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IMPORTANT CASE LAWS

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SUPREME COURT CITATIONS CIVIL CASES

2012-3-L.W.97

Ramrameshwari Devi and Ors
Vs
Nirmala Devi and Ors

Civil Procedure Code Section 144 / Restitution, Order 14 Rule 2,5, Order 20, Rule 5 /

Suit for mandatory injunction filed in 1992 / dragging of proceedings, effect of, imposition of costs, steps to be taken by Civil Courts to reduce delay - dates and time schedule to be fixed by Trial Court.

Practice / Trial / Civil Litigation, frivolous applications, filing of, effect of, restitution, imposition of costs, steps to be taken by Civil Courts to reduce delay – dates and time schedule to be fixed by Trial Courts.

Injunction / Ex parte injunction, grant of. Court should grant interim injunction or stay order only after hearing the defendants or the respondents – In case the court has to grant ex parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution.

At the time of filing of the plaint, the trial court should prepare complete schedule, fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment – If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself.

2012-3-L.W.232

M/s. Pushpa Sahakari Avas Samiti Ltd
Vs
M/s/Gangotri Sahakari Avas S. Ltd. & Ors

Civil Procedure Code Section 47 / Execution, Compromise decree, filing of execution petition before expiry of period in compromise, whether maintainable.

Civil Procedure Code Order 21 / Execution petition filing of, based on compromise before expiry of period stated, Scope of.

Execution was levied prior to the expiration of the period stipulated in the decree.

We do not find anything which lays down that premature filing of an execution would entail its rejection.

Contention that the executing court could not have entertained the execution proceeding because it was instituted before the expiry of the period stipulated in the compromised decree despite the factum that by the time the Court adverted to the petition the said period was over, is unacceptable.

Executing court did not commit any error by entertaining the execution petition.

(2012) 4 Supreme Court Cases 307

Kanwar Singh Saini
Vs
High Court Delhi

- A. **Civil Suit – Enforcement of interim or final orders/dece of court including undertaking given to court – Role of execution vis-à-vis contempt proceedings- Proper and advisable first mode for enforcement of orders, held, is to file an application under Or. 39 R. 2-A CPC for enforcement of interim orders/undertaking to court when suit is pending, or to file application for execution in case suit has been decreed based on undertaking or otherwise – When matter relates to infringement of a decree or decretal order embodying rights as between parties, contempt jurisdiction cannot be invoked merely because other remedies may take time or are more circumlocutory in nature - Violation of permanent injunction or willful breach of any undertaking given to court on basis of which suit itself was disposed of, can be set right in execution proceedings by attachment of defaulter’s property or by detention in civil prison, and not by contempt proceedings – Contempt jurisdiction is attracted when disobedience of court order or undertaking to court is willful and contumacious – Civil Procedure Code, 1908 – Or. 39 R. 2-A and Or. 21 R. 32 and Or. 21 – Contempt of Courts Act, 1971 – S. 2(b) – Specific Relief Act, 1963, Ss. 36 to 42.**
- B. **Civil Procedure Code, 1908 – Or. 39 R. 2-A and 1 & 2 and Or. 21 R. 32, Or. 21 and S. 47 – Application under Or. 39 R. 2-A – Maintainability of – Held, said application is maintainable only during pendency of suit where interim order passed by court or undertaking given by a party is violated – In instant case, no interim order was ever passed and undertaking given by appellant-defendant not to dispossess plaintiff from suit premises had culminated into final decree – If any further action was required it could be taken only in execution proceedings under Or. 21 R.32 – High Court erred in entertaining application under Or. 39 R. 2-A against appellant – Specific Relief Act, 1963, Ss. 36 to 42.**
- C. **Practice and Procedure – Interim order – Held, interim order always merges in final order after decree is passed and where case is dismissed, interim order stands automatically nullified – Civil Procedure Code, 1908, Or. 39 Rr. 1,2 and 2-A.**
- D. **Civil Procedure Code, 1908 – Or. 21 R. 32 – Injunctions enforceable under – Held, Or. 21 R. 32 applies to prohibitory as well as mandatory injunctions – Execution of an injunction decree is to be made in terms of said provision since CPC provides particular manner and mode of execution – No other mode, hence, permissible – Specific Relief Act, 1963, Ss. 36 to 42.**
- E. **Courts, Tribunals and Judiciary – Jurisdiction – Order/Decrees passed by court having no jurisdiction – Effect – Acquiescence – Relevance – Held, conferment of jurisdiction is a legislative function and can neither be conferred with consent of parties nor by superior court – Order/decree passed by court having no jurisdiction over the matter is a nullity as it goes to root of the cause – Acquiescence of a party cannot also be permitted to defeat legislative animation – Court cannot derive jurisdiction apart from statute.**
- F. **Statute Law – Statutory Scheme involving Adjudicatory Process – Enforcement of rights and obligations under Statute – Held, when a statute gives rights and provides forum for adjudication of rights, remedy has to be sought only under the provisions of that Act in the specified manner – Thus, for enforcement of a right/obligation under a statute, the only remedy available is to get adjudication of rights under the said Act.**
- G. **Civil Procedure Code, 1908 – S. 47 and Or. 21 R. 32 – Powers of executing court – Scope – Held, executing court cannot go behind decree – In absence of any challenge to decree, no objection can be raised in execution – Practice and Procedure – Execution.**

- H. Civil Procedure Code, 1908 – Or. 21 R. 32 and Or. 39 R. 2-A – Disobedience of decree passed on basis of admission/undertaking given to court – Appropriate remedy – Held, is to file an application for execution under Or. 21 R. 32 and not under Or. 39 R. 2-A – Procedure in execution of an injunction decree is same as prescribed under Or. 39 R. 2-A i.e. attachment of property and detention in civil prison.
- I. Contempt of Courts Act, 1971 – Ss. 2(b) and (c) – Civil or criminal contempt – Determination of – Violation/breach of undertaking given to court on basis of which decree was passed – Held, constitutes civil contempt since it is for sole benefit of other party to the suit and court must satisfy itself that such violation was willful and intentional – In such situation administration of justice could be undermined if order of competent court is permitted to be disregarded with impunity, but it does not involve sufficient public interest for it to be treated as criminal contempt – Where contemnor satisfies court that disobedience was under compelling judgment or decree punishment can be awarded – For violation of a judgment or decree provisions of criminal contempt are not attracted.
- J. Civil Procedure Code, 1908 – S. 47, Or. 21 and Or. 21 R. 32 – Execution – Nature of disobedience/non-compliance by judgment-debtor – Relevance of – Held, in execution proceedings, court may not be bothered with whether disobedience is willful or not and court is bound to execute decree irrespective of consequences – Civil Suit – Execution.
- K. Contempt of court – Criminal Contempt – Initiation of criminal contempt proceedings up to punishment therefor – If properly conducted/contempt power properly exercised – False affidavit (taking inconsistent pleas in reply filed to application under Or. 39 R. 2-A CPC) – High Court convicting appellant for criminal contempt and sending him to jail but not granting any relief so far as enforcement of decree was concerned – Propriety – Held, purposes of initiation of contempt proceedings are twofold: to ensure compliance with order passed by court; and to punish contemnor as he has the audacity to challenge majesty of law – High Court erred in not taking any steps for enforcing decree and sending appellant to jail, which was a glaring example of no-application of mind and non-observance of procedure prescribed by law – Civil Procedure Code, 1908 – Or. 21 R.32 and Or. 39 R. 2-A – Contempt of Courts Act, 1971, Ss. 10, 11, 12 and 2(c).
- L. Contempt of Court – Contempt proceedings – Nature of – Standard of proof – Benefit of doubt – Held, contempt proceedings being quasi-criminal in nature, standard of proof required is the same as in other criminal cases – Alleged contemnor is entitled to protection of all safeguards/rights provided in criminal jurisprudence, including benefit of doubt – There must be clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of contempt – Case should not rest only on surmises and conjectures.
- M. Maxims – Sublato fundamento cadit opus – Applicability – On facts held, since application under Or. 39 R. 2-A CPC itself was not maintainable all subsequent proceedings remained inconsequential – Thus, foundation being removed, entire structure collapsed.
- N. Civil Procedure Code, 1908 – Or. 10 R.1, Or.14 R. 1(5) and Or.15 R.1 – “First hearing of the suit” – When contemplated – Held, it comes after framing of issues whereafter suit is posted for trial – Said hearing can never be earlier than date fixed for preliminary examination of parties and settlement of issues – “Hearing” presupposes existence of an occasion which enables parties to be heard in respect of the cause – “First day of hearing” does not mean day for return of summons or the returnable date, but day on which court applies its mind to the case – Words and Phrases – “First hearing of the suit”.

(2012) 2 MLJ 550 (SC)

**P.R. Pajus (Debtor), Proprietor, P.R. Karuppaiah Nadar & Co, Trichy
Vs
P. Uma Maheswaran and Ors**

Code of Civil Procedure (5 of 1908), Order 18 Rule 1 – Right to begin – Filing of insolvency petition by creditor – Order directing debtor to get into witness box to begin evidence, challenged – Sale transaction effected by debtor during pendency of insolvency proceedings – Intention allegedly to defraud creditors – Contention by creditor that remaining properties of debtor not sufficient to discharge liability – Initial burden on petitioner/creditor to prove that transaction effected lacks bona fide and properties of debtor not sufficient to satisfy liability – Initial burden upon creditor to get into witness box to make out prima facie case in support of averments – Order directing debtor to get into witness box to begin evidence, set aside – Appeal allowed.

RATIO DECIDENDI:

- I. Defendant is entitled to get a right to insist that he should not be compelled to disclose his evidence first as otherwise the plaintiff would tune his case accordingly and any deviation form the normal rule would result in injustice.**
- II. Initial burden is upon petitioning creditor to get into witness box to make out a prima facie strong case in support of his averments that transfer of property by debtor during pendency of insolvency proceedings was with intent to defeat creditors and that the properties in his hands are not sufficient enough to satisfy his liability and only when the initial burden is discharged, debtor can be called upon to make out his case.**

SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 2 MLJ 86 (SC)

Dr. Subramanian Swamy

Vs

Dr. Manmohan Singh and Anr

Prevention of Corruption Act (49 of 1988), Section 19 – Code of Criminal Procedure, 1973 (2 of 1974), Section 197 – Grant of sanction for prosecution of public servant – Right of citizen to seek sanction for prosecution of a public servant for corruption – Alleged illegal grant of licenses for 2G spectrum at behest of then Telecom Minister/respondent No 2 and alleged loss suffered by Public exchequer – Impugned judgment of High Court refusing to entertain writ petition filed by appellant – Appeal – Question as to whether appellant has locus standi to file complaint for prosecution of respondent No 2 for offences allegedly committed by him under Act of 1988 – Respondent No 1 being Competent Authority to sanction prosecution of respondent No 2 was required to take appropriate decision in light of directions contained in judgment of Supreme Court in Vineet Narain v. SCC 226 – Appellant repeatedly wrote letters to respondent No 1 highlighting seriousness of allegations and fact that he had already supplied facts and documents which could be made basis for grant of sanction – Detailed inquiry not required to be made into allegations – But officers in PMO and Ministry of Law and Justice were duty bound to appraise respondent No. 1 about seriousness of allegations and relevant guidelines and directions in this regard, son as to enable him to take appropriate decision in matter – But they failed to do so – It is declared that appellant had right to file a complaint for prosecuting respondent No 2 – Impugned order set aside – Appeal allowed.

RATIONES DECIDENDI:

- I. While considering the issue regarding grant or refusal of sanction, the only thing which the Competent Authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence and the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy.
- II. A complaint can be filed by a citizen for prosecuting a public servant for an offence under the Prevention of Corruption Act, 1988 and the Competent Authority to sanction prosecution of a public servant for prosecution of a public servant for offences under the 1988 Act is required to take an appropriate decision within the time specified in the directions contained in the judgment of the Supreme Court in Vineet Narain v. Union of India (Supra).

(2012) 4 Supreme Court Cases 124

Sampath Kumar

Vs

Inspector of Police, Krishnagiri

- A. Criminal Trial – Appreciation of evidence – Inconsistent versions/Discrepancies/Contradictions – Minor contradictions are bound to appear in statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person – Discrepancies in testimony of a witness caused by memory lapses are acceptable – However, it is wholly unsafe to rely upon a version with material improvement unless it is corroborated by some other independent evidence that may probabilise the testimony – PW 7, in his statement under S. 161 CrPC made no accusations against appellants nor did he disclose to anyone that he had seen accused persons on the spot around time of commission of offence – It was only five years after occurrence that for the first time he disclose in court, the story about his having seen appellants standing near deceased when he work up on account of the noise of a stone falling hard on the ground – There is no cogent and acceptable explanation for his silence for such a long period – His assertion that he was scared by appellants even after they had

been taken into custody by police, is hard to believe – Appreciation of evidence – Credibility of witness
– Material improvement – Effect of.

- B. Penal Code, 1860 – Ss. 302/34 – Murder trial – Conviction reversed – Appreciation of evidence – Circumstantial evidence and motive – Death caused by crushing head of deceased while sleeping – PW 7, sleeping with deceased in verandah heard a sound and woke up – PWs 1, 2, 3 and 8 sleeping inside the house also woke up on noise made by PW 7 – Sessions Judge based conviction primarily on strong motive due to love affair of deceased with U, sister of appellant-accused V – Sessions Judge relied heavily upon deposition of PW 7 and a letter allegedly written by appellant-accused S to mother of deceased accusing appellant V – High Court confirmed conviction and sentence recorded by trial court – PWs 1, 2 and 3 stated only that deceased was fond of U and wanted to marry her which was not liked by her brother V – PW 7 stated that appellants were standing near deceased with his head crushed and threatened him not to disclose the facts to anyone – PW 7's testimony was found unreliable as he did not disclose the facts to PWs 1, 2, 3 and 8 and even to police, and disclosed the facts for the first time in court after a period of five years – Alleged letter written by appellants S could also not be relied upon, as it was produced after recording statement of accused under S. 313 CrPC – Held, prosecution has not proved its case beyond doubt – Criminal Procedure Code, 1973, Ss. 374 and 386.
- C. Criminal Trial – Witnesses – Natural witness – Witness (PW 7) naturally present at place of occurrence i.e. sleeping in verandah with deceased the right deceased was done to death – PW 7 improved his statement substantially – Witness neither wholly reliable nor wholly unreliable – Courts have to be circumspect in respect of such witness and have to look for corroboration in material particulars by reliable testimony, direct or circumstantial.
- D. Criminal Trial – Circumstantial evidence – Motive – Motive alone can hardly be a ground for conviction – In absence of any other circumstantial evidence, motive would not be sufficient to convict accused – On materials on record, there may arise some suspicion against appellant-accused, but suspicion, howsoever, strong cannot take the place of proof – Conviction reversed.
- E. Criminal Procedure Code, 1973 – S. 313 – Statement of accused – Facts not put to accused under – Admissibility of – Letter allegedly written by appellant-accused S to mother of deceased accusing appellant V of murder of deceased – Letter produced after recording of statement of accused under S. 313 – Confessional letter not put to accused when recording statement of accused under S. 313 – Confessional statement was rightly held to be inadmissible by High Court – Criminal Trial – Confession – Confession of accused.

(2012) 4 Supreme Court Cases 134

Dipak Shubhashchandra Mehta

Vs

Central Bureau of Investigation and Anr

- A. Criminal Procedure Code, 1973 – Ss. 439 and 239 – Grant of bail – Delay in trial resulting in incarceration for an indefinite period, violating Art. 21 – When a ground for bail – Serious economic serious offences – Appellant in custody for long – Appellant suffering from several ailments – Conditional bail – Reiterated, in case of delay in trial, bail should be granted, as keeping undertrial in jail custody for indefinite period violates Art. 21 of Constitution – But this principle should not be applied mechanically in all cases – Appellant-accused charged with economic offences of huge magnitude – In SLP against High Court's rejection of appellant's application for regular bail, in view of release on bail of co-accused on medical grounds and ASG's assurance of completion of trial within three months, Supreme Court on 29-4-2011, while not granting bail to appellant, made it clear that accused would be free to move Special Court in case of continuation of trial beyond period of three months – However, charges not yet framed and trial likely to take considerable time due to various factors – Appellant suffering from several ailments – Appellant's application under S. 239 CrPC for discharge pending – Held, fit case for grant of bail subject to stringent conditions (As imposed herein)

– Constitution of India – Art. 21 – Right to speedy trial – Penal Code, 1860, Ss. 406, 420, 467, 468, 471 and 120-B.

- B. Criminal Procedure Code, 1973 – S. 439 – Grant of bail – Exercise of discretion by court should be judicious – Factors to be considered – Extent of inquiry into facts warranted – Need for prima facie conclusion – Held, though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where accused is charged of having committed a serious offence - Penal Code, 1860, Ss. 406, 420, 467, 468, 471 and 120-B.
- C. Constitution of India – Art. 136 – Interference with grant or refusal to grant bail – Save in exceptional cases, ordinarily Supreme Court’s interference not called for.

(2012) 1 MLJ (Crl) 157 (SC)

G. Reddeiah

Vs

Government of Andhra Pradesh and Anr

Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 – Order of detention – Detenu found to be involved in felling, transporting, smuggling of red-sanders, trees and committing theft of forest wealth – Impugned detention order passed against detenu – Enormous activities of detenu violating various provisions of IPC, A.P. Act and Rules – Continuous and habituality in pursuing same type of offences, damaging wealth of nation – All procedures and statutory safeguards fully complied with by Detaining Authority – Reasoning of Detaining Authority as approved by Government and upheld by High Court, proper – Appeal dismissed.

RATIO DECIDENDI: Once the detaining authority is subjectively satisfied about the various offences labeled against the Detenu, habitually in continuing the same, difficult to control him under normal circumstances, appropriate order of detention can be passed.

(2012) 1 MLJ (Crl) 250 (SC)

Manjit Singh @ Mange and Ors

Vs

CBI, through its S.P. and Ors

- (A) Indian Penal Code (45 of 1860), Sections 302 and 120-B – Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), Section 3(2) and 3(3) – Offence of murder and Criminal Conspiracy – Conviction and Sentence – Sentence of life imprisonment awarded by trial Court – Appeal for enhancement of punishment filed by State – Prosecution has not been successful in proving that particular murder was committed with intention to cause terror – It is evident that murder committed not to cause terror but to prevent information regarding another crime from being divulged – TADA Court was justified in dismissing charges framed under TADA Act 1987 – Appeal dismissed.
- (B) Terrorist And Disruptive Activities (Prevention) Act (28 of 1987), Section 15 - Confessional statement made by person under Section 15 of Act – Admissible in trial of co accused for offence committed and tried in same case together who makes confession.

RATIO DECIDENDI:

I. When the Prosecution against accused has not been successful in proving that particular murder was caused with intention to cause Terror, and where TADA Court was justified in dismissing charges framed under the TADA Act therefore Appeal filed by state for enhancement of sentence would not be proper.

II. Confessional statement made by person under Section 15 of Act shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession.

(2012) 2 MLJ 257 (SC)

Principal Chief Conservator of Forest and Anr

Vs

J.K. Johnson and Ors

Wild Life (Protection) Act (53 of 1972), Section 39(1)(d) and 54(2) – Wild Life (Protection) Amendment Act (2002), Section 54(2) – Forfeiture of seized items – Seizure of hunted wild boar and rabbits – Order of Conservator of Forests to forfeit vehicles and weapons used in committing offence, challenged – Composition of offence under Sections 54 – Authority of specified officer empowered under Section 54(1) to compound offences to order forfeiture of seized items – Scope of – Specified officer under Section 54(1) on composition of offence, not empowered to deal with or order forfeiture of seized property used by person suspected of commission of offence – Held, order of Conservator of Forests, unsustainable – Seized property to be dealt with by Magistrate under Section 50(4) – Respondents to apply to concerned Magistrate for return of seized items – Appeal disposed of.

RATIO DECIDENDI: A specified officer empowered under Section 54(1) of the Wild Life (Protection) Act, 1972 as substituted by the Wild Life (Protection) Amendment Act, 2002 to compound offences, has no power, competence or authority to order forfeiture of seized items on composition of offence by a person who is suspected to have committed offence against the said Act.

(2012) 1 MLJ (Cri) 341 (SC)

Thota Venkateswarlu

Vs

State of A.P. Tr. Princl. Section and Anr

Indian Penal Code (45 of 1860), Sections 498-A and 506 – Dowry Prohibition Act, (28 of 1961), Sections 3 and 4 – Code of Criminal Procedure, 1973 (2 of 1974), Section 188 – Offences committed outside India – Previous sanction of Central Government, necessary to proceed with trial in India – Series of offences arising out of same transaction, some of which committed within India and some outside India – Upto stage of taking cognizance, no previous sanction would be required form Central Government in terms of Section 188 Cr.P.C. – However, trial cannot proceed beyond cognizance stage without previous sanction of Central Government.

RATIO DECIDENDI: In respect of series of offences arising out of the same transaction, some of which were committed within India and some outside India, up to the stage of taking cognizance, no previous sanction would be required form the Central Government in terms of provision to Section 188 Code of Criminal Procedure; however the trial cannot proceed beyond the cognizance stage without the previous sanction of Central Government.

(2012) 4 Supreme Court Cases 516

Rattiram and Ors

Vs

State of Madhya Pradesh

With

Stayanarayan and Ors

Vs

State of Madhya Pradesh through Incharge, Police Station Cantonment

Criminal Procedure Code, 1973 – Ss. 193, 209, 465, 207 and 208 – Cognizance by Sessions Court – Irregularity in committal proceedings – Cognizance taken by Sessions Court directly without commitment of case by Magistrate in accordance with S. 193 – Trial, held not automatically vitiated thereby – Trial would only be vitiated if failure of justice has in fact been occasioned thereby or accused can establish that he has been prejudiced thereby.

- Committal proceedings under S. 209 CrPC 1973 – Procedure of, contrasted with committal proceedings under CrPC 1898.
 - In view of constricted role of Magistrate in committal proceedings under S. 209 CrPC 1973 non-commitment of case, held, is not ipso facto vitiative of trial by Sessions Court – Appellant convict raising objection against said omission for the first time before appellate court (as in present case) must satisfy court that the same had resulted in failure of justice or had deprived him of fair trial or had caused prejudice to him – Otherwise, setting aside of conviction or direction for retrial automatically and merely on ground of irregularity of committal proceedings is impermissible.
 - Further held, obliteration of certain rights of accused at committal stage under CrPC 1973 in contrast to provisions of CrPC 1898 itself showed legislative intent that every stage in criminal proceedings was not to be treated as vital and CrPC is to be interpreted to subserve substantive objects of criminal trial – Penal Code, 1860 – Ss. 147, 148, 302 and 149 – Criminal Procedure Code, 1898, Ss. 207 and 207-A.
- A. Criminal Procedure Code, 1973 – S. 465 – Failure of justice – Test to determine, restated – Constitution of India, Art.21
 - B. Criminal Procedure Code, 1973 – S. 465 – Failure of justice – Concept of, in criminal jurisprudence – What is – Legal position summarized – Constitution of India, Arts. 21 and 14.
 - C. SCs, STs, OBCs and Minorities – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Ss.14 and 3(1)(x) – Trial by Special Court under, and certain provisions of IPC eventually leading to conviction under IPC only – Held, conviction did not stand vitiated in present case when cognizance was taken directly by Special Court (a Sessions Court) without commitment of case to it by Magistrate in accordance with Ss. 209 and 193 CrPC.
 - D. Criminal Procedure Code, 1973 – Ss. 193, 465, 209, 207 and 208 – Cognizance by Sessions Court – Committal proceedings – Obliteration of certain rights of accused at the stage of, in contrast to provisions of 1898 Code – Legislative intent behind, and mode of interpretation of provisions relating to various stages of criminal proceedings - Criminal Procedure Code, 1898 – Ss. 207 and 207-A – Interpretation of Statutes – Basic Rules – Purpose construction/interpretation – Applied.
 - E. Constitution of India – Art. 21 – Right to speedy trial – Entitlement to – Held, it is not exclusive right to accused but is a collective requirement of society and victim is also entitled to it.
 - F. Constitution of India – Arts. 21, 14 and 20 – Fair trial – Object, essence of, and its importance in criminal jurisprudence.
 - G. Criminal Trial – Fair trial – Factors rendering trial unfair – Non-compliance with adjective law, if by itself renders the trial unfair – Criminal Procedure Code, 1973, S. 465.
 - H. Precedents – Supreme Court vis-à-vis itself – Legal position summarised – Reiterated, pronouncement of law by a Bench is binding on co-equal Bench – Judgment given in ignorance of judgment of earlier Bench of co-equal strength attracts concept of per incuriam – Constitution of India, Art.141.

(2012) 1 MLJ (Cri) 536 (SC)

Shivlal and Anr
Vs
State of Chhattisgarh

Code of Criminal Procedure 1973 (2 of 1974), Section 157(1) – Indian Penal Code (45 of 1860), Sections 147, 148, 149, 302 – Conviction and Sentence – Appeal – Copy of FIR not sent to Magistrate at all as required under Section 157 (1) Cr.P.C. – In absence of any explanation furnished by prosecution to that effect, it would definitely

cast shadow on case of prosecution – Appellants/accused entitled to benefit of doubt – Appellants acquitted – Appeal allowed.

RATIO DECIDENDI: Failure to send the copy of the FIR to the Magistrate as required under Section 157 (1) Cr.P.C., in absence of any explanation furnished by the prosecution would cast shadow on the case of prosecution and the accused are entitled to get benefit of doubt and are entitled to get acquittal.

HIGH COURT CITATIONS CIVIL CASES

2012-2-L.W.22

Syed Safiullah Husaini

Vs

M. Raghupathi

Tamil Nadu Buildings (lease and Rent Control) Act (1960), Section 10(3)(a)(iii) / Wilful default, owner's occupation.

In the ground floor portion, there are two shops and the respondent is doing business in one shop and another shop is in the occupation of another tenant and in the rear portion, the revision petitioner is residing with his family.

Landlord is entitled to order of eviction if (a) building is non-residential in character; (b) Landlord should be carrying on business on date of Application for eviction; © Landlord should not be occupying any building of his own; (d) claim should be bona fide.

When the premises is used for residential purpose and in a portion of that premises, one of the members of the family is doing some non-residential work, that will not convert the premises as a non-residential one – If in a residential premises owned by an Advocate, in a room, if the Advocate is having office, that will not make the premises as a non-residential premises – Nor we can separate that portion from the remaining part of the premises and treat the office as a non-residential premises.

Son of the revision petitioner is already doing business in computer in a portion of his residential house and he has also let in evidence that he has got money to start a computer repair shop and he has got experience in that field – Further, he is a qualified graduate in Electronic Sciences.

Application was filed on the ground of wilful default and for own occupation and the case of the revision petitioner was that the tenant has committed default in payment of rent for January and February 2003 and the application was filed in July 2003 – Because the landlord has disconnected the electricity, that cannot be a ground to reject the case of the landlord – Landlord has satisfied the ingredients of section 10(3)(a)(iii).

2012-2-L.W.28

A. Manicka Mudaliar

Vs

1. Murugesu Mudaliar

2. Tiruchengode Weavers Co-operative Production and Sales Sangam, rep. By its Sp. Officer

Transfer of Property Act (1882), Sec. 53-A / Suit for recovery of possession and injunction.

Registration Act (1908), Sec. 49 / Unregistered document of sale, Collateral purpose.

Under section 49 of the Registration Act, the 1st respondent cannot claim any title over the property through Ex.B6 as the same was not registered and he can make use of section 49 of the Registration Act only for the purpose of proving his possession and that can be used to protect his possession as per section 53-A of the Transfer of Property Act – Further, being an unregistered sale deed, the recitals regarding payment of consideration cannot be looked into.

Unless the 1st respondent has proved that after taking possession of the property, he has done some act in furtherance of the contract and he was ready and willing to perform his part of contract, he cannot claim protection under section 53-A.

1st respondent is not the owner of the property and no title passes in favour of 1st respondent under Ex.B6, he is not entitled to put up any construction in the suit property.

1st respondent has failed to prove the essential ingredients for claiming protection under section 53-A – He is not entitled to claim protection, appellant is entitled to decree for recovery of possession.

2012-2-L.W.48

Kuppayammal

Vs

A. Sitheswaran & Ors

Negotiable Instruments Act (1881), Section 20, 118, Section / 'Payee', Section 8 / 'Holder', Section 9 / 'Holder in due course'.

Stamp Act (1899), Section 2(12), (14).

Respondents/defendants have failed to discharge the initial burden that they only put their signatures in blank promissory notes – As per the Indian Stamp Act, when a person signed an instrument, which is defined under Section 2(14) it amounts to execution of the instrument – having regard to section 2(12) and 2(14) of the Indian Stamp Act, it has to be presumed that the document was executed by the defendants – Under section 118 of the N.I. Act, presumption shall be drawn in favour of the plaintiff that the document was executed for consideration.

A person who puts his name as payee cannot become the holder in due course – Section 20 will not be applicable to the facts of the case, as it was not proved that the plaintiffs filled their name in blank promissory notes.

Plaintiffs filed the suits on the ground that the promissory notes were executed in their favour by the defendants and they filed the suits in the capacity of 'payee' and not in the capacity of 'holder in due course'.

Presumption under section 118 of the Negotiable Instruments Act, will enure to the benefit of the plaintiffs as the defendants have miserably failed to prove that they gave only blank promissory notes.

2012-2-L.W.56

J. Anitha

Vs

J. Prakash

Hindu Marriage Act (1955), Section 12(1)(c), 13(1)(ia), 13(1)(iii).

Words and phrases / 'Psychopathic disorder'.

Both parties have lived together only for a period of 12 days – During this period, no act or omission on the part of the respondent which has caused mental cruelty to the appellant has been established – Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty – Refusal to have intercourse should be for a considerable period and then only it will amount to mental cruelty.

Respondent being a newly married girl and having been sent to the matrimonial home from her parental house, she has been totally uprooted from her parents house – She would be in the position of a 'sapling' which

has been plucked from the nursery and transplanted in some other place – *Unless the newly transplanted sapling is watered and taken proper care of by the gardener or care taker, the newly transplanted sapling will not grow but it will wither away* – Appellant had threatened to divorce her within 12 days – She had not been treated with love and affection – It would not be possible for her to adapt to the new atmosphere – In the absence of love and affection from her husband and in-laws and unless she adapts to the new environment and atmosphere it would not be possible for her to have sexual intercourse with the appellant.

Non consummation of the marriage between the appellant and the respondent during this short period will not amount to mental cruelty.

Court below is not right in granting a decree of divorce on the ground of mental cruelty.

Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty.

There is no suppression of any material fact attracting Section 12(1)(c) of the H.M. Act for annulling the marriage between the appellant and the respondent.

'Psychopathic order' means a persistent disorder or disability of mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

There is no evidence to hold that the respondent / wife is suffering from mental disorder.

What is required to be proved for the purpose of Section 13(1)(iii) is that the respondent / wife is not only suffering from mental disorder, but also of such a degree and extent that the appellant / husband cannot reasonably be expected to live with her as her spouse.

Only because of the perverse and unsustainable order passed by the Court below, the life of two youngsters have been ruined for the past nine years – Respondent / wife had not deserted the appellant / husband. The respondent / wife is entitled for the relief of Restitution of Conjugal Rights.

(2012) 2 MLJ 64

Sivakasi Hindu Nadar Uravinmurai Magamai Fund by its Secretary, Sivakasi - 626123

Vs

S. Prakasam

- (A) Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) – Suit for recovery of possession – Lease of 'A' schedule property to respondent/defendant – Termination of tenancy – Contention of ouster of jurisdiction of civil Court in view of bar contained in Act – Maintainability of suit – Appellant claims exemption from purview of Act under relevant G.O. – Nature of trust disputed – Income tax exemption not relevant to know nature of Trust – Nature of Trust indicated by objects and bye-laws – Appellant, a Public Charitable Trust – G.O. covers appellant/Trust – Suit maintainable in view of exemption under G.O. – Termination of tenancy, valid – Held, appellant entitled to recovery of possession – Second appeal allowed.
- (B) Indian Evidence Act (1 of 1872), Sections 42 and 43 – Relevancy and effect of judgments, orders or decrees – Nature of Trust disputed – Judgment Exhibit A-19 held appellant as a Public Charitable Trust – Exhibit A -19 relevant – Held, admissible in evidence.
- (C) Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960) – Suit for recovery of possession – Defendant, a tress passer into 'B' schedule property – Contention of defendant that he is a permissive occupier in 'B' schedule property, not tenable – No legal obligation for appellant/Trust to continue permission for ever – Trust entitled to withdraw permission at any stage – Defendant, a tress passer – Held, Trust entitled to recovery of possession – Second appeal allowed.

RATIONES DECIDENDI:

- I. Public Charitable nature of Trust is to be seen from the objects of the Trust and object of Trust can be inferred from its bye-laws.
- II. Whether the Trust obtained exemption from payment of tax from Income Tax department or not is irrelevant to know the nature of the Trust.

(2012) 1 MLJ 86

**Britannia Industries Limited rep. by its Authorized Signatory Mr. Sanjay K. Handur
Vs
Sulochana Cotton Spinning Mills Private Limited rep. its General Manager and Anr**

- (A) Constitution of India (1950), Article 227 – Civil Revision Petition – Suit for permanent injunction – Filed by 1st respondent – To restrain Petitioner/1st defendant from alienating or encumbering or causing delivery of possession of suit property to any third parties – Grant of order of interim injunction – Challenged – Auction of movables and immovable assets by bank – Arrangement between 1st respondent and petitioner that if petitioner succeeds in bidding, movables to be sold to 1st respondent – Bid successful – Petitioner, contends no concluded contract – Communications between parties showing only an understanding between parties – No concluded contract – Order of interim injunction set aside – Revision allowed.
- (B) Constitution of India (1950), Article 227 – Civil Revision Petition – Against order of interim injunction – Alternative remedy for petitioner to file a civil miscellaneous appeal – No exhausted – Maintainability of Revision Petition under Article 227 – Scope of - Order of grant of interim injunction by trial Court caused great injustice to petitioner – Power under Article 227 wider than power under Article 226 – Power under Article 227 not subject to technicalities of procedure or traditional fetters available under Article 226 – Held, Civil Revision Petition, maintainable.
- (C) Specific Relief Act (47 of 1963), Sections 10, 14(1) (a) and 41(e) (h) – Refusal of interim injunction – Grant of interim injunction by trial Court – Challenged – Interim injunction cannot be granted and could be refused if performance would not be specifically enforced and when equally efficacious relief could be obtained – Grant of interim injunction by trial Court, contrary to statutory bar under provisions of Specific Relief Act – Interim injunction, set aside – Revision allowed.

RATIONES DECIDENDI:

- I. Interim injunction cannot be granted and could be refused if performance would not be specifically enforced and when equally efficacious relief could be obtained.
- II. As per Section 14(1) (a) of the Specific Relief Act, a contract for the nonperformance of which compensation in money is an adequate relief, the same cannot be specifically enforceable.
- III. The power under Article 227 is wider and is not subject to the technicalities of procedure or traditional fetters available under Article 226 and therefore, an order of grant of interim injunction by the trial Court causing great injustice to the party by exercising its discretion and jurisdiction in a manner not permitted by law can be challenged by filing revision under Article 227 without exhausting the alternative remedy of filing an appeal.

2012-2-L.W.115

Sulochana & Ors
Vs
Thilagavath

Hindu Law / Partition / Coparcenary Property, Ouster / Plea of, Co-owner / Partition / Earlier suit for Partition dismissed; fresh suit by co sharer not a bar.

Hindu Succession Act, 1956, Sections 15, 16.

Because a partition suit was dismissed earlier for default or settled out of Court, the co-sharers are not precluded from instituting a fresh suit for partition, if in reality no settlement got fructified.

There is no evidence to establish that there was ouster of the plaintiffs at the instance of the defendant's husband relating to the suit properties.

Once a co-sharer is having interest in the suit property, the lapse of twelve years' period is not a bar for seeking partition.

The defendant being the widow of the predeceased son of MA, cannot be the legal heir of MA.

2012-2-L.W.131

P. Baskaran
Vs
1. P. Soundararajan 2. P. Venkatesan

Specific Relief Act 1963, Section 28 / Extension of time for depositing money as per decree, Court if becomes 'functus officio' after passing decree / Rescission of contract by Judgment Debtor / rejection of.

Constitution of India Article 227.

Decree was directed to deposit a sum of Rs.10,00,000/- being the sale consideration within one month before the Court – Decree holder did not deposit the amount and filed I.A.No.790 of 2010 seeking extension of time stating that during the pendency of the suit he was having the means to pay. Later he invested the money in his business and therefore he was not able to mobilize the sum – For that purpose he may give a month's time to deposit – During the pendency of the said application in I.A.No. 790 of 2010, the Decree holder filed I.A.No.871 of 2010 seeking permission of the Court to deposit a sum of Five lakhs and that was allowed – Also filed I.A. Seeking permission of the Court to deposit the balance sale consideration of Rs.5,00,000/- and that was also allowed – Court below permitted the Decree holder to deposit a sum of Rs.10,00,000/- and thereafter, dismissed I.A.No.790 of 2010 on holding that the Court has become functus officio – The Court ought not to have dismissed the application on the ground that the Court has become functus officio.

Decree holder has explained the circumstances for the delay in not depositing the amount within the period stipulated and he has also proved his bona fide by depositing the entire balance sale consideration.

Once the Court grants time to the Decree holder to pay the balance sale consideration, the Judgment Debtor cannot ask for rescission of contract.

2012-2-L.W.137

P. Premavathy
Vs
J. Venkatesan

Hindu Marriage Act 1955 Section 13(1)(i-b) / Desertion, Ingredients.

For establishing Desertion by deserting spouse – The factum of separation; and (ii) the intention to bring cohabitation permanently to an end must be established – Deserted spouse must establish : (i) the absence of consent, and (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home.

Essence of desertion, as judicially understood, is a total repudiation of the obligation of marriage or an abandonment of the deserted spouse with an intention to bring the cohabitation permanently to an end – If a spouse abandons the other in a state of temporary passion, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.

Appellant adduced ample evidence to show that she had taken various efforts to rejoin her husband.

(2012) 2 MLJ 204

R. Kumar
Vs
R. Sushilkumar

Specific Relief Act (47 of 1963), Section 16(c) – Suit for specific performance – Agreement of sale – Initial burden of plaintiff to prove execution of sale agreement once there is denial of execution – Period of execution of sale deed, within three years – No reason given for fixing period as three years when balance to be paid only 10,05,000/- Alleged sale agreement, not genuine – Sale agreement intended only as security for dues under auto finance – No intention of parties to perform contract – Readiness and willingness to perform essential terms of contract, not pleaded and proved by purchaser/plaintiff – Burden of proof not discharged – Appellant established execution of document as security for loan – Plaintiff not entitled to relief of specific performance – Appeal allowed.

RATIO DECIDENDI: In a suit for specific performance, initial burden is on plaintiff to plead and prove his readiness and willingness to perform his obligation under the contract in terms of the contract once there is denial of execution of contract.

(2012) 1 MLJ 280

Chinnu Padayachi and Anr
Vs
Dhanalakshmi W/o. Thangavel and Ors

Code of Civil Procedure (5 of 1908) Section 96(2) Order 6 Rule 17 – Limitation Act (36 of 1963), Section 22 – Limitation – Suit for declaration of title and permanent injunction – Order allowing application for amendment of plaint, challenged – Amendment for incorporating prayer for mandatory injunction, directing defendants/petitioners to remove construction put up in common lane – Construction put up in common lane pointed out by Advocate Commissioner's report – Filing of application for amendment after 5 years from date of filing of report – Construction, not a continuous breach as contended by plaintiffs/respondents – Section 22 of Limitation Act not attracted – Plaintiffs not entitled to file amendment application at any point of time, even after prescribed period of three years – Amendment barred by limitation – Civil Revision Petition allowed.

RATIO DECIDENDI: Putting up of a construction in common lane cannot be considered as a continuous breach so as to attract Section 22 of the Limitation Act, 1963 which will entitle a plaintiff to file application for amendment at any point of time, even after the prescribed period of three years and any amendment sought for in such case is

barred by limitation if the application for amendment for incorporating a prayer for mandatory injunction seeking a direction to remove such construction has been filed after the prescribed period.

(2012) 2 MLJ 321

R. Mohanasundaram and Ors

Vs

Arulmigu Kolavizhi Amman Temple, G.N. Chetty Street, Mylapore, Chennai – 4 rep. by the Executive Officer,
Arulmigu Kapaleeswarar Temple, Mylapore, Chennai – 4 and Ors

- (A) Tamil Nadu Hindu Religious and Charitable Endowments Act (22 of 1959), Section 29 – Suit for recovery of possession – Claim for right of ownership of temple properties by Poojaris – Maintainability of – Non-maintenance and non-production of statutory registers as per Section 29 do not draw an adverse inference against temple – Title of temple over suit property established by documentary evidence, not affected – Defendants 1 to 4 in possession and enjoyment of property as poojaris and de facto trustees of temple – Held, plaintiff/temple absolute owner of suit property – Suit rightly decreed by Court below – Appeal dismissed.
- (B) Specific Relief Act (47 of 1963), Section 34 – Suit for recovery of possession – Filing of suit without seeking for declaration of title – Maintainability of – Prayer for declaration necessary only when title disputed or when a cloud is cast on title – Right and title of plaintiff/temple established in revenue records and upheld in various proceedings – Held, suit for bare recovery of possession without seeking for declaration, maintainable.
- (C) Limitation Act (36 of 1963), Section 10 – Suit for recovery of possession – Suit property, a religious endowment – Property vested for a specific purpose – Defendants 1 to 4 only poojaris and de facto trustees of suit properties – condition precedent under S.10, established by plaintiff/temple – Temple entitled to invoke benefit of Section 10 – Held, suit not barred by limitation.
- (D) Adverse possession – Burden lies on defendants to prove adverse possession – Possession of defendants 1 to 4 only in capacity as poojaris/ de facto trustees – Mere possession cannot confer a title by adverse possession – Plea of adverse possession cannot be made by defendants without accepting title of plaintiff temple.

RATIO DECIDENDI:

- I. Object of maintenance of registers under Section 29 of the Hindu Religious and Charitable Endowments Act, 1959 is only for proper and efficient administration of temple and non-maintenance or non-production of statutory registers will not draw an adverse inference against temple and will not affect title of temple over suit property, which is established by revenue records and other documentary evidence.
- II. A suit for bare recovery of possession without seeking for declaration is maintainable where the title of the plaintiff is not under a dispute or under a cloud and where the title to the property is in dispute or a cloud is cast upon his title and he is not in a possession or not able to establish possession, a prayer for declaration of title is necessary.

(2012) 2 MLJ 362

V. Prema Kumari
Vs
N. Palani

Hindu Marriage Act (25 of 1955), Sections 5, 11 and 12 – Prohibition of Child Marriage Act (2006), Sections 3 and 12 – Child marriage – Girl, only 15 years at time of marriage – Marriage against will of girl and consent of guardian – Minor child enticed out of keeping of lawful guardian – Compelled or induced by deceitful means for marriage – Girl protected under Section 3 of Act of 2006 – Marriage declared as null and void – Petition of respondent for restitution of conjugal rights, dismissed – Appeals allowed.

RATIO DECIDENDI: Courts are not precluded from declaring marriage of a minor as null and void, if she is taken or enticed out of the keeping of the lawful guardian and by force compelled or by any deceitful means induced to go through a form of marriage as she is protected under the provisions of the Prohibition of Child Marriage Act, 2006.

(2012) 2 MLJ 370

K.V. Venkataraman
Vs
N. Venkatakrishnan

Suit for recovery of money – Borrowal of money – Non-production of original of Exhibit P-1/deed of undertaking – Only Xerox copy filed – No explanation given for not filling original – Admissibility of document in secondary evidence – Scope of – Secondary evidence may be given when original is shown or appears to be in possession or power of a person against whom such document is sought to be proved – Absence of pleading in plaint or suit notice as to availability of original document with defendant – No issuance of notice to defendant to produce original – Plaintiff would be entitled to produce secondary evidence only if defendant has not produced same – Plaintiff not satisfied condition under Section 65(a) of Evidence Act – Not entitled to let in secondary evidence – Exhibit P-1, not admissible in evidence – Borrowal under Exhibit P-1 not proved – Plaintiff not entitled to recover money – Appeal dismissed.

RATIO DECIDENDI: As per Section 65(a) of the Indian Evidence Act, secondary evidence may be given of existence, condition or contents of a document when the original is shown or appears to be in possession or power of a person against whom such document is sought to be proved and unless condition under the said provision is satisfied by the plaintiff, he is not entitled to let in secondary evidence.

(2012) 3 MLJ 426

Nadippisai Pulavar K.R. Ramasamy Co-operative Sugar Mills, rep. by the Special Officer/Administrator
Vs
Rajenderan

Tamil Nadu Co-operative Societies Act (30 of 1983), Section 156 – Bar of jurisdiction of Civil Court – Order granting interim injunction – Suit filed against issuance of charge memo – Held, Civil Court's jurisdiction not ousted and Court has got jurisdiction to decide issues raised by plaintiff/respondent – Petitioner's claim that in view of Section 156 of Act, suit not maintainable, is not correct – No illegality in order granting interim injunction – Revision petition dismissed.

RATIO DECIDENDI: A charge memo issued by a special officer, under Co-operative Societies Act, can be challenged in a civil Court.

2012 (3) CTC 495

N. Manickam
Vs
Kanagaraj and Ors

Hindu Succession Act, 1956 (30 of 1956), Section 22 – Right of Preemption – Preferential right to acquire property in certain cases – Invocation thereof – Essential conditions : (1) interest in any immovable property of intestate or in any business devolves upon two or more heirs specified in Class I of Schedule (2) any one of such heirs proposes to transfer his or her interest in property or business (3) in that case, other heirs shall have preferential right to acquire interest proposed to be transferred.

Hindu Succession Act, 1956 (30 of 1956), Section 22 – Right of Preemption – When co-sharer should exercise right of pre-emption – Whether right of pre-emption can be exercised by co-sharer after sale of undivided share by other co-sharer in favour of third party – Held, right of pre-emption can be exercised even after sale made by co-sharer and sale is only voidable at instance of other co-sharer, who has denied preferential right – Right of pre-emption does not depend upon divisibility of property and even if property is capable of division, co-sharer, who has not sold his share, can exercise his right of pre-emption.

Hindu Succession Act, 1956 (30 of 1956), Section 22 – Limitation Act, 1963 (36 of 1963), Article 97 – Right of Pre-emption – Separate Suit – Co-sharer filed an Application of exercise right of pre-emption in Suit for Partition at Final Decree proceeding stage – One co-sharer sold undivided share in favour of third party pending Final Decree proceedings – Whether co-sharer should file separate Suit for Partition to exercise his right of pre-emption or can he maintain Application in Partition Suit itself – When third party purchaser also joined in Final Decree proceedings and prayed for partition of his share, co-sharer can maintain Application to exercise his right of pre-emption – Co-sharer need not file separate Suit for enforcement of his right of pre-emption.

Practice and Procedure – Petitioner filed an Application under Section 5 of Partition Act claiming right of pre-emption – Parties understood that Petition was filed under Section 22 of Hindu Succession Act and Court proceeded to adjudicate on that basis – Consensus ad idem between parties that they contested Application under Section 22 of Hindu Succession Act and not under Section 5 of Partition Act – Practice adopted by Petitioner is not fatal to his case – Hindu Succession Act, 1956 (30 of 1956), Section 22 – Partition Act, 1893 (4 of 1893), Section 5.

2012-2-TLNJ 540 (Civil)

R. Rakshadoss
Vs

1. Anjali. 2. Master J. Pravinkumar 3. J. Jayasundari (R2 & R3 rep by R1)

Negotiable Instruments Act 1881, Section 118(a) – Suit on promissory note executed for the balance of sale consideration – dismissed by trial court and allowed in part by first appellate court – on second appeal, held that admitted facts need not be proved as per section 58 of the Evidence Act and as the executant of the promissory note himself admitted signature in the promissory note, the presumption under Section 118(a) is to be drawn against him.

(2012) 1 MLJ 587

K. Natarajan
Vs
Gopaldasundari an Ors

(A) Hindu Succession Act (30 of 1956), Sections 14 and 15 – Code of Civil Procedure (5 of 1908), Section 100 – Second appeal – Suit for declaration of title and recovery of possession – Dismissal by trial Court – Allowed by lower Appellate Court – Suit property purchased by original owner and not inherited – Amounts to stridhana property – Death of original owner prior to Hindu Succession Act – Devolution of property only on her daughter

(mother of plaintiff) as Act not retrospective in its operation – Death of mother of plaintiff after Act came into force – Plaintiff absolute owner after mother’s death – Held, plaintiff entitled to declaration of title.

(B) Code of Civil Procedure (5 of 1908), Order 41 Rule 20 – Power to adjourn hearing and direct person appearing interested to be made respondents – Second appeal Contention of non-joinder of necessary parties – Parties before lower Court not liable to be impleaded in appeal unless necessary party – No claim made by defendants 3 to 6 over suit property – Remained ex-parte – Not necessary party – Held, non-impleading of defendants 3 to 6, not a ground to dismiss appeal.

RATIO DECIDENDI:

- I. Property purchased by a Hindu female out of her own funds becomes her absolute property as per Section 14 of the Hindu Succession Act and inheritance would take place under Section 15 of the Act, if she died after coming into force of the aforesaid Act.
- II. Property purchased by a Hindu female out of her own funds and not inherited by her shall be her stridhana property and such stridhana property shall devolve only upon her female heirs and not on sons if she died prior to coming into force of the Hindu Succession Act since the Act is not retrospective in its operation.

2012-2-TLNJ 657 (Civil)

Venkatasubramaniya Chettiar (D), V. Shyam Sunder, V. Swaroop Sundar
Vs
Perumal Chettiar & Ors

Indian Registration Act, 1908, Section 17 – Suit filed for partition alleging that the unregistered settlement deed executed earlier is not valid in law – trial court decreed suit and preliminary partition ordered – on appeal, High Court held that though partition deed not registered can be looked into for collateral purpose of division in status and also for considering the nature and character of possession.

HIGH COURT CITATIONS CRIMINAL CASES

(2012) 1 MLJ (Crl) 1

Jyothi W/o. S. Babu and Anr
Vs

Director General of Police, Police Head Quarters, Chennai and Ors

Constitution of India (1950), Article 226 - Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Sections 2(d) and 39 – Habeas Corpus Petition – Production of minor girl sought for – Victim of crime who has not completed 18 years of age – When produced or appears before Magistrate, enquiry has to be conducted by Magistrate – If child expresses willingness to join parents or guardian, custody has to be given to them if they are willing to take child – In the event of child expressing apprehension and refuse to go with them, child would become child in need of care and protection as per Section 2(d) of Act – In such event, Magistrate should forward child to Child Welfare Committee – Thereafter it is for Child Welfare Committee to deal with child in accordance with provisions of Act – In Habeas Corpus jurisdiction, it is open to Court to send child to Child Welfare Committee in case during enquiry it is found to be a child in need of care and protection – It is open to petitioners to approach Child Welfare committee for seeking restoration as under Section 39 of Act – Petitions disposed of.

RATIO DECIDENDI: In a Habeas Corpus petition, the High Court exercising power under Article 226 of the Constitution, depending on the facts and circumstances of the case, can issue necessary directions in the nature of writs including direction to keep the child in Children’s Homes. It is also open to the Court to send a child to the Child Welfare Committee, in case, during enquiry it is found to be a child in need of care and protection.

(2012) 1 MLJ (Crl) 45

Sankar
Vs

State rep. by its Inspector of Police, Kattumannarkoil Police Station, Cuddalore District

Indian Penal Code (45 of 1860), Section 376 – Indian Evidence Act (1 of 1872), Section 32(1) – Offence of Rape – Conviction and sentence – Appeal – Conviction by trial Court relying upon dying declaration – Statement made by deceased though satisfies first limb of Section 32(1) of Act, does not satisfy second limb of Section 32(1) of Act – Said statement would not fall within sweep of Section 32(1) and not admissible in evidence – No other evidence against accused in respect of alleged rape – Conviction and sentence set aside – Accused acquitted – Appeal allowed.

RATIO DECIDENDI: Unless the second limb of Section 32(1) of the Evidence Act is also satisfied, the statement of the deceased will not fall within the scope of Section 32(1) of the Act so as to be admitted as relevant evidence.

(2012) 1 MLJ (Crl) 50

Muthukrishnan
Vs

State rep. by its Inspector of Police, Crime Branch Police Station, Sivagangai District

Indian Penal Code (45 of 1860), Sections 120(b), 406, 468 and 477 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 190(1) (b) and 173(8) – Investigation – Final report of Police stating “action dropped” – Assignment of reason that records not given to investigating officer and no use in proceeding with investigation – Suo motu order by Magistrate for further investigation – Order of Magistrate, challenged – Exoneration of accused from all charges in domestic enquiry – Magistrate entitled to take cognizance under Section 190(1)(b) on receipt of a police report, even if no case made out against accused as per report – Procedure in Section 190(1)(b) by issuing process to accused, not followed by Magistrate – Order of Magistrate, set aside – Criminal revision allowed.

RATIO DECIDENDI: Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code of Criminal Procedure on receipt of a police report under Section 173(2) of the Code, even if no case is made out against accused as per such report and if the procedure laid down in Section 190(1)(b) by issuing process to accused is not followed by Magistrate when he is not satisfied with the conclusion arrived at by the investigating officer in the final report, the order of Magistrate for further investigation is not sustainable and liable to be set aside.

(2012) 1 MLJ (CrI) 57

Bhanwarlal Sharma

Vs

K.V. Sathyanarayanan an Ors

- (A)** Code of Criminal Procedure, 1973 (2 of 1974), Sections 203 and 362 – Bar of alteration/review of judgment – Quashing of proceeding in protest petition sought – Complaint against accused closed as ‘civil in nature’ – Closing of complaint on basis of negative final report of police – Final order of closure of complaint by Magistrate – Filing of protest petition by complainant before Magistrate to review his own order – Magistrate not empowered to recall his own order of dismissal as contemplated under Section 362 – Judgment or final order disposing of a case if signed becomes final – Court becomes functus officio – Held, review of same subsequently and hearing matter afresh, barred under Section 362 – Proceedings in protest petition liable to be quashed – Criminal Original Petition allowed.
- (B)** Code of Criminal Procedure, 1973 (2 of 1974), Sections 362 and 482 – Quashing of protest petition – Filing of protest petition by complainant before Magistrate to review his own order – Order of closure of complaint as ‘civil in nature’ by Magistrate – Dismissal of an earlier complaint on identical facts – No disclosed by complainant – Dismissal of earlier complaint as ‘civil in nature’, unchallenged – No changed circumstances – Filing of second complaint, abuse of process of law – Magistrate not empowered to recall his own order of dismissal as contemplated under Section 362 – Magistrate not entitled to entertain petition – Held, proceedings in protest petition quashed.

RATIO DECIDENDI:

I. Once a final order is signed, the Court becomes functus officio and cannot review the same subsequently as contemplated under Section 362 of the Code of Criminal Procedure and any petition before the trial court which seeks to reconsider and review its own order is liable to be quashed.

II. If any consideration of the facts by way of review is not permissible under the Code of Criminal Procedure and is expressly barred, the Court is not entitled to exercise its inherent power under Section 482 of the Code of Criminal Procedure to reconsider the matter and record a conflicting decision.

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M. Ramesh

Vs

The Inspector of Police, D-6, Anna Square Traffic Investigation, Chennai.

Motor Vehicles Act, Sections 184, 185, 411 r.w.177.

Criminal Procedure Code, Section 439 / Bail, Motor Accident, Drunken Driving.

I.P.C. Sections 304(A), 337, 304(ii).

In a case where an allegation has been made that the accident has been caused by the act of the alleged accused and the materials would disclose that he was in a drunken mood at the relevant point of time, the investigating agency is bound to register the case under Section of 304(ii) IPC.

Petitioner, in a drunken state while driving a car, crossing the yellow line hit a Motor Cycle, Auto and another Motor Cycle which were proceeding in the opposite direction and dashed on the platform due to which one person died and others sustained injuries – A case was originally registered under Section 304(A), 337 IPC and 184 of the Motor Vehicles Act – Case has been altered into one under Sections 304(ii), 337 IPC and 184, 185, 411 r/w 177 of the Motor Vehicles Act – Court is inclined to enlarge him on bail.

Directions both to the investigating agencies and to the Magistrate Courts given to register case under Section 304(ii), if it is found out that the accused person against whom a complaint is given in pursuant to an accident resulting in a death is driving at the relevant point of time in a drunken state.

(2012) 1 MLJ (CrI) 204

Paul Raj and Ors

Vs

State by its Inspector of Police, D-5, Kundrathur Police Station, Chennai

Indian Penal Code (45 of 1860), Sections 341, 324 and 323 – Conviction and Sentence – Revision – Case of ‘case and counter’ – Error in charge sheets informing commission of offence – Though FIR in counter case marked, Medical Certificates of accused not been marked and there is nothing to inform the nature of injuries sustained by petitioner – Accused acquitted – Criminal revision allowed.

RATIO DECIDENDI: In a case ‘case and counter’, the procedure to be adopted is to register both cases, conduct investigation thereon and file a positive charge sheet upon one and referred charge sheet in the other, it is only then the Court would be in a position to appreciate who or which party was aggressor in a case and counter.

(2012) 1 MLJ (CrI) 207

A. Sivasamy

Vs

State by Inspector of Police, Vigilance and Anti Corruption, Coimbatore, Coimbatore District

Prevention and Corruption Act (49 of 1988), Section 13(2) read with 13(1)(d) – Ill-legal Gratification – Conviction and sentence – Appeal – Demand of bribe, payment and recovery to be established and proved – Prosecution has miserably failed to establish charges against accused – Order of conviction set aside – Appeal allowed.

RATIO DECIDENDI: Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code of Criminal Procedure on receipt of a police report under Section 173(2) of the Code, even if no case is made out against accused as per such report and if the procedure laid down in Section 190(1)(b) by issuing process to accused is not followed by Magistrate when he is not satisfied with the conclusion arrived at by the investigating officer in the final report, the order of Magistrate for further investigation is not sustainable and liable to be set aside.
