



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
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2	Shankar vs. Shanthi	2017-1-L.W. (Crl.) 527	19.01.2017	Domestic Violence Act, Sections 18, 19, 20, 21, 22 Additional counter, receiving of Revision petitioner seeks permission to file additional counter alleging subsequent development in proceedings – It cannot be said revision petitioner raised a new plea about character of his wife after filing main counter – Trial Court directed to receive the additional counter filed by the revision petitioner.	10
3	R. Selvan vs. State through Inspector of Police, Vigilance and Anti Corruption, Dindigul	2017 (1) TLNJ 183 (Criminal)	24.01.2017	Criminal Procedure Code 1973, Section 242 (3) – When a specific proviso to sub section 3 permits to make such an application for deferring the cross-examination of P.W.3, it would be proper to allow the application by deferring the cross-examination of P.W.3, till the completion of chief examination of other witnesses to speak about the demand of bribe on the trap proceedings	11
4	A.T. Jacob and other vs. State of Tamil Nadu rep. by the Sub Inspector of Police, District Crime Branch, Nagercoil, Kanyakumari District and Another	2017-1-L.W. (Crl.) 521	25.01.2017	Criminal Procedure Code, Sections 196, 482 & I.P.C., Section 153A For taking cognizance of offence under section 153(A) I.P.C., previous sanction of the Central Government or of the State Government is a must – Order of judicial magistrate does not disclose any prior sanction of either central or of state government – Absence of requisite sanction – Suffice to quash proceedings.	11

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
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6	Raja and others vs. State of Inspector of Police, Sunguvarchathiram Police Station, Kanchipuram.	CDJ 2017 MHC 2701	15.02.2017	Section 302 of IPC, 397 of IPC – Any finding of guilt based on no evidence but on communal consideration is unconstitutional.	11
7	Dr. Thiravium and three others vs. L.Wilfred Raj	2017 (1) TLNJ 305 (Criminal)	24.02.2017	Criminal Procedure Code, 1973, Section 482 - Negligence of Medical personnel – Opinion obtained by the Court from a committee of doctors not supporting the charge of rashness of negligence – complainant also not produced any other evidence in the form of credible opinion given by another competent doctor to support the charge – Hence criminal proceedings quashed.	12
8	Hidhayathulla and Others vs. The Inspector of Police, All Women Police Station (Central) Coimbatore	CDJ 2017 MHC 2984	16.03.2017	Section 498 of IPC, Section 306 of IPC – The abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing, without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained.	12
9	David and another vs. State by Inspector of Thalavadi Police station	CDJ 2017 MHC 2539	21.03.2017	Indian Penal Code, 1860 – Section 304(ii), Section 397 – Code of Criminal Procedure, 1973 – Section 227, Section 401 – Accused learning driving in school playground – Children killed - accused involved in dangerous driving knowing fully well the risk – It is culpable homicide not amounting to murder	12
10	M.L.C. Corporation vs. M/s. Balavigna Weaving Mills (Pvt.) Ltd., and another	2017 (1) TLNJ 319 (Criminal)	13.02.2017	Negotiable Instruments Act, 1881, Section 138 & 142 – To attract Section 138 of the Negotiable Instrument Act, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account.	13

SUPREME COURT CITATIONS CIVIL CASES

(2017) 2 SCC 253

Alcon Electronics Private Limited vs. Celem Roujan, France and another

Date of Judgment: 09.12.2016

Civil Procedure Code, 1908 – Ss. 13, 14, 35, 35-A, 44-A, 2(2), 2(6), 2(9) and 2(14) – Foreign judgment – Interlocutory order by foreign court – Enforcement of, in India – “Judgment of merits” and “decree” as per Explan. 2 to S. 44-A – What is – Applicability of doctrine of comity of nations. **Held** - a foreign judgment which has become final conclusive between parties is not impeachable either on facts or law except on limited grounds under S.13.

Civil Procedure Code, 1908 – Ss.13 and 44A- Execution of foreign judgment/decree – Enquiry by executing court – When not permissible – Held, once an order or decree is obtained after following due judicial process by giving reasonable notice and opportunity to all proper and necessary parties to put forth their case, executing court cannot enquire into validity, legality or otherwise of said judgment.

(2017) 2 Supreme Court Cases 274

Bismillah Be (Dead) by Legal Representatives vs. Majeed Shah

Date of Judgment: 29.11.2016

Property Law- Transfer of Property Act, 1882 – S. 109 – Transfer of lessor’s interest/reversion/rent hold during subsistence of lease/tenancy Devolution of lease/tenancy on the same terms by operation of law once assignee/vendee establishes its title to lessor’s interest – Acquisition of title of “new landlord” in such case by the assignee/vendee.

Held: though by virtue of S. 116 of the Evidence Act, the tenant is stopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an assignee/vendee of the original landlord (lessor) of the demised property in an action brought by the assignee/vendee against the tenant for his eviction from the demised property under the rent laws – However, this right of a tenant is subject to the caveat that the tenant/lessee has not attorned to the assignee/vendee – Therefore, if the tenant/lessee pays rent to the assignee/vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprived the tenant/lessee to challenge the derivative title of an assignee/vendee in the proceedings.

However, once the assignee/vendee proves his title to the demised property, the original tenancy devolves on the assignee/vendee and tenant/lessee by operation of law on the same terms and conditions on which it was entered into with the original landlord/lessor and continues till either modified by the parties or is determined by the landlord in accordance with law- Further, it enables the assignee/vendee to acquire the status “new landlord” in place of the original landlord of the demised premises qua tenant/lessee.

2017 (2) SCC 797

Har Jas Rai Makhija vs. Pushparani

Date of Judgment: 02.01.2017

Civil Procedure Code, 1908 – Ss.33,2(2) and 35-A & Or.20, Or.6 R.4 and Or.41 R.27 – Decree when may be set aside on ground that it was obtained by fraud concealing relevant/material facts from court – Prerequisites thereto – Held, a mere concealment or non-disclosure of relevant facts without intent to deceive or a bald allegation of fraud without proof and intent to deceive, would not render a decree obtained by a party as fraudulent – Fraud must not merely be alleged but proved – It is only after evidence is led to establish intent to deceive that a conclusion of fraud played on court could be arrived at.

CDJ 2017 SC 072

Kuldeep Singh Pathania vs. Bikram Singh Jaryal

Date of Judgment: 24.01.2017

Representation of the People Act, 1951 – Section 81,Section 82,Section 86(1),Section 100, Section 100(1)(d)(iii), Section 117 – Code of Civil Procedure, 1908 – Order VII Rule 11(a),Order XIV Rule 2(2) – Non-disclosure of cause of action – Dismissal of petition - High Court dismissed petition filed by Petitioner/Appellant under Section 100(1)(d)(iii) of Act based on findings on preliminary issues that election petition lacked in material facts as required under Section 83(1)(a) of Act and as such, did not disclose any cause of action - Court Held – High Court committed mistake, as four out of six issues settled are taken as preliminary issues – Merely because it is trial on preliminary issues at stage of Order XIV of CPC, scope does not change or expand – Issue relates to enquiry under Order VII Rule 11(a) of CPC and hence, there is no question of preliminary issue being tried under Order XIV Rule 2(2) of CPC – Scope of enquiry at that stage has to be limited only to pleadings of Plaintiff, neither written statement nor averments, if any, filed by opposite party for rejection under Order VII Rule 11(a) of CPC or any other pleadings of Respondents can be considered for that purpose – Order passed by High Court is set aside and election petition is remitted to High Court to try it on merits expeditiously – Appeal allowed.

CDJ 2017 SC 149

Bithika Mazumdar and Another vs. Sagar Pal and others

Date of Judgment: 01.02.2017

Constitution of India, 1950 – Article 227 – Code of Civil Procedure, 1908 – Section 115 – Accidental claim – compensation –Delay – Appellants filed claim for compensation because of demise of deceased before Tribunal – Tribunal held that Court did not have territorial jurisdiction to entertain same and returned said petition filed by appellants for presentation thereof, in Court of law competent to decide said claim – Appellants filed review petition against that order which was also dismissed – Appellants filed petition under Article 227 of the Constitution in High Court which was dismissed – Court held –

It is an admitted position in law that no limitation is prescribed for filing application under Article 227 of the Constitution. Of course, the petitioner who files such a petition is supposed to file the same without unreasonable delay and if there is a delay that should be duly and satisfactorily explained- also held Moreover, the High Court should have also kept in mind that Gautam Mazumdar, who was the only earning member, died in the said accident and appellants are the widow and minor daughter of the deceased. In a case like this, the High Court should have considered the revision application on merits rather than dismissing the same on the ground of delay.

SUPREME COURT CITATIONS CRIMINAL CASES

2016 (7) SCC 1

Union of India vs. V. Sriharan

Date of Judgment: 02.12.2015

Life imprisonment in terms of Ss.53 and 45 IPC means imprisonment for rest of life of convict till his last breath – awarding of said special category sentence, in substitution of death sentence that is, sentence barring remission under CrPC for specified term beyond 14 years or life imprisonment barring remission for rest of life, held(*per majority*)is valid – further held(*per majority*) such special category sentence can only be imposed by High Court or Supreme Court and not by trial court – Criminal Procedure Code, 1973 – S.432 – Remission – kinds of Applicability to sentence of life imprisonment – Explained.

AIR 2016 SC 1844

Sheikh Sintha Madhar @ Jaffer @ Sintha vs. State Represented by Inspector of Police

Date of Judgment: 13.04.2016

(A) Penal Code (45 of 1860), S.300 – Evidence Act (1 of 1872), S.3 – Murder – Testimony of eye-witness – Credibility – Five eye witnesses to incident – Daughter of deceased studying in her house when she heard scream of her father/deceased – She saw 6-7 persons stabbing her father – Neighbour of deceased hearing distress call coming out of house and saw 4-5 persons attacking deceased – Merely because he did not see daughter of deceased until accused had left – Does not mean she was not present at place of occurrence and witnessed the incident – Omission of her name in inquest report and complaint – Not fatal in face of her otherwise cogent and convincing evidence corroborated by neighbor – Other three eyewitnesses turned hostile during trial and did not support prosecution case at all, but that does not affect statements of daughter and neighbor – Evidence of daughter cannot be rejected on ground of being interested witness – can be basis for conviction.

(B) Penal Code(45 of 1860), S.300 – Evidence Act (1 of 1872), S.3 – Murder – Identity of accused – Witnessing of incident by eyewitness from distance of 100 ft – Plausibility – Incident occurred at 10 p.m. in night – Area was illuminated by electric lights all around – Fact that eye witness was sitting in air conditioned room – Not conclusively proved – At 10.p.m. in night, roads and neighbourhood are quiet – Even slight noise can be heard - Plausible for eye witness sitting in room to hear screams of deceased, come out and witness incident – Particularly, when she was by then expecting return of deceased form his work.

(C) Penal Code (45 of 1860) S.300 – Evidence Act (1 of 1872), S.9 – Murder – Holding of joint TIP – Validity – There is no invariable rule that two accused persons cannot be made part of same TIP – Joint TIP would thus, in no manner, affect validity of TIP – If accused is already known to witness, TIP does not hold much value and it is identification in Court which is of utmost importance.

2016 (8) Scale 560

L. Narayanaswamy vs. State of Karnataka and others

Date of Judgment: 06.09.2016

PREVENTION OF CORRUPTION – PREVENTION OF CORRUPTION ACT, 1947 – SECTION 13(1)(d) r/w S 13(2) & 10 Cr.P.C – SECTION 156(3) & 190 – IPC – SECTION 120(b), 427, 447 & 506 r/w S 34 – Sanction for prosecution – requirement of – an order directing further investigation u/s 156(3) Cr.P.C. cannot be passed in relation to public servant in absence of valid sanction – Where the public servant had abused the office which he held in the check period but had ceased to hold ‘that office’ or was holding a different office, then a sanction would not be necessary.

CDJ 2016 SC 1049

Harpal Singh @ Chotta and another vs. State of Punjab

Date of Judgment: 21.11.2016

Indian Penal Code, 1860 – Section 120B, Section 364A, Section 395 – Section 412, Section 471 – Arms Act – Section 25 – Code of Criminal Procedure, 1973 – Section 161, Section 164 – Conviction – High Court affirmed conviction of Appellant-Accused for offence under Section 364A, 395, 412, 471, 120B of the IPC and also under Section 25 of the Act – Sentences to imprisonment for life and fine - Court Held – Prosecution has been able to prove charges leveled against Appellants –Both courts below have analyses evidence in correct perspectives – No interference is called for with judgment of conviction and sentence recorded against Appellant - Appeals dismissed.

2017 CRI.L.J. 352 (SC)

Ramesh and Another vs. State of Haryana

Date of Judgment: 22.11.2016

(A) Criminal P.C.(2 of 1974), S.378 – Appeal against acquittal – Powers of appellate court – appellate court empowered to re-appreciate or overview evidence on which acquittal is based.

(B) Evidence Act (1 of 1872), S. 32 – Dying declaration – Reliability – Death by burns – Allegations that accused persons caught hold of victim, sprinkled kerosene on her, lighted a matchstick and set her ablaze – Dying declaration implicating accused persons recorded by Magistrate in presence of doctor – In view of specific certification by Doctor that she remained fit while recording statement – victim cannot be said to be unconscious merely because she had suffered 100% burns – victim was taken to hospital by accused persons and no other person known to her had come in her contact before statement was recorded – No question of tutoring arises – Dying declaration is voluntary and reliable – Can be made basis of conviction.

(C) Evidence Act (1 of 1872), S.154 – Hostile witness – Credibility – Cruelty and murder case – Allegations of pouring of kerosene oil on wife and setting her ablaze on continuous demand of dowry – Statement of witness that accused was with him in his house and on receipt of information about incident both of them reached hospital – Is falsified by hospital record showing that it was accused who brought deceased to hospital – Witness though brother of deceased persons – Evidence of said witness who turned hostile stung by “culture of compromise” – cannot be believed – conviction of accused for offence of cruelty and murder, proper.

HIGH COURT CITATIONS CIVIL CASES

2017 (1) TLNJ 340 (Civil)

Sree Maruthi Marine Industries Ltd., vs. M/s. Oriental Insurance Co., Ltd.

Date of Judgment: 09.08.2016

Insurance Act, 1938, Section 64 VB – Suit filed by the plaintiff in High Court for recovery of the insurance amount alleging damages for their salt works on account of actual loss before filing the suit plaintiff filed a complaint in the consumer disputes redressal commission – the state commission directed the defendant to pay a sum of Rs.9,97,623.92 – defendant took up the matter to National Commission and the commission directed the plaintiff to file a regular suit in the National Commission for grant of stay, the commission directed the defendant to pay the plaintiff 50% of the amount awarded by the State commission – defendant paid a sum of Rs.5,93,462.25 – plaintiff took up the matter to Supreme Court – Supreme Court dismissed the SLP and gave to the plaintiff the benefit of Section 14 of the Limitation Act – suit filed by the plaintiff was dismissed & filed OSA in High Court **held**, plaintiff issued two cheques towards premium- 04.05.1990 was on Friday and 05.05.1990 to 06.05.1990 were holidays to the insurance company – only on 06.05.1990 during office hours cheques and covering letter were received by the insurance company – evidence of PW1 clearly shows that damages to the plaintiff salt stocks took place on 7th night and before 8th afternoon – claim of the plaintiff that peril commenced on 09.05.1990 is false – by considering both oral and documentary evidence court has no hesitation to come to the conclusion that there is no concluded contract between the plaintiff and defendant – mere payment of provision by cheques is no acceptance – appellant/plaintiff has not acted in good faith – OSA dismissed.

2016 (7) MLJ 605

J. Nijish Archibald vs. Regional Passport Officer, Madurai

Date of Judgment: 17.08.2016

Civil Laws – Passport – Change in Name – Petitioner’s Passport had carried his biological father’s name – on death of biological father, Petitioner’s mother remarried – Petitioner applied for renewal of passport and change of name from biological father to step-father – Respondent/Regional Passport Officer informed orally that unless there is specific direction from court not possible to issue new passport by inserting his father’s name after renewing earlier one – whether new passport can be issued to petitioner after inserting his father’s name in place of biological father – Held, observed in another case that since biological father had given up all rights in favour of biological mother at time of divorce, there was break up of ties between biological father and child – court follows decision passed by this court in B.S.Deepa v/s Regional Passport officer (2015 (2) MLJ 314) – court takes note of entire conspectus of attendant facts and circumstances of present case – court directs respondent/regional passport officer, regional passport office to consider aspect of reissuing petitioner’s passport after duly renewing same and to do needful to and in favour of petitioner – Petition disposed of.

2016 (5) CTC 121

A.C. Mathivanan vs. Sathyabama

Date of Judgment: 03.08.2016

Hindu Marriage Act, 1955(25 of 1955), Section 13-B – Divorce by mutual consent – Joint petition – whether parties should furnish reasons for their separation – necessity – Joint Petition for Divorce was dismissed on ground that parties have not mentioned reasons for their separation – Tenability – Parties have mutually agreed that their marriage should be dissolved – Court cannot enlarge scope of enquiry and act akin to fact finding authority – parties are living separately for considerable period and applied for Divorce by mutual consent – Court should respect sentiments and grant Divorce – No need to assign any reasons for separation in Petition – Family Court committed error in dismissing Petition for Divorce – Decree for Divorce granted.

2017 (1) TLNJ 314 (Civil)

The Land Acquisition Officer/Special Tahsildar, Adi Dravidar Welfare, Ulundurpet

vs.

Saravanan

Date of Judgment: 21.12.2016

Tamil Nadu Acquisition of Land for ADW Schemes Act 31 of 1978, Section 13 – Award passed by Special Tahsildar modified by sub-court – appeal by Special Tahsildhar in High Court held, where the claimants themselves have sought for only lesser amount, the court will have to give sufficient reasons before proceeding to consider enhancement – acquired lands are agricultural lands – the finding given by the lower court treating the lands as one meant for housing purposes not sustainable – no application filed for enhancement before this court – the judgment and decree of the court below modified – market value of the land fixed as Rs.2,000/- per cent – second appeal is partly allowed with directions.

(2017) 2 MLJ 502

S. Packialakshmi vs. K. Baskaran and Another

Date of Judgment: 09.01.2017

Property Laws – Settlement Deed – Unilateral revocation – Transfer of Property Act, Section 126 – Settlor / Original owner of property executed Settlement Deed in favour of his brother's daughter / 2nd Defendant – Plaintiff purchased property from 2nd Defendant – She came to know about revocation of Settlement and execution of Will by settler in favour of his brother's son / 1st Defendant – Present suit for declaration that Deed of Revocation of Settlement was invalid and void and not binding on Plaintiff – Whether deed of Revocation of Settlement Deed can be declared to be invalid – **Held**, in Cancellation of Deed, settlor stated that by mistake, Second Defendant was referred in settlement as his own daughter – Settlor not made any mention about fraudulent activities on part of 2nd Defendant – Executant himself admitted execution of document which required to be attested – Such admission was best evidence against executants.

Allegation of fraud and undue influence against 2nd Defendant could not be countenanced in the absence of material particulars about nature of fraud or undue influence – Settlement was acted upon and transfer was complete – Transfer of possession not sine quo non for valid settlement – Settlor did not reserve power of Revocation – In absence of power of Revocation of Settlement Deed, settlement could not be cancelled unilaterally – Settlement could be revoked only if it falls within exception under Section 126 – Without bringing case under exception provided in Act, unilateral cancellation of document was not permissible in law - Plaintiff entitled for declaration that Deed of Revocation of Settlement was invalid and not binding on suit property and on Plaintiff – Suit decreed.

Tungabadra Minerals Private Limited, Karnataka
vs.
Chennai Port Trust, Represented by its Chairman and Another

Date of Judgment: 12.01.2017

Contract – Frustration of contract – Indian Contract Act, Section 56 – Plaintiff/ company held license to mine-ore in State of Karnataka – Exports done through Defendant / Port Trust – Iron ore stacked within Defendants’ premises in area allotted on availability on payment of license fee on terms and conditions – If there was shortfall in export, plaintiff had to pay Defendant license fee for such shortfall quantity – Government of Karnataka issued Government orders prohibiting export and transportation of iron ore – Plaintiff claimed frustration of contract owing to Government orders and claimed refund of security deposit – Hence this suit – Whether allotment order became void pursuant to Government Order and they frustrated contract – **Held**, State itself had shareholding in Plaintiff – Even then, Government banned Iron Ore from being mined by Plaintiff – Plaintiff indulged in illegal mining activities – Plaintiff did not choose to contest such allegation or take steps to disprove such allegation – Plaintiff involved in illegal mining – Ban was only for violation of mining laws – Plaintiff, who comes to court with tainted hands could not seek relief either in equity or in law – Illegal activities of allottee invited ban of mining dispatch permits – That could never vitiate allotment order – Plaintiff had “self-induced” ban – Force Majeure could not be escape route for Plaintiff from its commitment to Defendants – Frustration of contract was direct result owing to their own act – They could not complain that Government Orders were passed affecting their activities and seek protection from liability arising to Defendants – Allotment order did not become void pursuant to Government Order banning issuance of mining discharge permits – They did not frustrate contract, since Plaintiff invited ban – Impossibility of performance rejected since voluntary indulgence in illegal mining inviting bar, could never be recognized in Court of law as ground to render agreement void – Defendant entitled to compensation – Suit dismissed.

Suguna vs. Kubendiran

Date of Judgment: 20.01.2017

Hindu Law – Divorce – Cruelty – Hindu Marriage Act, 1955, (Act 1955), Section 13(1) (i-a) – Indian Evidence Act, 1872, At 1872), Sections 3, 101 to 104 – Appellant /Petitioner filed petition for restitution of conjugal rights against Respondent / husband – Respondent filed petition for dissolving their marriage on ground of cruelty and desertion – Family Court allowed petition filed by Respondent granting relief of divorce on ground of cruelty alone – Petition filed by Appellant for restitution of conjugal rights dismissed – Being aggrieved, present appeals filed - Whether Family Court came to correct conclusion which resulted in granting divorce to Respondent on ground of cruelty – **Held**, burden lie on Respondent to establish his case of cruelty as contemplated under Sections 3, 101 to 104 of Act 1872 – Respondent must prove that Appellant threatened him as well as his parents with cruelty within meaning of Section 13(1) (i-a) of Act 1955 – Main allegation against Appellant was that she made repeated threat to commit suicide by pouring kerosene on her by putting blame on Respondent – Such matrimonial offence as alleged by Respondent proved through his oral evidence and documentary evidences under Exs.P2 to P9/letters written by Appellant – Such cruelty postulates treatment of Appellant with Cruelty as to create reasonable apprehension in mind of Respondent that it would be harmful or injurious to him to live with her - Acts of Appellant were of such quality or magnitude and consequence as to cause pain, agony and suffering to Respondent which amounted to cruelty in matrimonial law – Family Court came to correct conclusion which resulted in granting divorce to Respondent on ground of cruelty – It did not require interference to exercise appellate jurisdiction - Impugned common order confirmed – Appeal dismissed.

CDJ 2017 MHC 701

M. Latha vs. Rajeswari

Date of Judgment: 20.01.2017

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – Section 2, Section 10(2)(ii), Section 25 – Order of eviction – Validity of – Appellate Authority had confirmed order of eviction passed by Rent Controller and dismissed appeal filed by tenant-Appellant - Court Held – Evidence of witness and report of Advocate Commissioner has proved that Petitioner had sublet portion of demised building to fourth Respondent for using as Patient Waiting Room – That factum is rightly considered by both Courts below – One more aspect that had to be taken into consideration is that merely because subtenant had vacated premises during pendency of proceedings, same will not absolve liability of tenant to vacate premises – On date of filing of eviction petition, existence of subletting has been proved by landlord and hence, landlord is entitled for eviction – Both Courts below had considered all aspects in proper perspective and has come to correct conclusion and no reason to interfere with findings of Courts below – Petition dismissed.

CDJ 2017 MHC 1648

Chandran vs. Ramu Pillai

Date of Judgment: 01.03.2017

Code of Civil Procedure, 1908 – Section 100 – Declaration of suit property – Recovery of Possession – Injunction – Appellant/Plaintiff sought for declaration of suit property and recovery of possession – Since suit was dismissed by Trial Court, Plaintiff filed appeal – Lower Appellate Court further held that Plaintiff has not proved that suit property comes within property purchased by Plaintiff and dismissed same – **Court held** – Defendant has not produced even scrap of paper to prove his title – Further, revenue records are not only documents to prove case of title pleaded by Plaintiff – It is specifically pleaded that Defendant encroached suit property during absence of Plaintiff just before filing the suit – Plea of defendant that he was in possession and enjoyment of suit property for long time is not proved by any evidence - Having regard to conclusions which are inevitable, find that findings of Courts below are perverse and contrary to pleadings and documentary evidence – Further, judgment of Courts below are on an erroneous interpretation of boundary description found – Appeal allowed.

(2017) 3 MLJ 607

G. Vasantha

vs.

**Sri Maharaja Kallash Benefit Fund Ltd., rep. by its Chairman and Managing Director P.C.
Kallashchand Jain, S/o. Chithrarmal Jain, Mayiladuthurai Town and Munsif**

Date of Judgment: 01.03.2017

Negotiable Instruments – Promissory Note – Material Alterations – Negotiable Instruments Act, Section 87 – Respondent/ Benefit Fund filed suit for recovery allegedly due on promissory note said to have been executed by Defendant on specific date for specific sum- Defendant resisted suit contending that she never borrowed specific sum from Plaintiff and did not execute promissory note on specific date – Trial Court decreed suit – Being aggrieved, Defendant filed present appeal – Whether suit promissory note/Ex.A1 materially altered – Whether alteration renders promissory note void against Defendant under Section 87 – Whether Plaintiff’s failure to produce account book, would dis-entitle it from getting decree in suit – **Held**, alteration of Ex. A1 had been made in date as well amount of consideration – Material alteration would change legal character of instrument, and extinguish liability under instrument – Date of promissory note had been so altered so as to prove that it was within period prescribed under Limitation Act – If this was not material alteration, nothing else could be termed as material alteration – Managing Director of Plaintiff as PW 1 in his evidence specifically admitted that Plaintiff had got accounts – Borrowing by Defendant on specific date was reflected in accounts as well as in income tax returns of Plaintiff – Though he would say that he would produce documents, he had not chosen to do so – Suit promissory note materially altered so as to render it void under Section 87 – Plaintiff not entitled to decree on basis of said document – Judgment and decree of Trial Court set aside – Appeal allowed.

HIGH COURT CITATIONS CRIMINAL CASES

2017 (1) MWN (Criminal) 531 (DB)

M.S. Sivaraman

vs.

State, rep by the Commissioner of Police, Madurai City, Madurai and four others

Date of Judgment: 07.09.2016

(A) Advocates' Clerks Rules, 1988, Rules 10, 11, & 12 – Advocate Clerk – Unrecognized/unregistered clerk practicing under an Advocate – can be termed as “tout” – And, to be restrained from entering into any Court in State to practice as a Clerk. Advocates' Clerks Rules, 1988, Rule 10 – Recognized/Registered Clerks – Conduct of, in Court – Directions issued by Registry of High Court in Circular Roc No.4654-A/07/F2/28.11.2007 in tune with Rule 10 – to be strictly followed – Registry directed to forward copy of circular to all Advocates' Clerks Associations through Principal District Judge for strict compliance – Registry further directed not to entertain Advocate Clerks who do not comply with same.

(B) Constitution of India, Article 226 – Habeas Corpus Petition alleging abduction of Petitioner's wife by Respondents 3 to 5 on 05.09.2016 – Petitioner and Detenu allegedly got married on 18.06.2016 and detenu was abducted on 05.09.2016 as alleged in Affidavit – Both Petitioner and Detenu denied alleged marriage on 18.06.2016 and abduction on 05.09.2016 – Categorical statement that marriage was celebrated only on 06.09.2016 and not as alleged in affidavit – False averments in Affidavit – both affidavit and vakalatnama not signed by petitioner but by Advocate clerks, who were found to be unregistered /unauthorized clerks – counsel tendered unconditional apology for engaging unregistered/unrecognized clerks – petitioner and detenu got married on their own volition and their parents also accepted their marriage – No direction required – HCP closed.

2017-1-L.W. (Crl.) 527

Shankar vs. Shanthi

Date of Judgment: 19.01.2017

Domestic Violence Act, Sections 18, 19, 20, 21, 22 - Additional counter, receiving of Revision petitioner seeks permission to file additional counter alleging subsequent development in proceedings – It cannot be said revision petitioner raised a new plea about character of his wife after filing main counter para 4 - Trial Court directed to receive the additional counter filed by the revision petitioner.

2017 (1) TLNJ 183 (Criminal)

R. Selvan vs. State through Inspector of Police, Vigilance and Anti Corruption, Dindigul

Date of Judgment: 24.01.2017

Criminal Procedure Code 1973, Section 242 (3), Proviso – permits cross-examination of any witnesses to be deferred until any of the witness or witnesses have been examined or recall any witness for further cross-examination – When a specific proviso to sub section 3 permits to make such an application for deferring the cross-examination of P.W.3, it would be proper to allow the application by deferring the cross-examination of P.W.3, till the completion of chief examination of other witnesses to speak about the demand of bribe on the trap proceedings.

2017-1-L.W. (Crl.) 521

A.T. Jacob and other

vs.

**State of Tamil Nadu rep. by the Sub Inspector of Police, District Crime Branch, Nagercoil,
Kanyakumari District and another**

Date of Judgment: 25.01.2017

Criminal Procedure Code, Sections 196, 482 & I.P.C., Section 153A - For taking cognizance of offence under section 153(A) I.P.C., previous sanction of the central government or of the state government is a must – Order of judicial magistrate do not disclose any prior sanction of either central or of state government – Absence of requisite sanction – Suffice to quash proceedings.

2017 (1) TLNJ 273 (Criminal)

K. Thilagavathy

vs.

The Inspector of Police, Thirukokarnam Police Station, Pudukkottai District and 16 others

Date of Judgment: 30.01.2017

Criminal Procedure Code, 1973, Section 311 - murder – P.W.1 is the eyewitness – Petition by P.W.1 to re-examine him and scrap the evidence given by him earlier since at that time he was forcibly abducted by A-3, A-4, and A-8 obtained his signatures in blank papers at knife point and also threatened that he must turn hostile – directions issued earlier by High Court to trial Court on suo motu recall P.W.1 – refused – Transfer Petition filed – **Held** – No prejudice is caused to the accused, if the earlier evidence is scrapped as it is the right of the accused to cross examine P.W.1 based on his new evidence which is going to be recorded once again – If the accused wants to retain the earlier evidence of P.W.1, objections of the accused to scrap would support the contention of the petitioner that P.W.1 was threatened and coerced to give evidence earlier - Judicial Officer already transferred and new officer taken charge and therefore, the question of transfer does not arise – P.W.1 is directed to be recalled and examined under Section 311_– earlier evidence adduced by P.W.1 is directed to be scrapped – Petition closed with directions.

CDJ 2017 MHC 2701

Raja and others

vs.

State of Inspector of Police, Sunguvarchathiram Police Station, Kanchipuram

Date of Judgment: 15.02.2017

Section 302 of IPC, 397 of IPC - In our little experience we have not come across this kind of worst judgment. Let this be the last judgment ever written on communal consideration.

It is not understandable as to how a court could presume that the people belonging to a particular community will traditionally indulge in the commission of a particular type of crimes. It is also shocking to note that the trial judge had the strong conviction that the particular community people would indulge in a particular type of crimes and the same could be inherited like a family trade.

Judiciary cannot afford to decide the cases by tracing the criminal activities of the forefathers of the accused. No court of law can stigmatize a community as a whole. Proof beyond reasonable doubt of the guilt of an accused should be reached on the basis of the evidence on record. Any finding of guilt based on no evidence but on communal consideration is unconstitutional. In the instant case, the trial court has traced the socio economic as well as the

communal background of the accused and has come to the conclusion that these accused have committed the crime solely because they belong to a particular community.

2017 (1) TLNJ 305 (Criminal)

Dr. Thiravium and three others vs. L. Wilfred Raj

Date of Judgment: 24.02.2017

Criminal Procedure Code, 1973, Section 482 – Negligence of Medical personnel – Complaint filed by husband of deceased – who was died while undergoing surgery – Quash Petition – Opinion obtained by the Court from a committee of doctors not supporting the charge of rashness of negligence – complainant also not produced any other evidence in the form of credible opinion given by another competent doctor to support the charge – complaint against the petitioners is not inconsonance with dictum of the Hon'ble Supreme Court – putting the petitioners under ordeal of trial is nothing but harassment – proceedings quashed – petition allowed.

CDJ 2017 MHC 2984

Hidhayathulla and Others

vs.

The Inspector of Police, All Women Police Station (Central) Coimbatore

Date of Judgment: 16.03.2017

Section 498 of IPC, Section 306 of IPC - The abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing, without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. There has to be a clear mens rea to commit the offence and also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he/she commits suicide. If a victim commits suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances of an individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty. In the above circumstances of the case, none of the ingredients of offence under Section 306 have been made out and the appellant's conviction is held unsustainable.

CDJ 2017 MHC 2539

David and another vs. State by Inspector of Thalavadi Police station

Date of Judgment: 21.03.2017

Indian Penal Code, 1860 – Section 304(ii), Section 397 – Code of Criminal Procedure, 1973 – Section 227, Section 401 – Entitlement to Discharge – Whether there is sufficient ground available to proceed against Petitioner under Section 304(ii) of IPC. Court **held** – sufficient grounds available against Petitioners to proceed against them for offence under Section 304(ii) of IPC, as Petitioners have knowledge that their act of driving vehicle in the school play ground will lead to untoward thing and this act will likely cause death or cause bodily injury as it likely to cause death – Court below after considering material available on record, dismissed petition filed by Petitioners, and there is no illegality or irregularity in order passed by Court below – Revision dismissed.

2017 (1) TLNJ 319 (Criminal)

M.L.C. Corporation vs. M/s. Balavigna Weaving Mills (Pvt.) Ltd., and another

Date of Judgment: 13.02.2017

Negotiable Instrument Act, 1881, Section 138 & 142 - quash petition by A-2/Petitioner against proceedings – Respondent/Complainant contending that petitioner/2nd accused alone introduced the first accused to the complainant and 2nd accused acted as an agent of the accused, hence he is vicariously liable – to attract Section 138 of the Negotiable Instrument Act, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account – petitioner is not the drawer of the cheque – no materials connected the petitioner with the case – proceedings quashed.
