



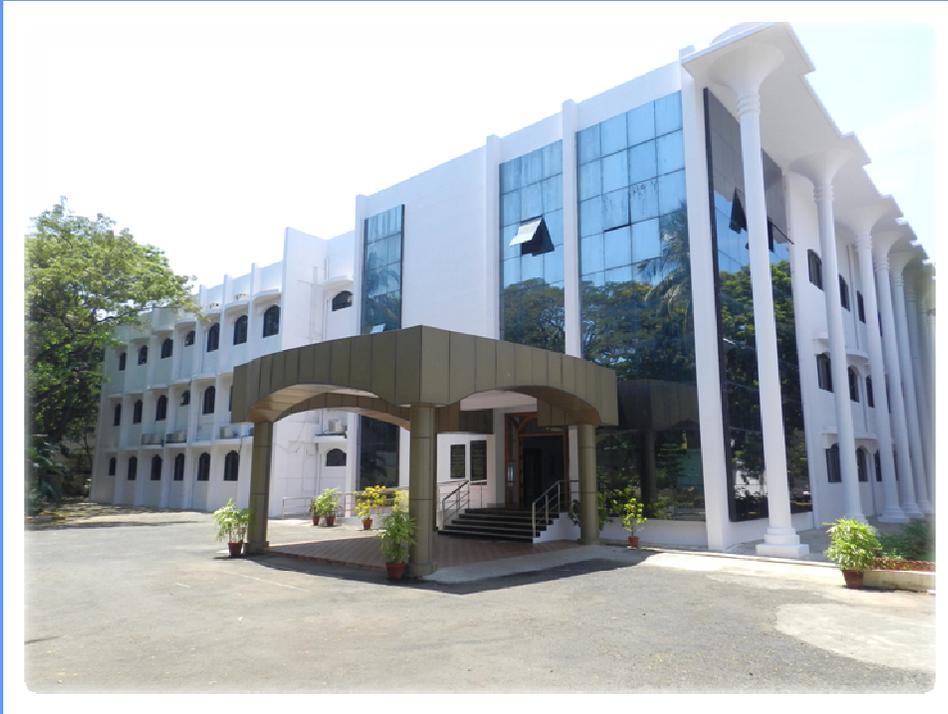
TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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SUPREME COURT CITATIONS CIVIL CASES

2016 (6) CTC 330

State Bank of Patiala vs. Mukesh Jain

Date of Judgment : 08.09.2016

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) [SARFAESI Act], Sections 17 & 34 – Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993), Section 1(4) – Jurisdiction of Civil Courts – Bank initiated Recovery action under SARFAESI Act for recovery of Rs.8 Lakh – Borrower instituted Civil Suit challenging Recovery action – Secured Creditor filed Application to reject Plaint on ground Civil Court has no jurisdiction to entertain Suit – Trial Court rejected Application holding that Tribunal is not competent to entertain *lis* as amount claimed in Suit was less than Rs.10 Lakh – Ouster of Civil Court Jurisdiction – Conflict between DRT Act and SARFAESI Act – Pecuniary jurisdiction contemplated under DRT Act is in relation to Original Jurisdiction of Tribunal – SARFAESI Act contains specific provision excluding jurisdiction of Civil Court – Remedy provided under SARFAESI Act is in nature of Appellate Jurisdiction – Tribunal has jurisdiction to entertain Appeal even in respect of claim less than Rs.10 Lakh – Appellate Jurisdiction need not be misunderstood with Original Jurisdiction of Tribunal – Plaint is liable to be rejected.

2016 (2) TN MAC 577 (SC)

Sandhya Rani Debbarma vs. National Insurance Co. Ltd.

Date of Judgment : 16.09.2016

MOTOR ACCIDENT CLAIM – Compensation – Determination – Deceased aged 31 yrs. 4 months, working as Junior Engineer (Grade I) under State Government, earning Rs.10,020/- p.m. as per claim – *Claimants* : Wife, minor children & parents of deceased – *Claim* : Rs.33,45,000/- -Tribunal taking Monthly Salary at Rs.13,504/-, fixed income at Rs.16,750/- p.m. : Awarded Loss of Dependency at Rs.32,32,000/- and Total Compensation at Rs.32,52,700/- p.m. – High Court in Writ Petition filed by Insurer, fixed income as per claim in Claim Petition at Rs.10,020/- and awarded Loss of Dependency at Rs.20,40,000/- : Total Compensation awarded at Rs.20,40,000/- without awarding any Compensation under other heads – Appeal before Apex Court – *Income* : Taking income at Rs.10,020/- p.m., 50% added towards Future Prospects considering permanent nature of job and age of deceased : Rs.15,030/- p.m. fixed as income – *Personal Expenses* : Considering number of Claimants, 1/4th deducted towards Personal Expenses : Loss of Contribution to family fixed at Rs.11,280/- [Rs.15,030/- - Rs.3,750/-] *Loss of Dependency* : Applying Multiplier of 17, Rs.23,01,120/- [Rs.11,280 x 12 x 17] awarded by Apex Court as against Rs.20,40,000/- awarded by High Court – *Loss of Consortium* : Rs.1,00,000/- awarded – *Loss of Love & Affection to Minor Children* : Rs.1,00,000/- *Loss of Love & Affection to Parents* : Rs.1,00,00/- *Loss of Estate* : Rs.1,00,000/- awarded by Apex Court – *Funeral Expenses* : Rs.25,000/- awarded – *Litigation Costs* : Rs.25,000/- awarded – *Total Compensation* : Rs.27,51,120/- awarded by Apex Court as against Rs.20,40,000/- awarded by High Court.

NEGLIGENCE – COMPOSITE NEGLIGENCE – Deceased travelling in Jeep – Head-on-collision between Jeep and Bus coming from opposite directions – Accident due to negligence of drivers of both vehicles – Insurers of both vehicles rightly held to be equally liable to pay Compensation – Apex Court directed Insurers to pay enhanced Compensation amount in ratio of 50 : 50.

INCOME – FUTURE PROSPECTS – Addition towards – Deceased aged 31yrs. 4 months, working as a Junior Engineer (Grade I) under State Government earning Rs.10,020/- p.m. as per claim – Deceased being in permanent job and below age of 40 yrs., 50% added towards Future Prospects following *Santosh Devi* (SC) – Income, thus fixed at Rs.15,030/- p.m.

PERSONAL EXPENSES – Deduction – Deceased aged 31 yrs. – *Claimants* : Wife, 2 minor children and parents of deceased – Number of dependants being 5, 1/4th deducted as Personal Expenses – *Sarla Verma* (SC) followed.

MULTIPLIER – Proper Multiplier – Deceased aged 31 yrs. & 4 months – Proper Multiplier held to be 17.

MOTOR VEHICLES ACT, 1988 (59 of 1988) , Sections 166 & 168 – Award of Compensation – “Just and reasonable Compensation” – Determination – Award of Loss of Dependency as Total Compensation without awarding any Compensation under other heads – Reasoning given by High Court that since Compensation awarded would fetch more than Rs.10,000/- p.m. by way of interest at 6% p.a. without consuming principal sum during period of dependency, no further award under other heads called for – Held to be contrary to well settled principles of law.

INTEREST – Rate of Interest – Accident took place on 14.11.2003 – Award of interest at 6% p.a. – Not proper – Following principles laid down in *Uphaar tragedy*, Apex Court awarded interest at 9% p.a.

(2016) 7 MLJ 820 (SC)

Syscon Consultants P. Ltd vs. Primella Sanitary Prod. P. Ltd.

Date of Judgment : 19.09.2016

Contract – Specific Performance – Validity of Sale Agreement – 1st Respondent/Plaintiff sought for specific performance of agreement made with 1st to 6th Defendants for conveyance of suit property – 1st to 6th Defendants wanted suit to be dismissed in view of objection of 7th and 8th Defendants – Plaintiff’s suit dismissed for default, but it was restored later – Thereafter, suit was amended and 7th and 8th Defendants were impleaded as additional Defendants – Additional reliefs for compensation were added and challenge to inventory proceedings also incorporated by way of amendment – 7th and 8th Defendants, who obtained suit property in inventory proceedings, sold same to 9th Defendant and Plaintiff sought amendment for cancelling that sale also – Trial Court upheld right of 7th and 8th Defendants – 1st to 6th Defendants were directed to refund specific amount with interest – On appeal, High Court partly reversed Trial Court judgment – Being aggrieved, present appeals filed – Whether Plaintiff entitled for specific performance of contract – Whether sale agreement executed between Plaintiff and 1st to 6th Defendants valid – *Held*, correspondence between parties shows that Plaintiff was ready and willing to perform its obligations under sale agreement – Suit property was island of coast in question which is not capable of valuation, same shows that monetary compensation would not suffice and be adequate alternative to specific performance – Plaintiff even discharged mortgage with Bank by paying specific sum which was three times amount of consideration mentioned

in agreement – 1st to 6th Defendants failed or neglected to complete sale even after clear title made out when obstacle of mortgage removed – Clause 9 states that if after title made out, vendor fails and neglects to complete sale, and/or to carry out obligations contained in agreement, purchaser shall be at liberty to enforce specific performance of agreement or recover earnest money with inter – Having opted throughout to enforce specific performance, Clause 9 must be applied in favour of Plaintiff – After inducing Plaintiff as per PW-1/F letter to pay specific sum to bank to clear dues on understanding that 1st to 8th Defendants would execute sale deed, they cannot go back – Clear title stood made out at that stage and agreement was enforceable thereafter – Justice done to Plaintiff as per decree granted by High Court and no injustice caused to Defendants – Appeals dismissed.

(2016) 7 MLJ 355 (SC)

Gulshera Khanam vs. Aftab Ahmad

Date of Judgment : 27.09.2016

Tenancy Laws – *Bona Fide* Requirement – Family – Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act 1972), Sections 3(g), 21 and 21(1)(a) – Constitution of India (Constitution), Article 227 – Appellant/landlady filed application under Section 21(1)(a) of Act 1972 seeking release of shop in her favour for her *bona fide* requirement and genuine need in comparison to need of Respondent/tenant – Authority ordered eviction – Appeal against order dismissed – On Petition filed by Respondent, High Court set aside order of courts below and held that Appellant’s daughter is not member of family as defined under Section 3(g) of Act 1972 and Appellant’s need is not *bona fide* – Special Leave Appeal – Whether finding that Appellant’s married daughter does not fall within meaning of word “family” as defined under Section 3(g) of Act 1972 and, therefore, her need cannot be considered under Section 21 of the Act for granting eviction of tenant is proper – Whether High Court was justified in reversing concurrent findings of two courts below and justified in dismissing Appellant’s eviction petition filed against Respondent under Section 21 of Act 1972 – *Held*, Appellant’s daughter received her share and became co-owner of building along with other co-sharers and thus got legal right of residence in building – Appellant’s daughter fulfilled definition of “family” under Section 3(g) of Act 1972 – Appellant entitled to claim eviction of Respondent from building in question for need of her daughter – *Bona fide* need of Appellant’s daughter to expand activities of running the clinic was rightly held by Prescribed Authority and first appellate Court in Appellant’s favour – Settled principle that in rent matters, landlord is sole judge to decide as to how much space is needed for him/her to start or expand any of his/her activity was overlooked by High Court while deciding issue of need – High Court should have also seen that two courts below have recorded finding that Respondent was having his own shops in same area where he could shift his existing business activity without suffering any comparative hardship – Court unable to agree with reasoning and conclusion arrived at by High Court – Appeal allowed with costs.

2016 (6) CTC 647

IDBI Trusteeship Services Ltd. vs. Hubtown Ltd.

Date of Judgment : 15.11.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 37, Rule 3 – Summary Suit – Triable Issue – Plausible but improbable – Conditional leave to defend – Payment/Deposit of Security – Suit for invocation of Corporate Guarantee – Terms of Guarantee unconditional – Invocation of Guarantee not challenged by Defendant – Defence of Defendant that Optionally Partially Convertible Debentures [OPCDs] entered into between parties only to circumvent provisions of FEMA Regulations – *Held*, payment under Guarantee to Debenture Trustee, an Indian Company for and on behalf of Vinca, an Indian Company – FMO, who becomes 99% holder of Vinca may utilize all funds for Structure Agreements in India and would require permission of RBI for repatriating said funds, establishing that there would be no infraction of FEMA Regulations – *Held*, defence raised by Defendant not substantial to claim made in Suit – Defence raised, only ‘plausible and improbable’ – Amount of Rs.418 crores being utilized and submerged into Construction Project, in which no payments were made after 2011, leading to grave speculations on good faith and genuineness on Defendants – Protection of Plaintiff, imperative – Defendant, *held*, to be granted leave to defend Suit only if it deposits Principal sum of Rs.418 crores invested by FMO or gives security for same amount – Order of Single Judge granting unconditional leave to defend, set aside – Appeal allowed.

Code of Civil Procedure, 1908 (5 of 1908) [as amended by 1976 Act], Order 37, Rule 3 – Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) – Impact of Amendment on Rule – *Mechelec’s* case – Whether good law – *Held*, post amendment of Rule in 1976, decision in *Mechelec’s* case no longer good law – Principles for grant of leave enunciated as follows: (i) Defendant entitled to unconditional leave to defend Suit if he has a substantial defence, (ii) Defendant ordinarily entitled to unconditional leave to defend Suit in cases where he raises triable issues but not a good defence, (iii) Trial Court can impose conditions with regard to mode of trial, payment into Court or furnishing of Security in cases, where triable issue is raised by Defendant but there is doubt as to his good faith or genuineness of triable issues, (iv) Trial Court can impose conditions with regard to mode of trial, payment into Court or furnishing of Security in cases, where defence raised by Defendant is plausible but improbable, (v) Trial Court can refuse to grant leave when Defendant has no substantial defence and/or raises no genuine triable issues, (vi) In cases even when triable or substantial defence is raised, but part of amount claimed by Plaintiff is admitted by Defendant to be due from him, leave to defend Suit, not to be granted unless amount admitted to be due is deposited by Defendant in Court.

Code of Civil Procedure, 1908 (5 of 1908), Order 37, Rule 3 – Leave to Defend – Refusal/Grant of – Discretion of Court – Significance of.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

2016-2-L.W. (Crl.) 472

Hardei vs. State of U.P.

Date of Judgment : 30.03.2016

Criminal Procedure Code, Section 319

I.P.C., Sections 420, 467, 468, 471, 409

Appeal against order summoning appellant, in exercise of power under Section 319, to face trial – Power of trial court to summon a person on account of evidence recorded during trial – scope

(2016) 4 MLJ (Crl) 214

State of Rajasthan vs. Jag Raj Singh @ Hansa

Date of Judgment : 29.06.2016

Narcotics – Seizure of Narcotics – Want of Warrant – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8, 15, 42(1), 42(2) and 43 – Along with other accused, Respondent/accused charged under Section 8/15 – After trial, both accused convicted under Section 8/15 – On appeal, High Court held that there was breach of mandatory provisions of Sections 42(1) and 42(2), Section 43 was not applicable and acquitted accused from charges under Section 8/15 – Present appeal filed by State against judgment of acquittal of accused – Whether High Court erred in acquitting accused – Whether there were sufficient materials to support findings of High Court regarding non-compliance of Sections 429(1) and 42(2) – Whether Section 43 applicable in present case – *Held*, Section 42(2) requires that where officer takes down information in writing under Section 42(1), he shall send copy to his immediate senior officer – Communication/Exh.P-15 which was sent to Circle Officer was not as per information recorded in Exh.P 14 and Exh.P 24 – Scheme indicates that in event search to be made between sun set and sun rise, warrant necessary unless officer has reasons to believe that search warrant or authorization cannot be obtained without affording opportunity for escape of offender which grounds of his belief to be recorded – In present case, there is no case that ground for belief as contemplated by Section 42(1) or 42(2) recorded by Station House Officer who proceeded to carry on search – Jeep in question intercepted and seized by police, same cannot be public conveyance within meaning of Explanation to Section 43 – Section 43 was not attracted – Section 429(1) required to be complied with, but same were not done – Non-compliance of Sections 42(1) and 42(2) prejudiced accused – High Court rightly held that noncompliance of Sections 429(1) and 429(2) proved – High Court did not err in setting aside conviction – Appeal dismissed.

(2016) 4 MLJ (CrI) 226 (SC)

U. Subhadramma vs. State of A.P.

Date of Judgment : 04.07.2016

Attachment of Property – Dead Person – Indian Penal Code (Code 1860), Sections 409, 468 and 471 – Criminal Law Amendment Ordinance, 1944 (Ordinance 1944) – Criminal Procedure Code 1973 (Code 1973) – Accused was prosecuted for misappropriation of funds and he died during pendency of Trial – After death of accused, Trial court proceedings still continued and accused was convicted under Sections 409, 468 read with Section 471 of Code 1860 – Application filed by State under Ordinance, 1944 before District Judge seeking for attachment of property of accused – Appellants/Legal representatives of deceased accused, were served with notice and District Judge confirmed the attachment order – High confirmed Trial court order – appeal – Whether property of person which was merely case of offence of misappropriation but who died during pendency of criminal trial can be attached in hands of his legal representatives under provisions of Ordinance 1944 – *Held*, finding of Trial court that Deceased was alone responsible for offences is completely vitiated as null and void since Deceased had admittedly died on date finding was rendered – Well settled that prosecution cannot continue against dead person – Criminal court cannot continue proceedings against dead person and find him guilty – Such proceedings and findings are contrary to foundation of criminal jurisprudence – District Judge committed gross error of law in acting upon such finding and treating Deceased as guilty of such offences while making order of attachment and confirming said order of attachment of properties – District Judge could not have proceeded with attachment proceedings at all since attachment proceedings were initiated by State against Deceased under clause 3 of Ordinance, 1944, who was actually dead – Clause 3 contemplates that such application must be made to District Judge within local limits of whose jurisdiction said person ordinarily resides or carries on business, in respect of property which State Government believes said person to have procured by means of offences – Incomprehensible that such application could have been made in regard to dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere – No legal provision which enables continuance of prosecution upon death of the accused – Orders of Criminal Court illegal and set aside – Appeal allowed.

(2016) 4 MLJ (CrI) 407 (SC)

State of Gujarat vs. Jayrajbhai Punjabhai Varu

Date of Judgment : 11.07.2016

Murder – Dying Declaration – Indian Penal Code 1860 (Code 1860), Section 302 – Victim/Deceased, succumbed to burn injuries, had given dying declaration recorded by police and oral declaration to her father before passing away – Husband of deceased/Respondent herein and other relatives were put to trial – Sessions Judge convicted Respondent under Section 302 of Code 1860 and sentenced him to suffer rigorous imprisonment for life while acquitting other accused persons – Appeal filed by Respondent before High Court was allowed by its Division Bench – Aggrieved by order acquitting Respondent, State has filed appeal by way of special leave before Court – Whether Court was right in acquitting Respondent-accused of all charges and not relying on oral dying declaration given to father of deceased – *Held*, dying declarations of deceased recorded by police officer as well as Executive Magistrate are fully corroborated and there is no inconsistency as regards role of Respondent herein in commission of offence – No reason as to why deceased would give names of her husband and her in-laws in alleged statement given to her father – Dying declaration is entitled to great weight and conviction basing reliance upon oral dying declaration made to father of deceased is not reliable and such declaration can be result of afterthought – Once Court is satisfied that declaration was

true and voluntary, undoubtedly, it can base its conviction without any further corroboration – It cannot be laid down as absolute rule of law that dying declaration cannot form sole basis of conviction unless it is corroborated – Rule requiring corroboration is merely rule of prudence – Burden of proof in criminal law is beyond all reasonable doubt – Prosecution has to prove guilt of accused beyond all reasonable doubt – It is also rule of justice in criminal law that if two views are possible on evidence adduced in case, one pointing to guilt of accused and other towards his innocence, view which is favourable to accused should be adopted – Evidence on record and sole evidence of father of deceased as compared to dying declaration do not inspire confidence in mind of Court to make it basis for conviction of Respondent – Appeal dismissed.

(2016) 4 MLJ (CrI) 477 (SC)

Bhagwan Jagannath Markad vs. State of Maharashtra

Date of Judgment : 04.10.2016

Murder – Reversal of Acquittal Order – Indian Penal Code, 1860 (Code 1860), Sections 147, 149, 302, 324 and 326 – Indian Evidence Act, 1872 (Act 1872), Sections 3, 145 and 155 – Trial court acquitted Appellants/accused, along with other accused for offences under Code 1860 – On challenge, High Court upheld acquittal of few accused, but convicted Appellants under Sections 147, 149, 302 read with Sections 149, 324 and 326 of Code 1860 – Appeal – Whether High Court justified in reversing acquittal of Appellants on basis of evidence available on record – *Held*, only if view of Trial Court is erroneous, unreasonable and perverse, reversal of acquittal is permissible – Appellate Court has power to review evidence and to reach at its own conclusion – Appellate Court has to consider fact that Trial Court had benefit of seeing witnesses in witness box and presumption of innocence was not weakened by acquittal – Appellate Court should not disturb finding of Trial Court, if two reasonable conclusions can be reached – Discrepancies of trivial nature could not be basis to reject evidence of injured eye witnesses – Non-examination of some of the witnesses can be ground to reject prosecution case, when injured eye witnesses examined – Records show that eye witnesses named accused Nos.1 to 7 – PWs.11 and 18 did not name other accused – Benefit of doubt given to accused Nos.10 and 11 for reason that they were not named by PWs.11 and 18 and also for reason that PW-10 attributed specific role only to accused Nos.1 to 7 – Accused Nos.1 to 7 were assigned specific role in assaulting deceased and their conviction under Section 302 read with Section 149 of Code 1860 upheld – Appeal partly allowed.

**HIGH COURT CITATIONS
CIVIL CASES**

2016 (6) CTC 602

The Managing Director, T.N. Tourism Development Corp.

vs.

R. Manoharan

Date of Judgment : 09.08.2016

Transfer of Property Act, 1882 (4 of 1882), Section 105 – Indian Easements Act, 1882 (5 of 1882), Sections 52 & 60 – “Licence” – “Lease” – Distinction – Meaning – Intention of parties is crucial to decide nature of transaction – “Lease” is not a mere Contract but envisages and transfers an interest in demised property – “Licence” is a right to use property and does not amount to easement or interest in property but is only privilege to Licensee – Licensor is entitled to secure possession of property after termination of Licence.

Words and Phrases – “Franchise” – Meaning – Franchise is an authorization granted by Government or Company to individual group enabling them to carry out specified Commercial transaction.

Transfer of Property Act, 1882 (4 of 1882), Section 105 – Indian Easements Act, 1882 (5 of 1882), Sections 52 & 60 – Licence – Lease – Plaintiff entered into Franchise Agreement with Tourism Corporation to carry on Restaurant business under name and style of “Hotel Tamil Nadu” – Agreement stipulates that Licensee after expiry of Licence period should vacate and handover Suit property – Plaintiff instituted Suit for bare Injunction on premise that Franchise Agreement should be treated as Lease Agreement – Construction of recitals of Deed – Intention of Parties – Agreement gives only right to use property in particular way but its possession and control remains with Owner – Licensee being permitted to make use of property for particular purpose – Absence of transfer of interest upon immovable property – Plaintiff made developments in demised property after obtaining approval from Licensor – Personal privilege was given to Licensee under Franchise Agreement – Document in question is “Licence Agreement” and not “Lease Agreement” – Licensee bound to vacate the handover possession of property after termination of license – Plaintiff is not entitled to seek any Injunction against Licensor from securing possession of Suit property.

(2016) 8 MLJ 13

Maharaja @ V. Chinnakaruppan vs. S. Muthukumar

Date of Judgment : 17.08.2016

Property Laws – Partition – Adverse Possession – Limitation Act (Act), Article 60 – 1st Respondent/Plaintiff was minor at time of partition and suit property divided between him and 1st Defendant – 1st Defendant sold property to Appellant/2nd Defendant – Plaintiff filed suit for partition and separate possession of half share in suit property – Trial Court dismissed suit, holding that 1st defendant has not prescribed title by adverse possession, however, held that Appellant is *bona fide* purchaser and dismissed suit and also held that suit is barred by limitation – Appeal preferred by Plaintiff and for finding of Trial Court in respect of adverse possession, Appellant herein has preferred

a cross objection – Appellate Court, dismissed cross objection and allowed appeal stating the suit is not barred by limitation and granted preliminary decree and separate possession on half share in suit property – Whether First Appellate Court is right in granting preliminary decree even though in Ex.A1, partition deed, properties are divided between all children – Whether First Appellate Court is right in rejecting plea of adverse possession raised by Appellant – Whether suit is barred by limitation – *Held*, as per Article 60 for setting aside transfer of property made by guardian of ward same has to be set aside within period of 3 years from date ward attained majority – Prayer for partition and not for setting aside partition deed which was entered by mother of plaintiff as guardian – Present suit is for partition and Appellant herein has stepped into shoes of his predecessor in title – As soon as plaintiff came to know about sale transaction, notice was issued and same has been returned – Thereafter sale deed executed – First Appellate Court considered aspect and concluded Appellant was not *bona fide* purchaser for value – For suit for partition cause of action is continuous one till property has been divided and possession taken – Appellant purchased property and suit was filed same year – Argument advanced by Appellant that suit is barred by limitation not accepted – No revenue records to show that 1st Defendant was in continuous possession and enjoyment of property with knowledge of true owner – Appellant has not proved that his predecessor has prescribed title by adverse possession – No reason to interfere with findings of First Appellate Court – Appeal dismissed.

(2016) 8 MLJ 119

C. Kishin Chand vs. City Bank N.A.

Date of Judgment : 07.09.2016

(A) Civil Procedure – Suit for Damages – Malicious Prosecution – Plaintiff had membership establishment agreement with 1st Defendant/bank pursuant to which, Plaintiff sought permission with regard to credit card transaction made by customer and 1st Defendant gave authorization of same – Complaint lodged by 1st Defendant through its manager/2nd Defendant based on letter sent by foreign Bank along with letter of card holder, same led to registration of complaint against Plaintiff which after trial, ended in acquittal – Plaintiff filed present suit for recovery of money towards damages for malicious prosecution made by Defendants – Plaintiff alleged that action of Defendants was without reasonable and probable cause and malice existed on part of 1st Defendant, as they never contacted either card holder or Foreign Bank to know actual circumstances, but merely acted upon letter of Foreign Bank – Whether 1st Defendant acted with reasonable and probable cause – Whether there was malice in 1st Defendant’s action – Whether complaint launched by employee of 1st Defendant for and on behalf of said Defendant – *Held*, Plaintiff has to establish that Defendant acted maliciously without reasonable and probable cause in order to succeed in suit for malicious prosecution – 1st Defendant’s intention was to curb fraudulent transactions and to find out real culprits – Defendants had reasonable explanation for its grievance about fraudulent transaction alone, while filing complaint with Police – No malicious intention to prosecute Plaintiff – Reference of persons involved was not made nor specific names of individuals were given by Complainant – Merely because Defendants acted in pursuant to letter given by Foreign Bank which in turn, was pursuant to complaint made by card holder, it cannot be said that complaint vitiated by malice – Mere complaint would not amount to malice prosecution, when there is suspicion borne out by records, same would satisfy reasonable and probable cause for prosecution – Findings made by Chief Metropolitan Magistrate do not bind on Civil Court – Merely because criminal proceedings concluded with acquittal, same by itself was not sufficient to label proceedings as malicious one – Perusal of complaint shows that 2nd Defendant acted in his official capacity and discharged his duty entrusted to him – Suit dismissed.

(B) Civil Procedure – Suit for Damages – Non-joinder of Necessary Party – Defendants alleged that present suit was bad for non-joinder of necessary parties, as Foreign Bank and card holder were

not impleaded – Whether suit was bad for non-joinder of necessary parties – *Held*, being dominus litis, Plaintiff had to choose party to suit in order to make claim against it – Facts on record show that claim made against Defendants, though it would be proper to add jurisdictional police who filed final report, but same was not required in view of relief sought for – As suit filed only against Defendants based on their action in lodging complaint and pursuing matter, which alleged to be tainted with malice, card holder and Foreign Bank were also not required – Suit was not bad for non-joinder of parties in view of facts on record.

2016 (2) TN MAC 585 (DB)

M. Suguna

vs.

The Managing Director, Metropolitan Transport Corporation Ltd. (DB)

Date of Judgment : 04.10.2016

LOSS OF INCOME – Determination – Deceased aged 54 yrs., a Sales Tax Inspector, earning Rs.12,310/- p.m. – Claimants : Wife, two daughters & son – Tribunal fixing income at Rs.12,310/- p.m. as per Last Pay Certificate-Ex.P3 and Service Register-Ex.P8 – Deducted 1/4th towards Personal Expenses following Apex Court in *Sarla Verma* to arrive at Loss of Contribution to family at Rs.9,233/- - Applying Multiplier of 11, Tribunal rightly awarded Loss of Income/Pecuniary Loss at Rs.12,18,756/- [Rs.9,233 x 12] x 17] – Confirmed in Appeal.

LOSS OF CONSORTIUM – LOSS OF LOVE & AFFECTION – Deceased aged 54 yrs. – Claimants : Wife aged 45 yrs., Daughters aged 23 & 19 yrs. and son aged 18 yrs. – Award of Rs.30,000/- towards Loss of Consortium and Rs.50,000/- towards Loss of Love & Affection – Not proper – Enhanced to Rs.1,00,000/- and Rs.1,50,000/- respectively.

FUNERAL EXPENSES – Award of Rs.10,000/- - Held to be on lower side – Enhanced to Rs.25,000/- - SC in *Rajesh* followed.

(2016) 8 MLJ 81

Royal Bank of Scotland vs. Dr. N. Varadarajan

Date of Judgment : 18.10.2016

(A) Contract – Breach of Letter of Intent – Termination of Letter of Intent – Plaintiff/Bank looked for office space to expand its banking operations – Defendants offered to lease premises to Plaintiff – Pursuant to offer, Plaintiff and Defendants executed Ex.P2/Letter of Intent (LOI) informing that premises would have access through two public roads – When there were deviations in sanctioned building plan, Plaintiff made several request to obtain regularization of deviations – Plaintiff alleged that it terminated LOI, as defects pointed out by it were not rectified – Plaintiff requested Defendants not to present cheques given earlier as part payment of security deposit for encashment, but Defendants encashed them – Defendants refunded specific sum leaving balance amount with them – Plaintiff alleged that it filed present suit for recovery of money with interest, as Defendants committed breach of terms and conditions of LOI – Whether Defendants breached terms and conditions of LOI – Whether Plaintiff entitled to terminate LOI on ground that Defendant did not provide access to premises to be leased through two public roads, when sanctioned plan or LOI did not provide such provision – *Held*, Ex.P2 shows that it did not contain side road access nor was there obligation committed by Defendants – Defendants did not give Plaintiff about access through streets in question to premises taken on lease – As sanctioned plan did not contain provision of access to suit building for

Plaintiff to terminate contract, controversy with respect to private or public streets in question has no relevance – Violations or deviations also cannot be reason for terminating contract unilaterally – Contract could not be completed in absence of Completion Certificate being provided by Defendants – Plaintiff has no reason to terminate contract resulting in loss to Defendants, as Defendants provided facilities required for immediate occupation – Completion Certificate from CMDA and Compliance Certificate from Corporation would prove that there were no deviations as pointed out by Plaintiff – No breach of contract committed by Defendants as alleged by Plaintiff – Suit dismissed.

(B) Property Laws – Lease Deed – Withdrawal from – Whether Plaintiff entitled to withdraw from entering into lease deed complaining that construction was not according to sanctioned plan and requiring regularization, when CMDA and Corporation did not do so – *Held*, as per sanctioned plan and building permit, Defendants completed construction and provided all amenities and facilities required under agreement – After verifying documents of title, sanctioned plan building permit, Plaintiff also paid half security deposit – Defendants also called upon Plaintiff to take possession of premises, but lease was terminated on unreasonable grounds, same was not contemplated under terms of lease agreement – Defendants entitled for damages caused by Plaintiff for non-occupation of premises, when it is concluded contract, which is being acted upon by both parties – Defendants rightly retained security deposit on account of unilateral and invalid termination of agreement – Plaintiff forfeited its deposit by its own default – Security deposit is not merely advance payment for lease agreement, but guarantee that contract should be performed – Plaintiff terminated lease agreement on its own – Defendants suffered loss due to refusal of Plaintiff's performance of its part of contract, though default of Plaintiff placed them only in same position – Plaintiff cannot ask for refund without deducting damages suffered by Defendants.

2016 (6) CTC 77

Syed Abdul Gani vs. Sajjida Begum

Date of Judgment : 19.10.2016

Contract Act, 1872 (9 of 1872), Section 55 – Specific Relief Act, 1963 (47 of 1963), Section 16
– Specific Performance – Contract of Sale – Time is essence of Contract – Construction of terms of Contract – Determination thereof – Agreement for Sale of immovable property – Conduct of parties – Agreement stipulates that balance Sale consideration should be paid within specified period – Seller failed to pay entire Sale consideration within stipulated period – Plaintiff has not taken any sincere effort to perform obligations under Contract – Contention of Plaintiff that balance Sale consideration was paid after expiry of time was not proved – Claim of Plaintiff that he had paid balance Sale consideration by cash was not proved by adducing acceptable evidence – Recitals of Contract makes it clear that time is essence of Contract – Plaintiff is not entitled to seek Specific Performance of Contract.

2016 (6) CTC 71

Siddammal vs. Arulmigu Selliandiammal Thirukoil

Date of Judgment : 20.10.2016

Code of Civil Procedure, 1908 (5 of 1908), Section 9 – Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N. Act 22 of 1959), Sections 108 & 79 – Suit instituted by Temple against Tenant for Permanent Injunction and Mandatory Injunction – Maintainability – Tenant constructed Superstructure in Suit property thereby violating Terms of Agreement – Temple instituted Civil Suit for Mandatory Injunction – Contention of tenant that Temple ought to have invoked provisions of HR & CE Act and Civil Suit is not maintainable – Jural relationship of Landlord and Tenant admitted by parties – There is no legal impediment for Civil Court to entertain Suit filed by Temple – Suit is maintainable.

(2016) 8 MLJ 361

Ponnammal vs. K.V. Janarthanam

Date of Judgment: 25.10.2016

Contract – Specific Performance – Sale Agreement – Plaintiff/Respondent herein instituted original suit to pass decree of specific performance in pursuance of sale agreement and also relief of perpetual injunction against Defendants/Appellants – Trial Court decreed suit – Appeal against judgment and decree of Trial Court – Whether Defendants have agreed to sell suit properties in favour of Plaintiff – Whether averments made in plaint have been denied specifically – *Held*, no specific denial has been made in respect of signatures as well as thumb impression of Defendants found in loan receipt and sale agreement – No acceptable evidence on side of Defendants for purpose of proving alleged attempt to discharge loan alleged to have been received by them from Plaintiff – Plaintiff has been examined and has given clinching/trustworthy evidence for purpose of proving genuineness of documents relied – Plaintiff has proved his readiness and willingness to perform his part of contract – No contra-evidence on side of Appellants/defendants for rejecting case of Respondent/plaintiff – No specific denial has been made with regard to averments made in plaint – Defendant must specifically deal with each and every allegation of facts in plaint – General denial of facts alleged in plaint is not sufficient – In written statement filed on side of Appellants/defendants so many aspects averred in plaint have not been specifically denied – Trial Court after pondering available evidence on record has rightly decreed suit – No valid ground to make interference with judgment and decree passed by Trial Court – Appeal dismissed with costs.

(2016) 8 MLJ 377

Saraswathi vs. M. Maruthachalam

Date of Judgment: 25.10.2016

Succession Laws – Partition – Validity of Will – Indian evidence Act, 1872, Sections 63(c), 68 and 114(e) – Suit property belonged to father of 1st Respondent/Plaintiff and 2nd Respondent/1st Defendant – Plaintiff filed suit for partition alleging that despite his demands for partition, Defendants did not come forward to effect partition – Defendants alleged that as 1st Defendant became owner of suit property by virtue of Will and he executed settlement deed in favour of his wife/2nd Defendant/Appellant – Trial Court dismissed suit – On appeal, First Appellate Court set aside judgment and decree of Trial Court – Second appeal by 2nd Defendant – Whether First Appellate Court right in holding that Will was not proved to be genuine and valid in spite of fact that there was no pleading and no evidence to that effect by Plaintiff to dislodge presumption of registered Will under

Section 114(e) – Whether First Appellate Court erred in doubting Will on basis of alleged conflict of testimony between DW-2 and DW-3 when suspicion alleged are not of inherent and when evidence recorded many years after date of registration – Whether First Appellate Court could render testamentary document ineffective instead of making it effective in absence of evidence to render Will ineffective when burden of proof to disbelieve Will failed to discharge same – *Held*, Defendants did not produce original Will and no acceptable explanation given by them with regard to non production of original Will – 1st Defendant did not speak about custody of Will or loss of Will – Steps taken by 2nd Defendant to retrieve lost Will were not explained – Evidence of DW-3/attesting witness did not satisfy requirements of law to uphold Will – Will was not established as per law – Merely because Will was registered, same would not entitle Defendants to contend that they could be absolved from examining attesting witnesses to prove genuineness of Will – Having failed to adduce evidence with regard to validity of Will and to substantiate their case by examining other attestor, Defendants cannot contend that Lower Appellate Court erred in pointing out shortcomings in evidence of DW-3 with reference to attestation of other attesting witness in Will – Defendants did not establish truth, validity and genuineness of Will – 1st Defendant would not be entitled to obtain title to suit property under Will and would not be competent to settle suit property in favour of 2nd Defendant – 2nd Defendant would not be entitled to lay claim of title, right or interest in respect of suit property as projected by her – Appeal dismissed.

2016 (6) CTC 590

V. Thambiah Reddy (deceased) vs. E. Kumar

Date of Judgment : 29.11.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 22 – Evidence Act, 1872 (1 of 1872), Section 58 – Decree of Eviction against father – Whether binding on his Legal Heirs – Suit for delivery of possession and damages – Father of Defendants being permissive occupier suffered Decree of Eviction – Defendants after father’s death claimed right as Tenant – Decree of Court passed in 1974 binding on Defendants – Decree and judgment passed against any party to the Suit, *held*, binding on party claiming right over property under party to Original Suit – Defendants being Legal Heirs of their father, who was Defendant in earlier Suit filed in 1970, bound by Decree in said Suit – Contentions of Defendants that they continued in property as Tenant by sufferance, unsustainable especially when no document produced by them to substantiate their stand – Defendants not in lawful possession of property and only rank trespassers in Suit property – Defendants squatting over property, bound to pay damages for use of same – Defendants directed to pay damages of Rs.2,000/- p.m. till they quit and deliver vacant possession to Plaintiff – Plaintiffs, *held*, entitled to Decree of vacant possession – Suit decreed as prayed for.

Code of Civil Procedure, 1908 (5 of 1908), Order 8, Rule 5 – Averments in Plaint – No specific denial of – Consequence of – Suit for recovery of possession and damages – Plea of Plaintiff that Defendants were evicted from Suit property in 1983 by TNSCB – Said plea not denied by Defendants in their Written statement – Plea of Plaintiff, to be presumed to be admitted as there is no specific denial by Defendants by virtue of mandate of Order 8, Rule 5.

HIGH COURT CITATIONS CRIMINAL CASES

(2016) 4 MLJ (Crl) 364

Velan @ Velarasan vs. State

Date of Judgment : 22.06.2016

Murder – Unsound Mind – Indian Penal Code, 1860 (Code 1860), Sections 302, 201 and 84 – Code of Criminal Procedure, 1973 (Code 1973), Section 335(2)(a) – Mental Health Act, 1987 (Act 1987), Section 24 – Trial Court convicted Appellant/accused under Section 302 of Code 1860, but acquitted him from charge under Section 201 read with Section 302 of Code 1860 – Appeal against conviction, with plea of insanity – Whether conviction of accused under Section 302 of Code 1860 warrants interference due to plea of insanity – *Held*, evidences of PWs.1 to 3 are cogent, convincing and reliable – Doctor, who conducted autopsy on body of deceased stated that death was due to shock and hemorrhage as result of head injuries and corresponding internal injury to brain – Prosecution proved that accused caused death of deceased – Evidences and earlier order of Trial Court postponing trial holding that accused was not fit to stand trial, would prove that accused suffered from schizophrenia on day of occurrence – Accused entitled for benefit of Section 84 of Code 1860 – Though doctors certified that accused is fit to stand trial, they did not opine that accused is fully cured – Patients with paranoid schizophrenia require treatment on permanent basis, even when symptoms seem to have receded tempting time for schizophrenia patients to say they are fine and need to more help – Accused cannot be allowed to be set free to move in public, as accused may indulge in similar activities in future – Accused requires treatment on permanent basis – As per Section 335(2)(a) of Code 1973, duty of present Court to pass appropriate order to detain Appellant in safe custody – As per Section 24 of Act 1987, present Court empowered to pass reception order under Act 1987 directing person to be kept in licensed psychiatric nursing homes run by State – Conviction imposed on Appellant set aside and he is acquitted from charge under Section 302 – On releasing Appellant from prison, Superintendent of Central Prison shall hand over him to Respondent/Inspector of Police, who shall hand over him to alleged Institute of Mental Health for safe custody and treatment – Magistrate shall deal with accused as per Act 1987 – Appeal allowed.

(2016) 4 MLJ (Crl) 460

Ayyappan vs. State

Date of Judgment: 23.06.2016

Suicide – Abetment to Suicide – *Mens Rea* – Indian Penal Code (Code), Section 306 read with 107 – Trial Court convicted and sentenced Appellant/Accused for offence punishable under Section 306 of Code – Appeal against conviction and sentence – Whether Prosecution had established offence under Section 306 of Code as against accused beyond all reasonable doubts – *Held*, offence of abetment requires *mens rea* – There must be intentional doing/aiding or goading the commission of suicide by another – Otherwise, even mere casual remark, something said in routing and usual conversation would be wrongly construed or misunderstood as abetment – Established that deceased was not happy that her husband was not giving her necessary money to run family – Accused never thought nor dreamt that his wife would commit suicide – Decision to put end to her life had been taken by deceased herself unaccompanied by any required overt act, as prescribed in Section 306 r/w 107 of

Code – Accused can't be punished for her foolish act and nobody's case that accused had abetted commission of suicide by his wife – Punishment must be for proved offence as prescribed under penal law – Offence under Section 306 of Code not attracted and recording of conviction under said Section was against law – Conviction set aside – Accused acquitted – Appeal allowed.

(2016) 4 MLJ (CrI) 298

Shahees vs. State

Date of Judgment: 30.06.2016

Rape – Conviction on surmise – Indian Penal Code (Code), Section 324 – Protection of Children from Sexual Offences Act, 2012 (Act, 2012), Sections 5(g) and 6 – Trial Court convicted Appellant/accused under Sections 5(g) and 6 of Act, 2012 and under Section 324 of Code – Appeal challenging conviction and sentence – Whether Trial Court justified in convicting and sentencing accused on mere surmise – *Held*, PW1 disowned complaint and PW12/child had also not stated anything incriminating against accused – No evidence against accused that either he attacked PW12 or sexually exploited her – Medical evidence doesn't lend support to case of Prosecution – Trial Court had convicted accused only on mere surmise which is illegal – Prosecution had failed to prove case beyond reasonable doubts and Appellant is entitled for acquittal – Conviction and sentences imposed on Appellant by Trial Court set aside and he is acquitted from charges under Section 324 of Code and Sections 5(g) and 6 of Act, 2012 – Appeal allowed.

(2016) 4 MLJ (CrI) 430

State vs. J. Doraiswamy

Date of Judgment : 14.07.2016

Discharge – Discharge from Charges – Revision – Criminal Procedure Code, 1973, Section 227 – Prevention of Corruption Act (Act), Sections 7, 11 and 13(1)(d) – Indian Penal Code (Code), Section 34 – Respondents/Accused A1 and A2 were charged with offences punishable under Section 7 of Act read with Section 34 of Code, 11 and 13(1)(d) of Act – Chief Judicial Magistrate (CJM) discharged Respondents from alleged offences – Revision by State against discharge order – Whether Prosecution had made out *prima-facie* case warranting Trial Court to frame charges against Respondents – *Held*, material contradiction with regard to date of payment to Respondents – Except ipse-dixit statement of Complainant's brother, no other material to prove demand of money by Respondents – Finding of Trial Court that there were inconsistencies in statements of Complainant and his cousin can't be found fault with – No consistent material to frame charge against Respondents in criminal proceedings, especially for same set of allegations, when they were exonerated in departmental proceedings in view of charges having not proved therein – No *prima-facie* case found to proceed against Respondents to frame charges in view of inconsistencies in statements of main witnesses namely Complainant and his Cousin – No infirmity found in findings rendered by Trial Court – Revision dismissed.

(2016) 4 MLJ (CrI) 446

B. Loganathan vs. Inspector of Police

Date of Judgment : 21.07.2016

Return of Property – Property Return Petitions – Dismissal – Code of Criminal Procedure, 1973 (code), Sections 451 and 457 – Revision Petitioner/Complainant lodged complaint against unidentified persons as they took away gold jewels in car and committed certain crimes including robbery – Revision Petitioner filed petitions before Judicial Magistrate for his interim custody of case properties viz., gold ingots, chains and money, which was dismissed – Revision petitions against orders passed by Judicial Magistrate dismissing property return petitions of Revision Petitioner justified – *Held*, victim in property crime would be interested in getting back his property – Once property is remanded in criminal case, it comes to custody of Court and that is why interim custody of property is given to eligible persons – Court has to see who had immediate possession of property and if person who had possession was not entitled, then he can't be given such property – Problem arises in property offences when accused converts case property into different form – When ownership of case properties could be traced to *de facto* Complainant, he could be given custody of same prescribing reasonable conditions – Information in confessional statement recorded from accused throws much light on aspect of ownership of case property, namely, ingots – They show that ingots were made out of jewels robbed from victim – Reasoning of Judicial Magistrate in dismissing property return petitions are not germane for disposal of property return petitions filed under Sections 451 and 457 of Code – Impugned orders set aside – Revisions allowed.

(2016) 4 MLJ (CrI) 451

Ekambaram vs. State

Date of Judgment : 22.07.2016

Rape – Cheating – Indian Penal Code, 1860, Sections 376 and 417 – Appellant/accused convicted under Sections 376 and 417 – Appeal against conviction – Whether conviction of accused under Sections 376 and 417 sus – *Held*, evidence of PW-1 shows that even prior to date of occurrence and knowing that Appellant was married man, she voluntarily and on her own consent had sexual intercourse with accused – Statement of PW-1 that she was raped by Appellant just two years prior to date of complaint inside her house cannot be believed – PW-2/father of PW-1 stated that while he and her wife/PW-3 went out for work, they would lock house and hand over key to their daughter/PW-1 and she used to look after shop – Considering evidence of PWs.2 and 3, statement of PW-1 that accused went and hid himself inside house of PW-1 and committed rape on her cannot be believed – Evidence of PW-1 does not inspire confidence – Prosecution did not explain for not producing/marketing earlier complaint produced, it would have been silent about such alleged incident that happened two years prior to date in question as alleged in Ex.P-1 – Adverse inference could be drawn against prosecution – Question of convicting accused under Section 376 does not arise – Fact that PW-1 consented to have sexual intercourse with Appellant by believing false promise made by him that he would marry her cannot be accepted, as PW-1 knew that accused was married man and she had sexual intercourse with him with consent and same was not in consequence of misconception of fact – Question of conviction imposed on accused under Section 417 does not arise – Conviction imposed on accused under Sections 376 and 417 set aside – Appeal allowed.

2016 (5) CTC 847

Subramaniam vs. The State

Date of Judgment: 04.08.2016

Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Sections 6, 34(2) & 42-A – Juvenile Justice (Care and Protection of Children) Rules, 2007, Rules 12 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 311 & 391 – Indian Evidence Act, 1872 (1 of 1872), Section 165 – Dispute as to Age of Victim Girl – Variations in date of birth – No documentary evidence produced to conclude that victim was a ‘child’ under POCSO Act, 2012 – Inspector of Police produced only a Photo copy of S.S.L.C. Certificate, but, not examined Headmaster or marked Certificates as Exhibit – Doctor’s Opinion about Age is only approximate – 2 years of margin to be added on either side – Trial Court passed strictures against Investigation Officer – Resulted in failure of justice – High Court exercised power under Section 311, Cr.P.C. and Section 165 of Evidence Act to record additional evidence under Section 391 of Cr.P.C. – Objection raised on behalf of Accused to receive additional evidence rejected, since age of victim is a crucial issue to do justice – As per Rule 12 of Juvenile Justice Rules, School Certificate shall have precedence over Birth Certificate – Summons issued to Headmaster and Investigation Officer was recalled to mark Birth Certificate, School Admission Register, etc. – Opportunity was given to cross-examine, Accused was cross-examined under Section 313, Cr.P.C. – As per additional evidence recorded under Section 391, Cr.P.C., victim girl is a child under Section 2(d) of Act, 2012 – Age established – Appeal partly allowed.

Evidence Act, 1872 (1 of 1872), Sections 24 & 3 – Extra-Judicial Confession – Accused confessed to Prosecution in Witnesses that he exploited girl and offered money to close Complaint – Such an offer is an extra-judicial statement, though a weak piece of evidence, would have corroborative value.

Code of Criminal Procedure, 1973 (2 of 1974), Section 154 – First Information Report – Delay – Delay in giving Complaint to Police not fatal – Mother of victim, a poor and illiterate lady, did not act immediately thinking future of girl – Modesty of girl is involved – Delay properly explained.

Evidence Act, 1872 (1 of 1872), Section 3 – Appreciation of Evidence – Women folk would not go to extent of making a false allegation – Defense plea of personal animosity is rejected – Considering circumstances, sentence reduced to 10 years – Appeal partly allowed.

Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 6 – Considering age of Accused and past and subsequent conduct, Life Sentence reduced to 10 years’ Rigorous Imprisonment.

Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Section 29 – Presumption – Facts sufficient to raise presumption against accused.

Practice & Procedure – Justice always triumphs – Facts discussed raises a presumption against Accused – Accused not rebutted legal presumption either by means of direct evidence or by means of circumstantial evidence – By unrebutted presumption also, prosecution has conclusively proved guilt of Accused – Fact remains that Trial Court and Additional Public Prosecutor should have been more vigilant in discharging their obligation under law in right manner and in right way – This judgment shall be taken as an eye opener for Subordinate Judiciary as well as Additional Public Prosecutors – Direction issued.

(2016) 4 MLJ (CrI) 257

State vs. Sankar @ Rajsankar

Date of Judgment: 22.08.2016

Confession – Extra Judicial Confession – Handwriting – Indian Penal Code, 1860 (Code 1860), Sections 320, 380 and 449 – Indian Evidence Act (Act), Section 73 – Trial court acquitted Respondent/sole accused from all charges for offences under Sections 449, 320 and 380 of Code 1860 – Appeal against acquittal by State and Criminal Revision filed by husband of deceased – Whether Trial Court was right in rejecting extra judicial confession and acquitting accused of all charges – *Held*, Ex.P4 is extra judicial confession – Ex.P5 is special report prepared by Village Administrative Officer (V.A.O)/P.W.11 – Trial Court compared Ex.P4 and Ex.P5 finding both in different handwritings – As per Section 73 of Act, court has power to compare signature or handwriting – Accused had no acquaintance with P.W.11 – Doubtful whether accused would have chosen total stranger to confess guilt – Trial Court has disbelieved Ex.P4 and recoveries of M.Os.6 and 7 also from out of alleged confession of Accused – Trial Court doubted very missing of M.Os.6 and 7 as no mention about same in F.I.R – Village Assistant who allegedly attested extra judicial confession not examined – Settled law that even if two views are equally possible, Appellate Court cannot substitute its view in place of view taken by Trial Court perverse, not possible to reject same and to substitute view of Appellate Court – No infirmity warranting interference – Appeal dismissed – Revision dismissed.

(2016) 4 MLJ (CrI) 496

M. Sundaramoorthy vs. Minor Iswaryalakshmi

Date of Judgment : 31.08.2016

Maintenance – Maintenance claim – Limitation period – Code of Criminal Procedure (Code), Section 125 – Revision Petitioners/Spouses lived separately on account of difference of opinion between them on various aspects – Monthly maintenance sought by wife for herself and her daughter – Family Court granted maintenance to daughter, however, denied to wife as she had already received lumpsum amount and was also silent in not taking steps for maintenance more than a decade – Aggrieved by grant of maintenance to his daughter, father/husband and aggrieved by denial of maintenance, wife have filed Revisions – Whether wife and daughter are entitled to maintenance from revision petitioner, if so how much to each and from when – *Held*, merely because wife has not claimed maintenance through court, after their separation for a long time, cannot be denied maintenance as there was no law of limitation for woman to claim maintenance from her husband under Section 125 of Code – Not established that wife had independent source of income – Evidence to show that Petitioner-husband had sufficient financial capacity to maintain his wife and daughter – Court after considering all relevant aspects, may arrive at higher rate than rate mentioned in maintenance petition – It cannot be said that Court was powerless to grant such amount when especially judicial discretion had been conferred upon Court – Maintenance granted to daughter by Trial Court not excessive – Wife entitled to quantum of maintenance granted from date of filing maintenance petition – Revision filed by father dismissed – Revision filed by wife allowed.

2016-2-L.W. (Crl.) 499

Sugesan Transport Pvt. Ltd.

vs.

The Assistant Commissioner of Police, J-2 Adyar Police Station, Adyar, Chennai

Date of Judgment : 12.09.2016

Criminal Procedure Code, Section 2(d) '*complaint*', 154(1), 154(3), 156(3), 200, 482, petition to register FIR, (First Information Report) whether to be entertained, by High Court, under what condition, '*inherent powers*', scope of,

Constitution of India, Article 144, petition to register FIR, (First Information Report) whether to be entertained, by High Court under what condition

Amended Letters Patent of the High Court of Madras (1865), Clauses 7, 36, petition to register FIR, (First Information Report) whether to be entertained, by High Court under what condition

Tamil Nadu District Police Act (1859), Section 21, duties of police officer, petition to register FIR, (First Information Report) whether to be entertained, by High Court under what condition,

Criminal Practice, direction for, registration of FIR, power of High Court Registry whether can number petition

whether under Section 482, Cr.P.C., Court has power to issue directions to register FIR – Power of High Court under Section 482, what is, expression "*the commission*", '*otherwise to secure the ends of justice*', scope of

held: a petition under Section 482, Cr.P.C. for a direction to register an FIR on the complaint of the petitioner circumventing the time table prescribed in *Lalita Kumari-IV 2014 (1) L.W.(Crl.) 1 and V* is not maintainable

Section 482, Cr.P.C. can be invoked only in respect of proceedings pending on the file of a Court and not otherwise

on receipt of complaint, Magistrate shall pass orders thereon within 15 days – If the police officer does not register FIR within a period of one week from date of receipt of the magistrate's order, Magistrate shall initiate prosecution against him – If no FIR is registered by police within one week from date of receipt of a copy of order of Magistrate under Section 156(3), Cr.P.C., complainant can approach this Court under Section 482, Cr.P.C. – If the police fail to complete preliminary enquiry within six weeks, as mentioned in *Lalita Kumari-IV 2014 (1) L.W. (Crl.) 1* complainant can approach this Court under Article 144 read with Section 482, Cr.P.C.

Petition must be accompanied by an affidavit sworn to by the complainant to show police have not completed preliminary enquiry within six weeks

Registry shall not number the petition filed under Section 482, Cr.P.C. seeking a direction to register an FIR unless it is accompanied by an affidavit containing above details

If police officer fails to register FIR pursuant to the directions of this Court, he will be liable for contempt of Court

Every police station shall have a Board giving the name and telephone number of the local Legal Services Authority

After reading a copy of the complaint and the original affidavit filed, the magistrate should send original complaint and a copy of the affidavit to the police along with a copy of the order directing the police to investigate the case – Magistrate should retain a photocopy of the complaint, original affidavit and the order must be recorded in order sheet, so that the complainant can apply for the certified copy of the order passed by the magistrate.

Court will entertain an application under Section 482, on failure of the police to follow the time table in *Lalita Kumari-IV* 2014 (1) L.W.(CrI.) 1 and V or not paying heed to the order passed by the Magistrate under Section 156(3), Cr.P.C.

A petition under Section 482, Cr.P.C. should be accompanied by an affidavit of the petitioner detailing the steps taken by him to give complaint under Sections 154, 154(3) Cr.P.C.

Court will not entertain complaints addressed to the Hon'ble Chief Minister of the State, Chief Secretary, Home Secretary, Director General of Police and other gubernatorial authorities

Closure report cannot be subject to judicial review under Section 482, Cr.P.C. – Direction to DGP to issue circulars – Procedure of issuing CSR receipt, to complainants, directions passed
