



TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW



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SUPREME COURT CITATIONS CIVIL CASES

2017 (1) TLNJ 492 (Civil)

Jayakantham and others vs. Abaykumar

Date of Judgment: 21.02.2017

Specific Relief Act, 1963, Section 20 (2) – Suit for specific performance – Trial court decreed the suit and directed the appellants to execute a sale agreement in favour of the respondent – Trial court noted that the agreement to sell had been registered and rejected the defence that it is merely a document executed by way of security for a loan transaction – Further held that there was nothing in the agreement to indicate that it was executed merely by way of a security – Confirmed by lower courts and High Court – Appeal to Supreme Court – There was a transaction of a loan with the father of the respondent - Material placed on record indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants – These circumstances make it inequitable to enforce specific performance – Decree for the payment of compensation in lieu of specific performance would meet the ends of justice – Earlier the father of the respondent paid an amount of rupees sixty thousand to the appellants – Total agreed consideration was Rs.1.60 lakhs – Direction issued to appellants to pay to the respondent an amount of rupees fifteen lakhs in lieu of specific performance – Decree for specific performance set aside with directions.

CDJ 2017 SC 310

Vasanthi vs. Venugopal (D) Thr. L.Rs.

Date of Judgment: 21.03.2017

Code of Civil Procedure, 1908 – Section 100A – Transfer of Property Act, 1882 – Section 53A – Specific Relief Act, 1964 – Section 16 – Eviction – Possession of suit Property – Appellant/Plaintiff filed an application before Rent Controller, for eviction of original defendant from suit property – Original defendant denied title of the Appellant claiming possession under a sale agreement. Appellant also instituted suit claiming relief of declaration of her title and recovery of possession of suit property – Trial Court, on basis of pleadings, framed issues and by its verdict dismissed suit holding inter alia that possession of original defendant of suit property was protected under Section 53A of Transfer of Property Act – Appellant preferred appeal before High Court which was dismissed – Court held that sale deed executed in favour of Appellant and proved in evidence, has not been annulled as on date and is thus valid and subsisting – On appraisal of evidence on record and on touchstone of above legal propositions, the Supreme court held that though LPA preferred by Appellant is not maintainable in law, respondents are not entitled to benefit of protection of Section 53A of Act read with Section 16 of Act, 1963 – Appeal filed against judgment and order, affirming judgment and order passed in Suit is allowed and Appeal preferred against judgment and order passed in Appeal is dismissed – suit filed by Appellant is decreed, as prayed for – Appeal disposed of.

CDJ 2017 SC 294

T. Ravi and Another vs. B. Chinna Narasimha and Others

Date of Judgment: 21.03.2017

Code of Civil Procedure, 1908 – Order 7 Rule 11, Order 9 Rule 9 – Tenancy Act, 1950 – Transfer of Property Act, 1882 – Section 52 – Cancellation of sale deed – whether it was necessary to file suit for cancellation of sale deed.

Court held – when sale deed had been executed during pendency of suit, purchaser pendente lite is bound by the outcome of the suit. Provisions of Section 52 prevent multiplicity of proceedings – The sale deed was not under authority of court and pendency of suit under Section 52 commenced from date of presentation of plaint and continued until suit or proceedings were disposed of by final decree, and on complete satisfaction or discharge of such decree, an order had been obtained – They cannot circumvent jurisdiction of court and wriggle out of decree – Transfer remained valid subject to result of suit and pendente lite purchaser is subject to legal rights and obligations of his vendor as decided by court – Appeals allowed.

Adverse Possession – whether deceased, his heirs and purchasers had perfected their right, title and interest by virtue of adverse possession.

Court held –there was no lis pendens, and as such it was necessary to question the sale deed and for want of questioning sale deed, plaintiffs had perfected their title by virtue of adverse possession – The same is clearly perverse finding – There was no question of perfecting title by adverse possession during pendency of suit – Section 52 negates very plea of adverse possession – Trial court and first appellate court have rightly held that there was no question of adverse possession – It has to be clearly set out from which date it commenced, and became hostile when there was repudiation of title – Possession never became adverse in the case, as property was purchased subject to outcome of litigation – High Court has erred in law in holding that plaintiffs perfected their title by virtue of adverse possession – The finding is perverse and has no foundational basis – Appeals allowed.

CDJ 2017 SC 292

M/s. Brakewel Automotive Components (India) Pvt. Ltd. vs. P.R. Selvam Alagappan

Date of Judgment: 21.03.2017

Code of Civil Procedure, 1908 – Section 47 – Validity of Order – Appellant has challenged order passed by High Court, thereby rejecting prayer of Appellant/plaintiff-decree-holder to eschew evidence of Respondent/defendant/judgment-debtor in proceeding under Section 47 CPC as well as to dismiss such application as not maintainable.

Court held – No case has been made out to entertain remonstrance against decree or application under Section 47 of CPC – Both Executing Court and High Court, have not only erred in construing scope and ambit of scrutiny under Section 47 of CPC, but have also overlooked the fact that decree does not suffer either from any jurisdictional error or is otherwise invalid in law – Objections to execution petition as well as to application under Section 47 of CPC filed by Respondent do not either disclose any substantial defect to decree or testify same to be suffering from any jurisdictional infirmity or invalidity – Appeals allowed.

CDJ 2017 SC 333

Karunanidhi vs. Seetharama Naidu and Others

Date of Judgment: 27.03.2017

Hindu Succession Act, 1956 – Section 15(2)(a) – Legality of Order – What is extent of share of each heir of deceased in his properties – How devolution of each heir's share would take place – On death of any heir, how his/her share would devolve on his/her legal representative in law.

Court held – Though High Court was right in upholding all findings of fact of two courts below but was not right in relying upon Section 15(2)(a) of Act for allowing plaintiffs' second appeal by treating them to be Class I heirs from father's side and, in consequence, was also not right in decreeing plaintiffs' suit in part by granting 1/3rd share to each plaintiff in suit property – This finding, is legally unsustainable and hence deserves to be set aside – Appeal allowed.

SUPREME COURT CITATIONS CRIMINAL CASES

2017 CRI. L.J.291 SC

Yogesh Singh vs. Mahabeer Singh and others

Date of Judgment: 20.10.2016

(A). Evidence Act (1 of 1872), S. 118 – Child witness – Evidence of – Cannot be rejected, if it is found reliable.

(B) Evidence Act (1 of 1872), S.3 – Interested witness – Evidence of – Cannot be disbelieved merely on ground that witnesses are related to each other or to deceased.

(C) Evidence Act (1 of 1872) S.3 – Appreciation of Evidence – Discrepancies in evidence – Minor contradictions, inconsistencies or insignificant embellishments do not affect core of prosecution – And cannot be taken as ground to reject prosecution evidence.

(D) Criminal P.C. (2 of 1974), S. 161 – Penal Code (45 of 1860), S.300 – Delay in recording statement of daughter of deceased by IO – Not unexplained as IO wanted to assure himself of veracity of her statement and hence, she was examined after she had time to recover from the shock of incident and compose herself – Under such circumstances, no prejudice caused on account of delay if any, in examining said witness.

(E) Criminal P.C. (2 of 1974) S. 156 – Penal Code (45 of 1860), S.300 – Lapses in investigation – Effect – Murder case – In view of evidence of complainant eye – witness and daughter of deceased vis-a-vis effect of lapses in investigation – Accusation cannot be dispensed with particularly when there was no material contradiction in testimonies of both eye-witnesses.

(F) Criminal P.C. (2 of 1974) S. 156 – Lapses in investigation – Murder case – Non-mentioning of time of incident in inquest proceedings – No correct date of receipt of FIR shown but defence witness himself stating that due to workload entry was made later on – It merely shows remissness on part of investigating officer and should not be treated as fatal to prosecution case.

(G) Criminal P.C.(2 of 1974), S. 157 – Delay in sending copy of FIR – Would not by itself render prosecution case unreliable – Evidence showing that FIR was recorded without unreasonable delay and investigation started on that basis – There is no other infirmity brought to notice of Court – Investigation not tainted in absence of any prejudice to accused.

(H) Criminal P.C (2 of 1974), S. 174 – Inquest report – Non-recording of entries as to time when inquest proceedings started and ended – Do not constitute a material defect so grave to throw out prosecution story.

(I) Evidence Act (1 of 1872), Ss.45, 3- Medical evidence – Evidentiary value of – Only corroborative and not conclusive – In case of a conflict between oral evidence and medical evidence, former is to be preferred unless medical evidence completely rules out the oral evidence – No material discrepancy in medical and ocular evidence which would tilt balance in favour of respondent/accused persons.

(J) Penal Code (45 of 1860) S. 300 – Evidence Act (1 of 1872) S.3 – Murder – Plea that deceased was a person with criminal antecedents and could be killed by any of his enemies – Prosecution has not sought to prove its claim on basis of circumstantial evidence – Hence, it is not incumbent on prosecution to discharge such burden to rule out every possible hypothesis with guilt of accused or consistent with guilt of any other person.

(K) Penal Code (45 of 1860), S. 300 – Evidence Act (1 of 1872), S.8 – Murder – Motive – Accused persons alleged to have committed murder of deceased since deceased had defeated accused in Pradhan elections – There is direct trustworthy evidence of witnesses as to commission of an offence – Motive loses its significance.

(L) Penal Code (45 of 1860), S. 300- Evidence Act (1 of 1872), S.27 – Murder – Evidence as to recovery – Mere non-recovery of weapon does not falsify prosecution case where there is ample unimpeachable ocular evidence.

(M) Criminal P.C. (2 of 1974), S. 313 – Examination of accused – Material questions regarding marriage, on which prosecution had allegedly relied upon, were not put to accused – No prejudice caused to accused on account of failure to examine them under S. 313 since said material was not incriminating in nature – Accused persons not per se entitled for acquittal on ground of non – compliance of mandatory provisions of S. 313.

(N) Evidence Act (1 of 1872), S.3 –Independent witness – Murder case – Prosecution version cannot be discarded on ground of lack of independent witnesses. Penal Code (45 of 1860), S.300.

(O) Evidence Act (1 of 1872), S. 3 – Penal Code (45 of 1860), S. 300 – Eye-witness – Plea that eye-witnesses could not have seen incident in view of height of agricultural crops shown in site map – Not tenable, particularly when there was some disparity in height of agricultural crops.

(P) Constitution of India, Art.136 – Criminal P.C. (2 of 1974), S. 378 – Appeal against acquittal – Murder Case – Having regard to evidence on record, view of High Court is not a plausible one – Order of acquittal of respondents passed by High Court – Liable to be set aside. 2012 (4) ALJ 420, Reversed.

2017 (1) TLNJ 165 (CrI) SC

Md. Sajjad @ Raju @ Salim vs. State of West Bengal

Date of Judgment: 06.01.2017

Indian Penal code, 1860, Section 302 r/w S. 34 – Death – Arrest of accused on suspicion by wife of deceased – Prosecution case stands and rests purely on the identification by PWs 3, 5 and 16 apart from the suspicion expressed by PW 8 – Test Identification Parade was held more than two and half months after the incident and in any case 25 days after the arrest of the accused – Delay in holding the Test Identification Parade – none of the prosecution witnesses given any identification marks or disclosed special features of any of those four suspects in general and the accused in particular – no incident or crime actually taken place in the presence of those prosecution witnesses – long interval of time had elapsed between the date of occurrence when the witnesses had seen for a few minutes and the date of the test identification parade – Neither in Exhibit Kha-1 nor in their statements during investigation, the eyewitnesses have given any descriptive particulars of accused – it will not be safe

and proper to act upon the identification of accused by the three witnesses at the identification parade – Suspicion expressed by PW 8 wife of deceased not enough to record the finding of guilt – Appeal allowed – Accused acquitted – Further held that acquittal on benefit of doubt also applicable to non – appealing accused.

2017 (1) TLNJ 221 (CrL) SC

Saloni Arora vs. State of NCT of Delhi

Date of Judgment: 10.01.2017

Indian Penal Code, 1860, Section 182 – Offence under – Appellant to be prosecuted by State – The appellant, aggrieved of, filed an application for her discharge on the ground that no procedure as contemplated under Section 195 of the Code of Criminal Procedure followed – Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken – The offence under S.182 is complete when a person moves the public servant for action – It is not in dispute that prosecution while initiating the action against the appellant did not take recourse to the procedure prescribed under Section 195 Cr.P.C – Action against the appellant relates to the offence under Section 182 IPC, is rendered void ab initio being against the law – Appeal allowed.

2017 (1) TLNJ 262 (CrL) SC

Ravada Sasikala vs. State of Andhra Pradesh and ANR.

Date of Judgment: 27.02.2017

Indian Penal Code, 1860 Sections 326 and 448 – Offence – trial Court sentenced accused one year R.I with fine with a default clause under Section 326 IPC and further sentenced him to pay a fine under Section 448 IPC with a default clause – State Preferred appeal for enhancement of sentence and accused preferred appeal against conviction and sentence – High Court modified the sentence imposed by the trial Court under Section 326 I.P.C to the period which the accused already undergone – State has not assailed the said judgment – appellant filed appeal in Supreme Court – Held – approach of the High Court gives shock – When there is medical evidence that there was an acid attack on the young girl and the circumstances having brought home by cogent evidence and the conviction is given the stamp of approval, there was no justification to reduce the sentence to the period already undergone – directed further that the acid attack victims shall be paid compensation of at least Rs 3 lakhs by the State as the aftercare and rehabilitation cost – also directed the accused - respondent No.2 to pay a compensation of Rs. 50,000/- - Appeal allowed.

CDJ 2017 SC 354

Kattukulanagara Madhavan (Dead) Thr. Lrs and another vs. Majeed and others

Date of Judgment: 30.03.2017

Section 302 IPC/Section 149 IPC – Common Object – Having Participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:-

1. What was the point of time at which he discovered that the assembly intended to kill the victim?
2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?
3. If he did, and failed, did he dissociate himself from the assembly by getting away?

The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory.

HIGH COURT CITATIONS CIVIL CASES

2017 (1) TLNJ 401 (Civil)

K.Sathishkumar vs. A.S. Manickkam and ors.

Date of Judgment: 18.03.2016

Civil Procedure Code 1908 as amended, Order 7, Rule 6 – See Registration Act, 1908, Section 49. – Registration Act, 1908, Section 49 – Suit filed for specific performance - Sale agreement unregistered – Plaintiff rejected at threshold – CRP filed in High Court. High Court held that, there is a discretion between the matters to be considered at the time of enquiry/trial and at the time of admission of the plaintiff, without understanding this distinction the plaintiff has been rejected – Order rejecting the plaintiff, is per se illegal – Decisions reported in 2014-8-MLJ 562 and in AIR (2003) SC 1905 relied on – CRP allowed with directions.

2017 (1) TLNJ 501 (Civil)

Jhambu. T.K vs. Dhanasekaran

Date of Judgment: 09.12.2016

Specific Relief Act, 1963 - Specific Performance - Suit filed – Allowed by trial Court relying upon the evidence of P.W.2 and held that there was oral sale agreement and advance amount also received by defendant/appellant – Appeal – suit is a counter blast to the eviction proceedings launched by the defendant in the year 2002 – Trial Court went wrong in granting decree for specific performance without advertent very essential requirements namely, the conduct of the plaintiff who seeks the discretionary relief of specific performance – Both PW1 and PW2 in their evidence would say that Rs.2,00,000/- is a big amount and it was paid without a receipt – Did not inspire the confidence of Court – PW2, who is an advocate has admitted the suggestion that he did not advise the parties to take receipt for payment of Rs.2,00,000/- in order to claim possession in part performance of the agreement. The fundamental requirement is that the agreement should be in writing – Suit based on oral agreement – possession of the property could be only considered as that of a tenant and not as an agreement vendee – Appeal allowed.

2017 (1) TLNJ 405 (Civil)

M.Sankar Nadar and anr. vs. Deva Krishnan

Date of Judgment: 20.01.2017

Specific Relief Act, 1963, Section 16 (c) – Suit filed for specific performance of sale agreement – Consideration paid in full – Possession also handed over – Defendants contend that the transaction was only in the nature of security – Trial court dismissed suit – First appellate court decreed the suit – Second Appeal filed in High Court by defendants - High Court held that, the normal conduct of a party who has paid the entire sale consideration would be to get the sale deed executed in his favour immediately – Except stating that the plaintiff was orally requesting the defendants to execute the sale

deed between 1995 and 2009, he has not produced a single paper to prove that he has been taking steps to get the sale deed executed – The plea of close relationship cannot be accepted for the reason that suit has been filed after a lapse of 14 years – Plaintiff cannot take protection under Transfer of Property Act, Section 53(A) – Second appeal dismissed.

2017 (1) TLNJ 557 (Civil)

Thangam.K and anr. vs. Subburaj and ors.

Date of Judgment: 24.01.2017

Civil Procedure Code, 1908, Section 100 – Second Appeal – Valid Marriage – 1st Plaintiff claiming to be wife of one deceased Kalidas and filed suit for partition in respect of his properties – Suit and first appeal dismissed – Second Appeal to High Court – High Court held that, 1st plaintiff / P.W.1 had not stated the exact date, month and year or her alleged marriage – P.W.2 and P.W.3/ independent witnesses have also stated that they have neither attended the wedding nor know the place of marriage – They have stated that they came to know about wedding through some other person – School certificate of 2nd Plaintiff / daughter, name of mother is not mentioned – Factum of marriage between 1st Plaintiff and deceased not proved – Plaintiffs also admitted that marriage between deceased and 5th defendant took place in 1976 – Second appeal dismissed.

2017 (1) TLNJ 353 (Civil)

V.Elango vs. Susi Ganesan, Film Director, Devi Sri Prasad kalaipuli S.Thaanu, Film Producer

Date of Judgment: 27.01.2017

Copyright Act, 1957, Sections 55 and 62 - Suit for Permanent injunction restraining the Defendant from infringing copyright – Plaintiff, a practicing Advocate claiming to be lyricists of a song in movie ‘Kandasamy’ - Held, no proof has been produced by Plaintiff to show that Ex.P.1 lyrics has been written by him – Plaintiff, though a practicing Advocate not taking any steps for more than six years for the suit to be posted, shows that the claim of Plaintiff is lacking bona fide – Suit dismissed.

CDJ 2017 MHC 1206

Faridha Begum vs. U.M.K. Batcha

Date of Judgment: 08.03.2017

The court held that, belated counter claim or written statement after framing of issues is generally prohibited, unless such counter claim or written statement will avoid multiplicity of proceedings.

Order 8 Rule 6-A & 9 CPC, read together indicates that it is not the prerogative of the defendant to file statements in piece meal at any point of time. It is the bounden duty of the defendant to place on record that subsequent pleading is warranted due to certain events occurred pending suit.

CDJ 2017 MHC 1114

K.R. Kannan vs. R. Krishnammal and Others

Date of Judgment: 13.03.2017

Constitution of India, 1950 – Article 227 – Partial Partition - Petitioner/Plaintiff sought for partition of suit properties against Respondents/Defendants – Defendants filed written statement stating prescribed properties were not included in suit schedule of properties and as such suit is bad for partial partition – Defendants filed counter claim, claiming prescribed share in suit properties, for which Plaintiff filed reply – Defendants filed application to amend plaint to include prescribed property in suit schedule, as prescribed properties are also joint family property – Trial Court after granting adequate opportunity for filing of counter, set Plaintiff ex parte and allowed Petition–Plaintiff, sought to set aside said order to contest application – Hence this Civil Revision Petition –

Court Held–The Petitioner claimed that he is dominant litus and that the defendants cannot seek inclusion of prescribed properties in his suit – It is settled legal position that in partition suit, concept of dominant litus, is not applicable and amendment in partition suit at instance of Defendants can be allowed, by adding few more properties – As Plaintiff had not filed counter inspite of granting opportunity, amendment petition was allowed – Inclusion of prescribed properties will not prejudice the case of Plaintiff, as during trial he could establish prescribed properties are not available for partition – As there is an amendment to plaint, Plaintiff can file reply statement within prescribed date– Civil Revision Petition was dismissed.

CDJ 2017 MHC 1150

H.T. Selva Kumar vs. Aejmalkhan

Date of Judgment: 16.03.2017

Tamil Nadu Buildings (Lease and Rent Control) Act, Sec.10(3)(a)(iii) and Sec 10(3)(c) Difference between possession and occupation – As per Sec 10(3)(a)(iii), only in Case of the Landlord or any member of his family is not occupying for his business a non- residential building, he is entitled to evict the tenant from other premises. But as per Section 10(3)(c), only in the case of landlord occupying a part of the building and requiring the remaining part of the building, he has to apply under Section 10(3)(c) of the Act– ‘Possession’ cannot be equated to ‘Occupation’ and as per Section 10(3)(a)(iii), occupation is the main criteria and not the possession.

CDJ 2017 MHC 1251

Rajedran vs. Rajedran and ors.

Date of Judgment: 28.03.2017

Civil Procedure Code Order 6 Rule 17 – Petition Seeking amendment after Commencement of trial – sufficient reason should be given for not filing the applications at the earliest point of time. If no such reason is given by plaintiff – Petition has to be dismissed.

(2016) 8 MLJ 433

Gurusamy vs. State of Tamil Nadu

Date of Judgment: 02.11.2016

Property Laws – Cancellation of Patta – Mandatory Injunction – Tamil Nadu Patta Pass Book Act, Section 14 – Tahsildar/3rd Defendant granted patta in name of Plaintiff considering his title and enjoyment of suit properties – When possession and enjoyment of suit properties interfered, Plaintiff filed earlier suit for permanent injunction – Pending suit, patta granted in favour of Plaintiff cancelled by 2nd Defendant/Revenue Officer – Plaintiff filed present suit for mandatory injunction – Trial Court dismissed suit, same was confirmed by First Appellate Court on appeal – Appeal by Plaintiff – Whether Plaintiff is entitled to seek relief sought for in present suit – *Held*, pending earlier suit, Plaintiff was put on notice about cancellation of patta by Defendants with reference to suit properties – Defendants also took said plea in their written statement filed in earlier suit – Despite same, Plaintiff did not evince interest to seek necessary relief as against Defendants in said suit by amending suit and it was not explained as to how Court could have granted relief of Permanent injunction against Defendants – facts on record show that 2nd Defendant cancelled patta only after due enquiry – Such being admission of Plaintiff, plea put forth by Plaintiff that as he was not aware of proceedings of 2nd Defendant cancelling patta, he was not in position to amend the plaint cannot be accepted – Though Lower Courts held that suit laid by Plaintiff was not maintainable as per Section 14, Lower Courts discussed merits and demerits of case of Plaintiff and rightly held that Plaintiff was not entitled to get suitable relief from Court – As Plaintiff admitted that he filed appeal before appropriate authority against cancellation of patta, Lower Courts rightly found that he had no cause of action to file the present suit – Plaintiff failed to establish that he was entitled to seek relief in present suit – Appeal dismissed.

HIGH COURT CITATIONS CRIMINAL CASES

2017 (1) TLNJ 321(Crl)

Sakthivel vs. Subramaniyan

Date of Judgment: 15.12.2016

Criminal Procedure Code, 1973, Section 256 – Case dismissed for the absence of complainant – Appeal – Criminal Procedure Code does not envisage for dismissal of complaint or discharge of an Accused when the Complainant had remained absent on the given date of hearing, like a ‘Musical Chair’. Both the Complainant and Accused remaining absent for a particular date of hearing – But on 4.4.2016, Accused remained absent and on his behalf a petition to condone his absence was filed and allowed – Only because of the Complainant’s non-appearance on same day and that of his counsel, the trial Court ultimately dismissed the complaint and acquitted the Accused – When on 04.04.2016, Accused remained absent, the trial Court should have exercised its judicial thinking mind in not passing an Order of Acquittal for the simple reason that the Complainant remained absent on the same day even though for the third time – Appeal allowed.

2017 (1) TLNJ 131 (Crl.)

**Durairaj Thethuvandar and others vs. State rep. by The Inspector of Police,
Mathur Police Station, Pudukkottai District and another**

Date of Judgment: 19.12.2016

Criminal Procedure Code, 1973, Sections 173 (8) & 200 – A bare reading of above extract would go to show that the investigation agency itself having power to probe further in any matter even after filing the charge-sheet upon the same – Magistrate Court ordered further investigation upon the same F.I.R. under which the Investigation Agency have also filed final report and, proceeded further in accordance with law – Very same Magistrate also committed the earlier PRC case to the Trial Court – He would have had knowledge about the earlier proceedings – Procedure which has been adopted by the Magistrate for further investigation and to take action by the respondent police is in accordance with law – Quash petition dismissed.

2017 (1) TLNJ 278 (Crl)

Manivel vs. The State represented by The Deputy Superintendent of Police CBCID Trichy.

Date of Judgment: 23.12.2016

Indian Penal code, 1860, Sections 341, 376, 302 and 201 r/w 302 – Life sentence for rape and murder – Appeal – Accused used the cellphone of P.W.26 to call P.W.10 & 9 and informed that he had raped and killed the deceased – Proved from call details furnished by P.W.16 & 17 – Though this extra-judicial confession is a very weak piece of evidence, this would lend assurance or corroborate the

other circumstances – Prosecution proved that accused had waylaid the deceased, raped her, killed her, tied the dead body with her bicycle and threw the same into the water with a view to cause disappearance of the evidence – As per the evidence of P.W.5, on an earlier occasion, the accused tried to molest her – Cannot be considered as an inadmissible evidence in view of the bar under Section 54 of Evidence Act. It states that in criminal proceedings, the fact that the person accused of, has a bad character, is irrelevant unless the evidence had been given that he has a good character, in which case alone, it becomes relevant – If the evidence of P.W.5 is rejected then there is no other evidence to prove the accused had bad antecedents – Not a fit case to impose death penalty – Accused liable to be punished for imprisonment for life with fine without any remission for 20 years – Appeal dismissed with modification of death sentence to one of life.

2017 (1) TLNJ 118 (Crl.)

Sundar @ Ashok vs. State rep. by The Inspector of Police, T-16 Nazarathpet Police Station

Date of Judgment: 18.01.2017

Criminal Procedure Code, 1973, Sections 439(1) (b) r/w 482 – Bail granted on the condition that petitioner shall execute a bond with one surety from blood relatives, one other from person having immovable property, and also proof of residence and copy of document of title to be produced – Imposing of bail condition is an individual exercise and the same shall be reasonable – Court held that, Even if the petitioner got bail, he could not come out of jail because he is not able to comply with the bail condition – Our bail system is not based on any case system and not property oriented – It is all our own creations – Persons with money, property come out of jail but those who have no money languish in jail – High Court modified the condition of bail that Petitioner shall execute own bond for Rs.5000/- Petition allowed.

2017 (1) TLNJ 328 (Crl)

E. Gnanasundaram vs. M. Krishnan

Date of Judgment: 19.01.2017

Negotiable Instrument Act, 1881 Section 138 & 139 – Cheque obtained for settling the dues of the accused by complainant bounced – Appeal against order of acquittal of accused – Initial burden is on the Complainant to show that the Accused had issued Ex.P1 – Cheque in respect of ‘Legally Enforceable Debt’ – Accused can maintain silence and it is for the Complainant to establish his case beyond Doubts – If the Accused is able to show certain materials which shakes the case of Prosecution, then the preponderance of probabilities can be accepted by the Court concerned provided the said materials are worthy of acceptance – Documents produced on the side of the Accused viz., Ex.D.2 (Registered cancellation of mortgage deed) goes a long way in making out a clear cut case that the loan amount was repaid and further no interest amount was due – Contents of Ex.D2, overrides the stand taken by the Complainant – By producing Ex.D2, respondent/accused has shaken the case of the Complainant – Appeal dismissed.

2017 (1) TLNJ 233 (Crl.)

**Vivekanandan @ Dinesh and another vs. Union Territory of Puducherry Rep. by
The Station House Officer, Thiruvannalor Police Station, Karaikal**

Date of Judgment: 02.02.2017

Indian Penal Code, 1860 Sections 332 r/w 34 – Grievous hurt caused to complainant a public servant by A1 and A2 – P.W.7 Head Constable has stated that he received written complaint from P.W.1 – But P.W.1 stated that he was unconscious at the time of treatment and police obtained complaint written by police men – Discrepancies in regard to the evidence of P.Ws.1 and 2 about the authorship of the complaint and when P.W.3 had categorically deposed that the complaint (Ex.P.1) was written by Head Constable then, the trial court was wrong in ultimately convicting the Appellants – P.W.5 (Ward Attender) clearly stated that the complaint was written by the Police Man – No independent witnesses to support the prosecution, (except the staff members of the Hospital) – Strong suspicion about version of the prosecution – Prosecution not established its case beyond reasonable doubt – Criminal Appeal allowed.

2017 (1) TLNJ 257 (Crl.)

M/s. Chinthamani Foods & Feeds (P) Ltd., and others vs. D. Chandrasekar

Date of Judgment: 20.02.2017

Negotiable Instrument Act, 1881 Section 138 – Cheque dishonor – By examining the Bank Manager to show that the cheque facility was given to the accused 10 to 12 years prior to the date of cheque and the account was also closed in the year 1995, but the cheque was stated to have been issued to the complainant only in the year 2001, creates a doubt in the case of the complainant that under what circumstance the cheque was issued to the complainant in the year 2001 – Hence burden shifts on the complainant to prove that there was a legally recoverable debt – Except the oral evidence of P.W.1, the Accountant of the complainant, neither the account book nor any other documentary evidence was placed to show that the amount is due to the complainant from year 2001 – Appeal dismissed.

CDJ 2017 MHC 1227

Loganathan & Others vs.State Rep. by The Inspector of Police

Date of Judgment: 08.03.2017

Indian Penal Code – Section 364 r/w 149 – Delay in registering FIR – Occurrence took place at 6.30 p.m. and Complaint filed at 10.00 p.m. – P.W.1 who was in his office at T.Nagar, on receiving the information from P.W.3, went in search for P.W.2 at many places. This exercise could have quite naturally taken sometime and that is the reason why he made complaint at 10.00 p.m. – No delay at all caused by P.W.1 to make a complaint to the police. The delay in this case was caused only by the police in forwarding the F.I.R. to the Court.

Court held that, - In our considered view, as we have already concluded, on this ground, the evidence of P.Ws.1 and 3, cannot be doubted and the further case of the prosecution that the case was registered at 10.00 p.m. on 23.12.2013 also cannot be doubted.

CDJ 2017 MHC 1358

**Arulvel vs. State rep by The Deputy Superintendent of Police, Periyayanayakanpalayam
Sub Division, All Women Police Station**

Date of Judgment: 20.03.2017

The court held that the evidence of a witness recorded by Executive Magistrate u/s 176(2) Cr.P.C. shall not fall within the ambit of Section 162 Cr.P.C. and therefore it is undoubtedly admissible in evidence as a former statement. At the time, when the statement (evidence) was made by the accused to the Revenue Divisional Officer / Executive Magistrate, he was not an accused and neither the Revenue Divisional Officer (P.W.10) has been empowered to record a confession as provided under Section 164 Cr.P.C.

Therefore, the statement made by the accused to the Revenue Divisional Officer (P.W.10), in the instant case, is undoubtedly an extra judicial confession, which is admissible in evidence, as neither the bar contained in Section 162 Cr.P.C. nor the one contained in Section 25 of the Evidence Act is applicable to the statement made to the Revenue Divisional Officer (P.W.10).

2017 (1) TLNJ 357 (Crl.)

**Asaithambi vs. State rep. by Inspector of Police, Uppaliyapuram Police Station,
Thiruchirapalli District**

Date of Judgment: 20.03.2017

Indian Penal Code, 1860, Section 302 – Conviction and sentence for murdering wife – Appeal – Accused and the deceased were living on the upstairs of the house of P.W.3 – Evidence of P.Ws. 1 & 2 shows that accused suspected the conduct of deceased and marital relationship between them was troublesome – Written statement of the accused also shows that accused has been displeased with his wife – Motive part is not of very much significance in this case inasmuch as there is eye witness account of the actual occurrence – Clearly spoken to by P.Ws. 1 & 2 that, on hearing the skirmishes of the deceased, they opened the door of the bedroom and saw the accused throttling the deceased – Presence of P.Ws. 1 & 2 at the place of occurrence was confirmed by P.Ws. 3 to 6 – P.Ws. 1 to 6 corroborated each other in all the material features – Accused stated that he was suffering from depression and taking medicines and produced discharge summary and out-patient slips of hospital – It is impossible to believe the version of the accused that he was not in full possession of his faculties, since he has not chosen to examine any doctor to speak about the medicines he has taken and the effect of those medicines – Version of the accused not reasonable and not accord with probabilities – Appeal dismissed.
