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IMPORTANT CASE LAW



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SUPREME COURT – CIVIL CASES

2017 (2) MWN (Civil) 230

Nidhi vs. Ram Kripal Sharma (D) through LRs.

Date of Judgment: 07.02.2017

Rent Control Laws – Eviction based on Bona fide requirement for owner’s occupation – Effect of Marriage of Petitioner.

Land Lady required premises to accommodate her grandparents and other family members. The Rent Controller ordered eviction but during the pendency of the appeal, she got married and settled with her husband. Considering this fact, the Appellate authority reversed the eviction order on ground that LandLady’s need for the premises is not based on bonafide requirement. The question raised before the Hon’ble Supreme Court was “Whether marriage of a landlady as subsequent event can extinguish bonafide requirement of landlady?”

The Hon’ble Supreme Court held that, Being married and shifted to other place does not automatically result in extinguishing of bona fide requirement. And the requirement of landlady to accommodate her parents and Grandparents did not cease even after her marriage. The Eviction order by Original Authority was affirmed.

(2017) 5 SCC 212

Chakreshwari Construction Private Limited vs. Manohar Lal

Date of Judgment: 10.02.2017

Civil Procedure Code Section 1908 - Order 6 Rule 17 and Order 7 Rule 14(3) – Amendment of pleadings and consequential submission of additional documents – When can be allowed – Principles summarized.

Some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately interms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

(2017) 4 SCC 771

Swami Shivshankar Giri Chella Swami and Anr. vs. Satya Gyan Niketan and Anr.

Date of Judgment: 23.02.2017

Civil Procedure Code Section 92 – Object of Section 92 – Discussed.

The Hon'ble Supreme Court held that, plaint should be annexed with the application filed u/s. 92 Civil Procedure Code and it is a prerequisite for filing the application for leave to file a suit. Based on the averments in the plaint only, it can be inferred that whether an application under section 92 Civil Procedure Code is maintainable or not. It is the statutory duty of the court to examine that whether the plaint is so annexed with the application under section 92 Civil Procedure Code or not.

2017 (6) SCALE 86

Jaswinder Kaur (now deceased) Through her Lrs' and ors. vs. Gurmeet Singh and ors.

Date of Judgment: 18.04.2017

(Specific Relief Act Section 12 and 16) – Scope of Section 12 and 16 discussed by Hon'ble Supreme Court.

The Hon'ble Supreme Court held that, if the party is not ready and willing to perform whole of the contract, Specific Performance with respect to the part of the contract could not be ordered.

2017 (5) SCALE 495

Chilamkurti Bala Subramanyam vs. Samantha pudu vijaya Lakshmi and Anr.

Date of Judgment: 02.05.2017

Civil Procedure Code Order 21 Rule 64 & 90 – Sale Set aside – when can be ordered

The Hon'ble Supreme Court held that, the law on the question of setting aside the court auction sale under Rule 90 of Order 21 Civil Procedure Code is clear. It is not the material irregularity or fraud that alone is sufficient to set aside the sale. The Judgment Debtor has to go further and establish to the satisfaction of the Court that the material Irregularity or fraud as the case may be, has resulted in causing substantial injury to the Judgment Debtor in conducting the sale. It is only then the sale so conducted could be set aside under Order 21 Rule 90(2) Civil Procedure Code. On facts, it was held that, there was adequate publicity given with the aid of beat of drums and the Judgment Debtor did not adduce any evidence or brought any bidder to purchase the property for price higher than the purchase bid and thus held that the Executing Court was justified in over ruling the objections raised by Judgment Debtor and in dismissing the petition under section Order 21 Rule 90 Civil Procedure Code.

SUPREME COURT – CRIMINAL CASES

2017 (2) MWN (CrI) 1 (SC)

Aires Rodrigues vs. Vishwajeet P. Rane and others

Date of Judgment: 10.01.2017

**Criminal Procedure Code 1973, Section 484, Criminal Law Amendment Act, 1932 –
Section 10 – General Clauses Act, 1897, Section 8**

The Question raised before the Hon'ble Supreme Court was "Whether the notification issued by the State of Goa, Daman & Diu declaring Sections 186, 188, 189, 228, 295-A, 298, 505 & 507 IPC, when committed within its territory, to be cognizable and section 188 or 506 IPC to be non-bailable, is valid?"

The Hon'ble Supreme Court held that, the said notifications are operative, approving the view taken by Hon'ble High court of Madras, in "P. Ramakrishnan vs. State rep. by Inspector of Police (2010 (1) LW (CrI.) 848)".

(2017) 4 SCC 490

Taruntyagi vs. Central Bureau of Investigation

Date of Judgment: 08.02.2017

**Criminal Procedure Code Necessity of Compliance of Section 207 is to ensure
fair trial – Copies of Hard Disc – Whether can be given to accused?**

The case involves offences u/s.66, of Information Technology Act 2000, Section 63 and 63-B of Copyright Act 1957, alleging that the accused had stolen the 'source code' of a software developed by the complainant company and thereafter put it for sale on a website. The Central Bureau of Investigation doing investigation had seized certain documents and materials from the office/ residence of accused/appellant including a hard disk. Central Bureau of Investigation filed the charge sheet and though Copies of all other documents are supplied to the appellant/accused, he is not given the aforesaid hard disks. The appellant had filed petition seeking copies of these hard discs. He had submitted that as per 'Government Examiner of Questioned Documents' (GEQD) cloned copies of these hard discs can be prepared and therefore, there is no problem in supplying the same to the appellant. The prosecution had objected that if the documents are supplied at that stage, the appellant might misuse the same.

Held:

In a case like this, the appellant / accused will try to demonstrate that the source code contained in the CDs is different from the source code of the complainant and the seized material contained the source code developed by him. So in order to prove his defence, the copies of the seized CD's need to be supplied to the appellant. The right to get these copies is statutorily recognized under section 207 Criminal Procedure Code which is the hallmark of a fair trial that every document relied upon by Prosecution has to be supplied to the defendant/accused at the

time of supply of the charge sheet to such an accused to enable him to demonstrate that no case is made against him.

The Hon'ble court, Considering the apprehension of the prosecution that if a copy is given to the accused he may erase or change or secure the date, has held that, in order to comply with the provision of section 207 of the code, the hard discs marked as Q 2, 9 and 20 be supplied to the appellant subject to the following conditions.

- a) Before supplying the said CDs, the contents thereof shall be recorded in the Court, in the presence of the complainant as well as the appellant and both of them shall attest the veracity thereof by putting their signatures so that there is no dispute about these contents later thereby removing the possibility of tampering thereof by the appellant.
- b) The appellant shall not make use of the source code contained in the said CDs or misuse the same in any manner and give an affidavit of undertaking to this effect in the trial court.

(2017) 2 MLJ (CrI) 361 (SC)

Rajagopal vs. Muthupandi @ Thavakalai and Others

Date of Judgment: 28.02.2017

Indian Penal Code Section 302, 148, 149 & 307 – Direct Evidence and Motive

The Hon'ble Supreme Court while considering whether motive has to be established in a case, where there is direct evidence.

Held:- It is well established that motive does not have to be established where there is direct evidence. It further held that, the point that no body has been examined from residences and shops nearby; and that no taxi driver has been examined since witnesses (PW1 & PW2) claim to have gone to hospital in a taxi, and that the motor cycles on which the accused drove are seized, all pales into insignificance once direct evidence is available.

(2017) 2 MLJ (CrI) 364 (SC)

In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials

Date of Judgment: 30.03.2017

In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials - Guidelines issued by Hon'ble Supreme Court

The Hon'ble Supreme Court, finding out that there are some common deficiencies while conducting Criminal Trials, has laid down certain guidelines to be followed while conducting Trial of Criminal Cases, regarding, recording of evidence, marking of Exhibits and Material objects and important aspects that should be found in Judgments and also for the appellate and Revisional Courts to follow, in detail.

(2017) 2 MLJ (Crl) 562 (SC)

Kumaran vs. State of Kerala and Another

Date of Judgment: 05.05.2017

Negotiable Instruments Act, 1881, Section 138 – Cr.P.C. Sec. 357, 421 and 431 – Recovery of Compensation when default sentence undergone by accused – whether can be made?.

The Interesting Question raised before the Hon'ble Supreme Court was "Whether when compensation is ordered as payable for an offence committed u/s 138 NI Act, and in default thereof, a jail sentence is prescribed and undergone, is compensation still recoverable"

The Hon'ble Supreme Court held, after considering the provisions of Sec, 431 Cr.P.C., that the legal fiction enacted under the said Section 431 of Cr.P.C. is not limited to "the purpose of this Act" alone and that it is clear that the object of the legal fiction created by section 431, is to extend for the purpose of recovery of compensation until such recovery is completed.

Thus it was held that, the compensation ordered u/s 357 (3) Cr.P.C., is recoverable in the manner prescribed u/s 421(1) Cr.P.C., even though a default sentence has been suffered.

MADRAS HIGH COURT – CIVIL CASES

(2017) 3 MLJ 829

R. Kannan vs. M. Anbazhagan and others

Date of Judgment: 04.01.2017

Civil Procedure Code, Order 21, Rule 46 B & 48 – Execution Petition against Garnishee for payment of money due by the Judgment Debtor – Duty of Garnishee.

The Court held that, the official respondent of Garnishee should appear and raise objections if he is not the disbursing authority. If he remains silent by not appearing and allows the Execution Petition to be closed, he cannot later turn around and say that he was not the disbursing authority when the Execution Petition was filed against the Judgment Debtor and Garnishee, for paying the amount due to the petitioner. It is further held by court that if the Garnishee does not raise his objection in the appropriate time – Then, he is liable to pay the decreed amount.

(2017) 3 MLJ 670

M. Subramonia Pillai and another vs. Nagarajan

Date of Judgment: 20.02.2017

Civil Procedure Code Section 20 – Jurisdiction and Constitution of India Article 14, 15, 16, 17, 18 & 19 – Denial of Membership to plaintiff by defendants.

The plaintiff had filed the suit for mandatory injunction directing the defendants to admit him as member of the community, on receipt of membership fees and other dues, since the defendants had rejected his request for his membership, as the plaintiff had married a girl of another community. The Trial Court had dismissed the suit on the ground that the court has no jurisdiction. The petition filed by the plaintiff seeking permission to sue the defendants as representative of the Chetti Samudhayam, was also dismissed by trial court.

The Hon'ble High Court on second appeal held that, the trial court had, in a wrong impression dismissed the application by holding that the suit is not filed in the capacity of the representative and failed to understand that, the plaintiff sought permission to sue the defendants as representative of Chetty Samudhayam. Further, since the defendants are residing at Padhmanabapuram, and the plaintiff had submitted his request to defendants only at padmanabapuram, the Trial Court has jurisdiction under section 20 Civil Procedure Code.

The Hon'ble High Court further held that, the contentions of the defendants that the byelaws of the Samudhayam prohibited membership to a person who married a person of different community cannot be accepted, as the very clause in the byelaws of the Samudhayam itself is against the provisions of all laws of the country.

(2017) 4 MLJ 6

Manickam vs. Chinnammal and another

Date of Judgment: 24.02.2017

Property Laws – Suit for Bare Injunction – Counter claim for Declaration, Permanent Injunction and recovery of Possession. Natham property - whether there is necessity for plaintiff to seek Declaration?

The court held that, taking into consideration the oral and documentary evidence, the Lower Appellate Court rightly found that the plaintiffs are in possession of the suit property. Since the Defendant has not produced any document except Patta to establish his title over the property, the lower appellate court rightly dismissed the counter claim and decreed the suit filed by the plaintiffs. Further all the documents produced by the defendant are subsequent to the filing of the suit. Since the suit property is a Natham Porampoke, in which neither the plaintiffs nor the defendants can claim title, there is no necessity for the plaintiffs to file the suit for declaration.

(2017) 3 MLJ 726

Gem Granites Rep by its partner Asai Thambi

vs.

**Indian Overseas Bank, Esplanade Branch, Rep by its Chief Manager and another,
Esplanade Chennai**

Date of Judgment: 16.03.2017

Enforcement of Bank guarantee – Permanent Injunction restraining 1st defendant / Bank from enforcing or paying Bank guarantees provided to 2nd defendant before ownership over disputed lands were settled by court.

The plaintiff has sought the relief of permanent Injunction restraining the Defendants from enforcing the Bank guarantees till the rights of ownership over the disputed lands are settled by court. But there is no such condition in the bank guarantees. Hence the incorporations of new conditions unilaterally by the plaintiff cannot be accepted. Further the interim order passed by the Hon'ble Karnataka High Court in Writ Petitions has merged with the final order passed in the Writ petitions, that were ultimately dismissed. Hence, the plaintiff cannot restrain the defendants from invoking the bank guarantees issued in their favor. The second appeal dismissed.

2017- 2 –L.W. 871

Selvi Vijayalakshmi vs. A. Sankaran and another

Date of Judgment: 24.03.2017

Paternity test – DNA test to prove Paternity – Matrimonial Dispute between parents, Father had filed application for directing his wife (Mother) and the daughter to undergo DNA test (In other words Paternity test).

The subordinate court had ordered DNA test. Aggrieved by the said order, the daughter who is not a party to the original Proceedings between spouses, has filed this Revision Petition Challenging the direction to undergo DNA test.

The Honorable High Court held that, though the court can order DNA test, it cannot be a routine matter because it involves personal freedom of an individual, and only in rare cases and real cases such a test can be ordered, provided there is a prima facie case for ordering such a test. The revision petitioner was born many years ago at a time when the spouses lead their happy married life. As per section 112 of Indian Evidence Act, Onus is upon the Husband to show that he had no access to the revision petitioner's mother, but in this case he did not do so. The revision petitioner is not a party to the matrimonial dispute between the spouses and dragging the petitioner also into a murky affair at the cost of her personal life is very difficult to digest. Absolutely there is no prime facie case to order for DNA test. Judges must also be alive to the sensitiveness involved in the cases coming before them.

2017-2-L.W. 858

Ramu (Deceased) and others vs. Samuel Nadar

Date of Judgment: 24.03.2017

Proof of Title – Departure of Principle of Boundaries over extent, when applies.

The Honorable High Court has held that, the principle that evolves is that, though the well established principle that, “boundaries will prevail over the extent”, continues to prevail, in a given case where there is discrepancy between boundaries and extent and the extent that lies within the given boundaries is much more than what could hence actually been conveyed, a departure has to be made.

2017 (3) CTC 499

R. Amutha vs. Jeyachitra

Date of Judgment: 24.03.2017

Indian Stamp Act – 1899 Section 10, 11, 2(11), 2(13),2(23) and Article 53 – Negotiable Instrument Act Section 4.

The Hon'ble High Court Held that,

Promissory note can be written on paper having an engrossed stamp or it can be with Adhesive stamps of requisite value – Kinds of stamps described and discussed in the Judgment. The differences between “Promissory note” and “Receipt” also discussed and held that, recitals of instrument is ‘sine quo non’, to determine nature of transaction and that, Promissory note with Default clause engrossed on “impressed stamp” satisfies definition of “receipt” and that instrument stamped in accordance with Act 53 of Act is enforceable in law.

2017-2-L.W.692

Thandava Mudaliar and anr. vs. Saraswathy @ Sarasu and ors.

Date of Judgment: 04.04.2017

Hindu Law – Factum of Marriage – Proof of Marriage – Burden of Proof vs. Onus of Proof.

The Hon'ble High Court held that, the law is well settled qua the principle that, though the Burden of Proof does not shift from one party to the Other, the Onus not only shifts, but also swing like a pendulum from one end to other, depending on the initial discharge of Burden of Proof. It was further held that, when proof beyond doubt is elusive for both parties, in a civil case, the civil court, will certainly adopt the theory of 'Preponderance of Probabilities' in place of 'proof beyond doubt unlike a criminal case.

2017 (3) CTC 657

Parvathi vs. Gowri Meena

Date of Judgment: 07.04.2017

Specific Relief Act Section 16 (c) and Evidence Act Section 92

Suit filed for specific Performance of agreement of sale by Respondent/Plaintiff, against Appellant / Defendant. The Appellant / Defendant, had claimed that, the defendant had availed a loan of Rs.2 Lakhs from the plaintiff and at that time, the plaintiff obtained signatures in blank stamp papers and that the plaintiff has created a sale agreement utilizing those stamp papers.

On facts the Hon'ble High Court held that, once the signature is admitted, then a contrary stand cannot be taken under section 92 of the Indian Evidence Act. And further held that, the appellant/defendant has not shown any circumstances to give any relief on equity and she has not come forward with proper disclosure of facts. Whereas respondent / plaintiff has proved the execution of sale agreement and has established her readiness and willingness.

Hence the Hon'ble High Court dismissed the appeal, holding that the plaintiff is entitled to suit relief.

(2017) 4 MLJ 1

Amaladoss Stephen vs. Srimathi. Seethalakshmi Ammal and others

Date of Judgment: 11.04.2017

Succession Laws – Will Suspicious Circumstances – Absence of Reasons for disinheriting other children – Effect.

The Court held that, when the plaintiff setup title to the property by purchase, it is for her to prove that her vendor had a title in the property sold. The vendor had claimed title through a will. As per the will, the testatrix disinherited her other children and her husband. It is not the case of the plaintiff that the relationship between the testatrix and her other children was strained at the time of execution of the will. However there is no explanation as to why the other heirs were disinherited and the suit property has been given only to vendor (3rd defendant). Absence of reason for denying the benefit to other children, who are entitled to inherit the property would cast a cloud of doubt on the genuineness of the will.

MADRAS HIGH COURT – CRIMINAL CASES

(2017) 2 MLJ (Crl) 287

Kumaresan

vs.

**State, rep. by The Inspector of Police, Vriddhachalam Police Station, Vriddhachalam,
Cuddalore District Crime No. 662 of 2014**

Date of Judgment: 12.01.2017

Murder – Counter Case – Cr.P.C. – Procedure for Investigation.

The Hon'ble High Court held that, it is settled law that when there are cases in counter, both the cases should be investigated by the same investigating officer: The truth should be found out and accordingly final report should be filed. Similarly, it also held that the failure of prosecution witnesses to explain the injuries sustained by the accused would give rise to a presumption that the prosecution party is suppressing an important part of the occurrence. Thus, they have rendered themselves unbelievable.

(2017) 2 MLJ (Crl) 295

Rajkumar [A7] and others

vs.

State, rep by its Deputy Superintendent of Police, CBCID, Madurai City OCU and others

Date of Judgment: 23.01.2017

**Indian Evidence Act Section 27, 30 and 65 B- Judicial Confession – Certificate by
Magistrate.**

The Hon'ble High Court held that, the Magistrate should record his belief that the confession was made voluntarily by the accused. The belief of the Magistrate on satisfying his Judicial Conscience alone attach solemnity to the Judicial Confession. If any such Judicial confession is made voluntarily it would be the sole foundation for conviction even in the absence of any corroboration. In the instant case the footnote of the learned Magistrate nowhere reflects that he believes that confession was made voluntarily by the accused. He has only recorded that the accused understood the questions put to him and answered them.

In the absence of belief of the Learned Magistrate that the confession was made voluntarily. It cannot be given any weightage because voluntariness of the confession is sine-Qua-Non for its admission and acceptance.

(2017) 2 MLJ (CrI) 622

V. Arul Jothi

vs.

State by Inspector of Police, Namakkal Police Station, Namakkal District (Cr.No. 886/2012)

Date of Judgment: 08.02.2017

Murder – more than one Dying Declaration – Reliability

The deceased died due to burn injuries. She was first admitted on 11.04.2012, in a private hospital. At that time, she had told the doctor that she caught fire accidentally while cooking with use of kerosene stove. On 16.04.2012 when the police recorded her statement, she had told there that she sustained injuries due to accidental fire while cooking. Later, when she was shifted to Government hospital on 10.05.2012 and when P.W.7 (Dr. Jayanthini) examined her, at 11.45 a.m., the deceased had told her that on 11.04.2012 that around 03.30 p.m. she self immolated herself. This was recorded by the doctor in the Accident Register. Later, when the Judicial Magistrate visited the hospital on 10.05.2012 at 02.45 p.m., the deceased had told him that A1 who returned home in a drunken state poured kerosene mixed with brandy on her and set fire. She had further stated that, when the deceased tried to escape, A2 pulled her from inside the house. Thereafter, the deceased died on 20.05.2012.

On considering the facts & circumstances of the case, Hon'ble High Court held that the earliest statement given by the deceased in the private hospital was consistently repeated by the deceased for 29 days that she sustained injuries in accidental fire. Though it is true that the dying declaration of deceased is substantive evidence and even in absence of corroboration, that by itself can be foundation to convict accused, but in instant case, it is difficult to believe the Judicial dying declaration in view of the consistent statements made by the deceased for the initial 29 days that she sustained injuries due to accidental fire while cooking with use of kerosene stove.

Conviction set aside and appellant acquitted.

2017-1-L.W.(CrI.) 698

Madavan

vs.

**The State rep by The Inspector of Police, All Women Police Station, Ariyalur District
(Crime No.8/2015)**

Date of Judgment: 03.03.2017

**Protection of Children from Sexual Offences Act (2012), Sections 6, 29 -Tamil Nadu
Prohibition of Child Marriage Act (2006), Section 9 - I.P.C., Section 366**

The question raised before Hon'ble High Court was, Whether formal written order taking cognizance has to be passed. It was held that, in the instant case though there was no formal written order taking cognizance, the fact remaining that, there was infact cognizance taken by the learned Judge and at any rate there was no failure of justice.

Further the Hon'ble Division Bench held that, the provision under section 36, 37 & 38 of the POSCO Act contain elaborate procedure, as to how the Trial should be conducted by the

special court, so as to ensure that the child is not exposed in any way to the accused at the time of recording of evidence and as to how conducive atmosphere should be provided to the child to depose freely without any fear and any compulsion. But the records reveal that there is no indication that this procedure was followed by the learned judge. In the absence of compliance of these provisions and when there is no record to indicate that a child friendly atmosphere was provided to the child, we are of the view that the reasons for the child to turn hostile in court disowning her earlier statement is presumable.

It further held that, the presumption raised under section 29 of the Act is rebuttable and it can be rebutted either by direct evidence or by circumstantial evidence. But in this case the accused has failed to rebut the same.

This un rebutted presumption would clearly go to prove that the accused had committed the offence.

2017 (3) CTC 603

Dr. Muthukumar @ Muthukumar and another

vs.

**The State, rep. by the Inspector of Police, District Crime Branch, Thanjavur
(Crime No. 311 of 2009) and another**

Date of Judgment: 03.03.2017

**Code of Criminal Procedure, 1973 (2 of 1974), Section 162 – Statements given to
Police Officers – Evidentiary Value – Relevancy.**

The Hon'ble Division Bench has held that the bar under section 162 is only for the Criminal Proceedings and there is No bar for Civil Court or for the Writ Court to rely on the statements under section 162 Cr.P.C.

(2017) 2 MLJ (Crl) 343

Mohammed Ali Jinna S/o. Kadar Mohideen and Others

vs.

**Intelligence Officer, Directorate of Revenue Intelligence, Chennai – 600 017
(F.No.DRI/CZU/VIII/48/ENQ-1/INT – 13/2015)**

Date of Judgment: 14.03.2017

Narcotic – Illegal Possession – Commercial Quantity – Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 1985), Sections 8(c), 9A, 22(b), 22(c), 25, 28 and 29 – Accused Nos.1 to 4 are Petitioners – Case is pending trial on file of Special Judge, NDPS cases – Charges framed against accused for offences under Sections 9A read with Section 29, 9A read with Section 25A of Act 1985 in respect of dealing with controlled substance and Sections 8(c) read with Section 29, 8(c) read with Section 22(c) and 8(c) read with Section 28 of Act 1985 – Challenge is to charge No.4 imputing offence under Section 8(c) read with Section 22(c) of Act 1985 – Whether Charge no.4 imputing offence under Section 8(c) read with Section 22(c) of Act 1985 ought to be altered – *Held*, tablets seized from petitioners are in dosage form – Notification would require a determination of small or commercial quantity on basis of content of psychotropic substance of that particular drug in dosage form – Petitioners were in possession

which is below commercial quantity – If prosecution is to contend that entire dosage is to be taken for purpose of determining whether possession is in small or commercial quantity effect would be prosecution allegation of company/manufacturer of drug/substance violating provisions of Act 1985 without charging them therefor – Court would state that reference to drug/substance in dosage form can only be with reference to dosage form as permissible in law – Lower Court directed to alter charge No.4 from one under Section 8(c) read with Section 22(c) of Act 1985 to one under Section 8(c) read with Section 22(b) – Revision allowed.

2017 (2) MWN (Cr.) DCC 15 (Mad.)

C. Kathirvel

vs.

K.S.V. Cotton Mills (P) Ltd., rep by its Managing Director, S. Kathirvel, Gujiliyamparai, Vedachandhur, Dindikkal District-703. 2. S. Kathirvel

Date of Judgment: 22.03.2017

NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 181) Section 138,139 – Presumption – When would arise.

The Hon'ble High Court Held that, the Presumption under section 139, would arise only when the complainant established due execution of cheque in discharge of legally enforceable debt or liability. When very fact of execution is in dispute, the complainant needed to prove not only execution but also passing of consideration.

2017-1-L.W.(CrL.) 709

P. Duraisamy

vs.

The State represented by the Secretary to Government Department of Home (Prison) Fort St.George Chennai 600 009 and others

Date of Judgment: 13.04.2017

Registration of Births and Deaths Act (1969), Section 13(3), 30 Tamil Nadu Registration of Births and Deaths Rules (2000) – Rules 9 (2), 10 (3) – Jurisdiction of Judicial Magistrate.

Juvenile Justice [Care of Protection] Act, (2000) – Proof of age – How to be made.

The Hon'ble Division Bench held that, the Judicial Magistrate/ Metropolitan Magistrate in the State of Tamil Nadu cannot pass any order under Section 13(3) of Tamil Nadu Registration of Births and Deaths Act after 25.01.2017 and that the Code of Criminal Procedure is not applicable to a proceeding under section 13(3) of the said Act. It further held that, an entry in the register of the Birth and Death is not a Conclusive proof of the date of Birth/Death.

CDJ 2017 MHC 3616

Vignesh vs. State rep by Inspector of Police – Seven wells Police Station

Date of Judgment: 27.04.2017

Criminal Procedure Code Section 438 and Juvenile Justice (Care and Protection of Children) Act, 2015 - Anticipatory Bail whether available for Juvenile.

The question that arose before the Hon'ble Division bench for reference was "Whether an application seeking bail u/s 438 Cr.P.C. at the instance of the Juvenile conflict with law in terms of Juvenile Justice Act, 2015 is maintainable before the High Court or before the Court of Session?".

The Hon'ble Court held that it is manifestly clear that an application seeking anticipatory bail u/s 438 Cr.P.C. at the instance of the child in conflict with law is not at all maintainable.

Similarly the direction to Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in the exercise of its inherent power u/s 482 Cr.P.C.

2017 (1) TLNJ 570 (Criminal)

Z. Thomas Zacharia

vs.

**The Inspector of Police, Kottor Police Station, Kanyakumari District
(Crime No. 280 of 2010) and Appukutan**

Date of Judgment: 18.05.2017

Criminal Procedure Code, 1973 Sections 173(5) and 173(8) – Petition to receive Additional Documents – The prosecution had filed petitions to receive additional documents after examining all the witnesses except the defacto Complainant, quoting the provision as under section 173(5) and 173(8) Cr.P.C. The accused had opposed the petitions claiming that it was filed to drag on the proceedings and that no further investigation could be ordered.

The Hon'ble High Court held that, though the petition is filed under section 173(5) and 173(8) Criminal Procedure Code, the prosecution has not prayed for any relief for further investigation on the basis of the documents produced. It has only quoted wrong provisions.

The Court further held that, during the course of Criminal Trial, if any fresh materials comes to light there cannot be any prohibition in receiving the same for proving or disproving the allegations made by the prosecution and that the relevancy of the documents mentioned in the petition shall be decided on conclusion of trial.
