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IMPORTANT CASE LAW



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2	Mohan Kumar vs. State of Madhya Pradesh	CDJ 2017 SC 242	07.03.2017	C.P.C., - Order 27, Rule 5B - It is the duty of the Court to make, in the first instance, every endeavor to assist the parties to settle in respect of subject matter of the suit and, if for any reason, settlement is not arrived at then proceed to decide the suit on merits in accordance with law. CPC. , - Order 41 Rule 23A of the CPC -When Vendor is found to be a necessary witness by High Court - it should give opportunity to the party to examine the vendor, matter remanded back to Trial Court.	01
3	Manti Devi and another vs. Kishun Sah @ Kishun Deo Sao and Ors.	2017 (0) Supreme (SC) 342: CDJ 2017 SC 521:: AIR 2017 SC 2002:: 2017 (4) SCALE 280	23.03.2017	Code of Civil Procedure, 1908 – Ss.99 and 141 - No Decree can be reversed or varied in appeal on account of misjoinder or non-joinder of parties, except non-joinder of a necessary party.	02

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SUPREME COURT - CRIMINAL CASES

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2	Sheikh Juman and Another vs. State of Bihar	CDJ 2017 SC 193:: 2017 (3) SCALE 161	23.02.2017	Criminal Law – IPC- Ss.149 & 302 – Explosive Substances Act, Ss.3 & 4 – murderous assault – death sentence commuted to imprisonment for life – interested witnesses – Evidentiary value – personal enmity between parties – Held: i) Oral evidence of a witness could be looked with suspicion only if it contradicts the previous statement. ii) The non-examination of the witnesses, who might have been there on the way to hospital or the hospital itself when deceased narrated the incident, would not make the prosecution case unacceptable. Similarly, evidence of any witness cannot be rejected merely on the ground that interested witnesses admittedly had enmity with the persons implicated in the case. The purpose of recoding of the evidence, in any case, shall always be to unearth the truth of the case. Conviction can even be based on the testimony of a sole eye-witness, if the same inspires confidence.	04

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
3	Gandi Dodda Basappa @ Gandhi Basavaraj vs. State of Karnataka	CDJ 2017 SC 211:: 2017 (3) SCALE 236	28.2.2017	Criminal Law – IPC – Section 302 & 304-I - Honour Killing of daughter - Trial Court acquitted – High Court convicted for an offence u/s. 304-I - Supreme Court convicted the appellant/accused for an offence u/s 302 IPC, holding that the act of the appellant/accused would not fall under either of the exceptions to Section 300 IPC and dismissed the appeal, making absolute the show cause notice issued for enhancement of sentence. Detailed discussion made as to when Exceptions to Section 300 IPC would apply.	05
4	M.G.Eshwarappa @ another vs. State of Karnataka	2017 (0) Supreme (SC) 210: CDJ 2017 SC 223::2017 (4) SCC 558:: 2017 (3) SCALE 296	02.03.2017	i) Penal Code, 1860 – S.302 r/w.34 and Ss.506, 354 – Murder trial – appeal against acquittal – reversal of acquittal by High Court - on basis of perverse view taken by trial Court which was against the evidence – Held: Justified. ii)Criminal Procedure Code, 1973 – S.154 – FIR – Reliability and validity of FIR – contents of FIR – Presence of only necessary details – whether on its basis, detailed narration by witnesses can be doubted – Held: FIR is not an encyclopedia, and if necessary details are there, on its basis detailed narration by witnesses cannot be doubted.	05
5	Pawan @ Rajinder Singh and another vs. State of Haryana	CDJ 2017 SC 249:: (2017) 4 SCC 140	08.03.2017	i) Penal code, 1860 – Ss.302/34 – Murder Trial – Death by shooting – appreciation of evidence – testimony of chance witnesses – Held: Testimonies of witnesses cannot be said to be reliable or trustworthy, particularly when their statements are not corroborated from other evidence on record. Forensic Report making prosecution story, as narrated by chance witnesses, highly doubtful, as gun is not in working condition – conviction reversed - appeal allowed – accused/appellant acquitted.	06

MADRAS HIGH COURT - CIVIL CASES

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1	R.Erakkaperumal vs. Union Bank of India	2017-3-L.W. 908 :: CDJ 2017 MHC 2986	03.03.2017	Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) 2002, Section 34, Bar of suit, whether applies. Recovery of Debts due to banks and Financial Institutions Act, 1993, section 29. Income Tax (Certificate Proceedings) Rules (1962), Rules 40,42,43 and 45- possession under usufructory mortgage subsequent to equitable mortgage cannot be protected – relief of injunction claimed by the tenant/ mortgagee against Bank – dismissed.	07
2	Sujatha Venkatesan vs. Manjula Srinivasan	CDJ 2017 MHC 1183	06.03.2017	Code of Civil Procedure, Order 33 Rule 1 - Indigent person - a person is indigent if payment of court fees would deprive him of basic living expenses. If basic living is not affected he shall not be treated as indigent person.	07
3	New India Assurance Company Ltd., vs. Prakasam and others	CDJ 2017 MHC 1266	10.03.2017	MCOP - head injury - atrophy it is permanent disability; victim 31 years having driving license income taken as Rs.10,000/- - upheld.	08
4	Sarangapani (Died) and others vs. Vasantha and another	2017 (2) MWN (Civil) 723	14.03.2017	CPC, 1908, O.23, R1 - Withdrawal of Suit - for adding more properties and larger relief - permitted following [(2017) SCC Online Page 116 : 2017 (1) CTC 762 (SC) - V.Rajendran's case]	08

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
5	Sampoornam and another vs. Sathya and another	CDJ 2017 MHC 2824	15.03.2017	Settlement of immovable property - Hindu - delivery of possession and change in revenue records not necessary to hold that settlement is acted upon.	08
6	M.Parimanam @ Parimana Konar vs. T.Egammai	CDJ 2017 MHC 2985:: 2017 (2) TLNJ 515 (Civil)	20.03.2017	Specific Relief Act, 1963, Section 28 – Suit for Specific Performance - decreed with a direction to deposit the balance sale consideration with a time frame – not deposited within the time stipulated – deposited after 14 years without getting order from the court extending time – Held: That Execution Court had erred in numbering E.P. filed by Decree Holder and in permitting the Decree Holder to deposit the balance sale consideration without any order extending the time limit - E.P. filed by the Decree Holder dismissed.	09
7	Thangavel and another vs. The Superintendent Engineer, Pudukottai	CDJ 2017 MHC 1168:: 2017-2-L.W. 332 :: 2017(2) MWN (Civil) 400	22.03.2017	Negligence - Death due to electrocution – Compensation for the death of 12 year old boy– Electrocution - strict liability – Electricity Board - liable irrespective of whether the son of plaintiffs could have avoided the particular harm. Directed to pay a compensation of Rs.5,00,000/- (Rupees five lakhs)	10
8	K.K.Anbalagan and another vs. C.Kumar and others	CDJ 2017 MHC 2630	05.04.2017	Hindu women – dies intestate – self acquired property - husband's heirs exclude the deceased women's siblings.	10
9	M.Srinivasan vs. M.V.Mohamed and others	CDJ 2017 MHC 1502	05.04.2017	When defendants plead title – then they cannot plead adverse possession also.	11
10	MD, TNSTC vs. Varalakshmi and other	2017 CDJ MHC 2949	17.04.2017	Motor Vehicles Act, 1988, Section 173 -Accident claim - future prospects - unorganized sector - future prospect given at 50% to be added to income.	11

MADRAS HIGH COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	S.Madhiyazhagan and Another vs. State, rep. by The Inspector of Police CB CID, Tirupur District and Another	2017-2-L.W.(CrI.) 19 JS	20.08.2015	Cr.P.C, Section 2(1) 'local jurisdiction', what is – Police Standing Orders (PSO) 504, Crime Investigation Department, CID, Scope, powers of magistrate to direct Crime Branch CID to investigate an offence – scope: Held: Magistrate can only order the Officer-in-charge of a Police Station that falls within his territorial jurisdiction to investigate an offence – Direction issued by Magistrate to the CB CID Under Section 156(3) Cr.P.C.to investigate is not sustainable.	12
2.	Arun Raj, A vs. State, rep. by Inspector of Police, Erode Railway Police Station, Erode and others	2017-1-L.W.(CrI.) 536 :: 2015 (3) MWN (Cr.) 473	30.10.2015	Criminal Procedure Code, Sections 183, 186, 482, transfer of Proceedings – petition to transfer case to court in Kerala – Ragging – Offence committed while victims were on train Chennai-Trivandrum Mail - Proceedings first commenced with the issuance of process by the Judicial I-Class Magistrate, Kolenchery, Kerala and not before the Judicial Magistrate No.II, Erode, T.N. – It is the date of institution of the proceedings and not date of taking cognizance by the Magistrate – Accused not to be subjected to two prosecution at two courts for same bundle of facts – Prosecution quashed.	12
3.	Kavin Vivek vs. State, Rep by the Inspector of Police V-5 Police Station Thirumangalam, Chennai – 600 101	2016-2-L.W.(CrI.) 615	05.08.2016	Cr.P.C, Section 482 – second quash petition – whether maintainable, S.173(8) further investigation ordering of, final report, quashing of, scope. An accused arrested for a minor offence and released on bail - can be arrested again if major offence is made out by turn of subsequent events, without cancelling the earlier bail. Disagreed with the decision of a learned Single Judge in Dhivan vs..State, rep.by the Inspector of Police, Vadalur Police Station, Vadalur, Cuddalore District – 2010 (1) L.W. (CrI.) 703, in view of	12

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				<p>categorical pronouncement of the Supreme Court in Prahlad Singh Bhati v. NCT, Delhi and another – (2001) 4 SCC 280.</p> <p>Prevention of Corruption Act, Sections 8, 9, 10, 13(1)(d), 17, 24 – Indian Penal Code, Sections 120-B, 406, 420, 506(ii) Conspiracy among A2 (IAS Officer), A1 (his son) ‘G’, a reporter to have illegally collected money from 10 victims for getting them appointment as public relations officers, attracting various offence – can ‘G’ be let off as a whistle blower?</p> <p>Complaint given by ‘G’ formed the basis for registration of FIR – earlier quash petition dismissed, second petition – whether maintainable – complainant transposed as accused – In Chennai, an offence under PC Act can be investigated only by an officer of the rank of Assistant Commissioner of Police, as laid down in Section 17 – Final Report quashed – reinvestigation by CBI Ordered.</p>	
4.	P.R.Venkatraman vs. Superintendent of Police	CDJ 2017 MHC 1141	02.03.2017	<p>Constitution of India, Article 226 – alleged illegal detention by parents - Parental custody - natural parental authority exercised to the dislike of the ward does not amount to illegal custody - as it is for the welfare of the ward.</p>	13
5.	Ramachandran vs. State	CDJ 2017 MHC 2649	04.04.2017	<p>Grave and Sudden Provocation - Criminal Procedure Code - Section 374(2), Section 482 - Indian Penal Code - Section 294(b),Section 302, Section 304(1),Section 307 – Appeal against conviction -Appellant/sole accused was convicted by Trial Court for offence under Sections 294(b) and 302 IPC – Held: Accused had lost his mental balance out of provocation, which, in Court’s considered view, was not only sudden, but also grave enough - act of accused, since would fall within First Exception to Section 300 IPC, accused would be liable to be punished only under Section 304 (1) of IPC.</p>	14

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6.	R.Thiagarajan vs. P.Saravanan	(2017) 2 MLJ (Crl) 588::LNIN D 2017 MAD 1549:: 2017 (2) MLJ (Crl) 588	06.04.2017	Negotiable Instruments – dishonor of Cheque – acquittal valid defence – NI Act, 1881, Section 138 – Code of Criminal Procedure, 1973, Section 255(1) – appellant/complainant preferred appeal as “aggrieved Person’ against acquittal – Held: Respondent raised some valid/probable defence in case while appellant did not come out with case in clear and crystalline fashion – cheque issued by respondent to finance concern was made use of by appellant to lodge complaint against respondent – appellant did not establish his case to subjective satisfaction of court – trial court acquitting respondent under Section 255(1) of Code, 1973 relating to offence under Section 138 of Act 1881 does not suffer from material irregularities or patent illegalities – appeal dismissed.	14
7.	Deepa vs. Balaji	2017 CDJ MHC 2581	13.04.2017	Claim for interim maintenance U/s 24 of Hindu Marriage Act - Maintainable - even though wife receiving maintenance U/s 125 CrPC.	15
8.	Kalaichelvan @ Dhanush K.Raja vs. R.Kathiresan and another	2017-1-L.W.(Crl.) 662 :: (2017) 2 MLJ (Crl) 498	21.04.2017	Criminal Procedure Code, Sections 125, 482 – maintenance claim by parents against alleged son – quash petition filed by son – Held: No prima facie case made out for awarding maintenance – DNA profiling cannot be ordered by the Court on the mere asking of a party in the absence of foundational facts - For initiating a proceeding under Section 125, sending a notice is not at all a <i>sine qua non</i> .	15
9.	Thameemun Ansari vs. State, Rep by The Inspector of Police, R-8 Vadapalani Police Station, Chennai	(2017) 2 MLJ (Crl) 593::LNIN D 2017 MAD 1550	24.04.2017	Sudden Provocation – IPC, 1960 – Sections 300, 302 and 304(i) – Held: Prompt launching of FIR goes to vouch for truthfulness of case of prosecution – Medical evidence duly corroborates with eyewitness account – only in quarrel, accused having lost his temper on account of sudden provocation made by deceased, took out knife and stabbed deceased twice – occurrence was not	16

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
				premeditated one and accused had no intention to cause death of deceased – act of accused would squarely fall within third limb of Section 300 and within first exception to Section 300.	
10.	D.D.Dhorrairaj vs. State	2017 (4) CTC 846	20.07.2017	<p>i) Indian Electricity Act, 1910, Sections 39(1) & 44(1) (c) - Electricity Act, 2003, Sections 154(2) & 185 – General Clauses Act, 1897, Section 6(e) – Offence of theft of Electricity committed before 2003 Act – accused prosecuted for offences under Section 39, Police registering case in 2002 under Electricity Act, 1910 – such offences are to be tried under machinery created under 1910 Act – Section 6(3) of General Clauses Act preserves right to prosecute offenders and determine Civil liability under 1910 Act, notwithstanding repeal of such Act by 2003 Act – 2003 Act does not extinguish jurisdiction of Magistrates for trial of offences under 1910 Act – plea of accused to transfer matter to Special Court constituted under 2003 Act, rejected - directions issued for expeditious trial.</p> <p>ii) Electricity Act, 2003 (36 of 2003), Sections 151, 153 & 154 – Harmonious reading of all Sections indicates that after Special Courts are constituted by State Government with concurrence of High Court, all other Courts would be denuded of jurisdiction to try offences under Electricity Act.</p>	16

SUPREME COURT - CIVIL CASES

CDJ 2017 SC 230:: 2017 (2) MLJ 632 (SC):: LNIND 2017 SC 105:: 2017 (2) CTC 656

A. Kanthamani vs. Nasreen Ahmed

Date of Judgment: 06.03.2017

Specific Relief Act, 1963 (47 of 1963), Section 16(c) - Specific Performance – Readiness and Willingness – Importance of pleadings – Plaintiff should contain clear averments indicating readiness and willingness to perform obligations of Contract – Financial Capacity of Plaintiff – Relevance – Suit instituted within 10 days from date of refusal to perform terms of Contract – Conduct of parties – Plaintiff paid more than 50% of Sale consideration before due date of execution of sale deed – Plaintiff need not produce money or vouch a concluded scheme for financing transaction to prove his readiness and willingness – plaintiff made arrangement to pay balance sale consideration by obtaining loan from financial institution – discretion exercised by Trial Court granting Decree for specific performance of agreement does not suffer from perversity or illegality.

Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Specific performance – readiness and willingness – illegal termination of sale agreement – obligation of plaintiff to seek declaration to declare termination of contract as null and void – Suit instituted for specific performance of contract – contention of defendant that mere suit for Specific Performance of Agreement simpliciter was not maintainable – objection regarding maintainability of Suit neither raised in Written Statement nor in first appeal – permissibility – plea of maintainability of suit should be raised in first instance – objection to maintainability of suit before Supreme Court cannot be entertained.

CDJ 2017 SC 242

Mohan Kumar vs. State of Madhya Pradesh

Date of judgment: 07.03.2017

Code of Civil Procedure - Order 27 Rule 5B - Duty of court in suits against the government or a public officer to assist in arriving at a settlement – when case at hand is against State Government and local bodies, it is duty of Court to make, in first instance, every endeavor to assist parties to settle in respect of subject matter of suit and, if for any reason, settlement is not arrived at then proceed to decide suit on merits in accordance with law.

Code of Civil procedure, 1908 – Order 41 Rule 23A – Madhya Pradesh Public Premises and Devasthanam (Regulation) Act – Section 4(2) – Removing Trespass –Appellant/first Plaintiff challenged judgment and final order passed by High Court in Appeal whereby High Court dismissed appeal and, in consequence, dismissed Plaintiff's suit which was partly decreed by Trial Court - **Court held** — High Court having held that the plaintiff was not able to prove his title to the land in the suit due to non-examination of his vendor, all that the High Court, in such circumstances, should have done was to remand the case to the Trial Court by affording an opportunity to the appellant to prove his case (title to the land) and adduce proper evidence in addition to what he had already adduced. This, the High Court could do by taking recourse to powers under Order 41 Rule 23A of the CPC. Since the

Court is inclined to remand the case by taking recourse to the powers available under Order 41 Rule 23A CPC, it is not considered necessary to examine any other question arising in the case. The Court is, therefore, of the considered opinion that instead of now remanding the case to the first Appellate Court, it would be just and proper to remand the case to the Trial Court to retry the suit on merits by affording an opportunity to the parties to adduce additional evidence in support of their case. The parties (plaintiff and defendants) are accordingly granted liberty to amend their pleadings and adduce additional evidence. The Trial Court shall then pass a judgment in accordance with law uninfluenced by any of our observations and of the High Court.

2017 (0) Supreme (SC) 342: CDJ 2017 SC 521:: AIR 2017 SC 2002:: 2017 (4) SCALE 280

Manti Devi and another vs. Kishun Sah @ Kishun Deo Sao and Ors.

Date of Judgment: 23.03.2017

Mis-Joinder –Plaintiffs/Appellants had purchased suit property from original landlord of First Defendant –Defendants/Tenants denied to accept Plaintiff as their landlord and refused to pay monthly rent to Plaintiffs on ground that Plaintiffs were not landlord to Suit Property -Plaintiff filed suit for ejection of suit property and sought to vacate Defendants on ground of personal need– Trial Court held Plaintiffs having purchased suit property had stepped into shoes of their vendors and by fiction of law become landlord –Trial Court decreed suit and granted eviction of Defendants -Aggrieved by said order, Defendants filed revision–High Court reversed order of eviction and dismissed suit for misjoinder of parties- Hence this Civil Appeal – Court Held – As per Section 99 of Code 1908, no decree can be reversed or substantially varied in appeal on account of misjoinder or non-joinder of parties – As per provisions under Section 141, is crystal clear that procedure under Code in regard to suit shall be followed as far as it can be made applicable to proceedings in any Court of Civil jurisdiction –As such what is provided under Section 99 in respect of appeal would apply to revision as well –Judgment of High Court was set aside and Judgment of Trial Court was restored – Respondents/Tenants were granted time till prescribed date to surrender vacant and peaceful possession, subject to filing undertaking within prescribed weeks - Civil Appeal was allowed.

2017 (2) TLNJ 504 (Civil)

Valiyavalappil Sarojakshan and Others vs. Sumalsankar Gaikevada and others

Date of Judgment: 29.03.2017

Kerala Buildings (Lease and Rent Control) Act, 1965 – Sections 11(4)(iii) and 11(4)(iv) – Eviction petition by landlord – allowed by Rent Controller under Section 11(4)(iv) for demolition and reconstruction need – First appellate authority allowed eviction under section 11(4)(ii) which was rejected by rent controller earlier – Reversed by High Court on appeal by tenant, further held that eviction only under Section 11(4)(iv) allowed – Supreme Court held that eviction on the respective grounds under the Act has different ramifications since the grounds being distinct and separate – merely because the landlords have taken possession on the basis of an order for eviction granted on one ground, that does not mean that the surviving grounds have become non-est – Appeals are allowed.

2017(8) SCALE 11

Hameed Kunju vs. Nazim

Date of Judgment: 17.07.2017

RENT CONTROL – KERALA BUILDINGS (LEASE AND CONTROL ACT), 1965 – SECTION 11(2)(b) & 11(3) – CONSTITUTION – ARTICLE 227 – Eviction Petition – Eviction matters should be given priority in their disposal at all stages of litigation and especially where the eviction is claimed on the ground of bona fide need of the landlord – Appellant, owner/landlord of eight schedule suit shops, filed one eviction petition against his 8 tenants including respondent – Eviction claimed u/s 11(2)(b) and 11(3) of the Act on the ground of bona fide need of appellant to start business in the schedule suit shops – none appeared for tenants despite service to them – trial court passed an eviction order and decreed appellant’s eviction petition – since the tenants did not vacate the suit shops, appellant filed execution application – trial court found that the tenants had not filed their objections and passed an order to deliver the suit shops to appellant – executing court closed the execution case – seven out of eight tenants did not pursue the matter further – respondent – tenant filed an application and made a prayer that the order directing delivery of possession should be set aside – Respondent filed petition under Article 227 of the Constitution challenging the legality and correctness of four orders of the trial Court/Executing Court – High Court allowed the writ petition and quashed eviction order passed by the trial court, order directing delivery of suit shops and order of the Executing Court closing the execution case – High Court remanded the case to the trial court for fresh trial – Whether the High Court was justified in interfering in the orders passed by the trial Court/Executing Court – Held, No.

SUPREME COURT – CRIMINAL CASES

CDJ 2017 SC 207:: AIR 2017 SC 1160:: 2017 (3) SCALE 134

P. Eknath vs. Y. Amaranatha Reddy alias Babu and another

Date of Judgment: 09.02.2017

Penal Code (45 of 1860), Ss. 302, 307 – Murder and attempt to murder – Accused allegedly hacked deceased and his daughter with sickle and also made life attempts on two injured – No discrepancy with regard to ocular testimony and medical evidence – Recovery of blood stained sickle at instance of accused – FSL report, credibility of witness, identification of accused/weapon, presence of light in murder scene all leading to guilt of accused – Accused liable to be convicted. (Paras 21, 23, 24, 37, 38, 39).

CDJ 2017 SC 193:: 2017 (3) SCALE 161

Sheikh Juman and Another vs. State of Bihar

Date of Judgment: 23.02.2017

CRIMINAL LAW – IPC – SECTION 149 & 302 – EXPLOSIVE SUBSTANCES ACT – SECTION 3 & 4 – Murderous assault – Death sentence commuted to imprisonment for life – Interested witnesses – Evidentiary value – Personal enmity between parties – Prosecution case that deceased, nephew of informant, was at his grocery shop when appellants armed with bomb explosives and guns came near his shop – Appellant ‘SS’ hurled a bomb at the deceased and as a result of the explosion deceased fell down on the Gaddi of the shop – Appellant ‘SA’ also attacked him by a bomb which hit him on the chest and exploded and consequently deceased died at the Gaddi itself – Another nephew ‘M’ hearing the sound of explosion came running to the shop and he was also attacked by a bomb – Due to explosion ‘M’ sustained severe injury, fell down and succumbed to the injuries at the hospital on the same day – Trial Court convicted A-3, A-8 and A-9 for the offence u/s 302, IPC and Section 3, 4 of Explosive Substances Act and sentenced A-3 and A-9 to death – Rest of the accused were convicted for offence u/s 302/149, IPC – On appeal, High Court rejected the death reference but confirmed conviction of accused persons – Concurrent findings of both the courts below as to the guilt of accused persons – High Court relied upon the evidence of eye-witnesses who were found to be trustworthy and reliable – High Court held that the accused were sharing the common object of doing away the deceased – Whether conviction of appellants as recorded by Courts below was sustainable – Held, Yes.

CDJ 2017 SC 211:: 2017(3) SCALE 236

Gandi Doddabasappa @ Gandhi Basavaraj vs. State of Karnataka

Date of Judgment: 28.02.2017

CRIMINAL LAW – IPC – SECTION 302 & 304-I – Honour killing of daughter – Conviction u/s 304-I, IPC altered to that u/s 302, IPC – P.W.16, from the Naik community, and deceased from Lingayat community, were in love – Being from different castes and apprehending opposition to their marriage by the family of deceased girl, they got married in 2002 – Couple were staying with parents of P.W 16 – Prosecution case that when this marriage came to the knowledge of father of deceased, he opposed it stating that they had brought down the honour of his family and that he would ‘finish’ his daughter for marrying into a lower caste – Deceased was pregnant (around nine months) – She frequently used the public toilet near her place of residence, often accompanied by her mother-in-law (PW.18) – On the day of the incident i.e. on 03.10.2003, at around 8 a.m., deceased wanted to go to the toilet when PW.18 told her that she would join her as soon as she would finish her work – After finishing her task, PW.18 started walking towards the public toilet when she heard cry of deceased coming from the toilet – PW.18 rushed towards the toilet and allegedly saw appellant, father of deceased, emerging from the toilet with a blood stained sickle – Deceased was found lying on the ground, facing upwards, in a pool of blood with a cut to her neck – Trial Court acquitted appellant accused on the ground that mere intent on part of the accused to commit the crime was not sufficient to record a finding of guilt – On appeal, High Court convicted appellant for offence u/s 304-I, IPC while holding that the circumstantial evidence was sufficient to convict the accused – Evidence of PW. 18 corroborated by other circumstances – Medical evidence that the injury found on body of deceased could be attributed to the sickle recovered from the scene of offence and injuries were sufficient to cause her death – No explanation as to how the instant case would be covered by one of the five exceptions given in Section 300, IPC – Whether the conviction recorded by the High Court u/s 304 part-I, IPC can be sustained – Held, No – The Court convicts appellant accused for offence u/s 302, IPC.

2017 (0) Supreme (SC) 210:CDJ 2017 SC 223::2017 (4) SCC 558:: 2017 (3) SCALE 296

M.G.Eshwarappa @ another vs. State of Karnataka

Date of Judgment: 02.03.2017

A. Penal Code, 1860 – S.302 r/2 S.34 and Ss.506, 354 – Murder trial – appeal against acquittal – reversal of acquittal by High Court – On basis of perverse view taken by trial court which was against the evidence – Held, justified – Trial Court’s reliance on conjectures and surmises that victim had succumbed to injuries suffered in motor vehicle accident and not due to assault by deadly weapons by accused in acquitting accused, not proper – prosecution case based on reliable testimony of P.W.1, injured eyewitness sister of deceased victim, is fully supported by remaining evidence – conviction confirmed. **Held**, testimony of P.W.1, injured eyewitness sister of deceased victim, is trustworthy – Her testimony stands corroborated not only by statements of other witnesses, but also from medical evidence – FIR was promptly lodged and copy was sent to Magistrate without delay – FIR contained all necessary details – Motive of crime stood established – As all accused were close relatives of complainant, it was not difficult for P.W.1 to recognize them when they assaulted deceased with deadly weapons in the evening at 7.30 p.m. – As deceased was not conscious and in a critical

condition, when admitted to hospital, non-recording of his dying declaration stands explained – No doubt present regarding time and place of incident – there appears nothing unusual in taking the injured to the hospital where the injured could be given better treatment and time is not lost, rather than simply the nearest hospital which may not be adequately equipped – further, trial court committed grave error by accepting defence case, that deceased might have died of injuries suffered in an accident, as possibility of, was not ruled out by P.W.2 (medical officer) – but, there is no suggestion of fact, that at the place of incident, any vehicle had passed through at the time of incident – trial court has taken support of conjectures and surmises – In the circumstances, held, High Court correctly held, that view taken by trial court is perverse and against the evidence on record – Therefore, conviction of appellant - accused A2 and A4 (accused A1 and A-3 died during proceedings), stands confirmed – Criminal Procedure Code, 1973, Ss.378 and 386(a).

B. Criminal Procedure Code, 1973 – S.154 – FIR – Reliability and validity of FIR and contents of FIR – presence of only necessary details – whether on its basis, detailed narration by witness can be doubted – determination of - Murder trial – details of assault not present in FIR – effect, if any – defence contention, that as there are no details of assault in FIR, story narrated by P.W.1 (sister and eyewitness of assault on deceased) is nothing but an improvement – reiterated, FIR is not an encyclopaedia and if necessary details are there, on its basis detailed narration by witness cannot be doubted – herein, on carefully going through FIR, it is clear, that all necessary facts are narrated and only the details, like from which side particular accused came, are not stated – Hence, contention rejected – Penal Code, 1860, Ss 506, 354 and 302 r/w S.34.

CDJ 2017 SC 249:: (2017) 4 SCC 140

Pawan @ Rajinder Singh and another vs. State of Haryana

Date of Judgment: 08.03.2017

Code of Criminal Procedure, 1973 – Section 313 – Indian Penal Code, 1860 – Section 34, Section 302 – Arms Act, 1959 – Section 25 – Murder – Conviction – Appellants/Accused challenged judgment and order, passed by High Court whereby said Court had dismissed appeal affirming conviction and sentence under Section 302 and section 34 IPC, against accused-appellants, recorded by Trial Court – High Court further affirmed conviction and sentence recorded against Appellant under Section 25 of Act -Court held, – Testimony of these witnesses cannot be said to be reliable or trustworthy particularly when their statements are not corroborated from other evidence on record – First Information Report it is nowhere mentioned why deceased had gone in his separate scooter with two appellants from his house – Find that Trial court as well as High Court has erred in law in holding that charge against two accused stood proved –In light of appreciation of evidence, it is of opinion that prosecution has failed to prove charge of offence punishable under Section 302, Section 34 IPC against two accused –Further hold that charge of offence punishable under Section 25 of Act, 1959 against accused is also not proved beyond reasonable doubt – Accordingly, appeal deserves to be allowed – Appeal allowed.

MADRAS HIGH COURT – CIVIL CASES

2017-3-L.W. 908

R. Erakkaperumal vs. Union Bank of India

Date of Judgment: 03.03.2017

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interes Act (SARFAESI Act) 2002, Section 34, Bar of suit, whether applies.

Recovery of Debts due to banks and Financial Institutions Act(1993), section 29.

Income Tax(Certificate Proceedings) Rules(1962), Rules 40,42,43 and 45 - Suit for injunction restraining defendants from interfering with possession of appellant – Appellant inducted as tenant by fourth defendant who stood as guarantor for 1st defendant – property brought to auction – suit by third party/appellant whether maintainable – Appellant not in occupation under a title or right created by the judgment debtor subsequent to the attachment of properties by the Recovery Officer – proceedings before DRT commenced later – Rule 40 applicable order directing recovery of possession passed by recovery officer under RDBI Act – sale was also under said Act and not under SARFAESI Act – Suit is one under Rule 47 – suit is not challenging proceedings under SARFAESI Act, the same cannot be thrown out by citing Section 34.

On the other hand in a suit for injunction by one claiming under defaulter whether maintainable – fourth defendant executed othi deed in favour of plaintiff – fourth defendant stood as guarantor – recovery initiated by first defendant **Held**, a person who claims right under defaulter is not entitled to resist or obstruct when an application for delivery of possession is filed by the auction purchaser – Appellant is a person who claims right under fourth defendant as a mortgagee based on a mortgage created after the equitable mortgage in favour of Bank and he cannot maintain the suit.

CDJ 2017 MHC 1183

Sujatha Venkatesan vs. Manjula Srinivasan

Date of Judgment: 06.03.2017

Contention of the appellants/petitioners is that possession of immovable properties and movable properties, like, the jewels, will not amount to capacity of the appellants/petitioners to pay the Court fee and that the trial Court failed to see that from and out of the properties owned by the petitioners, they cannot raise funds to pay the Court fee. **Held**: In any event, the appellants/petitioners cannot be termed as the persons not having sufficient means to pay the Court fee on their own admission that they owned the properties worth more than the amounts to be paid as Court fee. In the facts and circumstances of the case, the report of the District Collector with regard to the financial status of the petitioners is not necessary, in view of their own admission that they owned the properties more than the amounts mentioned under Order 33 Rule 1 of the Code of Civil Procedure. From the materials available on record, it is seen that the petitioners can raise funds to pay the Court fee by utilising the jewels and the immovable properties mentioned in the schedule to the Indigent O.P.No.17 of 2014.

CDJ 2017 MHC 1266

New India Assurance Company Ltd., vs. Prakasam and others

Date of Judgment: 10.03.2017

MCOP - head injury - atrophy it is permanent disability; victim 31 years having driving license income taken as Rs.10,000/- upheld -- **Held:** In the light of the medical evidence on record and discussion, the Court is not inclined to interfere with the extent of disablement taken into consideration by the tribunal, for the purpose of awarding compensation under the head loss of earning and other heads. Accident has occurred on 20.01.2012. In the light of the judgments of Hon'ble Supreme Court in Sri Ramachandrappa Vs..The Manager, Royal Sundaram alliance Company Ltd., reported in 2011 (13) SCC 236, Syed Sadiq and others Vs. DM UIIC Ltd., reported in CDJ 2014 SC 044, and Munna Lal and another Vs..Vipin Kumar Sharma and others, reported in CDJ 2015 SC 476, sum of Rs.10,000/- fixed as monthly income of the injured aged 31 years, cannot be found fault with. Therefore, the Court is not inclined to interfere with the determination of monthly income.

2017 (2) MWN (Civil) 723

Sarangapani (Died) and others vs. Vasantha and another

Date of Judgment: 14.03.2017

CODE OF CIVIL PROCEDURE, 1908 (5 OF 1908), Order 23, Rule 1 – Withdrawal of Suit – Plaintiff filed a suit for declaration regarding legal heirship status of a particular individual – during pendency of suit they filed an application to include a property omitted to be shown in Schedule – Application dismissed – Plaintiff filed application to withdraw suit and to file a fresh suit – Application allowed – Liberty granted – challenged – records show that plaintiff omitted to include a property – this would amount to formal defect resulting in dismissal of suit – contention of defendant that trial court ought not to have given liberty, not tenable – impugned order of trial court, proper – revision dismissed.

CDJ 2017 MHC 2824

Sampoornam and another vs. Sathya and another

Date of Judgment: 15.03.2017

Settlement of immovable property - Hindu - delivery of possession and change in revenue records not necessary. - **Held:** Admittedly, at the time of settlement, the settlee was unmarried and was living with the appellants. Therefore, there cannot be any other further evidence to prove the handing over of possession to the settlee. When the persons are living together in a joint family and one of them executing a settlement in respect of their children, it can be easily presumed that the settlement has been acted upon and in fact the possession was also taken by the settlee. Therefore, the contention of the learned counsel for the appellants that the settlement has not been acted upon cannot be sustained

From the judgment of the Honourable Supreme Court, it can be seen that when there is a valid settlement of an immovable property, delivery of possession is not an essential condition to test its validity. Even if the delivery of possession is not handed over, settlement cannot be invalid, merely on that ground alone.

Merely because the revenue records stood in the name of the first defendant, namely, the first appellant, that ground itself cannot a ground to invalidate the case of the plaintiffs. It is not the case of the appellants that the settlement has not been accepted by the settlee. Therefore, merely, the revenue records have not been changed during the life time of the settlee, that ground itself cannot be a ground that the settlement has not been acted upon. The revenue records will not create or extinguish title, at the most it would show only possession of the property. Admittedly, till the death of the settlee, he, along with his wife were living with the defendants Therefore, this Court is of the view that merely only the basis of the revenue records, it cannot be held that the settlement itself is not valid.

CDJ 2017 MHC 2985:: 2017 (2) TLNJ 515 (Civil)

M. Parimanam @ Parimana Konar vs. T. Egammai

Date of Judgment: 20.03.2017

Specific Relief Act, 1963, Section 28 – Suit for Specific Performance – Rescission of contract – agreement dated 12.03.1993 – Total sale consideration Rs.4,00,000/- - Rs.3,000/- paid as advance – suit decreed on 30.04.1999 with a direction to pay the balance sale consideration within a period of two months get sale deed executed – Appeal filed by the Defendants was dismissed default – Execution Petition filed by Decree Holder on 02.04.2013 without depositing balance sale consideration – Execution Court issued lodgment schedule and balance sale consideration was deposited on 20.06.2013 – Sale deed was also executed – E.A. To take delivery of the suit property was filed and ordered – Petition to set aside ex-parte order filed and returned – Petition to condone the delay of 206 days in representing the application – dismissing by Execution Court – Revision challenging the same – Held, though Revision Petition has been filed challenging the order of dismissal of application to condone delay in representation of petition to set aside ex-parte order, High Court proceeded to consider the validity of the Execution Petition filed by Decree Holder in exercise of Powers under Article 227 of Constitution of India – In this case, the Decree Holder had deposited balance sale consideration after lapse of 14 years from the date of decree without getting any order of extension of time – decision of the Hon'ble Supreme Court in P.R.Yelumalai Vs..N.M. Ravi 2015 (2) CTC 559 : 2015 (4) LW 90, even a single day delay in depositing the balance sale consideration will disentitle the decree holder to execute the decree – Further, even though there is no provision in the Limitation Act curtailing the time limit for which extension of time can be granted in 2013 (4) LW 626 (G.Kesavan vs..B.C.Raman) High Court by applying Article 54 of Limitation Act has held that no extension of time can be granted, if request is made, for a period of more than three years – it was therefore held that Execution Court had erred in numbering the Execution Petition filed by Decree Holder and in permitting the Decree Holder to deposit the balance sale consideration without any order extending the time limit – Execution Petition filed by the Decree Holder was dismissed – sale deed executed in favour of the D.H. was ordered to be cancelled and the Sub-registrar was directed to make necessary entry in respect of the same in its Register – Execution Court was directed to re-deliver possession within a period of two months and report compliance – Civil Revision Petition allowed.

CDJ 2017 MHC 1168:: 2017-2-L.W. 332 :: 2017(2) MWN (Civil) 400

Thangavel and another vs. The Superintendent Engineer, Pudukottai

Date of Judgment: 22.03.2017

Torts – Negligence – Death due to Electrocution – Whether established – Claim of Appellants that their 12 year old died when he stamped on live Electric wire – stand of respondents that deceased died as he had touched Electric wire accidentally cut by one Mariyappa while cutting Plantains from Banana tree – Established from Post-mortem that deceased only had injury on leg and had no burn injuries on hand – Leg, first place of contact with cut live Electric wire – Shock, **held**, spread upwards and reached heart through spinal cord and left back shoulder – Established that deceased died due to negligence of Respondents in maintaining live Electric Wire – compensation of Rs.5,00,000/- awarded to Appellants with interest @ 6 % p.a. From date of suit till date of realisation – Appeal allowed.

Torts – Negligence – Electric wires – maintenance of – duty of Electricity Board – Gravity of, discussed – Constitution of India, Article 21.

CDJ 2017 MHC 2630

K.K.Anbalagan and another vs. C.Kumar and others

Date of Judgment: 05.04.2017

Indian Succession Act, XXXIX of 1925 - Section 218, Section 278 - Section 15 of the Hindu Succession Act, 1956. The letters of administration of the estate of the deceased Hindu female, who died intestate and issueless has been claimed by the plaintiffs on the footing that they are the natural brother and sister of the deceased - According to them, in the absence of class - I heirs, they being class - II heirs as detailed under the Hindu Succession Act, 1956, are entitled to legally administer the estate of the deceased – **Held:** The properties described in the plaint schedule are the self acquired properties of the deceased Hindu female - In the absence of heirs falling under clause - a of Section 15 of Hindu Succession Act, the next in line of succession is the heirs of her husband - It is not in dispute that the first defendant is the son of the deceased husband's brother - Therefore, in the line of succession, it is found that the first defendant would have priority to succeed to the estate of the deceased - Even as per Section 218 of the Indian Succession Act, 1925, it could be seen that as per the rules/law applicable to the distribution of the estate in the case of the deceased, as per the law applicable to her, it is found that it is only the first defendant, who is admittedly, the son of the deceased husband's brother, who would be entitled to succeed to estate of the deceased and in such view of the matter, it could be seen that the plaintiffs cannot have any precedence or priority to seek the grant of Letters of Administration to the estate of the deceased, by passing or circumventing the claim of the first defendant.

CDJ 2017 MHC 1502

M. Srinivasan vs. M.V. Mohamed and others

Date of Judgment: 05.04.2017

Suit for possession, perpetual injunction and mesne profits – denying the title of the plaintiffs, defendants pleaded title by way of adverse possession – **Held** - plaintiff has traced his title to the suit property and the other plaint schedule properties through the compromise decree marked as Ex.P1 - The same has also been admitted by the defendants in the written statement - Therefore, it could be seen that the defendants though are aware of the plaintiff's title to the suit property, have set up a false case claiming to have acquired some right over the suit property from strangers and however, failed to establish their false claim – Further held, having denied the title of the plaintiffs, defendants cannot plead title by way of adverse possession - Only on admitting the title of the plaintiff, the defendants would be legally competent to make a claim over the suit property by way of adverse possession.

Inasmuch the defendants have no title over the suit property, they are not entitled to put up any structure or otherwise alter the suit property - Therefore, it is found that the plaintiff is entitled to obtain the relief of perpetual injunction as against the defendants as claimed in the plaint.

2017 CDJ MHC 2949

MD, TNSTC vs. Varalakshmi and other

Date of Judgment: 17.04.2017

Motor Vehicles Act, 1988 – Section 173 – Accident Claim – Deceased working in unorganized sector at the time of accident – addition of future Prospects – Contention of the Insurance company/appellant is in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, “future prospects”, to the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same. - **Held** - Perusal of the award shows that the number of dependents are 6 including 3 minor children and parents. With Rs.5,000/- certainly, one cannot maintain a family for the remaining years. The tribunal ought to have considered addition of certain income under the head future prospects or prospect as decided by a Coordinate Bench of this Court in C.M.A.No.3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila. - In the light of the above decision, held, 50% of the income, to be added for the purpose of computing loss of contribution to the family.

MADRAS HIGH COURT – CRIMINAL CASES

2017-2-L.W.(CrI.) 19 JS

**S. Madhiyazhagan and Another vs. State, rep. by The Inspector of Police CB CID, Tirupur
District and Another**

Date of Judgment: 20.08.2015

Criminal Procedure Code, Section 2(1) ‘local jurisdiction’, what is – Police Standing Orders (PSO) 504, Crime Investigation Department, CID, Scope, powers of magistrate to direct Crime Branch CID to investigate an offence – scope: **Held:** Magistrate can only order the Officer-in-charge of a Police Station that falls within his territorial jurisdiction to investigate an offence – Direction issued by Magistrate to the CB CID Under Section 156(3) Cr.P.C.to investigate is not sustainable.

2017-1-L.W. (CrI.) 536 :: 2015 (3) MWN (Cr.) 473

Arun Raj, A v. State, rep. by Inspector of Police, Erode Railway Police Station, Erode and others

Date of Judgment: 30.10.2015

Criminal Procedure Code, Section 183, 186, 482, transfer of proceedings.

I.P.C. Sections 34,143,147,148,149,307,323,324,393. -Petition to transfer case to court in Kerala – Ragging – offence committed while victims were on train Chennai – Trivandrum Mail, which Court has jurisdiction to try offenders – meaning of the expression “*proceedings were first commenced*”, what is - proceedings first commenced with the issuance of process by the Judicial first class Magistrate, Kolenchery, Kerala and not before the Judicial Magistrate No.II, Erode, Tamil Nadu – For invoking Section 186(b) Cr.P.C., the petitioner should have approached the High Court of Kerala – It is the date of institution of the proceedings and not date of taking cognizance by the Magistrate – Accused not to be subjected to two prosecution at two courts for same bundle of facts – Prosecution quashed.

2016-2-L.W.(CrI) 615

**Kavin Vivek vs. State, Rep by the Inspector of Police V-5 Police Station Thirumangalam,
Chennai – 600 101**

Date of Judgment: 05.08.2016

Criminal Procedure Code, Sections 482, second quash petition whether maintainable, 173(8) further investigation ordering of, final report, quashing of, scope.

Prevention of Corruption Act, Section 8, 9,10, 13(1), 17, 24,IPC, Sections 120B, 406, 420, 506(ii) Prayer to quash final report – Allegation against A1, A2 and defacto complainant (G) of promising to get government jobs by paying amount – Conspiracy among A2(IAS officer), A1(his son), ‘G’, a reporter to have illegally collected money from 10 victims for getting them appointment as public relations officer, attracting various offences.

Can ‘G’ be let off as a whistleblower?

Complaint given by ‘G’ formed the basis for registration of FIR – earlier quash petition dismissed, second petition whether maintainable - complainant transposed as accused – In Chennai, an offence under the Prevention of Corruption Act can be investigated only by an officer of the rank of Assistant Commissioner of Police, as laid down in Section 17 – Final report quashed – Reinvestigation by CBI ordered.

Disagreeing with the decision of a learned Single Judge in Dhivan vs..State, rep.by the Inspector of Police, Vadalur Police Station, Vadalur, Cuddalore District – 2010 (1) L.W. (CrI.) 703, wherein it was held that when once a person was granted bail for small offences and during investigation, if the commission of higher offences by him comes to light, the earlier bail should be cancelled and only thereafter, he can be arrested, **held** - an accused arrested for a minor offence and released on bail - can be arrested again if major offence is made out by turn of subsequent events, without cancelling the earlier bail. In view of categorical pronouncement of the Supreme Court in Prahlad Singh Bhati v. NCT, Delhi and another – (2001) 4 SCC 280.

CDJ 2017 MHC 1141

P.R. Venkatraman vs. Superintendent of police

Date of Judgment: 02.03.2017

Constitution of India, Article 226 – alleged illegal detention by parents - Parental custody - natural parental authority exercised to the dislike of the ward does not amount to illegal custody - as it is for the welfare of the ward. In view of the decision reported in Prasadkumar v. Ravindran (1992 (1) KLT 729), wherein it is stated thus:

"It cannot be said that having control and supervision of an aged girl by the parents will amount to illegal custody warranting the issue of a writ by this Court. Parents will naturally be interested in the welfare of their children and unless there are extraordinary circumstances, normally they will be the proper persons to take decisions concerning the career and future of their children. Parents will be entitled to have control over the children, especially if they are daughters, to protect them from the vagaries of adolescence.",

the Court dismissed the Habeas Corpus Petition.

CDJ 2017 MHC 2649

Ramachandran vs. State

Date of Judgment: 04.04.2017

Criminal Procedure Code - Section 374(2), Section 482 - Indian Penal Code - Section 294(b), Section 302, Section 304(1), Section 307 – Appeal against conviction -Appellant/sole accused was convicted by Trial Court for offence under Sections 294(b) and 302 IPC - Hence this appeal. -

Court held - Admittedly, the deceased and the accused were co-relatives and they were also neighbours. There was no enmity between the two families. The occurrence was not a pre-meditated one. The accused had scolded his son, because, his son had returned from the shop very late. When he manhandled his son, out of good intention, the deceased had gone to his house and questioned the accused as to why he was so cruel to his son. Thus, the rushing of the deceased to the house of the accused was only due to good intention. But unfortunately, this resulted in a quarrel. It was only in that quarrel, the accused had taken the aruval and caused a single blow on the head of the deceased. accused had lost his mental balance out of provocation, which, in Court considered view, was not only sudden, but also grave enough - act of accused, since would fall within First Exception to Section 300 IPC, accused would be liable to be punished only under Section 304 (1) of IPC - sentencing Appellant/accused to undergo rigorous imprisonment for seven years and imposing fine would meet ends of justice -conviction and sentence imposed on Appellant for offence under Section 294(b) IPC was confirmed and conviction and sentence imposed on him for offence under Section 302 IPC are set aside and instead he was convicted under Section 304(1) IPC - criminal appeal partly allowed.

(2017) 2 MLJ (Crl) 588

R. Thiagarajan vs. P. Saravanan

Date of Judgment: 06.04.2017

Negotiable Instruments – Dishonour of Cheque – Acquittal – Valid Defence – Negotiable Instruments Act, 1881 (Act 1881), Section 138 – Code of Criminal Procedure 1973 (Code 1973), Section 255 (1) – Appellant/Complainant preferred appeal as ‘Aggrieved Person’ against judgment of acquittal of Respondent/accused, passed by Judicial Magistrate – Whether Trial Court justified in acquitting Respondent from offence under Section 138 of Act 1881 – *Held*, Respondent raised some valid/probable defence in case while Appellant did not come out with case in clear and crystalline fashion – Cheque issued by Respondent to Finance concern was made use of by Appellant to lodge complaint against Respondent – Appellant did not establish his case to subjective satisfaction of Court – On appreciation of oral and documentary evidence available on record of respective sides, Trial Court rightly found Respondent as not guilty – Trial Court acquitting Respondent under section 255 (1) of Code 1973 relating to offence under Section 138 of Act 1881 does not suffer from material irregularities of patent illegalities.

2017 CDJ MHC 2581

Deepa vs. Balaji

Date of Judgment: 13.04.2017

Constitution of India - Article 227 - Code of Criminal Procedure, 1973 - Section 483, Section 125, (b) of Explanation to Section 125(1), Section 128 - Old Code of Criminal Procedure, 1898 - Section 488 - Hindu Marriage Act, 1955 - Section 24 and Section 26 - dissolution of marriage - enhancement of maintenance – Petitioner is the wife of respondent and Marital discordance arose between spouses - Consequently, they started living separately - husband filed petition before Sub-Court, seeking dissolution of his marriage with her on the ground of willful desertion and cruelty - She filed counter refuting his allegations. She also alleged that he ill-treated her with cruelty and also forced her to consent for his second marriage with another woman - petitioner filed application under Section 24 and 26 of the Act, 1955 seeking maintenance for herself and also for her children which was dismissed – hence instant petition Issue is - whether petition filed against dismissal of application of trial court for maintenance is maintainable.

Court held - instead of performing respondent's obligation under the Act, 1955 Sub-Judge, taken into account an irrelevant aspect and dismissed maintenance petition which is unsustainable in law - An order passed under Section 125 Cr.P.C. will not take away the jurisdiction of the Matrimonial Courts/Civil Courts to grant pendent lite maintenance to the wife and children under Sections 24, 26 of the Hindu Marriage Act. An order of maintenance passed under Section 125 Cr.P.C shall not bar the wife and the children to recourse to Sections 24, 26 of the said Act and seek maintenance in a pending matrimonial proceedings. They can seek such a relief in a matrimonial proceedings initiated either by the husband or by the wife herself.

2017(1) L.W.(Crl.) 662:: (2017) 2 MLJ (Crl) 498

Kalaichelvan @ Dhanush K.Raja vs. R.Kathiresan and Another

Date of Judgment: 21.04.2017

Criminal Procedure Code, Sections 125, 482 - maintenance claim by parents against alleged son('D' an actor) DNA profiling grant of, Paternity of Tamil film star'D' – petition under Section 125, Cr.P.C., claiming maintenance – scope – direction to produce original transfer certificate records, grant of. **Held:** no *prima facie* case made out for awarding maintenance, for trial to proceed further – DNA profiling cannot be ordered by the Court on the mere asking of a party in the absence of foundational facts – Couple had a son by name 'K' and he went missing – But important link that said 'K' had metamorphosed into 'D' is miserably missing in this case to order DNA Profiling - one cannot seek a direction to the Revenue authorities to issue community certificate to another – Examination of 'D' – nothing can be inferred from the examination conducted by Doctors – for initiating a proceeding under Section 125 sending a notice is not at all a *sine qua non*.

(2017) 2 MLJ (CrI) 593

**Thameemun Ansari vs. State rep by The Inspector of Police, R-8, Vadapalani Police Station,
Chennai - 600 026**

Date of Judgment: 24.01.2017

Murder – Sudden Provocation – Indian Penal Code, 1860, Sections 300, 302 and 304(i) – Appellant/sole accused was convicted by Trial Court under Section 302 and sentenced to imprisonment for life and pay fine – Appeal against conviction and sentence – Whether conviction of Appellant for murder under Section 302, justified – *Held*, prompt launching of FIR goes to vouch for truthfulness of case of prosecution – Medical evidence duly corroborates with eyewitness account – Only in quarrel, accused having lost his temper on account of sudden provocation made by deceased, took out knife and stabbed deceased twice – Occurrence was not premeditated one and accused had no intention to cause death of deceased – Accused had intention to cause injury and such intended injury was sufficient in normal course of nature to cause death – Act of accused would squarely fall within third limb of Section 300 and within first exception to Section 300 – Accused liable to be punished for offence under Section 304(i) – Accused was hardly 23 years of age at time of occurrence and has chances for reformation – Appellant is poor man and got big family to take care of – Having regard to all mitigating as well as aggravating circumstances, accused to undergo rigorous imprisonment for ten years and pay fine for offence under Section 304(i) – Appeal partly allowed.

2017 (4) CTC 846

D.D.Dhorrairaj vs. State

Date of Judgment: 20.07.2017

Indian Electricity Act, 1910, Sections 39(1) & 44(1) (c) - Electricity Act, 2003, Sections 154(2) & 185 – General Clauses Act, 1897, Section 6(e) – Offence of theft of Electricity committed before 2003 Act – accused prosecuted for offences under Section 39, Police registering case in 2002 under Electricity Act, 1910 – such offences are to be tried under machinery created under 1910 Act – Section 6(e) of General Clauses Act preserves right to prosecute offenders and determine Civil liability under 1910 Act, notwithstanding repeal of such Act by 2003 Act – 2003 Act does not extinguish jurisdiction of Magistrates for trial of offences under 1910 Act – plea of accused to transfer matter to Special Court constituted under 2003 Act, rejected - directions issued for expeditious trial.

Electricity Act, 2003 (36 of 2003), Sections 151, 153 & 154 – Harmonious reading of all Sections indicates that after Special Courts are constituted by State Government with concurrence of High Court, all other Courts would be denuded of jurisdiction to try offences under Electricity Act.
