



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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2016-4-L.W. 814

L. Gowramma (D) by LR. vs. Sunanda (D) by LRS. & anr.

Date of Judgment: 12.01.2016

Hindu Law Womens Rights Act (1933) (Mysore Act No. X of 1933), Sections 4, 8

Hindu Law/joint family, succession, women's rights

Succession to a Hindu male dying intestate will vest only in the widow under Section 4(1)(ii) to the exclusion of the daughters who are mentioned in clause (iii) by virtue of the expression "in the following order" –

A cursory reading of Section 8 would reveal that various females mentioned in the Section would be entitled to a share of joint family property in the circumstances mentioned therein. Under Sections 8(1)(a) to 8(1)(c) there has necessarily first to be a partition in the circumstances mentioned in each of the said sub-sections whereas under sub-section (d) what is required is that joint family properties should pass to a single coparcener by survivorship. If this condition of sub-clause (d) is met, then all the women mentioned in sub-clauses (a) to (c) would be entitled to a share therein.

It is clear, therefore, that Section 8(1)(d) can have no application to a case where joint family property passes to a single coparcener not by survivorship but by partition. There is also another way of looking at the issue raised in the present appeals. A partition of joint family property among brothers is expressly mentioned in Section 8(1)(b). Therefore, upon partition of joint family property between Thimmappa and his older brother, it is only their mother, their unmarried sisters and widows and unmarried daughters of their pre-deceased undivided brothers who have left no male issue who get a share under the Section. Unlike sub-section (a), unmarried daughters of Thimmappa do not get any share at the partition between Thimmappa and his brother.

In this view of the matter, the succession to a Hindu male dying intestate will vest only in the widow under Section 4(1)(ii) to the exclusion of the daughters who are mentioned in a subsequent clause i.e. clause (iii) by virtue of the expression in the following order. This being the case, it is clear that the appeals will have to be allowed and the judgments of the courts below set aside. The suit will stand dismissed as a consequence.

2016-5-L.W. 92

Gayathri vs. M. Girish

Date of Judgment: 14.07.2016

CPC order 17 rules 1,2,17

Suit for recovery of possession and damages – Plaintiff’s chief examination finished – Cross-examination – Defendant filing applications repeatedly seeking adjournments – Grant of costs – challenge to

held: Abuse of process of court – Adjournments granting of, when not permissible, stated

2017 (1) CTC 755

Behram Tejani vs. Azeem Jagani

Date of Judgment: 06.01.2017

Code of Civil Procedure, 1908 (5 of 1908), Order 39, Rules 1 & 2 – Temporary Injunction – Grant thereof – Parameters – Suit for Permanent Injunction instituted by Gratuitous Licensee – Legal right – Equitable relief – Plaintiff and her grandmother permitted to occupy Suit property out of love and affection by Defendants – Defendants derived title upon Suit property by virtue of testament – Trial Court declined to grant Temporary Injunction – High Court granted Temporary Injunction based upon “Settled Possession” of Suit property – Person holding premises gratuitously or in capacity of caretaker or servant would not acquire any right or interest in property – Mere long possession or settled possession would not confer any interest upon property – Order of High Court granting Interim Injunction based upon physical possession of property, set aside.

2017 (1) CTC 762

V. Rajendran

vs.

Annasamy Pandian (D) thr. L.Rs. Karthyayani Natchiar

Date of Judgment: 24.01.2017

Code of Civil Procedure, 1908 (5 of 1908), Order 23, Rule 1(3) – Withdrawal of Suit – Abandonment of part of claim – “Formal Defect” – “Sufficient Grounds” – Distinction – Essential requirements to seek withdrawal of Suit – Defect in Survey Number of Suit property – Application for withdrawal of Suit filed at stage of trial – Trial Court granted permission for withdrawal – High Court held that defect in Survey Number of Suit property cannot be treated as “Formal defect” – Power to allow withdrawal of Suit is discretionary in nature – Principle founded on policy to prevent institution of Suit again and again on same cause of action – “Formal defect” must be given liberal meaning which connotes various kinds of defects not affecting merits of plea raised by either of parties – Defect in Survey Number of Suit property goes to root of subject matter of Suit – Entire proceedings would be fruitless if Decree holder is not able to get Decree successfully – Order of Trial Court allowing Application for withdrawal of Suit allowed with Costs.

Code of Civil Procedure, 1908 (5 of 1908), Order 23, rule 1(3)(b) – Withdrawal of Suit – Essential conditions – Exercise of discretion – “Sufficient grounds” – Duty of Court – Court must be satisfied about “Formal Defect” or “Sufficient Grounds” – Facets of Formal Defect: (i) Want of Notice

under Section 80, C.P.C (ii) Improper valuation of Suit (iii) Insufficient Court-fee (iv) Confusion regarding identification of Suit property (v) Mis-joinder of parties (vi) Failure to disclose cause of action, etc. – Liberty to withdraw Suit at any time after institution of Suit cannot be considered as absolute right to permit or encourage abuse of process of Court – No license to Plaintiff to claim or to do so detriment of legitimate right of Defendant.

(2016) 10 Supreme Court Cases 805

Madhuri Ghosh and another

vs.

Debobroto Dutta and another

Date of Judgment: 09.11.2016

Family and Personal Laws – Family Property, Succession and Inheritance – Will – Nature of Bequest/Disposition: Vested/Contingent/Conditional/Absolute/Restricted/Limited – Absolute bequest in earlier part of will to prevail over any subsequent bequest

- Where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same will to other persons will be of no effect – Earlier clause of will granting absolute right to house property jointly to testator’s widow and elder daughter but later clause directing that after death of widow and daughter other lineal descendants would become owners of specified parts of same property – Held, absolute bequest in CI.2 would prevail over subsequent bequest in CI.4 – Succession Act, 1925, Ss. 138, 139, 95 and 88

**SUPREME COURT CITATIONS
CRIMINAL CASES**

2016 CRI.L.J 4198

Prakash Nagardas Dubal-Shaha

vs.

Sou.Meena Prakash Dubal Shah and others

Date of Judgment: 22.04.2016

Protection of Women from Domestic Violence Act (43 of 2005). Ss.20,21- Maintenance – Application for, by wife – Divorce proceedings initiated prior to coming into force of Act did not result in divorce- Hence, marital relationship continued and in view of second marriage by husband, cruelty on wife stood established – Such act constitute mental domestic violence – Unsuccessful divorce proceedings cannot adversely affect maintainability of application filed under Act- Wife entitled to seek maintenance.

2016 CRI.L.J 4407

Mahiman Singh vs. State of Uttarakhand

Date of Judgment : 29.06.2016

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Ss.20, 42, 43, 50 – Illegal possession of contraband – Conviction for – Validity – Appellant accused found carrying bag containing charas inside jeep – Quantity of charas recovered from appellant was commercial in nature – Evidence showing requirement of Ss.42, 43 r.w. S. 50 complied with – Statement of accused in S. 313, Cr. P. C. Proceedings taking therein a plea of denial along with affidavit filed by him – Not proved in evidence inasmuch as deponent was neither examined nor cross – examined – Even if one or two witnesses though cited initially were later given up by prosecution – It would not adversely affect prosecution case – Concurrent finding of conviction after appreciating evidence of cannot be interfered with.

2016 CRI.L.J 4191

Mukhtiar Singh vs. State of Punjab

Date of Judgment : 05.07.2016

(A) Prevention of Corruption Act (49 of 1988), Ss. 7, 13(1)(d) – Illegal gratification – Demand and acceptance of – Proof – Trap case – Demand, acceptance and recovery of incriminating currency notes from accused – Sufficiently proved – Objection that reliability of trap was impaired as solution collected in phial was not sent to chemical examiner – Not sustain – able – Recovery of tainted currency notes from custody of accused – Proved by direct evidence – Conviction proper.

(B) Prevention of Corruption Act (49 of 1988) S. 20 – Illegal gratification – Acceptance “as motive or reward” for doing or forbearing to do any official act – Inference as to – When can be drawn.

(2016) 4 MLJ (CrI) 750 (SC)

K.V. Prakash Babu vs. State of Karnataka

Date of Judgment : 22.11.2016

Suicide – Mental Cruelty – Indian Penal Code 1860 (Code 1860), Sections 306 and 498-A – Dowry Prohibition Act, 1961 (Act 1961), Section 3 – Wife of Accused – Appellant committed suicide – Trial Court convicted Appellant under Sections 498-A and 306 of Code 1860 and Section 3 of Act 1961 stating that act of Appellant constituted mental cruelty – On Appeal, High Court confirmed conviction under Sections 498-A and 306 while acquitting Appellant under Section 3 of Act 1961 – Whether Appellant is guilty of offences punishable under Section 498-A and 306 of Code 1860 – Whether extra marital affair can attract mental cruelty for satisfying ingredients of Section 306 of Code 1860 – Held, evidence shows that deceased wife developed sense of suspicion that her husband was with daughter of particular women – It has come on record through various witnesses that the people talked in the locality with regard to involvement of Appellant with daughter of particular woman – Extremely difficult to hold that prosecution has established charge under Section 498A and fact that said cruelty induced wife to commit suicide – Manifest that wife was guided by rumour that aggravated her suspicion which has no boundary – Seed of suspicion planted in mind brought the eventual tragedy – Such event will not constitute offence or establish guilt of Accused – Appellant under Section 306 of Code 1860 – Appeal allowed.

2017 (1) TLNJ (CrI) 54

Muthuramalingam & Ors. vs. State Rep. by Inspector of police

Date of Judgment : 09.12.2016

Indian Penal Code, 1860 Sections 148, 302 r/w 149 (8 Counts), 397 r/w 34 – Unlawful assembly – assault & Murder – Conviction – High Court on appeal found accused guilty of eight barbaric murders and attempt to murder while forming unlawful assembly – modified the conviction and sentence imposed by the lower court – whether the High Court was justified in modifying the conviction from Section 302 r/w S.34 to that of Section 302 r/w 149 IPC – motive is seen in the collective testimony of eye – witnesses PW1 – PW3 when accused came out from the bushes shouting “kill them”, “hack them”, “fire them”, as also mentioned in the complaint Exhibit P-1. – A child was also mercilessly attacked in the incident with a spear on his chest – Accused No.7- snatched away the child from her mother and killed her too with velstick – prosecution case well established by the testimonies of eye-witnesses PW1-PW3 and corroborated by PW4 – an overt act is not always an inflexible requirement of rule of law to establish culpability of a member of an unlawful assembly – accused in the present case do not deserve any sympathy – criminal appeals dismissed.

**HIGH COURT CITATIONS
CIVIL CASES**

2016 (6) CTC 392

M.Chellamuthu

vs.

**Sengalmalai Arulmigu Varadaraja Perumal and
Venkatramanswamy Vagaiyara Thirukoils, rep. by its Hereditary Trustees.**

Date of Judgment : 21.07.2016

Constitution of India, Article 227 – Code of Civil Procedure, 1908 (5 of 1908), order 39, Rules 1 & 2, Order 43, Rule 1(r) & Section 104 – Revision – Maintainability – Interim Injunction – Availability of Alternative remedy Appeal remedy available against Order of Interim Injunction passed by Trial Court – Order of Interim Injunction is appealable and not revisable – High Court can entertain Revision on ground of want of jurisdiction, failure to exercise jurisdiction and violation of Principles of Natural Justice – Power of Supervisory jurisdiction is in addition to power conferred to control Subordinate Courts or Tribunals – Revision preferred assailing Order of Interim Injunction pending Suit, held, not maintainable.

2017 (1) TLNJ 4 (Civil)

Sivakumar vs. Chellappa Gounder and another

Date of Judgment: 05.08.2016

Limitation Act 1963, Section 5 – Condone delay of 1116 days – unnumbered suit for recovery of money – trial Court returned the plaint for complying with the defects – Plaintiff represented the plaint after a delay of 1116 days – dismissed by Trial court – Revision – Plaintiff stated that he engaged a counsel, who was later appointed as District Munsif and further he was working in Bangalore as Coolie hence, there is a delay – When the papers were returned for compliance, ten days time was granted to represent same – but represented more than after three years – No sufficient cause shown – trial Court rightly dismissed – Revision dismissed.

2016 (6) CTC 209

Satbir Singh Bakshi vs. Saroja and ors.

Date of Judgment : 17.10.2016

Code of Civil Procedure, 1908(5 of 1908), Order 9, Rule 7 – Defendant set ex parte – Ex parte Order – Limitation – Application was filed to set aside ex parte Order at time of cross – examination of Plaintiff's witness – Trial Court dismissed Application on ground of belatedness – There is no limitation for filing Petition to set aside ex parte Order – Failure to adduce specific reason for non-appearance and non-filing of Written Statement is not fatal – Court can condone absence of party to advance cause of justice – Application can be entertained before pronouncement of Judgment – Participation by Defendants in Trial proceedings cannot be denied even if he does not show any good cause.

(2016) 8 MLJ 641

Sagar Constructions, rep. by its Proprietor K.M. Vidyasagar and another

vs.

S.B. Sivakammial (deceased) and others

Date of Judgment: 02.11.2016

Res Judicata – Insolvency Proceedings – Presidency Towns Insolvency Act, 1909 (Act 1909), Section 9(2) – Applications filed to set aside insolvency notices were allowed – Against said order, Original Side Appeals filed and Division Bench held that for issuance of notice under Section 9(2) of Act, 1909, there must be decree or an order for payment of money confirming setting aside of notices – Without adhering to terms of compromise, execution proceedings were initiated – Master passed order of attachment – Applicants/Judgment debtors/Appellants herein contended that if there is no decree as contemplated by Division Bench, question of filing Execution Petition does not arise – Single Judge stated observations of Division Bench in Original Side Appeals against insolvency notices cannot have any bearing in deciding validity of order passed in Execution Petition proceedings – Single Judge held that order of Master did not suffer from illegality or infirmity – Whether earlier judgment of Division Bench in Original Side Appeal arising in Insolvency proceedings is binding on parties in execution proceedings on principles of res judicata – Whether order passed in execution proceeding as confirmed by Single Judge in appeals is sustainable under law – Held, jurisdictional fact unrelated to rights of parties arising with respect to actual performance or nonperformance of obligations under various terms of compromise decree subjected to execution – Issue of enforceability of terms of compromise decree forming subject matter of execution as projected by Appellants did not enter into specific consideration in judgment of single Judge as well as in judgment of Division Bench in Original Side Appeal – No occasion had arisen for such consideration having regard to position that court had held decree as not being one for payment of money as such within meaning and ambit of Insolvency law – No legal embargo in maintaining execution proceedings – Judgments of Insolvency Court did not adjudicate upon disputes relating to actual fulfillment or non-fulfillment of obligations, rights of parties and merits of probable claims under compromise decree – Obligations required to be performed by Appellants under clauses put in execution are not preconditioned or interlinked by any prior obligation to be performed on part of decree holder – Neither is it specific case of Appellants – Performance of obligations under certain clauses cast upon decree holder are independent, distinct and severable without interlinking of obligations – Respondents never challenged validity or otherwise of said consent decree – Appeals dismissed.

2016 (6) CTC 541

T.V.Ravi vs. B.R. Mohan and ors.

Date of Judgment: 21.11.2016

Indian Easements Act, 1882 (5 of 1882), Section 4 – Transfer of Property Act, 1882 (4 of 1882), Section 6(c) – Easementary Right – Transfer of – Permissibility of – Transfer of Easementary right segregating it from Dominant Heritage not permissible by virtue of Section 6(c) of TP Act – An Easement cannot be exclusively transferred without transferring Dominant Heritage – Easementary right to follow right of Dominant Heritage – Transfer of Easementary right/ Servient Heritage to one person and transfer of Dominant Heritage to another, barred by Statutory mandate of Section 6(c) – Transfer of Servient Heritage along with Dominant Heritage, not barred.

2017 (1) TLNJ 238 (Civil)

Padmavathy. B. vs. Vijaya Ambedkar. M.A. (Died) and others

Date of Judgment: 01.12.2016

Civil Procedure Code 1908 as amended, Order 41, rule 28 and 29 – Suit filed for declaration of Title in trial Court – Suit decreed – defendant filed 1st appeal – the appellate reversed the findings – Ist Appellate Court straight away marked the additional documents without following the procedure in order 41 Rule 28 and 29 of CPC – Second Appeal filed by plaintiff held, the additional documents are revenue records and certified copy of sale deeds when additional evidence is directed or allowed to be taken, the appellate court shall specify the points to which the evidence in to be confined and record on its proceedings the points so specified – procedure not followed matter remanded to lower appellate Court – Second Appeal is disposed of with direction.

2017 (1) TLNJ 173 (Civil)

S.K.Balasubramanian(Died) and ors. vs. Ponnuthayee

Date of Judgment : 01.12.2016

Construction of pleadings – Written statement – averment in the written statement that there was oral partition in the family except the plaint schedule – whether amount to admission that there was no partition in respect of the suit properties – held, written statement should be read as whole and on proper construction of the same, the defendant had taken specific stand that the suit properties were exclusively allotted to her husband in oral partition – issues were framed to that effect and evidences were also let in – parties have understood the pleadings in proper perspective – second appeal dismissed.

Evidence Act, 1872, Section 101 to 103 – Burden of proof – suit for partition filed by plaintiff against his deceased brother's wife – suit dismissed – First appeal dismissed – second appeal by plaintiff – defendant contending that there was earlier oral partition in which the suit properties were allotted to her husband – Held, burden to prove oral partition is upon the defendant who had alleged it – On facts, it was held that the defendant had discharged the said burden by producing revenue records to show that the properties were standing in the name of her husband for long period of time and also the Propositus had properties other than suit properties – Second appeal dismissed.

Patta Passbook Act 1983 – Whether order of transfer of patta passed by revenue authorities is binding upon civil court while deciding question of title – Held, order of revenue authorities is not binding – on facts, the said order was held to be relevant piece of evidence since the same does not suffer from any legal infirmity and passed in accordance with the provisions of patta passbook Act.

2017 (1) TLNJ 101 (Civil)

R. Tamilselvi vs. A. Sangamuthu and ors.

Date of Judgment: 01.12.2016

Civil Procedure Code, 1908, Section 9 – Jurisdiction – implied ouster – Suit for recovery of possession or ejectment of tenant – rent controller alone has exclusive jurisdiction – jurisdiction of civil court impliedly ousted.

Tamil Nadu Building (Lease and Rent Control) Act, 1960, Section 10 – Suit for declaration of title and recovery of possession – suit decreed and first appeal dismissed – Second appeal by Defendant – Defendant contending that she is a tenant in respect of the suit property and therefore suit for recovery of possession is not maintainable – Held, once the Defendant is found to be a tenant then she can be evicted only as per Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and jurisdiction of civil court is impliedly ousted – Second appeal allowed.

Transfer of Property Act, 1882, Sec.111 (e) and (f) – Surrender of lease – Landlord creating mortgage in favour of tenant – Interest was agreed to be adjusted in lieu of Monthly rent – on redemption of mortgage, whether tenancy relationship will revive – Held, since there is no surrender of tenancy relationship, on redemption or mortgage the mortgage will continue to be a tenant in the suit property – Mortgage deed does not end tenancy relationship – suit for recovery of possession as against tenant not maintainable – Tenant to be evicted only as per Rent Control Act – second appeal allowed.

2017 (1) TLNJ 36 (Civil)

Kulandhaiyaa Sethurayar (died) and others vs. K. Sivakumar

Date of Judgment: 08.12.2016

Hindu Succession Act, 1956 (amended in 2005), Section 6 – Suit for partition filed by son against his father and brother contending the same to be joint family property – 1st Defendant/Father contending that the suit B schedule properties are his separate properties earned out of his own income – Suit decreed – Appeal by Defendants – Held, Suit A schedule properties admitted to be joint family properties – father had not produced any evidence to prove his separate income to purchase suit B schedule properties – therefore suit B schedule properties also held to be joint family properties – Further, during the pendency of appeal, 1st Appellant/father died leaving behind the parties as his legal heirs – the other legal heirs/daughters of 1st Appellant were impleaded as Appellants 3 to 6 – Since as per 2005 Amendment daughters are also coparceners, all the parties are held to be entitled to equal 1/6th share in the suit properties – Appeal Suit allowed in part modifying the share.

2017 (1) TLNJ 165 (Civil)

TNSTC, The Managing Director vs. Joy Rajam and ors.

Date of Judgment: 08.12.2016

Motor Vehicles Act, 1988, Section 166 – Fatal accident – father (aged 43) and minor son (Aged 7 years) died – Appeal by transport corporation challenging quantum of compensation – Held, (i) Deceased was heavy vehicle driver – Managing Director, Tamil Nadu State Transport Corporation Ltd. vs. Jayalakshmi reported in 2014 (1) TNMAC 152, income of driver was fixed at Rs.9,000/- p.m. However, considering inflation and spending power of people, income of deceased was fixed at Rs.15,000/- p.m (ii) Though the issue of future prospects in respect of private employees has been referred to larger bench of the Supreme Court, in Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54 a Three – Judge bench of the Hon’ble Supreme Court has held that future prospects is to be awarded to self-employed and other fixed wages persons at 50% for the age group below 40 years and 30% for the age group of 40-50 years – Since, the deceased was aged 43 years, 30% future prospects was awarded (iii) A further sum of Rs.1,00,000/- for loss of consortium to wife, Rs.1,00,000/- for loss of love and affection to daughter and a sum of Rs.50,000/- for loss of love and affection to father, Rs.25,000/- for funeral expenses, Rs.15,000/- for transportation and for loss of estate were awarded (iv) For minor child’s death – pecuniary loss was fixed at Rs.4,50,000/- as per Division Bench judgment in National Insurance Co.Ltd. v. R.Vimala reported in 2015(2)TNMAC 490 (DB) – After adding compensation on other heads, total compensation was fixed at Rs.6,25,000/- - C.M.A(MD) 1390/2016 is partly allowed & C.M.A(MD) 1389/2016 is dismissed.

**HIGH COURT CITATIONS
CRIMINAL CASES**

2017 (1) TLNJ 75

Shamlal. J vs. Manoharan. G, Proprietor, M/s. S.D.M. & Co

Date of Judgment: 06.01.2017

Negotiable Instrument Act, 1881, section 138 & 139 – Cheque dishonour case – Appeal against acquittal of accused – Appellant / Complainant not examined as a Witness – his brother/Special Power of Attorney Holder was examined as P.W.1 – at the time of taking cognizance deposition of Power of Attorney can be considered for registration of a complaint – But, Complainant was not examined as a witness for further proceedings of the case – From Ex.P2 Confirmation Letter, it is clear that the Respondent/Accused and his wife while borrowed amount and executed pronotes in favour of the Complainant’s financiers – concerned financiers were not examined to show how much each one of them had paid to the Complainant – High Court held that When the Accused taken a stand in Reply Notice that he had settled the entire loan liabilities in time and that the financiers refused to hand over the blank documents even after the repeated requests and ultimately the Complainant came to the rescue of the financiers and insisted upon the Respondent/Accused to pay a sum of Rs.1,00,000/- as pre-condition for returning of the documents or else, the blank cheques will be used against him etc., then on the side of the Complainant, the steps should have been taken to examine the concerned financiers as witnesses – Criminal Appeal is allowed – matter is remanded back to the trial Court for fresh disposal.

2016-2-L.W. (Crl.) 742

Palani and another

vs.

State, Rep. by The Inspector of Police, Singarapettai Police Station, Krishnagiri District

Date of Judgment: 11.02.2016

Indian Penal Code, Sections 201, 302 Extra Judicial confession, admissible, when

Evidence Act, Section 27 Extra Judicial confession, admissible, when

Murder – motive, illegal intimacy proved – Confession to police, non-police, admissibility when, scope of – Extra Judicial confession, admissible, when

Confessional statement of A-1, recoveries effected at the instance of A-1, established A-1 had motive to kill deceased, extra-Judicial confession of A-1 – In order to screen offence, A-1 concealed, mutilated dead body of deceased in sugarcane field, later revealed where it was concealed – Seizure of weapons used in commission of offence – Prosecution established case

(2016) 2 MLJ (CrI) 539

Ranganathan and others

vs.

State Represented by Inspector of Police, Rathinapuri Police Station, Coimbatore

Date of Judgment: 13.04.2016

Bail – Appeal Bail – Suspension of Sentence – Code of Criminal Procedure, 1973 (Code 1973), Sections 389(I) and 439 – Indian Penal Code, 1860 (Code 1860), Sections 299, 302 and 304(ii) – Petitioners/accused Nos. 1 to 3 tried for charge under Section 302 of Code 1860 – Trial Court recorded conviction under Section 304(ii) of Code 1860 and sentenced each of them to imprisonment and also directed each to pay specific compensation – Accused Nos. 1 to 3 filed petition under Section 389(1) read with Section 439 of Code 1973 to suspend sentence of imprisonment and to enlarge them on bail pending disposal of appeal – Whether Petitioners could be granted appeal bail – Held, conclusion of doctor on injury is not equivalent to judgment of Court and it is his opinion – Just like other expert, medical expert gives his opinion and it will be corroborative piece of evidence – Evidence of medical witness is not equivalent to evidence of ocular witness – View of medical witness is based on his knowledge on medical science, but view of Judge must be based on his legal knowledge – Opinion of medical witness is helpful, but it cannot be sole test, independent of requirement of penal law – Arguable points involved in pending appeal, same required to be examined at time of hearing main appeal – Prima facie case found in favour of Petitioners – Petitioners were on bail throughout Trial Court proceedings and they came forward to deposit compensation – Since it will take time for disposal of appeal, appeal bail granted to Petitioners and their sentence alone suspended.

2016-2-L.W. (CrI) 610

S. Stalin Babu

vs.

State represented by The Inspector of Police, C.C.I.W. Police, Thanjavur

Date of Judgment: 29.04.2016

I.P.C., Sections 120(b), 408, 409, 447(A), 467, 471, 109, Judgment, binding nature of, when

Co-operative Societies Act, Section 87, Judgment, binding nature of, when

Evidence Act, Sections 40 to 43, Judgment, binding nature of, when

Criminal Procedure Code, Section 482, Quash, to, discharge, Judgment, binding nature of, when

Jewels pledged – Allegation that petitioner (Jewel appraiser) substituted originals with spurious ones – Enquiry – Findings whether binding

held: a finding by Deputy registrar of Cooperative societies about liability of a person, cannot bind the criminal Court.

(2016) 4 MLJ (CrI) 654

Rajan @ David Raja

vs.

State, Rep. by Inspector of Police, Aanaimalai Police Station, Coimbatore District

Date of Judgment: 15.06.2016

Murder – Provocation – Indian Penal Code, 1860 (Code), Sections 300, 302, 304(i) and 506(ii) – Appellant / Sole Accused was charged for offences under Sections 302 and 506(ii) IPC – Trial Court convicted him under Section 302 of Code – Appeal against conviction and sentence – Whether trial court justified in convicting and sentencing Appellant for murder – Held, prosecution had clearly established beyond any doubt that it was accused who cut deceased and caused death – Recovery of M.O.I. Aruval from possession of accused, in pursuance of disclosure statement made by him added strength to case of prosecution – Conduct of deceased in taking accused’s wife and keeping her with him in illicit relationship would have had sustained provocation in him – Coupled with above sustained provocation; the immediate provocation and due to altercation, accused had lost his mental balance and had caused death of deceased – Act of accused would squarely fall within third limb of Section 300 and first exception to Section 300 of Code – Accused liable to be punished for offence under Section 304(i) of Code – Accused being young, occurrence being not pre-mediated and accused having no bad antecedents, there was lot of chances for reformation – Regarding these mitigating as well as aggravating circumstances, conviction and sentence imposed on Appellant for offence under Section 302 of Code set aside – Accused convicted for offence under Section 304(i) IPC – Appeal partly allowed.

2017-2-L.W. (CrI) 329

M. Muthuraj

vs.

**State represented by the Sub-Inspector of Police Bagalur Police Station Hosur,
Krishnagiri District**

Date of Judgment: 22.06.2016

Criminal Procedure Code, Sections 181, 482

I.P.C., Section 379

Theft of battery from Tamil Nadu, accused apprehended in Karnataka – Transfer of case by Attebelle Police in Karnataka by post to Bagalur police station in Hosur

Trial where to be conducted – FIR whether can be quashed

Accused who is charged for offence of theft under Section 379 can be tried either by the Court in whose jurisdiction, theft had occurred or by the Court in whose jurisdiction, the stolen property was possessed by him

Procedure to deal with cases in border areas of two States, what is, scope of – Accused cannot seek quashment – Offence can be proved even if corpus delicti not available

(2016) 4 MLJ (CrI) 335

Prakash

vs.

State, Rep. By the Inspector of Police, Bargur Police Station, Erode District

Date of Judgment: 15.06.2016

Sexual Assault – Corroboration of Evidences – Protection of Children from Sexual Offences Act, 2012 (Act, 2012), Sections 5(i) r/w sections 6, 29 – Indian Penal Code (Code), Section 506(ii) – Trial court convicted Appellant for offence on victim/PW 2 under Section 5(i) r/w Section 6 of Act, 2012 and Section 506(ii) of Code – Appeal against conviction – Whether conviction and sentence imposed on Appellant by Trial Court justified – Held, evidence of P.W.5/Doctor, who examined P.W.2, at first instance was sufficient to corroborate evidence of P.W.2 and subsequent medical examination and treatment were supportive piece of evidences – From evidences of P.Ws 1,2,3 and medical evidence, since fundamental fact required to raise presumption under Section 29 of Act, 2012 had been proved, court presume that accused had committed offence charged – Prosecution proved that accused had committed aggravated penetrative sexual assault as defined in Section 5(i) of Act, 2012 and so liable for punishment under Section 6 of Act – By criminally intimidating P.W.2 not to disclose about occurrence to anyone, accused committed offence punishable under Section 506(ii) of Code – Taking into account mitigating circumstances, sentencing Appellant to undergo rigorous imprisonment for ten years which is minimum punishment provided under Act, would meet ends of justice for offence under Section 5(i) of Act, 2012 which was punishable under Section 6 of Act – No interference with payment of fine and compensation directed by Trial court – No reason to interfere with conviction and sentence imposed for offence under Section 506(ii) of Code – Appeal partly allowed.

2016-2-L.W. (CrI) 642

S. Sam Sundar Singh

vs.

The Inspector of Police, Rathapuram, Tirunelveli District

Date of Judgment: 22.08.2016

Criminal Procedure Code, Section 173(8) Fresh investigating, ordering of, challenge to

It was contended that order passed by the learned Judicial Magistrate, Valliyoor accepting the negative final report submitted by the Investigation Officer treating the case as UN-undetectable is a 'judicial order', it cannot be reopened by the learned Magistrate

held : order accepting final report of the Investigation officer that case is undetectable is a judicial order – He cannot set it aside on his own and order fresh investigation

2016 (6) CTC 218

Senthil @ Gundu Senthil @ Senthilkumar vs. State

Date of Judgment: 27.09.2016

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 - Indian Penal Code, 1860 (45 of 1860), Sections 147 & 365 – Crime – Abduction – Compromise between parties – Quashing of prosecution – Whether warranted – Petitioner along with other Accused alleged of abducting a person for illegal ransom – Complainant and Victim report Settlement between parties and seek quashing of prosecution – *Held*, prosecution cannot be quashed, when crime involved is serious having an impact on society – Contention of victim that Petitioner and other Accused were not involved in crime – Suspicious factors involved in entire episode of abduction – Direction issued to Deputy Superintendent of Police to conduct further investigation in matter – Superintendent of Police directed to personally monitor entire investigation – Matter directed to be listed on 01.11.2016 for reporting compliance.

2017 (1) TLNJ 1 (Crl)

Mohamad Irfan vs. Velukannan

Date of Judgment: 22.12.2016

Negotiable Instrument Act, 1881, section 139 (B) – Technical defects in legal notice – Cheque number wrongly noted – Accused acquitted – Appeal – even though in the complaint cheque number incorrectly mentioned, High Court opined that there is no mist or cloud or shroud or any manner of simmering doubt in regard to the language employed in Section 138 of the Negotiable Instruments Act – notice will have to be read in entirety – there was no correction notice issued on behalf of Complainant to Accused – supply of chickens by Complainant to Accused is a running transaction – mistake in Ex.P3 Notice pertaining to the cheque number cannot be said to be an ancillary/incidental – because the issuance of Cheque Ex.P1 was not the only one transaction between the parties – incorrect mentioning of the cheque in Ex.P3 Notice is not fulfilling the requirement under Section 138(b) of N.I. Act – Appeal dismissed.
