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IMPORTANT CASE LAWS

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HIGH COURT CITATION OF CRIMINAL CASES

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SUPREME COURT CITATIONS CIVIL CASES

2012 -4-L.W. 338

V.S. Kanodia, etc.

Vs

A.L. Muthu (d) through LRs. & Anr

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Section 4.

Market value of the site on which the building is constructed is an important factor to be taken into consideration for fixing the fair rent of the building.

First premises is a non-residential building constructed on land relating to which fair rent has already been determined – Rent Controller determined the market fair rent on accepting the market value of the land at ₹ 25 lakhs per ground – Appeals have been preferred by both the appellant-tenants and the respondent-landlords but no order of stay has been passed by the appellate authority; matter is still pending – With regard to rest two rented premises, the building are situated on the adjacent land which are the subject matter of dispute – Mere fact that the appeal filed by appellants and respondents remain pending for disposal for more than 8 years and during the pendency the respondent-landlord filed two petitions under Section 4 of the Act before the Rent Controller, cannot be made a ground to deprive the appellants – tenants of their legitimate right to rely on a market value of adjacent land (D.No.23, TTK Road, Chennai) already determined by the Rent Controller – It was not open to the appellate authority to ignore the market value of the adjacent land already determined on the ground of pendency of an appeal.

Findings of the appellate authority with respect to 'classification of buildings', 'depreciation', 'plinth area', 'construction charges' and of basic amenities of the petition building as affirmed by the High Court are not interfered.

2012 -4-L.W. 359

Union of India

Vs

Ibrahim Uddin & Anr

C.P.C., Order 41, Rule 27/Additional evidence when can be filed, Scope of, Will, as additional evidence if appellate court can allow, Duty of appellate court; section 100/Substantial question of law, what are.

Whenever the appellate Court admits additional evidence it should record its reasons for doing so – The omission to record the reasons must be treated as a serious defect – Provision is only directory and not mandatory, if reception of such evidence can be justified under the rule.

True test is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

Application under Order 41, Rule 27 for taking additional evidence on record, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal – It depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other 'substantial cause'.

Provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment.

A party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule.

Inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realize the importance of a document does not constitute a "substantial cause".

SUPREME COURT CITATIONS CRIMINAL CASES

(2012) 7 Supreme Court Cases 56

P. SANJEEVA RAO

Vs

STATE OF ANDRA PRADESH

- A. Criminal Procedure Code, 1973 – Ss.311 and 242(3) proviso & S. 246(5) – Exercise of power of court to recall any witness for cross-examination for “just decision of the case” – Prayer for recalling two PWs for cross-examination at a belated stage - Matters to be considered – No formal application or oral prayer made by accused reserving his right to cross-examine PWs at later stage – Effect – Condonation of such lapse – When warranted.
- Degree of prejudice likely to be suffered by prosecution in case of cross-examination of PWs after long lapse of time and by defence in case of denial of opportunity to cross-examine PWs, to be weighted – A possible prejudice to prosecution cannot justify denial of fair opportunity to accused to defend himself.
 - Evidence of two PWs sought to be recalled and cross-examined provided very basis of prosecution case and wholly incriminated accused – But personal affidavit filed by counsel representing appellant-accused at trial stating that his intention had always been to cross-examine PWs (trap witnesses) concerned after cross-examining another PW (trap laying officer) with whose testimony former PWs’ testimony was closely connected, and it was logical to do so – Held, statement made by trial court counsel of accused in his affidavit deserves to be accepted in peculiar circumstances of the case – Though not making an application or oral prayer for deferring cross-examination of two PWs was a mistake and belated recall of said PWs for cross-examination may cause prejudice to prosecution case due to fading memory, but denial of opportunity to cross-examine two star PWs would result in serious miscarriage of justice – On a parity of reasoning, accused should be given opportunity to defend himself by permitting recall of said two PWs in the interest of a fair trial – Prevention of Corruption Act, 1988 – Ss. 7 and 13(1) r/w/ S. 13(1)(d) – Trap witness – Cross-examination of – Logical order – After cross-examining trap laying officer – Evidence Act, 1872, S .137.
- B. Criminal Procedure Code, 1973 – Ss. 311, 242(3) and proviso thereto and S. 246(5) – Recalling witness for cross-examination – Whom to be cross-examined – Decision generally depends upon nature of depositions and whether it incriminates accused – Evidence Act, 1872, S.137.
- C. Criminal Trial – Fair trial – Object – To ascertain truth and to grant opportunity to accused prove his innocence – Formal errors made by counsel for accused – Condonation of – Constitution of India, Art.21.

(2012) 3 MLJ (CrI) 82 (SC)

Sudevanand and Ors

Vs

State through CBI

Indian Penal Code (45 of 1860), Sections 302 and 120-B- Code of Criminal Procedure, 1973 (2 of 1974), Section 391 – Appellate Court may take further evidence – Refusal by High Court – Appeal-Appellate Court may take further evidence for any reasons to arrive at the just decision for proper disposal of case – Held the High Court was in error in refusing to summon approver – Appeal allowed.

RATIO DECIDENDI: Provisions of Sections 391 Cr.P.C. is not limited to recall of a witness for further cross-examination with reference to his previous statement.

(2012) 3 MLJ (CrI) 106 (SC)

State of Haryana

Vs

Shakuntla and Ors

Indian Penal Code (45 of 1860), Sections 148, 325 and 302 – Appeal against acquittal – Evidence found favoring accused innocence – Plea of alibi proved – No interference in order of acquittal – Appeal dismissed.

(2012) 6 Supreme Court Cases 107

SANDEEP

Vs

STATE OF UTTAR PRADESH

With

SHASHI BHUSHAN

Vs

STATE OF UTTAR PRADESH

- A. Criminal Trial – Circumstantial Evidence – Links in the chain of circumstances – Murder of pregnant paramour/girlfriend and unborn child (foetus) of appellant-Factual chain, held, pointed to appellants' guilt without any missing link in it – Conviction under Ss. 302/34 and Ss. 316/34 IPC, confirmed – Dying declaration made before police party together with medical reports and facts disclosed by accused himself, held, sufficient to prove guilt.**
- **Appellant along with his companion charged with having killed his girlfriend by taking her from Delhi to U.P. on pretext of marrying her in Haridwar – Car used for transportation belonged to appellant's mother – Crime noticed by two police constables who heard shrieks coming from car - Matter reported to police patrol party which intercepted car at a lonely woman from car – Woman disclosing her name, parents' address, her affair with appellant and injuries inflicted on her by deceased and his companion, and thereafter dying while on way to hospital – Appellant himself confirming many details of incident to police – Provocation for crime was deceased's refusal to abort pregnancy caused by appellant – DNA report confirming that appellant was father of unborn child found in deceased – Police version together with medical reports and other material recovered from car, held disclosed complete chain of circumstances leading to crime – the case was free from any broken link – All doubts sought to be created by appellant and deficiencies pointed out in prosecution case, found to be baseless – Conviction recorded by trial court and upheld by High Court, held, did not warrant interference – Penal Code, 1860, Ss. 302 and 316 r/w S. 34 – Conviction confirmed.**
- B. Evidence Act, 1872 – Ss. 32(1) and 45 – Dying declaration – Capability to make statement – Dying declaration made to police – Deceased seriously injured before death – Acid injuries (vitriolage) – Injuries cases by throwing of acid whether had rendered deceased incapable of speaking – One of the constables from police party before which dying statement was made, deposing that he noticed acid injuries on inner side of deceased's mouth – From this, doubt sought to be created that deceased was unable to speak and therefore not capable of making dying statement – Acid injuries were spread over head, hair, skin and some parts of body but injuries had not caused severe damage to mouth of deceased, much less to the extent of preventing her from making any statement to the witnesses – Doctor's oral deposition did not specifically negative deceased's fitness to speak – Besides, appellant-accused's own case in High Court was that injuries sustained by deceased were not sufficient to cause death – Held, in such circumstances, dying declaration made to police party could not be doubted.**

- C. Criminal Trial – Witnesses – Independent witness – Non-availability – Effect, if any, on prosecution case – Conviction based on deposition of police party which apprehended accused and also rescued deceased from appellant’s clutches before she died – Dying declaration also made to police party – Incident taking place at 9.30 p.m. on a non-busy road – Some labourers working on crushing unit about 100 yd away but none came near scene of crime – No infirmity found in medical evidence – Held, police evidence could not be thrown out because of non-availability of independent evidence.
- D. Criminal Trial – Witnesses – Eyewitness-Failure to examine all eyewitnesses – Whether prosecution case rendered doubtful – Examination of all witnesses, held, not always necessary if others have given satisfactory account of incident – Members of police party who were present at scene of incident examined while constable and driver who rushed deceased to hospital not examined – Sufficient details emerging from depositions of members of police party who were examined – Omission to examine left out police personnel, held, not fatal to prosecution case, particularly when appellant-accused could not point out how their examination would have given better account of incident to support their defence – Evidence Act, 1872, S. 134.
- E. Evidence Act, 1872 – S. 106 – Facts especially within accused’ knowledge – Burden of proof in such a case, held, lies on him – Alibi – Proof of – appellant-accused arrested by police party from scene of occurrence but appellant seeking to build up a case that he was not present at occurrence – His version was that car recovered from scene, have brought it to the place from where it was recovered – No serious effort made to satisfactorily prove theft of car – Held, facts pleaded by appellant were especially within his knowledge – Burden of proof that he was not present at the scene of occurrence, held, thus was on him – Burden, further held, not adequately discharged – Prosecution version which was otherwise plausible has therefore to be believed – conviction confirmed – Criminal Trial – Defence – Alibi
- F. Evidence Act, 1872 – Ss. 25, 8 and 27 – Confession of accused to police officer implicating himself vis-à-vis evidence relating to preceding or subsequent events elicited from statement made to police office - Confession to police officer implicating accused, held, is bared by S. 25 but other information disclosed by him in such statement is admissible under S. 8- Appellant-accused divulging his relationship with deceased and other details (like procuring of acid) – Such details, held, not hit by S. 25 – Further held, appellant’s disclosure that he was having an affair with deceased did not amount to confession of crime for which he was being prosecuted – Criminal Procedure Code, 1973 – Ss. 161 and 162 – Constitution of India – Art. 20(3) – Words and Phrases – “Confession” – Meaning – Criminal Trial – Confession – Confession of accused.
- G. Criminal Procedure Code, 1973 – S. 154 – Discrepancy in time of recording of FIR – Half an hour variation, held on facts, did not affect prosecution case when deposition of PW 1 (in charge of police party) was otherwise quite credible – FIR got recorded by police party which intercepted accused – Time of FIR was mentioned as 2315 hrs whereas police party’s own version was that they returned to police station at 2345 hrs – There was an obvious discrepancy in time of FIR – Notwithstanding discrepancy, held, police version of incident was quite believable
- H. Criminal Procedure Code, 1973 – S. 154 – FIR – Alternation of offence in FIR as a result of victim’s death – Delay in, when not fatal – Death taking place on the day of incident itself and this fact was known to police, yet alternation of offence in FIR postponed till receipt of post-mortem report - Explanation for delay, held, was not satisfactory but it being a minor discrepancy, prosecution case could not be doubted on this count – Conviction confirmed
- I. Criminal Procedure Code, 1973 – Ss. 154 and 157 – Report to Magistrate – Delay in transmission of report – No prejudice caused to accused – Prosecution case otherwise quite foolproof – Held, no exception could be taken to the delay
- J. Criminal Trial – Circumstantial Evidence – Clues and Tell-Tale Signs/Forensics – Generally – Forensic test – DNA test – Delay in conducting – Improper preservation of sample – Effect, if any, on conviction –

Burden, held was on appellant-accused to prove that prosecution case was vitiated sufficiently to render prosecution story improbable on account of delay and consequent mishandling of sample – Appellant charged with having caused death of his girlfriend who was found pregnant at the time of death – DNA report linking appellant as biological father of foetus taken out from deceased's body – Delay in conducting DNA test taken as one ground for defence – Expert witness, namely, Junior Scientific Officer from Central Forensic Laboratory, conceding that mishandling of sample could lead to wrong results but categorically deposing that in case on hand result reported by him was not based on wrong facts – Post-mortem examination conducted on date itself, 17-11-2004 but ice-preserved sample taken from foetus, sent to laboratory as late as on 25-1-2005 – Prior to this, formalin preserved sample was also sent to laboratory on 5-1-2005 but the same returned by laboratory saying that they did not have facility to test formalin preserved sample – Held, delay notwithstanding, medical report of DNA test affirmed by its maker in cross-examination could not be discarded in the absence of concrete case being made out by appellant-accused against its credibility – Medical Jurisprudence – DNA test – Evidence Act, 1872, S. 45

- K. Criminal Trial – Sentence – Death sentence – Commutation to imprisonment of specified term – Elongated life sentence as substitute for death sentence – Government's power to grant remission truncated – Pregnant girlfriend killed after she refused to abort – Murder committed inside car by hitting her with car tools (jack and spanner), cutting her with shaving blades and throwing acid on her – Murder, a pre-planned act – Held, brutality though writ large, yet the case was not exceptional enough to warrant death sentence – Death sentence imposed by courts below commuted to life imprisonment with condition that main culprit would serve minimum imprisonment for 30 years – Remission not to be granted during this period – His companion too to serve imprisonment for minimum of 20 years without remission – Criminal Procedure Code, 1973 – Ss. 433-A and 432 – Penal Code, 1860 – Ss. 302 and 316 r/w S.34 – Sentence warranted – Sentence to main culprit and sentence to accessory in crime – Sentences of imprisonment of minimum non-remittable term commensurate with heinousness of murder, imposed

(2012) 3 MLJ (Cri) 117 (SC)

Atmaram and Ors
Vs
State of Madhya Pradesh

Indian Penal Code (45 of 1860), Section 302 read with 149 – Conviction and sentence - Appeal – Pre determined mind to kill the deceased proved – Alteration of offence under Section 304 Part II not maintainable – Conviction under Section 302 sustainable – Appeal dismissed.

RATIO DECIDENDI: When the intent is proved by prosecution that accused had a pre determined mind to kill deceased, conviction under Section 302 IPC is sustainable.

(2012) 5 Supreme Court Cases 201

OM PRAKASH
Vs
STATE OF RAJASTHAN AND ANR

- A. Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 2(k) & (l) – Age – Determination of – Documentary evidence vis-à-vis medical evidence – Relevance of conduct of accused and/or method and manner of commission of offence – Heinous crimes - Duty of courts to scrutinize plea of juvenility with extreme caution in cases involving heinous crimes, to ensure that plea of minority is not employed to escape punishment

– Held, where school record is ambiguous and does not conclusively prove minority of accused, medical opinion assumes importance – If deliberately with ulterior motive, and authenticity of medical evidence is also under challenge by prosecution, the issue would be decided on basis of evidence led by parties

- In instant case, trial court failed to arrive at conclusive finding regarding age of accused, hence, opinion of medical experts based on x-ray and ossification test would be given precedence over shaky evidence based on school records and plea of circumstantial inference based on concocted story set up by father of accused – Accused had committed heinous crime of raping a tender-aged girl of 13 1/2 yrs – Method and manner of commission of offence indicated evil and matured skill of accused – Hence, in absence of reliable documentary evidence in support of age of accused, medical evidence which indicated that accused was major would be given primacy and he was thus not entitled to protection of Juvenile Justice Act – Such statutory protection is available only to minors who are innocent law-breakers and not to accused persons of matured mind who use plea of minority to protect themselves from punishment – Courts below erred in holding accused to a juvenile and in directing his trial before Juvenile Justice Board – Thus, accused directed to be sent for trial to court of competent jurisdiction where trial was pending, and not to Juvenile Justice Board – Penal Code, 1860 – S. 376 – Evidence Act, 1872, Ss. 35 and 45.
- B. Criminal Trial – Medical Jurisprudence/Evidence – Age – Medical estimate of age – Relevance and value – Held, though doctor’s examination of age is only an opinion, but where such opinion is based on scientific medical tests like ossification test and radiological examination, it will be treated as strong evidence having corroborative value while determining age of alleged juvenile accused – Evidence Act, 1872 – Ss. 45 and 35 – Penal Code, 1860, S. 376
- C. Juvenile Justice (Care and Protection of Children) Act, 2000 – Generally – Object of – Explained – Protection, emphasized, is available only to genuine juvenile accused and not to those who raise plea of juvenility merely to create smokescreen to hide real age so as to escape punishment
- D. Criminal Trial – Defence – Alibi - Proof – Nature of – Held, plea of alibi has to be raised at first instance and subjected to strict proof of evidence and cannot be allowed lightly, in spite of lack of evidence merely with aid of salutary principle that an innocent man may not suffer injustice S. 376.

(2012) 3 MLJ (Crl) 275 (SC)

Arjun
Vs
State of Maharashtra

Indian Penal Code (45 of 1860), Sections 302, 304 – Conviction and sentence – Appeal – No Premeditation – Act was committed in heat of passion, and accused had not taken any undue advantage or acted in cruel manner – Case falls under the fourth exception to Section 300 IPC – Conviction and sentence altered from Section 302 IPC to 304 – Appeal disposed of.

RATIO DECIDENDI: When the act of offence committed in a heat of passion and accused had not taken any undue advantage or acted in a cruel manner without any premeditation, it is just and proper to alter the conviction from Section 302 to 304 Indian Penal Code (45 of 1860).

(2012) 2 MLJ (Crl) 361 (SC)

V.D. Bhanot
Vs
Savita Bhanot

Protection of Women from Domestic Violence Act (45 of 2005), Sections 3, 12, 18, 19 – Protection Order – Protection-cum-residence Order passed under Section 18 and 19 of Act – Special Leave Petition – Held, situation comes squarely within ambit of Section 3 of Act – Order of High Court modified – Direction given that respondent be provided with right of residence where petitioner is residing by way of relief under Section 19 of Act – SLP disposed of.

RATIO DECIDENDI: A wife who had shared a household in the past, but was not longer doing so when the Act came into force, would be still entitled to the protection of the Protection of Women from Domestic Violence Act, 2005.

2012 -2-L.W.(CrI.) 368

Govindaraju @Govinda
Vs

State by Srirampuram P.S. & Anr

I.P.C., Section 302 r/w. 34,

Evidence Act, Section 27 – Recovery, Testimony of sole eye witness, Police Officer; whether reliable, hostile witness, statements, reliability; ‘theory of adverse inference’; Scope of,

Criminal Trial/Evidence, eye-witness, Police Officer; whether reliable; hostile witnesses; statements; reliability; ‘adverse inference’; when can be drawn,

Criminal Procedure Code, Section 37/Appeal against acquittal; Regular appeal, distinction of.

Sole eye-witness is police officer P.W.1 – Question is whether a police officer can be a sole witness.

Statement of a police officer can be relied upon and form the basis of conviction when it is reliable, trustworthy and preferable corroborated by other evidence on record.

It is not necessary that wherever the witness turned hostile, the prosecution case must fail – Part of statement of such hostile witnesses that supports the case of Prosecution can be taken into consideration.

Statement of PW-1 suffers from improbabilities and is not free of suspicion – Its non-corroboration by other witnesses adds to the statement of PW-1 lacking credence and reliability.

Recoveries were made not in conformity with the provisions of Section 27.

(2012) 2 MLJ (CrI) 377 (SC)

Anil Sachar and Anr
Vs

Shree Nath Spinners P. Ltd. and Ors

Negotiable Instrument Act (26 of 1881), Section 1387 – Dishonour of cheque – Order of acquittal – Appeal – All four cheque referred to in both the complaints are presumed to have been given for consideration – Presumption under Section 139 of Negotiable Instrument Act, 1881 has not been rebutted by the accused – Order of acquittal set aside – Appeal allowed.

RATIO DECIDENDI: When the cheques referred to in the complaints are presumed have to been given for consideration and when the presumption under Section 139 of the Negotiable Instrument Act, 1881 has not been rebutted by accused, Order of acquittal of the accused cannot be sustained.

HIGH COURT CITATIONS CIVIL CASES

2012 (4) TLNJ 38 (Civil)

R. Kamabn
Vs
S. Fawsal Hidayat

Specific Relief Act 1963 – It is well settled that no tenant can claim a right of possession and enjoyment in the property belongs to some other person, without paying any rent or having any legal right and therefore, there is no error or infirmity in the impugned judgment and Decree of the first appellate court in decreeing the suit directing the defendant to vacate and hand over the possession of the premises to the respondent, the owner of the property – SA dismissed.

2012 (3) TLNJ 45 (Civil)

M. Malakondiah and Anr
Vs
K. Palani and Anr

Constitution of India 1950, Article 227 – Appointment of Advocate Commissioner – An attempt after a period of 6 yrs of filling the report of the Advocate commissioner – to re-issue the warrant or to appoint an advocate commissioner to inspect and measure the suit properties in view of the allegation – there was an encroachment by the Respondents/Plaintiffs – conclusion arrived by the trial court in dismissing the application of the petitioners – no way legally infirmed – No manifest error committed by trial Court – CRP deserved no merit consideration and accordingly dismissed.

2012 -3 TLNJ 49 (Civil)

Albert
Vs
M.Y. Mohammed Syed Ibrahim

Tamil Nadu Buildings (Lease and Rent Control) Act 1960, Section 10(2) & 10(3) – Eviction on the ground of willful default – relationship denied by tenant – rent controller ordered eviction and confirmed by appellate authority – on revision held that the landlord has not produced any document to prove that revision petitioner was put in possession of the property – courts without finding have proceeded with eviction order is incorrect – court is bound to find out the existence of relationship of landlord and tenant between parties – landlord also did not file the sale deed to prove ownership and therefore denial of title by tenant is bona fide – landlord not entitled to maintain action for eviction before the Rent Controller – Civil Revision Petition allowed with direction.

2012 (4) TLNJ 60 (Civil)

Sankaran No : 15/39 New Bharath Hotel R.K.V. Road Erode
Vs
S.A.M. Amjad Ibrahim No: 3, Jeenath Complex Bhavani Main Road Erode – 5 and Ors

Civil Procedure Code 1908 as amended – Order 39 – Filing an interim application to remove exhibits from the list of the documents – unregistered and unstamped documents cannot be taken as evidence – No objection while marking those documents by the plaintiff – time for trial court to frame and issue and proceed further including the validity and acceptance of those documents – It is open to contest the issue during trial – reasoning of the trial court in rejecting the interim application in the considered opinion of this court – Review petitioner is at liberty to question the validity of documents – CRP dismissed

2012 (4) TLNJ 63 (Civil)

M/s. Shanmugam Foundation Pvt. Ltd 43/19, Park Avenue Corporation Colony Arcot Road Kodambakkam Chennai
Vs
Smt. Sivakalai 14/21, Srirangaram Illam Machampalayam Sundarapuram Coimbatore – 641 024 and Ors

Civil Procedure Code 1908 as amended – Order 39, Rule 3 – Trial court granting injunction without giving notice to the opposite party – without assigning any reasons is contrary to the proviso to Order 39 rule 3 – Impugned order passed is liable to be set aside – trial court is directed to take up the interim application afresh – hear both the parties – decide on merits – CRP allowed.

2012 -3 TLNJ 72 (Civil)

The Union of India owning Southern Railways by its General Manager, Chennai
Vs
R.J. Simpson and Anr

Indian Evidence Act, 1872, Section 101 & 102 – See Railways Act 124A.

Railways Act 1989, Section 124A – Passenger was hit by electrical post and died-compensation claimed in railways claims tribunal – Tribunal awarded compensation – on appeal the plea of railway that deceased not having valid license rejected – opined that mere non production of ticket can not be held adverse to that of claimant as burden of proof is impossible to be discharged by dependents who has no knowledge about the victim holding valid ticket or pass or permission – exemption to sections 101 and 102 of Indian Evidence Act – Appeal by railway dismissed.

(2012) 6 MLJ 82

S. Sivakumar
Vs
P. Venkatachalam

Code of Civil procedure (5of1908), Order 18 Rule 17 – plaintiff side evidence – Applications dismissed – Revision Petitions – Petitioner already had filed application for reopening of Case before trial court and same was allowed pursuant to which both petitioner and defendant were examined in chief and was closed- Held, petitioner has filed present applications for second time to reopen plaintiff s side evidence to fill up the lacuna which cannot be permitted – Need for clarification of any issue or doubt did not arise for Court below to recall witness- If applications filed by Petitioner allowed, it would amount to abuse of process of court – Applications rightly dismissed by trial court Revision petitions dismissed.

RATIO DECIDENDI: The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power and the power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

(2012) 6 MLJ 93

V. Pandi and Ors
Vs
M. Thyagarajan and Ors

Evidence – Comparison of signature, with others admitted or proved- Held, evidence in both suits recorded and closed and suits are posted for arguments- At belate4d stage, prayer of petitioners for sending documents for comparison by signature expert cannot be entertained –Revision petition dismissed.

2012 -3 TLNJ 181 (Civil)

Ramesh Babu
Vs
K. Selvaraj

Negotiable Instruments Act 1881, Section 118 and 139 – When it is established that the plaintiff had sufficient source of income and having means to lend the amount due under pro-note and witnesses were examined to support the case of the plaintiff and when once the execution of promissory notes is admitted and presumption sections 118 and 139 of the Negotiable Instruments Act stand unrebutted – there is no infirmity factually or legally in the judgment of the trial Court decreeing the suit – Appeal Suit dismissed.

2012 -3 TLNJ 193 (Civil)

M/s. Mahaveer Button Manufacturing Company represented by Proprietrix Smt. Chandrakantha Mahaveer Button
Manufacturing Company
Vs
V. Manoj

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – Eviction sought on the ground of additional accommodation – alleged landlord owns another premises in occupation of a company in which landlord is a director – eviction ordered by rent controller was confirmed on appeal-on revision High Court opined that because, the landlord happens to be a shareholder in a company, there is no embargo that he should not seek for eviction of the demised premises for his own business (para 10) – CRP dismissed.

2012 -3 TLNJ 205 (Civil)

S. Gurusamy Reddiar and Anr
Vs
R. Purushothama Reddiar

Civil Procedure Code 1908 as amended, Section 35, 35(2) – Provides for cost to follow the event, and the costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation – further for indifferent approach and wasting valuable time of the courts in obtaining undue benefit from the frivolous litigation plaintiffs have to pay costs – direction of courts below ordering costs confirmed.

Interpretation of words "Defamation" – Suits filed for damages – defendant was termed as 'misappropriator', 'cheater', 'trespasser' and 'money – swindler', - reply, made by defendant is alleged as defamatory suit dismissed and the appeal was also dismissed – on further appeal High Court opined that mere writing of words howsoever defamatory they may be, to a person intended to be read by him and not intended to be read by a third person, neither gives room to an offence of defamation nor makes a man liable to pay damages in a Civil action – SA dismissed.

(2012) 6 MLJ 229

Murari Nadu (deceased) and Ors
Vs
Srinivasan and Anr

Tamil Nadu Hindu Religious and Charitable Endowments Act (22 of 1959), Section 6(18) and 6(20) – Code of Civil Procedure (5 of 1908), Section 80 – Private temple – Private temple belonging to petitioner's family – Private temple was constructed by ancestors of the plaintiff – It has no property of its own except the temple site, occupied Grama Natham – Plaintiff succeeds to management of private temple has been in effective control and

management till date without any third party's interference either by the Government or by the defendants – The private nature of the institution within the family of the plaintiff for over five generations uninterruptedly, was asserted, accepted and recognized by the public – Plaintiff's father constructed a dwelling house very near to the private temple and got E.B. Connection – Deputy Commissioner allowed the application of the plaintiff, declaring that the suit temple is not religious institution – On appeal, Commissioner allowed appeal of the defendants and declared that suit temple is a religious institution – Validity and legality of – Public as of right are not entitled to worship – It is shown that the temple expenditure are not met by contributions made by public for day to day poojas and other expenses – No evidence is forthcoming to see that police are offering contributions – There is no version from the mouth of defendants' witnesses nor from the pleadings, that Sevas and Utsavas are conducted in the suit temple periodically – There is no evidence to show that devotees are regularly worshipping the idol in the suit temple and no question of devotees treating the temple as a public temple arises – Suit temple is private temple and the suit institution does not come under the purview of the H.R. & C.E. Act.

RATIO DECIDENDI: The Hereditary Trustee has to be a one whose office devolves by hereditary right or it is to be regulated by itself or is specifically provided for by the founder.

(2012) 5 MLJ 233

T.R. Dinakaran

Vs

Revenue Divisional Officer, Aruppukottai and Ors

Constitution of India (1950), Article 226 – Tamil Nadu Patta Pass-Book Act, 1983 – Modification of entry in the Patta Pass Book – Jurisdiction of Revenue Divisional Officer to cancel patta – Order of first respondent/Revenue Divisional Officer cancelling patta standing in name of petitioner in respect of property in issue and consequently transferring patta in name of respondents 4 to 9 – Writ petition – Held, power exercised by first respondent in passing impugned order is not conferred under Act – Order passed by first respondent is unsustainable as the same was passed without jurisdiction – Impugned order set aside – Writ Petition allowed.

RATIO DECIDENDI: Neither the Revenue Divisional Officer nor any other Revenue Authority has got any power or jurisdiction to confer the title of the properties on any person while considering an application for grant of patta or for cancellation of patta.

2012 -3 TLNJ 244 (Civil)

Ramasamy

Vs

Selvaraj (set ex parte in the trial court) and Anr

Motor Vehicles Act 1988, Section 166 – Appellant lost his son in a road accident while his son was travelling in two wheeler with another person – Since the driver of the vehicle not having valid licence Tribunal directed the first respondent to pay the quantified compensation amount and exonerated the insurance company – Appellant filed petition against order of tribunal – Held – whether the vehicle owner, willfully with his full knowledge, placed the vehicle in the possession of such persons and further that has contributed to the accident – If it is not and the vehicle is insured, the insurer shall be asked to pay the compensation amount to the claimants on behalf of the insured and recover the amount from the vehicle owner in execution – High Court held that Insurance Company has to pay the compensation to claimant and may recover the amount from owner of the Vehicle – CMA allowed.

2012 -4-L.W. 284

T.M. Bhoopathy

Vs

The Executive Officer, Marundheeswarar Temple, Thiruvanmiyur, Chennai -41

C.P.C., Sections 79(2),(3),80/Order 31, Rules 1, 2.

Plaintiff was not in possession and also had not established his possession in the suit property.

Suit property belongs to the defendant/respondent temple Devasathanam, namely, Devasthanam of Maruntheeswarar temple, Tiruvanmiyur – By merely impleading the Executive Officer of Arulmighu Maruntheeswarar Temple, he cannot ask for permanent injunction, in view of the proviso to sub-section 2 of Section 79 as well as sub-section 3 thereof.

As per Order XXXI Rule 2 when the temple Devasthanam is administratively represented by the Board of Trustees, the plaintiff should have made them parties to the present suit for seeking injunction – Plaintiff/appellant has failed to implead the Board of Trustees of the temple Devasthanam.

2012 (3) TLNJ 306 (Civil)

R. Raghunandhan
Vs
M. Revathi

Hindu Marriage Act 1955, Section 13 (1) and (ia) --- Petition for divorce on the ground of mental cruelty – husband and wife are living separately from March 2001, for nearly 11 years – there would not have been any occasion or chance for husband and his family members to harass the wife demanding dowry – making false allegations against the husband and his family members and making the husband to go to police station, definitely will amount to causing mental cruelty to husband – When the husband and wife are not living together over a period of 11 years and the matrimonial home is beyond repair, the marriage becomes a fiction – CMA allowed.

(2012) 6 MLJ 315

Perumal Chettiar and Ors
Vs
Govindammal and Ors

Code Civil procedure (5 of 1908), Order 6 Rule 17 – Application under – application allowed by trial Court – Revision petition Held, if matter has to be viewed strictly, two separate applications ought to have been filed – But in view of categorical finding of lower court that there was no controversy over adding of B schedule of the property in schedule of property to I.A for final decree, no necessity for such hyper technical view Lower court was justified in allowing application without insisting for a separate application to be filed for getting incorporated the `B` schedule property ;in the application for final decree No interference with such order is warranted in these revisions Revision petitions dismissed.

RATIO DECIDENDI: In an interlocutory application, there should be only one prayer.

(2012) 6 MLJ 317

Riyaz Ahmed
Vs
Sarasu and Ors

Code of Civil procedure (5 of 1908), Order 9 Rule 13 – Application to get ex-parte decree set aside – Application dismissed by lower Court on main ground that factum of earlier application filed under Order 9 Rule 13 of C.P.C. which was filed just after date of ex –parte decree having been passed by lower Court not disclosed by petitioner Revision petition – Held, lower Court is justified in dismissing application – Revision petition disposed of.

2012 -4-L.W. 327

G. Sivaprakasam
Vs
G. Dhandapani

Negotiable Instruments Act (1881), Section 118, Promissory Note, Execution, Consideration.

Plaintiff had proved execution of the promissory note by the defendant – Arising of presumption under Section 118 as to the passing of consideration etc. is automatic – It is rebuttable – Defendant has to dislodge it – But, he did not do so.

(2012) 6 MLJ 348

A. Krishnakumar
Vs
V. Srinivasan and Ors

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), Section 10(2)(i)-Eviction – Willful default and unauthorized sub tenancy – Revision petition – Held, there was landlord and tenant relationship between landlord revision petitioner – Landlord was in the habit of issuing receipt as evidenced by Exhibits P-1 and P-2 – Revision petitioner could not produce any rent receipt evidencing that he paid the rents – Both Courts below correctly held that there was no contractual relationship directly between landlord and revision petitioner and that latter entered into premises and occupied it only under some other person – In such case, landlord was justified in approaching Rent Controller with plea that said person did not pay rent and committed willful default in paying rent – Revision petition dismissed.

(2012) 4 MLJ 356

G. Narayanan
Vs
G. Mohan and Anr

Limitation Act (36 of 1963), Section 5 – Condon action of delay – Order passed by lower Court dismissing application on ground that clinching evidence not produced – Revision – No straight jacket formula can be had for condoning delay – Strict approach not contemplated – In interest of audi alteram partem, lower Court could have, on cost, condoned delay – Held, delay could be condoned subject to payment of cost – Revision petition disposed of.

(2012) 4 MLJ 357

Latha and Anr
Vs
L. Thangaraj

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), Section 10(2)(i)-Eviction – Order of eviction – Revision petition – Held, Excess advance is liable to be adjusted in the rent payable by tenant as and when becomes due even without any demand from tenant – Landlord who is bound to refund excess amount should adjust advance amount towards arrears, if any – If that be so, landlord cannot expect payment of rent for alleged period of default – If landlord cannot demand any rent for that period, notice issued by her intimating default also will be invalid and of no legal consequence – Revision petition allowed.

RATIO DECIDENDI: Landlord who is bound to refund the excess amount should adjust the advance amount towards arrears, if any.

HIGH COURT CITATIONS CRIMINAL CASES

(2012) 3 MLJ (Cri) 7

Kannan and Anr
Vs

State by the Inspector of Police, D1, Poonamallee Police Station, Chennai 600 056

Indian Penal Code (45 of 1860), Sections 498-A and 304-B-Conviction and sentence – Appeal – Dying declaration – Dying declaration result of tutoring and does not bear truth – Benefit of doubt – Prosecution has failed to bring guilt of accused beyond all reasonable doubt – Order of conviction set aside - Accused acquitted – Appeal allowed.

(2012) 3 MLJ (Cri) 14

P. Ponnaiyan
Vs

State by Sub Inspector of Police, Chitode Police Station, Erode

Code of Criminal Procedure, 1973 (2 of 1974), Section 321 – Withdrawal from prosecution – Petition filed by inspector – Inspector of Police has got o authorization under Section 321 of Cr.P.C either to file a petition or memo seeking to withdraw any prosecution – Court cannot pass any order on memo filed by inspector – Petition dismissed.

RATIO DECIDENDI: In view of Section 321 of Code of Criminal Procedure 1973, it is only for the Assistant Public Prosecutor or the Public Prosecutor who is in charge of case to decide whether to withdraw case or not.

(2012) 3 MLJ (Cri) 158

Ranjithkumar and Anr
Vs

State rep. by Inspector of Police, Mayanur Police Station, Karur District

Indian Penal Code (45 of 1860), Section 302 – Offence of murder – Conviction and sentence – Criminal Appeal – Complete chain forming without any missing link pointing towards the guilt of accused – Prosecution has established its case beyond reasonable doubt – Order of conviction upheld – Criminal Appeal dismissed.

(2012) 3 MLJ (Cri) 174

S. Nagalakhmi rep by Power Agent K.N. Venkataraman
Vs
R. Nagalingam

Negotiable Instruments Act (26 of 1881), Section 138 – Dishonour of cheque - Appeal against acquittal - No legally enforceable debt – No material available that complainant had advance the sum to accused – Presumption under Section 139 of Negotiable Instrument Act has been rebutted by the accused – Order of acquittal confirmed – Appeal dismissed.

(2012) 3 MLJ (Crl) 221

R. Karunakaran

Vs

Inspector of Police, Central Bureau of Investigation (Anti Corruption Branch), Shastri Bhavan, Chennai

Code of Criminal Procedure Code, 1973 (2 of 1974), Sections 173(2), 190 – Cognizance – Order taking cognizance – Petition filed to recall cognizance taken - Police report filed – Once report is accepted and magistrate has taken cognizance of the offence and issued process there is no provision to recall such order taking cognizance except to challenge the charges – Prayer to recall taking cognizance is misconceived – Petition dismissed.

RATION DECIDENDI: Once the Police report is accepted and the magistrate has taken cognizance of the offence and issued process, there is no provision to recall such taking cognizance except to challenge the charges.

(2012) 3 MLJ (Crl) 305

R. Ramamoorthy

Vs

State of Tamil Nadu, rep by the Inspector of Police, Mallur Police Station Mallur, Salem District and Anr

Indian Penal Code (45 of 1860), Section 306 – Abetment of suicide – Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Quashing of proceeding – Petition for quashing of proceeding – Contents of alleged suicidal note does not disclose the mental imbalance of deceased boy – Contents appear to be rhetoric in nature and cannot form basis to launch criminal proceedings against Accused – Criminal proceeding quashed – Petition allowed.

RATIO DECIDENDI: When the content of alleged suicidal note discloses the mental imbalance of deceased and appears to be rhetoric in nature which cannot form basis to launch Criminal proceeding against accused, quashing of proceeding is proper and justified.
