



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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MADRAS HIGH COURT - CRIMINAL CASES

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SUPREME COURT – CIVIL CASES

(2017) 5 SCC 496

Dnyandeo Sabaji Naik and another vs. Pradnya Prakash Khadekar and others

Date of Judgment: 01.03.2017

A. Rent Control and Eviction – Eviction Petition/Suit – Abuse of Process of Court/Law/Fraud on Court – Misuse of law to defeat or delay justice – Filing of frivolous and groundless cases/petitions – Held, must be firmly dealt with by all courts, imposing exemplary costs on the litigant concerned so as to ensure that access to courts is available to citizens with genuine grievances – It is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that legal system is not exploited by those who use the forms of the law to defeat or delay justice.

B. Rent Control and Eviction – Tenancy/Tenant – Status as a tenant – Claim as to - Made by petitioners herein on basis that their status as licensees fructified into a tenancy with effect from 1-2-1973 under the Rent Act concerned – Held, was not sustainable in absence of any licence in their favour.

2017-3-L.W. 650

Dr. K.S. Palanisami (dead) through Lrs.

vs.

Hindu Community in general and citizens of Gobichettipalayam and others

Date of Judgment: 09.03.2017

Succession Act (1925), WILL, Joint and Mutual WILL, what is, ingredients, difference, between Joint and Mutual Will, proof of, Revocation of Will, Alienation, powers of alienation to surviving testator whether exists; 'r h; t R j e; j u k?', 'Absolute right', meaning of, what is, Trust, creation of, obligation of trustees, scope of.

WILL executed by husband and wife jointly – Whether Will is Joint Will or a Joint and Mutual Will – Right of survivor with regard to alienation of property mentioned in the Will – scope

Connotation of words 'absolutely with all the rights', what is – use of words 'r h; t R j e; j u k?', meaning of – scope

Whether Will can be read as only life estate i.e. right of enjoyment and receiving of rent, income or absolute right including the right of alienation

2017 (4) CTC 690

J. Balaji Singh vs. Diwakar Cole and others

Date of Judgment: 24.04.2017

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rules 23, 23-A & 25 – Remand – Power of First Appellate Court – Additional Evidence – Suit dismissed – Trial Court disposed of Suit on all factual and legal issues – Plaintiff adduced Additional Evidence before First Appellate Court – Appellate Court admitted Additional Evidence – Case remanded to Trial Court to decide Suit afresh on merits by considering Additional Evidence adduced by parties – Approach of First Appellate Court remanding case to Trial Court, held, justified.

Code of Civil Procedure, 1908 (5 of 1908), Order 43, Rule 1(u) – Appeal to High Court – Appeal assailing Order of Remand passed by First Appellate Court – High Court set aside First Appellate Court Judgment and examined case on merits – Improper approach – High Court cannot examine case on merits - High Court required to examine legality of Remand Order in Appeal – High Court could only remand case to First Appellate Court with direction to decide First Appeal on merits – High Court had no jurisdiction to decide Appeal on merits – Code confers limited power to High Courts to examine only legality and correctness of Remand Order of First Appellate Court.

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 23-A – Remand – Power of First Appellate Court – First Appellate Court allowed Additional Evidence – Case remanded to Trial Court to decide Civil Suit afresh on merit in light of Additional Evidence – First Appellate Court recorded findings on merits of case – Finding rendered by First Appellate Court on merits of matter after remanding case to Trial Court is grave error – First Appellate Court need not examine case on merits having remanded Suit to Trial Court.

2017 (4) CTC 678

Srinivasaiah vs. H.R. Channabasappa (Since Dead) by his LRs. and others

Date of Judgment: 25.04.2017

Transfer of Property Act, 1882 (4 of 1882), Section 58(c) – Mortgage – Mortgage by Conditional Sale – Sale outright with condition of repurchase – Distinction – Determination thereof – Owner of suit property secured Loan by executing Deed styled as “Deed of Conditional Sale” – Recital stipulates that Creditor allowed to remain in possession of property for five years and Owner would be entitled for re-conveyance after repayment of Loan amount – Owner of Suit property offered to repay Loan amount with request to resale – Contention of Creditor that Deed in question is outright sale – Deed in question satisfied requirement of Mortgage by Conditional Sale and test laid down in *Chunchun Jha case*.

Limitation Act, 1963 (36 of 1963), Article 61(a) – Suit for Redemption of Mortgage and Recovery of property – Mortgage by Conditional Sale executed in year 1969 – Five years’ period provided for re-conveyance of property expired in year 1974 – Suit instituted for recovery of property in year 1987 – Suit for Redemption of Mortgage would be governed by Article 61(a) of Act – Suit instituted within limitation period.

AIR 2017 SC 2419

Gurnam Singh (D) Thr. Lrs. And others vs. Gurbachan Kaur (D) by Lrs. and others

Date of Judgment: 27.04.2017

(A) Civil P.C. (5 of 1908), O. 22, Rr. 9, 3(2), 4(3) – Abatement – Death of plaintiff and two defendants during pendency of second appeal – No application filed to bring legal representatives on record – Non-compliance of Rr. 3(2) and 4(3) resulting in dismissal of appeal – Judgment in second appeal passed by High Court against deceased – defendants – Is without jurisdiction – and hence nullity.

(B) Civil P.C. (5 of 1908), O.22, Rr.9, 3(2), 4(3), Ss. 100, 96, 47, O.21, Rr. 98, 101 – Abatement – Objection against judgment – Second appeal – Judgment passed against deceased-defendants, nullity – Question of validity of judgment – Can be raised in appeal or even in execution proceedings arising out of such decree.

SUPREME COURT – CRIMINAL CASES

2017-2-L.W. (Crl.) 64

State of Bihar vs. Rajballav Prasad @ Rajballav PD. Yadav @ Rajballabh Yadav

Date of Judgment: 24.11.2016

Indian Penal Code, Sections 376, 420/34, 66-A, 370, 370-A, 212, 120-B

Protection of Children from Sexual Offences (POCSO) Act (2012), Sections 4,6 and 8

Immoral Traffic Act (1956), Sections 4,5,6

Fair Trial – Role of court – Principles of Bail, grant of – Cancellation – when

Allegations levelled against respondent (MLA) of committing rape upon minor girl – State aggrieved by order granting bail to respondent, challenged it.

Consideration is whether there are any chances of the accused person fleeing from justice or reasonable apprehension that the accused person would tamper with the evidence/trial if released on bail.

2017 CRI. L.J. 2250

Himanshu Mohan Rai vs. State of U.P. and another

Date of Judgment: 07.03.2017

(A) Evidence Act (1 of 1872), S.3 – Criminal P.C. (2 of 1974), S. 161 – Testimony of witness – Delay of 25 to 30 days in recording statement of witness – Testimony of witness found credible and corroborated by evidence of informant in all material details of incident – Cannot be rejected on ground of delayed recording of his statement particularly when there was change of Investigation Officers.

(B) Criminal P.C. (2 of 1974), S. 154 – FIR – Whether ante-timed – No requirement that FIR must be in handwriting of informant – Circumstances not showing that FIR was ante-timed – Nor timing of FIR could be disbelieved because police constable seized shirt from scene of crime before registration of FIR.

(C) Evidence Act (1 of 1872), Ss. 3, 45 – Ballistic expert's report vis-à-vis ocular evidence – Murder case – Ocular testimony that accused shot and killed deceased, found reliable – Ballistic report that empty cartridges found at spot were not fired from gun recovered from accused – Has no effect of discrediting ocular testimony particularly when lead bullets recovered found belonging to commonly used caliber i.e. 32 bore weapon.

2017 (2) MWN (Cr.) 321 (SC)

Brijendra Singh and others vs. State of Rajasthan

Date of Judgment: 27.04.2017

Criminal Procedure Code, 1973 (2 of 1974), Section 319 Power of Court to proceed against person not arraigned as an accused – Exercise of – Scope – Degree of satisfaction required for invoking power under Section 319 – Power under Section 319 though discretionary power, also extraordinary and to be exercised sparingly and not in casual and cavalier manner – Once Court finds strong and cogent evidence against a person from evidence led before Court, power under Section 319 can be invoked – Prima facie opinion formed by Court requires stronger evidence than mere probability of his complicity.

(2017) 6 SCC 765

Arun Kumar vs. State of Bihar and others

Date of Judgment: 01.05.2017

Criminal Procedure Code, 1973 – Ss. 378, 386(a) and 385 – Appeal against acquittal – Powers of appellate court – How exercisable – Reiterated, power of appellate court to review evidence in appeals against acquittal is as extensive as its powers in appeals against convictions, but that power is with a note of caution that appellate court should be slow in interfering with orders of acquittal unless there are compelling reasons to do so – Case of assault using guns and lathis, leading to death of one and injuries to others – High Court upholding acquittal of accused persons by a very cursory and cryptic order – Non-exercise by High Court of its appellate powers in a proper manner – Case remanded back to High Court for hearing afresh on merits.

(2017) 6 SCC 792

Bibi Parwana Khatoon Alias Parwana Khatoon and another vs. State of Bihar

Date of Judgment: 04.05.2017

Penal Code, 1860 – Ss. 304-B/34 – Dowry death – Death due to strangulation and body burnt thereafter – Incident taking place in matrimonial home of deceased – Circumstantial evidence – Not establishing that appellant-accused, deceased victim's sister-in-law and brother-in-law, had any common intention with husband (convicted accused) of deceased in commission of crime – Presence of sufficient evidence that both used to live in a different village and not with accused husband – Evidence available not proving beyond reasonable doubt, that appellants tortured victim for any demand of dowry – Hence, their conviction reversed.

MADRAS HIGH COURT – CIVIL CASES

AIR 2017 MAD 126

Apex Laboratories Limited, Chennai vs. India Pharmaceuticals, Mumbai

Date of Judgment: 10.11.2016

(A) **Copyright Act (14 of 1957), Ss. 14, 51** – Infringement of copyright – Injunction – Identical labels on medicine bottles – Documents on record disclosing plaintiff as prior user – Plaintiff’s label is subject-matter of copyright registration – Artistic work present in plaintiff’s label – Defendant on contrary failing to prove prior use of label – Infringement of plaintiff’s label by defendant, apparent – Plaintiff entitled to injunction.

(B) **Copyright Act (14 of 1957), S.51** – Suit for infringement – Copyright registration – Cannot be challenged by defendant in infringement suit unlike patent law. Patents Act (39 of 1970), S.107.

(C) **Copyright Act (14 of 1957), Ss.51, 55** – Registered copyright – Establishment of fact of infringement by plaintiff – Makes plaintiff entitled to damages without proving actual damage.

(D) **Copyright Act (14 of 1957), Ss.51, 62** – Territorial jurisdiction – Infringement of copyright – Plaintiff carrying business in territorial jurisdiction of Madras High Court – It has territorial jurisdiction over matter – Merely because defendant is not operating business in territories of Madras High Court, it does not lack jurisdiction.

2017-3-L.W. 701

K. Murugesan Pillai (Died) and others vs. M. Sundarapandi and another

Date of Judgment: 17.11.2016

Hindu law/Joint family property

Family consisting of plaintiff and his two brothers never lived as members of a joint family – They do not constitute a Hindu joint family

Benami transaction – proof of – purchase of property by plaintiff in his name cannot be presumed as an acquisition by all three brothers for the benefit of the family.

2017 (2) MWN (Civil) 637

A. Velappan Pillai vs. R. Sudhakaran Pillai

Date of Judgment: 22.11.2016

Code of Civil Procedure, 1908 (5 of 1908) – Cause of action – Nature of Suit – Determination of – Suit for recovery of money – Post-dated Cheque issued by Defendant relied upon to establish Loan transaction between parties – Suit, held, not based on said Cheque but on original transaction of borrowal of money – Stand of Defendant that Suit is not maintainable as Cheque was not presented and became valueless, unsustainable – Negotiable Instruments Act, 1881 (26 of 1881), Section 138.

2017-3-L.W. 817

N. Sundaramurthy and others vs. Suseeladevi and others

Date of Judgment: 03.03.2017

Specific Relief Act (1963), Sections 16, 22

Definite change in the law relating to readiness and willingness after Saradamani's case 2011-4-L.W. 97(SC) – Time fixed in contract, effect of – plaintiff falls short of requirement of readiness and willingness to perform his part of the obligations

No explanation for silence on part of 1st plaintiff from date of agreement till issuance of notice for nearly two years – Agreement does not impose obligation to effect a partition on defendants

Plaintiff has not chosen to seek relief of partition and separate possession – plaintiffs are entitled to refund of advance amount.

2017-3-L.W. 856

T. Muthukumarasamy vs. J. Selvasundarraaj

Date of Judgment: 03.03.2017

C.P.C., Section 47, Order 21 rule 95

Suit for declaration of title and recovery of possession by auction purchaser whether maintainable

Whether a separate suit by auction purchaser for recovery of possession is barred under section 47

“the suit for declaration of title and for recovery of possession on the basis of the title of the auction purchaser is not barred under Section 47 C.P.C. and that even after dismissal of an application filed by the auction purchaser under Order 21, Rule 95 for delivery of possession for default or on the ground of limitation, the auction purchaser can file a suit for declaration of title and for recovery of possession within twelve years”.

2017 (2) MWN (Civil) 654

A. Raja Bhoopathi (Died) and others vs. A. Vivekanandan

Date of Judgment: 06.04.2017

Stamp Act, 1899 (2 of 1899), Section 35 – Registration Act, 1908 (16 of 1908), Section 17 – Family Arrangement – Registration of – Whether necessary – Unstamped, unregistered document captioned as ‘Family Arrangement’ sought to be marked in Partition Suit – Clear stipulation in document warranting its registration within three months – Document purporting division of property in praesenti and future and not about past division – Document, held, cannot be relied upon for collateral purpose – Respondents in Suit denying existence of document – In such circumstances, photocopy of inadequately stamped and unregistered document, held, inadmissible in evidence – Order of Trial Court, refusing to mark document, upheld – Civil Revision Petition dismissed.

Stamp Act, 1899 (2 of 1899), Section 38 – Photocopy – Impounding of Document – Original documents, which are not stamped/inadequately stamped can be impounded under provision – Photocopies of documents produced, cannot be impounded under Section 38.

(2017) 5 MLJ 523

A.P. Subramanian (died) and others vs. Thiru. R. Sivasamy and another

Date of Judgment: 24.05.2017

Civil Procedure – Execution of Compromise Decree – Compliance of Conditions – Appellant/Plaintiff filed suit for specific performance against 1st Defendant/owner of property and 2nd Defendant/bank – Pending suit, compromise entered into between parties – Balance sale consideration was to be paid by Plaintiff – 1st Defendant failed to execute sale deed in favour of Plaintiff – After long drawn legal process, judgment issued by Lower Court – Balance sale consideration deposited in Court – Plaintiff filed execution petition seeking execution of sale deed – Executing Court held that prayer in execution petition could not be granted – Aggrieved, Plaintiffs filed present appeal

Executing Court ought to have taken into account that decree to be executed was compromise decree, which stipulated several conditions to be complied with – Payment of amount within two months from date of compromise memo was not only condition to be complied with – Plaintiff complied with some of the conditions in compromise decree and conduct of Plaintiff was not procrastinating – Plaintiff, having complied with some of the conditions in compromise decree, would have expected judgment debtor to come to Office of Sub Registrar for execution of sale deed – Finding him not available, notice was issued – Payment made into Court within reasonable time – Compromise settlement guided by principles of justice, equity, fair play and other legal principles – Duty of Courts to uphold and give full effect to compromise by giving effect in letter and spirit – Fair and final order in execution petition set aside – Appeal allowed.

(2017) 5 MLJ 568

G. Muniratnam and another vs. District Collector, Tuticorin and others

Date of Judgment: 01.06.2017

Property Laws – Settlement of Property – Implied Revocation – Constitution of India, 1950, Article 227 – 1st Petitioner/1st Defendant executed General Power of Attorney to agent authorizing her to deal with his land – Agent sold few cents of land to her daughter thereafter, 1st Petitioner settled property in name of his minor daughter/2nd Petitioner/2nd Defendant – Agent sold land to her children and others by two sale deeds – Purchasers as Plaintiffs filed two suits against Petitioners for declaration of settlement deed executed by 1st Petitioner in favour of 2nd Petitioner as null and void and also to declare order of Registrar cancelling sale deeds as null and void – Interlocutory applications filed by Petitioners to reject plaints dismissed – Aggrieved, Petitioners filed present revisions – Whether principal could deal with property after executing power of attorney and appointing agent to act on his behalf – Whether settlement of property in favour of 2nd Petitioner impliedly revokes power of attorney executed in favour of agent – Whether present Court could interfere in pending suit under Article 227 of Constitution to strike off Plaint – Held, Plaintiffs had no privity of contract with Petitioners on alleged date of sale – They were not concerned with settlement deed of 1st Petitioner – By settling property in favour of 2nd Petitioner, power of attorney was impliedly superseded – Aggrieved by that, agent approached police and given complaint – Without pursuing legal course, she created documents in favour of her children as if power deed was in force – Most appropriate person to challenge settlement deed could be agent – She was not dominant litis in suits – Cause of action as framed by Plaintiffs in suits were only illusory – Plaintiffs traced their right through their mother who acted as power agent of principal but on date of said sale, principal himself had no title over property – Person who executed sale deed in favour of Plaintiffs had no right to deal with property – Executant and claimants were mother and children – Those documents were sham and nominal documents on which suits based – Entertaining such suits and forcing Defendants to undergo ordeal of trial would amount to abuse of process of Court – Person who was competent to register document, had power to cancel same by virtue of power conferred under circular if it was found to be fraudulent – Pleadings found in plaint itself renders suit not maintainable in law for want of cause of action – Order of District Registrar passed in pursuant to direction of present Court could be challenged only by departmental appeal and not by way of suit – Plaint struck off – Revisions allowed.

2017-3-L.W. 893

S. Malini and others vs. B. Sasidharan

Date of Judgment: 08.06.2017

C.P.C., Order 41 rule 27

Adverse possession

Defendants failed to plead and prove under what capacity they are residing in suit property – Defendants in possession of property without any legal right, can be treated only as trespassers – Adverse possession does not arise.

2017-3-L.W. 848

Arukutty vs. Punithavathy and others

Date of Judgment: 21.06.2017

Hindu succession Act (1956), Sections 6, 8, daughter's rights, scope

Ancestral property – Devolution – Date of death – Effect of

It is not in dispute that two items of suit properties belong to RG, which devolved upon his heirs and were ancestral properties – RG had one son and four daughters – RG and his son entitled to 1/2 share constituting as coparceners and entitled to 1/2 share by birth

Appellant/plaintiff (grandson) claims equal right for four daughters – No plea by plaintiff that any of the four daughters of RG unmarried on 25.03.1989, when Section 29-A came into force

Properties partitioned between coparceners as per registered deed of partition, there is no question of inducting daughters as coparceners – daughter claiming right based on amended section 6 cannot claim any right to possession of the joint family property prior to the said amendment.

MADRAS HIGH COURT – CRIMINAL CASES

2017 (2) MWN (Cr.) 415

Palanisamy and another

vs.

State, rep. by Deputy Superintendent of Police, Sankagiri Division, Salem District

Date of Judgment: 16.02.2017

Indian Penal Code, 1860 (45 of 1860), Sections 304-B & 498-A – Dowry Death – Ingredients of offence under Section 304-B – Death of deceased within 7 yrs. Of marriage – Cruelty/harassment in connection with demand of dowry “soon before” death, if established – Evidence of mother of deceased, PW1 that when deceased and A1 started living separately, A1 demanded cot, bureau, etc. and harassed deceased – That, after conceiving and miscarriage, deceased lived with PW1 and when she was taken back to Matrimonial home, A2 quarreled with PW1 and A1 beaten deceased demanding Pongal Seer and PW7, son of PW1 gave Rs. 600 at time of Pongal – That, A1 is a drunkard and used to harass and beat deceased – PW3, related to Accused family, spoken about A1 demanding bureau and cot and that A1 is a drunkard and used to beat deceased – PW7 also spoken about harassment – Except harassment by A1, no evidence to prove dowry demand – No live link between effect of cruelty based on dowry demand and consequential death of deceased – Charge under Section 304-B, held, not proved – No evidence of harassment and dowry demand by A2 – A2 entitled to acquittal – Conviction under Section 304-B set aside – A1 liable to be convicted under Section 498-A – Considering fact that occurrence took place in year 2001 and A1, who is a poor man, already undergone imprisonment for 4 months, sentence of 3 yrs.’ RI under Section 498-A modified to period already undergone.

(2017) 3 MLJ (CrI) 123

Jayanthi @ Karolina and another

vs.

Inspector of Police, N-1 Royapuram Police Station, Chennai – 600 013

Date of Judgment: 24.02.2017

Abetment of Suicide – Mens Rea – Indian Penal Code, 1860, Section 306 – After trial, Appellants / Accused Nos. 1 and 2 convicted under Section 306 – Challenging their conviction, accused Nos. 1 and 2 filed present appeal – Whether prosecution proved that Appellants had mens rea to commit alleged offence – Whether act of accused leads to deceased to commit suicide and their act intended to abet deceased to take such decision to commit suicide.

(2017) 3 MLJ (Cr) 97

Kakulamarri Kalyan Srinivasa Rao

vs.

**Central Bureau of Investigation, Bank Securities and Frauds Cell rep. By its
Superintendent of Police, Bangalore, Karnataka**

Date of Judgment: 12.05.2017

Anticipatory Bail – Imposition of Conditions – Surrender of Passport – Code of Criminal Procedure, 1973 (Code 1973), Section 104 – Passports Act (Act), Section 10(3)(e) –

Sessions Judge granted bail to Petitioner in case registered against him, however, directed to surrender his passport before Court and not to leave country without prior permission of Court – Aggrieved by conditions imposed, Petitioner filed petition – Whether police empowered to retain passport of accused under provisions of Code 1973.

Held, Act which is Special law will prevail over provisions of Code 1973 which is general law – Section 10(3)(e) of Act deals with impounding of passport whereas Section 104 of Code 1973 allows Court to impound document to produce before Court – Act overrides provision of Code 1973 for purpose of impounding passport – Order directing to surrender passport amounts to impounding of passport itself – Impugned order insofar as condition to surrender Petitioner's passport before Court illegal, said condition set aside – Other conditions imposed in impugned order remain unaltered – Petition allowed.

2017 (2) MWN (Cr.) 408

Karuppasamy and others

vs.

**State of Tamil Nadu, rep. by the Inspector of Police, All Women Police Station,
Srivilliputhur**

Date of Judgment: 18.05.2017

Evidence Act, 1872 (1 of 1872), Section 65-B – Electronic records – Secondary evidence – Admissibility – Compliance with condition enumerated in Section 65-B mandatory – Compact Disc (CD) produced by De facto Complainant without Certificate as required under Section 65-B(4) – Contents/Statements pertaining to Electronic record/CD not been stated in Petition/Affidavit – Without details of contents and without mandatory Certificate, Electronic record/CD, held, cannot be received in evidence.

Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Order permitting marking of CD as an Exhibit in evidence of PW1/De facto Complainant – Legality – Petition filed at fag end of case after hearing both sides – Petition not containing signature of Prosecutor or Police or their Affidavits – Affidavit of De facto Complainant alone annexed – Mandatory Certificate required under Section 65-B(4), Evidence Act not filed for admissibility of CD – Such Petition, held, not legally maintainable – Contents of CD not filed alongwith Petition – No reference made in evidence of Witnesses or in Final Report – PW1 not spoken about possession of CD in question or conversation recorded in CD – CD also not seized during investigation of case by Police – Impugned Order allowing receiving of CD, held, liable to be set aside.

(2017) 3 MLJ (Crl) 66

P.K. Amarnath

vs.

State, Thro' The Inspector of Police, Anna Nagar Police Station, Madurai

Date of Judgment: 18.05.2017

Return of Property – Interim Order – Car belonging to petitioner/9th accused produced in one case before Judicial magistrate and remanded to Court custody – Interim custody of said vehicle given to Petitioner, as per order of Judicial Magistrate – Original Registration Certificate Book (R.C. Book) of vehicle surrendered by Petitioner and lying in custody of Judicial Magistrate Court – All accused including Petitioner acquitted from charges – Impugned vehicle not marked as Material Object – Petition filed by Petitioner before Judicial Magistrate seeking return of his original R.C. Book relating to vehicle returned – Aggrieved, Petitioner filed revision petition – Whether return of original R.C. Book could be ordered – Held, impugned order made in respect of vehicle for interim custody by Magistrate was not final order, as it was only order for interim custody of vehicle – Such order was free to get modified at any stage for reasons to be recorder – Reviewing of final order alone prohibited – No bar in entertaining petition filed for return of original R.C. Book relating to vehicle to Petitioner – Judicial Magistrate directed to take impugned petition on file, if re-presented by Petitioner, and to pass order for return of original R.C. Book, considering reasons assigned by Petitioner law – Revision allowed.

(2017) 3 MLJ (Crl) 186

J. Swaminathan

vs.

State, rep. by the Inspector of Police, Central Bureau of Investigation, SPE: EOW, Chennai

Date of Judgment: 01.06.2017

Discharge Petition – Prima facie case – Code of Criminal Procedure, 1973 (Code 1973), Section 173, 397 and 401 – Indian Penal Code, 1860 (Code 1860) – Charge sheet filed against Petitioner/3rd accused and other accused under provisions of Code 1860 – Discharge petition filed by Petitioner dismissed – Aggrieved, Petitioner filed present revision petition – Whether there was prima facie case made out against Petitioner to frame charges – Held, charge sheet along with other material documents and dismissal order of Magistrate show that there were incriminating materials to proceed against Petitioner and other accused – At time of considering discharge petition before framing of charges, Court ought to have seen whether there was prima-facie case made out for framing of charge – Court need not to conduct roving enquiry regarding oral and documentary evidence collected by prosecution – Magistrate, considering all materials collected during investigation found that there was prima facie case as against Petitioner and other accused to frame charges – Validity and admissibility of oral and documentary evidence could be done only after trial and not at stage of framing of charges – Trial Court correctly concluded that there was prima facie case made out as against Petitioner and others to frame charges – Magistrate Order could not be interfered by exercising revisional jurisdiction under Section 397 read with Section 401 of Code 1973 – Revision dismissed.

2017 (2) MWN (Cr.) 376

Pasupathi

vs.

State, represented by the Inspector of Police, Sanarpatti Police Station, Dindigul District

Date of Judgment: 09.06.2017

Criminal Procedure Code, 1973 (2 of 1974), Sections 468(2)(c), 473 & 482 – Indian Penal Code, 1860 (45 of 1860), Section 304 – A – Summons case – Investigation not concluded within 6 months – Charge-sheet filed beyond 3 years’. Period of limitation as fixed under Section 468 without condonation of delay under Section 473 – Proceedings, if liable to be quashed – Offence taken place on 17.01.2011 – Prosecution case that investigation completed by Police on 10.12.2013 and Charge-sheet filed on same day – But, Ministerial Staff of Court affixed seal only on 5.2.2014 – Therefore, contention that Charge-sheet was filed within period of limitation – Going by date seal on Charge-sheet, Charge-sheet filed after delay of 17 days – Delay condoned in exercise of power under Section 482 in interest of justice – Ratio laid down by Apex Court in Vanka Radhamanohari applied – Delay, if not condoned, would cause prejudice to State and victim as Accused would go scot-free on ground of limitation.

2017 (2) MWN (Cr.) 439

The State by the Inspector of Police, CBI/ACB/Chennai

vs.

V. Vaidiyalingam and another

Date of Judgment: 20.06.2017

Prevention of Corruption Act, 1988 (49 of 1988), Sections 7, 13(2) r/w 13(1)(d) – Indian Penal Code, 1860 (45 of 1860), Section 120-B – Offence under – Acquittal – Legality – Prosecution case that A1 & A2/Central Excise Department officials conspired together and demanded and accepted illegal gratification for issuance of Service Tax Registration Certificate to PW2 – Contradictory evidence in respect of alleged demand, handing over and acceptance of money – PW2 and shadow Witness/PW3 went to meet Accused – Evidence of PW2 that money was demanded after Certificate was given to him – Whereas evidence of PW3 that money was demanded and received prior to issuance of Certificate – Evidence of PW2 that A1 demanded money and when same offered, A1 asked PW2 to handover same to A2 – Whereas PW3 in cross-examination admitted that A2 not received money at instruction of A1 – Contradiction also with respect to exact place from where tainted money recovered – Evidence of PW2 that A2 obtained money from him and kept it on right side of table, but in cross-examination stated that money was recovered from table drawer – Statement of PW3 that A2 kept money in right side table drawer – As per Recovery Mahazar, Ex.P14, money was recovered from right side drawer – However, no indication in Rough Sketch/Ex.P16 as to from which table tainted money was recovered – Evidence of PWs. 2 & 3 that A2 received money in his right hand, when both hands of A2 proved to contain phenolphthalein – Signature of Accused not obtained on lable of bottle containing hand wash – Trap proceedings done by PW9/Inspector of Police prior to registration of FIR, bad in law – Delay in dispatching Exhibits and MOs to Court creates further doubt –

PW2 not choosing to inform alleged demand by Accused to superior Officers in same building creates serious doubt – Mere recovery in absence of proof of demand and acceptance not sufficient – No substantive evidence to prove that both Accused agreed to share birbe money – Prosecution failed to prove charges including Conspiracy theory beyond reasonable doubt – Order of Acquittal being well reasoned, warranted no interference in Appeal – Appeal against acquittal dismissed.

2017 (2) TLNJ 59 (Criminal)

K. Muruganandhan vs. The Inspector of Police, Ariyalur and another

Date of Judgment: 04.07.2017

Criminal Procedure Code, 1973, Section 439 (2) – Petition to cancel anticipatory bail since name of de-facto complainant and year of crime number wrongly mentioned – Misappropriation of money by accused found in F.I.R – Wrong mentioning of the name of the defacto complainant cannot in no way materially alter the verdict in the facts and circumstances of the present case – Criminal original petition dismissed.

2017 (2) TLNJ 67 (Criminal)

Subash and others

vs.

State, Rep. by Inspector of Police, Thiruchitrambalam Police Station, Thanjavur District

Date of Judgment: 13.07.2017

Indian Penal Code, 1860 Sections 120-B, 364, 302, 201, 364, 302 r/w 109 and 201 – Deceased harassed and suspected fidelity of his wife/A-3 – Murder – conviction and sentence – Appeal – Evidence of P.W.1 proves that he has not seen the deceased with A-1 and A-2 – But P.W-2 stated that he along with P.W-1 and villagers taken A-1 to Police station – But P.W.27 stated that arrest of A-1 was in public place – Contradiction – P.W.3/child living with relatives of deceased after death, her mother, her testimony not inspire confidence – P.W.6 & 7 brother in law-of deceased though stated that they saw deceased with A-1 & A-2 on occurrence day, not informed same to any when search of deceased was going on – Serious doubts suspicion about date of death – Though prosecution witnesses speak about the motive the same alone cannot be the sole factor in a case involving circumstantial evidence – witnesses deposed and documents marked are not sufficient to prove the charges against appellants – Appeal allowed and accused acquitted.
