release remand prisoner on bail at any time and that was not case with convict prisoner – Convict prisoner who had exhausted his remedies in hierarchy of Courts cannot be released on bail by

executive fiat – Discretion of executive was governed by Rules and sentence can be suspended only in manner set down therein – Executive power to release convict prisoner on leave, was subject to responsibility of jail authorities to produce him before Trial Court for hearings – Rule 35 can't be interpreted to mean that it would not apply to convict prisoner, who, incidentally was also remand prisoner, whether, he was on bail or otherwise – Writ petition devoid of merits – Writ petition dismissed.

(2016) 4 MLJ (Crl) 607

Alex C. Joseph vs. State by Inspector of Police

Date of Judgment: 09.09.2016

Return of Property – Return of Seized Property – Photocopies – Code of Criminal Procedure, 1973 (Code 1973), Sections 451 and 457 – Indian Evidence Act, 1872 (Act 1872), Sections 62 and 63 – Indian Penal Code, 1860 (Code 1860), Sections 120B, 420, 467, 468 and 471 – Prevention of Corruption Act, 1988 (Act 1988), Sections 13(2) and 13(1)(d) – Case registered against Petitioner/accused No.2 along with other accused under Sections 120B, 420, 467, 468 read with Section 471 of Code 1860 and Section 13(2) read with Section 13(1)(d) of Act 1988 – Petition filed to return documents/articles seized from Petitioner by Respondent – Trial Court directed Respondent to furnish photocopies of same – Revision Petition – Whether Trial Court justified in directing Respondent to furnish photocopies of petition mentioned documents/articles or Respondent be directed to return original documents to Petitioner – *Held*, in view of fact that Petitioner was supplied with photocopies/xerox copies of documents in issue, he cannot said to be prejudiced and no hardship or inconvenience caused to him – Considering fact that investigation is in progress and after finalization of investigation about vehicles, few more charge sheets likely to be filed in due course and also taking note of facts and circumstances on record, plea of Petitioner for direction to return the petition mentioned documents/articles is not acceded to – Trial Court order does not suffer from infirmity – Petition dismissed.

(2016) 4 MLJ (Crl) 764

S. Balasubramaniam vs. State

Date of Judgment: 02.11.2016

Report – Filing of Final Report – Condonation of delay – Code of Criminal Procedure, 1973 (Code 1973), Sections 460, 468 and 473 – Indian Penal code, 1860 (Code 1860), Sections 279 and 338 – Case registered against Petitioner/accused under Sections 279 and 338 of Code 1860, but charge sheet was not filed in time – Respondent/police later, filed final report along with petition under Section 473 of Code 1973 for condonation of delay caused in filing final report – Magistrate granted extension of time – Being aggrieved, present revision filed – Whether Magistrate justified in condoning delay caused in filing final report – *Held*, as per Section 473 of Code 1973, delay can be condoned, when delay is satisfactorily explained to Court or it is necessary in interest of justice – Opportunity by way of notice to accused shall be given before exercising power under Section 473 of Code 1973 – Power under Section 473 of Code 1973 should be exercised by passing reasoned order and proper reason must be given – No notice was given to Petitioner before passing impugned order – In case of absconding accused, impugned order does not disclose grounds or reasons for its existence, but Petitioner was on bail – Impugned order passed behind back of accused who will have say before passing impugned order – Impugned order suffers from legality and propriety, same set aside – Magistrate will restore alleged petition to his file and will give opportunity to both side and pass orders – Revision allowed.

(2016) 4 MLJ (CrI) 756

National Collateral Management Services Ltd. vs. State

Date of Judgment : 10.11.2016

Criminal Proceedings – Authorized representative – Proceedings against Corporation – Right to Represent – Code of Criminal Procedure, 1973 (Code 1973), Section 305 – Indian Penal Code, 1860 (Code 1860), Section 420 – Essential Commodities Act, 1955 (Act 1955), Section 7(1)(a)(ii) – Public Distribution System (Control) Order 2001 (Order 2001), Clause 6(4)(i)(ii) – Based on complaint filed by Deputy Tahsildar, case registered under Section 420 of Code 1860 read with Section 7(1)(a)(ii) of Act 1955 read with Clause 6(4)(i)(ii) of Order 2001 and filed FIR – Subsequently, Government referred case to CBI for further investigation – CBI registered case under Section 120B read with Section 420 of Code 1860 and Section 7(1)(a)(ii) of Act 1955 read with Clause 6(4)(i)(ii) of Order 2001 – Pending case, Petitioner/accused No.15/company filed petition under Section 305 of Code 1973 seeking order to permit Petitioner to be represented by authorized representative/Area Manager of Company in main case, same dismissed – Being aggrieved, present revision filed – Whether impugned order passed by Trial Court sustainable – *Held*, Section 305 of Code 1973 shows that Corporation or Society has right to appoint person to represent for corporation or company – Without considering above said facts, Trial Court dismissed petition – Records would show that there was no material to show Petitioner filed petitions frequently before Trial Court to change representative – Reason assigned for dismissing order is not acceptable in absence of materials on records, same is not valid – Impugned order set aside – Petition allowed.

2016-2-L.W. (CrI) 665

Saranya vs. State by Inspector of Police, All Women Police Station and another

Date of Judgment : 11.11.2016

Criminal Procedure Code, Sections 91, 349, 482

Evidence act, section 45, 114, 132

I.P.C., Sections 294(b), 376, 417, 506(i)

Protection of Children from Sexual Offences Act (2012), Section 4

Prohibition of Child Marriage Act (2006), Sections 2, 10, 11

can a criminal court direct a prosecution witness and her child to subject themselves to DNA profiling along with the accused

held: “X” continued to be hostile to prosecution in evidence before the trial Court – Burden is on “X” to disclose to the Court, who and where her husband “M”

Power for a criminal Court to subject a witness and her child to DNA analysis flows from Section 91 read with the second limb of Section 311 Cr.P.C. and Section 45 of the Evidence Act.

‘*Thing*’ in section 91, crpc would take within its fold, blood samples, hair, nail, etc. of a person – There is an eminent need to subject “X” and her child to DNA profiling in order to arrive at the truth.
