



TAMIL NADU STATE JUDICIAL ACADEMY

Vol: XI

Part: 9

September, 2016

IMPORTANT CASE LAW



OFFICE: No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028
Phone Nos. 044– 24958595 / 96 / 97 / 98
Telefax: (044) 24958595

Website: www.tnsja.tn.nic.in
E-Mail: tnsja.tn@nic.in/tnsja.tn@gmail.com

INDEX

S.No.	IMPORTANT CASE LAW	PAGE No.
1	Supreme Court - Civil Cases	01
2	Supreme Court - Criminal Cases	05
3	High Court - Civil Cases	08
4	High Court - Criminal Cases	14

TABLE OF CASES WITH CITATION

SUPREME COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	Faruk Ilahi Tamboli vs. B.S.Shankarrao Kokate (D) by L.Rs.	2016 (4) CTC 440	14.10.2015	Rent Control and eviction	1
2	Ram Rati vs. Mange Ram (D) through L.Rs.	2016 (5) CTC 555	23.02.2016	Recall of Witness – Parameters to exercise power	1
3	Umesh Goel vs. Himachal Pradesh Co-operative Group Housing Society Ltd.	2016 (4) CTC 419	29.06.2016	Partnership Act – Interpretation of Section 69(3) – Applicability to Arbitral Proceedings	1
4	Vimal Kishor Shah vs. Jayesh Dinesh Shah	(2016) 6 MLJ 605 (SC)	17.08.2016	Alternative Dispute Resolution – Disputes on Trust – Jurisdiction of Arbitrator	3
5	Principal Secretary vs. Ragini Narayan	(2016) 7 MLJ 88 (SC)	20.09.2016	Trust and Charities – Powers of Donor Trustee – Delegation	3

SUPREME COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	State of Maharashtra vs. Hemant Kawadu Chauriwal, etc.	2016-2-L.W.(Crl) 314	16.12.2015	Murder – Dying Declaration – Reliance – Scope	5
2	Satish Shetty vs. State of Karnataka	(2016) 3 MLJ (Crl) 611 (SC)	03.06.2016	Suicide – Abetment – Dowry Death	5
3	Sekhar Suman Verma vs. Superintendent of N.C.B.	(2016) 3 MLJ (Crl) 747 (SC)	29.06.2016	Narcotics – Search – Compliance of Provisions of NDPS Act	6
4	Jagdish vs. State of Haryana	(2016) 3 MLJ (Crl) 751 (SC)	29.06.2016	Culpable Homicide	6
5	Sampelly Satyanarayana Rao vs. Indian Renewable Energy Devpt. Agency Ltd.	2016 (5) CTC 563	19.09.2016	Negotiable Instruments Act – Section 138 – Post-dated Cheque – Issued as ‘Security’	7

HIGH COURT - CIVIL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	V.Arumugam vs. R.Chandrasekaran	2016 (5) CTC 150	26.05.2016	Suit for Specific Performance – Oral Agreement – Limitation	8
2	B.Raghumaran vs. Ms.Pushpabai	(2016) 6 MLJ 286	08.06.2016	Property Laws – Validity of Sale Deed – Cancellation of Power Deed	8
3	Manager, Oriental Insurance Co. Ltd vs. Saraswathi	2016 (2) TN MAC 145 (DB)	22.07.2016	Motor Accident Claim – Income Assessment – Proper Multiplier – Proof of Negligence	9
4	Durairasan vs. D.Kuppuswamy	2016 (4) CTC 675	29.07.2016	Settlement deed – Cancellation of – Sections 101 to 104 of Evidence Act	10
5	K.Chandralekha vs. S.Ravikumar	2016 (5) CTC 92	05.08.2016	Rejection of Plaintiff – Bar of Limitation	10
6	A. Krishnan vs. A.Ponnaiyan (deceased)	2016 (5) CTC 421	11.08.2016	Hindu Law – Suit for Partition	11
7	Karthik Meyyappan vs. Sri Sutha Devi	(2016) 6 MLJ 371	11.08.2016	Evidence – Marking of Will – Attesting Witness	11
8	G.V.Vanitha vs. K.Dhanasekaran	2016 (5) CTC 329	11.08.2016	Execution – Obstruction/Resistance	12
9	M.Y.Rahamathulla vs. S.A.Amanulla	2016 (5) CTC 83	18.08.2016	Principles of Mohammedan Law – Validity of Conditional Gift	12
10	Selvamani vs. Minor K.Gomathi	2016 (5) CTC 391	01.09.2016	Partition – Will – Issue of Paternity	12

HIGH COURT - CRIMINAL CASES

S.No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	PAGE No.
1	M. Jahir Hussain vs. State	(2016) 3 MLJ (Crl) 664	14.03.2016	Murder – Insanity	14
2	Kannamma vs. State	(2016) 3 MLJ (Crl) 571	25.04.2016	Return of Article – Case Properties – Sections 451 and 457 Cr.P.C.	14
3	Salia Beevi vs. Annadurai	(2016) 3 MLJ (Crl) 625	28.04.2016	Cheating – Admissibility of Secondary Evidence	15
4	Palanisamy vs. State, rep. by Inspector of Police	2016 (5) CTC 415	06.06.2016	Murder by Strangulation – Circumstantial Evidence	15
5	Suresh Kumar vs. State	(2016) 3 MLJ (Crl) 513	08.06.2016	Murder – Fair Trial	16
6	Mahalingam vs. State by The Inspector of Police	(2016) 3 MLJ (Crl) 533	08.06.2016	Murder – Dying Declaration	16
7	Selvaraj vs. State	(2016) 3 MLJ (Crl) 697	27.06.2016	Discharge	17
8	K. Rajagopalan vs. Sri Srinivasa Engineering Works	2016 (4) CTC 392	05.07.2016	N.I.Act – Sections – Sections 138 and 142(2) – Transfer of Complaint – Jurisdiction	17
9	CBI rep. by Additional Superintendent of Police, SPE: CBI: ACB, Chennai vs. Shri. Andasu Ravindar & ors.	2016-2-L.W.(Crl) 220	22.07.2016	Confession Statement – Making and Marking of – Scope – Sections 164 Cr.P.C. and 25 Evidence Act	17
10	N.Gowthaman @ Babu v. The Government of Tamil Nadu	2016 (5) CTC 225	29.08.2016	Tamil Nadu Borstal Schools Act – Interpretation of statutes	18

SUPREME COURT CITATIONS CIVIL CASES

2016 (4) CTC 440

Faruk Ilahi Tamboli vs. B.S. Shankarrao Kokate (D) by L.Rs.

Date of Judgment : 14.10.2015

Rent Control and Eviction – *Bona fide* Need – Comparative Hardship – Consideration of – Appellant/Landlord seeking eviction on ground that they were selling beetle nuts and beetle leaves in open on street and they require Suit Shop for their own business – Established that Appellants had purchased Suit premises for running a business therein and not for earning Rent therefrom – Contention of Respondents/Tenants that Appellant ought to continue business with his family, untenable – *Held*, Owner of property has every right to use his property as he chooses – Suit Shop measuring 9.7 square meters suitable for business of selling beetle nuts and beetle leaves – *Bona fide* need of Appellants established – Finding of Trial Court that alternative accommodation was available for Respondents-Tenants not disputed by Respondents before any forum – Respondents running a Grocery Shop, having a Bicycle Shop, running a Wine Shop and also owning Agricultural lands – Appellant, on other hand running Flour Mill in a property measuring 105 square meters – Appellants, *held*, cannot be expected to run a retail business of selling beetle nuts in a premises as large as 105 square meters – Comparative hardship in favour of Appellants – Suit for eviction allowed on ground of *bona fide* need – Appeal allowed.

2016 (5) CTC 555

Ram Rati vs. Mange Ram (D) through L.Rs.

Date of Judgment : 23.02.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 18, Rule 17 – Court may recall and examine Witness – Nature of Discretion – Parameters to exercise power to recall Witness – Trial Court recalled Witnesses on “left out points” by parties – Propriety – Power to recall Witness can be exercised at any stage – Power cannot be invoked to fill up omission or lacuna in evidence already led by Witness – Discretionary power envisaged under Code should be exercised sparingly in appropriate cases – Court should see that trial is not unnecessarily protracted under guise of recall of Witness – Impugned Order recalling Witness for further elaboration on left out points is legally impermissible.

2016 (4) CTC 419

Umesh Goel vs. Himachal Pradesh Co-operative Group Housing Society Ltd.

Date of Judgment : 29.06.2016

Indian Partnership Act, 1932 (9 of 1932), Section 69(3) – ‘Other proceeding’, whether includes Arbitral proceedings – Unregistered Firm, whether banned from raising a Counter-claim before Arbitrator – Section 69 dealing with effect of non-registration – Sub-sections (1) & (2) imposing a ban of filing of Suit for enforcement of right under Contract or under 1932 Act by an unregistered Firm or a Partner of unregistered Firm against Firm, its Partners or any Third party – Said ban applicable to sub-section (3) dealing with claim of set-off or other proceeding to enforce right to sue for dissolution of Firm – Counter-claim awarded in favour of Appellant, an unregistered Firm by Arbitrator, found to

be unjustifiable by Division Bench on account of embargo contained in sub-section (3) in Section 69 – *Held*, foundation of application of sub-section (3) to be initiation of Suit in which claim or set off of other proceedings intrinsically connected with Suit arise – Claim or set off or other proceeding, *held*, not to have independent existence – Launching of Suit in a Court of law, a *sine qua non* for application of ban under sub-section (3) – Counter-claim in Arbitral proceedings not covered under embargo in sub-section (3) of Section 69 – Ban imposed under Section 69, *held*, to have no application to Arbitral proceedings as well as to Arbitration Award – Order of Division Bench set aside – Appeal allowed.

Indian Partnership Act, 1932 (9 of 1932), Sections 69(1) & 69(2) – Interpretation of – Section 69 dealing with effect of non-registration – Sub-section (1) imposes a ban on any person in his capacity as Partner of an unregistered Firm against said Firm or any of its Partners in filing a Suit for enforcing a right arising under a Contract or 1932 Act – Same ban imposed under sub-section (2) upon an unregistered Firm or any of its Partners on its behalf against Third party by way of a Suit to enforce a right arising from a Contract in any Court – Common component under both provisions is a ban on filing a Suit, in a Court for enforcement of right arising from a Contract or conferred by 1932 Act on behalf of an unregistered Firm or by Firm itself or by anyone representing as Partners of unregistered Firm.

Indian Partnership Act, 1932 (9 of 1932), Section 69(3) – Provisions of sub-sections (1) & (2) – Whether incorporated in sub-section (3) – Sub-section (3) opening with expression, ‘provisions of sub-sections (1) & (2) shall apply’ – Said expression, *held*, implies that entirety of both sub-sections should be bodily lifted and incorporated in sub-section (3) – While applying sub-section (3), all ingredients contained in sub-sections (1) & (2) to be read into sub-section (3) and applied.

Arbitration Act, 1940 (10 of 1940) – Arbitration and Conciliation Act, 1996 (26 of 1996) – Indian Partnership Act, 1932 (9 of 1932), Section 69 – Different between 1940 Act and 1996 Act *vis-a-vis* Applicability of Section 69 of 1932 Act – Scheme of 1940 Act not similar to 1996 Act – Proceedings under 1940 Act virtually in nature of a Suit in a Civil Court – Parties under 1940 Act even in absence of an Agreement providing for Arbitration, can seek for a reference to Arbitration with consent of all parties – 1940 Act calls for intervention of Court not only at initiation and enforcement of Arbitration but provides for intervention at every stage of Arbitration proceedings – Under 1996 Act, scope of intervention of Court is very limited and is not same as in 1940 Act – Decision of Apex Court in *Jagdish Chander Gupta v. Kajaria Traders (India) Ltd.*, 1964 (8) SCR 50, holding that proceedings under 1940 Act would be governed by Section 69 of 1932 Act – Said decision, *held*, only applicable to proceedings under 1940 Act and not applicable to proceedings emanating under 1996 Act wherein role of Court is limited – Consequently, Section 69(3), *held*, has no application to Arbitration proceedings instituted under 1996 Act.

Interest Act, 1978 (14 of 1978), Section 2(a) – Indian Partnership Act, 1932 (9 of 1932), Section 69(3) – ‘Court’ – Definition in 1978 Act – Whether applicable to 1932 Act – ‘Court’ under Section 2(a) of 1978 Act to include a Tribunal and Arbitrator – In absence of any specific provision under 1932 Act, definition under Section 2(a), *held*, cannot be imported in 1932 Act.

Arbitration and Conciliation Act, 1996 (26 of 1996), Section 36 – Indian Partnership Act, 1932 (9 of 1932), Section 69(3) – Arbitral proceedings, whether akin to Civil proceedings – As per Section 36 of 1996 Act, Award of Arbitrator to be equated to Decree of Court for purpose of execution – Contention of Respondent that by virtue of Section 36, Arbitration proceedings are to be treated as Civil proceedings and same would come into ambit of ‘other proceeding’ in Section 69(3) of 1932 Act – *Held*, Section 36 only creating a Statutory fiction – Said fiction limited for purpose of enforcement of

Award – Court cannot add words to the Statutory fiction to conclude that Arbitral proceedings would be Civil Court proceedings for purpose of applicability of Section 69(3) of 1932 Act.

(2016) 6 MLJ 605 (SC)

Vimal Kishor Shah vs. Jayesh Dinesh Shah

Date of Judgment : 17.08.2016

Alternative Dispute Resolution – Disputes on Trust – Jurisdiction of Arbitrator – Arbitration and Conciliation Act, 1996 (Act 1996), Sections 2(b), 2(h), 7 and 11 – Indian Trust Act, 1882 (Act 1882) – Differences cropped up inter se beneficiaries with respect to manner in which affairs and business of Trust were being carried on – Parties could not settle disputes/differences and nor could they agree for appointment of arbitrator amicably – Respondent Nos.1 to 3 (one set of beneficiaries) filed application under Section 11 of Act 1996 – Designated Judge, by impugned judgment, allowed application – Judge proceeded to invoke clause of Trust Deed and appointed sole arbitrator for deciding disputes/differences which had arisen between parties to application – Other group of beneficiaries felt aggrieved and filed special leave appeal against the order – Whether clause in Trust Deed, which provides for resolving disputes arising between beneficiaries of Trust through arbitration, can constitute “arbitration agreement” within meaning of Section 2(b) and 2(h) read with Section 7 of Act 1996 – Whether application filed by Respondents under Section 11 of Act 1996 can be held as maintainable – *Held*, sections in Act 1882 confer jurisdiction on Civil Court and provides that an aggrieved person may approach the principal Civil Court of Original Jurisdiction for adjudication of his grievances – Trust Deed cannot be held to constitute agreement much less arbitration agreement despite containing arbitration clause therein – Trust Deed including arbitration clause does not satisfy requirements of Section 2(b) and 2(h) read with Section 7 of Act 1996 – Trust Deed cannot be construed as “arbitration agreement” within meaning of Section 7 of Act 1996 – Disputes relating to Trust, trustees and beneficiaries arising out of Trust Deed and Trust Act are not capable of being decided by arbitrator despite existence of arbitration agreement to that effect between parties – Application filed by Respondents under Section 11 of Act 1996 is not maintainable on ground that it is not based on “arbitration agreement” within meaning of Sections 2(b) and 2(h) read with Section 7 of Act 1996 – Assuming that there exists arbitration agreement yet disputes specified therein are not capable of being referred to private arbitration for their adjudication on merits – Application filed by Respondents under Section 11 of Act 996 dismissed as not maintainable – Impugned order set aside – Appeal allowed.

(2016) 7 MLJ 88 (SC)

Principal Secretary vs. Ragini Narayan

Date of Judgment : 20.09.2016

Trust and Charities – Powers of Donor Trustee – Delegation – Registration Act, 1908, Section 47 – 1st Respondent/Plaintiff claiming to be Donor Trustee after death of her husband/original Donor Trustee, wrote letter to Chairman of Trust for cooperation of State in discharging functions as Donor Trustee, same forwarded to State – Appellants/Principal Secretary, State appointed 2nd Respondent as Donor Trustee – On challenge made by Plaintiff, Trial Court and High Court found that original Donor Trustee had authority to nominate Plaintiff and delegation of his powers in favour of Plaintiff suffered from no illegality – Appeal – Whether delegation of powers of Donor Trustee in favour of Plaintiff suffered from illegality – Whether it was Plaintiff who was validly nominated Donor Trustee or State – *Held*, para (IV)(i) of Trust Deed shows that original Donor Trustee was to continue as donor Trustee during his life time where after he was to be succeeded by his lineal descendant and if mode of succession fails, power of appointment of Trust Deed was to vest with State – Amendment of 1978

shows that name of 1st wife of original Donor Trustee added in para (IV)(i) as nominee to succeed from original Donor Trustee – After 1st wife was divorced by original Donor Trustee, he got married to Plaintiff where after further amendment proposed and passed through Resolution and by that amendment, name of 1st wife deleted and Plaintiff's name added – Lower Courts rightly found that Plaintiff was wife of original Donor Trustee, at time of his death, as such it cannot be said that mode of succession mentioned in para (IV)(i) failed – Words 'or his wife' in amendment of 1978 to which Appellants approved refer to wife of Donor Trustee, same retained in amendment of 1995 – By virtue of Ex.A-7, recital contained in amendment of 1995 and in view of letter of State, consent of State to amendment of 1995 can be inferred – No error found in High Court order – Appeal dismissed.

**SUPREME COURT CITATIONS
CRIMINAL CASES**

2016-2-L.W.(CrI) 314

State of Maharashtra vs. Hemant Kawadu Chauriwal, etc.

Date of Judgment : 16.12.2015

Indian Penal Code, Sections 34, 302, 304-B, 498A

Evidence act, Section 32, dying declaration, reliance, scope

Appeal by state against acquittal – cruelty by husband, mother in law charge of suicide by burning, whether proved – Material contradiction, shabby investigation, effect of –

FIR lodged after receipt of dying declaration recorded by Naib tehsildar reached police station late about one full day – Fitness certificate did not state about fit and stable mental condition of deceased – Alleged letters written by accused to her father, effect of, whether proved

Held: Tehsildar deposed that deceased was illiterate and dying declaration was read over and explained to her – These are self-contradictory – Dying declaration and alleged letters not proved

(2016) 3 MLJ (CrI) 611 (SC)

Satish Shetty vs. State of Karnataka

Date of Judgment : 03.06.2016

Suicide – Abetment to suicide – Dowry Death – Indian Penal Code, 1860 (Code 1860), Sections 498A, 306 and 304B – Dowry Prohibition Act (Act), Sections 3, 4 and 6 – Indian Evidence Act, 1872 (Act 1872), Section 113A – Case registered against Appellant and his parents/accused under Section 498A, 304B of Code 1860 and Sections 3 and 4 of Act – Appellant/husband of victim lady and his parents were acquitted, same challenged – High Court found Appellant guilty under Section 498A of Code 1860 and found circumstances on record proper for resorting to Section 113A of Act 1872 which permits raising of presumption as to abetment to suicide by married woman – Appeal – Whether conviction of Appellant under Sections 498A and 306 of Code 1860 sustainable – Whether High Court justified in resorting to exercise discretion available under Section 113A of Act 1872 – *Held*, injuries on victim not explained by Appellant although he and deceased slept together in same room before she consumed poison – High Court found that deceased harassed for noncompliance with demand of accused for specific sum to invest in business and that such harassment falls under Clause (b) of explanation of Section 498A of Code 1860 – Once prosecution succeeds in establishing component of cruelty leading to conviction under Section 498A of Code 1860, only in rare case, Court can refuse to invoke presumption of abetment, if other requirements of Section 113A of Act 1872 satisfied – High Court gave reasons on basis of facts on record through evidence to invoke presumption under Section 113A of Act 1872 and it discussed explanations of Appellant in initial version by way of Unnatural Death Report and later explanations – High Court found later explanations unacceptable and initial

explanation that deceased committed suicide because she was not permitted to go to her mother's place does not inspire confidence and rightly rejected by High Court – Appellant failed to rebut presumptions raised against him under Section 113A of Act 1872 – No reason to take different view from that of High Court – Appeal dismissed.

(2016) 3 MLJ (CrI) 747 (SC)

Sekhar Suman Verma vs. Superintendent of N.C.B.

Date of Judgment : 29.06.2016

Narcotics – Narcotics Search – Compliance of Provisions – Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 1985), Sections 21, 42 and 50 – On search, banned substances were seized from Appellant – Court convicted Appellant under Section 21 of Act 1985 and sentenced him to suffer rigorous imprisonment – High Court upheld conviction and sentence – Appeal against conviction and sentence – Whether there was proper compliance of provisions of Sections 42 and 50 of Act 1985 – *Held*, High Court has recorded finding keeping in view law laid down by Apex Court – PW-7 himself was gazetted officer and was not necessary for him to ensure compliance of Section 42 – Rightly found that offer to search Appellant was given to him in writing and on his giving consent, he was accordingly searched – High Court was right in upholding procedure followed by raiding party for ensuring compliance of Section 50 and rightly held against Appellant on this issue – No ground to take different view than one taken by High Court – Court upholds finding against Appellant – Appeal dismissed.

(2016) 3 MLJ (CrI) 751 (SC)

Jagdish vs. State of Haryana

Date of Judgment : 29.06.2016

Culpable Homicide – Appeal against conviction – Indian Penal Code 1860 (Code 1860), Sections 304 Part II and 323 – Fight occurred between two groups of relatives – Victim/Deceased was killed and others injured – Trial Court convicted Appellant/Accused for offences punishable under Section 304 Part II and Section 323 of Code 1860 – High Court upheld conviction – Whether lower courts were justified in convicting Appellant under sections 304 Part II and 323 of Code 1860 – *Held*, settled principle of law that court cannot appreciate entire evidence de novo in routine manner while hearing criminal appeal when conviction is based on concurrent findings of two courts – Only when court comes to conclusion that impugned finding though concurrent in nature is wholly arbitrary, unreasonable or/and perverse to extent that no judicial mind of average capacity can ever record such conclusion, court may undertake exercise of appreciating evidence to extent necessary to find out error – Court has not been able to notice any arbitrariness or/and unreasonableness in concurrent finding of two courts below – Courts below were justified in appreciating evidence of eye-witnesses PWs 2, 10 and 12 and rightly came to conclusion that Appellant was armed with lathi and gave blows to deceased and was responsible for causing death of deceased – Concurrent finding of two courts, which is based on appreciation of oral evidence on question as to whether Appellant (accused) was present on spot, whether he gave blow to deceased and, if so, how many etc. is binding on this Court – No illegality found warranting any interference – Appeal dismissed.

2016 (5) CTC 563

Sampelly Satyanarayana Rao vs. Indian Renewable Energy Devpt. Agency Ltd.

Date of Judgment : 19.09.2016

Negotiable Instruments Act, 1991 (26 of 1881), Section 138 – Dishonour of Cheque – Post-dated Cheque – Legally enforceable Debt – Dishonour of Post-dated Cheque given for repayment of Loan instalment – Whether dishonour of Post-dated Cheques given by way of Security would attract offences under Section 138 of Act – Accused entered into Development Agreement with Complainant to advance Loan for project – Agreement recorded that Post-dated Cheques were issued as Security towards repayment of instalments of Loan – Contention of Accused that Cheques were not issued towards discharge of debt or liability in *praesenti* but for Amount payable in future – Legal issue as to whether Post-dated Cheque is for discharge of debt or liability, depends on nature of transaction – Loan was disbursed prior to date of issuance of Post-dated Cheques – Accused incurred liability on date of Cheque in terms of Loan Agreement – Cheque issued by Accused represents discharge of existing enforceable debt and liability – Complaint is maintainable.

Negotiable Instruments Act, 1991 (26 of 1881), Section 138 – Cheques issued as Security – “Security” – Meaning of – Whether Cheque issued as Security, is question of fact – Test is whether Cheque is issued in discharge of existing enforceable debt or advance payment with subsisting debt or liability.

**HIGH COURT CITATIONS
CIVIL CASES**

2016 (5) CTC 150

V. Arumugam vs. R. Chandrasekaran

Date of Judgment : 26.05.2016

Specific Relief Act, 1963 (47 of 1963), Sections 16 & 20 – Limitation Act, 1963 (36 of 1963), Article 54 – Suit for Specific Performance – Oral Agreement – Limitation – suit for Specific Performance based on Oral Agreement – Limitation – Suit for Specific Performance based on Oral Agreement between parties – Oral Agreement duly proved by Witnesses, who adduced that they had witnessed Oral Agreement of Sale between Plaintiff and D1 on 06.03.1991 and had also witnessed Plaintiff paying entire Sale consideration of Rs.15,000/- on said date – As per depositions of Witnesses, no time-limit was fixed for execution of Sale Deed – Notice for execution of Sale Deed issued by Plaintiff in 1997 – Notice returned as ‘refused’ by D1 – Suit filed by Plaintiff in 1997 – *Held*, as no limitation was fixed for performance of Contract, limitation would commence from date of refusal of performance of Contract by Defendant as per Article 54 of Limitation Act – Suit filed by Plaintiff, *held*, within limitation – Order of First Appellate Court, decreeing Suit, not interfered with – Second Appeal dismissed.

(2016) 6 MLJ 286

B. Raghuparan vs. Ms. Pushpabai

Date of Judgment : 08.06.2016

(A) Property Laws – Validity of Sale Deed – Cancellation of Power Deed – Appellant/Plaintiff filed suit to declare sale deed executed in favour of 1st Defendant by 2nd Defendant as null and void, not binding upon him and to restrain Respondents/Defendants from making encumbrance of suit properties, same decreed – On appeal, First Appellate Court reversed judgment and decree of Trial Court – Being aggrieved, Plaintiffs filed present appeal – Whether Lower Appellate Court erred in holding that 2nd Defendant had no knowledge about cancellation of Power Deed, when his evidence and that of 1st Defendant prove otherwise – Whether Lower Appellate Court erred in holding that Defendants had no knowledge about General Power of Attorney Deed/Ex.A5, when conduct of Defendants show that sale deed under Ex.B2, executed without consideration – Whether Lower Appellate Court erred in not drawing proper inference to it, when 2nd Defendant did not hand over sale consideration and there is no proof for paying specific sum by him to his Principal – *Held*, though Plaintiff claimed that original owner of property cancelled Ex.A5, letter of revocation under Ex.A6 was not communicated to 2nd Defendant – Ex.A7/envelope returned with endorsement as “door locked” – In absence of due service of cancellation letter on 2nd Defendant, presumption is that 2nd Defendant was not informed about cancellation of his Power of Attorney Deed before authority given under Power of Attorney Deed/Ex.B1 – 2nd Defendant would be under impression that Power of Attorney Deed executed under Ex.B1 by Principal was in force – But after few days, Plaintiff purchased property from Principal through Power Agent, for which Power Agent authorized by Principal under Ex.A8 registered General Power of Attorney Deed – When letter of revocation was not communicated to 2nd Defendant, execution of another registered Power Deed in favour of Power Agent under Ex.A8 is not valid and further Sale Deed under Ex.A10 executed by Principal through his Power Agent in favour of Plaintiff cannot be genuine and valid – Further, it also cannot be construed that 2nd

Defendant did not hand over entire sale consideration to his Principal – Ex.B2 was not created only to defeat legitimate right of 2nd Defendant's Principal – Lower Appellate Court is right in finding that 2nd Defendant had no knowledge about cancellation of Power Deed/Ex.B1 – Also, there is no proof to show that Sale Deed under Ex.B1 executed without consideration – Defendants also had no knowledge about Ex.A5 – Since Plaintiff bound to substantiate his contention that 2nd Defendant did not hand over entire sale consideration to his Principal, no necessity arisen to draw adverse inference against 2nd Defendant – Judgment and decree passed by First Appellate Court confirmed – Appeal dismissed.

(B) Civil Procedure – Verification of Plaint – Power of Power Agent – Jurisdiction of Trial Court – Barred by Limitation – Code of Civil Procedure, 1908 (Code 1908), Order 3, Rules 1 and 2 – Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Act 1955), Sections 25(d), 37(1) and 40 – Limitation Act, 1963 (act 1963), Articles 58 and 59 – Whether Power Agent has competency to verify and sign plaint on behalf of Plaintiff – Whether Trial Court did not have pecuniary jurisdiction to entertain suit – Whether suit barred by limitation – *Held*, General Power of Attorney executed by Plaintiff in favour of Power Agent, through whom, suit instituted not marked as Exhibit – Power of Attorney executed by Plaintiff in favour of Power Agent only for selling property on his behalf and to sign agreements, sale deeds, supplement deeds and other instruments and to present same before concerned Registering Officers and admit execution thereof for registration – Act of Power Agent seems to be in excess of Authority conferred by power – Since Sale Deed itself questioned by Defendants, it is for Plaintiff to enter into witness box to dispel doubt or clouds shrouded over said Sale Deed, but same was not done by Plaintiff – General Power of Attorney holder of Plaintiff does not have competency either to verify or sign plaint and to file suit seeking relief of declaration – Plaintiff, in order to avoid or evade revenue to Government, brought suit within pecuniary jurisdiction of District Munsif Court by computing Court fee under Section 25(d) of Act 1955, which is out of its pecuniary jurisdiction – Impugned Sale Deed/Ex.B2 seems to have been executed, but suit filed after three years and three months – Suit, as contemplated under Article 58 of Act 1963, barred by limitation – As per Article 58 of Act 1963, to obtain other declaration, period of Limitation is three years – Starting point of limitation is when right to sue first accrues – Article 59 of Act 1963 also relevant to be referred to – Since suit filed for seeking declaratory relief to declare impugned Sale Deed/Ex.B2 as null and void, it ought to have been filed within period of three years – With suit not filed within prescribed time of three years as contemplated under Article 58 of Act 1963, suit barred by limitation.

2016 (2) TN MAC 145 (DB)

Manager, Oriental Insurance Co. Ltd. vs. Saraswathi

Date of Judgment : 22.07.2016

INCOME – Assessment – Deceased aged 64 yrs., running a Manpower Agency supplying Manpower to Industries – Ex.P12-Licence granted by Competent Authority duly renewed time to time, marked – I.T. Returns-Exs.P9 & P10 for Assessment years 2008-2009 & 2009-2010, marked – Both found to be genuine and not inflated, even though Ex.P10 filed subsequent to death of deceased – Tribunal rightly fixed Income at Rs.7,29,000 on basis of Ex.P10 – I.T. Return – No interference called for.

MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 168 & 173 – Compensation – Quantum – Challenge to – Deceased aged 64 yrs., running a Manpower Agency supplying Manpower to Industries – *Claimants*: Wife & son of deceased – *Income* : Rs.7,29,000 p.a. fixed by Tribunal on basis of IT Returns – *Loss of Income* : Tribunal deducting 1/3rd towards Personal Expenses and

applying Multiplier of 5, awarded Rs.24,30,000/- [Rs.7,29,000 – 1/3 x 7] : Confirmed in Appeal in absence of any contra-evidence – *Loss of Consortium* : Rs.3,00,000/- awarded by Tribunal, not exorbitant : Confirmed – *Loss of Love & Affection* : Rs.3,00,000/- awarded towards Loss of Love & Affection, Loss of parental supervision and guidance to son/2nd Claimant, *held*, not exorbitant – *Total Compensation* : Rs.30,30,000/- as awarded by Tribunal, *held*, not excessive : Confirmed – Appeal dismissed.

MULTIPLIER – Proper Multiplier – Deceased aged 64 yrs. – Application of Multiplier of 5 – Confirmed.

NEGLIGENCE – Proof – Deceased while driving Two-wheeler dashed by Bus owned by R3 from opposite direction – Deceased was driving his vehicle on correct side of road and Bus driven on wrong side as per Rough Sketch/Ex.P3 – Bus Driver lost control over Bus and dashed against Motorcycle – Considering Rough Sketch/Ex.P3 and Observation Mahazar/Ex.P4, Tribunal arrived at finding that accident caused due to rash and negligent driving of Driver of Bus and not due to any fault of deceased – Finding of fact as recorded by Tribunal called for no interference, upheld in Appeal.

2016 (4) CTC 675

Durairasan vs. D. Kuppuswamy

Date of Judgment : 29.07.2016

Evidence Act, 1872 (1 of 1872), Sections 101 to 104 – Settlement Deed – Cancellation of – Whether proved – Plaintiff and D1 are Son and Father – Settlement Deed executed by father in favour of Son – Execution of Deed admitted by both parties – Plaintiff in possession of properties and mutation of records taken place in favour of Plaintiff, proving that he had accepted Settlement – Contention of father in Written Statement that Deed was executed under threat and assault, when he was not in conscious state of mind – Whereas, recital in Cancellation Deed that as Son failed to maintain his Father and Mother, Settlement Deed in his favour was being cancelled – Established that Plaintiff had taken self-contradictory stands in Written Statement and Cancellation Deed – No Complaint nor any Suit filed by Father for cancellation of Settlement Deed allegedly obtained under threat – Act of Father executing Settlement Deed in presence of Attesting Witnesses and putting signature before Registering Authority, falsifying his contention that Settlement Deed was obtained under threat and assault – Moreover, as Cancellation Deed not containing any recitals with regard to threat or assault attributed on D1, contention of D1, *held*, not proved – Suit filed by Plaintiff decreed – Judgment of Appellate Court, set aside – Second Appeal allowed.

2016 (5) CTC 92

K. Chandralekha vs. S. Ravikumar

Date of Judgment : 05.08.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 7, Rule 11 – Bar of limitation *vis-a-vis* allegations of fraud and forgery – Suit for declaration of Sale Deeds as null and void, injunction and connected reliefs – Sale Deed executed in 1998 – Suit filed in 2012 – *Held*, bar of limitation cannot be decided by merely considering date of Sale Deed and date of Suit – Entire sequence of events as stated in Plaint, commencing from transfer of title to Suit property till date of filing of Suit to be considered as whole for determining bar of limitation – Plaintiff, claiming title by way of inheritance – Plaintiff pleading that Defendants by playing fraud got Revenue records mutated based on fraudulent and

fabricated documents – Proceedings for cancelling Patta in favour of Defendants initiated in 2007 and same were prolonged till 2011, leading to filing of instant Suit in 2012 – *Held*, when serious allegations of fraud, forgery and impersonation are made by Plaintiff, Suit cannot be rejected on technical ground of limitation – Transaction however long ago would be void *ab initio* if allegations of fraud, forgery and impersonation stand proved – Person holding a fraudulent title cannot hold it for ever under guise of technical plea of limitation – Rejection of Suit in instant case, *held*, not warranted on ground of limitation – Order of First Appellate Court resorting Suit on file of Trial Court, upheld – Second Appeal dismissed.

Code of Civil Procedure, 1908 (5 of 1908), Order 1 & Rule 6 – Joining several Defendants in one Suit – Challenge to various Sale Deeds by way of filing of Single Suit – Whether permissible – Suit for Declaration of various Sale Deeds as null and void – Plaintiff not a party to any of those Sale Deeds – Plaintiff claiming to be owner of property, alleging fraud and forgery on part of all Defendants – Main issue to be decided is whether title of Defendants has been obtained by fraud, forgery or impersonation – Combined cause of action arising for Plaintiff to file a single Suit against all defendants – Mere fact that Defendants are not totally different and not known to each other, *held*, would not preclude Plaintiff from filing single Suit against all Defendants.

Limitation Act, 1963 (36 of 1963), Section 14 – Applicability of – Proceedings before Revenue Authorities, to be akin to proceedings before ‘Court’ as contemplated in Section 14 – Exclusion of period while remedy was being pursued before Revenue Authority so as to bring Suit within period of limitation, *held*, permissible as per mandate of Section 14.

2016 (5) CTC 421

A. Krishnan vs. A. Ponnaiyan (deceased)

Date of Judgment : 11.08.2016

Hindu Law – Suit for Partition – Property purchased in names of three brothers – Suit for Partition filed by one against other two – Defendants contended that there was an Oran Partition among the three, but not proved – Even Patta, Water Tax and electricity connection continued to stand in name of all three – Preliminary Decree passed by Appellate Court, confirmed.

(2016) 6 MLJ 371

Karthik Meyyappan vs. Sri Sutha Devi

Date of Judgment : 11.08.2016

Evidence – Marking of Will – Attesting Witness – Indian Evidence Act, 1872 (Act 1872), Section 68 – Indian Succession Act, 1925 (Act 1925), Section 63(c) – Respondents/Plaintiffs prayed to grant Letters of Administration in respect of Will – During pendency of same, Plaintiffs made attempt to mark Will through PW-1 – Appellants/Defendants raised objection regarding marking of Will through PW-1 and reference made to Single Judge – Single Judge permitted PW-1 to examine herself as first witness and thereafter examine any one of the attesting witnesses or both of them to prove execution of Will – Being aggrieved, Defendants filed present appeal alleging that as per Section 68 of Act 1872 coupled with Section 63(c) of Act 1925, Will has to be marked only through attesting witness – Whether Will can be marked through PW-1 or to be marked only through attesting witness – *Held*, even in Section 68 of Act 1872 or in other Sections of Act 1872, it is not stated that Will has to be marked only through attesting witness – Marking of particular document is different from proving its contents by person, who is connected with same – Will can be marked through PW-1 – Mere marking

itself would not constitute its proof – Under such circumstances, plea put forth by Defendants cannot be accepted – PW-1 can be permitted to mark Will, but for proving its execution and attestation, Plaintiffs have to examine any one of the attesting witnesses as per Act 1872 – Appeal disposed of.

2016 (5) CTC 329

G.V. Vanitha vs. K. Dhanasekaran

Date of Judgment: 11.08.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 97 – Execution – Obstruction/Resistance for execution of Decree – Eviction Order passed by Rent Controller attained finality and affirmed by Supreme Court – Judgment-Debtor filed Affidavit of Undertaking for delivery of possession of property – Decree holder levied Execution for delivery of possession – Obstructor/Third party filed Petition before Execution Court claiming independent right, interest upon property – Execution Court declined to number Application and rejected Application at unnumbered stage – Revision filed by Third party was dismissed with liberty to file Rent Control Appeal – Rent Control Appeal filed by Obstructor was allowed directing execution to hear Application by allowing parties to let in oral and documentary evidences – Rent Controller ought not to have rejected Application without even numbering – Application cannot be disposed on merits without numbering Application – Order of Rent Control Appellate Authority remanding matter for fresh consideration on merits did not suffer from any infirmity.

2016 (5) CTC 83

M.Y. Rahamathulla vs. S.A. Amanulla

Date of Judgment : 18.08.2016

Principles of Mohammedan Law, Rules 149 & 150 – Gift – Conditional Gift – Validity of – Suit for declaration of title and injunction – Contention of D2 that her husband-‘S’ was Owner of property and he gifted same to D1-D7 in 1967 and on date of alleged Sale Deed in 1978 in favour of Plaintiff/Appellant, ‘S’ was not Owner of property – *Held*, declaration, acceptance and delivery of possession, three essential conditions of Valid Gift under Mohammedan Law – Declaration of Gift by Donor-‘S’ and acceptance of same by Defendants established by evidence adduced by parties – Suit property, a vacant site and neither proved nor contended that S (Donor), who was residing in Singapore, was in possession of gifted property at any point of time – Delivery of Corpus in favour of Defendants, *held*, implied – Contention of Appellant that conditions imposed in Gift would make it void, untenable as conditional Gift under Mohammedan Law is valid, but conditions imposed are void – In such circumstances, established that Gift was executed in favour of Defendants in 1967 and Appellant did not derive any title from Sale Deed executed in 1978 as S was not Owner of property on said date – In such circumstances, dismissal of Suit by First Appellate Court, upheld – Second Appeal dismissed.

2016 (5) CTC 391

Selvamani vs. Minor K. Gomathi

Date of Judgment : 01.09.2016

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 2 – Evidence Act, 1872 (1 of 1872), Sections 3 & 112 – Issue of Paternity raised by Father – Presumption raised under Section 112 is rebuttable – Party questioning such presumption must plead and prove same – On date of customary

Divorce, Wife found to be not pregnant – Customary Divorce was on 10.03.1987 – Even if Wife had conceived a couple of days preceding 10.03.1987, Child should have been born in December 1987 – Child was born only on 31.07.1988 – Wife could not have been pregnant on or before 10.03.1987 – Child born on 31.07.1988 would have been conceived in October 1987 – Parties had filed Petition for Mutual Consent before Court in September 1987 and would have lived separately six months preceding September 1987 – Court cannot presume that parties had access prior to October 1987 – Wife and Husband are proper parties to accept or deny status of their Child but Husband died during pendency of litigation – Will executed by Husband and Power of Attorney executed by Husband proves case that Wife had deserted him long prior to 1987 – Access not proved under Section 112.

Succession Act, 1925 (39 of 1925), Section 63 – Evidence Act, 1872 (1 of 1872), Section 68 – Will proved by examining Attesting Witnesses and scribe.

Evidence Act, 1872 (1 of 1872), Sections 3, 63 & 65 – Medical Certificate certifying women as not pregnant – No details of person issuing it found in document – Medical Certificate not proved.

Hindu Marriage Act, 1955 (25 of 1955), Section 13 – Divorce – Marriage can be dissolved only in accordance with law or procedure recognized by law and not otherwise.

Registration of Births and Deaths Act, 1969 (18 of 1969), Sections 8, 16 & 17(2) – Registration of Births and Deaths Rules, 1999, Rule 5 – Birth Certificate issued by Public Authority indicates names of Parents and Child – Genuineness of such Certificate cannot be questioned – Such Certificate by itself does not vouch whether information contained is correct or not – Certificate does not authenticate correctness of information furnished.

Evidence Act, 1872 (1 of 1872), Sections 101 to 103 & 114(e) – Registration of Births and Deaths Act, 1969 (18 of 1969), Sections 8, 16 & 17(2) – Birth certificate issued by Public Authority is presumed to contain correct information – Person questioning such information has to lead evidence to rebut such presumption – Initial burden is on such person – Burden then shifts on person, who asserts such information to be correct – Person relying on such Certificate should discharge burden of proof by producing documents or examining informant.

**HIGH COURT CITATIONS
CRIMINAL CASES**

(2016) 3 MLJ (CrI) 664

M. Jahir Hussain vs. State

Date of Judgment : 14.03.2016

Murder – Insanity – Indian Penal Code, 1860 (Code 1860), Sections 302, 304(ii) and 506(ii) – Accused were arrested and put to trial in connection with homicidal death of deceased – Trial Court acquitted Accused 2 and 3 from charges framed against them – Trial Court found First Accused guilty under Sections 302 and 506(ii) of Code 1860 and convicted him – Appeal against convictions by First Accused/Appellant – Appellant contends that he suffers from insanity – Whether conviction of Appellant under Sections 302 and 506(ii) of Code 1860, justified – *Held*, at time of remand of First Accused by concerned Magistrate, he has not raised any plea with regard to alleged insanity – If really even prior to occurrence, First Accused has been suffering from mental disease or disorder and even today same position continues after Judgment of the trial Court definitely he would have followed correct procedure for filing present Criminal Appeal – Appeal has been filed by First Accused himself as appellant without representing either by his relatives or by his friend – Alleged insanity of First Accused at time of occurrence is nothing but concocted story – First Accused is nothing but “feigned insane person” – Considering evidence given by prosecution witnesses easily discernible that First Accused cannot be mulcted with punishment under Section 302 of Code 1860 – On basis of evidence given by prosecution witnesses and fact that only due to attack made by First Accused deceased has passed away, act of accused would come within purview of section 304(ii) of Code 1860 – Conviction and sentence passed by Trial Court under Section 302 of Code 1860 against Appellant modified – Appellant found guilty under Section 304(ii) of Code 1860 – Appeal partly allowed.

(2016) 3 MLJ (CrI) 571

Kannamma vs. State

Date of Judgment: 25.04.2016

Return of Article – Case Properties – Return of – Code of Criminal Procedure, 1973, Sections 451 and 457 – Police brought stolen properties to Court – Petitioner/*Defacto* Complainant filed petition under Section 451 – Trial Court passed impugned order negating Petitioner’s request – Petitioner filed present revision petition alleging that impugned order passed by Trial Court erroneous – Whether impugned order passed by Trial Court erroneous – *Held*, Trial Court may explore possibility of taking xerox copies of case properties/Diary, Note Book, Receipt Book/S.Nos.1 to 7 and prepare appropriate Panchnama for aforesaid properties – If need be, bond may also be obtained from Petitioner that she would produce said Diary, Note Book and Receipt Book for conduct of main case and said bond may be taken by Trial Court from Petitioner after taking proper security – Petitioner did not enter into witness box and produce documents like Pawn Tickets/Pawn Receipt to be marked as Exhibits – Even on side of Respondent, no one entered into witness box to repel/repudiate plea taken by Petitioner – By virtue of ingredients of Section 451, wherein Court empowered to return concerned properties – On assessment of facts and circumstances on record, impugned order passed by Trial Court was not in consonance with law and to prevent aberration of justice, same interfered and set aside – Revision case allowed.

(2016) 3 MLJ (CrI) 625

Salia Beevi vs. Annadurai

Date of Judgment: 28.04.2016

Cheating – Admissibility of Secondary Evidence – Indian Penal Code, 1860 (Code 1860), Section 420 – Indian Evidence Act, 1872 (Act 1872), Sections 45, 62, 65(a), 66 and 73 – 1st Respondent/accused tried for commission of offence under Section 420 of Code 1860 – After trial, Trial Court held that prosecution did not establish charge against accused beyond reasonable doubt and found him not guilty under Section 420 of Code 1860 – Challenging acquittal order passed by Trial Court, Petitioner/complainant filed present petition with allegation that Trial Court erred in acquitting accused – Whether acquittal order passed by Trial Court sustainable – *Held*, to bring case within its purview of Section 420 of Code 1860 not only cheating simpliciter, but dishonest inducement to person sought to be deceived to deliver property required to be established – In judgment of Trial Court, nowhere it was mentioned that as to why xerox copy of Exs.P.1, P.3, P.4/receipt and undertaking letters were marked in absence of originals of same and it was also not known whether originals of said documents either lost or des – Unless secondary evidence authenticated by foundational/cementing evidence that purported copy or xerox copy was true copy of originals, xerox copies of Exs.P.1, P.3 and P.4 inadmissible in evidence – As accused denied his signature in Ex.P.1, Ex.P.3 and Ex.P.4, Petitioner should have taken steps to compare signature found in those documents with his admitted signature in contemporaneous documents – Petitioner should have taken out petition under Section 73 of Act 1872 seeking opinion of Expert under Section 45 of Act 1872, but in present case, such course was not adopted by Petitioner – Ex.P.2/complaint, with reference to Exs.P.3 and P.4 executed by 1st Respondent, point out that return of money issue is only civil transaction, as 1st Respondent did not honour his commitment in returning amounts in instalments as agreed – In light of facts and circumstances on record, offence under Section 420 of Code 1860 against 1st Respondent was not established – Conclusions arrived at by Trial Court that 1st Respondent was not guilty under Section 420 of Code 1860 and acquitting him do not suffer from irregularities or illegalities – Judgment passed by Trial Court affirmed – Petition dismissed.

2016 (5) CTC 415

Palanisamy vs. State rep. by Inspector of Police

Date of Judgment : 06.06.2016

Indian Penal Code, 1860 (45 of 1860), Section 302 – Murder by strangulation – Circumstantial Evidence – Recovery of Material Object – Circumstances relied on by Prosecution is that on arrest of Accused, Motorcycle driven by deceased was recovered – There is no evidence on record to believe that Motorcycle belonged to deceased or was in his possession – One Witness states that deceased was walking and Accused followed him – FIR also does not state anything about missing Motorcycle – Even wife of deceased had not spoken about ownership of Vehicle belonging to deceased – Story planted by prosecution – Prosecution failed to prove case beyond reasonable doubt – Suspicion, however strong, cannot take place of proof – Prosecution also failed to create a strong suspicion against Accused – Conviction of Accused untenable – Appeal succeeds.

Indian Evidence Act, 1872 (1 of 1872), Section 8 – Motive – Even if motive for crime is proved, Court cannot rush to conclusion that it was Accused, who caused death of deceased – Motive is always a double edged weapon.

(2016) 3 MLJ (CrI) 513

Suresh Kumar vs. State

Date of Judgment : 08.06.2016

Murder – Fair Trial – Indian Penal Code 1860 (Code 1860), Sections 300, 302, 307 and 436 – Constitution of India (Constitution), Article 21 – Code of Criminal Procedure (Code 1973), Section 313 – Appellant / sole accused stands convicted for offence under Sections 436, 302 and 307 of Code 1860 and sentenced to undergo imprisonment – Appeal against conviction – Whether trial conducted by Sessions Court would amount to unfair trial infringing upon fundamental right guaranteed to accused under Article 21 of Constitution – Whether conviction imposed on appellant justified – Held, fair opportunity was afforded to accused to engage counsel and by providing legal assistance, but, he refused to accept same – When it was so refused, it is no obligation of court to force counsel upon accused - No violation of fair procedure contemplated under Article 21 of Constitution – Speedy trial is fundamental right which falls within scope of fair trial as guaranteed under Article 21 of Constitution – Speedy trial is not aimed at only in favor of accused but also equally aimed at in favour of victims as well as society at large – If witnesses are summoned repeatedly by court so as to give evidence it would amount to harassment and infringement upon their human rights – Narration of facts made would go to show that accused has made every attempt to drag on proceedings with view to harass witnesses – At this stage if witnesses are recalled, same would not be fair to witnesses – Intention of accused in causing burn injuries on P.Ws.1 and 6, was only to cause their death – for having caused such attempt on lives of P.Ws.1 and 6, accused is liable to be punished for offence under Section 307 of Code 1860 – For having caused death of deceased by pouring petrol and setting fire to the shop with knowledge that it would result in death of victim, accused's act would fall within fourth limb of Section 300 of Code 1860 and liable to be punished under Section 302 of Code 1860 – Established that accused poured petrol into shop, set fire to shop and caused extensive damages – Accused liable for punishment under Section 436 of Code 1860 – Trial court has imposed fine in total which is not just and proportionate going by economic status of accused – Court inclined to reduce fine amounts – Trial court imposed lesser proportionate punishments – Substantive sentence of imprisonment for one year imposed for offence under Section 307 Code 1860 is inadequate – Unable to enhance imprisonment since no appeal for enhancement has been filed – Convictions and sentences confirmed – Fine reduced – Appeal partly allowed.

(2016) 3 MLJ (CrI) 533

Mahalingam vs. State by The Inspector of Police

Date of Judgment: 08.06.2016

Murder – Dying Declaration – Indian Penal code, 1860 (Code 1860), Section 302 – Appellant, sole accused, stood charged for offence punishable under Section 302 of Code 1860 – Trial Court convicted Appellant/accused on basis of Dying Declarations made by deceased and sentenced him to undergo life imprisonment – Appeal against conviction – Whether Appellant is guilty of offence under Section 302 of Code 1860 and can conviction be upheld on basis of Dying Declar – *Held*, Metropolitan Magistrate P.W.5 has stated that when she went to hospital, she explained to declarant that she was Metropolitan Magistrate which the declarant understood – Magistrate has not stated even during her oral evidence that she was satisfied about mental fitness of Deceased – Supreme Court has held that mental fitness of declarant to make declaration is absolutely necessary – Magistrate has not at all neither recorded nor has she spoken about same in her evidence – In absence of satisfaction of Magistrate about mental fitness of Deceased, Court cannot place any relies on dying declaration – Assuming that these two dying declarations, namely, Ex.P.5 and Ex.P.6 could be considered, Court finds lot of contradictions between these two – Material contradiction has not been explained by

prosecution at all and this creates further doubt in case of prosecution – P.W.1 to P.W.3 have not stated as to whether deceased was found in kitchen or she was lying on the cot – Court finds it difficult to sustain conviction and sentence imposed on accused – Prosecution has failed to prove case beyond all reasonable doubts – Appellant is entitled for acquittal – Appeal allowed.

(2016) 3 MLJ (CrI) 697

Selvaraj vs. State

Date of Judgment : 27.06.2016

Discharge – Discharge Petition – Dismissal of – Indian Penal Code, 1860, Sections 406, 420, 477A, 120B, 380 and 34 – Charges framed against Petitioners / accused for offences under Sections 406, 420, 477A read with Section 120B, 380 read with Section 34 – Petitioners preferred discharge petitions, same dismissed – Revisions – Whether dismissal of discharge petitions justifiable – *Held*, in final report, there hardly would be possibility of bringing home the offences alleged, as same is bereft of material in support of charges made – 2nd Respondent / *de facto* complainant produced statements of bank accounts which reflect much dealing with monies of Association and that monies found their way to hands of accused and same is matter for concern – Report of auditors shows that particulars are not available – It is for Prosecution to establish interlink between Association and Society, their accounts, monies that fallen into hands of accused and third parties and to unravel offences, which stand committed – Further investigation shall be carried out by one not below rank of assistant Commissioner of Police of Central Crime Branch – Officer designated for such purpose shall complete further investigation and file his report – Pending receipt of report of further investigation, proceedings before Metropolitan Magistrate shall stand stayed – Upon receipt thereof, Lower Court shall proceed further with case.

2016 (4) CTC 392

K.Rajapogalan vs. Sri Srinivasa Engineering Works

Date of Judgment : 05.07.2016

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 142(2) – Negotiable Instruments (amendment) Ordinance, 2015 – Common hearing of connected cases sans Jurisdiction – Whether permissible – Complaint under Section 138 for dishonor of Cheque – Accused filed Complaint against Complainant for offences under Penal Code – Both cases pending before Judicial Magistrate, Salem – Amendment of Section 142, inserting sub-section (2) whereby Court where drawee Bank is situated would have Territorial jurisdiction to entertain a Complaint under Section 138 - Drawee Bank, situate in Bangalore – Memo for transferring Complaint to Bangalore dismissed by Judicial Magistrate, Salem on ground that both cases ought to be heard together in interest of justice – *Held*, jurisdiction of Judicial Magistrates, Salem cannot be conferred *de hors* Section 142(2) - Trial Court bound to provisions of law and to obey mandates of Section 142(2) – Liberty of filing transfer of case always available to parties – Order of Trial Court set aside – Case transferred to Jurisdictional Court at Bangalore – CrI.O.P. allowed.

2016-2-L.W. (CrI) 220

CBI rep by Additional Superintendent of Police, SPE: CBI: ACB, Chennai

vs.

Shri. Andasu Ravindar & ors

Date of Judgment : 22.07.2016

Criminal Procedure Code, Sections 164, Confession statement, making of, how, marking of, scope, sections 306, 309, 311

Evidence act, Section 25 confession statements, marking of, scope

Revision by CBI against order in which permission to include A4, A5, A6, who were shown as “*accused persons not sent up for trial*” in column No.2 of the charge sheet as additional witness, was dismissed

Whether there is need to obtain specific order of discharge, need for tender of pardon,

Held: when court has not disagreed with charge sheet tender of pardon under Section 306 by treating A4 to A6 as approvers by obtaining a specific order discharging them from case, does not arise

Confession statements of A4 to A6 recorded under Section 164(1) mandate not followed by recording a certificate at the foot of the confession statement

Confession statements to be treated as statements other than confession statements under Section 164(5) Cr.P.C., - Power to examine by court under section 311, scope of – Prayer of CBI to include A4 to A6 as additional witnesses for examining them, to be accepted

2016 (5) CTC 225

N. Gowthaman @ Babu vs. The Government of Tamil Nadu

Date of Judgment : 29.08.2016

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926) – Criminal Jurisprudence – Can Under-trial Prisoner be sent to Borstal School – Difference between Under-trials and Convicted Prisoner – Under-trial Prisoner is in *custodia legis* of Court and has to be produced before Court for extension of remand from time to time – Remand Prisoner cannot be required to labour – Borstal School established for purpose of giving sustained industrial training to convicted persons in age group of 18 to 21 years – Such discipline cannot be imposed on Under-trial Prisoner – Under-trial Prisoners in age group of 18 to 21 years cannot be sent to Borstal School as Adolescent Offender pre-supposes conviction – Under-trial Prisoners not entitled to benefits of Act.

Interpretation of Statues – Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926) [as amended by Act 13 of 1989] – Words employed in Statute should be given their literal meaning, when there is no ambiguity.

Constitution of India, Article 14 – Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926 – Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 2(13) – Scope of – Child in conflict with law as defined in Juvenile Justice Act to mean child, who has not completed 18 years on date of commission of offence – Adolescent Offender under Borstal School Act is one, who is 18 years and above and commits an offence and gets convicted before reaching 21 years – Two categories are different and are not equal to complain discrimination in treatment – Ratio laid down in *P.Shanmuganathan v. Secretary to Government, Home Department, Chennai*, 2006 (2) MWN (Cr.) 348 (DB) overruled.

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926), Sections 8 & 10 – “Imprisonment” – Scope of – Indian Penal Code, 1860 (45 of 1860), Sections 53 & 53-A – Tamil Nadu General Clauses Act, 1861 (T.N. Act 1 of 1891), Section 3(15) – Expression “Imprisonment” used in Sections 8 & 10 Borstal Schools Act will not include Imprisonment for Life – A.Thangammal v. State, 2008 (2) CTC 625 (FB) overruled.

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926), Sections 8 & 11 – Decision to send Adolescent Offender to Borstal School should be taken after conviction but before passing sentence – Accused, after conviction but before sentencing, may plead that he be detained in Borstal School in lieu of passing of Sentence of Imprisonment – Convicting Court is vested with jurisdiction to act under Section 8 only upon convicting and before passing sentence – Convicting Court could be either Original or Appellate Court – Appellate or Revisional Court can pass Order under Section 8 only if person has not crossed age of 21 years on date of Judgment subject to enquiry under Sections 8(2) & 11.

Words & Phrases – *Functus officio* – Criminal Court becomes *functus officio* after conviction and sentencing

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926), Sections 8 & 11 – No duty cast on Court to examine conferring of benefit of Act on Adolescent Offender – Such offender should seek such privilege after conviction but before passing of sentence.

Code of Criminal Procedure, 1973 (2 of 1974), Section 361 – Children Act, 1960 (60 of 1960) – Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) – Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926) – Section 361 has no application to Borstal Schools Act – Children Act and Juvenile Justice Act deal with children below 18 years – Borstal Act deals with persons between age group of 18 to 21.

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926), Section 10-A – Expression “Transportation” occurring in Section 10-A means Imprisonment for Life.

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926) – Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) – Provisions of Borstal Schools Act are privileges – No right is conferred or vested on Adolescent Offender – Juvenile in conflict with law has vested right to claim all protections under Act.

Tamil Nadu Borstal Schools Act, 1925 (T.N. Act 5 of 1926), Sections 8, 10 & 10-A – Convicting Court can send Adolescent Offender to Borstal School prior to passing of sentence and be detailed only upto age of 23 years – Adolescent Offender cannot be sent to Borstal School where minimum sentence is Imprisonment for Life – Inspector General of Prisons has got power to send Adolescent Offender to Borstal School – State Government can send Adolescent Offender to Borstal School even in cases of Imprisonment for Life if offender at time of conviction is not less than 16 in case of male and 18 years in case of female but not more than 21 years of age.

Constitution of India, Article 226 – G.O.(D) No.922, Home (Prison IV) Department, dated 12.8.2008 – Extending provisions of Borstal Schools Act to Under-trial Prisoners, quashed – Repealing of Borstal Schools Act suggested.
