



# TAMIL NADU STATE JUDICIAL ACADEMY

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## IMPORTANT CASE LAW



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# INDEX

<b>S. No.</b>	<b>IMPORTANT CASE LAW</b>	<b>PAGE No.</b>
1.	Supreme Court – Civil Cases	01
2.	Supreme Court – Criminal Cases	04
3.	Madras High Court – Civil Cases	07
4.	Madras High Court – Criminal Cases	12

# TABLE OF CASES WITH CITATION

## SUPREME COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	M/s.Kaushik Co-Operative Building Society vs. N.Parvathamma and others	2017 (4) SCALE 490	11.04.2017	Doctrine of <i>res judicata</i> is a wholesome one which is applicable not merely to matters governed by the provisions of the Code of Civil Procedure but to all litigations.	01
2	Bhagirath vs. Ram Ratan	(2017) 6 MLJ 237 (SC)	14.07.2017	Contract, Specific Performance - Readiness and Willingness – Father of 1 <sup>st</sup> defendant entered into agreement to sell suit land with plaintiff for consideration and earnest money received by him from plaintiff – on death of father, plaintiff approached 1 <sup>st</sup> defendant for execution of sale deed and filed suit for specific performance – <b>Held:</b> Agreement shrouded in mystery even if its execution found to be established – prima facie execution of agreement appears to be for obtaining money for treatment only – land never actually intended to be sold and also, it could not have been sold for paltry sum – When substantial consideration in form of earnest money advanced by plaintiff/lawyer, he would not wait for six years even for asking for first time that too to son of deceased to perform agreement – keeping silence for six years indicates that agreement was for obtaining money for treatment only – it would be iniquitous to decree specific performance.	01

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
3	Shayara Bano vs. Union of India	2017 (9) SCALE 178:: (2017) 9 SCC 1 – (Larger Bench - Five Judges)	22.08.2017	<b>Muslim Law – Muslim Personal Law (Shariat) Application Act, 1937 – Section 2 – Constitution – Articles 13, 14, 15(1), 21, 25, 32, 141 &amp; 142 – Triple Talaq or 'talaq-e-biddat' – validity – Held:</b> Triple Talaq cannot be treated as essential religious practice merely because it has continued for long - Practice of Talq-e-Biddat or Triple Talaq thus declared illegal and set aside.	02
4	Justice K.S.Puttaswamy (Retd.) and another vs. Union of India and others	CDJ 2017 SC 981:: 2017 (10) SCALE 1::2017 (6) MLJ 267 (SC)::LNIND 2017 SC 420 (Constitution Bench – 9 Judges)	24.08.2017	Question before the Constitution Bench was whether right to privacy is fundamental right guaranteed under Constitution – <b>Held, Yes.</b> – Detailed Judgment.	02
5	Amardeep Singh vs. Harveen Kaur	2017 (3) SCC (Cri) 505 :: 2017 (3) TLNJ 609 (Civil) SC :: 2017 (1) SCALE 258 (2017) 8 SCC 746 :: 2017 (5) CTC 665	12.09.2017	<b>i) Hindu Marriage Act, 1955, Section 13-B(2) – Divorce on mutual consent – minimum cooling period of six months is not mandatory but directory – it can be relaxed in any exceptional situations – guidelines framed.</b> <b>ii) Generally Held:</b> No court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. Courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law – various decisions referred.	03

# SUPREME COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No
1	Krishnaveni Nagam vs. Harish Nagam	2017 0 Supreme (SC) 255:: CDJ 2017 SC 275:: AIR 2017 SC 1345:: 2017 (3) LW 721	09.03.2017	Transfer of divorce proceedings from Madhya Pradesh to Hyderabad - directions issued - 1.Video conferencing; 2. Legal Aid ; 3.Deposit of cost of travel, lodging and boarding; and 4.Providing email id/phone number of litigants.	04
2	Manoj Kumar vs. Champa Devi	CDJ 2017 SC 561	06.04.2017	Maintenance - wife - deserts husband - husband on that ground seeks divorce - divorce granted – wife entitled to Maintenance. - following Vanamala Vs H.M.Ranganatha Bhatta - 1995 (5) SCC 299 and Rohatash Singh Vs. Ramendri & others – 2000 (3) SCC 952	04
3	Sonu vs. State of Haryana	2017 (5) CTC 207 (SC) :: 2017 (3) MWN (Cr.) 130 (SC) :: AIR 2017 SC 3441 :: (2017) 8 SCC 570 :: (2017) 4 MLJ (CrI) 23 (SC) :: 2017- 2-L.W.(CrI.) 606 SC	18.07.2017	<b>Indian Evidence Act, 1872, Section 65-B(4)</b> – Electronic Records – Call Detail Record of Mobile – Admissibility in evidence – <b>Held:</b> objection relating to mode/method of proof to be raised at time of marking of exhibit and not later – only when documents are inherently inadmissible, admissibility can be challenged at appellate stage – CDRs not inherently inadmissible – Issue of mode of proof, a procedural issue and can neither be raised nor rectified at appellate stage – challenge made to admissibility of CDR, unsustainable – appeal dismissed.	05

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	Meters and Instruments Private Limited and others vs. Kanchan Mehta	2017 (6) CTC 66	05.10.2017	<p><b>Negotiable Instruments Act, 1881, Sections 138 &amp; 139 – Cr.P.C., 1973, Sections 357(1)(b) &amp; 357(3) – dishonor of cheques – compounding of offences – Held,</b> when object of provision being primarily compensatory and punitive in nature with intendment of enforcing compensatory element, principle of Section 258 Cr.P.C. will apply and Court can close proceedings and discharge accused on satisfaction that cheque amount with assessed cost and interest is paid, even if complainant refuses to receive the amount. <b>Further held,</b> compounding at initial stage has to be encouraged but it is not debarred at later stage subject to appropriate compensation as may be found acceptable to parties or Court.</p>	05
5	Independent Thought vs. Union of India and Another	CDJ 2017 SC 1163	11.10.2017	<p>Sexual intercourse between man and his wife being girl between 15 and 18 years of age is rape. Exception 2 to Section 375 IPC should be read down to bring it within four corners of law and make it consistent with Constitution -Exception 2 to Section 375 IPC in so far as it relates to girl child below 18 years is liable to be struck down.</p>	06

# MADRAS HIGH COURT - CIVIL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Central Bank of India, Regional Office, Madurai and another vs. Gomathiammal	2017 (5) CTC 302	19.10.2016	<b>SARFAESI Act, 2002 – Section 34</b> – Suit filed to declare the sale and the sale certificate issued by the Bank as null and void is not maintainable in view of express bar under Section 34 of the Act.	07
2	Bank of Baroda vs. R.Subramanian	2017 (5) CTC 198	01.02.2017	<b>CPC., 1908, O.7, Rule 11</b> – Recovery of Debts due to Banks and Financial Institutions Act, 1993, Section -18 – Rejection of Plaintiff – guarantor sought declaration that bank guarantee was void <i>ab initio</i> – maintainability of suit – Held: Suit is barred by Section 18 of RDBFI ACT.	07
3	Valarmathi Marian vs. Palkees Ummal and others	CDJ 2017 MHC 2791	04.04.2017	<b>Indian Evidence Act, Section 68</b> – Held, When execution of settlement deed is not denied, there is no necessity for examining the attesting witnesses to prove it.	07
4	Sampoornam vs. Karuppanna Gounder and other	CDJ 2017 MHC 2989:: 2017 (5) MLJ 66	04.04.2017	Succession Laws – Partition of Ancestral Property – Female Coparcener – <b>Hindu Succession Act, 1956</b> - Daughter entitled to partition, as succession opened only in 2005, even though she was married before 1989.	08
5	Techno Plastic Industries vs. Dart – Industries Inc	CDJ 2017 MHC 2655 :: 2017-3-L.W.99	25.04.2017	Injunction – Grant of - Trade Mark, passing off - Trade dress or packing – apart from similarity, Plaintiff has to further prove that the same is being associated by Public/consumers as an integral part of the product itself. Further, aggrieved party has to establish its market share has been usurped by the opposite party by fraudulently using its goodwill and reputation, which the aggrieved party has earned in the market.	08
6	Balakrishnan and others vs. B.Veni and others	2017 (5) CTC 249	02.06.2017	<b>Specific Relief Act, 1963, Sections 16(c) &amp; 20</b> – Suit for specific performance – readiness and willingness to perform – <b>Held:</b> Failure of trial court to frame an important issue regarding readiness and willingness of Plaintiff vitiates entire judgment.	09

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
7	Gowri vs. Subbu Mudaliar and others	2017-2-L.W. 715	21.04.2017	<p><b>i) Hindu Succession Act, 1956, Sec. 2(2A) - applicability to Pondicherry : Held:</b> In view of Section 4 of Hindu Succession Act, which has overriding effect of all the customs, Hindu Succession Act alone applies to the Hindus residing in Pondicherry, except renouncants who renounced their personal status and adopted French Law.</p> <p><b>ii) Property obtained as Hindu Joint Family – Rule of survivorship was applied as per Mitakshara Principle of law – one of the legal heirs cannot contend property is self acquired as per Customary Hindu Law.</b></p> <p><b>iii) Will– Any Will executed in respect of entire joint family property is not valid in law.</b></p>	09
8	Thambammal and others vs. Subbayammal (Died) and others	2017 (5) CTC 225	17.05.2017	<p><b>(i) Contract Act, 1872, Ss. 11 &amp; 16 – Undue influence – Balance of probabilities far outweigh presumption that they were executed out of normal and voluntary disposition of mind, and favours presumption of undue influence. (ii) Evidence Act, 1872, Sec.68 – Indian Succession Act, 1925, Sec.63 – When execution of Will is shrouded by suspicious circumstances and evidence of attesting witness is unconvincing, Will cannot be held to be proved.</b></p>	10
9	R.Manoharan and 4 others vs. The Deputy Commissioner, HR and CE, Madurai and another	2017 (5) CTC 238	18.05.2017	<p><b>T.N. HR &amp; CE Act, 1959, Sec. 6 –Whether Ancestor’s Samadhi, owned and maintained by family is a religious institution? Held:</b> Presence of Hundi, conduct of religious rights, worship by public, as a matter of right, are essentials of religious institution. Dharmadaya Inam granted to specific family for upkeep and maintenance of Samadhi, cannot be termed as Public endowment. Grant being private grant, will not come under purview of HR &amp; CE.</p>	10
10	R.Leela Ammal vs. V.Gopal	2017 (5) CTC 154	06.06.2017	<p><b>i) Indian Evidence Act, 1872, Ss. 3 &amp; 58- admission – effect of - When signature in sale agreement admitted by defendant, non-examination of attesting witnesses, who are brothers and sisters of defendant is not fatal to the case of Plaintiff.</b></p> <p><b>ii) Specific Relief Act, 1963 – Section 16(c) – Readiness and willingness to perform contract – depositing amount before filing suit not essential for proving readiness, in absence of court order, as per explanation (i) to Section 16 (c) of Specific Relief Act.</b></p>	11

# MADRAS HIGH COURT - CRIMINAL CASES

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
1	Ganesan vs. State, by DSP, V and C, Chennai	2017-2-L.W.(Cr.) 543	03.11.2016	<b><u>Prevention of Corruption Act &amp; Vigilance and Anti Corruption Manual, Rule 47</u></b> Held: Non-compliance of provisions in the Vigilance manual will not be a ground for acquitting accused.	12
2	Shanmugam and Ors vs. State, Rep.by the Inspector of Police, Thanjavur District and Others	2017-1-L.W.(Cr.) 195	17.11.2016	<b><u>(i) Criminal Procedure Code, Sections 211, 226, 464</u></b> – beginning of case by public prosecutor – Absence to begin case by Public Prosecutor in Sessions- how it affects framing of charges- not proper-effect- would amount to irregular trial.  <b><u>(ii) Criminal Conspiracy</u></b> – ingredients of Section 120-B IPC – If charge did not indicate whether it was under Section 120-B(i) or 120-B(ii), specifically indicating the main offence abetted, is defective.  <b><u>(iii)</u></b> On the ground of failure to frame appropriate charges, matter remanded back to trial Court.	12
3	N. Banu and others vs. State of T.N.	2017-2-L.W.(Cr.) 1 :: 2017(2) MWN (Cr.) 338 (DB)	21.04.2017	<b><u>i) Framing of charges</u></b> – Failure to frame proper charge would result in failure of justice.  <b><u>ii) Imposing punishments</u></b> – Under Scheme of Code, Court has no discretion to omit to impose sentence for offence of conspiracy to commit murder – omission to impose punishment for offence of conspiracy is contrary to mandate of Code.  <b><u>iii) Conspiracy</u></b> – Conspiracy to murder and murder committed in pursuance of conspiracy are two distinct offences.  <b><u>iv) Evidence of independent witness</u></b> – An independent witness who has spoken about presence and participation of accused in a crime deserves to be accepted.	12

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
4	Sagayam @ Devasagayam vs. State	2017) 3 MLJ (CrI) 134 :: 2017 (2) TLNJ 209 (Criminal)	24.04.2017	<p><b>Modification of bail conditions:</b> (i) Imposing condition in bail orders should be fair, reasonable and should not be unjust, otherwise it will run counter to Article 21 of the Constitution of India.</p> <p>(ii) Nowhere in Section 436 or 437 or 439 or 438 of Code, 1973 or in Form No.45 appended to Schedule II to Code, 1973, production of property document, title deeds either by surety or by accused contemplated.</p> <p>(iii) When accused execute bail bond, Court cannot insist production of property documents.</p>	13
5	A.Suryanarayan vs. G.M.Joseph Raj	(2017) 3 MLJ (CrI) 52	26.04.2017	<p><b>Negotiable Instruments – Dishonour of Cheque – acquittal –</b> Absence of complainant on the date of hearing cannot be a good ground for acquitting an accused in a routine and cavalier fashion. The crucial test would be whether the complainant or the accused was prevented for a bona fide reason from not attending the particular date of hearing.</p>	13
6	Mohamed Ali and another vs. State, rep by The Inspector of Police, District Crime Branch Police Station, Kanyakumari District and another	2017 (3) MLJ (CrI) 191	08.06.2017	<p><b>Prosecution – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c) and 22 – Indian Penal code, 1860, Sections 34 and 40 – Held:</b> Section 34 of Code, 1860 could also be invoked to other penal legislations as it was only rule of evidence and not substantive penal provision.</p>	14
7	Felix Suresh Peter vs. The Inspector of Police, Peraiyur Police Station and another	2017-1-L.W.(CrI) 550	30.06.2017	<p><b>Criminal Procedure Code, Sections 70, 73, 317 – IPC, Sections 323, 342 -</b> Court should not exercise discretion in favour of issuing non bailable warrant, if there is no intentional non appearance of the accused.</p>	14
8	Varadharajan vs. Mythili and another	2017 (5) CTC 652	14.07.2017	<p><b>Code of Criminal Procedure, 1973, Section 125 –</b> Maintenance to wife – parameters for grant of maintenance – Income of husband is relevant factor.</p>	15

S. No	CAUSE TITLE	CITATION	DATE OF JUDGMENT	SHORT NOTES	Pg. No.
9	Kavitha vs. C.Prabhakar	CDJ 2017 MHC 6065	07.09.2017	<p><b>Disbursement of maintenance amount utilizing Digital India Programme</b> - vision of Digital India programme is to transform India into a digitally empowered society and knowledge economy - thus to enhance timely justice delivery system in respect of disbursement of maintenance amount deposited in the Court in respect of the maintenance proceedings to the wife, the lower judiciary has to update themselves on par with the scheme floated by the Union of India in "Digital India" by utilizing the Digital India programme as adopted. All the Family Courts are required to adopt digital India for disbursement of the award amount to enhance the timely justice delivery system. Certain directions issued to Registry of High Court, in this regard.</p>	15
10	Murugasamy vs. The State, Rep by Inspector of Police, Karumathampatty Police Station Coimbatore District and another	2017-2-L.W.(Cr) 345 :: 2017 (5) CTC 561:: 2017(3) MWN (Cr.)77 :: (2017) 4 MLJ (Cr) 129	15.09.2017	<p><b>i) Cr.P.C., 1973, S.164(6)</b> – Statements recorded by Magistrate – whether copy of statement to be furnished to Police immediately after recording by Magistrate – Held, Yes and evolved a procedure. Also held, accused not entitled to know as to whether he has been identified by Witness in TI Parade prior to filing of Final Report. Directions issued to State Government on the procedure to conduct Test Identification Parade. – <b>Held:</b> As per direction issued by Supreme Court in Shivanna, copy of statement should be handed over to IO immediately, by taking two photo copies of statement, certifying them, issuing one copy to IO and keeping other copy in his custody and sending original statement to JM/Court, with specific direction not to disclose contents of such statement to any person till charge sheet is filed.</p> <p><b>ii) S.164</b> – High Court evolved procedure in consonance with S.164 and mandate of Apex Court in Shivanna for recording Statements.</p> <p><b>iii) S.54-A</b> -Test Identification Parade – procedure to be followed – directions issued to State Government.</p> <p><b>iv)</b> Accused not entitled to know as to whether he has been identified by Witness in TI Parade prior to filing of Final Report.</p>	16

# SUPREME COURT – CIVIL CASES

**2017 (4) SCALE 490**

**M/s.Kaushik Co-Operative Building Society vs. N.Parvathamma and others**

**Date of Judgment: 11.04.2017**

**Land Grabbing – A.P.Land Grabbing (Prohibition) Act, 1982 – Section 8(1) – CPC – Section 11** – Land grabbing case – dispute regarding identity of the suit land – applicability of principle of *res-judicata* – question is whether the High Court was justified in not quashing the proceedings on LGC No.44/2000, when the Special Court ex-facie lacks jurisdiction over the subject matter in the instant case applying principles of *res-judicata* – Held, No – allowing the appeals filed by appellant-society, **Held.**

(A) The main point revolves around the principles of *res-judicata* which is neither against public policy nor *res-integra* to civil procedure prevailing in our country. The doctrine of *res judicata* is a wholesome one which is applicable not merely to matters governed by the provisions of the code of Civil Procedure but to all litigations.

(B) The question of *res-judicata* is not *integra* to our judicial system. The rule of *re judicata* while founded on ancient precedent is dictated by a wisdom which is for all time and that the application of the rule by the Courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

(C) Furthermore, it is well settled that the principle of *res judicata* is applied for the purpose of achieving finality in litigation.

(D) Court perused the written notes on arguments of the learned counsels for both the parties and after a punctilious scrutiny of complete record, Court is of the considered opinion that it may be true that the Court at initial stage may not enter into the merit of the matter. Its opinion in the nature of things would be a *prima facie* one. But the Court must also consider that the analogy of *res-judicata* or of the technical rules of civil procedure is, in cases like the present one, appropriate and the courts are expected to administer the law as to effectuate its underlying object. Court shall also bear in mind that the basic character of this principle is public policy and preventive as to give finality to the decision of the Court of competent jurisdiction and prevent further litigation.

**(2017) 6 MLJ 237 (SC) LNINDORD 2017 SC 10908**

**Bhagirath vs. Ram Ratan**

**Date of Judgment: 14.07.2017**

Agreement shrouded in mystery even if its execution found to be established – *Prima facie* execution of agreement appears to be for obtaining money for treatment only – Land never actually intended to be sold and also, it could not have been sold for paltry sum – When substantial consideration in form of earnest money advanced by Plaintiff/lawyer, he would not wait for six years even for asking for first time that too to son of deceased to perform agreement – Keeping silence for six years indicates that agreement was for obtaining money for treatment only – It would be iniquitous to decree specific performance considering delay on part of Plaintiff even if agreement executed.

**2017 (9) SCALE 178:: (2017) 9 SCC 1 – (Larger Bench - Five Judges)**

**Shayara Bano vs. Union of India**

**Date of Judgment: 22.08.2017**

**Consitution of India – Article 25** – Muslim personal law – practice of Talaq-e-Biddat or Triple Talaq (that is instant, irrevocable, unilateral divorce by husband by formula of pronouncing divorce three times), **held**, per majority, is not protected by Article.25 as it is not an essential religious practice – Talaq-e-Biddat or Triple Talaq is against the basic tenets of Quran and thus violates the Shariat – Even though Triple Talaq is lawful in Hanafi jurisprudence (followed by 90% of Sunni Muslims in India and which Hanafi School alone recognizes Triple Talaq), yet that very jurisprudence castigates Triple Talaq as sinful – Moreover, it cannot be said that there is no ratio decidendi in Shamim Ara, (2202) 7 SCC 518 – it made a specific finding as to how Triple Talaq does not adhere to Quranic principles and therefore is bad in both theology and law – Triple Talaq cannot be treated as essential religious practice merely because it has continued for long – practice of Talaq-e-Biddat or Triple Talaq thus declared illegal and set aside.

**CDJ 2017 SC 981:: 2017 (10) SCALE 1::2017 (6) MLJ (SC) :: LNIND 2017 SC 420**

**(Constitution Bench – 9 Judges)**

**Justice K.S.Puttaswamy (Retd.) and another vs. Union of India and others**

**Date of Judgment: 24.08.2017**

**Constitution – Fundamental Right – Right to Privacy – Constitution of India, 1950, Articles 12,14,19,20(3),21 and 25** – Whether right to privacy is fundamental right guaranteed under Constitution – **Held**, privacy is constitutionally protected right which emerges primarily from guarantee of life and personal liberty in Article 21 – Elements of privacy also arise in varying contexts from other facets of freedom and dignity recognized and guaranteed by fundamental rights contained in Part III – Judicial recognition of existence of constitutional right of privacy is not exercised in nature of amending Constitution nor Court embarking on constitutional function of that nature entrusted to Parliament – Like other rights which form part of fundamental freedoms protected by Part III, privacy is not absolute right - Law which encroached upon privacy will have to withstand touchstone of permissible restrictions on fundamental rights – In context of Article 21, invasion of privacy must be justified on basis of law which stipulates procedure which is fair, just and reasonable – law must also be valid with reference to encroachment on life and personal liberty under Article 21 – Invasion of life or personal liberty must meet three fold requirement of legality, which postulates existence of law, need defined in terms of legitimate state aim and proportionality which ensures rational nexus between objects and means adopted to achieve them – Privacy has both positive and negative content – Negative content restrains State from committing intrusions upon life and personal liberty of citizen and its positive content imposes obligation on state to take necessary measures to protect privacy of individual – Informational privacy of individual – Informational privacy is facet of right to privacy and dangers to privacy in age of information can originate not only from State but from non-State actors as well – Union Government to examine and put into place robust regime for data protection – Creation of such regime requires careful and sensitive balance between individual interests and legitimate concerns of State – Legitimate aims of State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and spread of knowledge and preventing dissipation of social welfare benefits – such matters of policy to be considered by Union Government while designing structured regime for data protection – since committee chaired by former Judge of

present Court constituted for that purpose, matter shall be dealt with appropriately by Union Government – Reference answered accordingly.

**2017 (3) SCC(Cri) 505 :: 2017 (3) TLNJ 609 (Civil) SC :: 2017 (1) SCALE 258 :: (2017) 8 SCC 746 :: 2017 (5) CTC 665**

**Amardeep Singh vs. Harveen Kaur**

**Date of Judgment: 12.09.2017**

**Family and Personal Laws – Hindu Marriage Act, 1955 – Section.13-B(2) – Divorce by mutual consent – Cooling-off period of six months – Held,** for determining whether provision is mandatory or directory, language alone is not decisive and court must have regard to context, subject-matter and object of provision – Court can waive off statutory period under S.13-B(2) in its discretion after considering following factors: (i) statutory period of six months specified in S.13-B(2) in addition to statutory period of one year separation under S.13-B(1) is already over before first motion itself; (ii) no likelihood of reconciliation between parties; (iii) parties have genuinely settled all their differences including alimony, custody of child or any other pending issue; and (iv) whether waiting period would only prolong agony- thus, cooling-off period being directory, it is open to court to exercise its discretion in facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation – Moreover, in conducting such proceedings the court can also use the medium of videoconferencing and also permit genuine representation of the parties through close relations such a parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice – Interpretation of Statutes – subsidiary rules – mandatory or directory – Constitution of India, Art.142.

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## **SUPREME COURT – CRIMINAL CASES**

**2017 0 Supreme (SC) 255::CDJ 2017 SC 275:: AIR 2017 SC 1345:: 2017 (3) LW 721**

**Krishnaveni Nagam vs. Harish Nagam**

**Date of Judgment: 09.03.2017**

**Hindu Marriage Act (1955), Sections 13, 19 - Matrimonial proceedings** – Transfer of case, petition by wife – Doctrine of Forum convenience – Applicability of – when – Factors for transfer of case what are – High Courts ought to issue appropriate administrative instructions to regulate the use of video conferencing for matrimonial case – Legal Aid committee to make available legal aid service – Technology to be utilized for services – Every district court must have at least one e-mail ID – wherever defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice – Order incorporating such safeguards may be sent along with the summons – Directions passed.

**CDJ 2017 SC 561**

**Manoj Kumar vs. Champa Devi**

**Date of Judgment: 06.04.2017**

**Criminal Procedure Code, 1973 - Section 125** – Maintenance – Desertion- Respondent/ Wife sought for maintenance against Appellant/Husband – Trial Court allowed Petition –Appellant preferred appeal before High Court and contended that he had obtained divorce on ground of desertion and was under no obligation to pay maintenance to Respondent - High Court dismissed Appeal –Appellant aggrieved over impugned order - Hence filed Special Leave Petition – Court. **Held** – Relying on decisions of Apex Courts – As Section 125 of Criminal Procedure Code, including explanation under sub-section (1) has been consistently interpreted by this Court, for last two decades – As aforesaid consistent view was followed by High Court while passing impugned order – As such we find no justification to interfere with impugned order, in exercise of our jurisdiction under Article 136 of Constitution – Special Leave Petition was dismissed. A wife who has been divorced on the ground of deserting the husband, would be entitled to maintenance under Section 125 Cr.P.C on the ground of being a divorced wife, even though she might not have been able to claim maintenance under Section 125 Cr.P.C during the subsistence of the marriage for the reason that she has refused to live with her husband without sufficient reasons. **Vanamala (Smt) v. H.M. Ranganatha Bhatta, 1995(3) R.C.R.(Criminal) 210 : (1995) 5 SCC 299**, and secondly, **Rohtash Singh v. Ramendri (Smt.) and others, 2000(2) R.C.R.(Criminal) 286 : 2000(3) SCC 180** followed by Supreme Court.

**2017 (5) CTC 207 (SC) :: 2017 (3) MWN (Cr.) 130 (SC) :: AIR 2017 SC 3441 :: (2017) 8 SCC 570  
:: (2017) 4 MLJ (CrI) 23 (SC) :: 2017-2-L.W.(CrI.) 606 SC – 18.07.2017**

**Sonu vs. State of Haryana**

**Date of Judgment: 18.07.2017**

**Evidence Act, 1872(1 of 1872), Section 65-B** – Call Details Records(CDR) of Mobile Phone – inadmissibility of CDRs not accompanied by certificate as contemplated under Section 65-B(4) – permissibility of objection regarding inadmissibility at stage of appeal before Supreme Court – admittedly no objection taken when CDRs adduced in evidence before Trial Court – No objection taken even at appellate stage before High Court – no case that CDRs a form of Electronic record not inherently admissible in evidence – objection is that CDRs marked without certificate as required by Section 65-B(4) – objection relating to mode or method of proof to be raised at time of marking document as Exhibit and not later – crucial test is whether defect could have been cured at stage of marking – had objection taken before Trial Court, Court could have given opportunity to prosecution to rectify defect – mode and method of proof being procedural, objection having not taken at trial, cannot be permitted at appellate stage – only admissibility of documents inherently inadmissible can be taken at Appellate stage – CDRs do not fall in category of inherently due to violation of procedure prescribed in Section 65-B(4), cannot be permitted to be raised at this stage.

**2017 (6) CTC 66**

**Meters and Instruments Private Limited and others vs. Kanchan Mehta**

**Date of Judgment: 05.10.2017**

**Negotiable Instruments Act, 1881(@6 of 1881), Sections 138 & 139 – Code of Criminal Procedure, 1973(2 of 1974), Sections 357(1)(b) & 357(3)** – Object of Enactment – Dishonour of Cheques – Compounding of offences – Payment of Cheque amount by accused pending trial – jurisdiction of Court – object of enactment is to enhance acceptability of cheques in settlement of liabilities – offence under law primarily related to civil wrong- penal provision for dishonor of cheques – object of provision being primarily compensatory and punitive in nature with intendment of enforcing compensatory element – intention of legislature was to ensure that complainant must receive amount of cheque by way of compensation – principle of Section 258 of Cr.P.C., will apply and Court can close proceedings and discharge accused on satisfaction that cheque amount with assessed cost and interest is paid – compounding at initial stage has to be encouraged but it is not debarred at later stage subject to appropriate compensation as may be found acceptable to parties or court.

**CDJ 2017 SC 1163**

**Independent Thought vs. Union of India and Another**

**Date of Judgment: 11.10.2017**

**Indian Penal Code, 1860 - Section 5, Section 41, Section 375 - Prohibition of Child Marriage Act, 2006 - Section 3, Section 3(1), Section 11, Section 14 - Hindu Marriage Act, 1955 - Section 13(2)(iv) - Protection of Children from Sexual Offences Act, 2012 - Section 42, Section 42-A - Protection of Women from Domestic Violence Act, 2005 - Section 3 - Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 2(12), Section 2(14), Section 27 - Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2(k) - Dissolution of Muslim Marriages Act, 1939 - Section 2(vii) - Criminal procedure code - Section 198(6) - Protection of Human Rights Act, 1993 - Constitution of India - Article 14, Article 15, Article 15(3), Article 21, Article 23, Article 32 - Marital rape –**

i) Whether sexual intercourse between man and his wife being girl between 15 and 18 years of age was rape - **Court held** - no reason to arbitrarily discriminate against girl child who was married between 15 and 18 years of age - On contrary, there was every reason to give harmonious and purposive construction to pro-child statutes to preserve and protect human rights of married girl child - this was only pragmatic option available - Court are left with absolutely no other option but to harmonize system of laws relating to children and require Exception 2 to Section 375 of IPC to now be meaningfully read as: “Sexual intercourse or sexual acts by man with his own wife, wife not being under eighteen years of age, was not rape” - It was only through this reading that intent of social justice to married girl child and constitutional vision of framers of our Constitution can be preserved and protected and perhaps given impetus - Court have not at all dealt with larger issue of marital rape of adult women since that issue was not raised before us by petitioner or intervener. Paras: 105,106,107

ii) Whether Exception 2 to Section 375 of IPC, in so far as it relates to girls aged 15 to 18 years, was unconstitutional and liable to be struck down” was question for consideration in this writ petition

**Court held** (Deepak Gupta, J) - issue raised is only with regard to girl child and Court did not think it proper to deal with this issue which may have wider ramifications especially when case of girl child can be decided without dealing with issue of privacy - Court has not dealt with wider issue of “marital rape”, Exception 2 to Section 375 IPC should be read down to bring it within four corners of law and make it consistent with Constitution -Exception 2 to Section 375 IPC in so far as it relates to girl child below 18 years was liable to be struck down - Section 198(6) of Crpc will apply to cases of rape of “wives” below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of Crpc.

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## **MADRAS HIGH COURT – CIVIL CASES**

**2017(5) CTC 302**

**Central Bank of India and another vs. Gomathiammal**

**Date of Judgment: 19.10.2016**

**Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002) (SARFAESI Act) Section 34 – Constitution of India, Article 227** – Suit filed by Loan Guarantor to declare sale proceedings of Bank as null & void on ground of fraud by Bank – Maintainability of – Section 34 of Act places express bar against jurisdiction of Civil Court – Applicability of Civil Court jurisdiction analyzed through series of judgments – Suit barred by Section 34 of SARFAESI Act – suit not maintainable – consequently impugned Order set aside and Plaint struck off – Respondent to file appeal before appropriate forum, subject to limitation.

**2017 (5) CTC 198**

**Bank of Baroda vs. R. Subramanian**

**Date of Judgment: 01.02.2017**

**Recovery of Debts due to Banks and Financial Institutions Act, 1993(51 of 1993)** – Section 18 – Code of Civil Procedure, 1908(5 of 1908), Order 7, Rule 11 – Rejection of Plaint – Guarantor sought declaration that bank guarantee was void ab initio – Maintainability of Suit – Bank initiated Loan Recovery proceedings before DRT - Guarantor's Application for discharge dismissed by DRT & DRAT – **Held**, Tribunal is empowered to decide all issues pertaining to recovery of loan – Civil Court would be ousted with regard to dispute relating to Recovery proceedings – Civil Court has jurisdiction to decide issue, if any fraud played by Secured Creditor – Tribunal is not mere collection agent – Enforcement of contract can very well be decided by Tribunal – agitating same issue in two different fora is abuse of process of law – Tribunal's power to decide Application includes power to test validity of documents relied on by Banks – Suit barred by Section 18 – Application allowed, consequently Plaint rejected.

**CDJ 2017 MHC 2791**

**Valarmathi Marian vs. Palkees Ummal and others**

**Date of Judgment: 04.04.2017**

**Indian Evidence Act, Section 68** - Partition Suit - Plaintiff filed the suit claiming 1/8<sup>th</sup> share in the suit property, alleging that the suit property was purchased by her husband – denying the relationship of the plaintiff with the deceased, defendants contended that the deceased settled the property in favour of defendants – it was contended by the plaintiff that the alleged settlement deed was not proved by examining attesting witnesses – **Held**: The entire evidence of D.W.1 with regard to the execution of the settlement by Hameed Sulthan is not denied by the plaintiff. When the execution of the document is not specifically denied, there is no need for examining the attesting witnesses, particularly, with regard to registered settlement, as per proviso to Section 68 of the Indian Evidence Act. The plaintiff, in this case, neither in the plaint nor in her evidence has denied execution of the

document by late Hameed Sulthan. Further held, when the execution of the document by the executor is not specifically denied, the person relying upon the document need not resort to the provision of Section 68 of the Indian Evidence Act for proving the documents which have been registered in accordance with the provisions of Indian Registration Act.

**CDJ 2017 MHC 2989 :: 2017 (5) MLJ 66**

**Sampoornam vs. Karuppanna Gounder and other**

**Date of Judgment: 04.04.2017**

**Succession Laws – Partition of ancestral property – Female Coparcener – Hindu Succession Act, 1956(Act 1956), Section 6 – Hindu Succession Tamil Nadu (Amendment) Act, 1990 (Act 1990), Section 29-A – Hindu Succession (amendment) Act, 2005(Act 2005), Section 6 –** 1<sup>st</sup> Defendant/1<sup>st</sup> Respondent was father of Appellant/Plaintiff and her sister/2<sup>nd</sup> Defendant – On death of 2<sup>nd</sup> defendant, her legal heirs were added as Defendants – Suit property was joint family property – Suit filed by Plaintiff for partition dismissed by Lower Courts – Aggrieved, Plaintiff filed appeal – whether under Section 6 of Act 2005, female coparcener married before cut-off date was entitled for share in undivided ancestral property – **Held**, as per Section 29-A of Act 1990, daughter to become coparcener should not have been married prior to cut-off date – said amendment superseded by Act 2005, giving daughters equal rights along with sons in coparcenary property – condition put forth to effect that succession, which opened prior to coming into force of Act 2005, would have no application at all – succession was yet to be opened for reason that 1<sup>st</sup> defendant was still alive – condition put forth in Act 1990 taken by virtue of act 2005 and therefore, marriage of plaintiff prior to 35 years was no bar to claim her right as coparcener in suit property – Ex.B3 will come into force on certain date, after cut-off date given in provision to Section 6 of Act 1956 – 1<sup>st</sup> defendant could bequeath his right in respect of his share only and he could not bequeath entire suit property in favour of his wife.

**CDJ 2017 MHC 2655 :: 2017-3-L.W.99**

**Techno Plastic Industries vs. Dart Industries Inc.**

**Date of Judgment: 25.04.2017**

**Injunction/Trade Mark** ‘Tupperware’, ‘Signorware’, Passing off, principles, what are Injunction – grant of – passing off action – challenge to products of respondents sold under brand “Tupperware”, appellants selling their products under brand “Signorware” There is no phonetic similarity or deceptive similarity. Grievance that appellant is passing off its products as that of respondents – Trade set up whether similar – Aggrieved party has to establish its market share has been usurped by the opposite party by fraudulently using its goodwill and reputation, which the aggrieved party has earned in the market.

Evidence substratum of any civil suit – mere pleadings and financial documents would not be suffice to grant any relief – it is to be established that general public have been misled into believing that product which they have purchased was not they had wanted to purchase. Channels of distribution is recognized as one of the tests in an action for passing off though not in an action for infringement – In the case distinctiveness of the shape also needs to be established that it can be associated only with the respondents.

**2017 (5) CTC 249**

**Balakrishnan and others vs. B. Veni and others**

**Date of Judgment: 02.06.2017**

**Specific Relief Act, 1963, Sections 16(c)&20** – Suit for specific performance – readiness and willingness to perform – Plaintiff executed sale agreement with condition to complete Sale within 6 months and paid sale advance – after two years, Leal Notice issued demanding documents proving Title of Sellers – Sellers returned Sale Advance and sold Suit properties to other purchasers - **Held**, Failure of trial court to frame an important issue regarding readiness and willingness of Plaintiff vitiates entire judgment – doctrine of Delay and Laches – Inordinate and unexplained delay in issuing suit notice and filing suit would disentitle plaintiff from seeking equitable relief of specific performance – If delay caused serious prejudice to defendants and also created rights in third parties, such delay cannot be ignored – Plaintiff cannot be granted relief of Specific Performance owing to long delay coupled with conduct of Plaintiff and material circumstances – Appeal allowed – Judgment and Decree of Trial Court set aside.

**2017-2-L.W. 715**

**Gowri vs. Subbu Mudaliar and others**

**Date of Judgment: 21.04.2017**

**Hindu Succession Act (1956), Sections 2(2A) applicability to Pondicherry, scope, 4, 5, 6, 30.**

**Pondicherry(Laws) Regulation (1963) (w.e.f.01.10.1963), Regulation 7.**

**Hindu Law/Custom, Mitakshara Law, applicability to Pondicherry Hindus, scope of,**

**Partition/Hindu law, joint family, coparcenery.**

**WILL / by Hindu**, in Pondicherry, whether valid, proof of Applicability of Hindu succession act to Pondicherry, effect of Section 4 – Customary Hindu Law whether applicable to Hindus in Pondicherry – whether Mitakshara coparcenary in Pudhucherry applicable, scope of, what is father whether absolute owner of ancestral property Will, rights of, proof, scope Section 4 of Hindu Succession Act provides overriding application of the Act – Any custom or usage as part of the law which was governing Hindus in Pondicherry except renouncants immediately before the commencement of this Act shall cease to have effect prior to French regime there was no custom governing the Hindus – They are all governed only by Mitakshara principles – It cannot be said that there were customs which were unique other than Mitakshara school among the Hindus in the Pondicherry even prior to the French regime – History in Pondicherry traced - **Held**, In view of Section 4 which has overriding effect of all the customs, Hindu Succession Act alone apply to the Hindus residing in Pondicherry except renouncants who renounced their personal status and adopted French Law property in this case was obtained as Hindu Joint family – Rule of survivorship was applied as per Mitakshara principle of law – One of the legal heirs cannot contend property is self acquired as per customary Hindu law. properties are ancestral properties, came to 'MM' – He had two sons, 'A' (plaintiff's husband) and first defendant – two sons by virtue of their becoming coparcenars along with their father, each entitled to 1/3 share in ancestral properties Will by MM – challenge to – any Will executed in respect of entire joint family property is not valid in law.

**2017 (5) CTC 225**

**Thambammal and 4 others vs. Subbayammal (died) and 7 others**

**Date of Judgment: 17.05.2017**

**Contract Act, 1872(9 of 1972), Sections 11 & 16 – Undue influence** – suspicious circumstances – person of unsound mind – sale deeds and Will bequeathing suit properties were executed by 83 year old man, immediately after death of his first wife – Executor was being treated for Schizophrenia around that time – beneficiaries of documents belonged to a single family – validity of documents executed by person of unsound mind – **Held**, person, having Schizophrenia disease, cannot be expected to have full control of his senses- Execution of documents shrouded with suspicious circumstances because; (i) documents executed immediately after death of beloved wife;(ii) documents executed by person aged more than 83 years;(iii) oral and documentary evidence unconvincing about executor being of sound mind; and (iv)single family benefitting from execution of documents – Balance of probabilities far outweigh presumption that they were executed out of normal and voluntary disposition of mind, and favours presumption of undue influence – Impugned Judgment and Decree of lower Court confirmed – Appeal suit dismissed with costs.

**Evidence Act, 1872(1 of 1872), Section 68 – Indian Succession Act, 1925(39 of 1925), Section 63** – Will shrouded by suspicious circumstances – Evidence of Attesting Witness unconvincing – Will not proved.

**2017 (5) CTC 238**

**R.Manoharan and 4 others vs. The Deputy Commissioner, HR and CE, Madurai and another**

**Date of Judgment: 18.05.2017**

**Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (T.N.Act 22 of 1959)**  
**Section 6** – Whether ancestor's Samadhi, owned and maintained by family, is religious institution – suit property granted as Inam to Plaintiffs for maintenance of Ancestor's Samadhi – Guru Poojas conducted by family and attended by Public – HR & CE declared suit property as Math – Order confirmed by Lower Court – Appeal against – presence of Hundi, conduct of Religious rights, worship by Public as a matter of right are essentials of Religious Institution – Dharmadaya Inam granted to specific family for upkeep and maintenance of Samadhi, cannot be termed as a Public Endowment - Grant, being Private grant, will not come under purview of HR & CE – **Held**, Suit property is exclusive Private Samadhi of Ancestor for following reasons: (i) Guru Poojas conducted by single family and general public attended only by invitation, (ii) suit property within private property of Plaintiffs, (iii) no document to show that it is Public Institution, (v) no statement obtained to show that it was Public Religious Institution – Appeal suit allowed and impugned Judgment set aside with costs.

**2017 (5) CTC 154**

**R.Leela Ammal vs. V.Gopal**

**Date of Judgment: 06.06.2017**

**Indian Evidence Act, 1872, Sections 3 & 5B – Admission – effect of** – Defendant that attesting witnesses were not present, when agreement of sale was signed, and that witnesses signed later – defendant's notice to notice to plaintiff admitted execution of agreement of sale and receipt of sale advance – execution of document admitted – terms contained in such document cannot be questioned – since signature in sale agreement admitted by defendant, non-examination of attesting witnesses, who are brothers and sisters of defendant, is not fatal to case of Plaintiff.

**Specific Relief Act, 1963, (47 of 1963), Section 16(c) Readiness and willingness to perform contract** – recitals in agreement for sale required balance sale consideration to be deposited in court before seeking specific performance – whether plaintiff's failure to deposit amount before filing suit proves lack of readiness and willingness to perform contract – **Held**, depositing balance sale consideration not mandatory without Court direction, despite recitals to that effect in agreement for sale – depositing amount before filing suit not essential for proving readiness, in absence of Court Order, as per Explanation (i) to Section 16(c) Specific Relief Act.

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## **MADRAS HIGH COURT – CRIMINAL CASES**

**2017-2-L.W.(Crl.) 543**

**Ganesan vs. State, by DSP, V and C, Chennai**

**Date of Judgment: 03.11.2016**

**Prevention of Corruption Act Sections 7, 13(1)(D), 13(2), 19(1) – Directorate of Vigilance and Anti Corruption Manual, Rule 47** – Whether statutory, following of, scope – earlier order of sanction contains typographical errors which did not convey correct and proper meaning for according sanction – PW1 justified in issuing the revised order of sanction. Clauses in the Vigilance Manual are all in the nature of guidelines to be followed by the investigation officer while dealing with criminal cases – they have no statutory force – Non-compliance of provisions in the Vigilance manual will not be a ground for acquitting accused – prosecution proved demand made by first accused to defacto complainant for payment of illegal gratification – there was a demand and acceptance of bribe amount by the accused at the place of occurrence.

**2017-1-L.W.(Crl.) 195**

**Shanmugam and Ors vs. State, Rep.by the Inspector of Police, Thanjavur District and Others**

**Date of Judgment: 17.11.2016**

**I.P.C., Sections 34, 120-B, 294, 302, 307, 342, 352**

**Criminal Procedure Code, Sections 211,226** - opening case for prosecution, 464 - Criminal Trial/Framing of Charge, public prosecutor to begin, absence of, effect Murder- Criminal conspiracy proof of – Framing of charge by trial court how to be done – failure of – effect - Beginning of case by public prosecutor in sessions court – need for – absence to do – trial irregular – matter remanded criminal conspiracy – ingredients of Section 120-B – charge did not indicate whether it was section 120-B – charge did not indicate whether it was section 120(B)(i) or 120B(ii) what is main offence abetted, hence defective - Stabbing of deceased by accused seven times, allegation of – whether proved – four accused went together armed with weapons in same transaction, first accused caused death of deceased by stabbing him seven times – No charge under Section 34 framed – when trial court invoked Section 34 to frame charges against accused Nos. 2 to 4 for offence of murder – trial court failed to frame appropriate charges – matter remanded.

**2017-2-L.W.(Crl.) 1 :: 2017 (2) MWN (Cr.) 338 (DB)**

**N. Banu and others vs. State of T.N.**

**Date of Judgment: 24.04.2017**

**I.P.C., Sections 120B, 302 r/w 149 120B, 506(ii)** - framing of Charges, whether proper – Trial Court framed charge against all seven accused under Section 120B I.P.C., simplicitor – charge does not state as to what was the offence that was conspired – punishment for the offence of conspiracy under Section 120B I.P.C. depends upon the punishment provided for offence conspired – trial court defectively framed a charge under Section 120B without indicating that offence conspired was a

murder – Court cannot omit to impose punishment on accused – while framing charges and while punishing accused, distinction is seldom noticed by the Subordinate Judiciary.

**Criminal Procedure Code, Sections 306, 307, Approver grant of pardon, evidence whether acceptable, scope** - Murder – Conspiracy – proof – Criminal trial – accomplice evidence – Reliance – when – P.W.79 was an active participant in initial conspiracy, out of fear he withdrew – argument that P.W.79 exculpated himself, cannot be accepted – P.W.79 did not pray for grant of pardon, cannot hold P.W.79 is unworthy of credit.

**(2017) 3 MLJ (Crl) 134 :: 2017 (2) TLNJ 209 (Criminal)**

**Sagayam @ Devasagayam vs. State**

**Date of Judgment: 24.04.2017**

**Anticipatory Bail – Modification of Conditions – surety – Code of Criminal Procedure, 1973(Code 1973), Sections 436, 437, 438 and 439 – Constitution of India, 1950 (Constitution), Article 21** – Petitioner filed petition seeking anticipatory bail, but conditions imposed in granting same – petitioner was unable to execute bail bond and filed present petition to modify certain portion of bail condition imposed – whether petition filed by petitioner to modify portion of bail condition imposed, sustainable – Held, bail provisions and provisions relating to bail bonds, surety bonds cannot run counter to Article 21 of Constitution – while fixing bail amount, Court must take into account circumstances of case and it should not be excessive – Bail bond amount should ‘not be onerous’ and bail condition should not be ‘harsh condition’ – surety should be fit person and if court consider it necessary, it can conduct enquiry by itself or it can direct Subordinate Court to conduct enquiry as to fitness of person to stand as surety – There cannot be indignation to surety, which will make him run away from Court without offering surety – Court can accept cash surety instead of personal surety but cannot demand personal surety, property surety, cash surety, at same time – Imposing condition in bail orders should be ‘fair’, ‘reasonable’ and should ‘not be unjust’ otherwise it will run counter to Article 21 of Constitution – Nowhere in Section 436 or 437 or 439 or 438 of Code 1973 or in Form No.45 appended to Schedule II to Code 1973 production to property document, title deeds either by surety or by accused contemplated – when accused executes bail bond, court cannot insist production of property documents – Surety need not be Government servant or blood relative or local surety – Directions issued – Petition disposed of.

**(2017) 3 MLJ (Crl.) 52**

**A.Suryanarayan vs. G.M.Joseph Raj**

**Date of Judgment: 26.04.2017**

**Negotiable Instruments – dishonour of cheque – acquittal - Negotiable Instruments Act, 1818(Act 1881), Section 138 – Code of Criminal Procedure, 1973 (Code 1973)** – Trial Court passed judgment of acquittal on ground that complainant never took steps to subject himself for cross of P.W.1 – Aggrieved, complainant filed appeal – Whether judgment of acquittal for offence under Section 138 of Act 1881 liable to be set aside – Held, crucial test would be whether complainant or accused prevented for bona fide reason from not attending particular date of hearing – when complainant was absent on given date of hearing then, nowhere Code 1973 enjoins that complaint should be dismissed or accused ought to be discharged – Because of non-appearance of complainant, it was not necessary that in all cases accused shall be acquitted – complaint under Section 138 of Act 1881 ought not to be dismissed in interest of deliverance substantial justice – judgment of acquittal for non-appearance of complainant might bar fresh perusal of case in respect of same offence – P.W.1’s

cross examination was not yet completed and was in midway – Trial Court should not have closed evidence on side of complainant and posted matter for judgment – course of action adopted by trial court in closing the evidence of P.W.1 and posting main case of judgment is not a prudent course of action – Court without expressing opinion on merits of matter in respect of main case, to prevent aberration of justice and to promote substantial cause of justice set aside impugned judgment of acquittal - matter remanded back to Trial Court for fresh consideration – appeal allowed.

**2017 (3) MLJ(CrI) 191**

**Mohamed Ali and another vs. State, rep by The Inspector of Police, District Crime Branch  
Police Station, Kanyakumari District and another**

**Date of Judgment: 08.06.2017**

**Prosecution – Quashing of – Recovery of Contraband – Criminal Procedure Code, 1973(Code 1973), Section 482 – Narcotic Drugs and Psychotropic Substances Act, 1985(Act 1985), Sections 8(c) of Act 1985** – Aggrieved, Petitioners/2<sup>nd</sup> and 3<sup>rd</sup> accused filed present petition for quashing prosecution – whether prosecution against Petitioners to be quashed - Held, Petitioners attempted to take umbrage by confining their cases only to seizures effected from them individually – such test could not be applied to present case – Seizures effected from different accused in course of single transaction – Prosecution materials prima facie show that 1<sup>st</sup> to 5<sup>th</sup> accused operated with common intention – Section 34 of Code 1860 could also be invoked at any time by Court – it was not necessary that there should be specific charge, because Section 34 of Code 1860 did not create new offence, but only rule of evidence – Section 34 of Code 1860 would show that framers used expression “ criminal acts” and not “offence” – word “offence” defined under Section 40 of Code 1860 which limits its application to Code 1860 alone – usage of expression “ criminal acts “ in Section 34 of Code 1860 was wider than word “offence” same could lend itself to other penal legislations as it was only rule of evidence and not substantive penal provision – petition dismissed.

**2017-1-L.W.(CrI) 550**

**Felix Suresh Peter vs. The Inspector of Police, Peraiyur Police Station and another**

**Date of Judgment: 30.06.2016**

**Criminal Procedure Code, Sections 70, 73, 317 - I.P.C., Sections 323, 342 - Petition to recall NBW** – Court should not exercise discretion in favour of issuing nonailable warrant – When there is no intentional non appearance of accused, court can either issue summons orailable warrant or issue instructions to the accused through pleader asking for the appearance before the Court. Without scrutiny of the entire facts and circumstances of the case and complete application of mind, the court should not exercise the discretion in favour of issuing non-ailable warrant. The court must decide whether issuance of non-ailable warrant is the only way to get the presence of the accused.

**2017(5) CTC 652**

**Varadharajan vs. Mythili and another**

**Date of Judgment: 14.07.2017**

**Code of Criminal Procedure, 1973 (2 of 1974), Section 125** – Maintenance to Wife – Parameters for grant of Maintenance - Quantum of Maintenance – Income of Husband is relevant factor – Award of exorbitant Maintenance – husband earning salary of Rs.12,000/- and Trial court ordered maintenance of Rs.3,500/- - tenability – wife is Post-Graduate and earning Income out of employment - providing maintenance to aged parents by husband is statutory duty – award of more than 2/3<sup>rd</sup> proved income of husband as maintenance is irrational – Trial Court should have weighed entire circumstances to arrive at quantum of Maintenance – Order of Trial Court awarding Maintenance stands modified.

**CDJ 2017 MHC 6065**

**Kavitha vs. C.Prabhakar**

**Date of Judgment: 07.09.2017**

**Delay in disbursement of maintenance amount deposited in court – Procedure for speedy disbursement of maintenance amount ordered u/s.125 Cr.P.C. and interim maintenance in H.M.O.P. cases by utilizing the Digital India programme - while issuing directions, Court observed:**

(i) From the questionnaire that has been sent to various Family Courts regarding the procedure for issuance of maintenance award amount deposited by the husband in the Court, also not encourageable or seems to have been more delay in disbursement of the deposited maintenance amount. More number of the Family Courts seems to have followed the very age-old procedures of cheque petition enquiry and issuance of cheque thereon on filing of the memo for payment to the wife. Only in the Family Court in Chennai, the facility of crediting the award amount deposited in the Court to that of the bank account of the wife seems to have been followed through ECS while all other Family Courts across the State are making cumbersome procedures making further difficulty for the wife to come to the Court for the maintenance to live decent livelihood. It is to be stated that except the Family Courts in Chennai, the procedures adopted in all other Family Courts across the State are not encouraging and are not rendering timely justice delivery to the person in need of money to maintain the day-to-day life.

(ii) To enhance timely justice delivery system in respect of disbursement of maintenance amount deposited in the Court in respect of the maintenance proceedings to the wife, the lower judiciary has to update themselves on par with the scheme floated by the Union of India in "Digital India" by utilizing the Digital India programme as adopted.

(iii) Since payment out through the digital mode was not covered under the e-Court project, the Registrar (Judicial) is hereby directed to place the above order before the Hon'ble e-Court committee of this Court for getting the administrative sanction to the District Judiciary, both Family Courts and Judicial Magistrate's Court handily the maintenance cases filed either under Section 125 of Cr.P.C. or any other provisions regarding maintenance, can go digital and adopt themselves as digital payment and disburse the deposited amount in Court towards maintenance to the estranged wife to enhance the timely justice delivery system.

**Murugasamy vs. The State, Rep by Inspector of Police, Karumathampatty Police Station  
Coimbatore District and another**

**Date of Judgment: 15.09.2017**

i) **Cr.P.C., 1973, S.164** – Statements recorded by Magistrate – whether copy of statement to be furnished to Police immediately after recording by Magistrate – **Held:** As per direction issued by Supreme Court in Shivanna, copy of statement should be handed over to IO immediately, by taking two photo copies of statement, certifying them, issuing one copy to IO and keeping other copy in his custody and sending original statement to JM/Court, with specific direction not to disclose contents of such statement to any person till charge sheet is filed.

ii) **S.164** – High Court evolved procedure in consonance with S.164 and mandate of Apex Court in Shivanna for recording Statements.

iii) **S.54-A CrPC, section 9 Indian Evidence Act** -Test Identification Parade – procedure to be followed – directions issued to State Government.

iv) Accused not entitled to know as to whether he has been identified by Witness in TI Parade prior to filing of Final Report.

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