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IMPORTANT CASE LAWS

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SUBULAXMI
Vs
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A. Motor vehicles Act, 1988 – Ss. 166, 173 r/w S. 163-A & Sch.II – Permanent disability – Compensation under both heads relating to (1) permanent disability, and (2) loss of future earning – Duty to grant – High Court, though enhancing amount awarded towards loss of future earning, deleting amount awarded towards permanent disability – Said deletion, held, was impermissible – Considering nature of injuries suffered [resulting in amputation of left leg (below knee) and right foot] and the date of accident (13-3-1998), a sum of ₹1 lakh awarded towards permanent disability.

B. Motor Vehicles Act, 1988 – Ss. 166, 168, 173 r/w S. 163-A & Sch. II – Permanent disability – Motor accident – Resulting in amputation of left leg (below knee) and right foot [causing 86% permanent disability] – Quantum of compensation – Functional disability – Determination – Age of victim at time of accident was 30 yrs and she was earning ₹1500 p.m. – Supreme Court determining ₹1 lakh towards permanent disability, ₹2,78,640 towards loss of future earning, ₹1 lakh towards pain and suffering and loss of amenities, ₹45,000 towards medical expenses, extra nourishment, transport charges and loss of earning during treatment and ₹1,25,000 towards future replacement of artificial limbs and other medical expenses – Thus, compensation enhanced by High Court from ₹2 lakh to ₹2,75,000, further enhanced by Supreme Court to ₹6,48,640 – Tort Law – Workmen's Compensation Act, 1923, S.4.

C. Motor Vehicles Act, 1988 – Ss. 171 and 166 – Award of interest on enhanced sum – Denial of, by High Court, without assigning any reason therefor – Held, was not proper – Direction issued for grant of interest @ 9% p.a. on differential enhanced sum from the date of filing of claim petition till date of deposit of sum before Tribunal – Civil Procedure Code, 1908, S.34.

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ENVIRONMENTAL AND CONSUMER PROTECTION FOUNDATION
Vs
DELHI ADMINISTRTAION AND ORS

✌ **Constitution of India – Arts. 21-A, 32, 21 and 141 – Primary or elementary education – Expeditious expansion and improvement of basic directions of Supreme Court regarding implementation of RTE Act – Directions issued – Writ petition disposed of with belief that Central and State Governments and National Commission and State Commissions for Protection of Child Rights would take effective measures for compliance with Supreme Court directions and implementation of RTE Act – In case of non-compliance with directions, liberty given to aggrieved parties concerned to approach Supreme Court for appropriate orders – Right of Children to Free and Compulsory Education Act, 2009 – Ss. 6 to 9 and 31 – Commissions for Protection of Child Rights Act, 2005, Ss. 13 and 24.**

✌ **Education and Universities – Generally – Primary and elementary education – Improvement of, and implementation of RTE Act – Obligation to ensure basic amenities and infrastructure – Mechanism to**

safeguard the rights of child – Right of Children to Free and Compulsory Education Act, 2009 – Ss. 6 to 9 and 31 – Commissions for Protection of Child Rights Act, 2005, Ss. 13 and 24.

Held: Judicial notice is taken of the fact that some of the States have not fully implemented the directions issued by the Supreme Court in Society for Unaided Private Schools of Rajasthan case, (2012) 6 SCC 1 as well as the provisions contained in the RTE Act. Considering the facts that the Supreme Court has already issued various directions for proper implementation of the RTE Act and to frame rules, there is no reason to keep this writ petition pending. Section 31 of the RTE Act has also conferred certain functions on the National Commission for Protection of Child Rights and also on the State Commissions. The said authorities will no doubt examine and review the safeguards for the child's rights and recommend measures for their effective implementation.

All the States are directed to give effect to the various directions already given by the Supreme Court like providing toilet facilities for boys and girls, drinking water facilities, sufficient classrooms, appointment of teaching and non-teaching staff, etc., if not already provided, within six months from today. It is made clear that these directions are applicable to all the schools, whether State-owned or privately-owned, aided or unaided, minority or non-minority. As the writ petition is disposed of, no orders are required to be passed on applications are not fully implemented, it is open to the aggrieved parties to move the Supreme Court for appropriate orders.

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MICRO HOTEL PRIVATE LIMITED
Vs
HOTEL TORRENTO LIMITED AND ANR

A. **Constitution of India – Arts. 226 – Judicial discipline – Division Bench of High Court reopening judgment of reopening Bench which had attained finality – Impermissibility.**

B. **Constitution of India – Art. 226 – Finality of order – Res judicata – Interference with final orders – High Court's order had attained finality – Reopening of proceedings by coordinate Bench of same High Court in another writ petition – Impermissibility of.**

- R-1 having defaulted in repayment of loan received from R-2 and R-5 State Financial Corporations (SFCs), also failed to avail one-time settlement schemes (OTS) offered in 2003 and 2007 – High Court in first round of litigation directed R-1 to deposit ₹ 50,00,000 each with R-2 and R-5 upfront, failing which liberty was granted to R-4 & R-5 to proceed under S. 29 of SFC Act to bring properties of R-1 to sale – Review petition thereagainst was also dismissed – R-2 and R-5 sold said property in auction under S. 29 of SFC Act, to appellant (auction-purchaser) and possession handed over to it owing to failure of R-1 to comply with directions of High Court – High Court in second round of litigation by impugned order directing R-2 and R-5 to offer benefit of OTS afresh and quashing sale agreement and grant of possession to appellant on ground that R-2 and R-5 failed to follow guidelines in Vincent Paul, (2011) 4 SCC 171, by not issuing notice of 30 days before selling R-1's property – Tenability.

- **Held, High Court virtually sat in judgment over binding judgment of another coordinate Bench and also misread vital facts of the case – In instant case, seizure order was issued and entire assets were taken over after expiry of 30 days from date of notice – Even otherwise, guidelines in Vincent Paul case were not applicable to present case since said judgment had prospective application (though they had been complied with) – Hence, held, there was no illegality in procedure adopted by R-2 and R-5 – By overlooking vital facts as well as binding judgment of coordinate Bench, High Court wrongly reopened a lis and issued wrong and illegal directions – Hence, order of High Court set aside – Sale and grant of possession to appellant restored – Civil Procedure Code, 1908 – S. 11 – Res judicata – Debt, Financial and Monetary Laws – State Financial Corporations Act, 1951 – S. 29 – If properly invoked.**

C. **Debt, Financial and Monetary Laws – State Financial Corporations Act, 1951 – S. 29 – Sale of debtor's property – Steps to be followed – Principles restated – Civil Procedure Code, 1908, Or. 21 R.66 and Or. 34 Rr. 4 and 5.**

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SUPREME COURT CITATIONS
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GIAN SINGH
Vs
STATE OF PUNJAB AND ANR

A. Criminal Procedure Code, 1973 – Ss. 482 and 320 – Relative scope – Inherent power of High Court under S. 482 to quash criminal proceedings involving non-compoundable offences in view of compromise arrived at between the parties – Whether available – If so, then when may such power be exercised – Social impact of crime in question vis-à-vis its individual impact, as decisive criterion for exercise of quashment power in such cases – Guidelines for and limitations on exercise of quashment power of High Court in such cases, laid down – Whether S. 320 creates a bar/limits inherent power of High Court under S. 482, examined – Whether B.S. Joshi, (2003) 4 Scc 675, Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1 require reconsideration.

- **Held, power of High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal court of compounding offences under S. 320 – Case where power to quash criminal proceedings may be exercised where the parties have settled their dispute, held, depends on facts and circumstances of each case – Before exercise of inherent quashment power under S. 482, High Court must have due regard to nature and gravity of the crime and its societal impact.**

- **Thus, held, heinous and serous offences of mental depravity, murder, rape, dacoity, etc., or under special statutes like Prevention of Corruption Act or offences committed by pubic servants while working in their capacity as public servants, cannot be quashed even though victim or victim's family and offender have settled the dispute – Such offences are not private in nature and have a serious impact on society.**

- **But criminal cases having overwhelmingly and predominatingly civil flavor stand on a different footing – Offences arising from commercial, financial, mercantile, civil, partnership or like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and parties have resolved their entrie dispute, High Court may quash criminal proceedings – High Court, in such cases, must consider whether it would be unfair or contrary to interest of justice to continue with the criminal proceeding or continuation of criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between parties and whether to secure ends of justice, it is appropriate the criminal case is put to an end - If such question(s) are answered in the affirmative, High Court shall be well within its jurisdiction to quash the criminal proceeding – Hence held, B.S. Joshi, Nikhil Merchant and Manoj Sharma cases are all correctly decided – Prevention of Corruption Act, 1988 – Ss. 7 to 13 – Penal Code, 1860 – Ss. 376, 302, 406 and 420 – Negotiable Instruments Act, 1881, Ss. 147, 141 and 138.**

B. Criminal Procedure Code, 1973 – Ss. 482 – Quashing of criminal proceedings – Exercise of power by High Court – Quashing of non-compoundable offences in view of compromise arrived at between parties – Guidelines laid down – Categories of cases in which such power can be exercised stated by way of illustration, and not exhaustively.

C. Criminal Procedure Code, 1973 – Ss. 482 and 320 – Relative scope – Power of High Court under S. 482, for quashing criminal offences and power of compounding of offences under S. 320 – Distinction

between – Held, the same materially different and not interchangeable – In compounding of offences, power of a criminal court is circumscribed by provisions contained in S. 320, being guided solely and squarely thereby – On the other hand, formation of opinion by High Court for quashing a criminal offence or criminal proceeding or criminal complaint under S. 482 is guided by the material on record as to whether the end of justice would justify such exercise of power although ultimate consequence may be acquittal or dismissal of indictment – Hence, quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offences.

D. Criminal Procedure Code, 1973 – S. 320 – Compounding of offences – Scope of – Exhaustive nature of S. 320 – Held, in view of S. 320(9) compounding of an offence has to be in accord with S. 320 and in no other manner – Negotiable Instruments Act, 1881, S. 147.

E. Criminal Procedure Code, 1973 – S .482 – Inherent powers of High Court – Scope and ambit – Reiterated – Inherent power is of wide plenitude with no statutory limitation but has to be exercised to achieve either of twin objectives: (i) to prevent abuse of process of any court, or (ii) to do real, complete and substantial justice – However, inherent power is not to be exercised as against express bar of law in specific provisions of CrPC – No precise and inflexible guidelines can be laid down therefor – Depends entirely upon facts and circumstances of each case – Maxims – Quando lex aliquid alicui concedit, concediture et id sine qua res ipsa esse non potest.

F. Criminal Procedure Code, 1973 –S .482 – Express provisions of CrPC – Exercise of inherent power – Bar on – Reiterated, power under S. 482 is not to be resorted to if there is specific provision in CrPC for redressal of grievance of an aggrieved party – It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of CrPC.

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NARAYAN MANIKRAO SALGAR
Vs
STATE OF MAHARASHTRA

A. Penal Code, 1860 – Ss. 304-B & S. 498-A and S. 113-B, Evidence Act, 1872 – Dowry death – Burden of proof on accused after presumption under S. 113-B-B, Evidence Act arises – Nature of – Mere denial – Effect of – Suicide by wife by hanging due to dowry demands.

- Held, once foundational facts required for raising said presumption have been established by prosecution burden lies on accused to prove as to how deceased died – Mere denial cannot be treated as discharge of onus – Onus has to be discharged by leading proper and cogent evidence – Accused must show that death of deceased did not result from any cruelty or demand of dowry by accused – On facts held, accused (husband and mother-in-law of deceased) failed to explain as to how and under what circumstances deceased died, as well as conduct of husband immediately prior and subsequent to death of deceased – On the other hand, prosecution by reliable and cogent evidence had established guilt of accused – There being no rebuttal thereof, no interference with conviction of appellant-accused called for – Evidence Act, 1872 – Ss. 113-B, 113-A, 106, 101 and 102 – Dowry Prohibition Act, 1961 – S. 2 – Criminal Trial – Proof – Burden and Onus of proof – Reversal of, by law – Onus on accused in such cases.

B. Penal Code, 1860 – Ss. 304-B & 498-A and S. 113-B, Evidence Act, 1872 – Dowry death – Expressions "dowry death", "soon before her death", and "in connection with any demand for dowry" occurring in S. 304-B – Meaning – Explained through case law – Time between date of marriage and date of death – Relevancy – Suicide by wife by hanging – On facts held, testimony of PWs clearly established persistent dowry demands by accused, and cruelty and ill-treatment meted out to deceased for non-fulfilment of demand – Besides, period between marriage and death of deceased was very small i.e just about a year – Hence, conviction of accused (husband and other-in-law of deceased) under S. 304-B &

S. 498-A calls for no interference – Dowry Prohibition Act, 1961 – S. 2 – Evidence Act, 1872, Ss. 113-B and 113-A.

C. Criminal Trial – Sentence – Principles for sentencing – Sentence reduced – Mitigating circumstances – Age of accused and fact that they had already spend considerable period in jail – Conviction under S. 304-B & S. 498-A IPC and imposition of sentence of life imprisonment and 3 yrs' RI respectively – Sentence reduced to 10 yrs' RI for both appellant-accused i.e. husband and mother-in-law – Penal Code, 1860 – Ss. 304-B and 498-A – Sentence warranted.

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NARAYAN MANIKRAO SALGAR
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With
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With
KESHAV MANIKRAO SALGAR AND ANR
Vs
STATE OF MAHARASHTRA

A. **Penal Code, 1860 – Ss. 326/149 OR Ss. 302/149 – Murder or grievous hurt – Determination of – Medical evidence – Nature of weapons used, location and nature of injuries – Appreciation of – Medical evidence indicated that deceased had been very severely beaten – All accused were armed with sticks and bricks, etc. – Deceased had sustained many external injuries on his four limbs as well as his head – Numerous bones in his arms and legs were fractured – Brain was found congested – Number of injuries caused to deceased clearly shows that assault was premeditated – All injuries were lacerated and caused by blunt weapons – None of the witnesses could say if any injury had been caused by katti (sickle) – Held, it is not possible to hold that appellants shared common object of causing murder of deceased – Accused had merely decided to teach him a lesson for having a quarrel with PW 2 on previous day – Injuries being grievous in nature, offences committed by appellants would fall within mischief of S. 326 – Conviction modified to one under Ss. 326/149 and sentence of 7 yrs' RI.**

B. Criminal Trial – Witnesses – Eyewitness – Reliability of – Conviction confirmed – Dying declaration – Testimonies of eyewitnesses – Appreciation of – Wife of victim being star witness – Penal Code, 1860, Ss. 326/149.

C. Evidence Act, 1872 – S. 32(1) Dying declaration – Dying declaration recorded by PSI – Reliability of – Doctor examined patient and permitted PSI to record statement of injured – Doctor categorically stated that statement of injured victim was recorded by PSI in his presence and after the statement was conscious enough to make statement – Held, there is no reason to discard dying declaration – Conviction confirmed.

D. Constitution of India – Art. 136 – Exercise of powers under – Interference in criminal matters – Court would not interfere with concurrent findings of fact, save in exception circumstance i.e. where conclusion of High Court is manifestly perverse and unsupportable on evidence on record – Appellant failed to point out any infirmity in conclusions recorded by courts below with regard to premeditated assault on victim – On this issue, both the judgments do not suffer from any such perversity which would shock conscience of Supreme Court – However, conviction modified to one under Ss. 326/149 IPC

(2012) 9 Supreme Court Cases 650

BHIMANNA
Vs
STATE OF KARNATAKA

A. **Criminal Procedure Code, 1973 – Ss. 222, 215 to 217, 385, 386, 464 and 465 – Effect of error or omission in charge – Conviction for minor offences even if not charged, though offence proved included in offence charged – Sentence to be awarded.**

- **All three accused persons charged under Ss. 302/34 IPC for committing murder in furtherance of common intention – Trial court convicted one of them under S. 302 IPC and finding that the other two accused persons had nto acted in furtherance of common intention to commit murder, and held them to be guilty of causing injuries only – Trial court however did not award said two accused any punishment since they were nto charged for minor offences in question – High Court without altering finding of trial court, awarded punishment under Ss. 302/34 IPC to the said two accused because they were charged it - Held, trial court is empowered to alter/add charges at any stage of trial and it is only if prejudice is caused to accused would a fresh trial be warranted – Appellate court can also exercise power to alter/add charges – Thus, in present case, trial court was patently in error in not altering/adding requisite charges or even without such alteration/addition, and not punishing them for minor offences other than under S. 302 IPC – On facts, held, ends of justice would be met if all accused persons are convicted under Ss. 447, 504 and 304 be met if all accused persons are convicted under Ss. 447, 504 and 304 Pt. I r/w S. 34 IPC – Penal Code, 1860, Ss. 304 Pt. I, 447, 504 r/w S. 34 or S. 302 r/w S.34.**

B. **Penal Code, 1860 – Ss. 304, 447, 504 r/w S. 34 or S. 302 r/w S. 34 [S. 300 Exception 4] – Intention to murder – Absence of – Inference of – Sentence warranted for lesser offences – Dispute over pathway leading to sudden quarrel and attack on deceased by accused – However, accused stopping attack as soon as deceased fell down – Held, this shows that there was no intention to kill and no premeditation – Hence, conviction and sentences under Ss. 304, 447, 504 r/w S. 34, imposed, setting aside conviction under S. 302 r/w S.34.**

C. **Criminal Procedure Code, 1973 – Ss. 211, 215 to 217, 222, 464 and 465 – Defect in charge – When vitiates trial – Principles reiterated – Need for accused to show prejudice caused by error in charge/non-framing of charge and failure of justice occasioned there by – Words and Phrases – "prejudice" and "failure of justice".**

2012 (6) CTC 690

Laxmi Dyechem
Vs
State of Gujarat & Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Negotiable Instruments Act, 1881 (26 of 1881), Sections 138, 139 & 141 – Signature of drawers not matching specimen signature, whether would amount to dishonor of Cheque ? – Any change in signature brought about with a view of prevent Cheque being honoured would amount to dishounour and would become an offence under provision – Change in Authorised Signatory of a Company, Firm, etc. would not automatically amount to dishonor of Cheque and become punishable, unless drawer despite notice and despite opportunity to make payment does not pay amount in time stipulated under Act – In instant case, offer made by defaulting Company to issue new Cheques upon settlement of accounts, held, a conditional offer and would not render illegal an otherwise lawful prosecution – Moreover, Cheques issued by authorized persons of Company would lead to presumption that Cheque were meant to discharger lawful debt or liability – In absence of any proof to rebut presumption that Cheques were issued for discharge of lawful debt or liability, Section 139 would not come to rescue of accused – Allegations of fraud, to be left to decision of Trial Court and not be investigated by Court under Section 482 of Code – Order of High Court quashing Criminal proceedings

against Signatories of Cheques, set aside – Trial Court direct4ed to proceed with trial of Complaints – Appeal allowed.

Negotiable Instruments Act, 1881 (26 of 1881), Section 139 – Presumption under provision – Prosecution can fail if Accused establishes probable defence sufficient enough to create doubt about existence of legally enforceable debt or liability – Said defence to be raised by relying upon materials submitted by Complainant or in some case accused may lead evidence on his own – Presumption can be discharged even at threshold where Magistrate examines case at stage of taking cognizance as to whether prima facie case has been made out against drawer of Cheque – However, if defence is not raised, presumption under provision not being rebutted, would operate with regard to materials submitted by Complainant.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 138 & 139 – Stop Payment cases – Harmonious construction of Sections 138 & 139 to be adopted in matters arising out of "Stop Payment' – 'Stop Payment' instruction when given to Bank would constitute an offence under Section 138, however, subject to Section 139 – Where Stop Payment contingency arises for bona fide reasons, Section 138 would not apply as it applies in conjugation with Section 139 which envisages right of rebuttal before making out of offence – Stop Payment Cheques, thus, a category subject to rebuttal and would be an offence only if drawer of Cheque fails to discharge burden of rebuttal.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Stop Payment cases – Nature of responsibility cast on Trial Court in Stop Payment cases, discussed.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Stop Payment cases – Illustrations enumerated.

(2012) 9 Supreme Court Cases 705

PUSHPANJALI SAHU
Vs
STATE OF ORISSA AND ANR

A. Crimes Against Women and Children – Rape – Sentence – Strict sentence for perpetrators of rape – Reduction of sentence to below minimum prescribed – Liberal attitude of courts below – minimum prescribed – Liberal attitude of courts below – Stringently condemned.

- High Court confirmed conviction of appellant-accused for offence of rape but reduced sentence of 7 yrs awarded by trial court to about a year already undergone – Impermissibility of – Reiterated, undue sympathy towards accused by imposition of inadequate sentence would do more harm to justice system by undermining confidence of society in efficacy of law - Courts are duty-bound to award proper sentence having regard to the nature and manner of execution or commission of the offence – Courts have also to safeguard social interests in order to uphold faith in justice.

- Held, present case where watchman of women's hostel committed rape on matron of that hostel, does not fall within category of exceptional cases failing within purview of "adequate and special reasons" based on which sentence for rape can be reduced below statutory minimum – Hence, trial court's order restored – Further held, courts are expected to deal with cases of sexual crime against women with utmost sensitivity towards prosecutrix and sternly towards accused – Penal Code, 1860 – S. 376 – Rape – Sentence.

B. Penal Code, 1860 – S. 376 – Rape – Nature of – Held, rape is a crime not only against victim but also against entire society – It is a crime against basic human rights – Constitution of India – Art. 21 – Crimes Against Women and Children – Rape.

(2012) 9 Supreme Court Cases 742

STATE OF UTTAR PRADESH
Vs
MUNESH

A. Penal Code, 1860 – Ss. 302 and 376 – Rape and murder of 11-year-old girl – Appreciation of evidence – Natural and independent witnesses – Minor contradictions – Conviction restored – Sentence of RI for life, imposed.

- Deceased, aged about 11 yrs, had gone alone from her house to prepare cow dung cakes – Respondent-accused forcibly took her into wheat filed with bad intentions – She raised cries and on hearing the same, PWs 2 and 3, who were passing by at a short distance, came to said filed and saw respondent strangulating deceased with a dupatta – On seeing them, respondent ran away and when they tried to chase him, he could not be caught – Trial Judge convicted respondent and sentenced him to death – High Court allowed appeal and acquitted respondent and rejected capital sentence reference – High Court disbelieved statement of independent eyewitnesses, PWs 2 and 3 on ground of contradictions between statements made under S. 161 CrPC and their evidence before court and delay in lodging of FIR – Respondent further submitted that non-recovery of chunni (dupatta i.e. a kind of stole), which was alleged to have been used for strangulating victim was fatal to prosecution case – Held, PWs 2 and 3 are not related to deceased, and are independent eyewitnesses who actually witnessed occurrence – Alleged contradictions are trivial in nature and have not affected prosecution case, which is also supported by medical evidence – Analysis and ultimate conclusion of High Court is contrary to acceptable and reliable material placed on record by prosecution – Accused first committed offence of rape and then murdered the deceased – Sentence of RI for life, imposed – Criminal Procedure Code, 1973, Ss. 374 and 161.

B. Criminal Procedure Code, 1973 – S. 154 – FIR – Delay in FIR – If reasonably explained – Occurrence at 4.30 p.m. – FIR LODGED AT 11.05 P.M. – Rape and murder of 11-year-old minor girl in village – Father of victim (PW 1), a village, on hearing of incident through PWs 2 and 3 (who had been passing by), rushed to spot, made arrangements to cover body of his daughter, tried for some time to trace accused, and thereafter, reached police station which was at a distance of 2 km – Held, it cannot be construed that there was any unreasonable and unexplained delay which goes to root of prosecution case – Delay has been properly explained by PW 1 – Even otherwise delay cannot be said to be abnormal as erroneously observed by High Court – Penal Code, 1860 – Ss. 376 and 302.

C. Criminal Procedure Code, 1973 – S. 154 – FIR – All details as spoken to by PWs 1, 2 and 3 were not mentioned in FIR – Held, trial court rightly observed that FIR need not be encyclopaedic – It is just an intimation of occurrence of an incident and it need not contain all facts related to said incident.

D. Criminal Trial – Investigation – Defective or illegal investigation – Effect of – Death caused by strangulation – Prosecution failed to recover chunni (dupatta) which was alleged to have been used for strangulating victim but, remaining material objects, evidence of prosecution witnesses, statement of doctor (PW 4) who conducted post-mortem, his opinion, etc. amply prove prosecution case – Hence, claim of respondent regarding defect in prosecution evidence, rejected – Penal Code, 1860 – Ss. 376 and 302 – Rape and murder.

E. Penal Code, 1860 – Ss. 376 and 302 – Rape and murder of minor – Medical evidence – Appreciation of – Absence of report of Sperm Detection Test – Effect of – Cause of death of deceased was asphyxia due to strangulation and also ante-mortem injuries – Conclusion of PW 4 (doctor) fully supported prosecution case that deceased was raped before strangulation – Blood was seen in vagina of deceased – Held, in absence of abovesaid report, prosecution case cannot be doubted about rape, particularly, in the light of categorical findings of PW 4 that murdered victim's hymen was found to have been ruptured – Other prosecution witnesses also stated about injuries on her private parts and oozing of blood – Medical evidence proved that victim was raped before her death

and she dies on 5-3-2002 – Prosecution story is fully corroborated with medical evidence on record – High Court failed to give importance to said evidence.

F. Penal Code, 1860 – Ss. 302 and 376 – Rape and murder of 11-year-old girl – Conviction restored – Sentence – Incident occurred in year 2002 – Trial court imposed death – High Court acquitted respondent – Held, rigorous imprisonment for life would meet ends of justice.

G. Crimes Against Women and Children – Rape – Primary concern both at national and international level is about devastating increase in rape cases and cases relating to crimes against women – India is no exception to it – Although statutory provisions provide strict penal action against such offenders, it is for courts to ultimately decide whether such incident has occurred or not – Courts should be more cautious in appreciating evidence and accused should not be left scot-free merely on flimsy grounds – In present case, accused had committed rape which repels moral conscience as he chose a girl of 11 yrs to satisfy his lust and subsequently murdered her – Penal Code, 1860, S. 376.

(2012) 9 Supreme Court Cases 750

ASHWANI KUMAR SAXENA
Vs
STATE OF MADHYA PRADESH

A. Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 7-A, 33 ,49 and 2(y) – Juvenility – Determination of - Nature, scope and ambit of inquiry expected of court, Juvenile Justice Board and Child Welfare Committee while dealing with claim of juvenility under JJ Act, 2000 – Explained in detail.

- Held, such inquiry is not expected to be an "inquiry" of the sort contemplated under S. 2(g) CrPC; only procedure laid down under R. 12 of 2007 Rules needs to be followed and not that under CrPC – S. 7-A obliges court to make inquiry only, not investigation or trial - Though S. 7-A has used expressions "Court shall make an inquiry", take such evidence as may be necessary" and "but not an affidavit", court or Board can accept as evidence something more than an affidavit i.e. court or Board can accept documents, certificates, etc., as evidence, need not be oral evidence – R. 12 has to be read along with S. 7-A – R. 12(2) uses expressions "prima facie" and "on the basis of physical appearance" or "documents, if available" - R. 12(3) use expression "by seeking evidence by obtaining" – These expression re-emphasise fact that what is contemplated in S. 7-A and R. 12 is only an inquiry – Further, age determination inquiry has to be completed and age has to be determined within thirty days from date of making application, which is also an indication of manner in which inquiry under JJ Acts has to be conducted and completed [Ed.: See also in detail Shortnotes B, C and D] – Juvenile Justice (Care and Protection of Children) Rules, 2007 – R. 12 – Criminal Procedure Code, 1973 – Ss. 2(g) and (h) – Words and Phrases – "Inquiry" and "enquiry" – Evidence Act, 1872, S. 35.

B. Juvenile Justice (Care and Protection of Children) Rules, 2007 – Rr. 12(3)(a)(i) to (iii) – Claim of juvenility – Age determination procedure under JJ Act, 2000 – Duty of courts/Juvenility – Age determination procedure under JJ Act, 2000 – Duty of courts/Juvenile Justice Boards and Child Welfare Committees functioning under JJ Act, held, is to seek evidence by obtaining certificates, etc. mentioned in Rr. 12(3)(a)(i) to (iii) – Courts in such situations act as a parens patriae because they have

a kind of guardianship over minors who from their legal disability stand in need of protection – Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 7-A, 33 and 49.

C. Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 7-A, 33 and 49 – Claim of juvenility – Age determination inquiry under JJ Act, 2000 – Procedure to be adopted by court or Board – Obtaining of medical opinion – Need when arises – Exact assessment of age if not done – Effect of – Finality of age determination under S. 7-A r/w R. 12 – Juvenile Justice (Care and Protection of Children) Rules, 2007 – R. 12 – Evidence Act, 1872, S. 35.

D. Juvenile Justice (Care and Protection of Children) Act, 2000 – Ss. 7-A, 49 and 2(l) – Claim of juvenility – Proper mode of determination of, under JJ Act, 2000 – Reliance on school records, etc., as proof of age – Rejected by trial Court – Ossification test relied on by court to determine age and dismiss claim of juvenility – High Court confirmed order passed by courts below stating that accused failed to establish that his age was below 18 years on date of incident – Impropriety of approach adopted by courts below – Murder trial – Claim of Juvenility accepted by Supreme Court – Juvenile Justice (Care and Protection of Children) Rules, 2007 – R. 12 – Penal Code, 1860 – Ss. 302 and 34 – Arms Act, 1959 – S. 27 – Criminal Trial – Juvenile/Child accused – Evidence Act, 1872, S. 35.

(2012) 9 Supreme Court Cases 791

RAGHUVANSH DEWANCHAND BHASIN
Vs
STATE OF MAHARASHTRA

A. Criminal Procedure Code, 1973 – Ss. 204, 70, 71 74 and 76 – Non-bailable warrant (NBW) – Issuance of - Duty and discretion of court regarding, explained – Striking a balance between an individual's rights, liberties and privileges on one hand, and State as representative of the community/polity, on the other – Necessity of – In instance case, having regard to nature of complaint against appellant (a practicing advocate) and his stature in community and fact that admittedly appellant was regularly attending court proceedings, held, it was not a fit case where NBW should have been issued – Attendance of appellant could have been secured by issuing summons or at best by a bailable warrant – In facts and circumstances of case, issuance of NBW was manifestly unjustified – Constitution of India – Arts. 21 and 22(i) – Penal Code, 1860, S. 324.

B. Criminal Procedure Code, 1973 – Ss. 204, 190(1)(a), 70, 71, 74 and 76 – Failure of accused to attend court on date of hearing – Issuance of appropriate warrant against accused therefor: whether bailable warrant, or, non-bailable warrant (NBW) to be issued – Undisputed power and jurisdiction of court regarding – Ingredients necessary for exercising such power – Held, it is four court which is clothed with discretion to determine whether presence of accused can be secured by bailable or non-bailable warrant, to strike balance between need of law enforcement on one hand and protection of citizen from highhandedness at the hands of law-enforcement agencies on the other – Power and jurisdiction of court to issue appropriate warrant against accused on his failure to attend court on the date of hearing of matter cannot be disputed – Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to nature and seriousness of offence involved, past conduct of accused, his age and possibility of his absconding – Constitution of India, Arts. 21, 22(1) and 14.

C. Constitution of India – Arts. 21, 22, 32 and 226 – Compensation – Matters involving infringement or deprivation of fundamental rights, abuse of process of law, harassment, etc. – Held, in such matter, Courts have ample power to award adequate compensation to an aggrieved person, not only to remedy wrong done to him, but also to serve as a deterrent for wrongdoers – Power and jurisdiction of Supreme Court and High Courts to grant monetary compensation in exercise of their jurisdiction respectively under Arts. 32 and 226 of Constitution, to a victim whose fundamental rights under Art. 21 are violated, are well established.

D. **Criminal Procedure Code, 1972 – Ss. 204, 190(1)(a), 70, 71 74 and 76 – Non-bailable warrant (NBW) issued on account of failure of appellant-accused to attend court proceedings – Warrant made returnable on 85th day from its issue – Accused arrested on basis of such warrant, which was executed on 8th day, in spite of it being a National holiday (Independence Day) – No justifiable reason present for such urgency in executing warrant on a National holiday – Such conduct of police officer, on whose direction warrant was executed, not justified – Constitution of India – Art. 21 – Penal Code, 1860, S. 324.**

E. **Criminal Procedure Code, 1973 – Ss. 204, 190(1)(a), 70, 71, 74 and 76 – Arrest on basis of cancelled non-bailable warrant (NBW) – High Court directing delinquent police officer (Respondent 2) responsible for executing such warrant, to pay monetary compensation of ₹ 2000 to aggrieved person (appellant), from his own account – Such punishment, if adequate – Whether aggrieve person entitled to any compensation for humiliation and harassment suffered by him on account of wrong perpetrated by delinquent police officer, in addition to what was awarded by officer should also be prosecuted and proceeded against departmentally for his wrongful confinement – Held, appellant being a practicing advocate conversant with court procedure and, therefore, should have procured a copy of memo/order whereby NBW was cancelled by court – Admittedly, he applied for and obtained a copy of such order afterwards – Though conduct of Respondent 2 in arresting appellant, ignoring appellant's plea that NBW issued by court had been cancelled, deserves to be deplored, yet strictly speaking, action of Respondent 2 in detaining appellant on strength of warrant in his possession, perhaps motivated, cannot be said to be per se without authority of law – Hence, no other action against Respondent 2 warranted – He has been sufficiently reprimanded – Penal Code, 1860, S. 324 – Total Law - Malicious prosecution/Wrongful prosecution – Constitution of India, Arts. 21, 22(1) and 14.**

F. **Criminal Procedure Code, 1973 – Ss. 204, 70, 71 476 and Such, II Form 2 – "Non-bailable" warrant (NBW) – No such terminology found in CrPC as well as in Such. II Form 2 – Issuance of such warrant by courts – validity of – Held, it is true that neither S. 70 nor S. 71 appearing in Ch. VI CrPC, enumerating processes to compel appearance, as also Such. II Form 2, uses expression like "non-bailable" – However, S. 71(2) specifies endorsements which can be made on a warrant – Endorsement of expression "non-bailable" on a warrant is to facilitate executing authority as well as person against whom warrant is sought to be executed, to make them aware as to nature of warrant that has been issued – Merely because Form 2 issued under S. 476 and set forth in Sch. II nowhere uses expression "bailable" or "non-bailable" warrant, that does to prohibit courts from using said word or expression while issuing warrant or even to make endorsement to that effect on warrant to issued.**

G. **Criminal Procedure Code, 1973 – Ss. 204, 70, 71 and Sch. II Form 2 – Cases where non-bailable warrants (NBWs) are issued by courts – Necessary guildelines to be adopted in, issued by Supreme Court – All High Courts directed to issue appropriate directions in this behalf to subordinate courts, which shall endeavour to put directions into practices at the earliest, preferably within six months – Constitution of India, Arts . 136, 32, 141 and 144.**

2012 (6) CTC 829

Dimpey Gujral W/o. Vivek Gujral & Ors
Vs
Union Territory though Administrator, U.T. Chandigarh & Ors

Code of Criminal Procedure, 1973 (2 of 1974), Section 320 – Indian Penal Code, 1860 (45 of 1860), Sections 147, 148, 149, 323, 307, 452 & 506 – FIR under various provisions lodged against Petitioners on account of a trivial dispute between parties – Instant Petition to transfer case from Chandigarh to Delhi - Compromise entered into between parties during pendency of Petition – However, one of offences alleged against Petitioner, a non-compoundable offence – Decision of Court in Gian Singh v. State of Punjab, 2012 (5) CTC 526 (SC) relied upon – Offences not being heinous offences showing extreme depravity nor being against society but being of personal

nature, held continuation of Criminal proceedings would tantamount to abuse of process of law – Offences buried to bring peace and amity between parties – FIR and charges against Petitioners, quashed.

(2012) 7 MLJ 887(SC)

Gaytri Bajaj
Vs
Jiten Bhalla

Guardians and Wards Act (8 of 1980) – Hindu Minority and Guardianship Act (32 of 1956) – Custody of minor children – Divorce by mutual consent – Entitlement to custody of children by respondent-father – Abandonment of visitation rights by appellant-mother-Appeal-Question as to whether appellant would be entitled to visitation rights – Held, children expressed their reluctance to go with their mother even for short duration of time – Mediator had also failed to convince children – Visitation right to mother would be adverse to interest of children – Visitation rights to mother denied – Children would continue to remain in custody of their father until they attain age of majority – Appeal dismissed.

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HIGH COURT CITATIONS
CIVIL CASES

2012 -5-L.W. 229

J. Revathi & Anr
Vs
S. Murugesan

Chit Fund Act, Sections 4,76/Suo motu raising of issue by court, whether permissible.

Maxims : Ex turpi causa non oritur action; Exdolo malo non aritur action; Ex nudo pacto non oritur action.

Respondent filed the suit seeking recovery of a sum – Court suo motu raised the point as to whether the suit was filed based on unregistered chit in violation of Sections 4 and 76 of the Chit Funds Act.

There is a legal embargo as against such conducting of unauthorised chits, which is punishable under law.

No legal cause of action would arise out of an illegal act.

Plaintiff, who admittedly, subscribed to the unauthorized chit conducted by the defendants cannot file a suit for recovery of money from them.

Suit should not have been entertained by both the courts below – This is purely a law point based on admitted and indubitable facts and hence this court in revision was justified in framing that issue and deal with it.

2012 -5-L.W. 242

Latha & Anr
Vs
L. Thangaraj

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Sections 7, 10(2)(i)/Advance, arrears, adjustment.

Respondent-landlord filed the RCOP invoking Section 10(2)(i) that there was non-payment of rent with effect from February 2007 to December 2007, for a period of 11 months at the rate of ₹1,400/- per month.

Petitioners/tenants would submit that it ₹20,000/- was paid by the tenants to the landlord towards advance – As per law, more than a months' rent should be refunded by the landlord from out of the advance amount or he should adjust the excess rental advance towards the arrears of rent – Accordingly from February 2007 till July 2007 there could be no 'wilful default' at all.

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

Landlord was not justified in approaching the Court with the complaint that there was 'wilful default' in paying the rents by the tenant.

2012 -5-L.W. 253

Mrs. Sangeetha
Vs
K. Meenatchisundaram and Ors

C.P.C., Order 6, Rule 17,

Tamil Nadu Court Fees and Suits Valuation Act (1955), Section 25(a)(d).

In the amendment in the plaint, the plaintiffs have only traced title to their predecessor in title of the property.

Court below has rightly allowed the application, holding that by permitting the plaintiffs to include the relief of declaration, multiplicity of proceedings is avoided and the plaintiffs have not introduced any new case and they have only traced their title to the suit property.

Plaintiffs having prayed for the relief of declaration of title, in respect of the immovable property, ought to have valued the relief under Section 25 (a) of the Act and they cannot value the same under Section 25 (d).

2012 -5-L.W. 267

Saroja Ammal
Vs
G. Krishnan

Transfer of Property Act (1882), Sections 106, 111(g)/Notice.

Appellants/defendants and their predecessor not running manufacturing business in the building but only running rice mill – Not entitled to give six months notice to quit under Section 106.

Tenancy between the vendor of the plaintiff and the defendants are admitted and also the respondent/plaintiff has proved that she purchased the suit property under a valid sale deed and after purchase, issued legal notice to the defendants as lessees.

Appellants/defendants not entitled to any legal notice under Section 106 – Respondent/plaintiff is entitled to the relief of declaration, recovery of possession and other reliefs.

2012 -5-L.W. 330

S. Ganesh (died) rep by Power of Attorney Sambandam S/o Govindasamy Mudaliyar, 19A, Doravadi Street Chidambaram & Ors
Vs
N. A.S. Ansari and Ors

Negotiable Instruments Act (1881), Section 118/Promissory Note, Suit based on Execution, Proof of,

C.P.C., Order 3, Rule 2/Suit based on promissory note by power agent, whether permissible, procedural irregularity, whether can be cured,

Tamil Nadu Money Lenders Act (1957), Sections 2(8), 3, 9, 9(10©/suit filed by power agent, maintainability.

Tamil Nadu Money Lenders Rules (1959), Rule 8/Suit filed by power agent, maintainability,

Power Agent could not have filed the suit claiming a sum – But it was a procedural irregularity, which would not take away irregularity, which would not take away the right available to a principal to obtain the relief prayed for in the plaint.

Fact the PW1-Promissory Note shows that he could not have been allowed to depose he could not have been allowed to depose in place of the principal – In matters requiring personal knowledge of Ex.A1-Suit Promissory Note transaction, PW1's evidence on behalf of principal was of no avail to the Appellant/Plaintiff.

PW2 is a professional money lender-Books, Statement of Accounts etc., are to be submitted – But no Account Books were produced before the trial Court on behalf of the Appellant/plaintiff(later deceased) to establish the suit transaction.

As per Section 34, if the entries, in the books of account, duly maintained, in the ordinary course of business, are corroborated, through other evidence, the same, are admissible – A Plaintiff relying on account books should prove (1) that the books are kept in regular course of business; (2) the particular entries and (3) must give some corroborative evidence.

There is no presumption of correctness attaching to the entries in books – Mere proof of the existence of some entries in books is not enough – The law requires proof not only of account books generally, but of each item – PW2 has not produced the accounts or the account books, adverse inference will have to be drawn against the Appellant/Plaintiff.

Appellants/Plaintiffs had not established that the Appellant/Plaintiff (since deceased) possessed the requisite means to lend a sum under Ex.A1-Promissory Note.

As per Tamil Nadu Money-Lenders Act and under Tamil Nadu Money Lenders Rules, 1959 the Books, Statement of Accounts etc., are to be submitted.

2012 -5-L.W. 348

Sakunthalammal (died) & Ors
Vs
T.G. Rajabathar (died) & Ors

Settlement Deed/Execution, attestation, acceptance by Minor, Proof regarding, subsequent alienation, effect, unborn children's rights, remainder's right, Scope of,

Transfer of Property Act (1882), Settlement deed, acceptance by minor, possession, Proof, Effect of, Remainder's; Interest, transfer to unborn persons, whether permissible; Scope of.

Maxims : Verba it a sunt interlligenda, ut res magis valeat quam perat;

Verba generalia generaliter sunt intelligenda;

Acta exterior indicant interior secreta;

Ex dolo malo non oritur action;

Ex trupi causa non oritur actin; Ex maleficio non oritur contractus;

Nul Prendra advantage de son tort demesne;

Nullus commodum capere posttest de injuria sua propria;

MM executed a settlement in favour of 'R'-D1 herein for life and thereafter to his children on their attaining majority – Plaintiffs are R's children – While so MM executed a sale in favour of N inrespect of item No. 2 which is subject matter of Appeal.

Held: To prove acceptance, there need not be any express written consent, and even by implication, acceptance could be understood and discerned – A minor cannot be expected to make any express acceptance.

Donor and the minor done are residing in one and the same house, the question of donor going out of the house and handing over possession of it to the minor done does not arise.

Absence of actual physical delivery of the properties concerned would not be fatal to the acceptance of Ex.A-1 –It cannot be stated that Ex.A1 was not acted upon by acceptance and delivery of possession.

Mere attestation of a document would not denote or connote that the attester relinquished whatever right he was having over the property covered under the said document attested by him.

A Hindu was made competent to execute a gift or settlement in favour of unborn persons, but subject of Chapter-II of the T.P. Act.

On the date of Ex. A27-the sale deed, none of the plaintiffs were born, R the life estate holder himself was a minor and he was not married – subsequently he got married and the plaintiffs were born to him.

Because D1-'R' during his life time kept quiet without asserting his right over item No.2 it does not mean that the absolute remainders, viz., the original Plaintiffs also should follow suit – They are having the right to assert their legal rights over the suit property.

An absolute remainder even during the life time of life estate holder can file a suit to safe-guard his interest without seeking for possession.

An absolute remainder even before he gets possessory right over the suit property, can well approach the Court for remedial measures.

2012 -5-L.W. 378

P. Vijayalakshmi
Vs
P. Susheela & Ors

Hindu Succession Act (1956), Sections 6(5), 8, Central Amendment Act (Act 39 of 2005) (w.e.f. 9.9.2005), Section 6/ Prospective or Retrospective operation, Scope of,

Hindu Succession (Tamil Nadu) Amendment Act (1989), (Act 1 of 1990) (w.e.f. 25.3.1989), Section 29(A) to (C)/Notional partition, Effect of,

Partition/Joint Hindu Family, Notional partition, Coparcenary property, daughter's rights, Scope of.

All the properties inherited by a male Hindu from his father, father's father or father's father's father are his ancestral properties.

Plaintiff and 2nd Defendant are the daughter and son of late P – Plaintiff filed the suit seeking for partition and possession of the properties into three equal shares and allot on such share to the Plaintiff.

When the suit properties were allotted to P under Ex.A2-partition deed and when P had son (2nd Defendant), P cannot claim to hold the property as absolute owner.

Since plaintiff traces her right trough her father as Class I heir, when P died intestate in 2001, as per Section 6 then in existence, Plaintiff had a right in the family properties i.e. 1/3rd share from out of half share of P.

Plaintiff having got married in 1981-82, as per (Tamil Nadu) Amendment Act 1 of 1990, cannot claim equal right on par with male members.

Since P died on 30.11.2001, on the date of death of P notional partition was effected and succession opened – By virtue of sub-section (5) of Section 6 notional partition effected remains unaffected – Therefore, Plaintiff can claim right only from out of father's half share i.e. 1/6th share.

When notional partition has taken place before 20.12.2004, as contemplated under Explanation to sub-section (5) of S.6 of the Act, the said partition is not affected – Trial Court rightly held that Plaintiff is entitled to 1/6th share in the suit properties.

(2012) 8 MLJ 379

J. Chandraekaran and Ors
Vs
V.D. Kesavan

(A) **Common usage – Right to use common passage – Whether plaintiff was entitled to common usage of the suit land – Held, document has to be read as a whole and it's spirit should be taken note of – In recitals of partition deed, defendant and plaintiff's father admitted that suit lane should be available for both of them – Plaintiff derived his title only under his father even though not by inheritance, at least by compromise as envis-aged under compromised deed – Plaintiff had right of common passage in schedule lane.**

(B) **Indian Easements Act (5 of 1882), Section 15 – Prescription – Acquiescence – Electric metres of defendants fixed on wall of plaintiff – Whether defendants have right to continue such metres fixed on plaintiff's wall as latter acquiescenced to it – Held, once as per partition deed, specific right is found conferred on plaitniff's father, cannot exclude his heir from using suit lance by just pleading prescription – Simply because plaintiff tolerated defendants, does not mean that ad nauseam and ad infinitum he should tolerate the same – Plea of acquiescence or prescription pleaded by defendants is untenable – Second appeal and cross-appeal dismissed.**

(2012) 8 MLJ 407

T. Janagan
Vs
A.Nandagopal

Suit for specific performance – Agreement to sell entered into between Plaintiff and Defendant – Plaintiff raised huge loan and paid sale consideration to Defendant – Whether Plaintiff has been ready and willing to perform his part of contract – Held, person who seeks specific performance should prove that he has been ready and willing to perform his part of the contract ever since it's emergence – Plaintiff kept quiet for one year and nine months without insisting for sale deed to be executed in his favour – Plaintiff who approaches Court for getting specific performance of his agreement to sell – Appeal is dismissed.

(2012) 8 MLJ 446

K. Rukmani
Vs
K.S. Ponnusamy Gounder

Negotiable Instruments Act (26 of 1881), Section 118 – Presumption as to negotiable instrument – Suit for recovery based on promissory notes – Defendant produced documents only after closing plaintiff's side, during trial – Whether case can be decided by discarding documents belatedly filed, and without ascertaining their genuineness – Held, plaintiff not recalled and given opportunity to explain stand concerning documents – If genuineness of documents denied by plaintiff, documents to be examined with help of handwriting expert – When evidence is lacking, negative has to be presumed and not affirmative – Decision cannot be rendered, simply placing reliance on presumption as per Section 118 – Matter remitted to trial Court.

2012 -5-L.W. 485

S. Kasiramalingam
Vs
The Chief Secretary, Governmetn of Tamil Nadu, Fort St. George, Chennai 600 009

Constitution of India, Article 165 r/w Article 217(2)(b), Challenge to Appointment of Advocate General/ Requisite qualifications, ten years of practice, what is, Continuous Practice, Practice in High Court, what is, Scope of, Article 319 (d)/Appointment as member of TNPSC, effect of.

Writ petition was filed challenging the appointment of the second respondent herein as Advocate General of the State of Tamil Nadu and to oust him from the office of the Advocate General on ground that the second respondent is not qualified for appointment as Advocate General and that he is appointed in violation of Article 165(1) r/w 217(2)(b) with appended explanation (aa) and also under Article 165 r/w Article 319(d).

It was submitted that the second respondent, having been appointed as Member of the TNSPSC in the year 2004 and till he resigned in the year 2008, suspended his practice during the said period and only after resignation of the post in 2008, he resumed his practice – Therefore, he was not having continuous practice of 10 years as an Advocate in the High Court.

Petitioner also submitted that as per Article 319(d), the second respondent is not entitled to be appointed in any post, including the post of Advocate General of Tamil Nadu, which can be treated only as an 'employment' – It was contended that he is disqualified from being appointed as Advocate General after serving as the Member of the TNSPC as there is constitutional prohibition under Article 319(d).

Held : For being appointed as Advocate General of the State one should be qualified to be appointed as a Judge of High Court as prescribed in Article 217(2)(b).

Second respondent's practice in the Bar spreads over to twenty four years before his appointment as a Member of TNPSC – Thereafter three years of practice before being appointed as Advocate General, is not in dispute.

Question raised is that, the second respondent is not having continuous practice of ten years immediately preceding his appointment as Advocate General of Tamil Nadu.

Second respondent has fully satisfied the eligibility conditions as contemplated under Article 217(2)(b) for being appointed as Advocate General of the State of Tamil Nadu as per Article 165 – He is not barred for being appointed as Advocate General of Tamil Nadu under sub-clause(d) of Article 319.

(2012) 8 MLJ 506

T.P. Vadivelu
Vs
S. Padmavathy and Ors

(A) Rights of co-owners – Joint possession of suit property, dwelling house – Partition suit – Whether co-owners can restrain each other from interfering with others' alleged possession – Held, dwelling house is common property of all co-sharers – One co-owner cannot physically prevent the other, right of ingress and egress over suit property – Plaintiff is not owner of suit property, only permitted to occupy it, no right to claim exclusive ownership during final decree proceedings.

(B) Hindu Succession Act (30 of 1956), Section 23 – Dwelling houses – Right of female heir – Whether plaintiff being female member, is prohibited from claiming partition of dwelling house – Held, no embargo for lady member to seek preliminary decree – Section 23 applicable only at time of final decree – Hindu Succession (Amendment) Act, 2005, omitted Section 23 – Hence, before passing final decree, embargo in Section 23, not considered as it is deemed deleted even regarding pending proceedings – Second appeal disposed of.

(2012) 8 MLJ 547

R. Manivasakan
Vs
M. Vimala

Hindu Minorities Guardianship Act (32 of 1956), Section 6 (a) – Guardian and Wards Act (8 of 1890), Section 25 – Natural guardian – child custody – Petitioner, father and natural guardian of child seeking grant of custody of minor from respondent, mother – Legality of – Held, best interest of child is only determining factor – Request by petitioner for grant of custody of minor cannot be granted only because he is natural guardian – Petitioner entitled for visitation right – Original petition dismissed.

2012 (4) TLNJ 553 (Civil)

U. Sree
Vs
U .Srinivas

Hindu Marriage Act, 1955 Section 13(1)(i-a), 26 and 27 – Decree for dissolution of marriage with permanent alimony of ₹5 lakhs ordered by family Court – On appeal Division bench of High Court directed husband to pay additional amount of ₹12500/- for maintenance – on appeal Supreme Court held that husband proved his case of mental cruelty which was the foundation for seeking divorce – Despite dislodging the finding of desertion, Supreme Court held that the respondent husband has rightly been granted a decree of divorce – as a decree is passed, wife entitled to permanent alimony for her sustenance – Further held that it is appropriate to fix the permanent alimony at ₹50 lacs out of which ₹20 lacs shall be kept in a fixed deposit in the name of the son in a nationalized bank which would be utilized for his benefit – Appeal dismissed with directions.

2012 (6) CTC 612

Arumugam
Vs
Natarajan S/o. Senthamaraikannan

Transfer of Property Act, 1882 (4 of 1882), Section 52 – Specific Relief Act, 1963 (47 of 1963), Section 19(1) – Protection under Section 19(1) of 1963 Act, whether available to purchaser pendent lite? – Suit for Specific Performance of Agreement – Sale in favour of subsequent purchaser pending litigation, however, Agreement in his favour anterior in point of time – Sale Agreement in favour of Plaintiff found to be invalid and tainted with material alteration – Consequently, right of purchaser would remain intact and phrase 'subsequent purchaser' would loose significance – Held, rights of purchaser pendent lite would vanish only when decree of Specific Performance was passed in favour of Plaintiff – When Plaintiff has been non-suited on account of material alterations made in Agreement, purchase made by purchaser, though subsequent, would not be affected by lis pendens – Held, though Section 52 of 1882 Act would prevail over Section 19(1) of 1963 Act and Doctrine of lis pendens would prevail, as

Plaintiff had been non-suited pending litigation would not have adverse impact on rights of subsequent purchaser – Finding of First Appellate Court that said purchaser (albeit subsequent) was bona fide purchaser for value, upheld in facts and circumstances of case.

Code of Civil Procedure, 1908 (5 of 1908), Order 6, Rule 4 – Agreement of Sale – Plea of material alteration in Agreement raised stage of First Appeal – Validity of – Suit for Specific Performance of Agreement of Sale – First Defendant/Owner of property remaining ex parte – Second Defendant/subsequent purchaser, held, would not have had knowledge about alteration in Agreement – Plea of material alteration though not raised in Written Statement, said plea was raised during cross-examination of Plaintiff's witnesses – Material alteration in Agreement apparent on face of document – In such circumstances, consideration of plea of material alteration by Appellate Court, not invalid.

Jurisprudence – Property Law – Defences available to subsequent purchaser, when erstwhile owner of property remains ex parte – Held, absence of erstwhile owner would benefit him and would facilitate fraudulent transaction being focused as genuine transaction – In such circumstances, limiting defences available to subsequent purchaser only to be an incentive to create litigation – Held, when endeavour of law is to put an end to litigation, procedure cannot facilitate – Decision of Court in P. Retnaswamy v. A. Raja, 2008 (3) CTC 1, referred to.

Jurisprudence – Property Law – Right of subsequent purchaser to file Appeal – Held, subsequent purchaser entitled to challenge result of litigation despite fact that property was taken by him subject to result of litigation – Moreover, when owner of property remains ex parte, subsequent purchaser cannot be barred form filing an Appeal.

(2012) 8 MLJ 759

Kailash Timber and Flywoods, Coimbatore
Vs
Saritha and Anr

Workmen's Compensation Act (8 of 1923), Section 8 and 17 – Workmen compensation – Death due to electrocution – Ex gratia payment to claimant/legal representatives not under Act – Question as to whether sum received by respondent/claimant can be deducted from sum of compensation awarded by Labour Commissioner – Held, under Section 17 of Act, a workman cannot contract himself out – If employer pays of his own to workman, he does so with risk that he would not be entitled to get set off for sum so paid – Amount was paid to claimant not under Act but as ex gratia payment – Such amount cannot be deducted from sum payable by appellant/employer – Appellant not entitled to get set off for sum paid to claimant – appeal dismissed.

2012 (6) CTC 771

Fr. Jegath Gaspar Raj, 68, Luz Church Road, Chennai -4
Vs
The Editor, Kumudham Reporter (Magazine), Kumudham Publications Pvt, Ltd. 151, New No. 306, Purasawakam High Road, Chennai 10

Torts – Defamation – Application for Interim Injunction restraining Defendants from publishing defamatory articles against Applicant – Applicant, a Roman Catholic Priest, a public figure by reason of his high level contacts and various activities in public figure by reason of his publication about his alleged involvement in 2G Spectrum case, posing great threat to national economy cannot be said to be defamatory – Injunction not to be granted considering nature of public activities of Applicant and nature of issue involved – However, Respondents restrained from publishing anything relating to personal life and private affairs of Applicant, without seeking clarification from him.

2012 (6) CTC 781

Sri Vaishnava Sri Padam Kainkaryam Association, rep. by Secretary, T.R. Srinivasan, Sri Vedantha Desikar Devasthanam, 5, Kesavaperumal Koil Sannathi Street, Mylapore, Chennai
Vs
M.S. Rajagopalan and Ors

Practice and Procedure – Quoting of wrong provision – Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Sections 23(2) & 25 – Stay of proceedings pending Appeal – As against order granting stay pending Appeal, by Appellate Authority, present Revision Petition filed by Petitioner under Section 25 of Act – But cause title indicated as though Revision was filed under Article 227 – Held, present Revision Petition has been filed within 30 days as prescribed under Rent Control Act – Petitioner has also carried out necessary correction in heading indicating the Revision was filed under Section 25 – But said correction was not found in Respondent's copy – Mere quoting of wrong provision of law will not put fetters on power of Court to treat Revision as on filed under Section 25.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 23(2) – Power of Appellate Authority to grant stay pending Appeal – Whether Appellate Authority was justified in granting blanket stay pending Appeal ? – Held, no doubt Appellate Authority has power to grant stay but same must be exercised with some rationale – In present case blanket stay was granted by Appellate Authority on sole ground that Fair Rent proceedings has not attained finality – Court, which is vested with power to grant discretionary relief is also obliged to impose 'such conditions' as may deem fit, in interest of justice, so that party enjoying interim order is put on terms.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (T.N. Act 18 of 1960), Section 23(2) – Power of Appellate Authority to grant stay, pending Appeal – Engineer's Report no doubt, is not encyclopaedia and same need not be taken as bibilical truth, but said report will certainly form foundation while granting stay – In present case, Engineer examined on part of Tenant himself admitted that fair rent would be 3,506, whereas rent being paid by Tenant is ₹1,800 – In such circumstances, Appellate Authority could have directed Tenant to pay atleast admitted fair rent of ₹3,506, while granting stay of Fair Rent proceedings – Accordingly Revision allowed and impugned order granting blanket stay set aside – There will be order of interim stay subject to Respondent depositing admitted fair rent of ₹3,500 per month, from date of filing of Appeal – Respondent further directed to deposit differential rent from year 2007 up to November 2008 – Revision allowed – Order granting blanket stay set aside.

2012 (6) CTC 833

Kamatchi and Anr
Vs
Muthammal and Ors

Code of Civil Procedure, 1908 (5 of 1908), Section 37, Explanation to [as introduced by Amendment Act 104 of 1976] – Decree – Transmission of - Whether necessary – Suit originally decreed by Subordinate Court – After enhancement of pecuniary jurisdiction, Execution Petition filed before District Munsif Court – Objection by judgment-debtor that in absence of any transmission of decree by Subordinate Court, District Munsif Court cannot entertain any proceeding and therefore, order of District Munsif Court is liable to be set aside – As per Explanation to Section 37 by virtue of Amendment Act 104 of 1976, there is no need for transmission by Corut which passed decree, after change of pecuniary jurisdiction – Earlier conflict of opinion whether decree can be executed by transferee Court in absence of any transmission by original Court, which passed decree, was clarified by introduction of Explanation to Section 37 – Effect of Explanation to Section 37 introduced by Amendment Act 104 of 1976, not brought to notice of Court in decision reported in Sri Krithika Finance v. R. Elangovan, 2009 (5) CTC 153 – Explanaiton was introduced only to settle controversy with respect to power of executing Court - Objection raised

by judgment-debtor cannot be sustained – District Munsif Court is competent to entertain Application for execution – Civil Revision Petition dismissed.

2012 -4-L.W. 844

P.S. Rengarajan
Vs
K.G. Pandurangam and Ors

C.P.C., Order, 18 Rule 18/Power of Court to inspect, when second advocate commissioner appointed, sketch filed, need for, Scope.

C.M.P. was filed by the petitioner under Order 18, Rule 18 CPC, seeking the appellate judge to inspect the suit property and other properties for ascertaining the correct position and existence by way of local spot inspection.

Held: Unless legal necessity warrants, the Presiding Judge of the Court need not have any personal inspection of the property – No party to the proceeding is entitled to compel the discretion of a judge to have personal inspection of the suit property and also other properties.

After scrapping the earlier Advocate-Commissioner's report filed by the first Advocate-Commissioner, second Commissioner was appointed and after his inspection, he filed his report and sketch, before the trial court.

As the petition itself is not maintainable, in view of the second Advocate-Commissioner's report and sketch intact and also considered by the trial court in its Judgment, the petitioner/appellant is not entitled to seek the appellate judge himself to inspect the property – Revision petition is liable to be dismissed as not maintainable.

2012 -4-L.W. 849

K.B. Nawabjan
Vs
Lodd Ramgopal & Ors

Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Sections 2(6) 10(i)/landlord-tenant, sub-tenancy, relationship, bona fide denial of title, effect of, Suit for eviction whether maintainable, sub-tenant, whether trespassers.

Termination of the chief-tenancy by the landlord would make the sub-tenant also a trespasser – Cessation or eviction order against the chief tenant would bind the sub-tenant also even though the sub-tenant was nto made a party to the proceedings.

Whenever denial of title of the landlord has been raised by a tenant, the bona fide nature of such denial has been decided by the Rent Controller as per S.10(i).

Second proviso of Section 10(i) is applicable to the present case. It has to be seen whether the chief-tenancy has been over due to the death of the original chief-tenant.

Relationship of the landlord, chief-tenant and sub-tenant did not vanish on the death of the chief-tenant when the relationship of the landlord and tenant and sub-tenant are subsisting in between the parites, the defendants cannot be deemed as trespassers.

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HIGH COURT CITATIONS
CRIMINAL CASES

2012 (6) CTC 648

The Dolveton-Corrie Protestant School Association, represented by its President, Mr. H.E. Wilkins, No.13-A, Ritherdon Road, Vepery, Chennai – 600 007
Vs
Dr. Prof. Geoffery K. Francis [Respondent in Crl.A Nos.840 & 841 of 2004/Petitioner in Crl.R.C. Nos. 153 & 154 of 2007]

Indian Penal Code, 1860 (45 of 1860), Sections 499, 500 & 505(2) – Letter sent by Accused to Management of School containing allegations that School is amassing unaccounted wealth and spending money on lawyers to cover up its fault – Said statements expressing hatred of Accused toward School Authorities and defamatory, per se – No explanation offered by Accused to prove how said statements were made in good faith and for public good – Act of Accused not covered by Exceptions enumerated in Section 499 – Remarks of Accused being libelous per se, conviction of Accused under Sections 500 & 505(2), upheld.

Indian Evidence Act, 1872 (1 of 1872), Section 65 – Secondary Evidence – No objection raised to admissibility of – Held, even if no objection is raised to marking of Xerox copy of a document of which original is not produced, said Xerox copy would not be admissible in evidence by virtue of Section 65.

2012 -2-L.W.(Crl) 665

Babu
Vs
Vinayagam

Evidence Act, Section 45,

Negotiable Instruments Act, Section 20.

It was contended that the cheques as well as the promissory notes have been signed in blank as a collateral security.

Petitioner admits the issuance, entrustment or execution of the cheques as well as promissory note to the respondent/complainant.

He disputes that the writing made in the instruments notes differ and they were written in two different inks.

Sending the cheques in question as well as the promissory notes to ascertain the person who wrote the contents thereof is unnecessary.

2012 (6) CTC 739

Dr. J.S. Rajkumar and Anr
Vs
Assistant Commissioner of Police, cyber Crime Cell, Central Crime Branch, Egmore, Chennai-8 and Anr

Torts – Medical Negligence – Gross Negligence – Doctor conducting bariatric surgery on patient aged 20 years – Post-operation patient complaining of abdominal pain on fluid collection in abdominal cavity – Doctor performing second surgery and claimed to clean cavity, drain collection and close seat of perforation – Patient, however, even after second surgery became critical – Drainage tube recklessly removed by within three days of operation – Food fed, leaking through perforation, could not be drained on account of removal of drainage tube - Infection of patient progressing severely – Said acts of Doctor, held, constitute gross negligence.

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Documents to be considered by Court – Court to only look into documents filed by Police and relied upon by them under Section 207 – Documents produced by Accused not to be considered, unless same is impeccable in nature – Statements recorded by witnesses under Section 161 not to be relied upon by Court.

Code of criminal Procedure, 1973 (2 of 1974), Section 482 – Medical Negligence – Conflicting opinion of Doctors – Approach of Court – Petition to quash Criminal proceedings initiated on account of alleged gross negligence by Petitioner-Doctor – Two out of three Doctors opining that Petitioner was guilty of gross negligence whereas other three Doctors offering opinion favouring Petitioner – Held, in Petition under Section 482, Court not to make roving enquiry to determine which opinion is acceptable – Duty of Trial Court to test acceptability of said opinions.

Medical Negligence – Factors necessary to prosecute Doctor – Doctor to be guilty of gross negligence and not merely ordinary negligence – Obtaining of independent opinion from unbiased Doctors by Investigating Officer pre-requisite for prosecuting a Doctor – Doctors, dedicated to serving society, ought to be protected from unscrupulous prosecution – Police and Courts to be guarded from being swayed by ill-founded allegations against Doctors.

Criminal Jurisprudence – Medical Negligence – Conflicting opinion of two set of Doctors – In case of conflicting opinion given by Doctors, Police not to close case by accepting opinion favouring Accused – Police bound to file Final Report leaving it to decision of Court as to acceptability of said opinions.

Indian Penal Code, 1860 (45 of 1860), Section 304-A – Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Medical Negligence – Gross Negligence, whether attributable to Hospital, where Doctor was working? – Offence registered against Doctor for negligently causing death of patient – Hospital, where Doctor was working also arrayed as Accused – No material available on record to maintain prosecution against Hospital – Criminal proceedings against hospital, quashed.

2012 (6) CTC 841

Mahender Goyal
Vs
Kadamba International, rep. by its Proprietor, Sh. Deepak Kumar Aggarwal, D/1, K.A.S. Nagar, No.8, Marappalam Road, Karungalpalayam, Erode

Code of Criminal Procedure, 1973 (2 of 1974), Sections 190, 322 & 482 – Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Territorial Jurisdiction of Magistrate vis-avis power to take cognizance of offence – Decision of Apex Court in Trisuns Chemical Industry v. Rajesh Agarwal, 1999 (8) SCC 686 in conflict with Judgment of Apex Court in Y. Abraham Ajith v. Insepctor of Police, Chennai, 2004 (8) SCC 100 on issue of power of Judicial Magistrate, who lacks territorial jurisdiction to take cognizance of offence – Questions referred to Larger Bench for

resolving said issue and for determining modus operandi to be adopted by Judicial Magistrate when most cognizance he is convinced that he lacks jurisdiction and for determination of power of High Court under Section 482 vis-à-vis said issue.

Negotiable Instruments Act, (26 of 1881), Section 138 – Territorial Jurisdiction of Magistrate – Magistrate would have territorial jurisdiction to entertain Complaint under provision, if place where cheque was drawn or place where drawee Bank dishonoured cheque or place where legal notice was received by Accused were situated within his jurisdictional limits – When cheuqe was drawn at New Delhi, dishonoured at Bangalore and notice was received in New Delhi, Judicial Magistrate at Erode would not have territorial jurisdiction on account of Erode being the place where Complainant received cheque and where collecting Bank was situated and place where notice was issued, as same would not constitute part of cause of action.

Code of Criminal Procedure, 1973 (2 of 1974), Section 190 – Territorial Jurisdiction of Magistrate vis-à-vis power to take cognizance of offence – Territorial jurisdiction of Magistrate would not trammel his power to take cognizance of offence – Issue of territorial jurisdiction to be considered only during post cognizance state – Decision of Apex Court in Trisuns Chemical Industry v. Rajesh Agarwal, 1999 (8) SCC 686, relied upon.

Code of Criminal Procedure, 1973 (2 of 1974), Section 201 – Applicability of provision – Provision applicable only during pre-cognizable stage and not applicable post-cognizance.

Code of Criminal Procedure, 1973 (2 of 1974), Section 322 – Term 'Chief Judicial Magistrate' employed in provision understood in common parlance as Chief Judicial Magistrate to whom concerned Magistrate is subordinate.

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