



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



HEADQUARTERS, CHENNAI

No.30/95, P.S.K.R. Salai, R.A. Puram, Chennai – 600 028

Phone Nos. 044- 24958595 / 96 / 97 / 98 Fax: (044) 24958595

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

REGIONAL CENTRE, COIMBATORE

No.251, Scheme Road, Race Course, Coimbatore - 641 018.

Telephone No: 0422 - 2222610/710

E-Mail: tnsja.rc.cbe@gmail.com

REGIONAL CENTRE, MADURAI

Alagar Koil Road, K.Pudur, Madurai - 625 002.

Telephone No: 0452 - 2560807/811

E-Mail: tnsja.rc.mdu@gmail.com

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SUPREME COURT - CIVIL CASES

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1	U.Manjunath Rao vs. U.Chandrashekar and Another	CDJ 2017 SC 885 :: 2017 AIR(SC) 3591:: 2017 (6) MLJ 489 :: 2017 (8) SCALE 488	04.08.2017	<u>Code of Civil Procedure, 1908(5 of 1908), Section 96 & Order 41, ,Rule 31</u> – First Appeal – Hearing of Appeal – Duty of Appellate Court – Finding of Facts – Appellate Court is final Court of facts - First appeal is valuable right of parties – Reversal Judgment – Judgment of Appellate Court must reflect conscious application of mind and record findings supported by reasons – while reversing findings of Trial Court, duty of Appellate Court is different than while affirming Judgment – Appellate Court should address issue on facts as well as on law – Judgment of Appellate Court should state reasons for decision while affirming Judgment of Trial Court or reversing same.	01
2	Siddalingayya vs. Gurulingappa and Others	2017 (9) SCC 447 :: CDJ 2017 SC 1053	05.09.2017	<u>Civil Procedure Code, 1908, - Order.8, Ruler.1 & 10 and Sections.148, 151, 33, 96 and 100</u> – Failure of defendants to file written statement despite time granted by court – Refusal by trial court to grant further time to file written statement - Propriety – Substantial justice subject to payment of costs. Relying upon observations made by Supreme Court in <i>Sangram Singh</i> , AIR 1955 SC 425, held though time was granted to defendants to file written statement before closing their right with respect thereto, yet the trial court, instead of closing the said right of defendant, should have granted some further time to defendants to file written statement, subject to payment of reasonable amount to costs to plaintiff – Approach adopted by High Court while passing the impugned order was in tune with observations made in <i>Sangram Singh case</i> – Hence, not liable to be interfered with.	01

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
3	Adivappa and others vs. Bhimappa and others	2017 (7) MLJ 492(SC) :: LNIND 2017 SC 454 :: 2017 (6) CTC 556	06.09.2017	<u>Succession Laws – Partition</u> – Joint Family Nucleus – Appellants/Plaintiffs filed suit for declaration that suit properties in Schedule ‘B’ and ‘C’ are Plaintiffs self-acquired properties and Scheduled ‘D’ were ancestral and hence, Plaintiffs have 4/9 th share – Trial court and High Court dismissed suit, hence present appeal – Whether concurrent findings of Lower Courts liable to be upheld – Held, Defendants were able to prove that partition took place and was acted upon – Burden lies upon member who after admitting existence of jointness in family properties, asserts his claim that some properties out of entire lot of ancestral properties were his self-acquired property – Plaintiffs themselves based their case admitting existence of joint family nucleus in respect of schedule D properties and sought partition by demanding 4/9 th share – Plaintiffs failed to prove material fact that despite existence of jointness in family properties described in Schedule B and C was not part of ancestral properties but were their self-acquired properties – concurrent findings of lower courts upheld – appeal dismissed.	02
4	Bhargavi Constructions and Another vs. Kothakapu Muthyam Reddy and Others	CDJ 2017 SC 1039 :: 2017(5) CTC 775 :: 2017 (7) MLJ 242(SC) :: LNIND 2017 SC 458	07.09.2017	<u>Code of Civil Procedure, 1908(Code 1908), Order 7 Rule 11(d)</u> - Proper Interpretation of Expression “law” in Order 7, Rule 11(d) not only includes any Act enacted by Legislature, but also judicial decisions of Supreme Court – Supreme Court judgment is law of land under Article 141 of Constitution of India – Particular remedy laid down by Supreme Court for challenging award of Lok Adalat must be followed in letter and spirit.	02
5	Narendra and Others vs. State of Uttar Pradesh and Others	CDJ 2017 SC 1061::2017 (9) SCC 426	11.09.2017	<u>Land Acquisition Act, 1894</u> - Once a particular rate of compensation is judicially determined- it becomes fair compensation, benefits thereof is to be given to even those who could not approach the court. That some of the villagers claimed lesser rates than the fair compensation which is ultimately determined, should not be a ground to deny fair compensation.	02

SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Central Bureau of Investigation vs. M.Sivamani	2017 AIR(SC) 3583 ::2017 (3) MLJ(Crl) 611::2017 (8) Scale 398::CDJ 2017 SC 870	01.08.2017	<u>Code of Criminal Procedure, 1973(Code 1973), Section 195</u> - When High Court directs investigation into specified offence mentioned in Section 195 of Code, 1973, bar under Section 195(1)(a) of code 1973 could not be pressed into service.	03
2	Rajkishore Purohit vs. State of Madhya Pradesh and Others	CDJ 2017 SC 872 :: 2017 0 AIR (SC) 3588:: 2017 (3) Crimes (SC) 363:: 2017 9 SCC 483:: 2017 6 Supreme 96:: 2017 0 Supreme (SC) 707	01.08.2017	<u>Indian Penal Code, 1860 – Section 302 r/w section 34 - Common Intention:</u> If common intention by meeting of minds is established then there is no need for any overt act or possession of weapon required, to establish common intention.	03
3	Rajiv Kumar and Another vs. State of U.P. & Others	CDJ 2017 SC 879 :: 2017 0 AIR(SC) 3772; 2017 3 Crimes(SC) 346; 2017 8 SCC 791; 2017 6 Supreme 1; 2017 0 Supreme(SC) 709;	02.08.2017	<u>Section 120-B IPC - Criminal Conspiracy:</u> Meeting of minds is sine quo non for criminal conspiracy, its existence and objective can be gathered from surrounding circumstances. In some cases indulgence in illegal act by illegal mans may be informed from knowledge itself.	04

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
4	Vasant Rao Guhe vs. State of Madhya Pradesh	CDJ 2017 SC 913	09.08.2017	<p><u>Prevention of Corruption Act,1988 - Section 13(1), Section 13(2),Section 19</u> – Known source of income from lawful source and such receipt to be intimated in accordance with law.</p> <p>Public Servant facing Criminal Misconduct charges is not bound to furnish explanation in absence of proof - Prosecution to prove - Pecuniary resources or property disproportionate to the accused's known sources of income and it is only on the discharge of such burden by the prosecution, if the accused fails to satisfactorily account for the same, he would be in law held guilty of such offence.</p>	04
5	Securities and Exchange Board of India vs. Classic Credit Ltd.,	CDJ 2017 SC 969	21.08.2017	<p><u>Section 26 of Securities and Exchange Board of India Act 1992 (SEBI Act)</u> Amendment changing forum for trial – is procedural and so is retrospective.</p>	05

MADRAS HIGH COURT - CIVIL CASES

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	J.D. Shanthy (deceased) vs. M.L.Perumal	2017 0 Supreme (Mad) 12	04.01.2017	<u>Section 69 of the Indian Evidence Act, 1872</u> - When both the attesting witnesses are not found, the Will can be proved only as per Section 69 of the Indian Evidence Act, 1872 coupled with Section 47 of the Indian Evidence Act, 1872.	06
2	Naveen G.Rolands vs. Cholamandalam DBS Finance Ltd., Chennai	2017 (5) CTC 47	15.02.2017	<u>Arbitration and Conciliation Act, 1996, (26 of 1996) - Section 16 - Code of Civil Procedure, 1908(5 of 1908), Section 20</u> - Exclusive Jurisdiction - petitioner availed home loan facility in Bangalore - Arbitration agreement contains a Clause that venue of Arbitration proceedings shall be at Chennai at Registered Office - having signed and accepted condition, petitioner cannot resile the same - Arbitration Tribunal constituted at Chennai has jurisdiction.	06
3	Elangovan vs. Sulochana and others	2017 (3) MWN (Civil)595	27.03.2017	<u>Code of Civil Procedure, 1908(5 of 1908), Order 7, Rule 11 - Limitation Act, 1963(36 of 1963) - Article 58</u> - Rejection of Plaint - Suit for declaration that Power of Attorney and Sale Deed executed are null and void - Suit instituted after a period of 3 years from execution of sale deed - Suit barred by Limitation.	06
4	V.Srinivasan vs. V.Selvaraj	2017 (5) CTC 185	14.07.2017	<u>Code of Civil Procedure, 1908- Order 41, Rule 23</u> - Remand - Held: Appeal cannot be remanded upon a document, which came into existence after filing of suit - Order of remand set aside - CMA allowed.	07
5	Ramakrishnan and others vs. Gurusamy (Died) and others	2017 (6) CTC 29	18.07.2017	<u>Benami Transactions (Prohibition) Act, 1988(45 of 1988), Section 4(3)</u> - No Bar under Section 4(3) of Act for purchasing property in name of person acting in fiduciary capacity or as Trustee - Nature of property to be inferred from subsequent conduct of parties.	07

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
6	C.Arul Manikandan vs. T.Archana	2017 (4) LW 178:: 2017 (6) MLJ 641::2017 (5) CTC 528	03.08.2017	<u>Hindu Marriage Act, 1955 (25 of 1955), Sections 13(1)(i-a) & 23</u> – Divorce on grounds of cruelty – Petition for Divorce not like any other commercial suit – grant of Divorce not automatic even when parties jointly present Mutual consent divorce petition – divorce cannot be sought or granted based on Panchayat Muchalika alone — allegations of extra martial affairs not proved – court not satisfied on grounds raised – order of family court dismissing petition of divorce even when respondent-wife remained ex-parte, confirmed – appeal dismissed.	07
7	G.Muthukumar vs. R.Bhuvaneshwari	(2017) 7 MLJ 385 :: LIND 2017 Mad 2661	07.08.2017	<u>Hindu Law – Restitution of Conjugal Rights – Bar to Claim Maintenance – Hindu Marriage Act, 1955, Section 24</u> - Husband filed – restitution of conjugal rights - decreed – wife not complied – divorce proceedings initiated by husband. Wife claims maintenance – entitled as there is no bar under section 24 of Family court.	08
8	The Executive Engineer Tamil Nadu Housing Board, Anna Salai, Nandanam vs. V.N.Mohamed Hussain and Others	CDJ 2017 MHC 6739	18.08.2017	<u>The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013</u> The statutory mandate under the provisions of the New Act-, obligation is cast upon the authority concerned to deposit the compensation amount awarded in the light of sections 31, 32 and 33 of the Old Act, 1894 and admittedly, it has not been done, which would result in deemed lapse of the Land Acquisition Proceedings.	08

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9	A.Velusamy vs. Hemavathy Ramanathan and others	CDJ 2017 MHC 5254 :: 2017 0 Supreme (Mad) 1652	29.08.2017	<u>Specific Performance</u> – Sale agreement proved by attendant circumstances and also from the fact that Plaintiff was willing to refer the document to forensic expert while defendant was not. Relief of Specific Performance – relief based on equity – Hence, in this case as Plaintiff claims to entered into agreement for sale of acquiring house at Chennai for the purpose of education of children and admittedly as the children are now well settled. A grant of decree of Specific Performance would completely unsettle the first defendant. Hence alternative relief of refund of Rs.50,00,000 with 6% interest p.a is ordered.	09
10	S.Umamaheswari vs. The High Court of Judicature at Madras, Rep. by its Registrar General, Chennai and Others	CDJ 2018 MHC 096	22.12.2017	<u>Constitution of India - Article 226 -</u> Petitioner was appointed as Civil Judge. She was placed under compulsory wait –When the matter stood thus, the 1 st respondent issued show cause as to why she should not be discharged from Tamil Nadu Judicial service as contemplated under Rule 26 of Tamil Nadu State and Subordinate Service. The petitioner also gave a detailed reply to the show cause – the second respondent herein passed an order, discharging the petitioner from the Tamil Nadu State Judicial Service in terms of 27c of TNSSS Rules with immediate effect, challenged as one which violates Article 311 of the Constitution of India. Held high court has powers to initiate proceedings against delinquent officers, High Court is recommending authority when it comes to the question of dismissal, removal, reduction in rank or termination of the service of the judicial officer, on any count whatsoever. Writ petition is dismissed. Petitioner claims Deemed probation – rejected as the high court has powers to extend the period of probation without any issuance of specific order.	09

MADRAS HIGH COURT – CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1.	Samsudeen vs. P.R.Jayanthi	CDJ 2017 MHC 5906	04.08.2017	<p><u>The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal</u> –The petitioner had filed a petition under Sections 311, 311-A of Cr.P.C read with Section 45 of the Indian Evidence Act, with a prayer to send the disputed cheques since the petitioner has got specific case that he had issued cheques for security purpose in the year 2002 and the same are misused by the respondent, to the Forensic Sciences Department to ascertain the age of the ink,- The plea of the petitioner has been rejected – on the ground that, there is no mechanism in India to determine the age of the ink.</p>	10
2.	Kali @ Kalidoss @ Kalirajan vs. The State rep by its, The Inspector of Police, Keezhavalavu (Crime No.196 of 2011)	CDJ 2017 MHC 5705 :: 2017 (4) MLJ(CrI) 257 :: LNIND 2017 BMM 1116	04.09.2017	<p><u>Murder – Unsound Mind – Indian Penal Code, 1860, Sections 84, 302 and 341</u> — <u>Schizophrenia</u> is chronic and severe and it is not possible to presume that Schizophrenia is only occur in a lucid intervals – accused behavior was of unsound mind at relevant point of time – once evidence adduced on the side of accused probablise case, court has to necessarily hold that to claim benefit under Section 84, accused discharged his burden — Established that accused was insane person at relevant time and he was not capable of understanding nature of thing – case comes under exception of Section 84 – accused entitled to benefit of doubt – appeal allowed.</p>	10
3.	Amaravathi.P vs. Govt.of T.N., by Secretary, Home Department and 3 others	2017 (2) TLNJ 298 (Criminal)	15.09.2017	<p><u>Death in Police Custody</u> – case registered against police officers – acquitted – compensation claimed – Held: acquittal of the accused giving benefit of doubt will not stand in the way of the Court awarding compensation.</p>	11

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4.	Guruchittan vs. State by Inspector of Police, Kadambur Police Station Erode District	2017 (4) MLJ (CrI) 678 LNIND 2017 MAD 3616	21.09.2017	<p><u>Culpable Homicide not Amounting to Murder – Evidence of Witnesses – Indian Penal Code, 1860, Sections 304 (1) and 506 (2)</u> – Trial Court convicted accused under Sections 304 (1) and 506 (2) for causing death of victim/deceased, hence present appeal – Whether conviction of Appellant for culpable homicide not amounting to murder justified – <i>Held</i>, deposition of P.W.2 and P.W.3 is clear and cogent as regards manner in which occurrence had taken place and evidence show that accused attacked deceased using knife and wooden log – Oral testimonies of P.W. 2 and P.W. 3 corroborated by medical evidence – Delay in lodging complaint sufficiently explained by P.W.1. that it was late night, there was wild animal movement and they had visited in morning – Seen from Observation Mahazar and Rough Sketch prepared by Investigating Officer that occurrence has taken place in forest-like area – Explanation offered for delay cannot be brushed aside – P.W.15/Constable who took First Information Report to Court explained that due to land slide, vehicle movement stopped and he reached Court at the said time – Evidence of P.W.15 remained unchallenged – Trial Court justified in convicting accused – Incident took place all of sudden, no previous enmity and premeditation – Sentence of Rigorous Imprisonment of offence under Section 304 (1) IPC is reduced – Appeal partly allowed.</p>	11

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
5.	T.Dhinakaran (minor), Rep. by next friend and Grandmother, Vijaya, Kiliyanour and Another vs. V.Ranganathan and Others	CDJ 2017 MHC 6584	05.10.2017	<p><u>Forwarding of complaints and dealing with petitions filed under section 340 Cr.P.C. guide lines issued. Held-</u> (i) When an application is filed under section 340 of the Code of Criminal Procedure, it is for the Court concerned to entertain and decide the issues involved in the said application without any interference into the proceedings of the Original suit or other category of the lis as the case may be;</p> <p>(ii) The Court concerned can very well simultaneously proceed with the petition and the main case and decide them accordingly;</p> <p>(iii) Those petitions are to be numbered as “Miscellaneous Judicial Case” and may be tried as per law;</p> <p>(iv) In case if the disposal or the findings of the petition filed under Section 340 of the Code of Criminal Procedure is having any bearing upon the main case, then the concerned Court has to act as per law.</p>	12
6.	G.Sowmiya vs. State rep by The Inspector of Police, Vishnu Kanchi Police Station, Kancheepuram District and Another	CDJ 2017 MHC 6913	06.10.2017	<p><u>Criminal Procedure Code – Section 397 and 401</u> – Framing of charges on the 2nd accused, based solely on the confession of the 1st accused. No other material found against the 2nd accused. 2nd accused Entitled to discharge.</p>	13
7.	Sakthivel, S/o. Manickam, Acharahalli, Papparapatty, Dharmapuri District vs. State, by the Inspector of Police, Papparapatty Police Station, Dharmapuri District (Crime No. 262 of 2015)	2017 (4) MLJ (CrI) 715 LNIND 2017 MAD 3725	23.10.2017	<p><u>Murder – Extra – judicial Confession – Indian Penal Code, 1860, Section 302</u> – Extra-judicial confession recorded by VAO could not be believed as even as per his own admission, he was utter stranger to 1st accused and Appellant – prior to recording of extra-judicial confession statements, he did not know them at all – it was not even case of prosecution that fearing torture and third degree treatment at hands of police, they approached VAO and gave extra-judicial confessions statements – No cogent and corroborative material available as to voluntary nature of such extra-judicial confession</p>	13

S. No.	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
8.	K.Pugazhendhi vs. State, Rep. by Inspector of Police, Vigilance and Anti – Corruption Trichy, Crime No.17/2017	2017 (4) MLJ (CrI) 666 LNIND 2017 MAD 3547	23.10.2017	<p><u>Prevention of Corruption – Circumstantial Evidence – Prevention of Corruption Act, 1988, Sections 7, 13 and 20</u> – Appellant / accused demanded and received bribe money from <i>de facto</i> complainant / PW-2 to issue patta – Appeal against conviction of Appellant by Trial Court under Sections 7, 13 (1) (d) and 13 (2) – Whether conviction of Appellant sustainable – <i>Held, de facto</i> complainant deposed that after paying deficit charge, he met accused who demanded bribe money – When witness asked whether he will not forward application without money, accused replied even for months it will not be forwarded without money – Conversation is relevant because when PW-2 met accused, first he enquired whether he brought money – Said conversation heard by accompanying witness PW-3 and corroborated in his deposition – Recovery of tainted money from possession of accused established through phenolphthalein test on hand wash and shirt pocket wash, proved to be positive and chemical analyst report is marked – <i>De facto</i> complainant, accompanying witness and trap laying officer all in unison deposed that they went to taluk office – In said circumstances thrusting money into person’s pocket forcibly sounds improbable – No error in judgment of conviction – Considering value of bribe amount and age of Appellant, period of sentence modified – Appeal dismissed.</p>	14

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
9.	Anchor Marine Service (Leather Division), A Partnership firm, Rep. by its Partner, Ms.Omana Manavalan by her Power Agent, T.N. Srinivasan and another vs. Prakash H.Mehtani, Managing Director, Tejoomals Industries Ltd., and Others	2017 (4) MLJ (Crl) 742:: LNIND 2017 MAD 3902	03.11.2017	Negotiable Instruments – Dishonour of Cheque – Cause of Action – Complaint filed by complainant against company for dishonour of cheque quashed – Complainant re-presented same cheque and created fresh cause of action and on that cause of action present case filed – Trial court after analyzing evidence convicted accused Nos. 1 and 3 and acquitted No. 2 – Revision filed by accused No. 3 challenging his conviction and appeal filed by complainant against acquittal of No. 2 – Whether filing of case on successive cause of action is permissible – <i>Held</i> , earlier complaint quashed on technical ground that company was not added as party – Cause of action in present case is different from cause of action of earlier complaint – Present cause of action based on successive default in payment of cheque on second presentation of cheque within time – Contention of revision petitioner as to cause of action not sustainable – Conviction of accused No. 3 for default of second dishonour of cheque is sustainable – Considering date of offence and amount involved, sentence alone modified – Trial Court rightly acquitted accused No. 2 on ground that he is impleaded only because he is Director of company – No evidence that he was in-charge of and was responsible to company for conduct of business at time of committing offence – Revision petition partly allowed – Appeal dismissed.	15

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
10.	Palanichamy vs. State, Rep. By Deputy Superintendent of Police, OCU-I, CBCID, Chennai (Crime No. 363 of 2018) and another	2017 (4) MLJ (CrI) 761 LNINDORD 2017 MAD 7757	25.10.2017	<p><u>Sexual Harassment – Delay in Complaint – Indian Penal Code, 1860 (Code 1860), Section 354 – Tamil Nadu Prohibition of Harassment of Women Act (Act), Section 4</u> – Victim girl / P.W.2 / student who was sexually harassed by Petitioner / teacher in school premises filed private complaint – Trial Court convicted Petitioner under Section 354 of Code 1860 and Section 4 of Act – Appeal by petitioner dismissed, hence present revision – Whether order of conviction passed by Trial Court and confirmed by Appellate Court, sustainable – Whether delay in lodging complaint by way of private complaint creates doubt on credibility of prosecution witnesses – <i>Held</i>, P.W.11 one of the donors of school trust was in inimical terms with school management – P.W. 11 brought pressure upon P.W.1 / mother of victim to prosecute Petitioner and other persons in school management committee – P.W.1 admitted in her cross examination that entire legal expenses met out by P.W.11 – Chief Education Officer conducted inquiry and filed report stating that no such occurrence took place – Inspector of Police in his evidence stated that his investigation revealed that complaint falsely given at instigation of P.W.11 – Nothing brought on record by prosecution to doubt his evidence – It has been mentioned in complaint that two teachers misbehaved, yet charge sheet was filed only against Petitioner – Private complaint filed with delay of more than twenty two months and bereft of details of alleged sexual harassment – Prosecution failed to prove case against Petitioner beyond reasonable doubt – Both Lower Courts erroneously convicted Petitioner – Revision allowed.</p>	15

SUPREME COURT – CIVIL CASES

CDJ 2017 SC 885 :: 2017 AIR(SC) 3591:: 2017 (6) MLJ 489 :: 2017 (8) Scale 488

U.Manjunath Rao vs. U.Chandrashekar and Another

Date of Judgment: 04.08.2017

Code of Civil Procedure, 1908(5 of 1908), Section 96 & Order 41, ,Rule 31 – First Appeal – Hearing of Appeal – Duty of Appellate Court – Finding of Facts – Appellate Court is final Court of facts – First appeal is valuable right of parties – Reversal Judgment – Judgment of Appellate Court must reflect conscious application of mind and record findings supported by reasons – while reversing findings of Trial Court, duty of Appellate Court is different than while affirming Judgment – Appellate Court should address issue on facts as well as on law – Judgment of Appellate Court should state reasons for decision while affirming Judgment of Trial Court or reversing same.

2017 (9) SCC 447:: CDJ 2017 SC 1053

Siddalingayya vs. Gurulingappa and Others

Date of Judgment: 05.09.2017

Civil Procedure Code, 1908, - Order.8, Ruler.1 & 10 and Sections.148, 151, 33, 96 and 100 – Failure of defendants to file written statement despite time granted by court – Refusal by trial court to grant further time to file written statement - Propriety – Substantial justice subject to payment of costs.

Relying upon observations made by Supreme Court in *Sangram Singh*, AIR 1955 SC 425, held though time was granted to defendants to file written statement before closing their right with respect thereto, yet the trial court, instead of closing the said right of defendant, should have granted some further time to defendants to file written statement, subject to payment of reasonable amount to costs to plaintiff – Approach adopted by High Court while passing the impugned order was in tune with observations made in *Sangram Singh case* and did not substantial justice to both parties – Hence, not liable to be interfered with.

2017 (7) MLJ 492 (SC) :: LNIND 2017 SC 454 :: 2017 (6) CTC 556

Adivappa and others vs. Bhimappa and others

Date of Judgment: 06.09.2017

Succession Laws – Partition – Joint Family Nucleus – Appellants/Plaintiffs filed suit for declaration that suit properties in Schedule ‘B’ and ‘C’ are Plaintiffs self-acquired properties and Scheduled ‘D’ were ancestral and hence, Plaintiffs have 4/9th share – Trial court and High Court dismissed suit, hence present appeal – Whether concurrent findings of Lower Courts liable to be upheld – Held, Defendants were able to prove that partition took place and was acted upon – Burden lies upon member who after admitting existence of jointness in family properties asserts his claim that some properties out of entire lot of ancestral properties were his self-acquired property – Plaintiffs themselves based their case admitting existence of joint family nucleolus in respect of schedule D properties and sought partition by demanding 4/9th share – Plaintiffs failed to prove material fact that despite existence of jointness in family properties described in Schedule B and C was not part of ancestral properties but were their self-acquired properties – concurrent findings of lower courts upheld – appeal dismissed.

CDJ 2017 SC 1039 :: 2017(5) CTC 775 :: 2017 (7) MLJ 242(SC) :: LNIND 2017 SC 458

Bhargavi Constructions and Another vs. Kothakapu Muthyam Reddy and Others

Date of Judgment: 07.09.2017

Proper Interpretation of Expression “law” in Order 7, Rule 11(d) not only includes any Act enacted by Legislature, but also judicial decisions of Supreme Court – Supreme Court judgment is law of land under Article 141 of Constitution of India – Particular remedy laid down by Supreme Court for challenging award of Lok Adalat must be followed in letter and spirit.

CDJ 2017 SC 1061 :: 2017 (9) SCC 426

Narendra and Others vs. State of Uttar Pradesh and Others

Date of Judgment: 11.09.2017

A.Land Acquisition Act, 1894 – Section 25, 23, 18 and 54 and S.27 – Compensation – Court, not precluded from awarding a higher compensation than claimed amount.

B. Land Acquisition Act, 1894 – Section 28(A) – Grant of higher compensation to landowners who had not approached court, but covered under same Section.4 notification – Held, from a bare reading of Section 28(A) and spirit contained therein, in absence of exemplars and other evidence under same notification – purpose and objective behind aforesaid provision is salutary in nature.

* * * * *

SUPREME COURT – CRIMINAL CASES

2017 AIR(SC) 3583 ::2017 (3) MLJ(CrI) 611::2017 (8) Scale 398::CDJ 2017 SC 870

Central Bureau of Investigation vs. M. Sivamani

Date of Judgment: 01.08.2017

Cognizance of offence – Statutory Bar – Code of Criminal Procedure , 1973(Code 1973), Section 195 – India Penal Code, 1860(Code 1860), Section 182 – Prevention of Corruption Act(Act) – High Court ordered investigation into fake motor accident claims – Appellant/CBI filed charge sheet under provisions of Code 1860 and Act against 1st to 9th accused –Respondent/5th accused charged with role of misrepresentation and producing false evidence, moved petition pleading bar under Section 195(1)(a)(i) of Code 1973 by submitting that cognizance of offence under Section 182 of Code 1860 could not be taken except on complaint in writing of public servant – trial court dismissed petition – On revision, High Court quashed proceedings against Respondent – Aggrieved, Appellant filed appeals- whether there was non-compliance of Section 195(1)(a)(i) of Code 1973 in Court taking cognizance of offence under Section 182 of Code 1860 – Held, bar not intended to take away remedy against crime but only to protect innocent person against false or frivolous proceedings by private person – Expression “public servant or his administrative superior’ could not exclude High Court – It was implicit in direction of High Court that it was necessary in interest of justice to take cognizance of offence in question – Direction of High Court was at par with direction of administrative superior public servant to file complaint in writing in terms of statutory requirement – Protection intended by Section against private person filing frivolous complaint was taken care of when High Court finds that matter required to be gone into in public interest – such direction could not be rendered futile by invoking Section 195 of Code 1973 of such situation – Once High Court directs investigation into specified offence mentioned in Section 195 of Code, 1973, bar under Section 195(1)(a) of code 1973 could not be pressed into service – view taken by High Court would frustrate object of law and could not be sustained – impugned order set aside – Appeals allowed.

CDJ 2017 SC 872 :: 2017 0 AIR (SC) 3588:: 2017 3 Crimes (SC) 363:: 2017 9 SCC 483:: 2017 6 Supreme 96:: 2017 0 Supreme (SC) 707

Rajkishore Purohit vs. State of Madhya Pradesh and Others

Date of Judgment: 01.08.2017

Murder - common intention – Indian Penal Code, 1860, Section 34 and 302 – Deceased was spearheading campaign for removal of 3rd accused from post of Mayor – All four accused came together to place of occurrence – 2nd accused fired at deceased while other two accused provided cover – Trial Court convicted 2nd Respondent under Section 302 read with Section 34 – On appeal, High Court acquitted 2nd Respondent – aggrieved, Appellant/brother of deceased filed present appeal – whether presence of 2nd Respondent at place of occurrence along with other co-accused was sufficient to infer common intention – Held, motive for assault existed because accused aggrieved by meeting summoned – Exhortation made by 2nd Respondent when accused were at very close quarters to deceased – Firing done from distance of about 6 inches – 2nd respondent and 4th accused provided cover

– nothing in conduct of 2nd respondent to draw inference that he was taken by surprise, when co-accused opened fire and immediately escaped from place of occurrence in chaos that followed, indicative of his awareness of common intention – Sequence of events and manner in which occurrence took place, manifests pre-concerted plan and prior meeting of minds – High Court completely erred in appreciation of evidence and applied wrong principles to negate common intention – Order of acquittal set aside – order of conviction of 2nd respondent restored – appeal allowed.

CDJ 2017 SC 879

Rajiv Kumar and Another vs. State of U.P. and Others

Date of Judgment: 02.08.2017

Criminal Conspiracy: Meeting of minds is sine quo non for criminal conspiracy, its existancy and objective can be informed from surrounding circumstances. In some cases indulgence in illegal act by illegal mans may be informed from knowledge itself.

The appeal filed against the order passed by the High Court – Imprisonment for three years and a fine of Rs.50,000/- imposed on each of the appellants for conviction under [Section 120-B](#) IPC. The same has been confirmed by The High Court- Fact that several complaints surfaced alleging irregularities in allotments and conversions of land in ‘NOIDA’- the matter be investigated by the CBI. Consequently, the CBI registered an F.I.R. that the appellants entered into a criminal conspiracy, abusing their position as public servants – In the result, the conviction of the appellants Rajiv Kumar and Neera Yadav is confirmed. The sentence of imprisonment of three years imposed on the appellants is reduced to two years and the appeals are partly allowed with the only modification in sentence.

CDJ 2017 SC 913

Vasant Rao Guhe vs. State of Madhya Pradesh

Date of Judgment: 09.08.2017

Prevention of Corruption Act,1988 – Section 13(1), Section 13(2),Section 19 – Known source of income from lawful source and such receipt to be intimated in accordance with law.

Public Servant facing Criminal Misconduct charges is not bound to furnish explanation in absence of proof.

Prosecution to prove - Pecuniary resources or property disproportionate to the accused’s known sources of income and it is only on the discharge of such burden by the prosecution, if the accused fails to satisfactorily account for the same, he would be in law held guilty of such offence.

Supreme Court Held, both the Courts below indulged in voluntary exercises to quantify the pay of the appellant for the periods excluded by the prosecution as well as his agricultural income and that too premised on presumptions with regard to his possible expenditures/investments and his share in the agricultural receipts, having regard to the nature of the charge cast on the appellant and the inflexible burden on the prosecution to unfailingly prove all the ingredients constituting that same, there could have been no room whatsoever of any inference or speculation by the Courts below.

A person cannot be subjected to a criminal prosecution either for a charge which is amorphous and transitory and further on evidence that is conjectural or hypothetical. The appellant in the determinations before the Courts below has been subjected to a trial in which both the charges and evidence on aspects with vital bearing thereon lacked certitude, precision and unambiguity.

A public servant charged of criminal misconduct there under has to be proved by the prosecution to be in possession of pecuniary resources or property disproportionate to his known sources of income, at any time during the period of his office. Such possession of pecuniary resources or property disproportionate to his known sources of income may be of his or anyone on his behalf as the case may be.

Further, he would be held to be guilty of such offence of criminal misconduct, if he cannot satisfactorily account such disproportionate pecuniary resources or property. The explanation to Section 13(1)(e) elucidates the words “known sources of income” to mean income received from any lawful source and that such receipt has been intimated in accordance with the provisions of law, rules, orders for the time being applicable to a public servant.

The primary burden to bring home the charge of criminal misconduct there under would be indubitably on the prosecution to establish beyond reasonable doubt that the public servant either himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income and it is only on the discharge of such burden by the prosecution, if he fails to satisfactorily account for the same, he would be in law held guilty of such offence.

In other words, in case the prosecution fails to prove that the public servant either by himself or through anyone else had at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income, he would not be required in law to offer any explanation to satisfactorily account therefore.

CDJ 2017 SC 969::2017 (11) SCALE 600

Securities and Exchange Board of India vs. Classic Credit Ltd.,

Date of Judgment: 21.08.2017

Section 26 of Securities and Exchange Board of India Act 1992(SEBI Act) -

Supreme Court Held, the pre-amended section merely stated that only a Court above the Magistrate’s Court could try the offences. Hence, a Court of Session could have tried the offence theoretically, even as per the pre-amended section. So it was concluded that there was no change of forum as such, and the amended section merely stated no court inferior to Court of Session should try the offence, which does not amount to a change of forum as such. The argument of accused that they were deprived of the possibility of a summary trial was also rejected stating that SEBI Act had no provision for summary trial.

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MADRAS HIGH COURT – CIVIL CASES

2017 0 Supreme (Mad) 12

Shanthi, J.D. (Decd) and others vs. M.L.Perumal and others

Date of Judgment: 15.12.2016

Section 69 of the Indian Evidence Act, 1872 – When Both the attesting witnesses are not found, the Will can be proved only as per Section 69 of the Indian Evidence Act, 1872 coupled with Section 47 of the Indian Evidence Act, 1872. In view of the evidence of P.W.1, the execution of the Will by the testator, Lokiah Naidu, is proved as per the provision of the Indian Evidence Act, 1872.

2017 (5) CTC 47

Naveen G.Rolands vs. Cholamandalam DBS Finance Ltd., Chennai

Date of Judgment: 15.02.2017

A. Arbitration and Conciliation Act, 1996,(26 of 1996) - Section 16 – Code of Civil Procedure, 1908(5 of 1908), Section 20 – Exclusive Jurisdiction – petitioner availed home loan facility in Bangalore – Arbitration agreement contains a Clause that venue of Arbitration proceedings shall be at Chennai at Registered Office – having signed and accepted condition, petitioner cannot resile same – Arbitration Tribunal constituted at Chennai has jurisdiction.

B. Arbitration and Conciliation Act, 1996(26 of 1996), Section 34 – Home Loan facility obtained by Petitioner – alleging non-payment, respondent initiated Arbitration proceedings – petitioner remained exparte despite notice of intimation – award passed – challenged – record shows that arbitrator had not considered certain payment made by petitioner - a bulk sum had been deposited reducing EMI to 50% - Arbitrator did not go through statement of accounts even in a cursory manner – proceedings have been conducted mechanically – award suffers from non-application of mind – award set aside – matter remanded with a direction to appoint fresh arbitrator – petition allowed.

2017 (3) MWN (Civil) 595

Elangovan vs. Sulochana and others

Date of Judgment: 27.03.2017

Code of Civil Procedure, 1908(5 of 1908), Order 7, Rule 11 – Limitation Act, 1963(36 of 1963) – Article 58 – Rejection of Plaint – Suit for declaration that Power of Attorney and Sale Deed executed are null and void – Suit instituted after a period of 3 years from execution of sale deed – Suit barred by Limitation.

2017 (5) CTC 185

V.Srinivasan vs. Selvaraj

Date of Judgment: 14.07.2017

A. Code of Civil Procedure, 1908(5 of 1908), Order 41, Rule 23 – Remand – suit for declaration and injunction, decreed – Appeal filed – appellate Court remanded matter for adducing additional evidence on ground that Trial Court had not considered Ex.B34 (6 pattas) issued under UDR Scheme – Challenged – Ex.B34 obtained after filing of suit – Appeal cannot be remanded upon a document which came into existence after filing of suit – order of remand set aside – CMA allowed.

B. A Division bench of this court in Palanisamy @ Uthayarpalayanthan vs. Apparsamy, 2002 (4) CTC 23, has held that when the materials are available on record, the lower Appellate Court should have disposed of the Appeal on merits rather than remanding the same under Order 41, Rule 23(a), CPC. In addition to that, the document which was relied upon by the Lower Appellate Court to conclude that the Plaintiffs have to prove their title is a document which has been obtained after the Suit.

2017(6) CTC 29

Ramakrishnan and others vs. Gurusamy (Died) and others

Date of Judgment: 18.07.2017

Benami Transactions (Prohibition) Act, 1988 (45 of 1988), Section 4(3) – Suit for Declaration and Injunction – Defendant's father working outside India sent funds to his elder brother, Plaintiff's father to purchase property – property purchased in name of Plaintiff's father in 1920 – Whether Benami holding – Suit property assigned to Defendants' father on subsequent Oral Partition between brothers – Suit property mortgaged and redeemed several times by Defendant's father – Defendants in continuous possession of Suit property – Trial Court dismissed Suit for Declaration and Injunction – First Appellate Court also dismissed Suit – Factum of purchase made for family benefit can be inferred from events pleaded – self-acquired property can be treated as Joint Family property in HUF and can be blended into family property – conduct of parties executing several Mortgages to 3rd parties prove Oral Partition – Suppression of material fact, including relationship with Defendants, who are own cousin, raises doubt about Plaintiffs' case – Held, No Bar under Section 4(3) of Act to purchase property in name of person acting in fiduciary capacity or as Trustee – Nature of property to be inferred from subsequent conduct of parties. Plea of parties need not be verbatim as in Statute – case of parties can be inferred from nature of pleadings.

2017 (4) LW 178:: 2017 (6) MLJ 641::2017 (5) CTC 528

C.Arul Manikandan vs. T.Archana

Date of Judgment: 03.08.2017

Hindu Marriage Act, 1955 (25 of 1955), Sections 13(1)(i-a) & 23 – Divorce on grounds of cruelty – Petition for Divorce not like any other commercial suit – grant of Divorce not automatic even when parties jointly present Mutual consent divorce petition – divorce cannot be sought or granted based on Panchayat Muchalika alone – Allowing it would cause extra constitutional bodies to usurp powers of courts in Matrimonial matters – It

is against Public Policy – Spirit of Family Laws in India is to protect institution of Marriage – Non-appearance of wife and non-examination of attestors to Muchalika or any other person raises serious doubt – allegations of extra martial affairs not proved – court not satisfied on grounds raised – order of family court dismissing petition of divorce even when respondent – wife remained ex-parte, confirmed – appeal dismissed.

(2017) 7 MLJ 385

G.Muthukumar vs. R.Bhuvaneshwari

Date of Judgment: 07.08.2017

Hindu Law – Restitution of Conjugal Rights – Bar to Claim Maintenance – Hindu Marriage Act, 1955, Section 24 – Petition filed by Appellant/husband against Respondent/wife for restitution of conjugal rights allowed – Respondent filed petition against Appellant for divorce on allegation of cruelty and desertion and also filed application under Section 24, for monthly maintenance to her and her minor daughter and litigation expenses – Petition allowed, hence present appeal – Whether Respondent was not entitled to claim maintenance against Appellant, since petition filed by Appellant for restitution of conjugal rights allowed by Family Court – **Held**, mere grant of decree for restitution of conjugal rights in favour of husband could not create legal bar to claim maintenance by destitute wife who had no income to maintain herself – Disobedience of decree for restitution of conjugal rights was not ground in terms of Section 24 to deny claim for maintenance to party who otherwise satisfy ingredients of said provision – interim maintenance awarded by Family Court was only to support Respondent and minor child during pendency of proceedings – No proof produced by Appellant in respect of contention that Respondent was also earning – Sum granted by Family court towards interim maintenance could not be considered to be exorbitant – Appeal dismissed.

CDJ 2017 MHC 6739

The Executive Engineer Tamil Nadu Housing Board, Anna Salai, Nandanam

vs.

V.N. Mohamed Hussain and Others

Date of Judgment: 18.08.2017

Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 the statutory mandate under the provisions of the New Act, obligation is cast upon the authority concerned to deposit the compensation amount awarded in the light of sections 31, 32 and 33 of the Old Act, 1894 and admittedly, it has not been done, which would result in deemed lapse of the Land Acquisition Proceedings. In the Present case, the Learned Judge in the impugned order, had taken note of the factual aspect and legal position and rightly reached the conclusion as to the non-deposit of the enhanced compensation and also the non-availability of proof even with regard to the deposit of the enhanced compensation with the City Civil Court as per section 31[2] of the Right to Fair Compensation Act, 2013 – Hence, writ appeal dismissed.

CDJ 2017 MHC 5254 :: 2017 0 Supreme (Mad) 1652

A.Velusamy vs. Hemavathy Ramanathan and others

Date of Judgment: 29.08.2017

Specific Performance – Sale agreement proved by attendant circumstances and also from the fact that Plaintiff was willing to refer the document to forensic expert while defendant was not. Relief of Specific Performance – relief based on equity – Hence, in this case as Plaintiff claims to have entered into agreement for sale of acquiring house at Chennai for the purpose of education of children and admittedly as the children now well settled, grant of decree of Specific Performance would completely unsettle the first defendant. Hence alternative relief of refund of Rs.50,00,000 with 6% interest p.a is ordered.

CDJ 2018 MHC 096

S. Umamaheswari

vs.

The High Court of Judicature at Madras, Rep. by its Registrar General, Chennai and Others

Date of Judgment: 22.12.2017

Petitioner was appointed as Civil Judge. She was placed under compulsory wait –When the matter stood thus, the 1st respondent issued show cause as to why she should not be discharged from Tamil Nadu Judicial service as contemplated under Rule 26 of Tamil Nadu State and Subordinate Service. The petitioner also gave a detailed reply to the show cause – the second respondent herein passed an order, discharging the petitioner from the Tamil Nadu State Judicial Service in terms of 27c of TNSSS Rules with immediate effect, challenged as one which violates Article 311 of the Constitution of India. Held – High Court has powers to initiate proceedings against delinquent officers, High Court is recommending authority when it comes to the question of dismissal, removal, reduction in rank or termination of the service of the judicial officer, on any count whatsoever. Writ petition is dismissed. Petitioner claims Deemed probation – rejected as the high court has powers to extend the period of probation without any issuance of specific order.

MADRAS HIGH COURT – CRIMINAL CASES

CDJ 2017 MHC 5906

Samsudeen vs. P.R. Jayanthi

Date of Judgment: 04.08.2017

Criminal Procedure Code - Section 397 r/w Section 401 - The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal –The petitioner had filed a petition under Sections 311, 311-A of Cr.P.C read with Section 45 of the Indian Evidence Act, with a prayer to send the disputed cheques since the petitioner has got specific case that he had issued cheques for security purpose in the year 2002 and the same are misused by the respondent, to the Forensic Sciences Department to ascertain the age of the ink,- The plea of the petitioner has been rejected on the ground that, there is no mechanism in India to determine the age of the ink.

CDJ 2017 MHC 5705 :: 2017 (4) MLJ(Cr) 257 :: LNIND 2017 BMM 1116

Kali @ Kalidoss @ Kalirajan

vs.

The State rep by its, The Inspector of Police, Keezhalavavu (Crime No.196 of 2011)

Date of Judgment: 04.09.2017

Murder – Unsound Mind – Indian Penal Code, 1860, Sections 84, 302 and 341 – accused hit victim/deceased on his chest and face repeatedly with MO1/axe – PW1/wife of deceased, PW2 and PW3 were eye witnesses to occurrence – trial court convicted Appellant/accused for offences punishable under Sections 302 and 341 – whether prosecution proved guilt of accused beyond reasonable doubt – Whether accused entitled to benefit under Section 84 – Held, Schizophrenia is chronic and severe and it is not possible to presume that Schizophrenia is only occur in a lucid intervals – accused behavior on date of occurrence, at time of occurrence, on date of remand and continuous treatment in hospital would establish fact that accused was of unsound mind at relevant point of time – once evidence adduced on the side of accused probablise case, court has to necessarily hold that to claim benefit under Section 84, accused discharged his burden – Burden shifts on prosecution to show that accused did not have such mental disorder on date of occurrence – Prosecution for reasons best known to them not adduced evidence on by not examining medical officer who treated accused for mental disorder – Established that accused was insane person at relevant time and he was not capable of understanding nature of thing –case comes under exception of Section 84 – accused entitled to benefit of doubt – appeal allowed.

2017 (2) TLNJ 298 (Criminal)

Amaravathi. P vs. Govt. of T.N., by Secretary, Home Department and 3 others

Date of Judgment: 15.09.2017

Death at Police custody – Accused arrested in connection with Narcotic Investigation – Died in Police custody – High Court interfered with order of Sessions Court and acquitted the accused giving the benefit of doubt, as the complainant has not been examined and the documents have not been produced and scrutinized by the Magistrate Court – order of the Magistrate indicate that the mandatory procedures enunciated under Section 202(2) Cr.P.C. not followed – Giving the benefit of doubt in favour of the accused while acquitting him, will not stand in the way of this Court awarding compensation – Even assuming acquittal of the said Police personnel is on the merits of the case, there are categorical findings based on the evidence that had been discussed indicating that the said Inspector of Police, who led the team, was directly responsible for the death – said Inspector of Police died pending trial – contention that since in the criminal appeal, the judgment is rendered acquitting the said Police personnel, the petitioner herein would not be entitled to get compensation, cannot be countenanced – Even contended by petitioner that the petitioner was an agriculturist, there is not proof – court takes into account the principles of motor accident victim compensation cases – respondents are directed to pay the compensation of Rs.10,50,000/- less the compensation already granted i.e., Rs.1,00,000/- - Writ petition disposed of with direction.

2017 (4) MLJ (CrI) 678 :: LNIND 2017 MAD 3616

Guruchittan vs. State by Inspector of Police, Kadambur Police Station Erode District

Date of Judgment: 21.09.2017

Culpable Homicide not Amounting to Murder – Evidence of Witnesses – Indian Penal Code, 1860, Sections 304 (1) and 506 (2) – Trial Court convicted accused under Sections 304 (1) and 506 (2) for causing death of victim/deceased, hence present appeal – Whether conviction of Appellant for culpable homicide not amounting to murder justified – *Held*, description of P.W.2 and P.W.3 is clear and cogent as regards manner in which occurrence had taken place and evidence show that accused attacked deceased using knife and wooden log – Oral testimonies of P.W. 2 and P.W. 3 corroborated by medical evidence – Delay in lodging complaint sufficiently explained by P.W.1. that it was late night, there was wild animal movement and they had visited in morning – Seen from Observation Mahazar and Rough Sketch prepared by Investigating Officer that occurrence has taken place in forest-like area – Explanation offered for delay cannot be brushed aside – P.W.15/Constable who took First Information Report to Court explained that due to land slide, vehicle movement stopped and he reached Court at the said time – Evidence of P.W. 15 remained unchallenged – Trial Court justified in convicting accused – Incident took place all of sudden, no previous enmity and premeditation – Sentence of Rigorous Imprisonment of offence under Section 304 (1) IPC is reduced – Appeal partly allowed.

CDJ 2017 MHC 6Z584

T.Dhinakaran (minor), Rep. by next friend and Grandmother, Vijaya, Kiliyanour and Another

vs.

V. Ranganathan and Others

Date of Judgment: 05.10.2017

Criminal Original Petition filed under Section 482 of Criminal Procedure Code:

Forwarding of complaints and dealing with applications filed under section 340 Cr.P.C.

(Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in unnumbered Criminal Appeal No..... of 2008 dated 30.12.2008, on the file of the learned Principal Sessions Judge, Villupuram, confirming the order passed in unnumbered I.A.No..... of 2008, dated 03.11.2008, on the file of the learned Additional Sub Judge, Tindivanam and direct the learned Additional Sub Judge to hold enquiry in the petition filed by the petitioners under Section 340 Cr.P.C.)

Held - this Court has no hesitation to hold that when an application under section 340 of the Code of Criminal Procedure is filed, the Civil Court has to register the same as "Miscellaneous Judicial Case" that is a case where a Judicial Enquiry is contemplated. The learned Civil Judge that is the learned Subordinate Judge, Tindivanam should have therefore, directed the application to be registered as Miscellaneous Judicial Case and try the same thereafter in the manner and procedure as contemplated under section 340 and 195 of the Code of Criminal Procedure. Further, this Court also holds that the learned Subordinate Judge, Tindivanam might have proceeded to decide the suit and may also proceed to decide the application under section 340 of Code of Criminal Procedure separately. But in the considered opinion of this Court both the orders passed in an unnumbered Criminal Appeal No..... of 2008 dated 30.12.2008 on the file of the learned Principal Sessions Judge, Villupuram in confirming the order passed in an unnumbered I.A.No.... of 2008 dated 03.11.2008 on the file of the learned Additional Subordinate Judge, Tindivanam are liable to be set-aside and accordingly set-aside.

At the same time as already stated that both the Original Suit as well as Appeal suit are disposed of by the competent Courts concerned, it is not possible for this Court to remand back the Appeal Suit to the learned trial Court as this Court has no jurisdiction and the Appeal Suit has also been disposed of much earlier. On the other hand, it is for this Court to decide and settle the ambiguities in respect of the procedures adopted in dealing with the petitions filed under section 340 of Code of Criminal Procedure in the Civil Courts, by giving the following directions;

- (i) When an application is filed under section 340 of the Code of Criminal Procedure, it is for the Court concerned to entertain and decide the issues involved in the said application without any interference into the proceedings of the Original suit or other category of the lis as the case may be;
- (ii) The Court concerned can very well simultaneously proceed with the petition and the main case and decide them accordingly;

(iii) Those petitions are to be numbered as “Miscellaneous Judicial Case” and may be tried as per law;

(iv) In case if the disposal or the findings of the petition filed under Section 340 of the Code of Criminal Procedure is having any bearing upon the main case, then the concerned Court has to act as per law;

However, in the present case, though the Original Suit as well as the Appeal Suit are tried and disposed of in the considered opinion of this Court, the trial Court, that is the Additional Subordinate Judge, Tindivanam is very well competent to receive the particular document connected with the Original Suit in O.S.No.26 of 2005 either from the record of the concerned Court or from the party concerned any shall proceed with further as per the direction given above, by affording all opportunities to the parties involved in the said case. With the above directions this petition stands disposed of.

CDJ 2017 MHC 6913

G. Sowmiya

vs.

State rep by The Inspector of Police, Vishnu Kanchi Police Station, Kancheepuram District and Another

Date of Judgment: 06.10.2017

This Criminal Revision is filed under Section 397 and 401 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Kancheepuram – Defecto complainant lodged a complaint before the respondent police stating that the jewels were missing from his house while the defacto complainant left the house for attending some function, he locked the door - The petitioner and A1 – broke open the bed room, and removed the safety locker- , worth about Rs.75 lakhs - Based on the same, the respondent police had also registered a case - Apart from that even in the complaint, the defacto complainant did not say about the handing over the keys of the house to the petitioner – None of the witnesses examined by the prosecution – finger prints from the scene of occurrence, the finger prints were not sent for comparison, to establish the involvement of the petitioner in the crime - there is no strong suspicion made out and no prima facie case is made out against the petitioner to proceed with the complaint against her and hence, she is entitled to be discharged.

2017 (4) MLJ (Crl) 715:: LNIND 2017 MAD 3725

Sakthivel, S/o. Manickam, Acharahalli, Papparapatty, Dharmapuri District

vs.

State, by the Inspector of Police, Papparapatty Police Station, Dharmapuri District (Crime No. 262 of 2015)

Date of Judgment: 23.10.2017

Murder – Extra Judicial confession – Indian Penal Code, 1860, Section 302 – Appellant/3rd accused was friend of 2nd accused who was said to be paramour of 1st accused – Trial Court convicted Appellant for murder of victim/husband of 2nd accused, hence present appeal – Whether prosecution was able to prove chain of circumstances to connect Appellant

for commission of offence of murder of victim beyond reasonable doubt – whether conviction recorded and sentence awarded by trial court sustainable – Held, nothing spoken about by Village Administrative Officer(VAO) as to preparation of Seizure Mahazar for recovery of cell phone of victim, therefore, recovery of cell phone could not be believed - Extra-judicial confession recorded by VAO could not be believed as even as per his own admission, he was utter stranger to 1st accused and Appellant – prior to recording of extra-judicial confession statements, he did not know them at all – it was not even case of prosecution that fearing torture and third degree treatment at hands of police, they approached VAO and gave extra-judicial confessions statements – No cogent and corroborative material available as to voluntary nature of such extra-judicial confession – Prosecution projected three circumstances, namely last seen theory, extra-judicial confession statements said to have been given by 1st accused and Appellant to VAO and recovery of cellphone under seizure Mahazar – Prosecution failed to prove two circumstances, namely extra-judicial confession and recovery of cellphone – No cogent chain of circumstances – benefit of doubt enure in favour of Appellant – conviction recorded and sentence awarded by Trial Court set aside – Appeal allowed.

2017 (4) MLJ (CrI) 666 :: LNIND 2017 MAD 3547

K. Pugazhendhi

vs.

**State, Rep. by Inspector of Police, Vigilance and Anti – Corruption Trichy,
Crime No.17/2017**

Date of Judgment: 23.10.2017

Prevention of Corruption – Circumstantial Evidence – Prevention of Corruption Act, 1988, Sections 7, 13 and 20 – Appellant / accused demanded and received bribe money from *de facto* complainant / PW-2 to issue patta – Appeal against conviction of Appellant by Trial Court under Sections 7, 13 (1) (d) and 13 (2) – Whether conviction of Appellant sustainable – *Held, de facto* complainant deposed that after paying deficit charge, he met accused who demanded bribe money – When witness asked whether he will not forward application without money, accused replied even for months it will not be forwarded without money – Conversation is relevant because when PW-2 met accused, first he enquired whether he brought money – Said conversation heard by accompanying witness PW-3 and corroborated in his deposition – Recovery of tainted money from possession of accused established through phenolphthalein test on hand wash and shirt pocket wash, proved to be positive and chemical analyst report is marked – *De facto* complainant, accompanying witness and trap laying officer all in unison deposed that they went to taluk office – In said circumstances thrusting money into person’s pocket forcibly sounds improbable – No error in judgment of conviction – Considering value of bribe amount and age of Appellant, period of sentence modified – Appeal dismissed.

2017 (4) MLJ (CrI) 742:: LNIND 2017 MAD 3902

**Anchor Marine Service (Leather Division), A Partnership firm, Rep. by its Partner,
Ms.Omana Manavalan by her Power Agent, T.N. Srinivasan and another**

vs.

**Prakash H. Mehtani, Managing Director, Tejoomals Industries Ltd., No. 601, Raheja
Chambers, 212, Nariman Point, Bombay 21 and Others**

Date of Judgment: 03.11.2017

Negotiable Instruments – Dishonour of Cheque – Cause of Action – Complaint filed by complainant against company for dishonour of cheque quashed – Complainant re-presented same cheque and created fresh cause of action and on that cause of action present case filed – Trial court after analyzing evidence convicted accused Nos. 1 and 3 and acquitted No. 2 – Revision filed by accused No. 3 challenging his conviction and appeal filed by complainant against acquittal of No. 2 – Whether filing of case on successive cause of action is permissible – *Held*, earlier complaint quashed on technical ground that company was not added as party – Cause of action in present case is different from cause of action of earlier complaint – Present cause of action based on successive default in payment of cheque on second presentation of cheque within time – Contention of revision petitioner as to cause of action not sustainable – Conviction of accused No. 3 for default of second dishonour of cheque is sustainable – Considering date of offence and amount involved, sentence alone modified – Trial Court rightly acquitted accused No. 2 on ground that he is impleaded only because he is Director of company – No evidence that he was in-charge of and was responsible to company for conduct of business at time of committing offence – Revision petition partly allowed – Appeal dismissed.

2017 (4) MLJ (CrI) 761 :: LNINDORD 2017 MAD 7757

Palanichamy

vs.

**State, Rep. By Deputy Superintendent of Police, OCU-I, CBCID, Chennai
(Crime No. 363 of 2018) and another**

Date of Judgment: 25.10.2017

Sexual Harassment – Delay in Complaint – Indian Penal Code, 1860 (Code 1860), Section 354 –Tamil Nadu Prohibition of Harassment of Women Act (Act), Section 4 – Victim girl / P.W.2 / student who was sexually harassed by Petitioner / teacher in school premises filed private complaint – Trial Court convicted Petitioner under Section 354 of Code 1860 and Section 4 of Act – Appeal by petitioner dismissed, hence present revision – Whether order of conviction passed by Trial Court and confirmed by Appellate Court, sustainable – Whether delay in lodging complaint by way of private complaint creates doubt on credibility of prosecution witnesses – *Held*, P.W.11/ one of the donors of school trust was in inimical terms with school management – P.W. 11 brought pressure upon P.W.1 / mother of victim to prosecute Petitioner and other persons in school management committee – P.W.1 admitted in her cross examination that entire legal expenses met out by P.W.11 – Chief Education Officer conducted inquiry and filed report stating that no such occurrence took

place – Inspector of Police in his evidence stated that his investigation revealed that complaint falsely given at instigation of P.W.11 – Nothing brought on record by prosecution to doubt his evidence – It has been mentioned in complaint that two teachers misbehaved, yet charge sheet was filed only against Petitioner – Private complaint filed with delay of more than twenty two months and bereft of details of alleged sexual harassment – Prosecution failed to prove case against Petitioner beyond reasonable doubt – Both Lower Courts erroneously convicted Petitioner – Revision allowed.
