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IMPORTANT CASE LAW



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(2016) 1 SCC 530

Vasant Balu Patil vs. Mohan Hirachand Shah

Date of Judgment : 09.10.2015

A. Civil Procedure Code, 1908 – Or.6 R.17 – Amendment in plaint – Relief of declaration of title incorporated by way of amendment – If barred by limitation – Said amendment if related back to date of filing of suit – Determination of – Held, once said amendment was allowed and not challenged by defendants, the issue with regard to limitation had to be decided in favour of plaintiffs – Amendment in question related back to date of filing of suit – Doctrines and Maxims – Relation back – Applicability of, in case of amendment in pleadings – Limitation Act, 1963, Art.58

B. Specific Relief Act, 1963 – Ss.34, 36 and 38 – Suits for declaration of title and injunction in respect of property in question – Title – Proof of – Plaintiffs if held land in their own right or on behalf of villagers – Determination of

(2016) 4 SCC 549

Khursida Begum vs. Mohammad Farooq

Date of Judgment : 01.02.2016

Family and Personal Laws – Muslim Law – Gift – Hiba-bil-musha – Gift of undivided share in immovable property which was capable of division – When not invalid – Exceptional circumstances in which such gifts are valid – Description of property mentioned in plaint and in gift deed showing it to be commercial property situated in city of Jaipur which is capital of State of Rajasthan and is thus a large commercial town – Gift of undivided share in the property made by father to his then minor son (appellant) by execution of a registered deed – Property being in occupation of tenants, donor requested tenants to attorn to donee and right to collect rent thus stood transferred to donee – Gift found to be genuine – Held, exceptions when gift of undivided share (musha), which was capable of division, can be validated, satisfied – Hence gift can be given effect to – Transfer of Property Act, 1882, Ss.109 and 129

(2016) 6 SCC 317

Kusum Harilal Soni vs. Chandrika Nandlal Mehta

Date of Judgment : 12.04.2016

Rent Control and Eviction – Eviction of licensee – Recovery of compensation with interest – Fraud on court to thwart execution – Execution proceedings for recovery of arrears of compensation from licensee by attachment and sale of licensee's property, initiated by licensor after eviction and delivery of possession – Execution proceedings opposed by licensee (R-1) by setting up an MoU and an unregistered agreement with her daughter (R-2) indicating that licensee had sold her property to her unmarried daughter who would look after and maintain her mother even after her marriage – Held on facts, MoU and agreement are a sham, set up by licensee in collusion with her daughter to defeat and frustrate execution proceedings – Licensor entitled to carry out execution – Bombay Rents, Hotel and

Lodging House Rates Control Act, 1947 (57 of 1947), S.13-A(2) – Fraud/Forgery/Mala Fides – Fraud on court – Property Law – Easements Act, 1882 – Ss.64 and 60 – Civil Procedure Code, 1908 – Or.21 Rr.42 & 22 – Evidence Act, 1872, S.44

(2016) 4 MLJ 555 (SC)

Patel Ravjibhai Bhulabhai (D) vs. Rahemanbhai M.Shaikh (D)

Date of Judgment : 02.05.2016

Property Laws – Mortgage by Conditional Sale – Sale with Option to Repurchase – Transfer of Property Act, 1882 (Act 1882), Sections 58 (c) and 60 – Original Plaintiffs/Respondents executed deed in favor of Defendants/Appellants which was titled as conditional sale – Plaintiffs instituted civil suit for redemption of property in question – Trial court held that Plaintiffs have failed to prove that transaction was mortgage – First Appellate Court affirmed decree of dismissal of suit passed by Trial court – Plaintiffs preferred Second Appeal before High Court which reversed decree passed by two courts below – Defendants are in appeal before Court – Whether document in question, in its true interpretation, is mortgage by conditional sale, as interpreted by High Court or sale with option to repurchase as held by courts subordinate to it – *Held*, condition in deed in question that if Plaintiffs/Respondents make repayment within period of five years, Defendants shall handover possession of property in suit back to Plaintiffs, reflects that actual transaction between parties was of loan – Relationship of debtor and creditor existed – High Court has rightly held that deed in question is mortgage by way of conditional sale – Decree passed in favour of Plaintiffs does not require to be interfered with – Since possession of land was handed over to mortgagee, no interest was charged – On record that Defendants leased land to third parties, after possession was given by Plaintiffs – Court agrees with view taken by High Court – Appeal dismissed.

(2016) 4 MLJ 546 (SC)

Eitzen Bulk A/S vs. Ashapura Minechem Ltd

Date of Judgment : 13.05.2016

Arbitration – Foreign Award – Arbitration and Conciliation Act, 1996 (Act 1996), Section 34 – Foreign company and Indian company were in contract – Disputes having arisen between parties, matter was referred to Arbitration by sole Arbitrator – Arbitration was held in foreign location – According to English Law, Indian company was held liable and directed to pay sum – Indian company filed writ petition in one High Court resorting to Section 34 of Act 1996 which was allowed – Foreign company filed petition for enforcing arbitration award before another High Court which was allowed – Aggrieved by orders passed against each party in separate High Courts, both parties are in appeal – Whether Part I of Act 1996 is excluded from its operation in case of Foreign Award where Arbitration is not held in India and is governed by foreign law – *Held*, by Clause in agreement parties chose to exclude application of Part I to Arbitration proceedings between them by choosing foreign location as venue for Arbitration and by making English law applicable to Arbitration – Settled by now that where parties choose juridical seat of Arbitration outside India and provide that law which governs Arbitration will be law other than Indian law, part I of Act 1996 would not have any application – Award debtor would not be entitled to challenge award by raising objections under Section 34 before Court in India – Court in India could not have jurisdiction to entertain objections under Section 34 in such case – Judgment of High Court enforcing Foreign Award under Part II of Act 1996 is correct and liable to be upheld – Appeal of Indian company dismissed – Appeal of foreign company allowed.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

2016-1-L.W.(CrI) 552

Sujoy Mitra vs. State of West Bengal

Date of Judgment : 02.12.2015

Indian Penal Code, Section 376/Rape of Irish citizen, Procedure at trial, scope

Criminal Procedure Code, Section 278

Recording testimony of prosecutrix residing abroad through video conferencing Parameters to be followed, what are, stated

Accused challenged procedure adopted by trial court while recording statement of prosecutrix

Procedure laid down for recording statement of prosecutrix residing abroad

(2016) 3 SCC 309

Bobbili Ramakrishna Raja Yadad vs. State of A.P.

Date of Judgment : 19.01.2016

A. Crimes Against Women and Children – Dowry Prohibition Act, 1961 – S.6 – Non-return of dowry articles to bride by parents-in-law and other close relatives of husband – No presumption of entrustment under dominion of parents-in-law and other close relations, of dowry and traditional presents given at or about time of wedding – As regards stridhan articles, common practice is that same are sent along with bride to her matrimonial home for being kept and used by her – After marriage, couple started living in a different city separately from bride’s parents-in-law (A-2 and A-3) and sisters-in-law (A-4 to A-6) – In complaint against appellants alleging commission of offence under S.6, no specific allegation made that dowry amount and articles were entrusted to A-2 to A-6 at their separate place of abode which they kept and used without returning to bride – Allegations in complaint vague – Held, allegations prima facie do not establish offence under S.6 by A-2 to A-6 – Complaint quashed qua A-2 to A-6, but not against husband, A-1.

B. Crimes Against Women and Children – Dowry Prohibition Act, 1961 – Ss.6, 3 and 4 – Criminal proceedings under S.6 is independent of criminal prosecution under Ss.3 and 4 – Hence proceedings under S.6 against appellants were independently maintainable and did not stand barred because of pendency of trial against them in connection with offence under Ss.3 and 4 of the Act and Ss.304-B and 498-A IPC – However in the present case, in the absence of specific allegations of entrustment of dowry amount/articles to A-2 to A-6, criminal proceedings under S.6 quashed against them.

C. Criminal Procedure Code, 1973 – S. 482 – Quashing of criminal proceedings – Power should be exercised sparingly – Test is whether uncontroverted allegations made in complaint prima facie establish offence against accused – To decide whether it was expedient and in interest of justice, Court may consider any special features of the case – Held on facts, allegations in complaint do not prima facie disclose offence under S.6 of Dowry Prohibition Act, 1961 against Appellants 2 to 6 (parents and sisters of husband) – Hence continuation of criminal proceedings against them would not be just and proper – However proceedings against husband, A-1 not interfered with

D. Crimes Against Women and Children – Dowry Prohibition Act, 1961 – S.6 – Trust of dowry amount/stridhana created when placed in custody of husband or in-laws – Criminal offence on non-return of the same – Obligation to return the same even after conviction – Position explained – Trusts Act, 1882, Ss.88 and 89.

(2016) 3 SCC 135

Pooja Pal vs. Union of India

Date of Judgment : 22.01.2016

A. Criminal Trial – Investigation – Fresh investigation/Reinvestigation or further investigation – By the same or different agency – When permissible – Proactive role of court in (constitutional courts alone empowered to direct fresh investigation/reinvestigation and further investigation, while regular court empowered only to direct further investigation) – Need for – Fact that charge sheet has already been filed or that trial is pending – Relevance to whether fresh investigation/reinvestigation or further investigation can be ordered – Law summarised

B. Constitution of India – Arts. 136, 226 and 32 – Power of constitutional court to direct reinvestigation by CBI despite successive investigations by State agencies and despite pendency of trial – Scope of – Principles summarised – Case of brutal assassination of appellant's husband, who was a sitting MLA, in broad daylight under public gaze, by rival candidate

C. Criminal Trial – Investigation – Aim of investigation – What is – Efficacious prospects with the advent of scientific and technical advancements – Literature surveyed – Held, aim of investigation is ultimately to search for truth and to bring offender to book – Criminal Procedure Code, 1973, Ss.155 to 157 and 173

D. Criminal Trial – Investigation – Prime concern and endeavour of court of law – What must be – Held, it is to secure justice on basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency – Criminal Procedure Code, 1973 – Ss.155 to 157 and 173 – Constitution of India, Arts.136, 226 and 32

E. Criminal Trial – Criminal trial, what encompasses – Held, it encompasses investigation, inquiry, trial, appeal and retrial i.e. entire range of scrutiny including crime detection and adjudication on basis thereof

F. Criminal Trial – Duty of court while conducting trial – What is – Proactive role – Held, duty is to be guarded by mandate of law, conceptual fairness and above all its sacrosanct role to arrive at truth on basis of material brought on record – Evidence Act, 1872, S.165

G. Police – Duty, Powers and Role of Police – What are – Held, role of police is to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its

foremost duties – Constitution of India – Art.21 – Criminal Procedure Code, 1973, Ss.155 to 157 and 173

H. Criminal Trial – Witnesses – Eyewitness – Eyewitnesses retracting from their version made before police – Inference drawable from

I. Constitution of India – Arts.21, 136, 32 and 226 – Ghastly, revolting and villainous violations of invaluable right to life – Remedial initiatives in such cases – What should be

J. Constitution of India – Art.21 – Protection from crime – Duty of State – Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse

K. Constitution of India – Arts.136, 226, 21, 14, 368 and 32 – Power of constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation

L. Constitution of India – Arts.136, 226 and 32 – Entrustment of fresh investigation to CBI by constitutional courts despite pendency of trial and availability of the power of the courts below under Ss.311 and 391 CrPC r/w S.165 of the Evidence Act – When warranted – Overwhelming and imperative necessity to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain confidence of the community at large, reasons for which CBI ought to be directed to undertake a de novo investigation – Criminal Procedure Code, 1973 – Ss.311, 391 and 155 to 157 & 173 – Evidence Act, 1872, S.165

(2016) 2 MLJ (CrI) 141 (SC)

Gajanan Dashrath Kharate vs. State of Maharashtra

Date of Judgment : 26.02.2016

Murder – Circumstantial Evidence – The Indian Penal Code, 1860 (IPC) – Section 302 – The Indian Evidence Act, 1872 (the Act, 1872) – Section 106 – Accused/Appellant charged for murder of his father/deceased under Section 302 IPC – Trial Court convicted Accused based on evidence of PW1 and PW2 along with circumstantial evidence – High Court concurred with findings of Trial Court – Accused was convicted and sentenced accordingly – Challenging judgment of Trial Court and High Court, accused filed present appeal – Whether conviction of accused under Section 302 of IPC is justified – *Held*, PW1 deposed that accused abused and quarreled with deceased father on previous night of incident – Testimony of PW1 corroborated with testimony of PW2 – Accused was in drunken state – PWs 1 & 2 of old age, quite natural that they would keep themselves away from Accused – Credibility of PWs 1 and 2 cannot be doubted on ground that they did not try to intervene in the incident – Prosecution satisfactorily explained delay in lodging complaint – Prosecution case cannot be doubted on small delay between time of occurrence and in registration of first information report – No explanation offered by accused for presence of blood of deceased on his clothes – Prosecution proved that accused was at place of occurrence along with deceased – Accused duty bound to explain as to how death of his father was caused – When murder is committed in a house in secrecy, inmates of the house cannot escape by keeping quiet – Even though initial burden is upon prosecution, as per Section 106 of the Act, 1872, inmates also have corresponding burden – When accused could not offer any explanation as to homicidal death of his father, strong circumstance against Accused that he is

responsible for same – On appreciation of oral evidence and circumstances Trial Court and High Court rightly convicted accused under Section 302 IPC – No reason to interfere with impugned judgment – Conviction and sentence imposed upon accused confirmed – Appeal dismissed.

(2016) 2 MLJ (Crl) 229 (SC)

State of Madhya Pradesh vs. Goloo Raikwar

Date of Judgment : 02.03.2016

Murder – Cause of Death – Alteration of Conviction – The Indian Penal Code, 1860 – sections 302 & 304-I – The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act (the Act) – section 3(2)(v) – Accused/Respondents attacked victim/deceased and PW1 with weapons – On being taken to hospital, victim was declared dead – Charges initiated against accused under Sections 302 IPC and 3(2)(v) of Act – Trial Court convicted accused under section 302 IPC and sentenced them to life imprisonment – Accused acquitted for charges under Section 3(2)(v) of Act – On appeal, High Court set aside conviction under section 302 IPC and altered conviction to that of section 304-I IPC – Aggrieved by judgment of High Court, State filed present appeal – Whether High Court was justified in altering conviction of accused from one under section 302 IPC to that under section 304-I IPC – *Held*, Second Respondent pelted country bomb at deceased and PW1 and inflicted blow of sword on deceased – Other accused assaulted deceased with sword – Deceased soiled in blood, was taken to hospital and was declared dead – PW6, doctor who conducted autopsy stated that injuries found on body sufficient enough to cause death – Cause of death was excessive haemorrhage from injury no.3 which was on the knee – It is established that accused hurled country made bombs – Incised injuries caused to deceased were intentional and were sufficient to cause death in ordinary course of nature even if his death was not intended – It is sufficient to bring case within thirdly of section 300 IPC – High Court erred in altering conviction of accused from one under Section 302 IPC to that under section 304-I IPC – Judgment of High Court set aside – Judgment of Trial Court restored – Appeal allowed.

HIGH COURT CITATIONS CIVIL CASES

(2016) 4 MLJ 331

G.K. Parthasarathy vs. K. Gopal

Date of Judgment : 28.01.2016

Limitation – Suit for Recovery of Possession – Barred by Limitation – Limitation Act 1963 (L Act 1963), Article 64 – Specific Relief Act 1963 (SR Act 1963), Section 6 – Revision Petitioner/Plaintiff filed suit against Respondents/defendants seeking relief of permanent injunction restraining Respondents from trespassing or interfering with peaceful possession and enjoyment of suit property – Revision Petitioner filed application seeking permission to amend plaint for recovery of possession – Trial Judge dismissed application on ground that application itself is barred by limitation as contemplated under Section 6 of SR Act 1963 – Aggrieved by impugned order, Plaintiff is before Court with civil revision – Whether application filed by Plaintiff is barred by limitation in view of Section 6 of SR Act 1963 – *Held*, since provisions of Article 64 of L Act 1963 provides that for possession of immovable property based on previous possession and not on title, when plaintiff while in possession of property was dispossessed, suit for recovery of possession can be filed within period of 12 years from date of dispossession even though it is beyond six months – It is to be understood from language coined under Article 64 of L Act 1963 that suit to be filed within six months cannot be bar for person, who is dispossessed, to file suit – He can file suit within 12 years from date of dispossession – Revision allowed.

(2016) 3 MLJ 262

B. Selvam vs. Logambal (Deceased)

Date of Judgment : 05.02.2016

Property Laws – Permissive Occupation – Revocation of License – First Respondent/Plaintiff filed original suit seeking direction to Appellants/defendants to vacate and deliver vacant possession of ‘B’ schedule property – Trial Court decreed suit as prayed for – First Appellate Court dismissed appeal filed against judgment of Trial Court – First Respondent/Plaintiff contends that she permitted Appellants/Defendants to reside in ‘B’ schedule property – Appellants/Defendants claim joint possession and enjoyment of suit property and claimed equal entitlement – Aggrieved by judgment and decree of Courts below, Appellants filed present second appeal – Whether Appellants/Defendants claiming equal share in suit property prove their joint possession – Whether Appellants/Defendants on revocation of license liable to vacate and surrender vacant possession of ‘B’ schedule property – *Held*, Trial Court fully satisfied that suit property originally belonged to husband of First Respondent and after his demise, First Respondent inherited property – Though Appellants have marked documents, trial Court concluded that Appellants never proved their claim of joint possession – As per evidence of DW1, his father had absconded or unheard for about thirty three years – Highly suspicious to find name of absconding person for about thirty three years in adangal – No satisfactory evidence adduced by Appellants to prove that suit ‘A’ Schedule house was put up with funds provided by their father – In notice sent to Appellants, it is stated that Appellants were given permission to occupy ‘B’ schedule property and to vacate possession of ‘B’ schedule property – No reply issued by Appellants/Defendants for notice issued – Presumed that since license was revoked by notice,

Appellants were bound to vacate and surrender vacant possession of 'B' schedule property – Name of district mentioned in adangal was not at existence during period when adangal was issued – Hence First Appellate Court disbelieved adangal document – It is proved that deceased First Respondent/Plaintiff had given licence to Appellants/Defendants to stay in 'B' schedule property – Appellants/Defendants liable to vacate and surrender vacant possession of 'B' schedule property – Judgment and Decree of First Appellate Court confirmed – Appeal dismissed.

(2016) 3 MLJ 619

Manisha K. Kawad @ Lakshmi vs. Tarun I. Tater

Date of Judgment : 23.02.2016

Hindu Law – Divorce – enhancement of Permanent Alimony – Hindu Marriage Act (HMA), Section 13(1)(ia) – Protection of Women against Domestic Violence Act (Act) – Respondent/husband filed petition against Appellant/wife for dissolution of marriage on ground of cruelty – Appellant filed counter and also petition seeking remedies under Act – Trial Court passed impugned order ordering dissolution of marriage on ground of cruelty and granting permanent alimony to Appellant towards maintenance from Respondent – Wife filed present appeal for enhancement of permanent alimony alleging that alimony fixed by Trial Court is below Respondent's standard of life and annual gross total income derived by it is also not proper – Respondent resisted that Trial Court rightly fixed specific sum as permanent alimony after analysis of facts on record and income tax returns filed by Respondent – Whether permanent alimony fixed by Trial Court proper or to be enhanced – *Held*, impugned order shows that there is no illegality or irregularity or error in said order granting permanent alimony – Impugned order modified in view of plea made by Appellant for enhancing permanent alimony and by Respondent, who said to be facing financial difficulty – Respondent stated that sum ordered by Trial Court already paid by him to Appellant – Respondent permitted to handover demand draft for enhanced amount in favour of Appellant through her counsel.

(2016) 4 MLJ 17

S.K. Ramasamy vs. S.S. Chellakutti

Date of Judgment : 25.02.2016

Contract – Specific Performance – Barred by limitation – The Limitation Act, 1963, Sections 62 and Article 23 – The Indian Evidence Act, 1872 – Sections, 101, 102 and 103 – Plaintiff/Respondent filed suit against Defendants/Appellants seeking relief of specific performance directing Defendants to execute and register sale deed in respect of suit property in his favour and to receive balance of sale price – Plaintiff also sought for granting permanent injunction restraining Defendants from alienating or encumbering suit property in favour of third parties – Alternatively, Plaintiff sought for repayment of advance amount with interest and creation of charge over property – Trial Court dismissed suit – In first appeal, First Appellate Court modified decree of Trial Court and granted alternative relief prayed by Plaintiff – Aggrieved, Defendants filed present appeal challenging judgment of First Appellate Court – Whether First Appellate Court after rejecting relief of specific performance, erred in decreeing suit for refund of money, when relief is time barred – *Held*, Plaintiff executed Varthamana Deed but refrained from marking same on his side – Plaintiff not filed suit with clean hands – Suppression of execution of Varthamana Deed by Plaintiff and hiding from marking the same on his said entails to reject his claim – Plaintiff admitted that certain amount was advanced as loan to Defendants and two years' time was given for repayment – Plaintiff stated that he was under the obligation to cancel sale agreement provided loan amount was paid within time – It is independent and personal loan and not charged upon immovable property belonging to Defendants – Section 62 of Act, 1963 has no applicability – If loan amount was charged upon property, Plaintiff would not have

asked for alternative relief of creation of charge over property – Article 23 of Act, 1963 states that for money payable to Plaintiff, for money paid for Defendants, period of limitation is three years – For loan availed by Defendants, period of limitation is three years – Claim of Plaintiff barred by limitation – When relief of specific performance of contract was rejected, alternative relief of refund of advance amount cannot stand – Trial Court itself has found Plaintiff had failed to substantiate his claim as contemplated under section 101 of Act, 1872 – Defendants substantiated their case as under sections 102 and 103 of Act, 1872 – Alternative relief cannot be maintained – Judgment and decree of First Appellate Court granting alternative relief not sustainable, liable to be set aside – Judgment and Decree of Trial Court restored – Appeal allowed.

(2016) 4 MLJ 378

B.S. Narayanan vs. B.S. Anandan

Date of Judgment: 02.03.2016

Judgment – Judgment on Admission – Maintainability – Code of Civil Procedure, 1908 (Code 1908), Order 12 Rule 6 and Section 151 – Petitioner has filed suit against Respondents seeking directions to Respondents to adduce evidence – Respondent 1 filed memorandum – Petitioner/plaintiff filed application under Order 12 Rule 6 r/w Section 151 Code 1908, to pass preliminary decree in suit based on alleged admissions made by Respondents 1 and 5/defendants 1 and 5 in their written statement – Trial Judge proceeded to dismiss application – Whether trial Judge can be directed to pass judgment based on admission of Respondents 1 and 5/defendants 1 and 5 as contemplated under Order 12 Rule 6 of Code 1908 – *Held*, Court finds that there are lot of triable issues and no judgment can be passed based on written statement filed by Respondents 1 and 5 – It is to be pointed out that provisions of Order 12 Rule 6 cannot be construed that Judgment on admission is matter of right, but it is matter of discretion of court which is to be judiciously exercised – Particular averments made by Respondents 1 and 5 in their written statement cannot be termed as admission – Several triable issues are there, it may be better to direct parties to face trial – Revision dismissed.

(2016) 3 MLJ 286

Sarasamma vs. G. Pandurangan

Date of Judgment: 04.03.2016

Succession Laws – Will – Proof of Execution – Hindu Succession Act (Act) – Suit properties belonged to deceased/Testator and his wife – Plaintiff in first suit has filed suit for grant of Letter of Administration based on Will by deceased to claim suit properties – Defendant in first suit/Plaintiff in other suit for injunction is son of deceased – Plaintiff in first suit is not legal heir of deceased and she is neither Class-1 heir, nor Class-2 heir of deceased as per Act – Defendant contest claim and filed suit for permanent injunction and declaration that Will is null and void – Whether Plaintiff has proved Will executed by deceased or not in favour of Plaintiff and her husband – Whether alleged Will was executed by deceased or not and whether said Will is proved through witnesses examined before Court – *Held*, it is for Plaintiff to prove Will before this Court by examining attesting witnesses and adduce cogent and convincing evidence – Evidence of attesting witnesses (P.Ws.2 and 3) and Plaintiff (P.W.1), is contrary to each other regarding date of execution and registration of Will and their evidence is contrary to their proof affidavits – Evidence of P.Ws. 1 to 3 has to be rejected, as same is not trustworthy – Burden of proving Will executed by deceased, as claimed by Plaintiff in her pleadings and evidence, is on Plaintiff and she has to discharge burden of proving Will – Will has not been proved by Plaintiff as per law and documents produced on side of Plaintiff are not relevant to case – Plaintiff and her husband (since deceased) are not legal heirs of deceased as per Act, either as Class-I heirs or Class-2 heirs – In absence of proving Will, Plaintiff is not entitled to succeed to

properties of deceased – Defendant alone is sole legal heir to succeed to properties and estate of deceased – As Plaintiff and her husband have no right, interest or title over suit properties, they have no right to execute any sale deed in favour of parties or execute any document in respect of same – Any party who purchased properties from Plaintiff and her husband cannot acquire any valid title over properties – After analysing entire oral and documentary evidence adduced by both sides, Will, alleged to have been executed by deceased and stated to have been registered, has not been proved by Plaintiff as per law – Plaintiff is not entitled for grant of Letters of Administration as prayed for – Suit filed by Plaintiff liable to be dismissed and she is not entitled to any relief – Since Plaintiffs 2 and 3 in second suit are legal heirs of deceased first plaintiff therein and plaintiff in first suit has based her right and claim only based on alleged Will and Will having not been proved, Plaintiff has no right, title or interest over Suit properties – Consequently, Plaintiffs in second suit are entitled to prayer of permanent injunction as prayed for therein – Suit for grant of Letters of Administration dismissed – Suit for permanent injunction and declaration decreed as prayed for.

(2016) 4 MLJ 375

J. Vasanthi vs. N. Ramani Kanthammal

Date of Judgment: 16.03.2016

Court Fee – Payment of Court Fees – Validity of – Tamil Nadu Court Fees and Suits Valuation Act, 1955, Sections 25(d) and 40 – Suit filed for declaration that third party individual and 7th Defendant were owners of suit property and for declaration that sale deeds in question as null and void and for permanent injunction – Petitioners/3rd, 4th and 5th Defendants filed application to direct Plaintiff to pay Court fees under Section 40 and if Plaintiff failed to pay Court fee, plaint to be rejected, since plaint is undervalued, same dismissed – Present revision petition with allegation that Plaintiff liable to pay Court fee under Section 40, not under Section 25(d), since declaration sought for amounts to cancellation of sale deed – Whether Court fee paid by Plaintiff under Section 25(d) correct and proper or to be paid under Section 40 – *Held*, plaint shows that Plaintiff denied execution of sale deeds – In earlier occasion, it was held that Court fee payable is only under Section 25(d) and not under Section 40 – Further, valuation of property and Court Fee are not purely question of law, but mixed question of fact and law, same can be decided only based on evidence let in by parties – Till that time, averments made in plaint to be taken as correct with regard to valuation and payment of Court Fee – Lower Court rightly dismissed application filed by Petitioners – No irregularity or illegality found in impugned order warranting interference – Petition dismissed.

2016 (3) CTC 429

V.S. Sridharan vs. Baby Mehala

Date of Judgment: 23.03.2016

Specific Relief Act, 1963 (47 of 1963), Section 28 – Limitation Act, 1963 (36 of 1963), Articles 137 & 59 – Rescission of Contract of Sale – Suit for Specific Performance – Suit decreed *ex parte* in year 2003 – Trial Court directed Plaintiff to pay balance sale consideration within 3 months – Decree does not provide any time limit for payment of balance Sale consideration in case Defendant refused to receive balance sale consideration – Plaintiff deposited balance Sale consideration in Court and filed Execution Petition for execution of Sale Deed – Execution Court executed Sale Deed in year 2007 – Defendant filed Application for Rescission of Contract in year 2014 after inordinate delay – Application filed by Plaintiff for Rescission of Contract is barred by limitation – Order of Trial Court dismissing Rescission Application is affirmed.

(2016) 4 MLJ 265

S. Singaravelu vs. S.Natarajan

Date of Judgment: 28.03.2016

Written Statement – Separate Written Statement – Filing of – Code of Civil Procedure, 1908, Sections 94(e), 151 and Order VIII Rule 9 – 2nd and 3rd Respondents/1st and 2nd Plaintiffs filed suit for relief of partition and separate possession, same dismissed – On appeal, Single Judge set aside decree of Trial Court and remitted suit back to Trial Court – Suit restored on file of Trial Court – Pending suit, 1st Respondent/2nd Defendant filed application under Order VIII Rule 9 read with Section 94(e) and 151 seeking permission to file separate written statement with counter claim – Trial Court permitted 1st Respondent to file separate written statement containing counter claim – Present revision petition by 3rd to 6th and 8th to 14th Defendants – Whether order of Trial Court permitting 1st Respondent to file separate written statement disowning earlier written statement can be sustainable – *Held*, 1st Respondent/2nd Defendant has sought permission to file separate written statement, despite fact that he had earlier adopted written statement filed by 5th Defendant, on ground that he did not instruct his counsel to adopt written statement of 5th Defendant, on ground that he did not instruct his counsel to adopt written statement of 5th Defendant and had only instructed his counsel to prepare his separate written statement – If same could be true, he would not have kept quiet till trial was over and judgment pronounced by Trial Court in original suit – 1st Respondent could have raised such plea in appeal filed against decree made in original suit and could have taken different stand from other Defendants by engaging separate counsel in earlier appeal, as he figured as 1st Respondent in said appeal and contested that appeal jointly with them – Having not done so, 1st Respondent seems to have chosen to shift his stand and support Plaintiffs by preferring to seek permission to file separate written statement containing averments contrary to earlier written statement – If separate written statement allowed to be filed, that too at belated state, same will cause much prejudice to other Defendants – Reason assigned by 1st Respondent for disowning earlier written statement and seeking to press into service written statement containing different and opposite plea not properly dealt with by Lower Court – Impugned order of Trial Court permitting 1st Respondent to file separate written statement disowning earlier written statement cannot be sustained, same to be interfered with and set aside – Revision Petition allowed.

(2016) 4 MLJ 343

Johnshi Manuel vs. J.C. Sampath Kumar

Date of Judgment: 15.04.2016

Civil Procedure – Interlocutory Application – Withdrawal of Suit – Code of Civil Procedure, 1908 (Code 1908), Order I Rules 8(1) and 8(4) and Order 39 Rule 1 – Suit was filed by Respondents 1 and 2 herein in individual capacities, but as persons representing members of Diocese following procedure contemplated under Order I Rule 8 of Code 1908 – Along with plaint, interlocutory application was filed under Order 39 Rule 1 CPC for an interim injunction, pending disposal of Suit – Respondents 1 and 2 filed memo withdrawing interlocutory application – Revision petitioner herein filed application for being impleaded as party in suit – Trial Judge passed impugned order dismissing interlocutory application as withdrawn having effect of vacating order of status quo granted in said interlocutory application – Aggrieved by same, Petitioner approached court with present revision – Whether order permitting withdrawal of interlocutory application can be granted without following procedure contemplated under Order I Rule 8(4) Code 1908 in representative suit – *Held*, whenever

representative suit filed after getting permission under Order I Rule 8(1) is sought to be compromised or withdrawn, procedure under sub clause (4) of Order I Rule 8 should be complied with so as to enable other interested persons to get into shoes of outgoing plaintiffs and proceed with case – Procedure contemplated under Order I Rule 8(4) CPC equally applies to interlocutory application/incidental proceedings also and not confined to main suit alone – Permission granted by Trial Judge to Respondents 1 and 2 to withdraw interlocutory application, without following procedure contemplated under Order I Rule 8(4) CPC, is nothing but exercise of jurisdiction, which is not conferred on Trial court – Jurisdiction conferred on Trial court has not been exercised by trial court as mandate provided in sub clause (4) has not been followed – Finding of trial court is quite infirm, erroneous and discrepant and same requires interference by court in revision – Order of Trial court liable to be interfered with and set aside – Revision allowed.

HIGH COURT CITATIONS CRIMINAL CASES

(2016) 2 MLJ (CrI) 666

M. Sakthivel vs. State

Date of Judgment : 01.02.2016

Murder – Circumstantial Evidence – Indian Penal Code, 1860 (Code 1860), Sections 302, 364 and 201 – Indian Evidence Act, 1872 (Act 1872), Sections 65A and 65B – Appellant/accused challenged conviction under Sections 302, 364 and 201 of Code 1860 – Whether prosecution proved its case against Appellant beyond reasonable doubts based on circumstantial evidence – *Held*, perusal of evidence of PW-4 would show that he did not disclose about alleged fact immediately after alleged occurrence, but only after few days of occurrence for first time to police – Silence kept by PW-4 for such long time is unnatural and makes his evidence unbelievable – During course of investigation, PW-4 did not give identification features of accused – Material contradiction to effect as to whether M.Os. 6 to 17/material objects recovered from accused – Much importance cannot be given to evidence of PWs.1 and 10 to effect that M.Os. 6 to 17 recovered only from custody of accused in pursuance of disclosure statement made by him – Evidence of PW-10 would show that deceased used cell phone in question and collected call details for specific period from Special Branch Inspector of Police, who obtained same from Cell phone Company – Neither Inspector of Police examined nor material produced to prove said fact – Perusal of Ex.P14/call details would show that it was not obtained from authorized officer with certificate as required under Section 65B of Act 1872 to show that it is true copy – Since there is no certificate obtained from competent authority as provided under Sections 65A and 65B of Act 1872, Ex.P14 is not admissible in evidence – Though it is alleged that accused had illicit intimacy with deceased, no evidence for same – Motive not proved by prosecution – Prosecution failed to prove circumstances beyond reasonable doubt and proved circumstances do not unerringly point to guilt of accused – Conviction imposed on Appellant set aside and he is acquitted – Appeal allowed.

(2016) 2 MLJ (CrI) 440

Kaleel Ahamed Sahib vs. State

Date of Judgment : 19.02.2016

Criminal Proceedings – Quashing of Proceedings – Cruelty – Code of Criminal Procedure, 1973 (Code 1973), Section 482 – Indian Penal Code, 1860 (Code 1860), Section 498A – Dowry Prohibition Act (Act), Section 4 – 2nd Respondent/*defacto* complainant lodged complaint alleging acts of cruelty against Petitioners/Accused Nos. 1 to 4 / husband and in-laws – In enquiry, couple agreed to reunite and establish separate household – 2nd Respondent withdrew complaint given by her – Dispute arose again between couple and 2nd Respondent filed fresh complaint – Since Police did not take action, 2nd Respondent filed petition under Section 482 of Code 1973 for registration of FIR – Pursuant to Court’s order, case registered against accused under Section 498(A) of Code 1860 and Section 4 of Act and final report also filed – Pending proceedings, Petitioners filed petition under Section 482 to quash proceedings pending against them – *Defacto* complainant resisted that there are materials for trial to proceed against accused and this is not fit case to quash prosecution – Whether proceedings pending against Petitioners could be quashed – *Held*, records show that *defacto* complainant gave complaint, in which she stated that she was taunted by her in-laws in joint family, but she withdrew complaint by accepting to live in separate household with her husband – *Defacto* Complainant also,

stated that jewels given to her are with her parents and thereafter, changed her stand, as her husband pronounced triple Talaq – Allegations in final report against parents-in-law and sister-in-law are very vague – Final report and statements show that prosecution against accused Nos.2, 3 and 4 is only abuse of process of law, but there are materials for prosecution to proceed against accused No.1 – Proceedings pending against accused Nos.2, 3 and 4 alone quashed – Petition partly allowed.

(2016) 2 MLJ (Crl) 407

P. Kalpana vs. R. Saravanan @ Arumugam

Date of Judgment: 26.02.2016

Domestic Violence – Maintainability of Revision – The Code of Criminal Procedure (Cr.PC), 1973 (Code, 1973) – Section 372 – The Protection of Women from Domestic Violence Act, 2005 (Act, 2005) – Section 29 – Petitioner/wife filed case against her husband/First respondent and other relatives by marriage seeking relief under Act, 2005 – Chief Judicial Magistrate dismissed case – Aggrieved, Petitioner filed present revision petition instead of filing an appeal – Whether revision petition maintainable when appeal remedy under section 29 of Act, 2005 is available – *Held*, Appeal is creation of statute and right of appeal should be statutorily conferred – Right of appeal not a matter of assumption or presumption, is statutory remedy – According to section 372 of Code, 1973, no remedy shall lie unless otherwise provided under Code, 1973 or any other law – Act, 2005 enacted for problems between spouses, to provide various reliefs to wives, children as against domestic violence – Against any order under Act, 2005, appeal is provided under section 29 of Act, 2005 – Combined reading of section 29 of Act, 2005 and section 372 of Code, 1973 shows that against any order under Act, 2005, appeal shall lie to Court of Sessions – Pursuing course of appeal remedy should be as per statutory provisions under section 29 of Act, 2005 – Criminal revision not maintainable.

(2016) 2 MLJ (Crl) 493

Angamuthu vs. Inspector of Police

Date of Judgment: 21.03.2016

Investigation – Further Investigation – Jurisdiction of Magistrate – Code of Criminal Procedure, 1973, Sections 173(8), 190, 204 and 319 – Case registered by 1st Respondent/police against accused Nos.1 to 5 on complaint given by *defacto* complainant – On basis of final report of Investigation, Magistrate took cognizance against accused Nos.1 to 3 and proceeded further – *Defacto* complainant filed petition under Section 173(8) against left out accused, who were already named in FIR – Magistrate held that he has no jurisdiction under Section 173(8) to order for further investigation – Revision – Whether Magistrate has jurisdiction under Section 173(8) to order for further investigation – *Held*, FIR may contain names of several persons as accused, but final report can be filed only against persons against whom incriminating materials collected – Facts on record show that though accused Nos.1 to 5 were named in FIR, as incriminating materials available only with reference to accused Nos.1 to 3, Investigating Officer filed final report accordingly – Magistrate took cognizance on offences stated applying his judicial mind and at that stage, Magistrate had power to take cognizance against left out accused, but there must be incriminating materials against him – Question of further investigation will arise only when Investigating Officer discover new fact requiring probe – Before taking cognizance under Section 190 on final report, if Magistrate feels there are gaps requiring further statement to be recorded, he can direct Investigating Officer to do so – Magistrate cannot direct police as to manner of investigation – If there are materials from evidence presented before Court that some persons also involved in crime, Court can take cognizance against them under Section 319 and issue them summons under Section 204 – In present case, Magistrate did not record prosecution evidence – When complainant enters witness box as PW-1, if there are materials against left out

accused, he can proceed against them under Section 319 – Magistrate cannot simply take his testimony as gospel truth, but can subject him to cross examination and see that there are incriminating materials warranting issuance of summons to left out accused – Magistrate directed to take further action under Section 319, if there is evidence warranting summoning of other persons as accused – Petition disposed of.

(2016) 2 MLJ (CrI) 467

Mary vs. State

Date of Judgment: 23.03.2016

Murder – Dying Declaration – Indian Penal Code, 1860, Sections 302 and 34 – Appellants/accused Nos.1 and 2 convicted under Section 302 read with Section 34 – Appeal against conviction – Whether prosecution proved guilt of accused beyond reasonable doubts – *Held*, though minor discrepancies found in earlier dying declarations made by deceased, they are in same line – Subsequent to those dying declarations, Inspector of Police went to hospital and after having ascertained that deceased was in conscious state, he recorded her statement – In that statement, deceased had told that she herself poured kerosene and set fire – In respect of earlier dying declaration, deceased offered explanation that due to her animosity against accused with view to lock them in case, she made such false allegation against them – Deceased further stated that since her conscience pricked, she came out with true version and PW-12 stated about same in his evidence – Prosecution had no explanation in respect of evidence of PW-12 – Last dying declaration is contrary to earlier dying declarations – In absence of explanation by prosecution as to why last dying declaration made to PW-12 should be rejected, benefit of same given to accused – Prosecution did not prove guilt of accused beyond reasonable doubts – Conviction made by Trial Court on Appellants set aside and they are acquitted – Appeal allowed.

(2016) 2 MLJ (CrI) 485

Vijay Pradap Singh vs. State

Date of Judgment: 23.03.2016

Bail – Release of Lunatic – Code of Criminal Procedure, 1973 – Sections 329, 330, 397 and 439 – Indian Penal Code, 1860 (Code, 1860) – Sections 302 and 307 – Respondent Police registered case against Petitioner/Central Industrial Security Force constable under sections 302 and 307 of Code, 1860 – Petition under section 330 of Code, 1973 seeking release of Petitioner on bail was filed – Relying on medical certificate that Petitioner was fit for Trial, bail petition was dismissed by Magistrate – Revision – Whether order passed under section 330 of Code, 1973 by Magistrate suffers from any legality or propriety – *Held*, Magistrate conducted enquiry in accordance with section 329 of Code, 1973 – Civil Assistant surgeon conducted examination on Petitioner and Magistrate questioned Petitioner to satisfy whether Petitioner is fit for trial – Contentions of Petitioner relevant only in bail petition filed under section 439 of Code, 1973 – Correctness of bail dismissal order passed by subordinate Court cannot be questioned before Superior Court – Bail jurisdiction of Court under Chapter XXXV of Code, 1973 is wide and vast – Consideration of period of incarceration, stage of investigation, availability of accused for trial, offering of sureties by acceptable persons, consideration of health condition are within domain of Court under its bail jurisdiction under section 439 of Code, 1973 – Under Section 397 of Code, 1973, this Court can only see whether orders of Subordinate Court suffers from any legality or p – Court cannot interchange Section 439 of Code, 1973 for Section 397 of Code, 1973 – Court can exercise its jurisdiction under Section 330 of Code, 1973 only when individual is of unsound mind and not fit for Trial – In view of position of law and report of medical officer, contention of Petitioner that order passed by Magistrate is faulty and suffers from legality not accepted – Revision dismissed.

2016-1-L.W. (Crl) 682

Soundar @ Soundarrajan and another

vs.

The State rep. by The Inspector of Police, Ethappur, Salem District

Date of Judgment : 31.03.2016

I.P.C., Sections 302, 34, extra judicial, confession reliance, recording by magistrate

Evidence act, Section 30 extra judicial, confession reliance, recording by magistrate

Criminal Procedure Code, Section 164(4), confession, recording by magistrate how to be done

Murder – Proof of – Retracted confession Extra Judicial – Recording by Magistrate – Compliance of section 164(4) whether made – Magistrate omitted to record that accused gave confession voluntarily, is inadmissible – Presumption that confession was not made voluntarily

Extra Judicial confession to stranger, inadmissible

(2016) 2 MLJ (Crl) 471

P. Mani vs. V. Ganeshkumar

Date of Judgment: 31.03.2016

Complaint – Dismissal of Complaint – Validity of – Code of Criminal Procedure, 1973 (Code 1973), Sections 200, 201 and 202 – Chennai City Police Act, 1888 (Act 1888), Section 75(1)(c) – Money dispute arose between Petitioner/complainant and Respondent/accused – Petitioner lodged complaint under Section 200 of Code 1973 before Magistrate alleging that Respondent abused him in filthy language and threatened him with dire consequences, if he demands money back – Magistrate dismissed complaint – Revision – Whether order of dismissal passed by Magistrate suffers from legality or impropriety – *Held*, shifting of evidence consisting of statement of complainant and witnesses and analyzing it are matter to be considered during trial – Enquiry under Sections 200 to 202 of Code 1973 contemplated to satisfy Magistrate that there is ground to proceed further – Facts on record show that Petitioner and Respondent are not strangers and between them, there is money dispute – Allegation in private complaint is that in District Court Campus, Respondent alleged to have abused Petitioner in filthy language and also threatened him, same also reiterated in sworn statement of other two witnesses – Occurrence place is District Court Campus and it is public place and occurrence time is Court office hours – Many lawyers, litigants, vendors, trouble makers, sureties and accused will frequent – By the act of complaint, possibility of breach of public peace cannot be ruled out – In such circumstances, there is ground to proceed against Respondent under Section 75(1)(c) of Act 1888 – Impugned order of dismissal of Trial Court suffers from legality, same set aside – Magistrate directed to take cognizance for offence under Section 75(1)(c) of Act 1888 and issue summons to Respondent – Revision allowed.

(2016) 2 MLJ (CrI) 474

Nagaraj vs. State

Date of Judgment : 04.04.2016

Dacoity – House Trespass – Indian Penal Code, 1860 (Code 1860), Sections 395 and 457 – Indian Evidence Act, 1872 (Act 1872), Section 27 – Appellants/accused Nos.2 to 9 convicted under Sections 457 and 395 of Code 1860, same challenged – Whether prosecution established charges under Sections 457 and 395 of Code 1860 against Appellants beyond reasonable doubts – *Held*, PW-1 identified accused No.2 alone – In her complaint/Ex.P1, PW.1 did not give description of accused including accused No.2 – PW-1 had no opportunity to have countenance of accused No.2 – PW-1 admitted that at police lock-up, accused No.2 was identified – Identification of accused No.2 by PW-1 before Magistrate at Test Identification Parade could not be accepted – PW.14/Investigating Officer stated that he arrested accused Nos.1, 5, 6 and 7 and recorded their confessional statements in presence of PWs.4 and 5 and effected recovery of M.O.4/battery at instance of accused No.4 – PWs.4 and 5 turned hostile, recovery of M.O.4 not established – PW.10/pawn broker admitted that he did not see accused No.6 pledging M.O.1 in their pawn shop – Pawn ticket for M.O.1 also not produced – Recovery of M.O.1 not established – PW-12/Village Assistant and PW-11/VAO did not support prosecution version of recovery of properties relating to M.O.2/iron box, M.O.3/TV and M.O.5/pair of silver anklet under Section 27 of Act 1872 – Contradiction as to arrest of accused and recovery of case properties – Cross examination of PW-11 revealed that he acted as recovery witness in certain other property offence cases registered by police and seemed to be obliging witness of police, said recovery also not established – Prosecution did not establish charges beyond reasonable doubts – Conviction imposed on Appellants under Sections 457 and 395 set aside and are acquitted – Appeals allowed.

(2016) 2 MLJ (CrI) 385

Rathinam vs. State

Date of Judgment: 15.04.2016

Murder – Circumstantial Evidence – Indian Penal Code, 1860, Sections 302, 201 and 304 – Appellant/accused convicted under Sections 302 and 201 read with Section 302 based on circumstantial evidences – Appeal against conviction – Whether based on circumstantial evidence, prosecution proved its case against Appellant beyond reasonable doubts – *Held*, conduct of accused in absconding from his house until he appeared before PW-5/VAO inconsistent with innocence pleaded by him and no explanation from him as to why he absconded for such long time without attending on the deceased and without being present at his house – If doubtful, extra judicial confession is not sole foundation for conviction, unless it draws corroboration from independent sources, and material particulars – Facts on record show that extra-judicial confession given by accused to PW-5 not doubtful – Assuming that confessional statement is doubtful, it can be acted upon because it draws corroboration from other sources – In absence of explanation, conduct of accused in absconding until he appeared before PW-5 is adverse to his plea of defence and such act gives adequate corroboration to extra judicial confession – Such act would prove that accused attacked deceased, poured kerosene and set fire, which resulted in death of deceased – Evidence on record show that accused was provoked only by deceased and such provocation was sudden and grave and also there was no premeditation – Act of accused would fall within first exception to Section 300, though it would fall under third limb of Section 300 – Appellant liable to be convicted under Section 304 [Part I] – Conviction imposed on Appellant under Sections 302 and 201 read with Section 302 set aside – Appellant convicted under Section 304[Part I] – Appeal partly allowed.
